

MARCH 2, 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., in a Regular Meeting.

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

PUBLIC COMMENT

Unidentified, taxicab driver, thanked the Commission for listening to comments made by taxicab drivers last week. He discussed concerns regarding illegal limos at the Airport.

Donald Burn, Rec & Park Dog Advisory Committee, announced that next Tuesday they will be discussing the enforcement of the leash law throughout the park system. He invited the Commission to attend.

Meesha Irizarry, Idriss Stelley Foundation, discussed concerns regarding a gang member accused of homicide.

Steve Johnson, POA, discussed concerns regarding General Order 3.10.

Barbara Growth asked for police officers to ride the Muni.

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

Taken out of order.

Captain Keohane, Risk Management, presented Department General Order 8.11. He stated that the purpose of this general order is to provide effective and efficient means to investigate officer-involved shootings and officer-involved discharges, provide internal controls and accountability to the public, and provide a means to discuss existing department policy and procedures and recommend changes, revisions, and/or additions.

Captain Keohane stated that in Department General Order 8.11, the Department defines officer-involved shootings and officer-involved discharges, sets responsibilities for criminal and administrative firearm discharge investigations, addresses administrative leaves for those officers involved in firearm discharges, and places controls in place to insure timely investigations and reporting.

Captain Keohane stated that the Department have met and discussed the order with the OCC. The OCC's concerns were the order should be expanded to include in-custody deaths and fatalities involving department vehicles. The Department and the OCC met today to cover this topic and OCC stated that in the light of the discussions two weeks ago, absent those changes, Department General Order 8.11 is agreeable with them.

The Department also met with the POA and discussed the order. Captain Keohane stated that this order was presented to the POA Executive Board and agreed upon through the meet-and-confer process.

Commissioner Sparks stated that she's still a little troubled with the time frame in which the officer are returned to duty. Captain Keohane explained that this is an investigation where an officer has not been charged with anything. It's an incident that must be investigated and if there is overt criminality or overt actions violating policies, they should be discovered within three days. If not, in these circumstances, the officer is as much a victim as anybody involved in the situation. It's not pleasant to have to fire a weapon at somebody and potentially be put in a situation where bodily harm is

created or somebody's life is taken. Captain Keohane stated, in his research of five or six agencies, a process is in place where the officer is returned to work within zero to seven days. He stated that the purpose of this is, not only to get the officer back where there is no evidence of wrongdoing, but also to provide those services of a fully trained police officer to the public which they are out there to serve.

Commissioner Keane asked which agencies were surveyed. Captain Keohane stated San Diego PD, LAPD, San Jose Police Department, Sacramento Police Department, Los Angeles Sheriff's Department, and Oakland Police Department. In those Departments, the officers may be back within zero to seven days.

Commissioner Keane asked about the history of 8.11 and why the language that originally says that the officer is to be reassigned until the completion of the investigation written that way. Captain Keohane stated that that wasn't originally written that way. He stated that in researching back to the 1980s, a document was found that mentions a 3-day leave until it was determined. Subsequent orders to that, there was language where the officer would be placed on leave to aid in the investigation but there was no definite time when they would returned. The language where the officer would be placed on administrative leave pending completion of the investigation was new to the 1995 order. Commissioner Keane asked why the language was put in there in 1995 and why no one in the Department knows about it. Captain Keohane stated that he has asked and no one can state why that language was changed to that.

Commissioner Keane asked about why the Department is changing the word "shall" to "should" in regards to going into a crime scene. Captain Keohane explained just in case there was a circumstance where it's unforeseen where somebody had to enter the scene for some reason that was not anticipated in this order. Commissioner Keane stated that it is better to have clear mandates, particularly in regard to a crime scene where there's been a shooting, as to who is going to be there and suggested that standards be incorporated into the order by reference.

Commissioner Keane suggested language change to "officers who discharged a firearm in an officer-involved shooting will be reassigned to administrative duty for a minimum of three days." Commissioner Keane suggested to reassigned the officer for three days but it be done after meeting and discussion in which everyone agrees it's appropriate for the person to be reassigned. If it's not appropriate, then the board should go ahead and say that they're going to make it a little longer. Captain Keohane stated that he will take that back for discussion.

Commissioner Veronese asked why there is such a rush to get the officer back on the street. Captain Keohane stated that for the officer's psychological well-being, it's important for the officer to go back to work as soon as possible absent any criminal culpability or administrative problems. Second, Captain Keohane stated that the officer is also a victim and not a suspect in the case until criminal evidence is shown. Third, the officer is trained to provide service to the public and it does anybody any good, the public or the department, to keep the officer from performing his/her functions. Commissioner Veronese stated that he agrees with Captain Keohane but there should be some sort of review so that the officer doesn't have this hanging over his head with all the investigations going on.

Commissioner Sparks stated that the dates suggested for 3.10 are inconsistent with the dates now that are in 8.11. Captain Keohane explained that he is just waiting for the corrected draft from the transcripts to change 3.10 and then modify both orders so that they will be consistent.

Commissioner Chan asked whether the number of officers in the force in 1995. Captain Keohane stated that it was less than what it is today because at that time the Airport Bureau was not part of the Department but Captain Keohane stated that he could comment as far as prior to the incorporation of the Airport Bureau.

Commissioner Chan asked about the nature of the determination of Firearms Review Board. He stated that his understanding is that the role of the Review Board is to make a determination whether the discharge was in policy or out of policy. Captain Keohane stated that is correct. Commissioner Chan asked if it is in the purview of the Review Board to delve into matters having to do with psychology of the officer involved. Captain Keohane stated no, it is not.

Attorney Samara Marion, OCC, stated that it is the OCC's position that in-custody deaths and those that occurred during police pursuits deserve the same level of scrutiny that officer-involved shootings should be accorded and because of the importance of all three types of cases, OCC asked two weeks ago that there be one Board that review these kinds of cases with the kind of time line, the kind of dedication that they proposed. She stated that the 3.10 and 8.11 that are before the Commission are based on that principle.

Commissioner Marshall asked about the two different documents that are in front of him. Ms. Marion stated that if the language is different, it maybe that the Department changed language subsequently and that it was language that they agreed to. She stated that given the Commission's decision two weeks ago, the OCC is in agreement with what is being proposed right now under 8.11.

Commissioner Marshall asked Ms. Marion what the OCC's position was and why they agreed to the language regarding officers returning to duty. Ms. Marion stated that at this stage, the OCC's position was that it's a decision that the Department needs to make and that the Commission needs to decide whether that's a good decision or not.

Ms. Marion explained that the OCC's emphasis were on other priorities and stated that they defer to the Commission. She stated that the OCC don't feel that they're the experts as to what are the factors by which the Department should decide whether an individual should return to the street or not.

Commissioner Keane stated that the Commission relies upon the OCC for guidance and asked the OCC not to defer too much because the OCC's input is needed by the Commission.

Commissioner Veronese asked how is the Review Board efficient if the findings come back within 30 or 60 days and the officer is already back on the street. He stated the findings are totally irrelevant and will open up the city to a huge liability. Ms. Marion stated that OCC is in agreement to that and that timeliness is critical.

Commissioner Marshall asked the OCC if there is anything else that the OCC feels strongly about but traded off because of other reasons. Ms. Marion stated that the OCC had three strong disagreements that they had with the Department. One was that the OCC Director be placed on the review board and that the review board have an expanded jurisdiction and that the findings be expanded. As to the issue about when an officer is returned to duty, the OCC position is that that's a decision that the Department needs to make and that they had encouraged the Department to provide language in the DGO that provided a written decision-making process that could be reviewed by the Commission.

PUBLIC COMMENT:

Unidentified discussed concerns regarding the killing of her son.

Unidentified stated she's glad that the Commission is concern with the officers coming back after an officer-involved shooting.

Commissioner Veronese would like to know which county send back their officers on the street after three days and which county hold their officers on administrative duty until the investigation is complete and in order to have the POA have their meet-and-confer, to have the return to work subject to the review board and have the POA discuss that with the Department and OCC so that particular amendment can be voted on the next time the Commission meets.

Commissioner Renne suggested that an amendment be made to the proposed ordinance and see if the votes are there for it and with regard to both 8.11, if there are any amendments, make the motions tonight so that in a two-week period, have the Department go back to the POA with any amendments to 8.11 and 3.10 and then come back to the Commission within two weeks.

Commissioner Veronese suggested language change to paragraph 4 of subsection G: "Officers who discharge a firearm in an officer-involved shooting will be reassigned to administrative duty until such time that the Firearms Review Board has met and determined that the shooting is within policy." Second by Commissioner Keane for the purpose of it being a proposed amendment for consideration at a later time.

Commissioner Renne asked the Department to review the consistency of the time frames within both orders.

Commissioner Chan stated that his concern is that the concept that is expressed by Commissioner Veronese would appear to expand the role of the Firearm Review Board to inquire in the matters that go beyond the issue of whether the discharge is in policy or not and therefore, if you go down this route, you will have to revisit 3.10 to make the necessary conforming amendments. Second, is that if you tie administrative leave to the determination of the deliberations of the Board, that you may, in fact, be extending the administrative leave indefinitely absent more careful drafting with respect to this amendment. Commissioner Chan stated the interest should be the expeditious return to duty of the officer as soon as possible absent evidence to the contrary. He stated that there is nothing before the Commission that would indicate that a delay in return of duty would be in the interest of the officer. He stated that what the Commission have is evidence to the contrary. Commission Chan also stated that he believes the OCC also is correct in that, at some point, the Commission will have to defer to the expertise of the Chief. He stated that the Commission faces a prospect of having to micro manage the discretion to be applied by the Chief of Police with respect to the issue that's before the Commission.

Commissioner Chan stated that if the role of the Firearm Review Board is to be expanded, he stated that the members of the review board have to be expanded. The current language requires that recommendations by the officer-in-charge of the Behavioral Science Unit be immediately forwarded to the Chief for his/her consideration in determining whether it is in fact appropriate to return the officer to duty. The Firearm Review Board, as currently constituted, doesn't bring that expertise to bear and there's no mandate to the Chief that it be factored in there and at the very least you would want the input of Behavioral Science in making that determination whether an individual is fit to return to duty on the street.

Commissioner Chan stated that the problem here is that if the

Commission go the route of amendments, then you're making a conscious decision to maintain the status quo pending a drafting of 8.11 as amended and, therefore, Commissioner Chan stated that the Commission need to consider whether or not you want to have something in place and deal with the amendments so as to narrow the universe of issues to be addressed.

Commissioner Keane stated that all of the things that underlie what Commissioner Veronese is suggesting, and that is an informed decision, an informed discussion of the whole matter relating to a police officer returning to duty and when is something that need to be discussed.

Commissioner Keane, in regards to his amendment, his amendment goes to the whole concern of the language of rushing the officer back to duty. He suggested that subsection G(4) on page 6, should be changed: "Officers who discharge a firearm in an officer-involved shooting will be reassigned to administrative duty for a minimum of three days," and the last sentence stricken. As for the next paragraph, it should say: "Within three days of an officer-involved shooting, the Chair of the Firearm Discharge Review Board (or designee), the Deputy Chief of Investigations (or designee), the Homicide Section Lieutenant will meet to discuss any issues as to whether it is appropriate for the involved member to return to duty," and all other language in that paragraph be taken out. Commissioner Keane stated that those are his amendments should Commissioner Veronese's amendment should fail.

Commissioner Orr-Smith stated she has some of the same concerns that Commission Chan has indicated that in the prior General Order 3.10 speaks about what that review board is and it is not consistent with the role that Commissioner Veronese's amendment is proposing with respect to expanding the authority in role of that. She stated that she is in support of voting on the proposal in front of the Commission today and then look to a future meeting to discuss any further amendments.

Commissioner Chan stated that Commissioner Keane's amendment has good merit but his concern would be based on the rights of individual officers. He stated that if that language is amended in that way, the Commission should consider carefully whether the Commission should give this Chief, or future Chief, the ability to exercise discretion. Commissioner Chan stated that, if the Commission were to adopt an amendment along the lines suggested by Commissioner Keane, his concern would be that is the Commission conferring on the Chief too great a discretion to deny an officer a return to duty based on reasons that would have nothing to do with what the recommendations of Behavioral Science Unit may recommend on any other objective standards that could be use by a future Chief to punish a member who has fallen out of favor with the Chief's office. He stated that that would be his concern, the potential abuse by excising out a standard whereby an individual can point to the right that whatever you do should be with respect to the interest of returning me to duty when its in my interest but to go about that in an expeditious way as opposed to a less objective standard of appropriateness that might confer too much subjectivity to this Chief or a future Chief which potentially could be used as a hammer against individual member.

Commissioner Veronese stated that he concurs with Commissioners Orr-Smith and Chan in the purpose of the amendment is not to expand the role of the Review Board. The role of the Review Board is to determine whether or not the shooting was within policy. He stated that the Commission would like some determination that this officer was within policy and that's the only determination. It's not a criminal determination, it's nothing more than a determination from the Review Board that is primarily controlled by the Chief of Police.

Commissioner Chan with respect to section II.F(3) on page 5, he stated

that he has a question in regards to the timing and the relationship that paragraph 3 has with paragraph 5. He stated that in paragraph 5, it is mandatory that the control of the crime scene resides with the Homicide Detail upon the arrival of their investigators. Commissioner Chan stated that if the language in paragraph 3 is not changed, there would be a conflict of an absolute prohibition on persons other than emergency medical personnel or persons who are assisting in the preservation of the scene and the control of the Homicide Detail. He suggested the following language, paragraph 3: "Prior to the arrival of the Homicide Detail Investigators, as provided in Section II.F(5)," so that it would cross-reference paragraph 5 and also set up a time line such that prior to the arrival of those persons who must, under the terms of the general order exercise control of the crime scene, there is to be no compromising of the integrity of the crime scene.

He stated that since he has an amendment, he would have a further amendment that would move that the Commission approves the version of General Order 8.11 as suggested by Commissioner Orr-Smith but subject to calendaring at the earliest possible time the amendments that have been suggested by Commissioners Veronese, Keane, and by him. That way, there would be something in place and the Commission would be able to focus on a more deliberate matter.

Commissioner Renne stated that the motion would be to adopt what is before the Commission but for the four amendments that have been proposed subject to meet-and-confer in the ensuing two week period. Bring those proposed amendments back before the Commission in a two-week period of time.

Commissioner Chan stated that is correct so that there is something in place and at the same time commit the Commission to focus on the concerns that were raised this evening at the earliest possible time.

Commissioner Renne asked that in the ensuing two-week period, for 3.10, the time periods between 3.10 and 8.11 be reviewed, and the amendments to 3.10 that were adopted last time also be part of the meet-and-confer. So that both will be back before the Commission in a two-week time period.

Commissioner Sparks stated the current 8.11 has been in effect since 1995 and the Commission is talking about passing something and reconsidering six amendments which would modify it in a two-week period of time. Commissioner Sparks stated that she doesn't understand the rush to pass the 8.11 when in two weeks it will be opened back up for discussion to amend it to pass it again. She stated that it would be more appropriate just to table 8.11 for two weeks to allow the Department and the POA to meet-and-confer to discuss the six different amendments and come back to the Commission with a final version to vote on in a two-week period of time.

Commissioner Chan stated that the current version of 8.11 is antiquated and the Commission should at least resolve matters that are not in question that Captain Keohane and OCC have reviewed and focus on those matters that are of particular concern to the Commission.

Commissioner Sparks stated that the current 8.11 provides for summary of the investigation to be provided to the Commission. She stated that absent the final approval of 3.10, this 8.11 does not anticipate a summary to be developed for presentation to the Commission so what the Department would have would be an 8.11 in place which would not anticipate that the Commission be given a summary of the investigation pending the final approval of meet and confer and approval of 3.10. She suggests putting this 8.11 in place absent the final approval of 3.10 would do away with the

requirement for the Department to provide a summary of the investigation to the Commission.

Commissioner Renne stated that a separate motion be made that between now and two weeks from now that there be a summary in accordance with 8.11 if the circumstances arise.

Motion by Commissioner Chan to approve 8.11 as presented by the Department subject to the stated amendments by the Commissioners that the Department consider those, meet and confer, on all required items and return in a two-week period to the Commission for presentation. Second by Commissioner Orr-Smith. Approved 5-2

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

Commissioner Renne requested that if in the two-week period the circumstances arise in which the Commission would get a report that for some reason or another because of a loop hole of the two-week time lag, that the Department nonetheless present the Commission with such a report. So moved by Commissioner Chan. Second by Commissioner Keane. Approved 7-0.

Commissioner Renne announced that she has to leave by 7:30 p.m. In regards to Item No. 8, she requested that on the one-year anniversary of matters involving officer-involved shootings, the Commission holds its own hearing.

Commissioner Renne excused at 7:32 p.m.

CHIEF'S REPORT

a. Update on significant policing efforts by Department members

Chief Fong stated that there will be updates on the officer-involved shooting protocol, an MOU that the Department is working with the DA's office on in order to facilitate the process of officer-involved shooting investigations and in-custody death investigations. Secondly, an update on the drug court MOU that was discussed several weeks ago.

Deputy Chief Tabak gave a brief update on the MOU with respect to officer-involved shootings and in-custody deaths between the SFPD and the District Attorney's office. Chief Tabak handed out a recent draft of the MOU to the Commission. He stated that it is the most recent draft and more than likely there will be some language changes before it is finalized and signed and in effect. The MOU speaks to the protocol and procedures after an officer-involved shooting and an in-custody death with respect to both the DA's investigators and attorney's responsibilities and those of the police department. The District Attorney's focus primarily in these cases are to investigate and/or determine whether any violations of criminal law occurred. The Police Department's focus is also to determine whether violations of criminal law occurred but also whether or not department rules and procedures were followed and if proper law enforcement tactics were used under the circumstances.

Commissioner Keane expressed concern that this is an important topic and that the Commission get it right at the time of the presentation. He expressed concern that it would have been nice for the Commission to have received it in advance so that the Commission can listen to the comments with some sort of informed judgment.

Deputy Chief Tabak stated that the Department is disseminating the document now for future agendaized discussion so that it will give the

Commission some time to read the document and keep in mind that it may change by the time it's in effect. He stated that all he is attempting to do today is to give the Commission an outline of what the MOU speaks to.

Chief Tabak continued with his presentation. He stated that the MOU also describes the difference between a criminal and an administrative investigation. It described the notification requirements for the on-call district attorney's personnel that would be responding to a scene such as this. It spells out the cooperation between the Police Department and the District Attorney's personnel at the scene. It addresses the DA's investigation being an independent investigation from that of the Police Department. It also addresses the fact that information obtained on the criminal component of the Police Department's investigation will be turned over to the District Attorney's office. It addresses issues related to the interview of both civilian and law enforcement witnesses. It talks about physical and medical evidence and also the submission of a completed police department's investigation to the district attorney within the time frame of 60 to 90 days from the incident. The final portion speaks to the DA's charging requirement once they review all the facts of the investigation.

Chief Tabak explained that the bulk of this document was drafted and originated by the District Attorney. The Department has been in discussions with them since January 20, 2005. There have been four discussions with the District Attorney where they came up with the draft that is before the Commission now.

Commissioner Orr-Smith asked about the bulk of the MOU is designed by the District Attorney. She asked if this is in response to the Department requesting this kind of structure. Chief Tabak stated that it is the DA's initiative to spell out the differences of protocol between their personnel and the Police Department's personnel at one of these scenes. Chief Tabak stated that the time frame is better than in the past and that it is more timely.

Commissioner Sparks asked about the time frame in which the Department delivers its investigation to the DA but there isn't any date of when the DA's investigation has to be completed and has there been any discussions about that. Chief Tabak stated that this is a draft by the DA's office and the Department only have input ability in the language.

Commissioner Chan asked when the report on the Boyd matter was submitted to the DA's office. Chief Tabak stated it is probably closer to 120 days. Commissioner Chan suggested that a set time line be set by which the DA's office must acquaint the Department of the status of their independent inquiry.

Commissioner Veronese asked if there is anything in the MOU that's different from what's happening or is this MOU primarily a formalizing of what's happening. Chief Tabak stated that it formalizes what's already occurring but it makes it more regimented. There's no variance in the policy. This is the existing protocol that the Department and DA's office work under. It just formalizes it. Commissioner Veronese asked Chief Tabak as to his recommendations as to what he believes should be in the MOU that would make the Department's job easier and is there a way that the DA's office could incorporate in the MOU a preliminary finding that could be reported to the Chief so that the Chief knows as soon as possible what the DA's office is doing in regards to criminal prosecution. Chief Tabak stated that he will suggest that.

Commissioner Keane stated that this is a good start and asked Chief Tabak if the Police Department has been acting with dispatch and getting things done for the District Attorney's office in regard to the Boyd

investigation and is there a hang up on the Department's end. Chief Tabak stated that every requests has been submitted, not just on this officer-involved shooting but on previous one, the Department has acted with dispatch. He stated that it is in the Department's best interest and the best interest of the public as well as the District Attorney's office to conclude this in a timely manner. All forensic requests have been done. There is one item that is still to be done and that is in respect to DNA but that particular item should not have delayed the decision on the part of the District Attorney. However, they take the position that until all the evidence is in, they are not going to make a conclusionary statement. Everything has been done. Everything has been provided to them forensically and otherwise and it is just one item with respect to DNA. Commissioner Keane thanked Deputy Chief Tabak for his report.

Commissioner Marshall stated that his only concern with the MOU is that it doesn't mean anything unless there is time line in that last paragraph.

Commissioner Sparks stated that the Department has made great effort through the revision of 3.10 and 8.11 to expedite their investigation, to set definable time frames in reporting to the Commission and by doing so reporting to the public as to what's going on with these investigations. Commissioner Sparks asked Chief Tabak if, in the discussions with the District Attorney, that the District Attorney, in doing this document, to primarily memorialize the process that's going on right now and live themselves as much flexibility on the final end as possible or do they have a sense that there is a need on behalf of the citizens of San Francisco to be able to receive this information in a timely manner. Chief Tabak stated that it is definitely to expedite the process and do it in a timely fashion and work with the Department in cooperatively and conclude it as quickly as they feel they have the answers to conclude it.

Chief Tabak continued on his update regarding the Drug Court MOU. He explained that the courts, the DA's office, the Police Department, the Sheriff's Department, the Department of Public Health, the Mayor's Office, and the Public Defender's Office are the main stakeholders in this MOU. He explained the focus of this MOU is always public safety but also to provide an alternative to the normal prosecution of drug-related crimes. It focuses on therapy, counseling, and treatment programs to get those who truly need help, those who are truly addicted to drugs to get them off drugs and get them on the straight and narrow. Before anyone is referred to this drug court, and the DA is the only person who can refer them to, a defendant must show objective and demonstrative evidence that he/she is a serious drug abuser and it is the underlying problem by which has caused them to offend whatever that offense it.

This MOU requires for San Francisco residency. It also describes the permissible referrals. It describes the difference between a statutory and a non-statutory drug court offense. But, most importantly for the Department, it finally requires that for a deferred entry of judgment before a defendant may be referred to drug court. This is important because someone on the onset has to plead guilty to the charge. So, in essence, what they're doing is pleading guilty, they are referred to drug court, if they fall off the program within that year, it's like they failed probation and they go back and they can be sentence for the violation that they pleaded guilty on.

This MOU also describes the offenses that are not eligible for drug court. This is not for everyone. This is meant for the drug abuser, for the person who really needs assistance.

Chief Tabak stated that he feels that this is very comprehensive, it's reasonable, and it's a better MOU than the previous one. This is the most recent draft and all the stakeholders have to be signers on this MOU for it to go

into effect and so far the DA supports it, the Department supports it, and the Mayor's Office supports it. The Public Health and the Sheriff's right now are silent on the issue and the Public Defender is the only one currently opposing the language in this MOU.

Captain Tim Hettrich, Narcotics/Vice, explained that one of the things about this MOU is the fact that you have to be a San Francisco resident to participate. That is because it cost the Department of Public Health over a \$1 million a year to run this program overall between the Sheriff's Department, Adult Probation, Department of Public Health, and the Drug Court. It's approximately \$3 million a year to run this program.

Captain Hettrich explained that the Department of Public Health assigns these people. Once an individual is found suitable for Drug Court and that means that they've reached a certain level on a test that's given by the Department of Public Health through Drug Court and that has an addiction level, then they assign them. Some go to outpatient, some are inpatient, but all the rehabilitation centers are run by the Department of Public Health. There's about 137 individuals that are going through Drug Court right now for one year.

Commissioner Keane asked about the San Francisco resident requirement to be in Drug Court. Captain Hettrich stated that nobody should be excluded from the program but the District Attorney's intake people can make a determination whether an individual can go to drug court or not.

PUBLIC COMMENT:

None

OCC DIRECTOR'S REPORT

a. Review of Recent Activities

Director Allen discussed concerns regarding the MOU between the SFPD and the District Attorney's office in regard to officer-involved shootings. He stated that he has not seen this draft. He stated that their investigations are directly affected by the investigations of the district attorney and the police department. He discussed concerns that if the District Attorney does not say anything to the OCC then the year runs and if they are not doing a criminal investigation, the OCC's case is over. Director Allen stated that undermines the Commission's ability to impose discipline or to hear the matter. He stated that the Commission should really sit down and look at this MOU before the issue is brought back to the table.

Director Allen also reported that there was a brick thrown through one of the windows of OCC but nobody was able to go into the building. He stated that there have been four or five windows broken since Saturday. The person was not able to go in but the window was shattered but did not break. He thanked Southern Station for their help and for increased drive-through of the area.

Commissioner Veronese asked about the MOU. Ms. Morley, Deputy City Attorney, explained that this is an MOU and she doesn't know if it's actually a legally binding document. She stated that it is not a contract of the type where either party could sue each other because they didn't abide by the terms and conditions of the agreement. All it really does is set forth the parties understanding and how they are going to go forward and how they are going to conduct themselves. She stated that Director Allen's concerns were that some of the conduct that's discussed in here would affect his operations or could in a negative way.

Commissioner Orr-Smith suggest that Director Allen write down his

recommendations and submit them to Deputy Chief Tabak as he goes back to the DA on behalf of the Department.

Commissioner Keane suggested that Director Allen should go ahead and make his objections known to the District Attorney and even ask for a meeting with the District Attorney.

Commissioner Marshall asked Director Allen to jump in and move things along.

PUBLIC COMMENT:

None

DISCUSSION AND POSSIBLE ACTION TO TAKE OFF CALENDAR INDEFINITELY CHARGES FILED IN CASE NO. C04-159 JWA. SAID DISCIPLINARY CHARGES WILL BE PLACED BACK ON CALENDAR SHOULD THE OFFICER BE WITHIN THE JURISDICTION OF THE POLICE COMMISSION IN THE FUTURE
(Resolution No. 10-05)

Commissioner Veronese asked to be recused from voting in this matter due to his acquaintance with the officer involved. Motion by Commissioner Keane, second by Commissioner Chan to recused Commissioner Veronese. Approved 5-0.

Motion by Commissioner Keane to take off calendar indefinitely charged filed against the officer. Second by Commissioner Chan.

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

ABSENT: Commissioner Renne

RECUSED: Commissioner Veronese

PUBLIC COMMENT:

None

APPROVAL OF MINUTES FOR THE POLICE COMMISSION MEETINGS OF OCTOBER 20TH AND 27, 2004

Motion by Commissioner Veronese, second by Commissioner Keane to approve minutes for October 20th and 27, 2004. Commissioners Orr-Smith and Sparks were absent for the October 20th meeting. Approved 4-0.

PUBLIC COMMENT:

None

COMMISSION ANNOUNCEMENTS

- a. **Assignment of disciplinary charges filed in Case No. C04-005 JWA to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner** (Assigned to Commissioner Marshall, Resolution No. 11-05)

PUBLIC COMMENT:

None

SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS

Commissioner Sparks asked for an overview of community policing from the Department by district. Commissioner Sparks also asked for a presentation on what the process is for credentialing members of the press. Also, under the Chief's Report, Commissioner Sparks asked that the Chief

discuss the issue of the number of homicides this year as compared to last year and what is being done with the policy and what the plan of the Department is in addressing that issue.

Commissioner Veronese asked for a report and maybe a hearing on how homicides are being addressed.

Commissioner Chan asked that, as part of the community policing report, that the statistics for the number of non-aggressive interactions that the department has with the public be included.

PUBLIC COMMENT:

Steve Johnson, POA, stated that the two-week time line for DGO 8.11 is a tight time line because a great deal of information were requested by the Commission.

Motion to adjourn by Commissioner Marshall, second by Commissioner Keane. Approved 6-0.

Thereafter, the meeting was adjourned at 8:35 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission

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