

DECEMBER 8, 2004

REGULAR MEETING

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:39 p.m., in a Regular Meeting.

PRESENT: Commissioners Renne, Chan, Keane, Sparks, Marshall,
Veronese

ABSENT: Commissioner Orr-Smith

PUBLIC COMMENT

Shannon Altamoreno, friend of Sheila Detoy, discussed concerns regarding the shooting of Sheila Detoy and why the officers have not been disciplined.

Lorraine Altamoreno, Shannon's mother, discussed concerns regarding the Detoy matter.

Unidentified discussed concerns regarding failure by the Police Department in identifying suspects.

Unidentified discussed concerns regarding MUNI fare increase.

CHIEF'S REPORT

a. Update on significant policing efforts by Department members

Chief Fong reported on good police work by members of the Department in the different districts. She also reported that the Police Department, along with the Fire Department, the Coast Guards, the Marine Unit and the Port, had a drill to simulate a situation on the water side and how city resources would respond to help in that kind of situations.

Commissioner Veronese asked if the Police Department can track an exile warrant where you would arrest somebody that had a warrant but the warrant would specifically say will not extradite from San Francisco. Commissioner Veronese asked if there's a way to track how many of those people are in San Francisco. Chief Fong stated that she will look into it and respond to the Commission next week.

Commissioner Veronese asked about the bus pass policy for the homeless. Chief Fong stated that there are no bus passes being issued and stated that the department is looking at to address the issues of homelessness. Chief Fong stated that the Department of Human Services does have a program and the Department does not just want to send people away, the department wants to insure that if they are going to go, there's somebody at the other end to care for them, to be with them and to meet with them.

Commissioner Chan inquired about staffing concerns and asked how many officers are being drawn from regular patrol and detailed to special events on a weekly basis. Chief Fong stated that that number would vary depending on the number of special events. She explained that when a special event is permitted then the Department preplans and looks at what on-duty staffing levels are and based on the directions of FOB and the captains at the stations, it is determined on how many can be sent on an on-duty basis. On-duty meaning there would not be additional costs to the Department or to the City for those events if it is an event that is appropriate to send on-duty resources to. If it is not, if it is a special event such as someone having a party, shooting a movie, those are 10B. That's separate staffing that is paid for by those private contractors who are sponsoring that event. Those officers would be participating in an overtime basis and not from on-duty contingency. Chief Fong stated that there will be a presentation in regards to staffing levels within two weeks.

Commissioner Chan asked about a flyer in regards to 10B overtime in recent 49er football games. Chief Fong stated that she read that flyer and was very concerned about the statement being made and so she directed Deputy Chief Tabak to initiate an investigation to find out about the allegations.

OCC DIRECTOR'S REPORT

a. Review of Recent Activities

Director Allen reported that he has five investigators attending the officer-involved shooting training seminar in Santa Barbara.

Commissioner Chan asked about how discipline is administered in the City of New York. Director Allen stated that he does not have the information but will call the Commissioner with the information.

Commissioner Renne asked how many people are going from the OCC to this seminar. Director Allen stated that five people are attending and the tuition have been waived.

DISCUSSION AND POSSIBLE ACTION TO TAKE OFF CALENDAR INDEFINITELY THE DISCIPLINARY CHARGES FILED AGAINST RETIRED OFFICER IN CASE NOS. C00-281 JWA, C02-214 JWA, AND C02-213 JWA ON THE CONDITION THAT SAID CHARGES BE PLACED BACK ON CALENDAR SHOULD THE OFFICER BE WITHIN THE JURISDICTION OF THE POLICE COMMISSION IN THE FUTURE

(Resolution 99-04)

Commissioner Marshall explained that this item was on the calendar before and some concerns were raised. He stated that he has been assured that if this officer was to apply to another jurisdiction, a background check would show that he has pending discipline with the San Francisco Police Department.

Sergeant Reilly explained that, from his experience from being a Background investigation, other jurisdictions would do a background check and they will find these findings in the officer's personnel records.

Commissioner Sparks asked if there's any type of statute of limitations where the Commission could no longer bring it back for Commission action. Deputy City Attorney Morley explained that the statute of limitations on police officer discipline is 3304(d) and what that applies to is the time from which the employing agency has noticed that there may be misconduct and the point at which the charges are filed and they have to be filed within a year so the Commission will not have a problem because charges were filed with the Commission in this matter.

Motion by Commissioner Chan, second by Commissioner Sparks.
Approved 6-0

AYES: Commissioners Renne, Chan, Keane, Marshall, Sparks,
Veronese

ABSENT: Commissioner Orr-Smith

FOLLOW-UP REPORT FROM THE POLICE DEPARTMENT REGARDING THE STATUS OF PENDING INVESTIGATIONS OF OFFICER-INVOLVED SHOOTINGS

- * **Status of OIS summaries forwarded to the OCC by the Police Department**
- * **Sampling of what documents have been released in OIS cases**
- * **Status of existing OIS summaries and incident reports in the Sheila**

Detoy investigation

Commissioner Renne explained why this item is on the calendar. She stated that at last week's meeting, there was a representative from the OCC come forward and said that there had been no summaries forwarded to the OCC since the year 2000. Commissioner Renne asked Captain Keohane if he looked into that statement and if so, what did he find.

Captain Keohane stated that he looked into the issue. He stated that in regards to the first issue of no officer-involved summaries being delivered to the OCC since June of 2000. He stated that he located 18 officer-involved shooting summaries that have been delivered to the Department in January of 2002. He stated that he found these documents in both the Homicide Detail and also at the Commission office. He stated that he informed Director Allen of these findings and Director Allen did a thorough search of his organization and Director Allen has found 16 of the 18 documents.

As to the second issue of the five most current officer-involved shooting summaries, Captain Keohane stated that the process for providing these summaries to the Commission is first, the OIS investigation is done by the MCD investigator and he/she makes a recommendation to the Lieutenant of MCD. The Lieutenant then takes the case, evaluates it, then makes a recommendation, through him as the Risk Management officer, to the Chief of Police, whether it is in policy or not. When the case is sent to the Chief, the Chief either concurs with the recommendation or not. In the five cases that were presented, the Chief concurred with the investigators' assessment of the situation, the evaluation of the Lieutenant of MCD and of the officer of the Risk Management and signed these cases off as in-policy. Captain Keohane stated that those OIS summaries have not been delivered to OCC because after this step, the next step is the letter is drafted to the Commission, the summary, stating that the Chief's findings of the investigation. At that time when it is forwarded to the Commission, a copy is forwarded to the OCC. Those five OIS summaries were delivered to the Commission today and they were also delivered to the OCC.

Commissioner Renne asked Director Allen, with regard to the question of the OCC representative saying to this Commission there had been no summaries, do you agree that in fact there were summaries delivered to the OCC, 16 to 18.

Director Allen stated that yes but he also stated that on August 11th he told the Commission, after Captain O'Leary mentioned that he had 26 cases that were outstanding, he stated that in 2002 the OCC had received a lump sum of 16 to 18 cases.

Commissioner Renne stated that it was quite a misstatement and it caused concern and she is glad it's been cleared up.

Commissioner Keane asked what information has been given to the Commission and to the public relating to the Detoy case and asked Captain Keohane if the summary relating to the Detoy case ever given to the Commission and if it was ever done. Captain Keohane stated no it was not given to the Commission and it was never done. Captain Keohane explained that Homicide did make a summary for the Detoy case but he stated that he is waiting for the City Attorney's opinion before releasing any documents to the Commission. Captain Keohane explained that when the Homicide Detail completes their investigation, they complete a summary report. This summary report and other articles from their homicide investigation are then forwarded to MCD which then conducts an administrative investigation. That homicide summary becomes part of the MCD investigation. The Homicide summary goes through the Chief for her review to make sure she agrees with their

findings on the criminal nature of that case. The MCD then does the administrative investigation and provides a summary. The MCD summary goes to the Chief of Police to determine, for her review, whether it's in policy or not. Both of these files are then taken, put together, and a summary report is drafted for presentation to the Commission. He stated that in the Detoy case, the Department has a completed Homicide investigation with a summary and an MCD investigation with a summary. What the Department has not located is the letter to the Commission on the OIS summary that would be presented to the Commission.

Commissioner Keane asked that in regards to the Detoy case of six years ago, the only thing lacking is the transmission letter to the Commission and aside from that the summary materials and everything else were to be submitted to the Commission along with the transmission letter and the Department do not have the transmission letter. Captain Keohane stated that he would not call it a transmission letter and explained that what is presented to the Commission is an OIS summary of the case that summarizes the investigation and that is all that is forwarded to the Commission. Commissioner Keane stated that the Commission never got that summary and asked why. Captain Keohane stated he cannot answer that question.

Commissioner Keane asked Captain Keohane if he sees any obstacles in regard to releasing that to the Commission. Captain Keohane stated that he is waiting to the City Attorney's opinion as to what information should be presented to the Commission, since they may be the trier of fact in the administrative case. Captain Keohane explained, as far as the sampling of what documents has been released in OIS cases, there are all the police reports and supplemental reports, statements from the witnesses, crime scene log, the OIS summary report from Homicide, all attachments, the crime scene investigation report, evidence inventory, diagrams, reports of laboratory examinations, latent fingerprint requests, requests for records, computer assisted dispatch records, pictures of the evidence, the medical examiner's report, and the interview transcript and the tapes of interviews. Captain Keohane stated that those are the type of materials that would be provided. As far as the Detoy case, the question wasn't whether these materials can be released but whether they should be given to the Commission for review prior to hearing the possible administrative case and that what he's waiting for the City Attorney's opinion. Captain Keohane stated that he has the documents in his office and they can be replicated and delivered.

Commissioner Keane stated that in regard to anything that they are entitled to get, as a Commission, they should get it at the time they are entitled to get it and they have to get that in order to carry out their functions as a Commission. He stated that the Commission, because they sit as quasi judicial officers in the hearing process relating to discipline, that the Commission have to be protected and not look at certain things because it might bias them in regard to those hearings, Commissioner Keane stated that he finds that completely unacceptable. He stated that the Commission can look at the evidence that's presented to them in a hearing and decide totally on the basis of that evidence and not on the basis of the fact that they may have heard something or seen something in the past.

Commissioner Sparks asked if the Commission is getting that level of detail or are they just getting a summary. Captain Keohane stated that the Commission is getting a summary but if the Commission wants that level of detail, the Commission can get it.

Commissioner Renne stated that the summary gives them exactly that, a summary, but if the Commission wants more detail with regard to an incident, the Commission could have it.

Commissioner Veronese asked if that summary is given to the District Attorney also and do they use that same summary in coming up whether or not they are going to press charges or is that a summary that happens afterwards and they do that independently. Captain Keohane stated that he can't speak to the District Attorney's processes but from the cases that he has reviewed, the OIS summary is presented to the Chief after the District Attorney has concluded their investigation because there will be a recommendation or a notation whether there was any criminal acts involved or not and the Department will need the District Attorney's report before that is sent forward. Commissioner Veronese asked if the Commission can see and take a look at a summary so that they can see and understand what is being talked about here.

Commissioner Veronese asked about the 18 reports and if they are reports of incidents that occurred prior to June of 2000. Captain Keohane stated that it began in January of 1998 and the last incident was in October of 2000. Commissioner Veronese asked, out of the 29 cases that are pending, are summaries done on any of those cases. Captain Keohane stated that out of the 26 cases that were originally presented to the Commission, five of those cases have been completed to the extent that they have gone through the MCD evaluation, the Risk Management evaluation, and they have been signed off as in-policy by the Chief of Police. Those summaries have been presented to the Commission's office today. Captain Keohane stated that there is 24 cases pending in various stages of investigation.

Commissioner Veronese asked, out of the 18 case summaries given to OCC, were the actual investigative files given to OCC as well. Captain Keohane stated he does not have that information. Commissioner Veronese asked about the five summaries given to the Commission today, were they given to OCC. Director Allen stated that he does have 16 summaries as well as the investigative files and for the five that have just been delivered, he just received the summaries.

Commissioner Renne stated that she did follow up on the suggestion of the Commission to send a letter to the DA because of the question of how our review of OIS were fitting in with what they were doing. She stated that the DA's office is also going through all their OIS shootings and that Deputy Chief Tabak has been working with the DA's office and updating the protocol so it's very clear as to who is supposed to be doing what and to better coordinate them. Captain Keohane stated that some of the changes in protocols have been made already and protocols initiated. He explained that now in a OIS shooting, the homicide inspector that respond to the scene, takes charge of the investigation, will be pulled off their on-call status and they will remain with that shooting until the case is close. Deputy Chief Tabak has also instructed the new Crime Lab Director that in an OIS any forensic work that has to be done will go to the top of the list and it will be done immediately and will be worked on until the case is closed. Furthermore, to make sure that the most relevant evidence is processed first and have a time line to make sure everything is done in the most efficient manner, within 48 hours of an OIS, the District Attorney investigators, the District Attorney, the Homicide investigators, the investigations' Captain and the Director of the Crime Lab, they are all going to meet and plan out a strategy for the investigation to make sure it's done in a complete manner. Further steps that needs to be done is the Department wants the Homicide Unit to meet with Risk Management and MCD to set up a format for an OIS manual that will show complete steps on what should be taken and what time, what materials should be in what folder, and at that time, the Department will be able to provide the Commission with a complete accurate package within the time limits that will come up in the new General Orders.

Commissioner Sparks asked for a written summary of what Captain Keohane has just said.

Commissioner Keane he would be satisfied with the level of detail that Captain Keohane mentioned in regards to the Cammerin Boyd matter.

Commissioner Marshall stated that he is bothered by the Detoy matter and that six years is just insane. Captain Keohane stated that that case is closed and that the only thing that has not be delivered to the Commission is the summary.

Commissioner Keane asked if the Commission can meet next week in Closed Session with the City Attorney in regard to the Detoy case and the whole question of what can and cannot be seen by the Commission.

Commissioner Chan stated that he has convened a status conference in regards to the Detoy matter and have set February 4th for further status conference and the reason is that he was informed by the City Attorney that the matter of the writ proceedings that were filed against the city by the officers is set for a hearing on January 28th before Judge Warren in Superior Court.

Commissioner Sparks stated that she will submit a public records act request to obtain copies of the summaries and investigations regarding the Detoy matter.

PUBLIC COMMENT:

Shannon Altamoreno stated that it takes a long time to get copies of documents from the Department and it is completely unacceptable. She discussed concerns that an investigation was done but nothing has been done to the officers involved.

Marylon Boyd, Campaign for Justice for Cammerin Boyd, hopes that this Commission will put an end to the ability of the POA to prevent justice to be served in this community in this city.

Elvira Pollard, Gus Rugley's mother, discussed concerns regarding officer-involved shooting policies and procedures.

Betty, on behalf of Gus Rugley and Robert Edwards, discussed concerns regarding the police shooting of Robert Edwards.

Theresa Coleman discussed concerns regarding officer-involved shootings.

Camilla Boyd discussed concerns regarding release of documents to families.

Everett Pollard, on behalf of Gus Rugley, discussed concerns regarding officer-involved shootings.

Sylvester Pollard discussed concerns regarding the shooting of Gus Rugley.

Tasia, Gus Rugley's cousin, stated that the youth is scared of police officers and there's no programs available to the youths in the city.

DISCUSSION RE: OCC POLICY RECOMMENDATION #03-05, "PROVIDING TRANSLATORS"

Director Allen presented the OCC policy recommendation. He explained that the way the bulletins are written currently, people had a hard time expressing their need for a translator to the police. This policy is written to provide an opportunity for, not only the officer who is involved in the situation to call upon a translator if they feel they are having a difficult time understanding somebody, but also for the public, the person who is speaking to the officer, whether the person is a victim of a crime or a suspect or just somebody who needs police attention, it provides ways for the officer to determine that a translator shall be called and who should be used.

Commissioner Marshall asked if the Department has seen this revision. Director Allen stated that yes, the Department has seen the revision and will

speak on that revision. Director Allen stated that the “should” and the “shall” was the issue.

Commissioner Sparks asked about complaints made and asked if the department bulletin solved the problems or not. Director Allen stated that he doesn't know because the complaints that he has are from before the bulletin was issued.

Sergeant Mike Sullivan, ADA Coordinator for the Department, gave some historical background in regards to this issue. He stated that the Director mentioned Chinese for Affirmative Action and other and Sergeant Sullivan stated that the bulletin that went out was describing the institution of the language line, how to use the contract number. While that was happening, the Department was also meeting with Chinese for Affirmative Action, Protection Advocates, Inc., in Oakland, and some other members of the community about the language issue and there has been a roll call training put out with a video on how to use the language line. It covered some of the issues about when people are confused about language or when an officer shows up and the officer's knowledge of the language isn't enough to get across the legal points then they go to the language line.

Sergeant Sullivan stated that his concern in regards to the order is that the timing might be a little premature because he has been talking to people and is committed to going back to them and he would like to go back to them and get their input. Another concern is Item F on the second page, Sergeant Sullivan stated that that is something that the Department needs to sit down with a 911 dispatcher call taker to insure that they grab that information at the initial part of the call so that the officers can have something getting there. Sergeant Sullivan stated that his feeling towards the general order, as a policy format, it sounds good but to lock into a general order that is not a living document, they tend to stagnate and require change and go through the process of getting it back to the Commission to get approved, he feels that, from his part, it would be disingenuous for him not to go back to the community that he started with and say this is what we're working on, you've seen what we've done, where do we go next. Whether it's a video or more training or something but it's not right to go back to them. He stated that there is a follow-up meeting and at that follow-up meeting, he'd like to pursue where they should go next with these issue and also the information that the Director is providing in terms of the particular issues that came up in the different cases that they have and in addition not to leave out deaf and hard of hearing who also have translations, interpreters issues that need to be addressed.

Commissioner Chan asked if there are any language offerings at the Academy that would enhance the ability to communicate to further police functions. Sergeant Sullivan stated that he does not know of any classes that are being offered that way.

Commissioner Chan asked Director Allen if the word “shall” is used and therefore obligate a member to exercise an affirmative duty, presumably the violation of the mandatory provisions of this DGO would be a cause for discipline, would it not. Director Allen stated it would be a cause for investigation. Commissioner Chan stated it would be a cause for investigation into whether or not a punishable offense had occurred for failing to abide by the mandatory terms of this order. Director Allen stated that is correct. Commissioner Chan asked that if the standard is the ability to communicate, then why is there is a seven factor test that would be required of members to apply in their consideration as to whether a translator should be summoned. Commissioner Chan stated that this is going to be a very complicated calculus that a member on the street and in the interaction would not necessarily have the list in front of them as to the seven factor test to be applied in determining whether or not the duty to summon the translator would become mandatory.

Director Allen explained that they were trying to find all the various ways that somebody would be able to determine that there is confusion in communication. Director Allen also stated that his agency cannot cover every possible scenario and that in speaking with the Department, he understood that there may be occasion where someone may fake that they need a translator to slow down an investigation but OCC is trying to be more inclusive than less inclusive. If there is an investigation and its shown that there are 12 people who faked that they need translators and shown later that to be not the case, then they would not be disciplined. Director Allen explained that they probably have not considered every possible scenario and he does understand the difficulty in implementing this but what they are trying to do is be as inclusive as possible and it is open for discussion and he welcomes any language that walks that fine line. Commissioner Chan stated that his only concern is whether or not the Department is providing sophisticated parties with the ability to make mischief based on a rule that obviously is well intentioned because of drafting. Director Allen stated this is the first draft and he has no problem in taking the concerns of the Commission and the public and the Department into consideration but it was very important to get a document drafted.

Commissioner Chan asked Director Allen in what manner the current Departmental bulletin is insufficient to address the situation in this interim period. Director Allen stated it looks at the situation strictly from the side of the member, the officer who's in the situation and he feels that just leaving the discretion on the officer falls short of their obligation.

Commissioner Renne asked about the language that says "officers should not rely upon family members or others who are emotionally involved to provide translation assistance." Commissioner Renne stated that she agrees with "emotionally involved" but what concerns her is that she can think of a number of circumstances where a family member would be the one person that, particularly if there's a lot of stress going on, that somebody would rely on. Director Allen stated that he did address that with Ms. Marion and that is something that they wanted to look at.

Commissioner Veronese asked if there will be any fiscal impact. Director Allen explained they are focusing on victims and people that placed the calls and sure it may cost money to call the language line but if it addresses the situation remove someone from danger, he can't give how much this will cost.

PUBLIC COMMENT:

None

APPROVAL OF POLICE COMMISSION MINUTES FOR THE MEETINGS OF SEPTEMBER 7TH AND 15, 2004

Motion by Commissioner Sparks to approve the minutes. Second by Commissioner Veronese. Approved 6-0.

COMMISSION ANNOUNCEMENTS

- a. Assignment of disciplinary charges filed in Case No. C04-183 JWA to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner** (Assigned to Commissioner Doug Chan, Resolution No. 100-04)

AYES: Commissioners Renne, Chan, Keane, Marshall, Sparks, Veronese

ABSENT: Commissioner Orr-Smith

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

Commissioner Renne stated there will be a Closed Session next week and some general orders that might be on the calendar next week.

Commissioner Sparks asked about OIS investigations that have not been completed and asked the Chief if she can report whether or not all the officers involved in all 29 pending OIS investigations are on administrative duty.

Commissioner Chan asked as to when the Commission can begin the process of a permanent replacement for Lt. Geeter as Police Commission Secretary.

Commissioner Veronese asked that the meeting be adjourned in memory of Eric Allen who past away on Thanksgiving Day.

Thereafter, the meeting was adjourned at 8:37 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission

1497/rct