

## REPORT TO THE COMMUNITY

### Findings and Recommendations Concerning the Unintentional Police Shooting of Salvatore J. Culosi

Submitted by

Colonel David M. Rohrer  
Chief of Police  
Fairfax County Police Department  
4100 Chain Bridge Road  
Fairfax, VA 22030

January 11, 2007



Fairfax County, Virginia



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## Preface

On the evening of January 24, 2006, Mr. Salvatore J. Culosi was shot and mortally wounded by a member of the Fairfax County Police Department's Tactical Section during an operation by our Organized Crime and Narcotics Division and the Tactical Section to arrest Mr. Culosi and to serve a search warrant on his residence. Our preliminary investigation determined that the officer's weapon was unintentionally discharged.

On January 25, I publicly acknowledged this tragic event and, on behalf of my Department and myself, expressed our condolences to Mr. Culosi's family and friends. I also stated:

*We also acknowledge, and accept, that we have a responsibility to Mr. Culosi's family, to the community, and to our officers to conduct a comprehensive, balanced, and fair investigation and we are committed to performing that responsibility. I pledge that we will fully review, as always, our policies, practices, and this operation in detail.*

In this case, as in any police officer-involved shooting, we conducted thorough and detailed criminal and internal investigations. These criminal and internal investigations have been detailed, thorough, and comprehensive.

Investigations of this scope and magnitude are complex and require multiple steps, strict adherence to due process and policy, and significant analysis and review. And an internal investigation requires reasonableness and fairness and an appropriate balance between the public interest and right to know, the Department's goals and objectives, and the due process and rights afforded police officers.

This incident was the first fatal unintentional shooting by a Fairfax County police officer in the history of the Department, and it opened public and internal debate over the appropriateness of certain police methods and tactics. Although unprecedented for the Fairfax County Police Department, I believed this case warranted a comprehensive and candid report to the community.

Our goal is to emerge from behind "closed doors;" explain the investigative, review, disciplinary, and grievance processes; detail the extensive investigative steps taken in this case, report our findings; and highlight our actions and recommendations. We have attempted to present this report in a straightforward, sequential manner to enhance the understanding of the facts and circumstances and our investigative processes. Specific information related to this investigation is presented along with information generic to investigative, disciplinary/grievance, and review processes to provide more context.

Policing is a dynamic and, at times, challenging profession with inherent risks. My men and women perform our mission and their duties with integrity, professionalism, and courage, and in close partnership with a supportive and engaged community. However, it is both incumbent upon my Department and my responsibility to critically review and assess our policies and practices, and to be as open and transparent as possible.

As Chief of Police, I am responsible for balancing officer safety and the safety and civil rights of an individual. In my reviews and decisions, I must also balance objective reasoning against a subjective understanding of the behavior, actions, or decisions of my men and women. I take these responsibilities seriously, but they can be delicate and difficult balances to achieve.

By way of disclosure, I served previously as an officer, Assistant Team Leader, and Team Leader of the Tactical Section, as well as Commander of the Special Operations Division. Some may question whether I am predisposed to an outcome or hesitant to consider policy revisions or other “best practices.” However, as one who has always embraced change, I view myself as uniquely qualified to engage in meaningful discussion and review of the issues involved.

I accept full responsibility for our criminal and administrative investigations, and for the content of this report. I accept too that this report may not answer all questions and that some may perceive it as defensive in nature. This is not the intent. The intent is to report the facts and circumstances, our findings, and our recommendations in this case as fully and as clearly as possible.

As this is also a personnel matter, we are restricted in disclosing some information because of confidentiality and privacy. In addition, some operational details and methods will not be disclosed or discussed in detail so as to not compromise the safety of my men and women or future operations or investigations. As the full context cannot be presented, these omissions pose some risk for misunderstanding or misinterpretation by the reader, but I firmly believe the need to produce this report outweighs any potential risk.

The Fairfax County Police Department is committed to integrity and a standard of excellence, and we are committed to upholding public trust. As police are empowered by the public, we are, in turn, accountable and responsible to the community.

It is my express intent that we learn from this tragic incident and progress and improve as a Department. The Culosi family, the community, and my men and women deserve no less.

*Colonel David M. Rohrer  
Chief of Police  
Fairfax County Police Department*

## **Summary**

On January 24, 2006, detectives of the Organized Crime and Narcotics Division's Money Laundering Unit, as part of an ongoing illegal gambling investigation, secured a search warrant for 11626-A Cavalier Landing Court, located in Fairfax County.<sup>1</sup> The search warrant was going to be served concurrent with the arrest of Mr. Salvatore Culosi, owner of this address, for felony charges.

The Special Operations Division's Tactical Section<sup>2</sup> was contacted to perform both the search warrant operation and the arrest of Mr. Culosi. Following a briefing, the operation commenced at approximately 9:31 p.m. Master Police Officer (MPO) Deval Bullock and his partner were assigned the responsibility as the primary cover and arrest team, and as such he was tasked to approach Mr. Culosi, and stabilize the situation until other tactical officers arrived to handcuff Mr. Culosi. Upon a pre-designated arrest signal, MPO Bullock and his partner proceeded by vehicle into position to perform their assigned duties. As MPO Bullock exited the vehicle, he drew his service weapon to protect the undercover and himself, and issued voice commands to control Mr. Culosi. MPO Bullock's weapon discharged once. The bullet struck Mr. Culosi in the chest, mortally wounding him.

Mr. Culosi was immediately treated on the scene by a Tactical Section police officer/tactical medic and then medical personnel from the Fairfax City Fire and Rescue Department. He was transported by Fairfax City Fire and Rescue personnel to Inova Fairfax Hospital and later pronounced dead.

As required, this incident was investigated by the Criminal Investigations Bureau and the Internal Affairs Bureau to determine all relevant facts and circumstances.

The preliminary finding of each investigation was that the shooting was unintentional during the performance of a lawful duty by MPO Bullock. The criminal investigation was presented to Robert F. Horan, Jr., Commonwealth's Attorney for Fairfax County. Following his review of the investigation, he ruled there was no violation of criminal law and declined to prosecute MPO Bullock.

Following significant investigation, review, and analysis, the Department has concluded that the unintentional shooting was due to a reflex-like involuntary muscle contraction experienced by MPO Bullock as he was drawing his weapon and moving toward Mr. Culosi. Although the act was clearly unintentional, MPO Bullock was held accountable and responsible for the unintentional discharge, and a violation of Department regulations was sustained against him.

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<sup>1</sup> All bureaus, divisions, sections, or units listed are an entity within the Fairfax County Police Department unless otherwise noted. An organizational chart has been attached (Appendix 1) to assist the reader.

<sup>2</sup> Synonymous with what is commonly referred to as a SWAT team.

The Department has also conducted a comprehensive review of its policies, practices, training, and tactics and multiple recommendations have been made. In particular, the review determined that the use, application, and understanding of higher- or high-risk tactics are inconsistent across the Department. One of the primary recommendations is revised policies, guidelines, and training regarding the approval, use and application of high-risk tactics. Other recommendations include the establishment of a command level Use of Force Review Committee and revised and enhanced training.

The Department has also assisted the Civil Rights Division of the U.S. Department of Justice with its independent inquiry into this incident. As of the date of this report, the results of that inquiry have not been made known or released.

### **Overview of the Criminal Investigation of Salvatore J. Culosi**

On October 17, 2005, detectives from the Money Laundering Unit began a criminal investigation into alleged illegal sports betting at a local restaurant. A detective entered the establishment and was solicited by Salvatore Culosi to bet on sporting events. Mr. Culosi provided a personal cellular telephone number and a sports betting line number to facilitate future illegal gambling. Mr. Culosi set a \$300 betting limit and a \$1000 pay-out threshold. Beginning on October 21, 2005 and continuing through January 22, 2006, the undercover detective placed approximately \$28,000 in illegal sports bets with Mr. Culosi. During this time, the betting limit was raised to \$500. Several meetings were arranged with Mr. Culosi to collect and pay cash for illegal gambling wins and losses. Supervisory guidance and oversight was involved at all stages of the investigation, and the method and duration of the investigation was consistent with the investigative steps needed for prosecution.

Listed below are the Code of Virginia criminal statutes that Mr. Culosi would have been charged with, based on the detective's three-month investigation:

*§ 18.2-328. Conducting illegal gambling<sup>3</sup> operation; penalties.*

*The operator of an illegal gambling enterprise, activity or operation shall be guilty of a Class 6 felony. However, any such operator who engages in an illegal gambling operation which (i) has been or remains in substantially continuous operation for a period in excess of thirty days or (ii) has gross revenue of \$2,000 or more in any*

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<sup>3</sup> Code of Virginia § 18.2-325, Definitions - "Illegal gambling" means the making, placing or receipt, of any bet or wager in this Commonwealth of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest or event, occurs or is to occur inside or outside the limits of this Commonwealth.

*single day shall be fined not more than \$20,000 and imprisoned not less than one year nor more than ten years.*

*§ 18.2-246.3. Money laundering; penalties.*

*A. It shall be unlawful for any person knowingly to conduct a financial transaction where the person knows the property involved in the transaction represents the proceeds of an activity which is punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States. A violation of this section is punishable by imprisonment of not more than forty years or a fine of not more than \$500,000 or by both imprisonment and a fine.*

As part of the Money Laundering Unit's investigation and in preparation for arresting and prosecuting Mr. Culosi, a search warrant was sought for his residence. The Money Laundering Unit detective prepared an affidavit as required by Code of Virginia § 19.2-54:

*§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant prohibited; effect of failure to file affidavit.*

*No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing, or person to be searched, the things or persons to be searched for there under, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense in relation to which such search is to be made and that the object, thing, or person searched for constitutes evidence of the commission of such offense.*

The affidavit was presented to a magistrate who in turn authorized the search warrant for Mr. Culosi's residence at 11626-A Cavalier Landing Court (Fairfax County). The detective was seeking further evidence to substantiate his criminal investigation and convict Salvatore Culosi. Code of Virginia § 19.2-53 describes what may be searched and seized.

*§ 19.2-53. What may be searched and seized.*

*Search warrants may be issued for the search of or for specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:*

- (1) Weapons or other objects used in the commission of crime;*
- (2) Articles or things the sale or possession of which is unlawful;*
- (3) Stolen property or the fruits of any crime;*

*(4) Any object, thing, or person, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of crime.*

### **Operational Planning and Briefing**

After the Money Laundering Unit detective prepared his affidavit for a search warrant for Mr. Culosi's residence, the four-page document was reviewed. Concurrence and approval was granted by his immediate supervisor. The affidavit clearly specifies probable cause for a search of Mr. Culosi's residence, 11626-A Cavalier Landing Court, located in the Westcott Ridge subdivision in Fairfax County.

By policy the Organized Crime and Narcotics Division is to use the Tactical Section for all "high-risk" search warrants. Issues of concern for detectives and supervisory personnel in the decision-making process include the propensity for violence by suspects, access and availability of weapons, large amounts of currency, protection of the identity of undercover police officers, protection of confidential informants and readily destroyed evidence. There is, however, discretion in the service of low-risk search warrants based on facts and circumstances.

The search warrant for Mr. Culosi's residence was for "records and documents," a classification not normally associated with the use of higher-risk tactics or special teams or expertise. Several factors integral to a subjective understanding of the decision to request the Tactical Section were considered by the Assistant Commander of the Organized Crime and Narcotics Division, and subsequently others including the Tactical Section supervisors. During this timeframe, the Money Laundering Unit and Tactical Section had conducted an operation involving illegal gambling in which armed "guards" were inside the residence. Also, neighboring jurisdictions had experienced several armed robberies of poker games. There was, in summary, consideration given to a potential nexus between a gambling investigation involving large sums of money and the possibility of the existence of weapons. This, coupled with the unknown factor of who exactly would be in the residence, prompted the request for the Tactical Section for the search warrant.

The request for the Tactical Section to conduct a search warrant must be approved by the Commander of the Special Operations Division, and that approval was given for this case.

In the furtherance of his investigation the lead detective was already scheduled to collect winnings from Mr. Culosi for recent investigative bets. Therefore, the plan was for Mr. Culosi to be taken into custody outside of his residence, either inside the undercover vehicle or in close proximity to the vehicle. These are

known respectively as a “vehicle takedown”<sup>4</sup> or an “open air takedown.”<sup>5</sup> The Organized Crime and Narcotics Division has options available when conducting operations of this type. They may use either their Street Crimes Unit, comprised of specially trained detectives contained within the same division, or the Tactical Section to conduct the operation.

By policy and practice, the Street Crimes Unit is the primary choice for the majority of these arrest operations based on the assigned officers’ experience and training. However, as the Tactical Section was already being requested to serve the search warrant it was decided that the Tactical Section could also conduct the arrest.

Based on advance notice of the pending operation by the lead detective, supervisors and officers within the Tactical Section had begun preparatory steps on January 2, 2006. The Tactical Section Team Leader, a second lieutenant, coordinated the tactical planning. The operation would consist of two phases; one to take Mr. Culosi into custody and the other to serve a search warrant on his residence. In planning for any operation the Tactical Section considers multiple factors, including case background, criminal or other history of any involved person(s), threats, potential and types of weapons, the physical location, number of persons involved, the possibility of lookouts, etc. The Team Leader specifically planned the search warrant service portion of the operation and the Tactical Section Assistant Team Leader, a sergeant, was tasked to pre-plan for the arrest.

On January 24 the lead detective presented his “Affidavit for Search Warrant” with the supporting facts to a magistrate. The affidavit was reviewed by the magistrate and a search warrant was issued and signed.

The operational briefing was conducted at the Fair Oaks District Station, located at 12300 Lee Jackson Memorial Highway at 8:30 p.m. Members of the Money Laundering Unit and Tactical Section, and several patrol officers assigned to assist were in attendance. Information was communicated to all participants by the lead detective. This included a description and characteristics of the location; Mr. Culosi’s name, physical description and pertinent information, to include the lack of a criminal record and no known weapons; assignments and responsibilities for all personnel participating in the operation; a brief synopsis of the case; and details on the arrest plan. A written operations plan, including a photograph of Mr. Culosi, was disseminated to all participants.

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<sup>4</sup> General term for an operation in which an individual or individuals are taken into custody while in a vehicle which is either controlled by them or the police.

<sup>5</sup> General term in which an individual or individuals are taken into custody when they are on foot and readily able to flee.

The Tactical Section Assistant Team Leader and Team Leader then conducted the briefings for their respective roles in the operation for the arrest of Mr. Culosi and the service of the search warrant.

The Assistant Team Leader specifically briefed the vehicle takedown and planned arrest of Mr. Culosi. A primary consideration in any operation involving undercover detectives is the safety of the detective(s).

Through conversations with the lead detective, it was believed Mr. Culosi would most likely enter the undercover vehicle; however, the operations plan incorporated contingencies for other scenarios. Therefore, the plan developed had two arrest vehicles, each staffed by two tactical officers. One team was positioned to cover the front and one was positioned to the rear of the undercover vehicle. MPO Bullock and his assigned partner were in the vehicle to the rear. MPO Bullock's specific assignment was to exit the vehicle, approach and control Mr. Culosi through displaying his drawn service weapon and issuing standard voice commands, and to immediately stabilize the scene and protect the undercover detective. The other two tactical officers were then to approach and handcuff Mr. Culosi. Assigned tactical officers, including MPO Bullock, were among the most experienced of the Tactical Section.

The tactical vehicle takedown plan to arrest Mr. Culosi deviated to some extent from the standard Tactical Section training and past practices. MPO Bullock was not comfortable with the original plan and challenged it prior to the briefing. A modification was made, however, the vehicle takedown plan was still not fully consistent with training and past practice. Described in general terms, so as not to compromise the safety of future operations, the inconsistency was that one officer is not usually assigned to approach, cover an individual, and wait for others to arrive to physically control and handcuff. Several officers are generally assigned together so that they can work in tandem, communicate with each other, and support each other as needed. The other officers also generally have their weapons holstered so they may safely control and handcuff, or chase if necessary, an individual without the risk of an unintentional discharge.

### **MPO Deval Bullock and the Operation**

At the time of this case, MPO Bullock had approximately 17 years of experience with the Department. During his career he spent five years in the Street Crimes Unit and in 1999 was selected for the Tactical Section.

On Tuesday, January 24, 2006, he was scheduled to work the first day of his normal four-day tour. He had been on scheduled days off on January 21 and 22. On Monday, January 23, also a scheduled day off, he worked a Department approved seven-hour overtime assignment which ended at 4:30 p.m. He went

home after this assignment, and according to MPO Bullock, got a “normal” amount of sleep that evening.

Early in the morning on January 24, MPO Bullock was assigned to participate in a scheduled deer management hunt. He arrived at the designated location at 5:00 a.m. The assignment lasted until 12:30 p.m., after which he was sent home to rest pending the scheduled search warrant assignment later that night.

A review of MPO Bullock’s work schedule has found that his work hours and overtime hours were in compliance with all Departmental rules and regulations and it has been determined that fatigue was not a factor in this event.

MPO Bullock arrived as scheduled for the operational briefing at the Fair Oaks District Station at approximately 8:00 p.m. He was in full uniform, displaying his badge of authority. He was wearing his standard issued tactical uniform and gear. His issued duty weapon was a Heckler & Koch USP .45 caliber semi-automatic pistol, the same weapon carried by all members of the Tactical Section. MPO Bullock had his weapon holstered in a Safariland®, model #6004-931-HK-6V, gun retention holster.

At approximately 9:15 p.m., following the briefing, officers began to position themselves in their pre-designated locations, and at approximately 9:31 p.m., the operation was initiated. Weather conditions and ambient lighting conditions were as expected and were sufficient to perform a safe operation.

The undercover detective made telephone contact with Mr. Culosi who stated he would come outside to meet the awaiting officer. The exchange of money was to take place directly behind Mr. Culosi’s condominium. When Mr. Culosi arrived at the detective’s vehicle, he opened the passenger side door and gave the detective the illegal gambling proceeds in cash. He remained standing next to the open passenger door conversing with the undercover detective. As he did so, the assigned Tactical Section officers, including MPO Bullock, began their approach to arrest Mr. Culosi.

MPO Bullock was seated in the front passenger seat as his team approached the rear of the undercover vehicle to control Mr. Culosi. They pulled directly behind the undercover vehicle, parking several feet away. MPO Bullock began his exit from his vehicle to approach Mr. Culosi, who remained standing next to the open passenger door of the undercover vehicle.

As MPO Bullock exited his passenger seat, he pushed the vehicle door outward forcefully with his left hand to keep his right hand free to draw his issued service weapon.<sup>6</sup> Simultaneously, he turned his body and planted his feet on the

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<sup>6</sup> It is important to note that MPO Bullock’s drawing of his service weapon was not discretionary. It is a prescribed tactical method and he was performing as trained and assigned to protect the undercover detective and himself.

pavement. In accordance with his training, MPO Bullock, a right-handed shooter, began to reach for his holstered weapon, which was in double action<sup>7</sup> mode. As he manipulated the rotating hood of his holster and began drawing the firearm, he continued to push the door open with his left hand and began to issue standard voice commands to Mr. Culosi.

As MPO Bullock removed his weapon from the holster, he was rounding the outer edge of the door frame. As he did so, the heavy door reached its maximum opening threshold, bounced back and jarred him, causing him to lose his balance. His left hand maintained control of the door while his right hand was affixed to his weapon. MPO Bullock was still in the process of transitioning his weapon from his holster to establishing a master grip and coming to a “ready gun”<sup>8</sup> weapon stance when the weapon discharged.

One round was fired. MPO Bullock heard his weapon discharge, but did not immediately realize or recognize he had manipulated the trigger mechanism. Mr. Culosi was standing approximately 20 feet away next to the open passenger door of the undercover vehicle. The round struck Mr. Culosi in the left chest, just under his left arm. MPO Bullock ran to Mr. Culosi to determine if he had been struck, just after Mr. Culosi fell to the ground.

MPO Bullock’s tactical partner was moving to his assigned position from the opposite side of the tactical vehicle and heard one shot fired. Due to his position he did not visually witness the shooting. The undercover detective, seated in the driver’s seat of his vehicle across from where Mr. Culosi was standing, heard one shot fired and observed Mr. Culosi fall to the ground. The secondary arrest team vehicle arrived on the scene within seconds of the shooting. Perimeter units which were staged in close proximity also heard the shot and came to assist.

The Tactical Section has a full-time tactical officer/medic on every operation. The team medic was summoned, arrived in seconds, and began diligent lifesaving efforts. The team medic is certified through the Fairfax County Fire Department as an Emergency Medical Technician - Basic (EMT-B) and participates in a program of CME (Continuing Medical Education). He receives training once a month provided by the Department’s Medical Director.

Immediately following the shooting, rescue personnel were also summoned to the scene. Field treatment by the tactical team medic continued until Fairfax City Fire and Rescue (M403) arrived and took over emergency medical treatment.

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<sup>7</sup> Condition in which a semi-automatic weapon’s hammer is not cocked. The pulling of the weapon’s trigger cocks the hammer and fires the first round. In this model the hammer remains cocked following the firing of the first round and any subsequent rounds may be fired in “single action.”

<sup>8</sup> “Ready gun” - police terminology describing when the weapon is de-cocked, finger off the trigger and placed along the frame, with the weapon held at a lower position. This position enables a police officer to more fully view, scan, and evaluate any potential threats, i.e., the person’s hands, yet still be readily prepared to use deadly force if required.

Mr. Culosi was transported to the Inova Fairfax Hospital Emergency Department where he was pronounced dead at 10:07 p.m.

### **Service of the Search Warrant**

The search warrant was subsequently served upon Mr. Culosi's residence by other assigned tactical officers and detectives.

The search yielded records and documents supporting an illegal gambling enterprise, a large sum of U.S. currency, electronic devices and a computer, and suspected cocaine and drug paraphernalia.

The lead detective later filed the affidavit, search warrant and Inventory of Seized Property with the Fairfax County Circuit Court as required by Code of Virginia § 19.2-57.

### **Fairfax County Police Department Officer-Involved Shooting Investigations**

This section is presented to provide a comprehensive understanding of police officer-involved shooting investigations. There are some important details related to this specific investigation, however, most of the information is generic and relevant to any case. The Department believes this information is fundamental to the reader's thorough understanding of the depth and complexity of the criminal and administrative investigations required in any police officer-involved shooting. It is hoped this will provide a foundation for an informed understanding of our findings, recommendations, and conclusions.

The responsibility for investigating an officer-involved shooting both criminally and administratively is dictated by the Department's General Orders.<sup>9</sup> Specifically, General Order 540.1, Use of Force, assigns joint investigative responsibility to the Criminal Investigations Bureau and the Internal Affairs Bureau. The Criminal Investigations Bureau – Major Crimes Division, has primary responsibility for determining possible violations of criminal statutes and subsequent prosecution. The Internal Affairs Bureau is responsible for conducting an administrative investigation<sup>10</sup> which primarily focuses on adherence to laws and Fairfax County or Departmental policies, rules, and regulations. Each entity is responsible to ensure fair and thorough investigations and to provide comprehensive reports for review.

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<sup>9</sup> Directives of Departmental policy and procedure issued by the Chief of Police.

<sup>10</sup> Synonymous with an internal investigation an administrative investigation is conducted for the purpose of documenting the conduct, action(s) or performance of an employee(s) and to determine whether such conduct, action(s) or performance is in compliance with Departmental policy or General Orders. Administrative investigations may also serve to review Departmental policy, procedures, training, or equipment, and to make recommendations.

The investigations are conducted concurrently. However, the different roles of the two investigating bureaus require that specific measures be taken to ensure neither investigation is compromised. During the initial stages of the investigation detectives from both bureaus are routinely teamed together to gather statements from civilian witnesses to the event and all peripheral officers (those not directly involved in the use of deadly force).

The Criminal Investigations Bureau's Crime Scene Section also responds to the scene of all officer-involved shootings. Their forensic responsibility focuses on documenting the scene and gathering physical evidence needed for the criminal and administrative investigations. In addition to the procedures followed in all shootings not involving police officers, this evidence gathering includes documenting the appearance of the involved officer(s) and collecting the weapon(s) used during the incident. Up to this point in an officer-involved shooting investigation, all physical evidence and statements taken from witnesses and peripheral officers can be used by both the Criminal Investigations Bureau and the Internal Affairs Bureau for their respective investigations.

As soon as practical following an initial review of all available information, including witness statements, the officer(s) involved will be interviewed by Criminal Investigations Bureau detectives. During a criminal investigation, police officers are entitled to the same basic Fifth Amendment due process protection as any individual. This privilege against self-incrimination is the foundation for differences between the Criminal Investigations Bureau interviews and those conducted by Internal Affairs Bureau detectives as part of the administrative investigation. This is an important distinction to understand.

Police officers are normally required to answer questions regarding their official duties, but because the matter under investigation could constitute a violation of the law, officers are not compelled to answer questions put forth by Criminal Investigations Bureau detectives. The refusal to answer these questions will not subject an officer to disciplinary action. Although not compelled, MPO Bullock cooperated fully during this investigation.

During an Internal Affairs Bureau administrative investigation, officers are afforded specific guarantees as dictated by Chapter 5 of the Code of Virginia, "*Law Enforcement Officers' Procedural Guarantee Act*" (see Attachment 2). In addition to the Act, the United States Supreme Court ruling in Garrity v. New Jersey, 285 U.S. 493 (1967) clearly establishes that while a police officer can be compelled to answer questions related to their performance of duty, those answers are coerced by the threat of losing their job and are inadmissible under the Fifth and Fourteenth amendments to the Constitution for criminal proceedings.

The Court said:

*“We conclude that policemen [sic], like teachers and lawyers, are not relegated to a watered-down version of constitutional rights. Therefore, public officials, including police officers, cannot be forced to make such a choice and answer questions and then later, be found to have exercised their free will voluntarily, allowing their answers to be used against them in a criminal proceeding.”*

Although statements obtained during a criminal investigation of a police officer can be used for the administrative investigation, when the officer(s) involved in the shooting under investigation is initially interviewed, that interview is conducted solely by Criminal Investigation Bureau Detectives. This is done to avoid even the perception that the Internal Affairs Bureau is compelling a statement from the officer(s).

Supervisors and commanders are kept abreast of the progress of the investigations and provide guidance, review and ultimately approval of the lead detectives' work.

The criminal investigation is presented to the Commonwealth's Attorney for a ruling on any possible violations of law which could result in criminal prosecution. Like all criminal cases, the amount of time this process requires varies depending on the incident.

If a decision is made to prosecute a police officer, it is incumbent on the Department to fully support the Commonwealth's Attorney's Office throughout the prosecution. That support includes witnesses, testimony, documentation, evidence and any additional investigation required or requested by the Commonwealth's Attorney's Office or the court. If the officer involved in the shooting is not going to be prosecuted, the criminal investigation ends.

On March 27, 2006, following a review of the criminal investigation, Commonwealth's Attorney Robert F. Horan, Jr., ruled there was no violation of criminal law and issued a declination to prosecute MPO Bullock in the death of Mr. Culosi.

In most cases, including this one, the Internal Affairs Bureau interview of the involved officer(s) takes place following a determination by the Commonwealth's Attorney on any violation of law. This interview is compelled and the information, with a few exceptions, cannot be used in the criminal prosecution.

The administrative investigation determines whether the actions or behavior of the involved officer(s) were in compliance with law or Department or Fairfax County policies, rules, and regulations. It also serves to identify any gaps, flaws, inconsistencies or other issues with Departmental policy, procedures, training, or

equipment. Because the administrative investigation is an in-depth review of a specific incident, it often acts as a springboard for changes throughout the agency.

Historically, the *investigative* phase of an administrative investigation into an officer-involved shooting takes several months to complete. This extended timeframe is due in great part to the broad focus of the investigation, the requirement to conduct parallel, separate investigations, to ensure due process, and to fully and thoroughly document the facts and circumstances relevant to the incident. The investigation report involving the death of Mr. Culosi was completed by the Internal Affairs Bureau on May 11, 2006, and forwarded to the assigned commander for review (reviewing authority).

### **Review of Administrative Investigation**

The completed administrative investigation report serves many functions. It provides a thorough understanding of the facts and circumstances related to a specific incident, enabling the reviewing authority to make informed decisions. If sustained violation(s) are recommended against involved officer(s) the administrative investigation is used throughout the disciplinary process. Any disciplinary action and subsequent appeal of that action is based on the information contained in the investigation.

As previously stated, the administrative investigation also serves to identify any gaps, flaws, inconsistencies or other issues with Departmental policy, procedures, training, or equipment.

Once the administrative investigation report is completed by the Internal Affairs Bureau detective, the Commander of the Investigations Division of Internal Affairs (a lieutenant) and the Commander of the Internal Affairs Bureau (a major) review it. If they determine it presents a full and complete examination of all facts and circumstances relevant to the incident in question, the case is sent out of the Internal Affairs Bureau to the reviewing authority for further review and action on any recommendations or violations. If, through this examination, it is determined that the matter requires additional investigation, the entire case file is returned to the Internal Affairs investigating detective, with specific direction as to the actions required.

#### **I. Assignment of Reviewing Authority**

Once the administrative investigation is determined to be complete and is approved by the Internal Affairs Bureau Commander, the case is assigned to a specific command authority for review and determination of appropriate actions. Generally, the case will be assigned to the involved employee's immediate commander (a lieutenant or captain), unless otherwise directed by a higher

ranking officer. However, the investigation involving the death of Mr. Culosi was not assigned to the Commander of the Special Operations Division (a captain), even though he was MPO Bullock's immediate commander or to the Commander of the Operations Support Bureau (a major).

This decision was made by the Chief of Police based on the circumstances of the incident and the understanding that the tactical operation and existing policies and practices would need to be reviewed as part of the investigation. The case was assigned to the Commander of Patrol Bureau - Division I (a major) as the reviewing authority. This allowed for a fully independent review of the event by a commander one rank higher than the normally assigned reviewing authority, and one not normally associated with special operations. This also eliminated any perception that the reviewing authority had any vested interest in the outcome.

## **II. Responsibilities of the Reviewing Authority**

The assigned commander reviews the administrative investigation and reaches a finding for each allegation. Cases which involve an allegation of misconduct by a Department employee will include a listing of relevant regulations and/or laws identified during the course of the investigation. Each of these citations shall have a classification assigned on the basis of documented facts relevant to the matter in question and in accordance with the following:

Unfounded - the allegation is false and did not occur.

In Compliance - the employee's actions were in compliance with the rules and regulations of the Department.

Not Sustained - insufficient evidence exists to either prove or disprove the allegation.

Sustained - the allegation is supported by a preponderance of the evidence.

If the reviewing authority determines that the evidence presented supports the finding of a Sustained violation, a disciplinary hearing is scheduled. The purpose of the disciplinary hearing is to provide the employee with an opportunity to hear the evidence obtained during the administrative investigation and to respond to that evidence. This process will assist the reviewing authority with making a knowledgeable and fair decision in the matter.

## **III. Disciplinary Hearing**

There are no formal rules of evidence in the disciplinary hearing. The investigating detective presents an oral summary of the investigation to the reviewing commander and the employee. The employee is provided an opportunity to present statements and other evidence on their behalf. The

reviewing authority may pose questions to the employee, and/or the investigating detective, as may be necessary to determine the relevant facts.

If a need for additional investigation is identified by the reviewing authority, the investigating detective is provided with the appropriate direction. If no additional information is needed, a conclusion is reached by the reviewing authority. If the reviewing authority concurs with the conclusion reached by the investigating detective, the reviewing authority notes their concurrence and their applied reasoning in the investigative report. If alternative or additional conclusions are reached, those conclusions and applied reasoning are noted into the report by the reviewing authority.

If after the consideration of new information, the reviewing authority determines that a finding of Unfounded or In Compliance is justified, the new finding is assigned to the investigation. The completed file is then forwarded to the employee's bureau commander for final review and transmittal through the chain of command to the Chief of Police.

If the reviewing authority determines that the evidence presented continues to support the finding of a Sustained violation, a second hearing is scheduled so that disciplinary action can be imposed or recommended.

#### **IV. Disciplinary Action**

It is essential that public confidence be maintained in the ability of the Department to investigate and properly adjudicate complaints against its members. The purpose of discipline is to establish and reinforce expectations for all employees, modify behavior, and maintain the public's trust by holding employees accountable. Appropriate discipline promotes the respect of Department, Fairfax County, and community values and adherence to Department and County policies, procedures, rules and regulations.

The proper administration of discipline depends on a careful balance of factors, which are relevant to each situation and employee. Fairness, consistency and clearly stated expectations are necessary for discipline to be effective.

Commanders are specifically charged with ensuring the effectiveness and fairness of discipline by ensuring that investigations are conducted in a thorough and complete manner. Failure to meet this standard may result in disciplining an innocent employee or contribute to a lack of confidence in the system by employees and/or the public.

Commanders give careful consideration to the facts when making a finding. The level of proof in discipline cases is generally accepted as being measured by a "preponderance of the evidence."

The disciplinary action must be appropriate based upon the severity of the misconduct, the employee's past performance, and disciplinary record. Some misconduct is so egregious severe disciplinary action is required, to include termination, regardless of the employee's past performance and disciplinary record. Conversely, some discipline may appropriately be mitigated based on the employee's otherwise good performance and disciplinary record. The disciplinary action must also be measured against previous discipline imposed on other employees for similar violations.

The reviewing authority will either impose or recommend appropriate discipline as authorized by Chapter 16 of the Personnel Regulations of the County of Fairfax. Administrative investigations resulting in discipline which is imposed at a level below the Chief of Police shall be reviewed by the Bureau Commander, Deputy Chief of Police, and Chief of Police. A disciplinary action may be vacated by higher authority if additional investigation of the incident or reconsideration of the imposed discipline is warranted.

If the recommended discipline consists of suspension, disciplinary transfer, demotion, or termination, the employee shall be provided with advance notice of such recommendation. This advance notice is provided in writing and must detail the actions for which the employee is being disciplined and include information on the employee's right to appeal, along with the impact the disciplinary action might have on the employee's ability to be promoted.

Based on the administrative investigation, and using the guidelines and procedures above, the reviewing authority in this case sustained a violation of the Department's regulations against MPO Bullock and recommended disciplinary action on August 10, 2006.

## **V. Administrative Investigation Recommendations**

The reviewing authority may also comment or act on any recommendations provided in the administrative investigation or provide their own recommendations for review and/or action. These recommendations may be related to the specific employee, i.e., recommended training, or related to Departmental policy, training, etc., or the recommendations may be more far-reaching, i.e., proposing the need to seek legislative changes.

This aspect of administrative investigations is vital to the development of the agency. Recommendations are a significant part of this administrative investigation and will be discussed in some detail in a later section.

## **VI. Final Review Process**

The reviewing authority will ensure that the completed investigative report is then sent to the appropriate bureau commander, or as in this case, a deputy chief. This commander will review the investigation report and must concur that the investigation is thorough and complete, the conclusions as to violations are correct and the disciplinary action taken or recommended by the reviewing authority is appropriate. The completed investigation is then forwarded to the Chief of Police for the final review.

This action was reviewed and upheld by the Deputy Chief of Investigations and Operations Support on October 27, 2006.

This administrative investigation was forwarded to the Chief of Police on December 7, 2006, for his review. Based on his review, he has sustained a violation and imposed discipline. The Chief of Police has also directed action and follow-up on all recommendations made in this administrative investigation.

As detailed in Appendix 3, the disciplinary and appeal processes are governed by specific guidelines to enhance the ability of proper case adjudication. It is incumbent upon the reviewing authority to first conduct a comprehensive review of the administrative investigation.

The appeals or grievance process allows the employee to choose different avenues to have their specific case reviewed under appeal. Each of the respective appeal processes enables an additional review of the administrative investigation by a third party to determine if appropriate decisions were rendered.

An administrative investigation may require an extended period of time based on the severity of the misconduct or allegations, number of employees and/or witnesses involved, the scope of the case, any need for additional investigation, potential disciplinary action and any subsequent appeal or grievance.

### **Analysis / Findings of the Administrative Investigation**

The Internal Affairs Bureau, and specifically the Internal Affairs detective assigned to complete this administrative investigation, prepared an exhaustive examination of the relevant facts and circumstances. The investigation and associated research have provided a sound foundation for review and action throughout the Department. The findings of the investigation are presented here. The primary issues to be addressed are the cause of the unintentional discharge, the decision to use the Tactical Section and higher-risk tactics, and the operational plan.

MPO Bullock is a highly trained and experienced member of the Department, with significant experience in the handling of weapons and high-risk operations. He is well aware of Department guidelines regarding the handling of weapons and the cardinal rules of weapons safety, specifically not to place one's finger on the trigger unless the intent is to fire the weapon. Officers are trained to place their index finger along the frame of their service weapon to reduce the risk of an unintentional discharge. Our Academy instructors and Firearms Range staff, and the Tactical Section consistently reinforce this through training and practiced movement.

Following the shooting, MPO Bullock offered no excuses and accepted responsibility for his actions. He acknowledged that his weapon could only be fired by his finger pulling the trigger, but could not definitively state how this might have happened. Our investigation had to reconstruct his actions immediately preceding the unintentional weapon discharge.

Some will question why MPO Bullock cannot explain exactly how he discharged his weapon. Given that the act was clearly unintentional; that it occurred so suddenly; and that his focus was on Mr. Culosi, it is plausible that he would not have specific recall. Memory loss or distortion is also often associated with traumatic events. To his credit, MPO Bullock has never offered either excuses or speculation and has cooperated fully with investigators throughout this investigation.

To first rule out any weapon malfunction MPO Bullock's issued service weapon was submitted to the Virginia Department of Forensic Science's Northern Laboratory for examination and testing. It was found to be in working order, with the trigger pull within factory specifications for both double action and single action. Additionally, Internal Affairs detectives later met with the Fairfax County Firearms Training Unit staff and the Tactical Section supervisors at our Firearms Range to inspect, test, and evaluate MPO Bullock's holster and gun belt. The equipment was found to be in proper condition.

On January 24, MPO Bullock and his partner expected Mr. Culosi to be inside the undercover vehicle as planned. However, as they neared they observed Mr. Culosi standing outside of the undercover vehicle. MPO Bullock was immediately concerned that Mr. Culosi might flee from the scene or back into his residence. Based on MPO Bullock's statements, we have determined that he hurried to exit his vehicle and approach Mr. Culosi to more quickly control him through voice commands. We believe his hurried actions *may* have also been related to heightened anxiety, even subconsciously, over the planned deviation in tactics from those routinely trained and practiced. He knew that he had no other tactical officer (with weapon holstered) assigned directly with him to immediately handcuff Mr. Culosi or to chase him if he chose to run.

As previously detailed, MPO Bullock exited his passenger seat and pushed the vehicle door outward forcefully with his left hand to keep his right hand free to draw his issued service weapon. Simultaneously, he turned his body and planted his feet on the pavement. MPO Bullock began to reach for his holstered weapon. As he manipulated the rotating hood of his holster and began drawing the firearm, he continued to push the door open with his left hand and began to issue standard voice commands to Mr. Culosi.

MPO Bullock removed his weapon from the holster as he was rounding the outer edge of the door frame. As he did so, the heavy door reached its maximum opening threshold, bounced back and jarred him, causing him to lose his balance. His left hand maintained control of the door while his right hand was affixed to his weapon. MPO Bullock was still in the process of transitioning his weapon from his holster to establishing a master grip and coming to a “ready gun” weapon stance when the weapon discharged. He was not aiming his weapon at Mr. Culosi’s chest.

The phenomenon of *involuntary muscle contraction* as it relates to unintentional weapon discharges has been recognized and documented extensively in law enforcement. One type is an involuntary contraction of the muscles of one limb when the same muscles in another limb are performing a forceful action (sometimes referred to as a sympathetic contraction, sympathetic response, or sympathetic reaction). Similarly, any loss of balance can elicit reflex-like involuntary contractions in multiple muscles, including in the hands, to aid the body in seeking stability. Involuntary muscle contractions are believed to be one of the most common causes for unintentional discharges by police officers.

Based on MPO Bullock’s statements, the supporting evidence, and our preliminary research we believed involuntary muscle contractions to be a significant causation factor in the unintentional discharge. However, fully cognizant that we are not experts in physiology and could possibly misinterpret existing research, we sought an independent expert review of our investigation. Based on our research and references from other experts, we contacted and then retained Roger Enoka, Ph.D. He is widely recognized as an expert in the field, with an expertise in involuntary muscle contractions and unintentional weapons discharges.

Dr. Enoka was provided with the administrative investigation and statements from those involved. After reviewing this material, Dr. Enoka provided a report on the incident. This report concludes that the sequence of MPO Bullock’s actions as he exited the vehicle and collided with the door would have caused him to grip his weapon more firmly. This, coupled with the loss of balance and possible anxiety associated with the planned apprehension of Mr. Culosi, could have caused an involuntary muscle contraction. In summary Dr. Enoka reported, “Accordingly, it is my opinion that MPO Bullock unintentionally discharged his handgun due to an involuntary contraction of the muscles in the right hand while

holding the weapon. This reflex-like response was evoked by the unexpected collision with the door. I hold these opinions based on a reasonable degree of scientific certainty.”

In fairness to Dr. Enoka, it must be noted that his conclusions are based on a degree of reliance on MPO Bullock’s statements and our description of the scene.

It is important to note that we do not rely solely on Dr. Enoka’s conclusion. Instead, we sought his review to corroborate our findings. However, his conclusion, and ours, are based on the evidence and are reasonable and plausible. Our findings are also with precedent in officer-involved shootings elsewhere. In MPO Bullock’s unintentional shooting of Mr. Culosi, it is reasonable and plausible that he unintentionally pulled the trigger of his weapon based on an involuntary muscle contraction.

Although a mitigating factor in our final disciplinary determination, our finding does not fully absolve MPO Bullock. While significant effort and research was done to determine what caused MPO Bullock’s service weapon to discharge, our Department still holds an officer accountable for his or her actions.

It is also important to note that the drawing of his issued service weapon was prescribed, not a discretionary act on his part. MPO Bullock was assigned to perform a lawful duty, and he was drawing his weapon to cover Mr. Culosi as the tactics and his assignment prescribed, and as he was trained and expected to do.

MPO Bullock was ultimately held responsible and accountable for his failure to adequately and safely control his movements and speed, in accordance with Departmental and Tactical Section training. We determined that although he was acting in good faith to perform his assigned duty, this failure to safely control his movements indirectly caused the involuntary muscle contraction. This is a very technical finding, but police officers, particularly tactical officers, are trained to control their movements, the placement of their trigger finger, and to control the weapon. This is certainly a standard to which a trained and experienced tactical officer must be held.

We cannot definitively conclude whether or not MPO Bullock’s index finger was on the trigger prior to the involuntary muscle contraction. By policy and training all officers are not to have their finger on the trigger unless they intend to fire the weapon. They are taught to place the finger along the frame of the weapon. We believe, based on MPO Bullock’s extensive training and experience, that he did not have his index finger on the trigger and that the contraction was strong enough to pull his finger onto the trigger and subsequently pull the trigger. It is also possible that MPO Bullock’s finger was not yet on or along the frame as he

had just drawn his weapon and was still in transition from the holster to raising the weapon in preparation to establish a two-hand grip.

There has been considerable public scrutiny and internal debate in our Department as to the appropriateness of the decision to use the Tactical Section and higher-risk tactics in this case. Hindsight is always 20/20, but in reaching a determination as to the decision, the tactical plan, and MPO Bullock's weapon being drawn we must apply objective reasonableness against a subjective understanding of the decision-making and operation planning process. It must again be noted that in any action or operation, officer safety is always a significant consideration, particularly, as in this case, the safety of an undercover detective. Mr. Culosi was being arrested for felony charges during an undercover operation, with, or in close proximity to, the undercover detective, and in low light conditions.

The use of specialty units such as the Tactical Section and higher-risk tactics has merit in many situations, and the Section has been deployed with safety and success in countless operations since its inception in the late 1970s. The development, training, and deployment of specialized tactics fills a critical role, but their use, and inherent risk, must also be reasonable and warranted. By the nature of the tactics used in most higher- or high-risk operations of this nature, we must consider the use of this team's higher-risk tactics to be a "use of force." Other Department entities must be viewed in the same light.

Clearly, based on Mr. Culosi's background, his lack of a criminal record, the fact he had no known weapons, and his past conduct with the undercover detective there were no indications that he personally posed a "high risk." Of course, regardless of any risk assessment, the possibility of weapons can never be ruled out, and officers must always be cautious. The decision to use the Tactical Section was based on a potential nexus between illegal gambling and the propensity for weapons, and therefore, that he, or any unknown person(s) who may have been at his residence *could* be armed. This was primarily due to several illegal gambling investigations in Fairfax County and elsewhere involving armed "guards" and armed robberies of gambling participants because of the large sums of money often present.

The decision was also based on the Tactical Section's expertise, training, discipline, ability and capacity to adjust tactics according to a risk assessment, and the expectation they could conduct this operation safely. Our policies did not preclude the Tactical Section from being used in this operation. These policies dictated only when the Tactical Section *must* be used as opposed to defining higher- or high-risk criteria for which their use should be considered or required.

Paradoxically, the use of high-risk or higher-risk tactics is intrinsically safer than most other tactics. Officers deploying these types of tactics are usually experienced, highly trained and disciplined. The use of high-risk tactics has clear

advantages, to often include speed and/or surprise. By quickly controlling a person or persons and/or a physical location by deploying a superior number of trained and experienced officers or through other tactics, specialized teams such as the Tactical Section are often able to *reduce* the need for any other use of force and to enhance both the safety of the individual(s) or officers.

However, regardless of the potential advantages and benefits, any decision to use higher- or high-risk tactics must still be balanced against the potential risks, even if unintended, for individuals and involved officer.

Our administrative investigation identified gaps in decision-making guidelines. The investigating authority, the Chief's Office of Research and Support, and the Chief of Police have been seeking and reviewing other policy models and best practices since this incident occurred. Multiple recommendations, related to training, policy, etc., were made by the investigating and reviewing authorities in this case and included in the administrative investigation for further review, discussion, and possible action.

### **Recommendations**

The unintentional shooting death of Mr. Culosi warranted that the Fairfax County Police Department exercise due diligence to reduce the risk of a similar future occurrence.

Following is a discussion of the primary recommendations made as a result of this incident and our review of the administrative investigation. Some measures have been implemented and others are undergoing further review. Many of the recommendations made relate to the entire Department, not just those officers, supervisors, commanders, or entities involved in this incident.

Some measures are presented only in generic language. Specific operational methods and/or tactics will not be presented to protect the integrity of ongoing or future operations or investigations and, more importantly, so as to not compromise or jeopardize the safety of our men and women or those in other law enforcement agencies.

#### **I. Use of Force Review Committee (Command Level)**

This new committee, mandated by the Chief of Police and chaired by a Deputy Chief, is comprised of command level officers from across appropriate entities within the Department. This includes representatives from the Patrol Bureau, Criminal Investigations Bureau, Operations Support Bureau, Internal Affairs, Chief's Office of Research and Support, and the Academy. The committee is tasked with reviewing all officer-involved shooting incidents, as well as other serious use of force investigations or issue as directed by the Chief of Police.

This review will only occur after the completion of the administrative and criminal process.

The purpose of this committee is to conduct detailed reviews of the facts and circumstances of any investigation or issue assigned to it and to determine the validity of current policies, practices, procedures, equipment, or training. The committee will either validate these or make specific recommendations for updates, modifications, or revisions. As this specific investigation has only just been completed it has not yet been assigned to this committee. However, it will be assigned to the committee for review and critique in the future.

The committee will also be asked to identify trends in the agency's use of force statistics which might not have been detected in a review of individual incidents.

This committee has already been implemented internally, but our intent is to next add experts and representatives from other law enforcement agencies to provide critical external perspective, insight, and expertise. Some of these individuals will be invited to participate on the committee long-term; others will be identified and invited based on their specific expertise depending on the incident or issue. We believe that this external perspective and insight is critical to avoid internal "group think" and to identify and develop best practices.

It is important to also note that we will continue to research best practices through other law enforcement agencies, and, more importantly, through professional organizations such as the International Association of Chiefs of Police (IACP), the Police Executive Research Forum (PERF), and the Major Cities Chiefs (MCC).

## **II. Search Warrants / High-Risk Operations Policies and Protocol**

In this case, it has been widely misreported that our Tactical Section serves all or the vast majority of our search warrants. The Tactical Section served approximately 46 percent of the Organized Crime and Narcotics Division's search warrants in 2005 and 2006, and a smaller percentage when compared to all search warrants served in Fairfax County. Our Tactical Section is primarily trained and equipped to conduct arrest warrants, search warrants, and other operations deemed to be high-risk (this does not preclude them from conducting or assisting in other operations or acting in other capacities, but they must then use appropriate tactics and practices). Detectives and others often serve lower-risk or low-risk search warrants in the course of their investigations without tactical support.

The Department has undertaken a comprehensive review of not only our search warrant policy and protocol, but of policy and protocol for all potentially high-risk operations and for those entities primarily assigned to perform them. National models and best practices are also being sought and reviewed.

As a result of our ongoing review, a more comprehensive risk assessment form has been developed for all identified planned operations<sup>11</sup> with an elevated risk potential. This risk assessment has been modeled after others used by various agencies. This assessment tool provides first-line supervisors and commanders with a more effective decision-making tool. The use of this risk assessment should be a guide in evaluating suspect factors, weapons information, site factors, and other high-risk indicators.

This risk assessment has been implemented in the Organized Crime and Narcotics Division and the Tactical Section. Once this policy is fully implemented, all first-line supervisors and commanders will be trained and required to use this risk assessment for identified planned operations. The respective station or division commander or assistant commander will be required to review the risk assessment form and written approval will be required.

Although every arrest or operation presents a potential risk to the officer(s) involved the majority of individuals or situations faced do not pose an elevated threat. There are planned operations, however, that involve individuals who pose a credible threat to officers, evidence that may be readily destroyed or disposed of, or the physical location may pose unique challenges, i.e., fortified doors. In these cases specialized or unique equipment or expertise and/or higher- or high-risk tactics may be needed and warranted.

Traditionally, certain operations have “automatically” justified higher- or high-risk tactics, with possible exceptions listed. Our policies dictated only when the Tactical Section *must* be used as opposed to defining higher- or high-risk risk criteria for which their use should be considered or required. We are modifying our policies so the use of any higher- or high-risk tactics is not “automatic,” but rather must be warranted and reasonable based on articulated criteria and a risk assessment in each case.

Officer safety is always a significant consideration in any operation, and must remain so. However, operational methods and use of force, to include deployment of higher-risk tactics, must be balanced with the civil and constitutional rights of individuals. It is always incumbent upon law enforcement agencies to effectively manage the use of force and limit any application to situations in which it is warranted. We must continue to research, develop, implement, and use sound alternatives. We must guard against the temptation to use higher-risk tactics when not warranted or reasonable.

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<sup>11</sup> “Planned operation” will be any event involving potentially high-risk elements, excluding in-progress events requiring emergency response.

### **III. Department Policy Regarding Vehicle/Open Air Takedowns**

Vehicle and open air takedowns are complex techniques that can present inherent risks to both the person(s) being arrested and the officers involved. Continuous and standard training is required to ensure the procedures are successfully performed with precision and coordination with the utmost concern for safety.

Our review found different methods and tactics were being used to perform vehicle takedowns, which is not acceptable. We have mandated all training and tactics be consistent, and that only approved entities be authorized to conduct vehicle takedowns.

As with search warrants, officer safety must always be a primary consideration when conducting a vehicle takedown. However, operational methods and use-of-force, to include deployment of higher-risk tactics, must be balanced with the civil and constitutional rights of individuals.

### **III. Tactical Section Standard Operating Procedures**

Our review has determined that the Standard Operating Procedures (SOPs) of the Tactical Section need to be updated and revised. The first step in this process was to research model policies from other law enforcement agencies and other professional organizations such as the IACP and the National Tactical Officers Association (NTOA). This review of model policies has established a foundation for updating and development of policy.

The Tactical Section is currently developing and updating policy on personnel selection, training, equipment, and operations deployment procedures.

The Chief's Office of Research and Support and the Inspections Division of the Internal Affairs Bureau will be assigned to develop a master library of all Department SOPs, and be tasked with developing a method for auditing and reviewing these on a continuing basis.

### **V. Training in Involuntary Muscle Contractions**

There has been considerable research on involuntary muscle contractions that indicates a significant percentage of unintentional discharges are due to this physiological phenomenon. The results of an unintentional discharge can be catastrophic, and every effort must be made to reduce or mitigate the potential risk. Although current training addresses involuntary muscle contractions and incorporates procedures to avoid unintentional discharges, our Criminal Justice Academy has begun developing and implementing enhanced Department-wide training on involuntary muscle contractions with the objective of reducing the risk of unintentional discharges and enhancing safety.

Additionally, higher-risk methods and tactics are being assessed for the potential of an unintentional discharge caused by an involuntary muscle contraction, so the risk may be possibly reduced or mitigated. These tactics are first being reviewed at the operational level. They will then be reviewed by the commanders of the Criminal Investigations Bureau and the Operations Support Bureau. The Use of Force Review Committee will ultimately benchmark our tactics against identified best practices of other agencies.

## **VI. Supervisory and Command Responsibility and Oversight**

The application and use of higher- or high-risk tactics often result in safe and successful outcomes for all involved. However, we must always consider the inherent risks to all involved in the use of higher- or high-risk tactics *and* the potential consequences.

In planning, approving, and executing any higher-risk operation supervisors and commanders must fully review, consider, and assess all of the available relevant information and potential risks and consequences. Any use of higher- or high-risk tactics or elevated level of use of force must be warranted and reasonable in each case.

This administrative investigation has also highlighted the need for more communication and cooperation between supervisors and commanders of entities such as the Organized Crime and Narcotics Division and the Tactical Section. These two entities, assigned to different bureaus with separate and distinct command structures normally operate independently of each other, but may operate jointly for specific operations. However, as these units report to separate commanders a different understanding or expectations about a specific case, methods, or tactics may exist. This can adversely impact sound decision making, to include the decision to use higher- or high-risk tactics, and also affect the effectiveness and efficiency of operations. Similar dynamics may affect or impact other specialty units who are occasionally required to conduct joint investigations and/or operations.

Bureau commanders, the Deputy Chief of Patrol, the Deputy Chief for Investigations and Operations Support, and the Use of Force Review Committee will further review and examine responsibility and oversight for higher- or high-risk operations that involve multiple entities. Training needs to be enhanced to incorporate supervisory and command roles and responsibilities in higher-risk operations and the application and use of higher- and high-risk tactics.

## **Conclusion**

This has been a difficult, and often emotional, investigation, not only within the community, but within the Fairfax County Police Department. However, in reaching our findings and conclusions we cannot act on emotion. We must apply a standard of objective reasonableness. The facts, circumstances, and evidence of our criminal and administrative investigations are clear and convincing.

On the evening of January 24, 2006, members of the Organized Crime and Narcotics Division and the Tactical Section performed an operation to serve a search warrant on the residence of Mr. Culosi and to arrest him for felonies related to illegal gambling. As an assigned member of the operation, MPO Deval Bullock was performing a lawful duty, and had his issued service weapon drawn as he was assigned and as he had been trained and prescribed to do. It was not a discretionary act on his part.

We have ruled that the weapon discharge was unintentional. Based on the preponderance of the evidence, we have determined that an involuntary muscle contraction experienced by MPO Bullock was the direct cause of the unintentional discharge of his service weapon.

The handling of weapons is inherently dangerous, and accidental or unintentional discharges have occurred before, not only in the Fairfax County Police Department, but also within other law enforcement agencies across the country. Due care must always be exercised, but police officers are required to draw their weapons in many situations to protect themselves or others in the performance of their duties. An inherent risk always exists that a weapon may be discharged unintentionally.

However, it is also fundamentally clear that the Department must fully review all of our tactics, training practices, and policies to ensure that we reduce or mitigate the risk, and that we deploy higher- or high-risk tactics only in situations where they are reasonable and warranted. That risk-reduction or risk-mitigation strategy and, more importantly, the safety of the community and of our men and women, is the foundation for Departmental actions already taken and for our recommendations.

In retrospect (and with the benefit of the 20/20 vision of hindsight), it is easy for one to fault the decision to use higher-risk tactics in this case, but we must be cautious in any assessment.

In our determination, we have considered, and understand, the reasoning applied in requesting the Tactical Section and in the planning of this operation to arrest Mr. Culosi on felony charges in the proximity of an undercover detective. We have also reviewed the decisions and the operation in context of existing policy. The use of the Tactical Section and the higher-risk tactics were not specifically

precluded by policy. However, based on our review, we believe the specific tactics used in this case to arrest Mr. Culosi and to serve the search warrant on his residence were not necessary. We believe this arrest could have been accomplished using different, lower-risk, less complex arrest techniques. We have also determined that the tactical plan, which deviated from training and past practices, may have adversely affected the safety of this operation or at a minimum served to heighten MPO Bullock's anxiety.

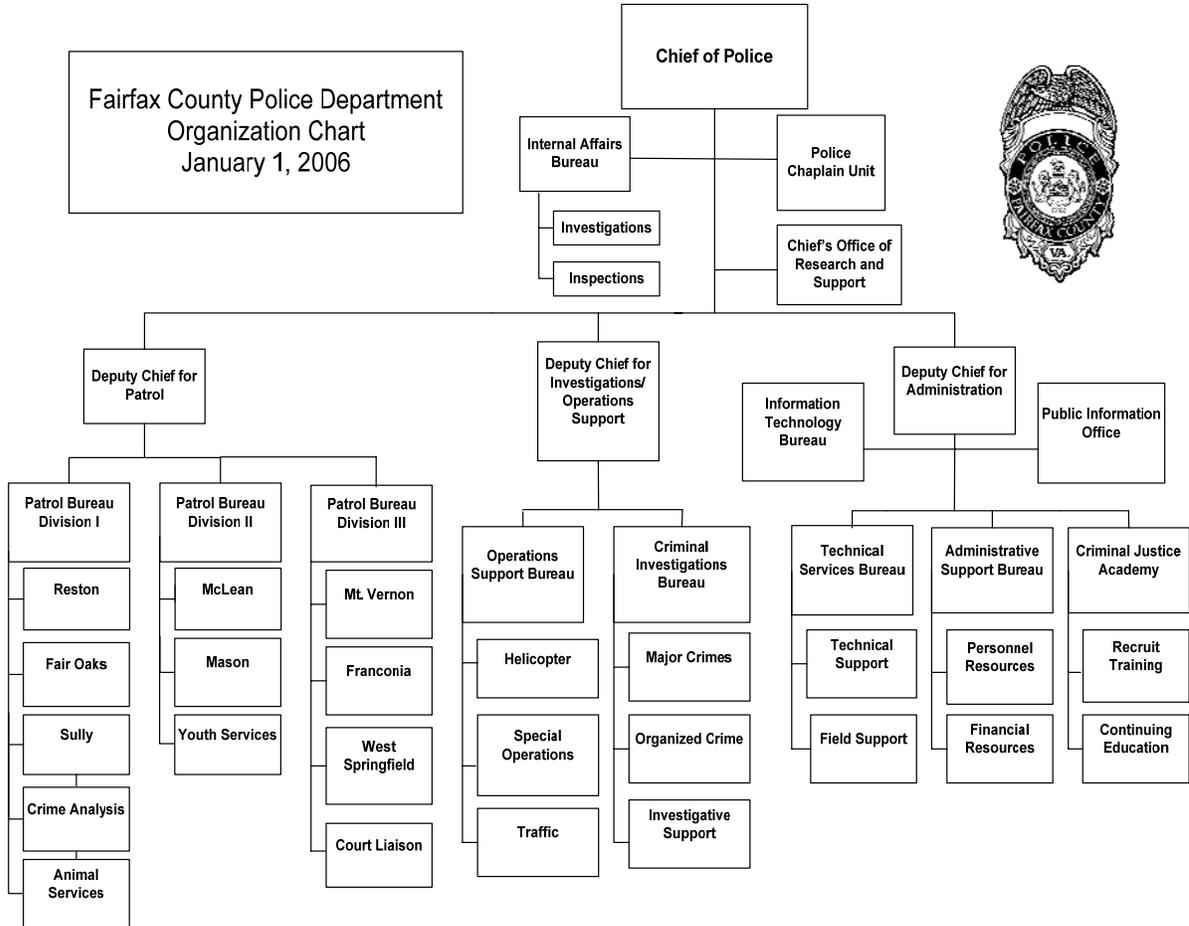
As we have, in hindsight, faulted the decision and the tactics used in this case, our review has determined that more stringent policy guidelines are required. It is fundamentally clear that we must develop and implement those policies and provide more guidance in the determination of what constitutes a higher- or high-risk operation and when to deploy higher- or high-risk methods or tactics. We have also determined that more supervisory and command responsibility and oversight is required. Enhanced training for supervisors and commanders in risk assessment and in the approval and use of higher- and high-risk methods or tactics is also required.

Policies must be developed which are measured and balanced. Policies that are too restrictive can adversely impact officer and community safety and Department effectiveness. Police officers, supervisors, and commanders must be allowed *appropriate* discretion and latitude to protect themselves and others and to effectively serve and protect the community.

We understand and respect the concern of some as to the time it has taken to complete this investigation. However, thoroughness and due diligence are required in investigating a case of this magnitude and in the consideration of corrective or prescriptive recommendations. The need for fundamental fairness, due process, thoroughness, accuracy, investigative integrity, and in-depth review are more important, and these principles must never be sacrificed for expediency.

The Fairfax County Police Department is dedicated to performing the mission of protecting and serving the community. We are also dedicated to fostering a culture of integrity, ethical and sound decision-making, and respect for civil and constitutional rights. And we fervently hope the conclusion of the painful investigative process into this tragic incident, coupled with the actions and recommendations detailed in this report fosters dialogue between the community and the Department that leads to understanding, trust, and a stronger partnership.

# APPENDIX 1. ORGANIZATION CHART



## APPENDIX 2. CODE OF VIRGINIA

### Chapter 5, Law-Enforcement Officers Procedural Guarantee Act

#### § 9.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

- a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles;
- b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ten or more law-enforcement officers; or
- c. Any game warden as defined in § 9.1-101.

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

(1978, c. 19, § 2.1-116.1; 1979, c. 592; 1983, c. 357; 1995, c. 730; 2001, c. 844.)

#### § 9.1-501. Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer

or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT).

(1978, c. 19, § 2.1-116.2; 1992, c. 221; 1993, c. 229; 2001, c. 844; 2005, cc. 868, 881.)

**§ 9.1-502. Notice of charges; response; election to proceed under grievance procedure of local governing body.**

A. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following rights shall be afforded:

1. The law-enforcement officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

2. The law-enforcement officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;

3. In making his response, the law-enforcement officer may be assisted by counsel at his own expense; and

4. The law-enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body

pursuant to §§ 15.2-1506 and 15.2-1507. A copy of the local governing body's grievance procedure shall be provided to the law-enforcement officer upon his request.

B. A law-enforcement officer may proceed under either the local governing body's grievance procedure or the law-enforcement officer's procedural guarantees, but not both.

(1978, c. 19, § 2.1-116.4; 1987, c. 461; 2001, c. 844.)

### **§ 9.1-503. Personal assets of officers.**

No law-enforcement officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless (i) such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties (ii) such disclosure is required by law, or (iii) such information is related to an investigation. Nothing in this section shall preclude an agency from requiring the law-enforcement officer to disclose any place of off-duty employment and where he may be contacted.

(1978, c. 19, § 2.1-116.3; 2001, c. 844.)

### **§ 9.1-504. Hearing; hearing panel recommendations.**

A. Whenever a law-enforcement officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within a reasonable amount of time following such action, as set by the agency, request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the agency. However, the hearing shall not be set later than fourteen calendar days following the date of request unless a later date is agreed to by the law-enforcement officer. At the hearing, the law-enforcement officer and his agency shall be afforded the opportunity to present evidence, examine and cross-examine witnesses. The law-enforcement officer shall also be given the opportunity to be represented by counsel at the hearing unless the officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo hearing.

B. The hearing shall be conducted by a panel consisting of one member from within the agency selected by the grievant, one member from within the agency of equal rank of the grievant but no more than two ranks above appointed by the agency head, and a third member from within the agency to be selected by the other two members. In the event that such two members cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member. The hearing panel may, and on the request of either the law-enforcement officer or his agency shall, issue subpoenas requiring the testimony

of witnesses who have refused or failed to appear at the hearing. The hearing panel shall rule on the admissibility of the evidence. A record shall be made of the hearing.

C. At the option of the agency, it may, in lieu of complying with the provisions of § 9.1-502, give the law-enforcement officer a statement, in writing, of the charges, the basis therefor, the action which may be taken, and provide a hearing as provided for in this section prior to dismissing, demoting, suspending or transferring for punitive reasons the law-enforcement officer.

D. The recommendations of the hearing panel, and the reasons therefor, shall be in writing and transmitted promptly to the law-enforcement officer or his attorney and to the chief executive officer of the law-enforcement agency. Such recommendations shall be advisory only, but shall be accorded significant weight.

(1978, c. 19, §§ 2.1-116.5, 2.1-116.7; 1980, c. 191; 2001, c. 844.)

#### **§ 9.1-505. Immediate suspension.**

Nothing in this chapter shall prevent the immediate suspension without pay of any law-enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this chapter prevent the suspension of a law-enforcement officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated regulations. In such a case, the law-enforcement officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.

(1978, c. 19, § 2.1-116.6; 2001, c. 844.)

#### **§ 9.1-506. Informal counseling not prohibited.**

Nothing in this chapter shall be construed to prohibit the informal counseling of a law-enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the law-enforcement officer.

(1978, c. 19, § 2.1-116.8; 2001, c. 844.)

#### **§ 9.1-507. Chapter accords minimum rights.**

The rights accorded law-enforcement officers in this chapter are minimum rights and all agencies shall adopt grievance procedures that are consistent with this chapter. However, an agency may provide for additional rights of law-enforcement officers in its grievance procedure.

(1978, c. 19, § 2.1-116.9; 2001, c. 844.)

## APPENDIX 3. APPEAL/GRIEVANCE PROCESS

### **Appeal /Grievance Process**

All Fairfax County merit employees who receive disciplinary action of suspension, disciplinary transfer, demotion, unsatisfactory service separation, or termination may seek redress by utilizing the procedures in Chapter 17 of the Personnel Regulations of the County of Fairfax. However, it is important to understand that police officers also have an alternative appeal option governed in part by Code of Virginia, Chapter 5, Section § 9.1, Law-Enforcement Officers Procedural Guarantee Act. A police officer may elect either one of the appeal/grievance options, but not both.

Any appeal must be filed within twenty business days following the receipt of the written notice explaining the Department's intent to impose disciplinary action. Regardless of the avenue of the appeal, the employee will have a hearing with their respective Bureau Commander. If the employee is not satisfied following the response from their respective Bureau Commander, they shall have five workdays after receiving the response to declare in writing to the Chief of Police their choice of the appeal procedures of General Order 310.2, Disciplinary Action and Appeals or Chapter 17 of the Personnel Regulations of the County of Fairfax.

#### **I. Appeals under General Order 310.2**

A sworn employee who elects to appeal under this General Order must choose one of the following avenues:

##### **A. Hearing Panel**

Police Hearing Panels are internal administrative panels authorized by Code of Virginia, Chapter 5, Section § 9.1, Law-Enforcement Officers Procedural Guarantee Act, and by General Order 310.2, Disciplinary Actions and Appeals, for the purpose of conducting disciplinary hearings and appeals. The Code of Virginia establishes a Hearing Panel as an advisory body; it is the policy of the Chief of Police to accept the majority decision of the Hearing Panel as advisory, with its recommendations "afforded significant weight." The findings and recommendations of the Hearing Panel must be consistent with all applicable laws and ordinances.

Hearing Panels consist of three members, all of whom must be sworn employees of the Department. One member is appointed by the Chief of Police. This member shall be of equal rank or a rank no greater than two ranks above the accused employee. One member is selected by the employee. The third member is selected by the first two members. If the

first two members can not agree on a third member, the third member is chosen by the Chief Judge of the 19th Judicial Circuit.

Hearing Panels are unique in the fact that they function without the technical restrictions and limitations imposed in courts of law, while at the same time preserving the fundamental principles of fairness and due process. Hearing Panels are initiated as fact-finding bodies to examine all of the information regarding a particular matter without interference from unduly restrictive legal provisions. The quasi-formal nature of the proceedings ensures that time will be taken for articulate definition of the issues, logical presentation of the evidence, and deliberative discussion and decision by the panel.

The Hearing Panel process is similar to a trial. The Police Department has the burden of proving by a preponderance of the evidence that the employee committed the alleged violation(s) of law and/or regulations. The Police Department also has the burden by a preponderance of the evidence of showing that the recommended discipline is reasonable. The Hearing Panel will consider only that evidence which is relevant and material to these issues.

Upon completion of all testimony presented by the employee and the Department, the Hearing Panel shall conduct private deliberations until a majority decision has been reached on all charges and issues before the Hearing Panel. If the hearing panel finds that a charge is sustained, the Hearing Panel shall recommend disciplinary action in accordance with General Order 310.2. Hearing Panels may recommend the type of penalty to be imposed, but the specific conditions remain at the discretion of the Chief of Police. For example, the Panel may recommend a suspension of 40 hours, but may not dictate the specific dates; the Panel may recommend a disciplinary transfer from the employee's existing assignment, but may not dictate a destination assignment. Hearing Panels are not authorized to award damages or attorneys' fees to the employee.

## **B. Appeal with No Hearing Panel**

General Order 310.2 also provides the option for the employee to appeal the disciplinary action directly to the Chief of Police in lieu of a hearing panel. This type of appeal will be heard by the Chief of Police, and disposition will be determined after reviewing any advisory recommendations submitted by Bureau Commanders and the Deputy Chiefs of Police.

### **C. Appeals to the Fairfax County Executive**

Following a disciplinary decision made by the Chief of Police involving suspensions, disciplinary transfers, demotions, unsatisfactory service separations, or terminations an officer can appeal to the County Executive. If the decision of the Chief of Police was made following the recommendations of a Hearing Panel, the County Executive may consider the findings and recommendations of the Hearing Panel as well as the findings and actions of the Chief of Police. If the decision of the Chief of Police was made without referral to a Hearing Panel for its recommendation, then the County Executive will direct the appointment of a Special Police Hearing Panel, unless the employee waives the right to such a Hearing Panel in writing.

### **II. Appeals under Chapter 17 of the Personnel Regulations of the County of Fairfax.**

This appeal process is not specific to police officers and is guided by the Personnel Regulations of the County of Fairfax. The process allows for the employee to appeal disciplinary action to the Bureau Commander and subsequently the Chief of Police.

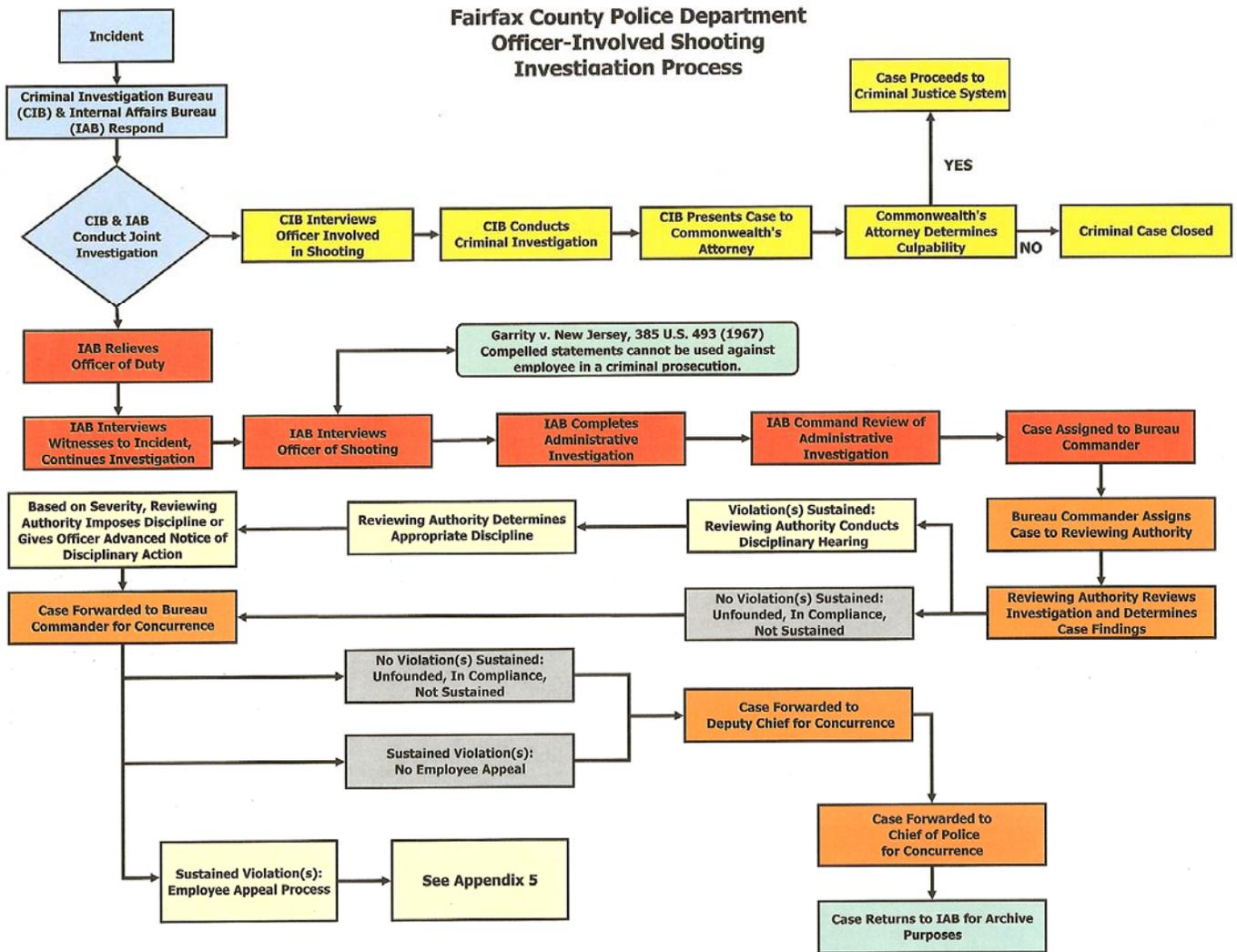
If the employee is not satisfied after those steps and following a determination by the County Executive that the disciplinary action is grievable, the violation and disciplinary action can be heard by the Fairfax County Civil Service Commission.

Appeals are heard by the Commission as soon as possible after receipt of the employee's appeal request. The Commission, in scheduling hearings on appeals, gives priority on its docket to dismissal and unsatisfactory service separation cases.

The jurisdiction and authority of the Civil Service Commission is confined exclusively to those complaints previously determined to be grievable. While the Commission has authority to determine the appropriate application of an existing rule or policy, the Commission does not have the authority to add to, detract from, alter, amend or modify in any way County or Department policy or procedure and its findings shall be consistent with all applicable laws and ordinance.

The majority decision of the Commission shall be final and shall be consistent with the provisions of law and written policies. The finding of the Commission shall be either binding or advisory to the County Executive based upon the classification of the grievance.

## APPENDIX 4. CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS PROCESSES CHART



## APPENDIX 5. EMPLOYEE APPEAL / GRIEVANCE PROCESS CHART

### Fairfax County Police Department Employee Appeal /Grievance Process

