

FEBRUARY 16, 2005

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.

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

PUBLIC COMMENT

Elizabeth Frantes talked about medical marijuana.

Kevin Murphy discussed concerns regarding the OCC investigation of his case. He stated that witnesses were not contacted.

Shannon Altamoreno, friend of Sheila Deto, stated that the hearing in Superior Court that was scheduled for February 18th has been moved to March 18th. She stated that it's been six years and nine months and at what point will there be resolution for this case.

Lorraine Altamorano, mother of Shannon, discussed concerns regarding the Deto case and that something needs to change with the process.

Unidentified stated that Northern Station have some sensitivity to cab drivers. He also discussed concerns regarding overtime by two officers.

HEARING ON THE MOTION TO DISMISS DISCIPLINARY CHARGES

DISCUSSION AND POSSIBLE ACTION TO GRANT OR DENY MOTION TO DISMISS DISCIPLINARY CHARGES FILED AGAINST OFFICER LIONEL N. SEVILLA (FILE NO. C04-137 JWA) UNDER GOVERNMENT CODE 3304(d)

Opening statement by Ms. Margaret Pendergast, Attorney at Law, on behalf of Officer Sevilla.

Opening statement by Mr. Jerry W. Akins, Attorney at Law, on behalf of the San Francisco Police Department.

Closing statement by Ms. Pendergast, Attorney at Law.

PUBLIC COMMENT:

Steve Johnson, POA, stated that three separate interviews were done and that they were always available for those interviews and stated that the POA is not responsible for dragging this motion.

Motion by Commissioner Orr-Smith to go into Closed Session. Second by Commissioner Marshall. Approved 7-0.

Motion by Commissioner Keane for disclosure of decision discussed in Closed Session. Second by Commissioner Chan. Approved. 7-0.

Commissioner Renne announced that the Commission has decided to deny the motion to dismiss on two grounds: (1) That Officer Sevilla purposely attempted to evade any sort of notification and (2) there was notification within the meaning of the statute.

AYES: Commissioners Renne, Orr-Smith, Keane, Marshall, Sparks, Veronese

NAYS: Commissioner Chan

Commissioner Renne also announced that there was a motion to direct Chief Fong to look into the question of whether there were others in the

Department who wilfully and purposely assisted Officer Sevilla in his attempt to evade notification and stated that there will be a written opinion in this matter within two weeks.

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

CHIEF'S REPORT

- a. Update on significant policing efforts by Department members**
- b. Department Budget update**

Chief Fong introduced the principal of Visitacion Valley Middle School, Mr. Jim Deurky, and one of the teachers at Visitacion Valley Middle School, Mr. Bernie Pera. They are present tonight to make a presentation to several members of the Police Department. Chief Fong asked Lt. John Loftus, Robbery Detail, Inspector Mike Dudoroff, and Commander David Shinn to come forward.

Principal Jim Deurky thanked the members of the San Francisco Police Department for the assistance to their school community during and after an incident which took place on November 9, 2004, where a man armed with a handgun arrived early in the school and detained and robbed two of the teachers in the main office. He also made death threats to teachers and students. He stated that the SFPD was quick to react and assisted members of their school community to safety. The San Francisco Unified School District and SFPD school evacuation plan was followed and students and staff were move to Visitacion Valley Elementary School without incident and students were reunited with their parents and guardians. Students, parents, and the staff had nothing but positive things to say about police personnel who assisted them during this crisis. The Robbery Detail and members of the Ingleside Police Station worked to solve this case and bring the individual to justice. He stated that their school community is grateful for the assistance and support of the SFPD. He then presented certificate to Commissioner Renne.

Mr. Pera presented plaques to express sincere appreciation to Captain Paul Chignell, Lt. John Loftus, and to Inspector Michael Dudoroff and Inspector Laura Venters, Robbery Detail.

Captain Jim Lynch, Fiscal Division, brief the Commission regarding the SFPD budget for fiscal year 2005-2006. Captain Lynch stated that for the fiscal year 2004-2005, the Department anticipates that it will close the fiscal year on budget with no requests for supplemental appropriations.

Captain Lynch stated that the revised budget for the current fiscal year is approximately \$308 million. At this point the Department does not have a projection for fiscal year 2005-2006. In order to better manage the Department's budget resources, the Department will reduce its budget programs from the current level of 17 to 6. This will not impact the budget bottom line, however, this realignment should improve management of the budget by improving fiscal accountability. The Department is consolidating these programs into a model that is more reflective of the Department's organizational structure but is intended that the personnel and equipment costs will be reallocated in the budget to each of the Department's four bureaus. Each bureau will be better able to manage their budgeted resources. Work orders will continue to be managed by the Fiscal Division of the Administration Bureau and the OCC will continue to manage their program.

In regards to staffing, the Department remains committed to providing effective community policing and a continued reduction of homicides and violent crimes. The Department is proposing increases in sworn and non-sworn classifications. It is anticipated that these additions will increase visible

patrol and improve response time and deployment through technology improvements such as record management system, crime mapping, and other technology changes. In order to address the current staffing situation, the Department along with the Mayor and his staff are committed to hiring 150 new police officers over an 18-month period. In order to improve the Department's efficiency through technology, the Department is proposing the addition of seven new technology positions to implement the Department's new record management system and comstat systems. Additionally, the Department is proposing that additional non-sworn positions be hired to fill administrative functions currently being handled by sworn personnel.

As far a grant funding, due to diminished opportunities at the Federal and State level, it is anticipated that available grant funding will be reduced.

In regards to equipment, the Department is given an equipment target ranging from \$2 million to \$3.6 million. The preliminary request can be summarized as replacement of vehicles and motorcycles, additional crime lab equipment, and computer hardware.

The crime lab will be officially accredited during the fiscal year. Accreditation requires ongoing activities and expenses to assure quality assurance measures are in place such as additional proficiency tests, service contracts for all instruments, and an adequate training budget to insure quality work product.

As far as capital improvements, capital projects are submitted directly to the Department of Architecture and that submission took place on January 14th.

Although the proposed budget will result in an increase, it is the Department's position that this increase is necessary in order to meet its primary mission of providing professional law enforcement service to the community it serves.

Commissioner Orr-Smith asked what is the attrition rate. Captain Lynch stated that the model that was used this year was 60 as projected retires and going into next fiscal year, it will probably be around that same number. As far as civilianization, Captain Lynch stated that part of the failures of the two propositions, the Mayor's office has pushed back civilianization to the end of the next fiscal year.

Commissioner Veronese asked if the Department had taken into account the presidential cutbacks in doing its analysis of the budget. Captain Lynch stated that the Department anticipates that there is going to be less funding available in traditional sources for grants in the cops funding and the Cops More technology funding. He stated that it might be too early to determine what the final outcome of grant funding will and whether there will be other opportunities that may be available under different programs than the traditional programs that were used over the last eight years or so. As far as funds that have been approved, they have been appropriated from previous fiscal years and the Department will be able to use those funds. One class coming in February will be funded on cops grant and potentially a second grant in the next fiscal year. Commissioner Veronese asked that the Commission be provided a copy of the February 22nd submission of the budget to the Mayor's office.

Commissioner Chan asked about cost recovery. Captain Lynch stated the Department is trying to increase the amount of recovery and stated that this came up during last year's budget process and part of the fee structure related to reports ties in to the Sunshine Ordinance and stated that there may have to be Charter changes to allow to get full cost recovery. He stated that

recommendations regarding legislation are being made and some of the ideas include repeal of the tow waiver for vehicles that are stolen within the city and the owner is a resident of the city; full cost recovery on events that serve alcohol; police reports full recovery; and possibly some sort of developer fee as new parts of the city come under development to offset some of the public safety costs.

Commissioner Chan asked if there will be any provision in the budget document that would address the need for additional 12 inspectors in order to restore previous personnel level. Captain Lynch stated that he is not personally aware where the staffing levels are and that this question will be better answered by the investigations bureau.

PUBLIC COMMENT:

None

OCC DIRECTOR'S REPORT

- a. Review of Recent Activities**
- b. OCC Budget update**

Director Allen introduced Kendall Go, Policy Analyst hired by the OCC.

Director Allen gave an update of the OCC budget. He stated that approved budget last year, permanent salary, is \$1,994,720. There was a \$50,000 increase that was acquired at the budget hearings which took the total up to \$2,044,720. Director Allen stated that they are at 50 percent of the halfway point and if they stay at the staffing that they have right now, the budget will come out exactly even.

The approved baseline budget for permanent salaries next year would be \$2,021,078. Currently, the OCC is proposing a budget of \$2,324,912 for an increase of \$303,000. The reason for the increase is that the OCC is currently unable to fulfil the Charter mandate in the policy department and they have a large caseload of cases that are currently being investigated. Director Allen stated that will take into account hiring a new policy analyst and quite possible two new policy analysts, full time positions, as well as fulfilling the 16th Charter position for investigators. The Charter mandates that the OCC have 15 investigators for every 150 officers but because of the backlog, the caseload that will be carried by the 16th investigator should bring the backlog down to a reasonable number and in two years it should be at zero.

The only increase is a \$3500 increase in the training fee. The MOU requires that \$2500 be provided for training for investigators. It will be increased to \$3500 so that each individual would have \$300 to go towards training.

The professional services budget is \$15,000. The OCC is asking to an additional \$10,000 for professional services like tape transcriptions, experts used in Commission cases and so on.

The OCC is also asking for \$27,000 capital investment. Director Allen stated that the OCC have not asked for capital investment for five years. The computers that the OCC currently have are five years old and starting to fail. He stated that it is expected that four or five of the computers will fail by the end of the next fiscal year. He is also asking for a new server to move the database onto its own server.

The final request for a one-time enhancement of \$7,700.00 which would allow for software that enables people to create files online. This would reduce the amount of paper flow in the office.

Commissioner Orr-Smith asked how much is allocated for overtime. Director Allen stated between \$10,710 is allocated for overtime. Commissioner Orr-Smith asked about labor negotiations. Deputy City Attorney Mariam Morley explained that labor negotiations are conducted through the Mayor's office with the various labor groups and the City Attorney's office works with the Mayor's office in conducting the negotiations. Commissioner Orr-Smith asked about the community outreach capability and if there is a budgetary impact to do that. Director Allen stated that it is being planned and that there isn't going to be any fiscal impact. It would be just providing the community with 293 forms from the office.

Commissioner Veronese discussed concerns regarding length of OCC investigations. He stated that OCC should operate, not on the exception to the rule, but on the rule. He asked Director Allen to pay special attention to the cases that are coming up on the statute of limitation.

PUBLIC COMMENT:

None

DISCUSSION AND POSSIBLE ACTION TO APPROVE REVISED DEPARTMENT GENERAL ORDER 3.10, "WEAPON DISCHARGE REVIEW BOARD"

(Discussion regarding this item was transcribed verbatim from the audiotape)

CAPTAIN KEOHANE: Madam President, Commissioners, Command Staff, Director Allen, fellow officers, and members of the public: The purpose of these orders that we're going to be presenting to you tonight, beginning with 3.10, is to provide an effective and efficient means to investigate officer-involved shootings and officer-involved discharges, to provide internal controls and accountability within the Department and to the public and to provide a means to discuss existing department policy and procedures and recommend changes, revisions, and/or additions.

In General Order 3.10, excuse me, the Department spells out the duties of the Board, defines the Board's jurisdiction, list members of the Board, and details its functions. In drafting this order, the Department took its direction from the Commission when they commented on General Order 7.01. The Commission stated they didn't want overly broad general orders such as juvenile procedures but would rather have them address specific areas such as, rather than juvenile procedures, juvenile custody issues.

In this order we aim to just address officer-involved shootings and officer-involved discharges.

Now, in these instances, the OCC has made recommendations that other issues such as vehicle pursuit fatalities and in-custody deaths also be incorporated into this order. The Department agrees that we need to revise our methods of operations in these areas and to that extent we have informed the OCC that we will re-write our DABOR policy to put in specific time lines, specific reporting obligations and so on. We have also informed the OCC and provided the OCC with the draft General Order 8.12 to cover in-custody deaths. We feel that these orders, under these two circumstances -- vehicle pursuit fatalities and also in-custody deaths -- have their own nuances. It need to be investigated by a separate Board rather than one focusing on the weapon discharge, excuse me, Firearm Discharge Review Board.

The Department also, in this general order, provides two findings. The findings are "in policy" or "not in policy." Every time a firearm is discharged by an officer, it is either in policy or not in policy, and this is covered under General Order 5.02 where it states when a firearm may be used. If it's not

being used in accordance with those orders, then it's not in policy. This does not mean that the officer is in jeopardy of disciplinary action but it is not in policy. An example would be an officer accidental discharge. Accidental discharges are not in policy. However, they should be investigated. We should be looking at the circumstances in whether it was accidental due to an equipment malfunction or that it was accidental due to negligence by the officer or whether it was negligence due to training on how to reholster a weapon. These things will all be addressed whether its in policy or not in policy.

OCC also recommends that there's another finding that there's "insufficient evidence." The Department feels that our investigators and the Firearm Discharged Review Board can determine whether a firearm was in policy or not in policy. We do not need a finding of "insufficient evidence." If there's questions to be asked, the Firearm Discharge Review Board can send it back for further investigation, but we want a finding whether that discharge was in policy or not in policy.

I believe another recommendation that the Office of Citizen Complaints recommends is "policy failure." Let me take a look at this for a second. Under policy failure they list the circumstances as "the act or event alleged did occur but was justified, lawful, and consistent with Department policy and procedures; however, those policies and procedures were unconstitutional, illegal or deficient." We could recommend – we could recognize where a policy may be in place and may be deficient but it takes great alarm that if we would have a policy that was illegal or unconstitutional. Beyond – that finding is not acceptable.

The other area in the 3.10 is the members of the Board. The Department's recommendation to the Board, the Department recommends that the members of the Board should include the Deputy Chief of the Administration Bureau as the Chair, the Deputy Chief of the Field Operations Bureau, the Deputy Chief of the Airport Bureau, the Deputy Chief of the Investigations Bureau, and the Range Master in an advisory committee, and also the Commanding Officer of the Risk Management in an advisory committee. The Department feels that these members of the Department can review policies and procedures of the Department and make a valid recommendation to the Chief whether that firearm discharge was in policy or not in policy.

The OCC would recommend that the Director of the OCC sit on the Board as an advisory capacity. However, advisory capacity is not spelled out in the first instance. Second of all, the OCC's Charter responsibilities I would delineate it as investigating complaints made by citizens and also providing the Commission with policy recommendations. It makes no mention for sitting on an internal San Francisco Police Department Board. We would not like to set the precedent now with having a member of the OCC sitting on the Board. However, in this order, when read, it will state that the Firearm Weapon Discharge Review Board, the Chair, the Deputy Chief of Administration, after the meeting had come to a conclusion for a recommendation to the Chief, will present the findings of the Board to the Chief of Police and the report will be forwarded to the Commission and the Director of OCC.

The Department, in reviewing this order, believes that it would not be – it would be in everybody's best interest perhaps to have the Director of OCC with the Chief when the policy, when the review of the order is presented to the Chief. Therefore, the Director of the OCC and the Chief will get the report from the Firearm Discharge Review Board at the same time.

In attempting to get together and reach consensus on these orders was the belief the Department that we had reached agreement on each one of these

three areas at one time. However, during negotiations these issues kept coming back. That's where we are tonight.

Also, just to further our explanation shall I say, the OCC has presented three outside agencies which they would like to use as perhaps models for the arguments of having to broaden the jurisdiction of the order to have the Director of OCC sit on the Board and also to have more than one finding. However, when we look at the three agencies that are in question, each one of them has a different model of civilian oversight. It doesn't quite fit into the model of San Francisco and once again the responsibilities of the OCC. The most geographically situated agency that has civilian oversight where they have a member sit on the Firearm Discharge Review Board would be the San Jose Police Department. Well, when we look at the San Jose Police Department, they do not investigate complaints against citizens and they're not actively participating in officer-involved shooting investigations. The independent auditor there, they're function is to review the process of the complaint and how the complaint goes to the process and make recommendations whether or not the Department followed their guidelines.

If we look to the Seattle Police Department. The Seattle Police Department is more of a determination immediately whether there was criminality involved or whether there was a policy. Their members meet 14 days after the shooting and they make a recommendation to the Chief whether the person should be returned to duty and so on. Also, at that point, make recommendations for discipline. A factor that we do have built in to our order but further down the line. Their civilian oversight representative is appointed by the Mayor, and while the person may sit at the Firearm Discharge Review Board hearings and listen to the testimony, they are there only advisory capacity and they must leave before any deliberations.

The final department that was provided to our department, we just received today, and we didn't have complete time to research but it's the Phoenix Police Department. And they're – the model here is they provide a review of all serious incidences so it's not just firearm discharges but all uses of force. It involve all serious cases. However, they have two models there. One is where they have a use of force review board, which I was informed by an attorney at the department today, that is consisting of all officers who reviewed the use of force. If they find there is a problem, then they forward it to a disciplinary review board which consist of the civilian members but this also contains members of peer officers. So once again, it's a different model.

We've been working on this general order for four or five months. I believe we've achieved our goals. I believe OCC has the same interests as ours and that's timely investigations, internal controls, accountability both internally and to the public, and a means to address policy issues. We'd like you to adopt this policy as presented so we move on and start to address some of the other policy issues that need addressing.

I'd be happy to answer any questions you have.

...

COMMISSIONER ORR-SMITH: I guess I'm concerned that we kind of bring the focus back to what's before us to decide today in terms of action. You know I appreciate your comments. They're things that we'll take under advisement. I'm also very much persuaded by Commissioner Chan's perspective. I don't want to collapse 8.11 with this. I think I'd like to keep them as separate entities so that we can progress. I don't – I'm not persuaded that there's any harm in keeping separate the use of force and serious injuries. I think that's something I would like to take more time to develop and not delay a decision in this matter because it's critical.

So with that said, my recommendation, Madam Chair, is that we look

at refining this or coming to some conclusion about this and propose a decision. I'm very strongly committed to having the review board convene in 30 days and then requesting that they report back to the Commission every 30 days until it's completed. It's my experience that when you do have due dates and milestones, you respond to them, something starts happening. And what we've seen in different cases is that at various times things don't wind up getting – start happening because they're five days, 30 days, 90 days down the road and on the 45th day things, people starts scrambling to meet the 90-day deadline, and I don't want that to happen. I think we deserve, the public deserves, our oversight deserves, and the Department deserves to have some progress reported with respect to this review process. So it would be my recommendation that we consider reviewing the – convening the review board within 30 days and then request that the review board report back to the Commission every 30 days until the 30 days is completed.

And the question about extensions and so forth, I think we kind of looked at that already. I'm incline not to encourage that. I don't want to bestow that power beyond what's already in the General Order as stated by Captain Keohane. That's my recommendation.

COMMISSIONER RENNE: Commissioner Orr-Smith, you have raised your hand – can I just throw out an idea. Okay. This is an idea for consideration, but we still haven't taken public comment. Okay. First of all, I agree with you, Commissioner Orr-Smith. We might want to defer to discussion on 8.11 because it is very late and I, for one, I'm getting a little tired. But taking a look at the keeping in mind the time limits that are in 8.11 on the 45 days et cetera. What if we, with regard to one, said kept “Within 90 days of a shooting, striking the words or once per quarter, the Chair of the Department Board shall convene the panel.” The reason for keeping the 90 days there is because by that time Homicide and Management Control should have completed its findings if we stick with 8.11. But then we would add to this the following language: “Within 120 days the panel shall have completed its investigation and issued its findings in accordance with this policy. In the event the panel cannot keep its obligations under this chapter within that time frame, that fact shall be reported to the Commission at its next meeting.”

COMMISSIONER KEANE: At its next meeting after the 120 days?

COMMISSIONER RENNE: Well, let's see. “That fact shall be reported to the Commission at the end of the 20 day period at its next meeting.”

COMMISSIONER KEANE: 120 days.

COMMISSIONER RENNE: Yes. Or we could say, “If in the event the panel determines it will be unable to complete its obligations within the time permitted by this chapter, that fact shall be reported to the Commission at its earliest meeting – next meeting.” In other words –

COMMISSIONER VERONESE: Can I make a suggestion?

COMMISSIONER RENNE: – the idea would be if we do stick with the time limits of 8.11, which I know we're not going to get to tonight, but that means 45 days and 60 days, then within that time – then that gives the panel time to meet.

COMMISSIONER VERONESE: What if we, in keeping with those 8.11 deadlines, what if we made that 60 days, they get Homicide's report by 45, they got two weeks to consider that report and then by 90 days they have to finish that report and the next meeting of this Police Commission after that 90 days expires, they report here.

COMMISSIONER RENNE: They can do that. They have 60 days. MCD, under 8.11, has 60 days.

COMMISSIONER VERONESE: I thought I read 45.

COMMISSIONER RENNE: MCD has 60 days. Homicide has 45 and MCD has 60. So 60 days – that actually gives them a whole another 60 days which is generous, very generous, but at least that's a time frame. It is too generous.

COMMISSIONER KEANE: I think its too generous.

COMMISSIONER RENNE: I don't know. Captain Keohane?

CAPTAIN KEOHANE: I can speak for the Department. We'll make every effort to complete these reports as timely as possible. However, if you want reports as to our progress as I believe Commissioner Orr-Smith was saying, I believe that's worthwhile. There's an old adage that the time it takes to complete a task expands proportionately with the time allowed and we want to be realistic but at the same time if you want the Department to come with reports, I think that's a worthwhile goal.

COMMISSIONER RENNE: What I'm thinking is if you have this time frame that you have, have to meet but if you can't meet it for some reason, and that's reported to the Commission, at least that gives the Commission an opportunity to decide whether or not it's a reasonable one and/or set a time frame to come back with the finding. That was my thinking.

COMMISSIONER VERONESE: Madam Chair, if we kept it at 60 days and MCD gets 60 days, they're on that panel. So if they're completed by 60 days and they meet thereafter and they're on that panel, then all the information is there for that panel to make their decision within 90 days, and we're not saying this investigation has to be complete obviously, what we're saying is that if it's going to go longer than 90 days, this Commission should know about that.

COMMISSIONER RENNE: Well, what I was getting at is a time frame by which they have had to have completed their investigations, issued their findings. That's what I was getting at.

COMMISSIONER KEANE: My concern, Madam President, is when you go ahead and put something in there sort of as an invitation to give us a reason why you can't do it and ask for an extension. We're going to get a reason why it can't be done and an extension every time and a request for an extension every time. My preference would be in accordance with what Commissioner Veronese and Commissioner Gayle Orr-Smith, Vice President Gayle Orr-Smith, was saying. Set a 90 days – just say it's due within 90 days. They have to go ahead and set up the panel or the body within 30 days and report to us that they're doing that and then make another report at 60 days and at 90 days we get –

COMMISSIONER VERONESE: If we don't, we get what?

COMMISSIONER KEANE: Well, if we don't, we don't – we're not at least putting in there by the way if you don't have it in 90 days, just tell us you don't have it in 90 days and ask for an extension. What we're saying is this is a drop dead day and we'll at least – which is probably the extent of the power we have – we'll at least frown at you if you don't, if you don't come through and do it within 90 days.

COMMISSIONER RENNE: So what you're saying, within 90 days a

panel shall have been convened and completed its investigations and findings.

COMMISSIONER KEANE: Yes, exactly. And the reports every 30 days in accordance with what Vice President Orr-Smith has said.

COMMISSIONER RENNE: I don't have any problem with that because MCD has completed their report within 60 days. That gives the panel 30 days to do its work.

COMMISSIONER ORR-SMITH: There you go. Shall we make a motion.

COMMISSIONER RENNE: We haven't had public comment yet and Commissioner Sparks have a chance to say – I interrupted you. I'm sorry.

COMMISSIONER SPARKS: Madam President, there are three major areas in which there's a disagreement between the OCC and the San Francisco Police Department as outlined by OCC and I think it would be – if we're either voting on a final version or a requesting that the Department come back with a final draft to vote on. I think we need to make it clear on all three of those whether we agree or disagree. And so I would think we would want to at least on those three provisions as to whether they should or should not be included.

COMMISSIONER RENNE: I agree. I agree. Let's take public comment –

PUBLIC COMMENT

Mr. Steve Johnson, POA, discussed concerns that the POA has not been presented with the OCC recommendation.

COMMISSIONER SPARKS: President Renne, I just have a question for the City Attorney.

COMMISSIONER RENNE: Yes.

COMMISSIONER SPARKS: Under the MOU, under the MOU on the later contract, would this require a meet-and-confer with the Police Officers' Association?

MR. JOHNSON (POA): Commissioner, just to make it easy. That, right now, the order you're looking at, the review board, they're going to make recommendations. Those recommendations can result in disciplinary charges in front of the Commission or the Chief's.

COMMISSIONER MARSHALL: Is that yes or no?

MS. MORLEY: Commissioner, through the Chair. I think I'll say this – would say the same thing that I've said in the past about these meet-and-confer issues on meeting and discussing – I don't think I'm prepared to give you an oral answer tonight about whether this is really within the scope of representation but I can give you that if you give me a couple of days. Our advise always has been that it is important to meet with the Police Officers' Association about any changes that you're making. Just a good policy and labor relations. It doesn't mean that you couldn't decide what you want the order to look like and make those decisions tonight and then that the Department meet with the Police Officers' Association and come back to you and talk about whether they blank or blank and would want to just –

COMMISSIONER RENNE: I supposed what we could do is treat this like the Board of Supervisors' first reading and then have it come back for

second and final reading two weeks from now.

DIRECTOR ALLEN: Just a simple point. There are several cases out there. On some issues that are in front of you, boards have changed the ability for civilians to sit on a board without meeting and conferring. There is a case law that we can actually provide to the Commission. I understand that the City Attorney is saying it is probably a practice to meet-and-confer but in the – it's usually involving – excuse me – wages and change of working condition that the meet-and-confer covers. And, again, for the individual issues that we're asking, the changing of a firearm review board to a – excuse me – all the use of force type of review board and to put somebody on, a civilian on the panel, both in San Jose and – I know it's San Jose and they have done this in Berkeley without meet-and-confer. So –

COMMISSIONER RENNE: I'm sorry. Commissioner Chan, did you wish to say something? I'm sorry.

COMMISSIONER CHAN: Madam President, I was thinking that in the interest of progress, that is viewing this as sort of an incremental process, we have an increment that is before us. I think, and that taking a queue from Commissioner Orr-Smith, that it's important to have to communicate the expectation of when things are to happen with firm daily number of days for deadlines and that if we vote the thing up now, I think we can view this as really an interim solution that we will have something in place. A Board will have been – have come into existence. It will be the mandatory requirement to convene a Board. We could certainly insert the time frames that have already been suggested here in the prior colloquy, and at least get this in place, reserving our right to revisit the matter, permit the POA to confer with the OCC about expanding the scope of findings about the matter of placing a civilian in an advisory capacity on the Board. I don't have an objection of putting a civilian. The issue for me is this civilian. I'm not satisfied yet as to what the consequences would be if the OCC Director were made a defendant in a civil action against the City wherein they seek the discovery what the nature and quality of the deliberations that occurred on the Board are and ended up being either subpoenaed or be named as a defendant. I mean there are a number of issues that I think require further deliberation but I think in the interest of progress in moving this along, we do have language before us that is a product of a meet-and-confer. I think we can get away with putting in our own time frame and moving it forward with the intent of revisiting this and we will have some experience, presumably, as to how this all will work – hopefully not a lot of experience if we're fortunate – but at the same time be able to revisit this after we have dealt with the mountain of other business that's currently before us.

COMMISSIONER RENNE: Alright. Well, it takes a motion to do business, Commissioner. Someone wants to make a motion. Want to take each one of these items separately that the OCC has proposed and see how we feel about it? Okay. Somebody want to –

COMMISSIONER CHAN: Madam President, I would prefer, rather than dealing with the matter as that, that we would have a motion that would at least in trying, Commissioner Orr-Smith or whoever's be prepared to make a motion, the time frame because I think that's critical. And then I would suggest that we vote up or down the draft as amended by Commissioner Orr-Smith's time frame.

COMMISSIONER RENNE: Okay.

COMMISSIONER CHAN: And if we are unable to do that then I would suggest that we bifurcate our deliberations and deal with the matters piece meal as raised by the OCC.

COMMISSIONER RENNE: Okay.

COMMISSIONER KEANE: Madam President, I move that we go ahead and adopt Commissioner Chan's suggestion that we vote – that we go ahead and approve the Review Board as drafted with the changes having to do with Commissioner Vice President Gayle Orr-Smith's recommendation that the body be constituted within 30 days of the events, and that they complete their work within 90 days, with a 30- and 60-day report to us. Having done that, that's the skeleton motion. And I think after we've done that, we can then entertain amendments relating to the OCC recommendations if we want.

COMMISSIONER RENNE: I think the appropriate one would be first of all add amendments. So if you're –

COMMISSIONER KEANE: I'd be prepared to –

COMMISSIONER RENNE: If you want to add an amendment then with regard to time frames your motion would be within paragraph one on page 2, strike the language in line or "once per quarter" and add the language at the end – this is just a suggestion – you may want – I think it fits in, but maybe it doesn't – following the word "panel" say – so it would be "Within 90 calendar days of a shooting event, the Chair of the Department Firearm Discharge Review Board shall convene the panel, complete its investigation and issue its findings in accordance with this policy."

COMMISSIONER ORR-SMITH: I would rather it would be within 30 days –

COMMISSIONER RENNE: Okay.

COMMISSIONER ORR-SMITH: – 30 calendar days of a shooting event –

COMMISSIONER RENNE: Okay.

COMMISSIONER ORR-SMITH: – that the Chair convene the panel.

COMMISSIONER RENNE: Okay.

COMMISSIONER ORR-SMITH: And then –

COMMISSIONER RENNE: And within 90 days?

COMMISSIONER ORR-SMITH: – within 90 days complete their report, investigation report.

COMMISSIONER VERONESE: You're not going to get any information until the very least 45 days though.

COMMISSIONER ORR-SMITH: But with the provision that there's a 60-day report as well – I don't know where to put that. Convene within 30 days and then report to the Commission on their progress at 60 days concluding in 90.

COMMISSIONER RENNE: Okay.

COMMISSIONER KEANE: That will be my motion –

COMMISSIONER RENNE: Alright. Then it should read, "***Within 30 calendar days of a shooting event, the Chair of the Department Firearm Discharge Review Board shall convene the panel. Within 60 days of the***

event, the Chair shall report the status of the matter to the Commission. Within 90 days the panel shall complete its investigation and issue its findings in accordance with this policy.”

COMMISSIONER ORR-SMITH: That’s it.

COMMISSIONER RENNE: Is that it?

COMMISSIONER ORR-SMITH: So moved.

COMMISSIONER KEANE: Second.

COMMISSIONER RENNE: Your second. Alright. On the amendment, Sergeant Reilly, would you call the roll.

SERGEANT REILLY: Motion by Commissioner Orr-Smith and second by Commissioner Keane, is that correct?

COMMISSIONER RENNE: That’s correct.

SERGEANT REILLY: On the motion which has been seconded with respect to Item #5 on the regular agenda to approve revised Department General Order 3.10, Weapons Discharge Review Board, also subject to the amendment as stated by the Commission, calling the roll:

President Renne how do you vote?

COMMISSIONER RENNE: Aye.

SERGEANT REILLY: Vice President Orr-Smith, how do you vote?

COMMISSIONER ORR-SMITH: Aye.

SERGEANT REILLY: Commissioner Chan, how do you vote?

COMMISSIONER CHAN: Aye.

SERGEANT REILLY: Commissioner Keane, how do you vote?

COMMISSIONER KEANE: Aye.

SERGEANT REILLY: Commissioner Sparks, how do you vote?

COMMISSIONER SPARKS: Aye.

SERGEANT REILLY: Commissioner Marshall, how do you vote?

COMMISSIONER MARSHALL: Aye.

SERGEANT REILLY: Commissioner Veronese, how do you vote?

COMMISSIONER VERONESE: Aye.

SERGEANT REILLY: **Motion carries.**

COMMISSIONER RENNE: Are there additional amendments? If not – additional amendments to vote on the matter that’s before us?

COMMISSIONER SPARKS: Madam Chair, I would like to offer additional amendments, please.

COMMISSIONER RENNE: Okay.

COMMISSIONER SPARKS: *One amendment would be that the Director of the OCC be placed on the Firearm Discharge Review Board as an advisory member.*

COMMISSIONER KEANE: Second.

COMMISSIONER RENNE: Is there a second? Okay. On that – any discussion – on that matter will you call the roll, Sergeant Reilly.

SERGEANT REILLY: On the amendment to adopt General Order 3.10 as offered under item #5 on the regular agenda, motion by Commissioner Sparks, second by Commissioner Keane to add the OCC Director as an advisory member of the panel, Commissioner President Renne, how do you vote?

COMMISSIONER RENNE: No.

SERGEANT REILLY: Vice President Orr-Smith, how do you vote?

COMMISSIONER ORR-SMITH: Aye.

SERGEANT REILLY: Commissioner Chan, how do you vote?

COMMISSIONER CHAN: No.

SERGEANT REILLY: Commissioner Keane, how do you vote?

COMMISSIONER KEANE: Aye.

SERGEANT REILLY: Commissioner Sparks, how do you vote?

COMMISSIONER SPARK: Aye.

SERGEANT REILLY: Commissioner Marshall, how do you vote?

COMMISSIONER MARSHALL: Aye.

SERGEANT REILLY: Commissioner Veronese, how do you vote?

COMMISSIONER VERONESE: Aye.

SERGEANT REILLY: **Motion carries, 5 to 2.**

COMMISSIONER RENNE: Alright. Commissioner Sparks, did you have additional –

COMMISSIONER SPARKS: I do. *Madam President, that the Firearm Discharge Review Board be extended to include investigation of in-custody death or police vehicle pursuit fatalities and have the authority to call additional members as advisory members to the panel when deemed necessary.*

COMMISSIONER RENNE: Alright. Is there a second? There is no second.

COMMISSIONER CHAN: Madam President, are there any other amendments, there being lack of a second for the last motion?

COMMISSIONER RENNE: Pardon me?

COMMISSIONER CHAN: Are there any other amendments there being – the motion having failed for lack of a second?

COMMISSIONER RENNE: I'm just waiting until Commissioner Sparks –

COMMISSIONER SPARKS: Yes. One additional amendment would be to add one of the findings "Policy Failure" in addition to In Policy and Not in Policy.

COMMISSIONER RENNE: Is there a second?

COMMISSIONER MARSHALL: Second.

COMMISSIONER CHAN: I will speak against the motion, Madam President, I feel the amendment, to enact it tonight, would be hasty and unwarranted. I think the language as presented to us by the OCC is unfortunate and that it would unnecessarily tie the hands of the City with respect to that. I believe the board lacks expertise to be making these sorts of conclusions. I think the current draft makes ample provision for the presentation of the information and the summary to the Chief as well as the Director of the OCC as well as to the board. It is empowered to suggest that further investigation and policy reform be made as a result of the facts that argues as a result of its deliberations. Therefore, I would encourage my colleagues to vote against this. I think it requires a bit more reflection than we're prepared to do this evening.

COMMISSIONER RENNE: Sergeant Reilly, will you call the roll.

SERGEANT REILLY: With respect to amendment to item #5, Department General Order 3.10, the amendment being moved and seconded to add Policy Failure in addition to the other two considerations, Commissioner Renne, how do you vote?

COMMISSIONER RENNE: No.

SERGEANT REILLY: Vice President Orr-Smith, how do you vote?

COMMISSIONER ORR-SMITH: No.

SERGEANT REILLY: Commissioner Chan, how do you vote?

COMMISSIONER CHAN: No.

SERGEANT REILLY: Commissioner Keane, how do you vote?

COMMISSIONER KEANE: No.

SERGEANT REILLY: Commissioner Sparks, how do you vote?

COMMISSIONER SPARKS: Yes.

SERGEANT REILLY: Commissioner Marshall, how do you vote?

COMMISSIONER MARSHALL: Yes.

SERGEANT REILLY: Commissioner Veronese, how do you vote?

COMMISSIONER VERONESE: No.

SERGEANT REILLY: **Motion fails 5 to 2, Madam President.**

COMMISSIONER RENNE: Are there any other amendments, Members? Alright. On the main item then, as amended, Sergeant Reilly, will you call the roll.

SERGEANT REILLY: This will be adopting revised Department General Order 3.10, Weapons Discharge Review Board, as amended by the Commission. President Renne, how do you vote?

COMMISSIONER RENNE: Aye.

SERGEANT REILLY: Vice President Orr-Smith, how do you vote?

COMMISSIONER ORR-SMITH: Aye.

SERGEANT REILLY: Commissioner Chan, how do you vote?

COMMISSIONER CHAN: Aye.

SERGEANT REILLY: Commissioner Keane, how do you vote?

COMMISSIONER KEANE: Aye.

SERGEANT REILLY: Commissioner Sparks, how do you vote?

COMMISSIONER SPARK: No.

SERGEANT REILLY: Commissioner Marshall, how do you vote?

COMMISSIONER MARSHALL: Aye.

SERGEANT REILLY: Commissioner Veronese, how do you vote?

COMMISSIONER VERONESE: Aye.

SERGEANT REILLY: Motion carries 6 to 1, Madam President.

COMMISSIONER RENNE: Alright. Sergeant Reilly, will you call the next item –

RESOLUTION NO. 9-05

APPROVAL OF REVISED GENERAL ORDER 3.10, “WEAPON DISCHARGE REVIEW BOARD”

RESOLVED, that the Police Commission hereby approves revised Department General Order 3.10, “Weapon Discharge Review Board.”

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

DISCUSSION AND POSSIBLE ACTION TO APPROVE REVISED DEPARTMENT GENERAL ORDER 8.11, “OFFICER-INVOLVED SHOOTINGS”

Motion by Commissioner Veronese to carry this item over in two weeks. Second by Commissioner Orr-Smith. Approved 7-0.

PUBLIC COMMENT:

None

**APPROVAL OF MINUTES FOR THE POLICE COMMISSION
MEETING OF NOVEMBER 10, 2004**

Motion by Commissioner Keane to approve the minutes. Second by Commissioner Marshall. Approved 7-0.

COMMISSION ANNOUNCEMENTS

Sergeant Reilly, Police Commission Secretary, announced that the next meeting will be in the Northern District, Rosa Parks Elementary School, 1501 O'Farrell Street, at 6:00 p.m.

Commissioner Renne announced that she will be out of town next week.

PUBLIC COMMENT:

None

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

Commissioner Keane asked that, in two weeks time, the Commission adopt a general order which revokes any authority for the Chief to go ahead and either approve or amend or change any other general order of this Commission by bulletins, if such authority exists.

Commissioner Chan asked that the resolution he submitted in May of 2004 be put back on the calendar for public testimony. He also asked that the Commission consider, with the pending retirement of Mr. Akins, for a report in regards to the function and duties of the Legal Division of the SFPD.

Commissioner Sparks asked for a report on the status of the Cammerin Boyd investigation.

PUBLIC COMMENT:

None

Thereafter the meeting was adjourned at 9:48 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission

1497/rct

