

**MAY 4, 2005**

**CLOSED SESSION**

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 5:42 p.m., in Closed Session.

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

**PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION**

Mark Schlosberg, ACLU, stated that this type of case is not a subject of mandatory bargaining.

Samara Marion, OCC, stated that the SFPOA has a right to make its opinion known to the Commission but it has no legal basis for asking the Commission to stay implementation of DGO 3.10.

Frank Martin Del Campo, Local 790, discussed concerns regarding treatment by the Department when it comes to labor issues.

**VOTE ON WHETHER TO HOLD CLOSED SESSION TO CONFER WITH LEGAL COUNSEL. (SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.10(d)(2))**

Motion by Commissioner Keane to hold Closed Session. Second by Commissioner Marshall. Approved 7-0.

**CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(b) AND SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.10(d)(2)**

CONFERENCE WITH LEGAL COUNSEL  
ANTICIPATED LITIGATION: AS DEFENDANT

Significant exposure to litigation against the City relating to DGO 3.10 in light of 3/2/05 and 4/28/05 letters from the POA regarding meet and confer obligations and binding arbitration.

**MAY 4, 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 6:55 p.m., in a Regular Meeting.

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

**VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION (SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.12(a))**

Motion by Commissioner Orr-Smith for non disclosure. Second by Commissioner Keane. Approved 7-0.

**PUBLIC COMMENT**

Elisabeth Prantes discussed concerns regarding medical marijuana.  
Marylon Boyd discussed concerns regarding the shooting of Cammerin Boyd.

Shannon Altamirano discussed concerns regarding the Detoy matter.  
Lorraine Altamirano discussed concerns regarding the Detoy matter.

Camilla Boyd discussed concerns regarding facial expressions of the audience while the public is speaking.

**DISCUSSION AND POSSIBLE ACTION TO TAKE OFF CALENDAR INDEFINITELY THE DISCIPLINARY CHARGES FILED AGAINST OFFICER TERRY HUEY (FILE NO. C04-060 EGF) WHO SUBMITTED HIS RESIGNATION EFFECTIVE APRIL 27, 2005. SAID DISCIPLINARY CHARGES WILL BE PLACED BACK ON CALENDAR SHOULD THE OFFICER BE WITHIN THE JURISDICTION OF THE POLICE COMMISSION IN THE FUTURE**

Motion by Commissioner Veronese to take off calendar the disciplinary charges filed against Officer Terry Huey. Second by Commissioner Marshall.

**RESOLUTION NO. 27-05**

**HEARING OF OFFICER TERRY Y. HUEY (FILE NO. C04-060 EGF)**

WHEREAS, on April 26, 2004, Chief of Police Heather J. Fong made and served disciplinary charges against Officer Terry Y. Huey, Star No. 86, Taraval, as follows:

**CHARGE NO. 1**

Conduct Reflecting Discredit (exhibiting inappropriate behavior and making inappropriate remarks, in violation of Department General Order 2.01).

- (1) At all times herein mentioned, Terry Huey, Star Number 86, (hereinafter referred to as “the Accused Officer”) was and is a police officer, holding the rank of officer, employed by the San Francisco Police Department.
- (2) As a police officer, the Accused Officer was and is responsible for knowing and obeying the rules, orders, and procedures of the San Francisco Police Department.
- (3) On or around June 8, 2003, at approximately 3:30 p.m., the Accused Officer and a fellow officer were dispatched to a report of a landlady entering a tenant’s apartment without consent.
- (4) The female tenant (hereinafter referred to as “Complainant”) met the officers at the door. Records indicate that she had called 911 twice that day to report that her landlady had entered her apartment with a key without the Complainant’s permission.
- (5) The Accused Officer and his partner arrived, and the Accused Officer spoke with the Complainant. During this conversation, the Accused Officer asked the Complainant if she was married, if she lived alone, what her sexual orientation was, whether she was currently in a relationship, and if she was having her sexual urges satisfied.
- (6) The Accused Officer also mentioned that he had lost his wife in a car accident. The Accused Officer suggested that he and the Complainant visit the bar across the street together.
- (7) The Accused Officer commented on the Complainant’s wrist tattoo and then asked the Complainant to guess where he had a tattoo, eventually telling her that he had one on his “ass.” He offered to take Complainant out sometime to get a tattoo and asked her where he should put his next one.

- (8) The Accused Officer also stroked the Complainant's arm and/or shoulder. The Accused Officer's comments and actions made Complainant feel sexually harassed and fearful of the police.
- (9) The Accused Officer admitted that he touched Complainant's shoulder but only to calm her down about the landlord-tenant dispute. He also admitted that he spoke to Complainant about tattoos, mentioning that he had a "friend" with a tattoo similar to Complainant's. The Accused Officer said that when asked, he told the Complainant the tattoo was located on his friend's posterior and explained that his friend had lost his wife in a car accident. The Accused Officer also said that he told Complainant to go "find herself," that is, get a babysitter and go out and have some fun.
- (10) By these comments and actions, the Accused Officer spoke of personal matters outside of the scope and purpose of his visit to Complainant's home to investigate a purported criminal trespass. In doing so, he violated Rules 14 and 9 of Department General Order 2.01.
- (11) Rule 14 of Department General Order 2.01 states, in part:

"PUBLIC COURTESY. When acting in the performance of their duties, while on or off duty, members shall treat the public with courtesy and respect and not use harsh, profane or uncivil language."
- (12) Rule 9 of Department General Order No. 2.01, which states:

"MISCONDUCT. Any breach of peace, neglect of duty, misconduct or any conduct by an officer either within or without the State that tends to subvert the order, efficiency or discipline of the Department, or reflects discredit upon the Department or any member, or is prejudicial to the efficiency and discipline of the Department, although not specifically defined or set forth in Department policies and procedures, shall be considered unofficer-like conduct subject to disciplinary action."

## CHARGE NO. 2

Neglect of Duty (failing to investigate and/or report a crime, in violation of Department General Orders 1.03 and 2.01).

- (13) Paragraphs (1) through (12) of Charge No. 1 are incorporated in this paragraph by reference and realleged as though set forth in full.
- (14) During his conversation with Complainant, the accused Officer told Complainant that her landlady's entry into her apartment was a "civil Matter." The Complainant reported more than one entry by her landlady without the Complainant's consent, at least one of which occurred while her son was present in the apartment.
- (15) The Complainant also requested an incident report but the Accused officer refused her one.
- (16) Communications Dispatch advised the officers when the Complainant reported the entry that the landlady was not at the scene. Neither the Accused Officer nor his partner responded to the call for an hour and forty-five minutes.
- (17) Neither the Accused Officer nor his partner attempted to check whether the landlady, who lived upstairs, was present for questioning about the reported trespass. Nor did they attempt to locate an agent of the

landlady, such as a building manager. However, the officers reported this incident as a 418, a “weaponless fight.”

(18) Penal Code Section 602.5 (a) states in pertinent part:

“Every person ... who enters or remains in any non-commercial dwelling house, apartment, or other residential place without consent of the owner, his or her agent, or the person in lawful possession thereof, is guilty of a misdemeanor.”

(19) Penal Code Section 602.5 (b) states in pertinent part:

“Every person ... who, without the consent of the owner, his or her agent, or the person in lawful possession thereof, enters or remains in any non-commercial dwelling house, apartment, or other residential place while a resident ... is present at any time during the course of the incident is guilty of aggravated trespass punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.”

(20) POST Basic Course Workbook, Learning Domain #24, Chapter 3, trains officers about unauthorized entry. It states, in pertinent part:

“If a landlord enters a tenant’s dwelling without prior permission in order to harass the tenant or to “snoop around,” the landlord has committed the crime of unauthorized entry (trespass).

(21) By failing to fully investigate Complainant’s allegation of criminal trespass and/or make a report of such crime, the Accused Officer violated Department General Orders 2.01, and 1.03.

(22) Rule 1 of Department General Order 2.01 states:

“The basic mission of the San Francisco Police Department and its officers is to protect life and property, preserve the peace, prevent crime, enforce criminal laws and ordinances, and regulate non-criminal conduct as provided by law. While on duty, officers shall devote their entire time to the achievement of this mission within the context of their respective assignment.”

(23) Department General Order 1.03 I.A.3. states:

“NEGLECT OF DUTY. Be considered in neglect of duty if they fail to discover serious crimes committed in their area which could have been discovered through the exercise of reasonable diligence.”

(24) Department General Order 1.03 I.A.5.d. states:

“Make written reports on crimes observed or brought to their attention that have not been previously reported.”

### CHARGE NO. 3

Conduct Reflecting Discredit (violating the terms of his probation, in violation of Department General Order 2.01).

(25) Paragraphs (1) through (12) of Charge No. 1, and Paragraphs (13) through (24) of Charge No. 2 are incorporated in this paragraph by reference and realleged as though set forth in full.

(26) On March 13, 2002, the Accused Officer appeared before the San

Francisco Police Commission on charges that he was insubordinate in disobeying a direct order to attend a class, that he was evasive and deceptive when questioned about the matter, and that he fabricated a reason for requesting four days of sick leave.

- (27) The Accused Officer admitted the truth of the charges, and the Police Commission ordered that the Accused Officer be terminated from employment. However, that termination was held in abeyance for three years, during which time the Accused Officer was to serve 90 days suspended from duty and was to not engage in any further misconduct.
- (28) By engaging in the acts of misconduct described in the charges set out above while on probation from a Police Commission termination held in abeyance, the Accused Officer has violated Rule 9 of Department General Order 2.01, previously set forth herein.

WHEREAS, Officer Terry Y. Huey, Star NO. 86, has submitted his resignation from the San Francisco Police Department, said resignation effective April 27, 2005; therefore be it

RESOLVED, that the charges of violating the Rules and Procedures of the San Francisco Police Department field against Officer Terry Y. Huey, Taraval, be and the same are hereby continued off calendar. Said disciplinary charges will be placed back on calendar should the officer be within the jurisdiction of the Police Commission in the future.

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

#### **CHIEF'S REPORT**

- a. **Update on significant policing efforts by Department members**
- b. **Update on revisions to Department General Order 3.19, "Complaint Early Warning System"**
- c. **Report on the Department's current Recruitment drive**

Chief Fong addressed the Commission and introduced Captain Keohane and Lt. Schmitt.

Captain Keohane updated the Commission in regards to Department General Order 3.19. He stated the general order has gone through the Command Staff and has been discussed and consensus has been reached with the ACLU on most areas. He stated that ACLU had received some feedback, however, there was nothing substantial at this time. A copy was also forwarded to the POA and a scheduled set to begin dialogue as to their issues and how they wished to address it.

Lieutenant Schmitt presented the update for the Department's efforts for recruitment for entry level police officers. Lieutenant Schmitt stated that last fall the Department netted 716 successful candidates now on the E-120 list and the department is hoping to get that list certified by the end of the week. The E-120 candidates are now in the background phase and are ready for consideration for hire in the June class or potentially the fall classes next year. This spring the Department started recruiting again. Beginning April 9<sup>th</sup>, there are four officers detailed full time to recruitment. The application drive for the next police officer test is May 2<sup>nd</sup> through May 31<sup>st</sup>.

Commissioner Veronese asked how many of the 716 are from San Francisco. Lieutenant Schmitt stated she does not have the information but will ask the Exams Unit for the information.

Commissioner Sparks thanked Lt. Schmitt for the Department's

participation at the Transgender Job Fair.

Commissioner Chan asked about the bilingual breakdown of the E-120 list. Lt. Schmitt stated she does not have that information but will get it for the Commissioner.

Commissioner Keane commented on the comments made by Captain Hettrich regarding medical marijuana.

Chief Fong explained that both articles were provided to the Deputy Chief because she, too, was concern about the statements that were made and that the Deputy Chief has had a sit down with the Captain and a presentation is being put together to discuss the policy of the Department as well how the Department treat individuals with cards from the Department of Public Health and how the Department follows up in terms of enforcement of any of the regulations.

Commissioner Chan asked about the hotel strike and if there is a liaison between the labor management and the Department to insure that there is sufficient police resources if incidents do occur. Chief Fong explained that whenever there are potential demonstrations that are going to occur, sometimes the group comes to the Department and sometimes the Department will see flyers and contact the group. The Department assigns appropriate personnel to be available in the area of the action so that the Department can respond as quickly as possible. In addition to having officers in that area, the officers are also put on Step 1 so that at a moment's notice they can respond to the location that they are needed at.

Commissioner Sparks commented that she has talked to several people who were part of the demos and were arrested and everyone said that the officers were courteous and very respectful and very efficient during the operation.

PUBLIC COMMENT:

None

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

- a. Review of Recent Activities**
- b. Presentation of First Quarter 2005 Statistical Report**

Director Allen presented the First Quarter 2005 Statistical Report. Director Allen stated that there was a significant increase in cases that were opened in March. He stated that OCC opened 102 cases in March. They have closed 138 cases with only 12 investigators.

Director Allen also stated that the OCC has concluded its preliminary investigation of the Boyd matter and the findings are being transmitted to the Chief of Police and the complainants and the officers will be notified as to those findings.

Ms. Samara Marion talked about the in-custody death protocol. She stated that the revised DGO 8.12 is ready to bring forward to the Commission.

Commissioner Renne stated that that DGO will be calendared after discussions with the Department have taken place.

Ms. Marion talked about the handling of policy recommendations and that there are no time lines for reviewing policy recommendations and no time lines for bringing them back to the Commission.

Commissioner Renne stated that the reason that there are no time lines is because there isn't sufficient discussion between the OCC and the Police

Department. Commissioner Renne stated that better and improved dialogue on everybody's part would be enhanced in improving procedures.

Commissioner Renne asked Director Allen that a letter be sent to the Commission if he wants something calendared.

**PUBLIC COMMENT:**

Mark Schlosberg, ACLU, discussed concerns regarding policy recommendations and asked that a procedure be set that creates time lines on when the Department responds to the OCC, time line for discussions between the Department and the OCC, and the bringing forward to the Commission.

Marylon Boyd discussed concerns regarding charges that will be filed against the officers in the Cammerin Boyd investigation.

Unidentified asked the OCC for a real answer as far as the Cammerin Boyd matter.

Commissioner Orr-Smith asked Director Allen what process he is engaged in with respect to the Boyd case. Director Allen stated that the Charter mandates that the OCC conduct a preliminary investigation. After completion of their investigation, the findings are turned over to the Chief of Police. The preliminary investigation has been completed.

Commissioner Keane stated that one of the big problems in regard to the integrity of the disciplinary system in the Department is time goes by, the one-year statute goes by for whatever reasons it's claimed by the OCC or by the Department that the statute really doesn't matter because there are other things going on – the District Attorney is investigating, there are outside criminal charges, there are outside civil things – and the problem in the past has been everyone has said that's fine, we'll eventually get to these charges and there won't be a problem because we have the statutory exceptions that can be put on to the one year statute of limitations. But the reality of that process is that when the charges are filed after the one year statute of limitations, no matter what kind of good cause that one can read into the statutory exceptions, the reality of it is the POA lawyers go into court, get a stay, keep the case hanging like the Detoy case, and nothing is ever done because of the delay of the legal system. Commissioner Keane stated that if there are charges to be filed in the Boyd case, they should have been filed in one year. He stated that this is something that is not good for the families, it's not good for the officers, it's not good for the City and County of San Francisco.

Director Allen stated that the preliminary investigation is completed.

Commissioner Keane asked who makes the decision if charges are going to be filed. Director Allen stated that he cannot and at this time it will be in the hands of the Chief of Police.

Commissioner Keane stated that under Prop H, the OCC Director can file the charges against the officers. Commissioner Keane stated that if indeed there is evidence that supports charges, he stated that Director Allen have the legal and moral obligation to go ahead and file those charges within the next two days. Director Allen deferred to the City Attorney's advice on that.

Director Allen explained that in the past two weeks, the OCC have used more resources into completing this matter so that it can be brought before the Commission and come to a resolution. He stated that he doesn't know what the final outcome is going to be but what he don't want is the message going back to the office that they didn't do a good job. The OCC was not operating by the exception, they were operating from within and what they are trying to find is the truth.

Commissioner Chan stated that it is his understanding that the OCC Director has a mandatory obligation to recommend disciplinary action to the Chief on those complaints that are sustained. Commissioner Chan also stated that it is permissive on the Director of OCC to verify and file charges with this Commission against members of the Department arising out of sustained complaints. There is a proviso that the Director of OCC is barred from verifying and filing charges for a period of 60 days and there is an exception to the proviso. Commissioner Chan stated that his understanding of the exception is that there are two things that are required. One is that the OCC Director have to issue a written determination that the limitations period within which member/members may be disciplined under 3304 may expire within that 60 day period and then there's another element to this. Commissioner Chan stated that there are three other predicate facts that are required and that is that the Chief has failed or refused to file charges with the Commission. Director Allen stated that that has not occurred. Commissioner Chan continued and stated that the second one is that the Chief or her designee fails or refuses to meet and confer with you. Director Allen stated that that has not occurred. Commissioner Chan stated that the third is other exigent circumstances necessitate that the Director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to section 8.343. Commissioner Chan asked Director Allen how exigent circumstance is defined here and asked if the prospect of the expiration of the statute of limitations would constitute an exigent circumstance. Director Allen stated that if he was to disregard the eight innumerate exceptions then it would and to do it selectively at this point would be wrong. Director Allen stated that the exceptions are there for a reason and one has been invoked in this case.

#### **APPROVAL OF MINUTES FOR THE POLICE COMMISSION MEETING OF FEBRUARY 2, 2005**

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

#### **COMMISSION ANNOUNCEMENTS**

Commissioner Chan thanked Commander Shinn and the Chief for accompanying him to meet with a community group in Chinatown.

#### **SCHEDULING OF ITEM IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS**

Commissioner Chan asked for a presentation from Project Safe or the Robbery Detail to explain to the Commission what steps small businesses may take to improve store fronts so that person who can pass by may be able to observe what is going on and be able to prevent crime from repeating.

Commissioner Veronese asked for a discussion regarding members retiring in the middle of hearings.

Thereafter, the meeting was adjourned at 8:24 p.m.

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Sergeant Joseph Reilly  
Secretary  
San Francisco Police Commission