

**OCTOBER 13, 2004**

**REGULAR MEETING**

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:30 p.m., in a Regular Meeting.

PRESENT: Commissioners Renne, Chan, Sparks, Marshall, Veronese  
ABSENT: Commissioners Orr-Smith, Keane

**PUBLIC COMMENT**

Lea Militello, Co-Chair of the San Francisco Police Officers' Pride Alliance representing over 200 LGBT Officers, addressed the Commission in regards to Lt. Judie Pursell and submitted a petition that is signed by 10 members of the Department requesting a hearing in regards to the transfers of Lt. Pursell.

David Pilpel notified the Commission that tomorrow there is a Public Education and Information Committee Meeting at 4:00 p.m. and one of the items on the agenda is a discussion of recent change in the Police Department's information practices.

Francisco DeCosta, Director of the Environmental Justice Advocacy, asked the Commission to have better dialogue not only among every levels in the Police Department but also among people in various neighborhoods.

Bill Carlin asked for increased patrolling at McClaren Park and asked that the Honda Unit patrol the area again.

Harper Laughlin and Les Laughlin talked about the Drug Free Marshall Program sponsored by the Church of Scientology.

John Crew, ACLU, thanked the Commission for their service.

**CHIEF'S REPORT**

- a. **Status of proposed changes to Department General Order 8.11, "Officer-Involved Shootings," reissuance of Department General Order 3.10, "Weapon Discharge Review Board," and modification of Department General Order 3.16, "Release of Police Reports," General Order 8.04, "Critical Incident Response Team," and General Order 8.09, "Media Relations."**
- b. **Review of Recent Activities**

Deputy Chief Pengel, for Chief Fong who is in Los Angeles, introduced Captain Keohane to talk about the status of Department General Order 8.11 and related General Orders.

Acting Captain Keohane, Risk Management Unit, talked about the status of proposed changes to Department General Order 8.11, reissuance of Department General Order 3.10 and modification of Department General Orders 3.16, 8.04, and 8.09.

(The following excerpts were transcribed from the audio tape of tonight's meeting.)

CAPTAIN KEOHANE: Acting Captain Keohane from the Risk Management Unit. Madam President, Commissioners, Command Staff, Director Allen, fellow officers, and members of the public: The draft of Department General Order 8.11, Firearm Discharge B excuse me B the Officer-Involved Shooting General Order that we=re going to review tonight and the related general orders are the results of the Department identifying the need for modifying these orders, direction from the Commission, and policy recommendations from the Office of Citizen Complaints.

We began this process approximately back in June of last year when Lt. Hennessy of the Homicide Detail recognized the need to update the Department General Order 8.11. When the process of doing this was almost completed when approximately the middle of last year it was brought before the Commission, and due to situations at that time, the Commission requested that language be changed in that draft policy and also the Office of Citizen Complaints came up with five specific recommendations. In the original re-write by Lt. Hennessy, we updated the definitions, added the shooting review board, and put in there needs to capture policy and training issues that may be deficient and set deadlines for reporting purposes.

Since that time that the request of the Commission for the language change and the five policy recommendations from the OCC, namely provide the information in officer-involved shootings, in-custody deaths, traffic accidents involving SFPD vehicles in pursuits, also recommendation to assignment by the Chief of Police for SFPD liaison for such incidents in those natures, duties of the liaison officer, and also request for directions not to make public statements or issue press releases that appear to predetermine the outcome of investigations or that unnecessarily place the deceased person in a negative light. We=ve addressed these issues and in looking at our policies within the Department, we recognize that all these updates are changes that were requested to the policies do not belong in Department General Order 8.11 per se. Instead, they belong to another General Orders such as 3.16, Release of Police Reports; 8.04, Crisis Response; 8.09, Medial Relations; and 8.11, the Firearm Discharge Review.

Tonight, we have provided these documents to you with the suggested changes for your review and we believe that these drafts address the issues that were raised by the Department, the Commission, and OCC, and they provide a foundation for meaningful discussion for policy, for implementation, and adoption, and I=m here to answer any questions you may have for the drafts that were provided to you.

COMMISSIONER RENNE: It might be useful to hit the highlights of any substantive changes. I note that a number of these changes seemed to be basically language changes, making them a little more clearer, and then as you say, dividing them in different sections, but it might be useful to highlight the substantive changes and the reasons there were substantive changes made.

CAPTAIN KEOHANE: Is there any General Order that you wish to begin with, Commissioner or Madam President?

COMMISSIONER RENNE: Well, I was hoping you were going to answer that question.  
What do you regard as any substantive changes?

CAPTAIN KEOHANE: Well begin with the firearm discharge, the Officer-Involved Shooting General Order.

COMMISSIONER RENNE: Okay.

CAPTAIN KEOHANE: Okay. This order was the genesis of all changes. Back in 2003, Lt. Hennessy recognized that there were problems in terms of actually recapturing the reports of officer-involved shootings, namely, timely reporting and presenting the findings to the Commission. Also, the reports were not capturing or there might be pattern of training deficiencies, policy deficiencies, and so on. In drafting this policy, therefore, we put in time lines so we would have accurate reporting mandates and also set up a weapon review panel in order to review these cases and there=ll be one body that would review all the cases and will be able to identify the issues.

In reviewing this at a later date, it was found that the weapon review panel was a panel that was in place up until 1995. At that time, it was disbanded. The reason why it was disbanded was prior to that, in 1995, the Homicide Unit did all criminal and administrative investigations. In 1995, Management Control Division took over the administrative investigations and thought that would be the process for check and balance. That failed, and in 2002, Lt. Hennessy recognized this and began the process of this order. The substantive changes with that, we=re putting in time lines for the reporting and also adding the weapon discharge review board so that we would have a means for capturing those issues.

COMMISSIONER RENNE: Okay.

CAPTAIN KEOHANE: Excuse me, the one thing I forgot was that the policy that=s in front of you is basically the same policy that the Lieutenant drafted with the language change requested by the Commission and also the removal of the weapon review discharge board which will now be called the firearm discharge review board. And that was placed separately just for purposes

of administration that would be we felt that it would be more proper to be placed in the administration section of the general orders rather than being included in this general order.

COMMISSIONER RENNE: The newspapers have reported that there are significant changes in policies with regard to information provided by the department. Are there significant changes in policies with regard to any of these proposed changes that we're considering this evening?

CAPTAIN KEOHANE: In Department General Order 8.11?

COMMISSIONER RENNE: And related general orders.

CAPTAIN KEOHANE: In related, I would say there's B there's two general orders that were touched on the release of information. One would be the release of police reports and the other one would be media relations. As far as media relations, this addresses the OCC policy recommendation, OCC policy recommendation #1 which states it shall be the policy of the San Francisco Police Department to provide as much information as possible without endangering the successful completion of the investigation or related investigation or endangering the safety of officers or other persons involved in the investigation to the families of individuals in officer-involved shootings, in-custody deaths, in traffic accident involving officer pursuits. In re-writing this, the medial relations, the substantive changes that were quoted in the paper this morning mainly are centered on section J, which states, the San Francisco Police Department shall not make public statements or issue press releases that occur to predetermine the outcome of investigation or unnecessarily places a deceased person in a negative light. This is also part of the OCC policy recommendation which I believe is #4. The San Francisco Police Department shall not make public statements or issue press releases that appear to predetermine the outcome of the investigation or unnecessarily place the deceased person in a negative light. We took that language from OCC, not that we will, in the end hopefully that will be included as stated but it's a meaningful start for discussion. I believe this is a problematic area, and we are going to have to give our officers clearer instructions on what may or may not be appropriate when speaking of the press, but we recognize the need to disseminate this information and not put people, you know, in a bad light. So we wanted to put that in there so we could use it to enter into discussions with OCC and further refine that.

COMMISSIONER RENNE: Alright. We may ask for comment from OCC but these stem B a number of these changes stem then from a number of OCC recommendations. Is that correct?

CAPTAIN KEOHANE: That is correct, Madam President.

COMMISSIONER RENNE: Okay. Commissioner Chan.

COMMISSIONER CHAN: I had a question as to procedure, Madam President, and that is I had, as you may know, some comments with respect to the drafts and we have several items included within item 2a of our agenda and I have simply inquired how you or my colleagues wish to proceed in terms of soliciting comments and markup. Perhaps reaction from the OCC Director, will we address them per each general order or wait until we've gone through all of them and then take, make a cumulative analysis of the matters before us simply as a matter on how you wish to proceed.

COMMISSIONER RENNE: If you'd like, we can do each one individually. I thought we could have like a general overview, which we've just had, but if you'd like we can do each one individually. The other thing is I know there will be public comments and I'm hoping that we may have comment from the OCC. Commissioners, would you prefer to take each one individually or B which we can do if you'd like to do that B and then we'll take public comment, and then my hope would be, as well, that after we get all of the public comment, if people also wanted to send comments to the Commission too, over the next week or two before we calendar it back for action, then we would have the benefit of OCC, the public, POA, whoever wants to comment before we finally adopt.

COMMISSIONER VERONESE: I believe it may be more productive for us tonight to take each DGO as a discreet unit, solicit public comment. For example, if we're starting out with 8.11 to take comments in terms of managements and reaction or further explanation questions that individual Commissioners may have and then solicit public comment as to each unit rather than have public comment which may address one or all of each of the matters that are before us. In other words, to break it up and I think our notes will be probably more clear as a result.

COMMISSIONER RENNE: Okay. Is that agreeable to everybody?

COMMISSIONER SPARKS: That's fine.

COMMISSIONER RENNE: That makes sense.

COMMISSIONER SPARKS: Yeah. I think it will be worth while to go over each one individually. I have some questions about it, if nothing else, formatting as well.

COMMISSIONER RENNE: Okay. Well, with that, let's do that then and let's first ask about 8.11. Take that up first, okay, and then we'll take the associated items each one. Okay.

COMMISSIONER MARSHALL: I just want to make sure I understand. The OCC policy recommendations have been folded in to B through out these general orders, that he made a decision not to craft something specific for that but that they have been folded into the general orders that we're looking at?

CAPTAIN KEOHANE: That's correct, Commissioner.

COMMISSIONER MARSHALL: So the two of you, I would think, is what I'm hearing, are in accord. Is that correct?

CAPTAIN KEOHANE: That is correct. I met with Director Allen approximately three weeks ago and we went over these changes and we agreed that this was the best way to address the concerns of the OCC and their policy recommendations.

COMMISSIONER MARSHALL: Okay.

COMMISSIONER RENNE: Maybe what we'll do is ask you questions first and then ask Director Allen if he has any comment on 8.11. Commissioner Sparks.

COMMISSIONER SPARKS: Captain, I brought my general order book and I was looking at DGO 8.11 of 11/8/95, which I think is the original DGO to talk about officer-involved shootings, and it doesn't appear that this is the format that was used in constructing this. Is this a brand new 8.11 because I'm looking at paragraph, for instance paragraph numbers, paragraph (f) in the original DGO 8.11 of 11/8/95, paragraph (f) is the Review talking about the written report and the summary the Chief of Police prepares for the Commission and paragraph (f) on the new one is entitled Scene and talks about something entirely different. So am I missing something here or is it totally, it's a completely renumbered B so it's very difficult to go from the original DGO 8.11 to the new DGO 8.11 in like comparing paragraph to paragraph. Is that a fair statement?

CAPTAIN KEOHANE: That is a fair statement.

COMMISSIONER SPARKS: Okay. So then just going back to the original DGO 8.11 of 11/8/95, looking at that particular paragraph (f), Review, which talks about the Chief's preparation of a summary report based on officer-involved shooting, is that still in the current and the new version of the 8.11 or is that taken to DGO 3.16 or 3.10?

CAPTAIN KEOHANE: 3.10, Commissioner.

COMMISSIONER SPARKS: So that's in 3.10, in the one talking about the Board, the shooting Board?

CAPTAIN KEOHANE: That is correct, Commissioner.

COMMISSIONER SPARKS: Is it still anticipated, and again not having found it for (unintelligible), it=s still anticipated that then the Department will prepare merely a summary for the Commission and then forward it to the Commission or as other Commissioners, I think at one point we will discuss, whether or not it will be possible to get more detailed information as part of that summary in the presentation to the Commission on officer-involved shootings. Can you speak to that?

CAPTAIN KEOHANE: Well, I=ve spoken with the City Attorney regarding that, and I=ve spoke with Captain O=Leary regarding that also for discussions. His name keeps coming up with these. The summary report will be provided to you and then there is discussion of providing case files to the Commission for their review.

COMMISSIONER SPARKS: So that=s not in the general order or that=s just discussion B I don=t understand what that means.

CAPTAIN KEOHANE: Well, it=s not in this general order at this time. That=s correct.

COMMISSIONER SPARKS: Okay.

CAPTAIN KEOHANE: And that=s one of the reasons why we=re having this so we could B

COMMISSIONER SPARKS: Okay. So what you have then, you said it=s in 3.10?

CAPTAIN KEOHANE: That=s correct.

COMMISSIONER SPARKS: So it=s still just the summary, okay.

CAPTAIN KEOHANE: Yes. That is correct, Commissioner.

COMMISSIONER SPARKS: Right. Okay. Yeah, that will be an issue at least we going to further discuss is what that summary entails and what additional information is presented to the Commission in addition to just the summary. So going back to kind of a format again, if I may, Madam President, what would you B is it possible for you to look at the original 8.11, of 11/8/95, which is at least the basic document that we originally looked at, and give us any type of an overview

of how that now, the new 8.11, has been changed relative to the original one? Is that possible to do?

CAPTAIN KEOHANE: I don't have the original, the >95, general order with me. But let me explain to you that -

COMMISSIONER SPARKS: Let me ask just one more question for clarification. Looks to me like the new 8.11 you have strikeouts?

CAPTAIN KEOHANE: That is correct.

COMMISSIONER SPARKS: But those strikeouts are from previous drafts of the revised 8.11 not the original 8.11. Is that correct?

CAPTAIN KEOHANE: Yes, what I was going to say is when we started back in June 1995, we started with the 1995 DGO 8.11. It went through a number of different revisions since that time. The final revision had the shooting review board in there. That was taken out and this is the draft that the final draft that was presented at that time, possibly around May or June of this year.

COMMISSIONER SPARKS: So then the review board was then put into a separate DGO 3.10?

CAPTAIN KEOHANE: That is correct.

COMMISSIONER SPARKS: Is that correct?

CAPTAIN KEOHANE: That is correct.

COMMISSIONER SPARKS: I guess the way I would have to go about this is talk about some of the issues that we brought up in addition to the OCC recommendations. Some of the issues were such as release of officer=s name and the original 8.11, it specifically prohibited the release, I believe, of the officer=s name.

CAPTAIN KEOHANE: That=s correct, Commissioner.

COMMISSIONER SPARKS: And where did that fall out B

CAPTAIN KEOHANE: That comes into 3.10 now for the language states, this report shall be a public record, and then it states, no report that is made public shall disclose any information deemed confidential by law.

COMMISSIONER RENNE: That=s what it says before, I think.

CAPTAIN KEOHANE: And that has the words that the, I believe the Commission=s concern was that prior language stated no report that is made public shall disclose the officer=s identity or any other information deemed confidential by law and is requested that the Department look at striking the officer=s identity or and other.

COMMISSIONER SPARKS: So now, no report shall be made public with any other information deemed confidential by law?

CAPTAIN KEOHANE: That is correct.

COMMISSIONER SPARKS: So where does it fall out as far as releasing the officer=s name?

CAPTAIN KEOHANE: The changes has been made in the general order and if it=s deemed confidential by law, the officer=s name will not be released.

COMMISSIONER SPARKS: What I=m asking is is it deemed confidential by law not to release the officer=s name?

CAPTAIN KEOHANE: We=re talking in the report, Commissioner. I think there=s two issues here that we want to talk about. One is in the report and one is after the incident. And I think the Commission=s raised concerns in the past they were stated that the officers= names will never be released, and at your direction we=ve done a survey of the largest agencies here in California to determine how and when they release names, not in police reports but as far as the situation itself and in responding, one agency does not release the names at all. The other five that have responded release the name anywhere from three to five days unless there is extenuating circumstances where it might take longer. And that is not addressed in this order. This order only addressed the written reports that are sent forward.

COMMISSIONER SPARKS: So that=s not codified in any of the new general orders so it=s still kind of up in the air as far as the policy.

CAPTAIN KEOHANE: That is correct, Commissioner.

COMMISSIONER SPARKS: Okay. I guess that=s all I can think of right this second.

COMMISSIONER RENNE: Commissioner Veronese, did you have a B

COMMISSIONER VERONESE: Commissioner Chan has.

COMMISSIONER RENNE: Oh, I'm sorry.

COMMISSIONER CHAN: Oh, I will defer to you, Commissioner Veronese, but I did have a small comment on the 8.11 text. I'll confer to you, Commissioner Veronese, I did have a comment to 8.11 which can await after your comments.

COMMISSIONER VERONESE: Thank you, Commissioner Chan. This is clearly not the end of this. I'm just wondering, through the Chair, how you want to go about getting our input into these documents?

COMMISSIONER RENNE: I think if everybody has a comment, you can submit them to Sgt. Reilly or make them now, make them before B you have some recommendations now, we can do that or if you want to write them out and submit them to Sgt. Reilly, we can circulate them and make them available.

COMMISSIONER VERONESE: I'm gonna require some time to digest these B

COMMISSIONER RENNE: I think we all are.

COMMISSIONER VERONESE: B and balance them with the former DGOs since my understanding was these was the former ones. I didn't look at the old ones to compare them but if they're different in numbering, it's something that I think is B even though they're different forms, it's something we need to take a look at. I would just make the suggestion that there is some provision in these documents that allows for information given to the Police Commission. And I'm not talking about B I'm talking about a document or a provision that is different from 3.10(e) somewhat to what Commissioner Sparks was talking about. But not just for these officer-involved shootings it's also some method to keep the Police Commission advised on an updated basis as to what's going on with the Police Department so that we don't learn about it as we are currently learning about it in the news which is one of my biggest frustrations. I think I've mentioned it now every meeting for the last four meetings. So if we could have some sort of provision that includes that. Other than that, I'm going to reserve my comments B I guess I will prepare a detailed analysis of how I read these and submit those to my fellow members and make them public. Thank you.

CAPTAIN KEOHANE: Thank you.

COMMISSIONER RENNE: We'll have some time to digest this and probably take a look at the old one and then take a look at this one. Yes, I'm sorry.

COMMISSIONER CHAN: I believe Commissioner Marshall had some comments, Madam President.

COMMISSIONER MARSHALL: Well, I'm trying and wrestling with what Commissioner Sparks is trying to wrestle with also. I think it's sort of comparing apples and oranges. You're going from an original document and that this has been rewritten in a different way. My thought was, and maybe it'll take us to do it, is to find those key issues that we have sort of brought up here before the Commission and specifically how have those changed, where are they in these particular general orders and have they not been changed because I can see what you're doing is sort of hunting and pecking and I don't know if that's an easier thing to do and maybe for us to go and maybe we'll have to go through and find where is this, where is this, where is this, where is this, where is this but do you think that's something you could provide us with? I don't know. There are several things that have been key to us, some of us anyway, and it might just be easier to say this is where this is right now and it has or has not changed. Is that fair?

CAPTAIN KEOHANE: Yes, it is fair. Would you purport what issues you were to go from the different orders we can do it that way.

COMMISSIONER CHAN: Madam President, if I might. I think our task, as two of my colleagues have pointed out, has been complicated in the mechanics because the red line is not an accumulative red line that has been compared with the original 8.11. I think what Commissioner Marshall is implying is that this draft that is before us be red lined against 8.11 with appropriate annotations as to where provisions in the original 8.11 have been carried forward into other DGOs and that would probably assist our colleagues' analysis of what has been placed before us and that's just my attempt to summarize what has been discussed.

COMMISSIONER RENNE: That's why I asked what are the substantive changes. I mean what we need to know are what are the substantive changes in this new order from the old order. Are there some? Are there none? And if there aren't any changes in this order but something that was in the old order was of significance like the raised the officer's identity, okay, you put that in 3.1 or something was intended to cover that issue. I think that's what everybody is getting at, right?

COMMISSIONER CHAN: I just have one comment B

COMMISSIONER RENNE: I think what everybody is asking is if we were to adopt this, what would we be missing. Is that a fair comment?

COMMISSIONER CHAN: I think that's very fair, Madam President, since the substance has been spread over the country side here, sort to speak, over several DGOs. But if I might, I did have one comment in respect to the text that is before us this evening and that had to do with I believe it would be article 2 for lack of a better word in section (g) on page 5 of the draft that's before us. This had to do with the B under the subheading Involved Officers and specifically the actions that would be taken in all cases of officer-involved shootings resulting in injury or death and underneath that is subparagraph (1) which currently reads all members shall be afforded all procedural rights as provided under the Peace Officers Bill of Rights. I did have a couple of drafting points that I probably could just state quickly now and that is for your consideration that we insert after the word *all* the words *substantive and* so that members will be informed that they will be afforded both substantive as well as procedural rights, and after the word *rights*, to insert the words *and remedies* so that a member would not be precluded from seeking any remedies that would be afforded them under these process. And then after the word *provided*, to insert the phrase *by applicable law, including without limitation thereto, the Peace Officers Bill of Rights*, so that the reference to the Officers Bill of Rights would be by way of example and not restrictive so that there would be no mistake that members would be afforded all of the rights to which they would be entitled which would include as a set of such rights, the Peace Officers Bill of Rights as there may be other statutes and other decisional law which they avail themselves in this situation. So I didn't want the language to be overly restrictive but simply to confer on the members the universe of rights which they would normally be entitled.

COMMISSIONER RENNE: Let's put that as something to consider then. Is there anything else?

COMMISSIONER CHAN: I reserve further comments when we address DGO 3.10.

COMMISSIONER RENNE: Alright. Commissioners, are there any questions on 8.11?

COMMISSIONER VERONESE: Paragraph C(3) or at least take a look

COMMISSIONER CHAN: Commissioner Veronese, just for my own clarification, you want to add the Commission Secretary to the list of persons that are entitled to notifications?

COMMISSIONER VERONESE: That's right. Such that if any of the Commissioner's requests notification, they can do that through the Secretary as opposed to having the Department contact each Commissioner which is not how it's currently done anyway.

COMMISSIONER RENNE: Why don't we just put Commission Secretary to transmit the information to Commissioners? Okay. Alright. Are there any other questions of Captain at this point? If not, let's take public comment on 8.11 if there's anybody that wants to be heard with regarding to 8.11.

PUBLIC COMMENT:

John Crew: Commissioners, John Crew, from the ACLU, and I'm not sure where you want the process comments but you were talking about it so let me just briefly say now. We believe it's important that when these comes back particularly for action, that these be calendared as separate agenda items. I understand this was only here for discussion but it's not only less confusing, but that way, the public has the right to comment at full on each particular item. And secondly, if I can just humbly suggests for what it's worth, a friendly suggestion, that it seemed to work for your predecessors, that when you calendar these items you certainly have the authority to request exactly what you're talking about. Calendar it two or three weeks (unintelligible) and say you want two weeks in advance, not only the draft language, but specifically a list of what the substantive changes are. That puts you on notice, that puts the public on notice and provides opportunity in advance so you're not trying to draft by committee here to get a better understanding. So for what it's worth, I offer that friendly suggestion. This is a Commission about change but sometimes old practices work well. Thanks.

COMMISSIONER RENNE: Is there any other comment on 8.11. This will be B we will not obviously be making a decision tonight. We will be comparing it with the previous, the original. There will be opportunity for organizations and individuals to comment before we adopt this. Yes, I'm sorry.

Steve Johnson: Thank you, Commissioner. Steve Johnson with the Police Association. We have not the luxury B OCC hasn't any of the input at all in any of these orders. We just got the four orders, the changes in the orders, late yesterday afternoon so we would certainly like to take our seat at the table as we're allowed during the meet-and-confer process because there is a lot here to be discussed and I think we have some very constructive changes that would help.

COMMISSIONER RENNE: Okay. Thank you. Let's turn to 3.10 then. Captain B and again, I think you've referred already to some of the substantive changes but I think if there are others that you haven't discussed already, it would be helpful to know what, if any, substantive changes are involved here.

CAPTAIN KEOHANE. This order was rescinded in 1995 so there was no current order at the time we initiated it. This order outlines the functions and

responsibilities of the Firearm Discharge Review Board. We've changed the name from Weapon Firearm Review Board so there won't be confusion in a later date regarding less than lethal impact weapons and also tasers if those come in to play. That is the reason why we are calling it the Firearm Discharge Review Board.

What we've done here, which is similar to the order that was part of 8.11 or the old weapon discharge review board, is differentiate between an officer-involved shooting and an officer-involved discharge. They will be handled differently in their investigations as the officer-involved shooting is where somebody is injured or killed and is much more serious and it will be different procedures. But what it does, if you look at this, it gives the duties of the board, the definitions of what the officer-involved shooting is or an officer-involved discharge. It states the composition of the board and then it puts down its functions. This is clearly one of the issues that the Commission was concerned about is timeliness reporting to the Commission. As we discussed in previous meetings, within 90 days of the shooting, this board will be impaneled, sit down and review the shooting.

We go back to the 8.11 where it has the mandated times in that order, Homicide will have their report that has to be done within 45 days; Management Control Division will have their report done within 60 days and it will be forwarded to the Board within 75 days. That will give members of this Board 15 days to review the policy or the shooting investigation before they impanel themselves to discuss it.

Now, if we look at the function also, it entails reports by both the Homicide Detail and the Management Control Division. They will come up with the recommendation whether it is in policy, not in policy, or whether it needs further investigation. These policies and these recommendations will be put into a report and as you can see on page 3 there will be three reports there. So there will be more openness and everybody will have a chance to review it. The first report will be from the Firearm Discharge Review Board, and that panel will make a report and forward it to OCC for the OCC's review. OCC will make a separate report on their findings and provide that to the Chief, and, finally, that report will be submitted to the Police Commission in its entirety. So the Police Commission will have access to all three reports.

Now, as we go back to 8.11 with the reporting mandates, if the Homicide Detail or if the Management Control Detail are not able to meet their required reporting time frames, they will have to respond to this Firearm Discharge Review Board and state their reasons why not, and that will also be provided to the Commission.

COMMISSIONER RENNE: Okay. Let's see B I guess Commissioner Sparks and then Commissioner Chan.

COMMISSIONER SPARKS: Captain, a recent situation we had was where the District Attorney's office had not completed their investigation so the Homicide nor the MCD or the Department was unable to release information. How is that anticipated in here or is what you just said anticipating that is that could be a circumstance which would not allow these time frames to be fulfilled? Would that be a fair statement or how does that figure in? I know that this District Attorney's investigation as well, I know we have no control over it but how is that figured in to the time frames?

CAPTAIN KEOHANE: That may be a reason why we're not able to maintain the time frames because we don't have control over the external organizations.

COMMISSIONER SPARKS: Right.

COMMISSIONER CHAN: I'd like to pick up on Commissioner Sparks' question about time frames because I think they are important. If I may address Captain Keohane through the Chair. Directing your attention to page 2 specifically Section D of Article 1 regarding function. I did have a question regarding the 90-day, 90 calendar days from the shooting event, and I think you've addressed that partially. I just want to, again, to refresh my memories to the rationale for the 90 days and where that fits in terms of the ideal sequence by which things are to occur.

CAPTAIN KEOHANE: It's 45 days we expect the Homicide B the Homicide Unit should be able to complete their criminal investigations within 45 days. We'll allow another 15 days for the Management Control Division to conduct further interviews if they need be, conduct their interview, and for that investigation, the Commanding Officer for his review, and then forward that to the Shooting Review Board or the Firearm Discharge Board. They would have time to review these documents before they impanel themselves for the discussion. They may have to look at these documents, everything together, see if there's any questions that they want to ask, formulate these questions, ask for the investigators that they may wish to call in, and so it gives them time to prepare for the hearing.

COMMISSIONER CHAN: Now, Captain, as I review the language for that B I do not see where the ability to convene the panel is contingent upon these other events occurring. The language, as it reads now, is mandatory that the panel shall convene within 90 days. So if none of those events occur that you have outlined, presumably then the Board must convene within 90 days in any event.

CAPTAIN KEOHANE: That is correct.

COMMISSIONER CHAN: Alright. Now, directing your attention to subparagraph 3 B actually subparagraph 2 and 3 which requires the Board to engage in its task, which is to review reports. Is there a reason why there is not a number of days or deadline inserted into both subparagraphs 2 and 3 by which the Board must review the written reports submitted by the Homicide Detail?

CAPTAIN KEOHANE: There was no reason that I know of and we can address that in future drafts.

COMMISSIONER CHAN: That would be a suggestion. I think what we're trying to do is not B I think what we're trying to do is establish a clear frame work and a time frame by which those should happen. Obviously, I think the public has an interest in narrowing, within reason, the discretion here to exercise delay. So I will encourage you to confer with the appropriate parties about establishing a more clear time line.

CAPTAIN KEOHANE: Yes, Commissioner.

COMMISSIONER RENNE: Any more questions?

COMMISSIONER CHAN: I did have a couple more. Thank you, Madam President B

COMMISSIONER RENNE: Your comments have been very good.

COMMISSIONER CHAN: I appreciate your indulgence here.

COMMISSIONER RENNE: No, very helpful.

COMMISSIONER CHAN: Again, directing your attention to subparagraph 4 towards the bottom of the page and specifically the subheading, perhaps this is a redline, *Further Investigation where the matter is to be referred back to MCD for further investigation or clarification, with a stated due date to the Review Board.* My question, again, focuses on the time by which the matter either must or should be referred back to MCD. And so, again, I would just submit that for further thought and perhaps if it's deemed appropriate to provide further clarification. Again, the premise here being to provide a clear frame work by which the task can be completed.

The same comment would apply to the last two lines on the page by which the Chief shall review, approve, and forward the Board's written summary to the Police Commission, and I think my colleagues probably have a great deal of interest by when that should happen and I think we need a hard date here as well even if it's determined that the other dates necessarily must be excluded from this

but I think the Commission has clear expectation that is to receive the information regarding the Board=s summary.

On the next page, I did have a question under the B what I believe to be heading officer-involved discharge, just below the middle of page 3, in which there is a provision here for a quarterly meeting during which the Board of Review shall convene to review all officer-involved discharges investigated by commanding officers and the members involved. And, again, I would appreciate some ideas to by what point in the quarter the appropriate member should convene.

And then moving on to section E for Police Commission Quarterly Report. Again, this may be micro-managing but I think, again, there was a deliverable stated here specifically a summary of each officer-involved shooting and officer-involved discharge to be provided to this Commission and it would be helpful to have a deadline within each quarter by which the Commission is to receive such a summary.

Thank you, Madam President, those are my comments.

COMMISSIONER RENNE: These are all new sections.

CAPTAIN KEOHANE: That is correct.

COMMISSIONER RENNE: These are all new sections. Actually, I think they=re good. They=re clearly stated for the most parts. So this is helpful. Commissioners Sparks, Commissioner Veronese, any B

COMMISSIONER SPARKS: Just a B I=m make a quick statement. Captain, so the time limits B and I think 8.11 if I heard you correctly B 45 days for development of the Homicide=s report, 15 days for MCD, which is 60 days convening the panel within 90 days. Are these realistic? We=re looking at let=s go, as an example, the Cammerin Boyd shooting and then looking at a list of 26 or 29 other officer-involved shootings which date back in some case four years maybe, are these really realistic time frames that you=re looking at here or are we looking at time frames that then will be as it put, investigator will appear before the Firearms Discharge Review Board and explain the reason for not complying. Are we setting ourselves up here for putting artificial dates in here to satisfy the Commission or the public and then actually not being able to meet those? I mean it seems like those are pretty small, those are pretty narrow days, you know, deadlines you=re putting in here and if you compare that to recent history and history over the last three or four years, I don=t see that we=ve had any evidence that those could be met.

CAPTAIN KEOHANE: In researching the dates, the initial dates were devised by Lt. Hennessy is the officer-in-charge of the Homicide Detail. He informed me that 45 days in most cases is a realistic date. Lt. Hennessy, before he assumed command of the Homicide Unit, was for two years the commanding officer of the Management Control Division. Based on his experience, he believes that they are. With my experience in the last few months, I believe they maybe realistic. I think we=ll have to make changes in the investigation, the administrative investigation procedures, but we can do that and it will make the Department more efficient. I believe they can be done and if not, we=ll revisit it but it gives us a benchmark, as you may say, to strive for and to improve our performance.

COMMISSIONER SPARKS: No, I think, personally, that=s an excellent way to approach this, but I just, you know, I hate to set up expectations in a Department order like this and not be able to meet those expectations right out of the box, but I think, what you=re saying, is an excellent way to approach it because I think there seem to be, hopefully, there are some efficiencies or procedural changes that can be made to expedite some of these investigations. Of course some have to go to the District Attorney=s office, I guess, and explain to them how to do it.

COMMISSIONER MARSHALL: We don=t have control over them.

COMMISSIONER RENNE: Commissioner Veronese.

COMMISSIONER VERONESE: Let=s start first with the title Firearm Discharge. I realize that the General Order defines the discharge as one that, says it right there, as one that where there=s no injury, but this is actually encompassing all discharges whether there=s injury or not so the title is kind of confusing.

Quick question. Are firearms B I understand that officers are put on administrative duty pending an investigation B are the firearms taken away at that time?

CAPTAIN KEOHANE: The firearm that was used in the shooting itself, yes, it is taken away, and it=s provided to the Range and CSI for ballistic reports and so on.

COMMISSIONER VERONESE: So once the investigation is completed or once the Range has taken a look at the firearm and all the ballistics have been taken from it, then it=s given back to the officer and that officer carries the firearm until the investigation is over?

CAPTAIN KEOHANE: Depends on the circumstances. Some situations, the officer is relieved of the firearm that was used at the time of the shooting for purposes of evidentiary value. However, they may, in circumstances, be provided with another weapon that evening.

COMMISSIONER VERONESE: Okay.

CAPTAIN KEOHANE: So the weapon itself that was used in that shooting, that would be held until it's no longer of any evidentiary value.

COMMISSIONER VERONESE: Okay. So, then my next question is to the purpose of this review process, and I think it's great that the Department is taking a look at all shootings and learning from them but my understanding is that these shootings are a very traumatic experiences for all officers in the Department, the CIRT team response and the officer's attended to the CIRT team and there are therapist involved and all sorts of people involved because this is such a traumatic incident. Is there a currently a review process to decide whether or not that officer is, for lack of a better term, fit to carry a firearm after being in such a traumatic experience?

CAPTAIN KEOHANE: Once (unintelligible) they are placed on administrative leave, detailed to the Homicide Unit pending the initial investigation. During that time, as you say, they meet with the CIRT people and as far as a formal, if you want to call it a fitness for duty evaluation, no, there's none.

COMMISSIONER VERONESE: Okay. The composition section, if someone were to take a look at this, they would think, as my grandfather used to say, the fix is in. They're all police officers and stuff and I understand that this is because this isn't a fit for duty and just a training and policy and procedures and that's probably, that's probably okay.

Section D, my comment is to the section that says Not in Policy. It says, *this finding shall be accompanied by a recommendation for discipline*. I think it that it should probably be more specific that if there is a finding that a police officer has discharged they're firearm and that discharge is not or is outside of policy, I think that that recommendation for discipline should come to the Police Commission or if it's something that we should at least consider and it's not, shouldn't be a discipline that is it the level or rather the discretion of the Police Chief but the level of the Police Chief. Something to consider. And after that it says *or a referral to MCD for further investigation* and it should state that if there is a finding of it not in policy, then it should come to the Police Commission. I think that a discharge of a firearm is a pretty serious incident especially if it's

involved a injuring a person and it should definitely come to the Police Commission and not at the level of the Police Chief.

Let=s see B other than that, my comments at to subsection E and the specifics to the Police Commission, obviously, it needs to be more than just a summary because I, for one, will have more questions than just the summary would provide. Other than that, thank you.

COMMISSIONER RENNE: Okay. Commissioner Chan.

COMMISSIONER CHAN: Thank you, Madam President. I did have a follow up question which pertains to the definitions contained in Article 1, section B, and that is, through the Chair. Captain Keohane, was there any thought given to crafting a definition for firearm? And the reason why I ask is that I am aware that there=s separate General Orders with respect to the ERIW, the extended range impact weapon, as well as there=s been a raft of publicity regarding the consideration by various law enforcement authorities as to the taser technology. What I=m getting at here is whether those systems would come within the purview of the Board if and when deployed with respect to the taser or current systems that are currently deployed within the Department to first responders or specialists on the force?

CAPTAIN KEOHANE: Commissioner, that policy is currently being drafted and reviewed by the City Attorney and members within the Police Department. And when that is finalized, it will be put before the Commission. As far as the extended range impact weapon, that comes under our Use of Force policy and if it was used inappropriately, a member may be subject to discipline for either unnecessary force or excessive force, and that, once again, depending on its severity, may come before you, but it is addressed in our Use of Force general order.

COMMISSIONER CHAN: So as to overall drafting intent then, it would be the intent of this draft then would not seek to incorporate those systems are the subject of another specific general order then and this would only pertain to firearms as we conceive of them, namely, what is issued to members, and I would assume this would include other firearms as well used by Tactical Unit, for example.

CAPTAIN KEOHANE: This would also include an officer=s off-duty weapon if he had occasion to use his personal weapon off-duty.

COMMISSIONER CHAN: That being said, again, as a friendly suggestion, perhaps some thought should be given to a clear definition of firearm as to what should be excluded from that and what would be included in terms of the internal jurisdiction of the Board. Thank you, Madam President.

COMMISSIONER RENNE: Any other comments? Director Allen, did you wish to add any comments on this one?

DIRECTOR ALLEN: Good afternoon, evening, Commissioners, President Renne, there=s no Vice President, Acting Chief Pengel, Command Staff, public: The OCC was concerned with the time lines as well. I think it=s good to have time lines in there. I believe, after writing the document protocol and we had time lines in there, that=s kind of what we sat down and talked about with the City Attorney. Having these 45-day and 15-day lines, we were specially interested

because recently it was brought to your attention that MCD reports that we were to summarize, we haven't received any since, I believe, 2000, 2001. So I talked to Acting Captain Keohane about that. This would insure that those reports did get to the OCC because it is our recommendation that is then made public and that's what the public may rely on when they're looking for these shootings. In fact, we've had, we've had the request, Sunshine request, for this information. I've had to reply that we did not have the cases in our office. I, too, was reassured by Lt. Hennessy but 45 days to 60 days is fairly accurate and I can tell you from investigations that we've had, many of the items that we request come within that time frame. There are exceptions, of course, in the last couple of shootings there have been several exceptions but I think it is realistic to believe that 45 to 60 days can work now. That is something that, of course, should be monitored along the way. But, again, having the 90-day review is comforting to us as well because of the fact we may receive a complaint independent of the review that's going on and so getting that information helps us to expedite our investigation of the complaint as well. So to have the 90-day review and all this information or at least some kind of report back to the shooting review board, which I believe turning the report to you all, kind of ensures that all that information is going to constantly be moving back and forth. So, we, again, agree with what's going on with the time lines and we'll monitor them along with the Commission, I guess, and the Police Department.

For Commissioner Veronese's question about the recommendation of punishment. I believe the recommendation would then come through the Chief to you all. My only concern, again, there would be, I think, it's a due process one. I haven't actually looked at this issue too much that we'd want to talk to the City Attorney. But in the event that we receive an independent complaint, such as in one of the last few cases that shooting incidents, we will be doing an independent investigation in the event that the recommendation is given to you all in advance. I know there's been questions of you all receiving information and then turning around and you have to sit and hear a Commissioner hearing, you would have this information in advance or if you were to act on that information in advance, that would cut our investigation off as soon as you made the decision. So I would think that would be something that you all might want to look at as to how you received that information or how that information is acted upon when you get that because if you get it from within 90 days saying not in policy and you want to act then, we, too, would be conducting an investigation, and I would think that you would want to hear our results. Not just our summary review of MCD's investigation but our own independent investigation as well. Here, it says that we have the right to recommend an independent investigation but, again, we may be conducting one at that time. So, I guess, it's more of a courtesy of asking you, if you do receive information that you would, you know, alert us and say, hey, and inquire whether or not we have an investigation on-going and then not act at least until our investigation was done because our investigations at times depend on

when we get the information can take up to five, six, seven months, and so you might have acted then we would have put that work in for nothing. So, just a concern to the Commission.

COMMISSIONER RENNE: Okay. Any other questions? Thank you, Director Allen. Are there any public comments on 3.10.

John Crew: John Crew, ACLU, with respect to Commissioner Veronese's comments about the composition of the Board and your grandfather's comment about the fix being in. I would point out that in the prior version of this one, this was in 8.11, the Director of the OCC was part of these Review Boards in a strictly advisory capacity. I confess that I've lost track of how long ago 8.11 was changed, but at some point in time that was the policy and in the new 3.10, the Director of the OCC is not there in the strictly advisory capacity. I would encourage you, I can think of lots of reasons and why we argued at the time when that was included why having the OCC would be there is a good thing. Perhaps there is reasons why he or she should not be there, I would encourage you before you adopt that to inquire into that so you can make an informed decision.

Secondly, with respect to my old friend Steve Johnson from the POA comment about requesting B I think you said a seat at the table on these issues B I would invite the POA to actually rather than sit at the table to stand at the podium with the rest of us. The POA has an extremely important perspective for this Commission and the public and it should be shared in public so we can all understand it and evaluate it appropriately. I certainly don't begrudge the POA asserting their rights to meet and confer but it's important, as you know, for this Commission to understand the lines of where meet-and-confer starts and ends. Meet-and-confer rights under the state Myers (unintelligible) Brown Act attaches only if the policy changes fundamentally affect the working conditions of patrol officers. And even then, if the matters being addressed involved fundamental managerial prerogatives for the public policy makers, namely, you, even then there's an exception under Myers Millies Brown Act for public discussion and indeed there's case law on how shooting reviews are handled. It says they are clearly not subject to meet-and-confer. So rather than go in the back room in private where we can't hear what's going on, we can't fairly understand and evaluate the peace officer concerns, which the people of San Francisco do care about. If they have a valid concern, we should hear it and we should act on it. I would invite the POA rather than sit at the table to stand at this podium and offer substantive comments at the appropriate time. Thank you.

Malaika Parker: Malaika Parker, Bay Area Police Watch. And so the changes to the general orders sound good. Just a couple of things that I wanted to raise. One is what happens with the reporting of an investigation if the D.A.'s office asked for information to be withheld again. I would like to see

some criteria set up for that to be flagged. So, if it's appropriate, then maybe that's a good thing, but my concern would be just across the board that things like that happen that the D.A.'s office ask for information not to be release. And then, along those lines, what are some ways that the information are shared with the public when that's appropriate because I obviously think it's good that the information is shared with the Commission but then how does get disseminated to the public in a timely manner so that the Commission doesn't have it in 90 days but it takes a year for the public to actually know what happened in their own community. And so those are just a couple of things that I would like to see addressed in the general order.

Meesha Irizarry: Meesha Irizarry, from Idriss Stelley Foundation. I wanted to report on this incredible show that were on cable last week, connecting the dot with Maurice Campbell. Commissioner Peter Keane, Police Commissioner Peter Keane and Director of the OCC, Kevin Allen, came on the show, and we got many auditors who called saying this is the very show ever. (Unintelligible) this is real radio the way that it should always be. So I respectfully urge other Commissioners to also come on our show for the sake of transparency and accessibility. We welcome controversy and different opinion so we also extend this invitation to the Police Department. I also want to announce we about to realize in Bayview Hunter's Point, and this is in support of all the brothers who came today, Bayview Hunter's Point Youth Rural Dream that will address the fact that to end the violence we also need to end the criminalization of the youth specially youth of color. We feel that both mothers are inherently combined, intertwined, and we also respectfully urge the Commission to endorse our project. Thank you.

Howard Smith: Good evening. My name is Howard Smith. I'm actually a member of B I live in Bayview Hunters Point, and I'm here actually just to address some of the issues that was going on with some of the officers out in Bayview Hunters Point who are basically treating us in a very inhumane fashion. We have an officer that I can call his name is Sgt. Jason Fox, I think his star number is 266 or 366, came to our neighborhood last month actually, August 13<sup>th</sup>, and basically, basically told B called us niggers that was standing up B all you niggers, this is what his words were, all you niggers standing on this corner need to leave. And I'm like B what I'm saying is this, my problem is this, with the police officers acting like this and B I don't know if you guys heard about one of our directors over at Joseph Lee Gym who was jumped on by officers in front of his two children B it's just an on-going problem and I would like for this Commission to B the officers that's over there, along with Captain Bruce, who's you know politicking to be Chief here, I would like for some, some, some investigator to go into these police officers backgrounds because I'm quite sure in their backgrounds we'll see a repeated misbehavior, misconduct, in they activities. Right now, I work every day. I work for the City and County of San

Francisco and I tell you, I fear for my life. And it's very uncomfortable. I shouldn't have to live like this. I pay my taxes just like every police officer and I'm a civil servant just like the rest of the police officer. They're there to protect and serve. They're not there to harass us and treat us like we are not humans. And I think this Commission, Dr. Joe Marshall, I would like for you to come out and sit down with the brothers and you can hear some of these stories that's going on. My cousin, Jeff West, he'll let you know exactly what happened that day when Officer Jason Fox decided to come through and use those inappropriate unprofessional words to the brothers over there. It's just kind of B I know it's a nationwide problem with police officers and so forth, but when it hit you in your own backyard, it's really B it needs to be dealt with. And we want to put out in the forefront so the next time something happens, we won't cover it up because that's what Captain Bruce is. He covering it up right now about, you know, playing basketball, but that's not that's not resolving our issues. Alright? So that's what I have to say and thank you for your time.

Jeff West: My name is Jeff West, I'm an outreach counselor for USF and Bayview Hunters Point. I've been living there all my life. And I was really surprised because I've doing outreach and I've been working in the neighborhood for at least 10 years doing the same work. And for somebody to come up and jump in your car and he asked by friend what B whose car is this? And my friend was like well, this is my nigger car. So he, Sgt. Fox jumped out of the car and asked what nigger car is this. And like five or six people turned their head and when they turned they head he said he had said that to get our attention. And like before I was working with kids, I was in a little trouble, but it was just B it offended me because I'm around here. I'm trying to stop killings just the way the police. I work with the police. I work with the Housing Authority. I do Project Connect. I work with City Hall. I mean I've done it all and just to B it B I have little B two sons where I'm trying to raise, you know, and I would never condone that kind of behavior. And it's just kind of hard to go to work because now B I've never been scare of nobody in my own neighborhood but now I don't know who to turn to. So if I make a complaint, you know, I've had certain people come up to me and say, well, if you complain, he's going to send his partners at you and so I don't know where to turn and this is the reason why we're at this meeting. So is there anything could be done or I mean I would accept an apology from Sgt. Fox but since he didn't apologize, I was really offended and it's still hard for me to even B sometimes I can't sleep at night and I call myself rough and tough but it's just hard. It's hard when you think you're doing something hard and then, you know, it's just that if can call me a nigger then he can get away with anything. And that's all. Thank you.

Director Allen, did you want to add anything on 8.11 at this point? If you want to add something, fine, if you don't, that's okay too.

Marylon Boyd: Marylon Boyd here on behalf of the Campaign for justice for Cammerin Boyd. I'd like to ask if we could get copies of the changes that have been proposed. I'd also like to get the actual rules as they were in effect prior to or as they are in effect right now. The other point I would like to comment on is that clearly a time frame that's six months well down the road, even for a police report, is pretty extreme and outrageous. I don't think there's any circumstance that justifies not doing police report within 30 days of an incident occurring. But I'd like to say that there were poignant questions that have been posed to the folks who are proposing the changes and I think that further questioning ought to be done in more depth in terms of actually what does it mean in terms of what actually happens in an instance where there's a shooting and where there was what's been called an unjustified shooting and where witnesses have come forward immediately at the time saying that there had been an unjustified shooting. So to that extent, I am concern that waiting for a district attorney to give a perspective on what they believe is whether or not they intend to pursuit an indictment or to pursue disciplinary charges of waiting for that by the police before they actually issue their findings from their investigations seems to be a little bit tenuous and unreasonable on the circumstances because the D.A. may take months and months and months to complete their investigation. So when we are told that there are separate investigations and they're an independent investigations, there's no reason to rely or wait or at least for the police department to wait for the district attorney to come up with their opinion because what it does is it gives the inference that somehow what they say depends to what the D.A. says. And if the district attorney comes up with the ruling that's against them, then it seems to me that they may then go back and modify or change what they've done somehow to either react to or respond to or whatever what the district attorney comes back. So to that extent, I would ask that they not B that the independence that we're told is there be there and not that it is an opportunity for one investigating body to rely on what another investigating body does. Thank you.

David Pilpel: David Pilpel. Having reviewed the draft 3.10, I have a couple further comments. I'd appreciate the discussion that you had earlier. In section 1(A), the Duties, the second paragraph there on purpose, I might suggest including some additional language that it's not just for purpose of training policy and procedures but it's also to make a finding of whether or not such discharge was in or not in policy. That's detailed further on but I think that this particular section lays out the overall purpose and it would be good to highlight it there. In section 18) Composition, the ~~strikeout~~ language from 8.11 suggest that there was a chair, actually two chairs, in the previous Board. It might make sense here to designate one of the Deputy Chiefs as the Chair of the Board. There's further reference to the Chair of the Board but it's not clear how that individual is designated. What's now entitled subsection (D) Function, I might suggest that

that be a new Roman numeral II procedures because that=s really not so much policy as laying out the procedures for how things proceed here and then further the subsections officer-involved shooting and on the next page in the middle of page 3, Officer-involved discharge, I might suggest making those lettered subsections because otherwise the officer-involved discharge kind of gets lost towards the end there. Couple other points where there are report from MCD and the OCC that come to the Commission, maybe there=s something that=s lost in terms of the procedures why something comes from the Department to the Commission and then the Commission forwards it to the Director of the OCC and vice versa. As far as I understand, they=re all like in the same building. Can=t the Police Chief forward a report to the Commission and concurrently to the OCC Director and can=t the OCC Director also concurrently forward a report and recommendations to the Commission and to the Police Chief? Does it have to all go through the Commission office? I don=t B again, maybe there=s a reason for that. It=s just lost on me. And that would apply both to the top of page 3 with those reports and then at the bottom of page 3 with the quarterly report to the Commission. I think those are my comments at this point and thank you.

COMMISSIONER RENNE: Alright. Any other comments with regard to 3.10?

Francisco Decosta: Commissioners, my name is Francisco Decosta. I was paying attention to the deliberations and then it got sort of sidetracked by some of the comments. What we are discussing is policy. You, as Commissioners, make policy. But even in making that policy, there are other law enforcement agencies that have a process. And I=m not telling you to incorporate the language but you need to look into the others of say some of the federal agencies. I say that because I did work for federal agencies and see how the time lines can be incorporated. And nowhere we are focus on the interim quarterly reports. The interim quarterly reports can lead you to a direction and tell you where exactly the investigation is going. The other thing is when a lay person does come and if it does not fall within the purview of the San Francisco Police Department and you, Commissioners, and supposed the matter lies with the district attorney, there should be some guidelines or some language where a lay person can know why this information does not meet the time lines. And this hasn=t been addressed here. Basically, when this matter was been discussed before the Board of Supervisor when we were discussing the proposition to bring in the new Commissioners, a lot of comments were made and it is good for you, Commissioners, to go back to those records or to those video tapes and see what we said. There lots of good comments made at that time. None of which can be said in a short duration over here. The other thing is, we do have certain criminal attorneys that deal with criminal cases, not really in the city but in the Bay Area, they should be afforded an opportunity to give their comments. Thank you very much.

COMMISSIONER RENNE: Alright. Shall we turn to Order 3.16.

CAPTAIN KEOHANE: Commissioners, General Order 3.16, a Release of Police Reports. This is probably the most difficult to address. Any order that encompasses the Sunshine Ordinance, government code, et cetera, can be a little complicated. We worked daily with the City Attorney's office on this issue: What information should be released and what should not be released. In drafting this order, it was forwarded to the City Attorney's office for their review, and they have not been able to give an in-depth study to it at this time. They're still reviewing it. But our purpose here in re-writing this general order was to make it clear that disclosure is the general rule and it's only on certain circumstances that we denied full disclosure, it's for a specific reason consistent with a pro po law, including issues such as the Sunshine Ordinance and the California Public Records Act.

All our police reports, when we talked about disclosing them, it's not a blanket policy. It's on a case-by-case basis: What's in the report and what the status of the investigation is. What we have to realize is that once information is let out, it's the same as a bullet leaving a gun. Once it's out, it can't be called back. You let out information that's gonna harm witnesses or dissuade witnesses from coming forward or if it's going to jeopardize an investigation, those are considerations we have to take into account.

What we did was, if you look on this, there's a lot of strike through. This is not the same as the 8.11. This is B the old order is incorporated here. We changed the order of some of the information. That's why the numerical differences are there. And those are most of the substantive changes. This general order was modified due to the OCC policy recommendations, number one, which states, It shall be the policy of the San Francisco Police Department to provide as much information as possible without endangering the successful completion of the investigation or related investigation or endangering the safety of officers or other persons involved in the investigation. To the families of individuals in officer-involved shootings, in-custody death, and traffic incidents involving SFPD officer pursuits. Well, we would build upon that and say it's our responsibility to raise the information by all parties where it's appropriate.

It also encompasses the OCC policy recommendation number 3, which states, of the liaison in those cases where we provide a liaison should properly disclose to the family the incident report unless the Chief of Police asserts that providing the report would endanger the successful completion of the investigation or related investigation or endanger the safety of officers or other persons involved in the investigation. The Chief, of course, shall justify to the Police Commission the continuing need to maintain confidentiality of the undisclosed information contained in the report.

COMMISSIONER RENNE: Okay. Commissioners, are there questions? You say that we have not heard back from the City Attorney=s office yet on this? We have not heard, have had the City Attorney=s input on this yet?

CAPTAIN KEOHANE: I would defer to the City Attorney.

MS. MORLEY: Madam President Renne, we did just get this general order and haven't had a chance to go through it for the Department. I think the one thing I would say about it is I don't think the Department was trying to make here any substantive changes to their previous general order and what this general order really is designed to do is to set out the requirements of the law, what the Public Records Act and the Sunshine Ordinance say with respect to police reports which are category of records that fall into the category of investigative files. And it's a fairly complex area of the law and point here, I think, is to be able to put it forth in such a way that the members of the department are going to be able to look at it and at least make an initial determination about whether there might be any problems with turning something over, whether they need to redact information that is deemed private. So, I might suggest that you give us a change to go through this general order again for the Department and to try to B yeah, I think if you go through it carefully, you're going to see that there are some glitches definitely still there and that it could use one more go through before you all put your minds to it.

COMMISSIONER RENNE: We'll have that opportunity. Commissioner Chan.

COMMISSIONER CHAN: Madam President, I did have a couple questions to ask as well, a couple of drafting. I'd like to defer to my other colleagues because questions that may come from them may be answered on my part.

COMMISSIONER RENNE: Commissioner Veronese, do you have a question?

COMMISSIONER VERONESE: I'm always good for a couple of questions. This policy, I think maybe B I'm going to comment on it anyway B it's inconsistent in several different places, and I'm wondering if B the Department needs to work on that and I'll just point out a couple places where it is.

Information that must be released to the public. You have section A(1), subsection A, subsection subsection (1), Individual arrested included name, address, occupation, and physical description. And then you have on the next page, subsection 5, you have the victim's name, age, and address. Further down you have the names and addresses of all persons involved or witnesses to other than the confidential informants. Now, it's great for purposes of public disclosure and everybody will now everything at that point but I'm sure that's not what you intend to do because one, names and addresses of all persons involved includes the police officers. And I'm assuming you don't mean that you're going to release the names and addresses of police officers. So that needs

to be worked on. It just needs to be very clear. If that's true and that's what the Department intends on doing, great. But something tells me that's not what the Department intends on doing and it needs to be clear what the Department's intentions are.

Subsection 3 of subsection B on page 5, again, right in the middle of the page, Diagrams, Statements or other parties involved, statements of all witnesses other than confidential, you know, when police officers are involved, they're clearly witnesses so they would be in there.

Then subsection B in Section B before that, Information that shall be withheld, section 5 of that says, When a report is released to the media, I'm assuming you're making a distinction to the media here, the names and address and telephone numbers of witnesses shall either not be released or shall be redacted. So I'm kind of unclear as to B in the beginning you're saying you're going to give all these information out and then you're saying when the media is involved, you're not gonna give any of that information out.

Before I move, my other concern is the rights of privacy whether it be individual, victims B because in this case you have it for victims, you have it for witnesses, and you have it for police officers, and the individuals arrested as well, suspects B is there a right to privacy to giving out information such as addresses and occupations, where they work, and is there a concern on the Department that perhaps their lives would be endanger such as you mentioned in subsection 8) where you say information that may be withheld, under the Department's discretion, you can withhold information that would endanger law enforcement personnel. Now, does that mean B is that the catch all for not releasing the police officers' information and if it is then I think that needs to be spelled out or is this the reason that we're going to get every time that there is a public request for that information. I just want to be clear as to what's going on here because as I read this, there's a whole lot of room for discretion and I don't want to get caught up in that mess when the circumstance does arise.

There doesn't seem to be B there's a title of it, it says Time of Release, but it doesn't really say when the information was released. To the General Public, page 7, subsection F, the general public may request in writing the release of report during normal business hours 0800 to 1600 Monday through Friday. I'm assuming that's not what you mean by time of release. But if it is then we need to address the time of release issue as in how long it will take for the Department to release it. Is there a time limit or is this gonna be B well, I'll just leave it at that. That should be true for the general public as well as for the media and it's to say nothing about to this Police Commission because there's still a big question in my mind as to when we get information.

That for me is it but I'm sure as I take a look at this order again I'll find more and I'll again present some sort of analysis myself. Thank you.

COMMISSIONER SPARKS: Yeah, it looks to me, as my colleague just stated, there's several things that are seemed to be inconsistent as the City Attorney stated, but I absolutely don't understand this one statement, which was actually in the original 3.16 and the original is subparagraph E at the very end and the new one it's G, Release of Authorization. It says, *the person who authorizes the release of the report to the public or news media is responsible for ensuring that the items listed in this order excluded from that report are not discernable*. What does that mean? I have no idea what that means.

CAPTAIN KEOHANE: I believe it means that they're not, not readable.

COMMISSIONER SPARKS: So it says responsible for ensuring that the items listed in the order are not readable or not discernable or I don't understand. I have no idea what that means. It seems to me like B I have no idea what that means.

MS. MORLEY: Commissioner, if I may. I think that what that is referring to if there's certain items that are gonna be redacted, or gonna be marked out, in a police report that is released, for example, the name of the victim of sexual assault, that will be redacted. So I think all that is trying to get to is if you're the person that, you know, in charge of doing the redaction and doing the copying to protect someone's privacy, you need to make sure that you really can't B that the person getting the report can't read that and that the privacy is protected.

COMMISSIONER SPARKS: That makes a lot of sense. Can we just say that?

COMMISSIONER MARSHALL: This just raise a question in my mind. Have you B is this the only draft here that you haven't reviewed or have you reviewed all of these?

MS. MORLEY: I did. I got them on the same time frame though that you did.

COMMISSIONER MARSHALL: But this is the only one you haven't?

MS. MORLEY: No, I have actually looked at this but I think what Captain Keohane was getting to is that this doesn't reflect the City Attorney's comments and this is probably the most highly legal or legally complex of all these general orders and so it doesn't reflect our comments to the Department in an effort to

make it clear and to make sure that it actually totally comports with these requirements, which are pretty complicated.

COMMISSIONER MARSHALL: Do all of the general orders fit in the same category with regard to your comments and you're just singleing this one out? Do the others reflect your comments?

MS. MORLEY: No, they do not.

COMMISSIONER MARSHALL: None of them do. Okay. I just got one question, first, under information that shall be withheld, that's 5(B), I'm just B this is just for me B vehicle collision reports involving death or personal injury except as provided by the Vehicle Code. Why is B

CAPTAIN KEOHANE: That's just a statute in the California Vehicle Code. We're not allow to release those B by law we are not allowed to release that information except to the party involved in the accident or their insurance companies or their legal representatives.

COMMISSIONER RENNE: Commissioner Chan.

COMMISSIONER CHAN: Thank you, Madam President. As I suspected, all of the comments by my colleagues are made with their usual precision and insight and I concur a large part to Commissioner Veronese's comments. I did have several smaller items to add and that had to do by way of drafting concerns as well as couple questions regarding the background.

With respect to the use of the word *surrounding* that appears in section A on page 4. I prefer that a global change where the word *surrounding* is use that we substitute that with the words *arising from* or *related to* or *relating to*, and the reason why I state that, and I'm drawing on an appellate case that I've read many years ago, I think those words have meaning with respect to the construction of particular provisions whereas I'm concern that if there's going to be litigation, will probably revolve around release, the nature of release, the nature of information, and I think we should strive for clarity where we can.

Which brings me to the point there are numerous statutory references or references to both administrative provisions as well as statutory citations and I think, again, for purposes of construction, it may be who've the drafter to, if not within this particular general order, perhaps a blanket rule of construction that when a statue is referred to by this general order or any general order, that should be a blanketed definition that it would mean the statute cited and any successor statute thereto so as to save the Department the expense of having to go through each statutory citation and conform them whenever the legislature seem fit to amend the law or whether a particular statute's been repealed.

The other comment that I had is a question address to Captain Keohane regarding the Department's past practice to the persons who are authorized to release information and directing, through the Chair, Captain, you attention to page 7, section E, that list the persons who may authorize release of the police reports. Could you again refresh my memory does this list of individuals or office holders within the Department reflect past practice or is it something new here about which we should be concern? For example, I'm looking at subparagraph 4 which refers to the Operations Center which is a thing as opposed to a person unlike the other innumrated items.

CAPTAIN KEOHANE: Commissioner, can I refer you to page 3. That is the old language. So we have number 1 would be the language is the same. Number 2, the language is the same.

COMMISSIONER CHAN: Okay. So this is largely a carry-over then from the previous version?

CAPTAIN KEOHANE: There are a couple of changes. Number 4 is different. In the old words is says the Operations Center during non-business hours after consultation with the assigned investigator or public affairs officer when possible. Now it says, the Operations Center during non-business hours after consultation with the assigned investigator or public affairs officer.

COMMISSIONER CHAN: Is there an individual within the Operations Center that would have management authority as opposed to simply the Operations Center?

CAPTAIN KEOHANE: No, we might have to expand upon that. What it would be was the person in the Operations Center would be able to possibly contact a person that would be authorized to release that report.

COMMISSIONER CHAN: Is this a duty officer of some sort then, is that what the concept is intended to entail?

CAPTAIN KEOHANE: That is correct. And then we also, in the new order, we added section 5 that nothing in this order prohibits a member from releasing a report after consultation, approval with the Legal Division.

COMMISSIONER CHAN: My other question concerns the object of Commissioner Veronese's previously expressed tension which was the times of release of information in Section (F). And what I picked up from this is that this is very much a work in progress and that you had not worked out the time by which release is to be made. That being said, what I also noted here was there wasn't a standard of conduct expressed in here such as reasonable efforts so that if you

can't in a hard deadline here that there would be a standard of good faith compliance with such request, to the extent that they're lawful, and I would argue not to use best efforts but say reasonable efforts.

CAPTAIN KEOHANE: Yes, Commissioner.

COMMISSIONER CHAN: I think we're all better off not litigating best efforts. Thank you, Madam President.

COMMISSIONER RENNE: Director Allen, did you have any comments on this section that you wanted to make? Okay. Commissioners, any other questions? Alright. Is there public comment on 3.16 and I am going to ask people to direct their comments to 3.16. Yes.

Carl Olson: Yes, President Renne and members of the Commission, my name is Carl Olson. I'm an attorney with the firm of Levy, Ram & Olson, and I represent the San Francisco Chronicle, the Northern California Radio & Television News Directors Association, and Associated Press. I will save my comments about the Media Relations policy for the time period set forth on that. We have a number of concerns about that as well. We feel that the new policy on the release of police records will unduly infringe on the ability of our clients to gather news in a timely manner. And all of our reporters are on deadline pressure, extreme deadline pressure, in getting reports timely right away is of the utmost importance. It's also something that's set forth in the Sunshine Ordinance. Section 67.21 of the Sunshine Ordinance says every person having custody of any public record or public information shall at normal times and during normal and reason hours, without unreasonable delay and without requiring an appointment, permit the public record or any segregable portion of the record to be inspected and examined and shall furnish one copy. Section 57.25 of the Sunshine Ordinance says that a request for information shall be satisfied no later than the close of business on the next day. But there's also a right to inspect information. You shouldn't have to make a written request, and in the past, members of the media and public have not had to make a written request and our clients are gravely concerned that in talking about making a written request that the Department is going to be changing the policy of having, in the past, release those information to people when they've requested it. I'm particularly concern about subsection (E) of the policy which says, *The following persons may authorize release of police reports but must consult with the Department Legal Division in cases that are not routine.* Well, that's pretty vague. In connection with 8.09, which I'll talk about later, which basically requires everything to be cleared by some central person in the Public Affairs office, I think that, as a practical matter, this is gonna result in people saying oh, I can't give this to you right now. I have to talk to the Legal Division. And the more people that you get involved, the slower the release of information if you get the information released at all. So, in summary, our clients have grave concerns about this. We don't think it complies

with the Sunshine Ordinance and we think it's going to result in undue restriction of information that our clients are entitled to and our clients have for decades been allowed to receive. Thank you.

COMMISSIONER RENNE: You might take a look at page 8 and see if that addresses some of your concerns.

John Crew: Commissioners, John Crew, from the ACLU, I don't want to try your patience tonight but I appreciate your attention to this order because, from our point of view, this is one of the most important General Orders in all of your stack of General Orders. There's a number of things that go into defining a police department's relationship with the community, but one of the most important things is the degree of openness. And there are two parts to that. One, is the reality of it. Can the public, can the media get access to information in a reasonable fashion, but also the perception of it, and I'm afraid here that perhaps for innocent reasons the Department has stumbled into something here where it is appearing to want to be more secretive than they're really trying to do. I want to talk about a couple of the substantive, perhaps accidental glitches that are substantive changes here, but I think it's important to keep this big picture in mind. And, ironically, you know, every law enforcement agency has its own strengths and weaknesses. Historically, one of the strengths of the SFPD has been is relatively open policies and practices and I think it would be a shame to accidentally stumble into greater secrecy. Now, the ACLU obviously is a strong advocate for open government but we also believe in the right to individual privacy. So there are competing interests here that need to be balanced. We would balance those interest, frankly, a little bit different than Mr. Olson and his clients, but they are difficult issues. And that's why I think it's so important on an issue like this to make sure that all parties' concerns are at least heard and addressed. This policy, 3.16, was originally drafted through a collaborative process, in those days it was known as General Order Z-3, a collaborative process involving the ACLU, lawyers for media organizations, I believe your City Attorney's office, Police Legal, or , in fact, these issues were hashed out and the language that you see in the old 3.16 came up with including the flawed language like discernable perhaps. But I think it's critical, critical, if for no other reason than perception, that you take care in addressing these issues and to make sure that they are fully heard and understood. I would disagree with Commissioner Veronese, if I understood him correctly, discretion is inevitably going to be part of the equation. I don't think you are able to or necessary want to write a policy that removes all discretion over what sort of records are addressed. I may have misunderstood your point. Calling your attention to two specific sections that are substantive changes, perhaps accident. Commissioner Veronese already pointed out section 2(B).5 at the bottom of page 5. This section requires the withholding of information to the media involving witnesses. And inside is a Public Records Act section. Few points, number 1, that Public Records Act exemption is

discretionary. You can choose to exercise it or not. It is mandatory. If you adopt this policy, you will be making a decision in every single case no matter what to choose secrecy. That is not required. That is not good policy. Secondly, I would caution you about one rule for the media and one rule for everybody else. I know Mr. Olson and his clients would not like a policy that gives the media less access to public records than other members of the public, and with due respect, you're going to have trouble defining who the media is. The ACLU is an advocacy organization but we have a website, we publish reports and newsletter. Mr. Marshall, Commissioner Marshall, when he's not on duty as a radio show, I believe his non-profit has a newsletter. I think it's a mistake, at least in that sort of thing, to set up two tiers of public access. Secondly, I want to call your attention to section 2(D).2 at the top of page 7. This refers to that after a case is closed, this policy purports to give the Department the discretion to still withhold certain information. And number 2 says information about law enforcement action. I don't know where that came from but that would appear to me to give them the discretion to withhold anything they want about whatever the police department does. I assumed that was an innocent mistake. I bring it up so it's not only addressed but to encourage you when you're working on these sort of policies to, in a timely fashion, reach out to Mr. Olson and his clients, the Sunshine Task Force, the ACLU is happy to help. You will get a better product in the end and there will not be a misunderstanding that the Department is trying to put down a wall of secrecy about what it's doing. Thank you for your patience.

COMMISSIONER RENNE: Alright. Anybody else. Then will move on. I just want to point out to everybody that there, you know, are in the public realm. People want to make written comments, they certainly can. I would suggest that they may be made, if at all possible, within the next two weeks because I know that people are anxious to have some closure brought to this. This is not the first time we've been discussion these things. Sorry, go ahead.

David Pilpel: The problem, David Pilpel, again. I found at least one instance of typos, so I would just hope that this gets spell checked. Also, on the top of page 6, third line, *if documents are withheld, the Department must explain how public interest would be harmed*. I would rephrase that as *if information is withheld* because it seems like there were some B these all speak to information. There could information conveyed other than through documents and this actually, I believe, governs public information generally. Further, just as the Bsome of the other general orders separate out policy and procedures, it seems to me that starting with subsection E, that that's really more procedural than policy. I mean, I guess, you could argue about who has the ability to authorize release but that could be a policy but it really seems to me that from that point forward it's really more procedural. As others have suggested, some of the items, also on page 6, that may be withheld actually can't be disclosed under state law and probably better in subsection (B), requiring withholding. For example, sexual

assault victims, medical information, 5150 matters, those sorts of things. As you just heard, when a case is closed, I think the policy from the Commission should be that as much information as possible is released and this really doesn't get to any level of description there. I think my only other point here was times of release the general public, that section really does need a lot of work. As I understand it, a public records request need not be made in writing. It can come through a variety of different channels. This really is just carry over language and I'm not sure that this is particularly applicable. And, certainly, as I guess we'll get to with the media in hopefully a few minutes, the media does need more immediate access to information for daily news reporting and that the Department needs to take that into account as it does but other members of the public generally also have rights to this information and I'm not sure if that's as clearly indicated in the draft as it could be. Hope that's helpful. Thanks.

COMMISSIONER RENNE: Okay. Anybody else? Okay, if not, let's move on to the next item which is the Crisis Incident Response Team, 8.04.

CAPTAIN KEOHANE: Yes, Commissioners, Department General Order 8.04, this is also B was brought about by recommendations from OCC. Basically recommendation number 2, the Chief of Police shall assign personnel to serve as liaison to the family of an individual killed in an officer-involved shooting, who dies while in the custody of the SFPD, or as in result of a traffic fatality involving SFPD vehicle or pursuit. This liaison shall initiate contact with the family of the deceased individual and promptly provide them with information about SFPD and Medical Examiner Officer procedures, crime scene processing, processing the deceased individual and his or her property. The agencies conducting investigation into the fatality of their respective roles and the relevant SFPD policies. The liaison shall also be available to provide information to the family on an on-going basis concerning investigations by the SFPD and other agencies. It also goes into OCC policy recommendation number 3 about the liaison shall promptly disclosed to the family the incident report and so on.

What we did with this General Order is we had the Critical Incident Response Team general order that covered what services or aid we provided to members that were involved in critical incidents. I believe it was Commissioner Sparks, at one of the meetings, requested what do we do for the community when they are involved. And as a result, we began looking at these. We took the 8.04 General Order and we added Section 2, Policy, for the community incident response. And in that added section 2, Notifications and Response, San Francisco Police Department shall notify the officer-in-charge of the SFPD Behavioral Science Unit whenever a mental health response is warranted to assist the public. The OIC of the Behavioral Science Unit shall insure that the Department of Public Health is notified immediately so that mental health workers can be dispatched into the community impacted by the traumatic incident.

In other instances, we also added, In other situations the commanding officer or officer-in-charge may contact the OIC of the Behavioral Science Unit to facilitate community incident response when they deem it appropriate. In discussions when we were putting this general order together, Commander Puccinelli brought forth situations where he=s already established liaison with the Department of Public Health and has B have used them as community resources in the Bayview District in situations that occur there.

No to set this in place, the Chief of Police is designated, within this order that the Deputy Chief of Investigations will be the person responsible for assigning SFPD personnel to service as liaison to the immediate family of any person killed in an officer-involved shooting, any person who dies while in the custody of the SFPD, or any persons whose death resulted from a traffic accident involving a vehicle pursuit And the Department shall provide as much information as possible consistent with the relevant provisions of the California Penal Code, San Francisco Administrative Code, Sunshine Ordinance, California Government Code, Public Records Act, and other applicable law, to the families of individuals seriously injured, or killed, in officer-involved shootings while in the custody of SFPD, or involved in traffic accidents involving SFPD vehicles or pursuits.

COMMISSIONER RENNE: Okay. I=ll start at this end at this time.

COMMISSIONER CHAN: It=s only one question, Madam President. Captain Keohane, my only question regarding this document for this evening was the interplay of the Department liaison as the person authorized to release information and the relationship of the liaison to the class of persons who are authorized to release information under draft 3.16. And I realize that the Deputy Chief of Investigations has the duty to assign personnel as appropriate here but then the Deputy Chief is not among the persons listed in 3.16. There is merely a reference of the investigator or the officer-in-charge, and so, I know that this is a difficult task and I=ve just called this out to you because I didn=t quite understand how this provision is intended to work with the other and maybe this will be picked up in a subsequent draft.

CAPTAIN KEOHANE: It may be B well, the intention here may have also been that the Deputy Chief of Investigations is the commanding officer of that unit or detail that would be handling this investigations, and he or she maybe the best person to work and see when, discuss with the officer-in-charge or the individual investigator and determine when these materials may be released.

COMMISSIONER CHAN: Right. And that raises the issues of whether there=s appropriate delineation of command authority in section E of the previous DGO that we had discussed, and, again, I just raised that for purpose of clarity

because I think we're, you know, we're dealing with several sets of regulations here. Thank you, Madam President.

COMMISSIONER RENNE: Commissioner Sparks.

COMMISSIONER SPARKS: Captain, thank you. I think this is a good start at putting in this community response element to this general order. A couple of questions, one is in paragraph 1, or paragraph A, subparagraph 1, you talked about liaison with the Department of Public Health. I guess my question was is there a specific Department or part of the DPH that normally, as a matter of course, handles this type of communication neighborhood and whether or not that should be codified in this regulation or some clarification as to who in the Department of Health needs to be contacted and what they would do rather than just say Public Health was notified, that's kind of like saying the City of San Francisco is notified, you know. There's a lot of different areas, and maybe that's defined a little more. That would be a suggestion.

I guess my other comment would be, under Department Release of Information, talking about information to be released to the families. You list pursuant to the California Penal Code, San Francisco Administrative Code, the Sunshine Ordinance, the California Government Public Code, and other applicable law. I'm guessing many of those will tell us what can't be released. I'm wondering if it might be possible to delineate in this paragraph something as simple as what can be released and maybe give a list of things that could be released to families so that we have a little better idea of what we're talking about here as far as release of information to families. This is very B it's probably, if you had all the applicable regulations in front of you, would be very clear but to me it isn't very clear just reading this one paragraph so I think it might be helpful, if possible, to actually list information that would be released to the families so that we have some clarity, you know, with that.

CAPTAIN KEOHANE: Yes, Commissioner.

COMMISSIONER VERONESE: One quick one here. Thank you and the Department for taking the community into mind and also thank you for knowing the Police Department's limits obviously. As an on-scene person, you know when somebody needs a B when there's a critical incident you know that there is an appropriate response but obviously, the Police Department isn't equipped to do these types of things so the Department of Health is very appropriate.

My one concern is that perhaps the Department of Health should get in contact with the liaison as opposed to just being sent out into the community. It makes it sound like they're being sent out into a vacuum whereas they can be sent out to a specific person that you may know for sure is directly involved in

that critical incident as a either a witness or a family member of the victim. Otherwise, that=s it. Thank you.

CAPTAIN KEOHANE: Thank you.

COMMISSIONER RENNE: Director Allen, do you have any comments on this section? No. Okay. Is there public comment with regarding to 8.04? Okay, if not, let got to 8.09. Excuse me, we do have somebody coming up. This is on 8.04.

Meesha Irizarry: We constantly are thriving with your support, Commissioners, for transparency and accessibility and I just want to mention, after my son was killed by the police, it took me four months to get an autopsy report. It took me 17 months, 17 months to get the police report. Can you even imagine the agony of the families waiting to see this version. My heart really goes to Marylon Boyd and the family for their composure, their dignity, and their courage. And this has to stop, it has to stop.

COMMISSIONER RENNE: Thank you. Okay. Captain Keohane, 8.09.

CAPTAIN KEOHANE: Yes, Commissioner. General Order 8.09, Media Relations, this will be the last general order we=re going to address this evening. This is also in response to OCC policy recommendations. Number 1, it should be the policy of the San Francisco Police Department to provide as much information as possible without endangering the successful completion of the investigation, related investigation, or endangering the safety of officers or other persons involved in the investigation to the families or individuals of officer-involved shootings, in-custody deaths, and traffic accidents involving SFPD pursuits. Also OCC policy recommendation number 4. The San Francisco Police Department shall not make public statements or press releases that appear to predetermine the outcome of the investigation or that unnecessarily place the deceased person in a negative life. Nothing in this policy shall inhibit the First Amendment Rights of individual members of the SFPD provided they shall not make public statements in an official capacity, in uniform, or purport to be speaking on behalf of the Department.

In addressing the Media Relations basic B what we did was we added the language in section (J) which is, The San Francisco Police Department shall not make public statements or issue press releases that appear to predetermine the outcome of an investigation or that unnecessarily place a deceased person in a negative light. We used that, we place that in there as a B I think I brought it up early with President Renne B that this is a beginning point for discussions with OCC and other concerned individuals or bodies that would like to have input on what information can we release that would not present people in a negative light. I think this is overly broad at this time but it is a starting point.

And building upon that, we look at section E, on page 2, regarding On-going Investigations. The first paragraph states, Disclosure of investigations information to the media is not appropriate. That is B I would say that it=s not intended to be a broad statement for all investigations because at certain times we=re going to want to release some investigative material to aid the public in coming forth with information. So I just like to say that that=s an omission on our part at this time and that will be added.

But if we look at the different areas, 1 through 8, where information may be withheld. Observations made by a defendant=s character, I think that goes directly to OCC policy recommendation 4. Statements, admissions, confessions, motives, or alibis attributed to the defendant or the refusal or failure of the accused to make a statement, once again, go directly to defendant=s character. Those are why those additions to this order have been included.

COMMISSIONER RENNE: Alright. I know Commissioner Chan have a number of suggestions for change. I just seen this and I haven=t had B I don=t know if the staff has had a chance to see it but we=ll circulate that.

COMMISSIONER CHAN: I was going to ask you, Madam President, as to the process by which that would be efficient. I don=t think we intend this to be a completely mark up session. I would perhaps if you let my other colleagues weigh in with their opinions on that and perhaps I can just hit the highlights rather than go into two pages of written comments that I=ve made since I took a little more time with this one.

COMMISSIONER RENNE: Well, as I say too, if members of the public, I think if we have written suggestions made and submitted to Sgt. Reilly, then that gives us an opportunity to see in black and white exactly what suggestions are being made.

COMMISSIONER SPARKS: I have just a broad comment not specific, not going to specific paragraphs and it=s what Captain Keohane=s comment was about disclosure of investigative information for media not being appropriate as kind of a lead off general statement. It seems to me that that that=s the opposite of what we would want to see as a full disclosure type of relationship with the media in saying that disclosure of information to the media is appropriate in situations when it does not jeopardize, you know, the on-going investigation to try to put a little different turn on it is suggesting that we do want open information exchanged except when it just jeopardizes investigations rather than making a flat statement starting off to the negative and then trying to clarify with the positive. It seems to me would be a better approach. But, you know, again, I would saying going through this, there is a lot of detail as to what we can=t do. Then it refers to information must be released refers you back to 3.16 which seems to me that as

part of this, we could also talk about information that could be released and can be released and be more specific rather than what can=t be in addition to what can=t be maybe. I guess that would be the only general comments.

COMMISSIONER RENNE: Director Allen, did you have any comments at this time with regard to this section?

COMMISSIONER CHAN: My intent by spending a little bit more time with this had to do with my concern about what we have heard as Commissioners and this need to balance both the ability of the Department to communicate clearly to the public with the need of the public for full disclosure, and, as I said, we've been B there=s been some criticism on the other side that there=s been too much information or perhaps in our (unintelligible) packaged information and I think that inquiry, as Commissioners, we=re going to be wrestling with, I know, in the coming days. That being said, as indicated, I've prepared a couple pages of comments and I just wanted to walk quickly through them more to communicate rationale than specific language changes. Although, there will be an insertion of a word here or there that I think would indicate my thinking on the matter. So, I'll do that with reference to the DGO language itself.

Specifically, in Article 1, section (A), I had B I expressed the preference that we insert the word *reasonably* after the word *cooperate* in line 2. And the rationale here would be to provide the Chief with the ability to exercise a rule of reason with respect to setting reasonable time, place, and manner regulations as implied by this paragraph=s specifications of the limits to which the news gathering function is subject, and I know that members of the (unintelligible) of state are going to weigh in on that issue. I would express now my preference in open hearing that if there are legal standards by which this general order should be revised that it would be more helpful to know those now, if necessary, by way of a brief that would communicate clearly to this Commission both local ordinance, state statutes, as well as applicable decisional law that should guide future revisions to this general order. I mean if there are rights of media organizations with respect to the release of particular types of information, we should probably be informed about that now instead of having to deal with it later.

I did have some rather an extensive rewrite of B let me deal first with the specific change in line 7 of section 1(a) that would delete the word *elsewhere* in the last line and insert after the word or the phrase *as otherwise provided in this order or other Department General Orders*. Again, going to my earlier point that the revision should make an attempt to cross-reference the universe of other restrictions that would be placed on the member=s authority to speak to the press to the extent that it exists elsewhere in the general orders and I think we need to be able to inform members of the Department clearly as to what their obligations are, which I think is one of the purposes of striving for clarity here.

COMMISSIONER RENNE: And just give the written comments.

COMMISSIONER CHAN: Right. And I do have written comments. The purpose of my edits as to Section (E) to reorganize this somewhat to address the nature of communications that would be inconsistent with the conduct of appropriate police operations which I think should be a principle and then on this, my thinking may be somewhat different than Commissioners Sparks, I think we should be striving for a level of professional standards that, all be it are solicitors of due process and privacy rights of individuals, but keeping in mind that we should do nothing that would compromise the integrity of the investigative function as well as investigative techniques, and I think we need to work that in because I don't think we are talking about the compromise or the technical means but the whole process by which cases are put together. And we would need some mechanism that fixes responsibility with respect to the release of information, and I had suggested my comments, a written authorization of the Chief, but that is merely a suggestion.

The substantive change that I would suggest would be at the end of Section (E) which would communicate the consequences for the unauthorized disclosure of information. A sentence to the effect *that the unauthorized disclosure of information and violation of this section 1(E) shall be grounds for referral to MCD for investigation and possible disciplinary action*. In other words, as it's drafted now, there is not communicated clearly what the consequences would be for violating the restrictions that are set forth in here.

As to Section (H), I had additional language suggested with respect to subparagraph (5).

COMMISSIONER RENNE: Commissioner Chan, I think it's going to be, you know, for us to digest this B

COMMISSIONER CHAN: Right, and I understand that. And I think, Captain Keohane, you have the benefit of those comments. I think we need to be cognizant of the fact that communications technology are more expansive than simply the broadcast function but to preclude or somehow regulate the contemporaneous communication of tactical developments and I think we need to do that. There may not be broadcasting live but they could very well be on the cell phone or webcasting. And so, the balance of my comments are set forth in writing and I'm sure we'll have another run at it. Thank you, Madam President.

COMMISSIONER RENNE: It's okay.

COMMISSIONER CHAN: I appreciate your patience.

COMMISSIONER RENNE: We'll circulate that and we'll need to get the City Attorney's comments back too and so I'm hoping we can get everything back within two weeks, three weeks. Okay. Any further questions for Captain Keohane.

COMMISSIONER SPARKS: My only comment, Madam President, that we do get, particularly in 3.16 and 8.09, we do get all the various stakeholders involved with the discussions as we go forward, you know, as well as the press and POA if they so choose and others to get involve so that we have a B I hate to use the term consensus B but a well-thought out document when we go forward and I'm sure that Captain Keohane's procedure anyway, so.

COMMISSIONER RENNE: I think we've been urging people all evening, get your comments in, call the Captain, so that we can go B this is a lot to digest for one evening B and I might say, Captain, you've done a very good job in terms of bringing it all together particularly, I know, under very tight time frame. We're anxious to get it going. It's complicated stuff, so, we thank you for that.

CAPTAIN KEOHANE: Thank you, Commissioner, but there are numerous people in the Department that helped on this project, especially Joe Reilly. Thank you.

COMMISSIONER RENNE: Okay. Let's see if there's any public comment with regard to 8.09.

Carl Olson: Carl Olson, representing the Chronicle of Northern California, Radio Television News Directors Association and Associated Press. At the outset, be careful what you ask for, you might get it. I do have some initial written comments and I have B

COMMISSIONER CHAN: Not a writ. You said written comments, right? Okay.

Mr. Olson: B and we just saw this for the first time today so we will be B

COMMISSIONER RENNE: And you were able to do that in that short of time?

Mr. Olson: Well, some of these are case that are cited in the letter and I have to thank my associate, Erica Craven, for this as well. But, we will be submitting additional comments directed to some of the specifics of it. But I'd like to say generally that for years my clients have been able to gather news and report news responsibly on matters of concerns of the public, and they've been able to talk to inspectors directly and that has worked. And they've been able to uncover significant news of concerns of the public such as the Police Department's difficulties in solving homicides. The Chronicle did an award-winning piece a couple of years ago about that subject and I know that's a subject of grave concern to everyone in San Francisco. One of the first things that Mayor Newsom did when he took office was to go to the Bayview and see what could be done about difficulties in solving homicides there. And that story could not have been reported had not Jaxon Vanderbekin and the other people at the Chronicle been able to talk directly to inspectors about that. So the non-legal way of saying what I'm saying is that if it ain't broke, don't fix it. And being able to talk to directly to inspectors in the past has worked and I think that the new rules, as a practical matter, would make it more difficult for beat reporters to get news that are gonna result in people being referred to a central office where there's only three people in a city of this size where the people are not available on the weekends and for breaking news, that just doesn't work for people that work for the Chronicle, for radio, and television stations, that just doesn't work. And so by forcing inspectors to contact their supervisors, the new policies are gonna hamper news gathering significantly. There are also problems with the Sunshine Ordinance and with the mandate of disclosure which is set forth there. I'm glad to hear that at least some of the really over broad language in here is probably gonna be revised. I think that the saying disclosure is not appropriate at the outset is absolutely the wrong message to communicate and some of these other language is just extremely broad. Such as (J) The Police Department shall not make public statements or issue press releases that appear to predetermine the outcome of an investigation. That's awfully broad, that's awfully vague, and I think as a practical matter that would result in people not saying anything at all. I think there are constitutional issues that are presented here. A couple of the cases cited in my letter B I would just like to briefly hit some highlights on B the Chico case cited in my letter says that speech that concerns issues about which information is needed or appropriate to enable the members of society to make informed decisions about their operation of their government merits the highest degree of First Amendment protection. And, obviously, everything that we're talking about here informs the operation of the government. The case of Kershman vs. Lake Elsinor Unified School District, 57 Cal Ap 4<sup>th</sup> 595, says,

Government employees are often in the best position to know what ails the agencies for which they work. Public debate may gain much from their informed opinions. And I think that the practical impact 8.09 as it's currently drafted is going to be to cut off the ability of people that are on the front lines to tell members of the media what is going on. There's an old saying that a horse is an elephant designed by committee, and I think that by getting more people involved and requiring that everything go through a central office, what's you're going to have is either the media being told that a horse is an elephant or being told nothing at all and neither of those is a satisfactory result. Thank you.

COMMISSIONER RENNE: Thank you. Alright. Is there anybody else that wants to speak to this particular item. This particular item.

Malaika Parker: Hi, I'm Malaika Parker, Bay Area Police Watch. I just wanted to say that in some ways agree with the gentleman from the Chronicle that the media should have some access to information but I also think that the particular reason that I think that is up until now, that's been the only way that the community has gotten any kind of information about anything that's happening with the Department, and I don't think that's appropriate. I think the answer is to figure out how to get more information to the community about things that are going on with their Department and there are some things that are broken with the process. I recently was looking at some old footage of incidents that we've worked on in the past and you know some of the things that are said about people is really hurtful, you know, and it's not just a word or two like I was watching footage from when Sheila Detooy was killed and an officer said, basically said that it was her fault that she was killed and that's just really hurtful and not necessary. And so I would say that there needs to be, you know, it just can't go from one extreme to the other. I definitely think there needs to be information that media and community members have access to because that's one of our ways to disseminate information is through the media but that it shouldn't be to the point where it's hurtful and there should be some restrictions on the ways that information is shared, particularly around victims of actions. And so even if it's a victim of, you know, our identities are protected in certain situations if it's a civilian case. But the same thing should happen when it's an incident involving the police and to just go on the attack and go on the offensive whenever something happens with the police is not appropriate. And so I think that should be looked at more than like just cutting all ties off to the media. And there was a comment made about making sure that there's some kind of accountability that happens along with this. So if you're saying that there should be some restrictions on what information gets shared with the media, and then if that information get shared, then what is the consequence for that behavior. I think that's really important because without that discussion then it kind of just leaves it open for things to happen anyway. Thank you.

David Pilpel: David Pilpel. I only have two brief comments on this section. You've already heard from Mr. Olson and I would agree with Commissioner Sparks in particular about not just being reactive. This really is a very reactive policy that when the media ask then you either provide or you don't blah blah blah. I think it would be good to start out with the public affairs officer shall proactively work with the media to provide information about the Department's activities not just upon request but that, you know, as new people move in to that office, whereas new reporters come to work for the media, that the Department should go out and try to seek people out not just wait until there's a problem. And then the other section, on page 3, the hostage scene section. The wording in here is very different from the other wording. This is all very first person. If this could be rewritten to keep the same content but word it in third person as the rest of the order sets out, so, you know, the media is discouraged from conducting negotiations. The media should be referred to blah blah blah, et

cetera, rather than when someone contacts you. It just reads differently. Thanks very much.

COMMISSIONER RENNE: Okay. Unless there is something B okay, one more comment. Okay.

Steve Johnson: Thank you, Commissioner. Steve Johnson with the Police Association. On this order, this order is, I think it=s one of the more difficult like everyone here has been saying. I=ve only seen it for a brief time this afternoon, late, actually, yesterday afternoon when we first got it. But we encourage police officers to talk to the press and yet this one is very restrictive and it can be very subjective also. We=ve already seen it one day the comments here from the representative from the media and that=s one person, one group of people, we don=t want to upset. Believe me, we just don=t the media upset, and we don=t want to put our officers in a difficult position. And that is why the meet-and-confer process is so important. The meet-and-confer process is where we do a lot of research. We get committee members involved. We get a lot of the members involved and we meet and we discuss things. And that=s why I was a little upset with the comment made by the ACLU representative earlier tonight that somehow the POA is trying to hide things by employing the meet-and-confer process. I understand that John Crew has been away from this Commission for some time, maybe a little too long. If John Crew wants to change State law, that=s perfectly fine. He can drive 80 miles north to a little city called Sacramento and that=s where he should do his lobbying, not here. So the meet-and-confer process is very important, and as far as the POA is concern, we have never shied away from public policy. We have always been a willing participant within the parameters established and we will continue to do so. But for John Crew to say that we are trying to hide something B well, if we are B we=re doing a very very horrible horrible job of it. And as you know, Commissioners, the meet-and-confer process, once that is, all the input from the meet-and-confer process just comes right back here to right in front of you at this podium, in public, in front of the television. There are absolutely no secrets involved. Thank you.

COMMISSIONER RENNE: Alright. Anybody else. If not, unless there is something more in the Chief=s report, shall we move on to item number 3.

#### **OCC DIRECTOR'S REPORT**

- a. **Presentation of the OCC's 3<sup>rd</sup> Quarter Statistical Report**
- b. **Presentation of OCC cases eight months and older**
- c. **Review of Recent Activities**

Director Allen presented the OCC's 3<sup>rd</sup> Quarter Statistical Report and the report on OCC cases eight months and older. He stated that the website has the full report that have the comprehensive statistics if the public would like to see those.

#### **DISCUSSION AND POSSIBLE ACTION TO APPROVE THE CHIEF'S RECOMMENDATION FOR STIPULATED DISPOSITION OF THE DISCIPLINARY CHARGES FILED IN CASE NO. C03-199 JWA WITHOUT TRIAL**

(Resolution No. 91-04)

AYES: Commissioners Chan, Marshall, Sparks, Veronese  
NAYS: Commissioner Renne  
ABSENT: Commissioners Orr-Smith, Keane

#### **COMMISSION ANNOUNCEMENTS**

None

PUBLIC COMMENT

None

**SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT  
FUTURE COMMISSION MEETINGS**

Commission Chan would like to request at some future date, a report from the Department regarding the use of civilian junctions to abate gang activity as a public nuisance.

Commission Sparks would like to request that the Commission schedule a hearing within 30 days to comply with the formal request for hearing by representative of the San Francisco Gay Pride Alliance. In pursuant to DGO 2.01, Paragraph A, "Requesting Hearings" and asked if that be scheduled within 30 days and ask that the Pride Alliance submit prior to that time, some type of a brief explanation of the issues that there are asking the Commission to call the hearing on.

Commissioner Sparks would actually like to cordially invite a representative of Kamala Harris' office, either she or one of her representatives to speak to the Commission and talk about procedures that the District Attorney's Office uses in investigative officer-involved shootings and also discuss possibly at that meeting discussion items to discuss the working relationship between the District Attorney's Office and the San Francisco Police Department and the Office of the Citizens Compliant relative to investigations of officer-involved shootings.

Thereafter, the meeting was adjourned at 9:35 p.m.

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Sergeant Joseph Reilly  
Secretary  
San Francisco Police Commission

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