

Use of Force Committee Meeting 09/01

Attendees: Rev. Dr. David Fox, Angelina Jackson, Donald Domineck were present in person. Dr. Carmen Culotta, Jacob Wourms, Cheryl Scroggins, Joe Parlette and Dr. Kevin Watt attended via Zoom. Torey Hollingsworth, Sarah Fenton, Chief Kamran Afzal, Lt. Col. Eric Henderson, Major Jimmy Mullins, Lt. Eric Sheldon, Sgt. Kyle Thomas, Andy Sexton were present as City of Dayton staff. Darius Beckham, Commissioner Shenise Turner-Sloss and Will Smith also attended.

Angelina Jackson called the meeting to order at 5:33pm.

Torey Hollingsworth read the roll call.

Ms. Jackson asks for a motion to approve the August 1st, 2022 meeting minutes.

Mr. Domineck makes the motion and Dr. Fox seconds the motion.

August 1st, 2022 minutes were approved 6-0.

Ms. Jackson explained that Dr. Culotta would no longer be able to participate as a voting member of the committee because she had moved to New Orleans. She had agreed to continue to participate to assist with the data analysis as a non-voting member. Ms. Hollingsworth explained that a new member would be appointed by the Commission after the committee had voted on its response to the Commission related to the use of force policy.

- Dr Watt expressed concern that the new Use of force Policy would not be able to move forward until a new member was appointed by the Commission. Torey Hollingsworth clarified that the City Commission won't appoint a new member until the Use of Force Committee sends their formal response to the Commissioners on the Dayton City Police's new Use of Force policy.
- Agenda was set for discussion on the Law Department use of force proposal and response to the Commission from the Use of Force committee on the proposal, however Ms. Jackson said she had already received everyone's feedback and was compiling it into a written response. No one had anything additional to add.
- Sgt Kyle Thomas talked about Police and Law Department process in developing the Use of Force policy recommendations. He mentioned that appointed staff who were subject matter experts had a large part to play in the process. Ms. Jackson asked about any concerns FOP might have about the recommendations from the working group. Sergeant Thomas stated that the Dayton Police department's focus is making sure this new use of force policy complies with the law and doesn't set up the department or their officer's for liability issues. He mentioned the Supreme Court ruling of Graham vs. Connor as the law of the land. Dr Watt asking where policy came from, what experts were involved as he was not in the original working group and wanted clarification. Col Henderson clarified that Major Brian Johns, who is responsible for the training academy, met with FOP, Training Academy Commander, the Policy and Planning staff and others to discuss the use of force policy response drafted by the Law Dept. They are subject matter experts on use of force. Ms. Jackson asked Col Henderson if everyone involved in crafting the language was internal, to which Col Henderson responded that yes, they were all internal within the police force.
- Ms. Jackson asked what concerns the FOP and others who discussed the policy had with the working group's proposal. Sgt. Thomas said creating a policy that would potentially set officers up for civil liability, even though in court an officer may get exonerated because they complied

with rulings of *Graham v Connor*. Ms. Scroggins asked if the FOP could talk about what was observed specifically that was not in line with law of the land or that they felt set up the department for liability from the recommendations the working group. Sgt Kyle responded that he could not, as he was not part of the conversations himself. He did state that those who were involved took liability and what was best for the Union into consideration when writing the new policy though.

- Ms. Scroggins stated that she came in late, after working group commenced. She was impressed with those involved in the committee and working groups. She expressed that recommendations went through the city law department and when making recommendations the working group and committees took into consideration safety of both police officers and citizens, focusing heavily on human rights and citizens rights within their recommendations.
- Lt. Sheldon proposed an example of how the term “necessity” could be challenging to interpret and issues around implementing that into police use of force policy. He talked about an example of necessity being a potential liability. He gave the example of two Officers who shot and killed a guy because the civilian pointed a shot gun at them and the officers were not sure if the civilian had a loaded weapon. He said it was not “necessary” because the shot gun was not loaded, but was an example of use of force that was rightfully used because they didn't know it was loaded. Dr Watts said he believed it was "necessary" because you didn't know if the gun was loaded. Lt. Sheldon questioned why standards are even changing and what was the issue with the policy before the changes, Dr Watt stated it was because times are changing. Ms. Jackson reminded committee members to let fellow Committee members, Commission staff and/or Police Department members finish their thoughts before responding. Col Henderson stated there was no clear definition when talking about adding additional language like “necessity”. Officers voted no on adding “necessity” into the use of force policy due to the ambiguity of the term. Henderson explained that the Police Department did add a lot of what was recommended and the spirit of the recommendations. He stated adding “necessity” into the language of the policy seems to be what is holding the Committee up at this point, but there's no real definition of necessity and that's the issue. Ms. Jackson asked if the Dayton Police Department had consulted with any other police forces about “necessity”, referring back to previous meeting minutes about discussions with Cleveland's Police Departments (refer to Nov. 4th meeting minutes). Ms. Jackson further commented that “necessity” is consistent with academics findings in regards to use of force policy. She posed: is the concern about “necessity” coming from a place of speculation and preventing progression from policy evolving? Ms. Jackson asked if there was any evidence that this policy and standard of “necessity” has caused a problem or liability for officers and police to be at fault. Ms. Jackson said the Committee has asked for this several times but no clear evidence has been brought to the table, because there is nothing to support that claim. She offered to provide more information and research on this topic to the Police Department by academic researchers if needed. Ms. Jackson stated that ultimate goal and cause for all of this is making the use of force policy less vague for police officers and citizens.
- Mr. Parlette stated Ms. Jackson made valid points. He said that having standards established by highest court in the country, the Supreme Court, is a reassurance for officers. Supreme Court cases and rulings are what the Committee and city should be basing policies off of and alluded to the fact that the City Police Department used Supreme Court cases when constructing their use of force policy. Ms. Jackson stated that “objective reasonableness” and de-escalation is not required by Supreme court ruling yet it is still important in use of force policy. Dr. Culotta asked, "why are we here?" What is the point of the Committee if it does not change anything and just

goes by what the Supreme Court rules. She further commented that the Committee will continue to have community dissatisfaction if there are no real changes. "What's the point of this group if nothing is changed?" Supreme Court rulings should be used as the bare minimum standard as far as she is concerned. Col Henderson countered by saying there have been a lot of changes and training within the Police Department. He argued that we are stuck on one word, which is "necessity". Ms. Jackson briefly interjected and stated that "necessity" is a concept, not a word. She said that it's essentially that if police don't "need" to use force on someone then they should not. Lt. Sheldon brought up the example of officer shooting man with shot gun even though it was not loaded again in response to Ms. Jackson's comment. Ms. Scroggins said that is not good example because "necessity" isn't being called into question. Lt. Sheldon addressed this concern by stating the police department does hear the complaint of "why did you shoot him if the gun was not loaded?" all the time in response to these situations like the example he brought up. Dr Culotta stated that the public needs the perception that officers are following a policy that promotes using a level of force that is "reasonable" and "necessary". That is what the community is wanting. Ms. Scroggins stated that the community want that level of trust with police. She commented about not wanting to have to tell her children and grandchildren what to do when a police officer stops them because she knows that officers will do what is "necessary" and "reasonable". She stated that the Committee and Police Department need to create a culture of trust.

- Mr. Wourms asked why "necessity" is an issue after the fact instead of in hindsight. Why are the police looking at the example of the police officer shooting a man with a shotgun as a liability in terms of "necessity" being implemented in policy, when in hindsight it was "necessary" considering there was no way of knowing or determining if the gun was loaded. The way the police are approaching the example seems to be after the fact. Ms. Jackson commented that nothing can supplant "objective reasonableness", there is nothing in police policy that can change that. She did state; however, that there are Rules of Conduct about "necessary" use of force so it is somewhere within police policy language already.
- Ms. Jackson asked the City Police Department if there is something this committee needs to consider in regards to the use of force policy. Srgt Kyle brought up Graham v Connor and how use of force came into conception due to conflict and issues within this subject. Graham v. Connor is what police base their policy on and at this time they are concerned about creating a new policy that would open police up to liability.
- Ms. Jackson asked if there were any questions the Committee had. Dr Watts asked about the process thus far and what the committee is essentially still waiting on. Dr Watts asked where is the City Commission with the policy that was submitted from the working group? Ms. Hollingsworth clarified. She said in spring of '21, the working group sent their recommendations to the Commission. Spring of '22 the Law Departments completed their review on those recommendations, and it was sent out for feedback from the Use of Force Committee. The Committee is essentially responding to that proposal formally to the City Commission to decide where they need to go with this policy. Ms. Jackson added that the June 30th meeting minutes, email today, August 1st meeting minutes will be used to form a response from the Committee to the Commission. Ms. Jackson proposed to vote on response by next meeting so we can address other issues that need to be addressed.
- The Committee went over the Use of force data collected and analyzed by Dr. Culotta. Dr Culotta has data to discuss and get feedback on. She is going to share her draft via email after the

meeting today. The Committee discussed what noncompliance is and defined it. It is essentially when a citizen is placed under or told they are under arrest but they are not compliant; however, the citizen takes no verbal or physical actions against an officer. Majority of time there when use of force was used within the data, an arrest was made and it resulted in injury of citizen. Many factors have not been assessed, including correlation to race gender, sexuality etc. The question was posed where does the Committee take the data now?

- Dr Watts asked what is "non-compliance"? Is it simply someone who is put under arrest saying, "I didn't do anything" and then getting injured. This is why he believes "necessity" is essential in the policy and also why data is important to bring back to Dayton Police. Col Henderson addressed the concern by bringing up the police departments commitment to transparency and the transparency portal. He stated that this information (data) is readily accessible all the time and also does include race, gender, etc. Further, Col. Henderson stated each situation the police department is willing to share use of force reports and body cam footage. He outlined the policy and procedure (what is entailed) after use of force incident occurs and how issues will be caught through that process. The police's job is to make sure they are doing the right thing and they want to minimize use of force as much as possible. Dr. Culotta expressed concern that the public may not be able to interpret the data presented on the DPD's transparency portal. She also stated that public perception vs officer perception is going to be different, especially on "reasonable" use of force. The purpose of the committee analyzing her data it to get at why the public feels differently than higher up officials in police force. Col Henderson replied that the issue is they are using data to represent an emotional conversation. Even on video these incidents do not look good, especially from outside perspective, but at the end of the day the officer what they had to do to apprehend the offender. Dr. Culotta argued that the issue is really the empathy of officers towards public and their situations.
- Dr. Watt stated that the Committee's job is to make sure what the people wants happens. He talked about cultural sensitivity training being needed on the police department, as parents teach their children the "don't say nothing don't do nothing mentality" which may be perceived as non-compliant and result in use of force. Dr. Watt doesn't understand the back and forth on all this and further stated that "we all want safety". Ms. Jackson stated that this will be an ongoing conversation as more data is collected. Ms. Jackson asked about what sort of data the committee wanted Dr. Culotta to collect for the purpose of use of force and the community at large.
 - Ms. Jackson suggested creating a list of variables to send to Dr Culotta. Mr. Domineck agreed with this assessment. Col. Henderson also agreed with Ms. Jackson because police transparency is a goal of the police department. Ms. Jackson stated the goal is to come up with variables that will be included in 2022 report.
- Mr. Parlette stated that he is also familiar with data as well and noted that Dr Culotta raised a point about non-compliance, which is something the Committee can look deeper into. He also mentioned taking a deeper dive into individual incidences, because if it is a situation where citizen is in the "saying something do nothing scenario" and use of force happens, then the Committee needs to be aware so that it can be addressed. Dr. Culotta agreed.
- Ms. Jackson suggested October meeting be devoted to 2021 use of force report and continuing to discuss any data analysis that Dr. Culotta is able to do at that point. The committee asked if there is a timeframe that Dr Culotta needs variables by. Timeline was discussed and it was

decided that the variables were needed within the next two weeks from Committee meeting and will be signed off by the Committee by December. Dr Watts and Mr. Wourms agreed.

- Ms. Jackson purposed forming a response by October meeting about use of force policy and whether Committee wants it to go to the Commission. Ms. Jackson asked if email is permissible for voting. Andy Section said no, that it is not permissible. The Committee can do a zoom meeting, as long as in compliance with public notice. (24 hours).
- Ms. Jackson asked for a motion to conduct meeting on Sept 19th specifically to vote on response to Commission. Dr. Watts makes the motion and Mr. Wourms seconded. The Committee was also in agreement; however, Ms. Hollingsworth asked the committee to not meet outside of normal schedule that was agreed upon. Dr Culotta then purposed working meetings in between monthly meetings. Ms. Hollingsworth stated that because the Committee was Commission appointed, it has to give public notice (24 hours) and must allow the public to attend. At this point in time, the staff tasked with supporting this Committee does not have the capacity to go beyond what we have been able to accomplish in terms of monthly meetings. Dr Watts commented that the Commission needs to appoint more staff for this Committee then. He recommended appealing to the Mayor and City Commissioners to do this.

Angelina Jackson asks for a motion to adjourn meeting.

Ms. Scroggins makes the motion. Jacob Wourms seconds the motion.

Meeting adjourned at 7:02 pm.