

NOVEMBER 1, 2006

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 5:34 p.m., in a Regular Meeting.

PRESENT: Commissioners Renne, Campos, DeJesus, Lee Marshall, Sparks, Veronese

PUBLIC COMMENT

David Villalobos commended Commissioners Sparks and Veronese for their work with the community. Commissioner Sparks thanked Mr. Villalobos. Commissioner Veronese thanked Mr. Villalobos.

Kevin Martin, Vice President SFPOA, discussed concerns regarding comments by two of the Commissioners last week. He also commented on the passing of Sergeant Phil Lee.

Martin Halloran, Treasurer POA, discussed concerns regarding comments made by Commissioners last week.

Allan White discussed concerns regarding the Castro incident on Halloween night.

Steve Johnson, POA, discussed concerns regarding remarks made by the Commissioners.

DISCUSSION AND POSSIBLE ACTION TO ADOPT FINDINGS ON DISCIPLINARY CHARGES FILED AGAINST LIEUTENANT JERRY LANKFORD (FILE NOS. C04-105 JWA, C04-113 JWA, AND C04-126 JWA)

PUBLIC COMMENT

None

Motion by Commissioner DeJesus, second by Commissioner Lee to go into Closed Session. Approved 7-0.

POSSIBLE REPORT ON ACTION TAKEN IN CLOSED SESSION

Commissioner Renne reported that the Commission did adopt findings of fact and conclusions.

VOTE WHETHER TO DISCLOSE ANY OR ALL OF THE DISCUSSIONS HELD IN CLOSED SESSION

Motion by Commissioner Sparks, second by Commissioner Veronese for non disclosure. Approved 7-0.

Commissioner Renne thanked Mr. Robert Tronnes and Ms. Jennifer Wang for their outstanding work, and the law firm of O'Melveny and Myers for allowing them to provide pro bono service.

DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION REGARDING PROCEDURES FOR STIPULATED DISPOSITION OF DISCIPLINARY CHARGES

PUBLIC COMMENT

Mark Schlosberg, ACLU, stated that (1) the most information that can be released to the public should be provided. (2) apart and aside from stipulated dispositions, he urged releasing other information, other categories of information in a comprehensive way, i.e. charges filed with names redacted, descriptions and dispositions of charges with names redacted.

Commissioner Veronese explained why he proposed an amended resolution regarding the Commission's policy and procedures for proceedings in disciplinary cases. Commissioner Veronese stated “. . . To the public, the prohibition of stipulated settlements says that we're unable to find other measures to keep the public informed, and I do not believe that is the case. To the officers of this Department the message is despite the reasonableness of the disposition, despite the agreement of the Department, and despite the fact that you, officer, are willing to come before this Commission and admit that you did something wrong so that you can get back to work and move on, we, the San Francisco Police Commission, are not going to let that happen. We're gonna hold it above your head until that day comes that (1) you agree to make your case in public, your Bill of Rights notwithstanding, or (2) you wait out the months and months or sometimes years before a hearing before this Commission is scheduled. Fellow Commissioners, that message is bad for morale and it is bad government.

Originally, I suggested that a compromise that we should set a penalty limit on which cases we hear as stipulation as Mr. Schlosberg mentioned. And by way of example, for example, we will not hear cases in private where the act is so egregious and the penalty so severe that it exceeds 60 days. I agree in those cases that the public has a right to know. I also agree in the ideal supported by the Los Angeles Sheriff's County, Sheriff's Office, where the penalty warranted, where if the penalty warranted is that severe, then perhaps the act of the officer is so bad that you should be required to have a hearing to determine what penalty the Commission, and the Commission alone, finds it just. Wherever we set the bar if the act is so severe to warrant severe punishment, then it's up to the Commission, not the officer, as to what – as to whether or not we want him or her to continue with this Department or what penalty should otherwise be handed out.

We cannot force an officer to take a stipulated disposition in public. Although most, if not all of us, prefer that he does. Given their rights, we need to incentivize not penalize officers and perhaps even reward those officers who request a public hearing in this matter.

Our role is not to make a public policy statement with the knowledge that such statement is an empty promise towards a noble goal. Instead, our role is to act responsibly, thoughtfully, in a forward motion towards real progress and this is a responsibility we have to the public. It's a responsibility we have to the men and women of this Department.”

Commissioner Veronese went on to explain the changes made in the resolution. Commissioner Veronese also asked the Commission to act as follows: For future consideration (1) That this Commission draft a formal request to the Sunshine Ordinance Task Force to conduct a review of the relevant codes, ordinances, and case laws and report back to the Commission on suggestions on how the Commission can maximize transparency in this post Copley existence. (2) That this Commission make it a priority of redrafting the Disciplinary Guidelines – a 12 year old publication. Such drafting should be done toward standardizing disciplinary processes, eliminating the existing confusion and restoring the public and the Department's fate in a fair and just disciplinary process. (3) That this Commission continue to seek out ways to incentivize members of this Department to conduct public hearings. And for the action on draft resolution on tonight's agenda, Commissioner Veronese stated that the Commission adopt a public policy statement consistent with its pursuits of transparency and open government as written and then he went on to explain the amendments made.

Commissioner Veronese moved to amend the resolution.

Commissioner Campos stated that he disagrees with Commissioner

Veronese's proposal. He stated that to adopt the amended resolution would not be good public policy for San Francisco.

Commissioner DeJesus stated that there was no notice to the proposed amended resolution and stated that she agrees with Commissioner Campos that not only does Copley not address stipulated dispositions, Penal Code 832.7 does not give the officer a right to have a stipulated disposition in any manner. Commissioner DeJesus also stated that the amended resolution takes away the transparency.

Commissioner Veronese stated that his intentions in putting this resolution forward is so the Commission can move forward with resolving matters in an effective government type of manner. He stated that the resolution the way it was written before, without the amendment, makes it difficult to do that.

Commissioner Sparks stated, just to provide background, when there are stipulated dispositions that occur now, the way it occurs is that the Department negotiates and discusses and potential disposition with the lawyer representing the officer. It is then presented to the Department. The Chief's advice is sought and given, and then that tentative agreement is brought to an individual Commissioner who then brings it to a Closed Session for the Commission to discuss that stipulated disposition in a Closed Session. Then once that is agreed upon in Closed Session by the Commissioners, then it is brought to an Open Session at which time the officer is brought before the Commission and asked whether or not he agrees with the charges and the stipulated disposition. Commissioner Sparks stated that the fact is, for the most part, that stipulated disposition is a done deal in Closed Session before the officer is brought before the Commission. Commissioner Sparks stated that what the Commission is suggesting is that the stipulated disposition be effectively done exactly the same way and what Commissioner Veronese is suggesting was to take the identity of the officer out of the equation and to eliminate the uniqueness of each case by presenting a bi-monthly report as opposed to each case being presented individually.

Commissioner Sparks stated that there might be something in the middle that would in effect protect the confidentiality of the officer. Commissioner Sparks suggested that, similar to what Commissioner Veronese's recommendations, but on a unique case-by-case basis. Commissioner Sparks suggested that as each case is heard that the Commission report to the public on a case-by-case basis the case number, the alleged rule violations, a brief summary of the factual basis for the rule violations, the type of proceeding whether it was a full trial or stipulated disposition, any relevant policy failures that are identified, and a proposed disposition or penalty. That is brought into open session and at that time the public has the right to comment on what the Commission proposes to assess as a penalty. Commissioner Sparks continued and stated that at that time the Commission would then vote by roll call in open session as to that penalty after the public has had an opportunity to comment.

Commissioner Lee stated that she supports the amendment and that this is just the first step and she looks forward to working with the rest of the Commissioners to make sure to find creative ways and to uphold the Commission's responsibility to keep the public informed.

Commissioner Campos stated he wanted to make two comments. First, is that the original resolution as drafted was given a great deal of thought and it was drafted very closely as it was reported in the press with the assistance from the City Attorney's Office and the fact that it was drafted in consultation with the City Attorney's Office, that it was a viable resolution. Secondly, Commissioner Campos stated that he appreciates the concern that

Commissioner Veronese has voiced which is if the Commission require that settlements be resolved in the open, that might cause people not to settle and that could increase the backlog of the Commission. Commissioner Campos stated that he doesn't necessarily think that that's the net effect. He stated that in terms of public policy, as much as the public cares that the Commission resolves cases quickly, the public just doesn't want the Commission to resolve quickly. The public wants the Commission to resolve cases the right way.

Commissioner Sparks stated the public deserves the right for openness but she doesn't think the public demands the right to know which officer did what as long as they understand the violation and they understand the penalty. Commissioner Sparks stated she could not support Commissioner Veronese's amendment as it is written. Commissioner Sparks proposed that this be held for another week to see if the Commission can somehow draft some kind of a compromise.

Commissioner Renne stated if this is held over, it has to be held over for two weeks because she will not be present next week.

Motion by Commissioner Sparks to continue this item for the agenda of November 15th. Second by Commissioner Veronese. Approved 5-2.

AYES: Commissioners Renne, Lee, Marshall, Sparks, Veronese

NAYS: Commissioners Campos, Sparks

CHIEF'S REPORT

a. Update on significant policing efforts by Department members

Chief Fong advised the Commission that Monday, the Department started a new Academy class of 50 recruit officers. This is the first class of the five that are budgeted in this fiscal year. Also, on Friday, it is the graduation of the 211th Recruit Class and there are 35 members who will be graduating.

Chief Fong reported on the activities on Halloween night. Chief Fong stated that the initial thought from the community was that this event should not occur because of the past challenges. Chief Fong stated that regardless of whether or not there was an event, resources would have to be dedicated. The Department worked together with the Fire Department, the Sheriffs' Department, the Department of Public Works, the MTA, with a number of agencies and the community in order to put together a plan. Chief Fong stated that in many ways, the plan worked. There were many who came to the community. However, late in the evening, around 10:40 p.m., there was an incident of violence in which two groups squared off. One member of one group hit a member of another group over the head with a bottle. As a result, one member from that other group pulled out a gun and started firing. There were thousands of people within the Castro event last night and obviously, the violence impacted a number of individuals. There were 10 individuals who were treated. Fortunately, none of them have life-threatening injuries.

Chief Fong stated that the investigation is now in the General Works Section. There's been information that this was a gang related incident. Chief Fong stated that that has not been determined at this time. Chief Fong stated that based on the efforts of all the city agencies who were out there, the officers and the deputies, and juvenile probation, there were fewer incidents of violence, fewer incidents in which the Fire Department had to transport people or provide medical services. Chief Fong stated that the Department will be working with the City in terms of future initiatives for Halloween.

Deputy Chief Shinn, FOB, stated that the Department met with city officials, the Supervisors, with other city agencies, with the community on how this can be done better from the lessons learned from last year. Chief Shinn

there were a number of command post that were opened. The strategy was to have an overwhelming police presence. The orders to the officers, in excess of 500 officers dedicated to this event, was zero tolerance. There was a number of arrests made early in the evening dealing with disorderly conduct. Chief Shinn stated that it is difficult for officers to see what's going on a few feet from them when there's an impacted crowd. Based on that, police spotters were put on the rooftops with the permission of the community who volunteered their residence so the Department can have officers on top. In addition to the various command post, the Department had a city wide command post that dealt with the redeployment of officers throughout the city no matter what was happening.

Deputy Chief Shinn stated that, unfortunately, after all the planning and strategy, there was that one incident where two groups, not from the neighborhood, had squared off and one individual with a firearm. Chief Shinn stated that the hard work of the officers and the other city agencies that assisted with this made it a safer event.

Commissioner Veronese asked about the shooting victims. Deputy Chief Shinn stated that eight people have been released from the hospital. Two are currently in and considered to be in stable condition.

Commissioner Campos stated that he and Commissioner DeJesus was on a ride-along last night and stated that as someone who saw everything that was going on last night and just the amazing effort that went into this, not only by other city agencies but by the Department in particular, Commissioner Campos stated he was impress and that as a member of the Commission, he is very proud of the work the officers are doing. Commissioner Campos thanked each and every officer who was out there. Commissioner Campos stated that the shooting was tragic but it was only one of a limited number of serious things that happened is a testament to all the work that went into it and all the work the officers did.

Commissioner DeJesus stated that she was very impressed with the hard work that went into the planning, the number of officers, and the cooperation between the different city agencies. Commissioner DeJesus stated that the public should know that even though there was that shooting incident, the Police Department was there. They exercised crowd control. They were able to open up the crowd to get the ambulances in. The Police also were able to escort the ambulances to the SFGH which got the victims there very quickly. Commissioner DeJesus also stated that, if anyone could really see from the view the Department sees it, the massive amount of people there and the Department was able to move all those people out in an orderly fashion was really something to see. Commissioner DeJesus thanked Chief Shinn, Captain Casciato, and Captain Goldberg for a wonderful job.

Commissioner Sparks thanked the Chief and commended the SFPD officers. Commissioner Sparks stated that this is her third year attending the Halloween events in the Castro and stated that this year is the best organized. She stated that all the officers that she spent time with in various locations were very serious but they were also somewhat relaxed in that they felt that it was well organized and things were under control. Commissioner Sparks thanked Captain Goldberg and Commander Tacchini.

PUBLIC COMMENT

Ace Washington discussed his concerns regarding the shooting incident.

OCC DIRECTOR'S REPORT

a. Review of Recent Activities

Ms. Jean Field, for the OCC Director, reported on OCC outreach activities. Ms. Field also talked about recent training attended by OCC investigators.

Commissioner Campos asked who is in charged of the OCC when the Director is away. Ms. Field stated that the day-to-day activities are handled by Chief Investigator Charles Galman. Ms. Field stated that Director Allen will be out for about two weeks.

Commissioner Campos asked for information regarding the recent break in at the OCC office and asked for the Controller's audit of the OCC. Ms. Field stated she will get the information for the Commission.

Commissioner Veronese asked why OCC investigators going to a homicide school. Ms. Field stated that the investigators attend many POST trainings because they are helpful for the investigators, not only to pick up on the latest in investigative techniques, but also to know how San Francisco police officers are trained.

APPROVAL OF MINUTES FOR THE MEETING OF OCTOBER 4, 2006

Motion by Commissioner Marshall, second by Commissioner Campos to approve the minutes. Approved 7-0.

COMMISSION ANNOUNCEMENTS

- a. Assignment of disciplinary case no. C06-142 JCT to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner**

RESOLUTION NO. 67-06

ASSIGNMENT OF COMMISSIONER AND SETTING OF DATE FOR THE TAKING OF EVIDENCE ON DISCIPLINARY CASE NO. C06-142 JCT)

WHEREAS, the assignment of a Commissioner and setting of a date for hearing on disciplinary charges in file no. C06-142 JCT, was called it having been set for this date; and

WHEREAS, Commissioner Petra DeJesus is hereby assigned to conduct taking of evidence in the disciplinary charges in file no. C06-142 JCT; therefore be it

RESOLVED, that Commissioner Petra DeJesus is hereby assigned to conduct taking of evidence in the disciplinary charges in file no. C06-142 JCT, and is to be set at a later date.

AYES: Commissioners Renne, Campos, DeJesus, Lee, Marshall, Sparks, Veronese

Commissioner Sparks addressed comments made by the POA about her. Commissioner Sparks stated the following, “. . . the POA had faxed it to dozens, if not hundreds – I don't even know how many people it was faxed to throughout the City, the bulletin of the POA – and when I got it, it reminded me of a conversation I had with my son on his first return back from Iraq. He served three tours in Iraq and on his first term back, he called me up and he said, 'you know,' he's a Marine officer, and he said, 'You know, some of my people had to kill people while they were there and fortunately, I didn't have to kill anyone while I was there.' And my assumption is, when he made that comment was that, he wasn't talking about murdering people and he wasn't

talking about doing something illegal. He was talking about having to defend themselves, and that was the context in which I made my remark and, you know, I would be happy to rephrase the remark in that I believe there is a difference in perception and anticipation of accountability by the general public between all public employees such as gardeners or other public employees and that of officers of the San Francisco Police Department. For the very reason that they are intrusted and sanctioned by the people of California and the people of San Francisco to defend them and to defend themselves with deadly force, sometimes resulting in someone dying. And I wasn't suggesting, at any time, was it a murderous act just like I would never suggest that my son was happy he didn't murder anyone in Iraq. But I would say there is a – I still believe there is a very large distinction between public employees and other public employees and those members of the SFPD. As I think the Chief knows and many people know, I have great respect for the men and women of the SFPD. I've had many many very good discussions with members of the SFPD and I would say there's probably no member of the SFPD that agrees with me every single time nor do I believe there's probably, there's probably no one in the SFPD that I agree with all the time but I would respect their opinions and I would hope that members, sworn members and others affiliated with the Department respect my opinions. Thank you.”

Commissioner DeJesus stated that the leadership of the POA do not serve their members well when they post bulletins that take the Commission's comments out of context to the rank-and-file. Commissioner DeJesus stated that she thinks it is really serious when a comment is taken out of context and sent out to the rank-and-file to try to inflame them against the Commission.

SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS

Commissioner Veronese asked that the Commission draft a letter requesting the assistance of the Sunshine Ordinance Task Force in looking for ways on how the Commission can be more transparent.

Commissioner DeJesus would like a report by the end of the year as to when the language access DGO will be calendared.

Commissioner Renne announced the special meeting on November 4th, from 9:00 a.m. to 1:00 p.m., at the Police Academy, and on November 8th, the Early Intervention System presentation will be made. No meeting on November 22nd and district meeting on the 29th.

PUBLIC COMMENT:

None

ADJOURNMENT

Motion by Commissioner Veronese, second by Commissioner DeJesus to adjourn the meeting in memory of Sergeant Phillip J. Lee, Jr., and a moment of silence. Approved 7-0.

Thereafter, the meeting was adjourned at 7:58 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission