

**FEBRUARY 16, 2011**

**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 5:40 p.m.

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter  
ABSENT: Commissioner Mazzucco

**PUBLIC COMMENT**

Emil Lawrence discussed concerns regarding police officers pay as a growing problem on the budget. (Documents presented)

Mr. Harrison discussed concerns regarding the homicide of Charles Harrison and asked for an update from the department.

Commissioner Marshall stated that he had spoken with the Chief in regards to the homicide and that he will speak to Mr. Harrison at a later time.

Clyde stated that DA Gascon took a pay cut to be district attorney.

Jim Spitelli, business on border of Tenderloin and Central, discussed concerns regarding police enforcement over jurisdictional lines.

**STATUS REPORT ON PREPARATION OF SFPD 2011-2012 BUDGET**

Deborah Landis presented the status report on the preparation of the SFPD 2011-2012 budget.

Commissioner Chan stated that she is not ready to vote on the budget and would like to put it over and stated that language access is a huge concern for her and how much money is allocated for it and would like an explanation when the budget is presented again.

Commissioner DeJesus would like an explanation on the cost for mental health training and would like specific information in regards to attrition and cost for tasers.

Commissioner Kingsley stated that the Commission supports the Department in its budget efforts.

Commissioner Slaughter asked about the CIT resolution adopted last week and the budget impact.

Chief Godown stated that the Department has not budgeted anything for tasers or for training and stated that the cost per day for the mental health training is \$8,000 and that the department will not pay for that amount of money and that is the reason that the funds ran out. Chief Godown stated that the Department will come back with a line-by-line explanation of the budget.

**PUBLIC COMMENT**

Emil Lawrence discussed concerns regarding the budget and police pensions.

Barbara Growth discussed concerns.

Clyde discussed concerns.

Michael Murowski discussed concerns.

**OCC DIRECTOR'S REPORT**

- **Status report on preparation of OCC's 2011-2012 budget**

Director Hicks presented the status report on preparation of the OCC's 2011-2012 budget.

- **Consent Item: 2010 First Amendment Compliance Audit of SFPD Records pursuant to Department General Order 8.10**

Director Hicks stated that this is a consent item but the OCC is prepared to answer any questions.

Commissioner DeJesus asked if there is a way to know if the officers are working outside of DGO 8.10 when they are assigned in a joint task force with Homeland Security which is covered in the Federal level. Samara Marion explained that part of the 8.10 audit is to look at the agency assist but it is limited to First Amendment activity.

**PUBLIC COMMENT**

None

Motion by Commissioner Slaughter, second by Commissioner Hammer to receive and file 2010 First Amendment Complaint Audit. Approved 5-1.

AYES: Commissioners Marshall, Hammer, Chan, Kingsley, Slaughter

NAYS: Commissioner DeJesus

**ASSIGNMENT OF DISCIPLINARY CHARGES FILED AGAINST ASSISTANT PATROL SPECIAL OFFICER ERNEST TACHIHARA, CASE NO. ALW C11-036 TO A COMMISSIONER FOR TAKING OF EVIDENCE ON A DATE TO BE DETERMINED BY THE COMMISSIONER**

Mr. John Rankin appeared on behalf of PSO Tachihara. Mr. John Alden appeared on behalf of the Department.

**PUBLIC COMMENT**

None

**RESOLUTION NO. 11-23**

**ASSIGNMENT OF COMMISSIONER AND SETTING OF DATE FOR THE TAKING OF EVIDENCE ON DISCIPLINARY CHARGES FILED AGAINST PATROL SPECIAL OFFICER ERNEST TACHIHARA (FILE NO. ALW C11-036)**

WHEREAS, the assignment of a Commissioner and setting of a date for hearing on disciplinary charged filed against Patrol Special Officer Ernest Tachihara, Star No. 2511, Northern, was called it having been set for this date; and

WHEREAS, Commissioner Carol Kingsley is hereby assigned to conduct taking of evidence in the disciplinary charges filed against Patrol Special Officer Tachihara; therefore be it

RESOLVED, that Commissioner Carol Kingsley is hereby assigned to conduct taking of evidence in the disciplinary charges filed against Patrol Special Officer Ernest Tachihara, and is to be set at a later date.

AYES: Commissioners Marshall, DeJesus, Chan, Kingsley, Hammer, Slaughter  
ABSENT: Commissioner Mazzucco

**COMMISSION ANNOUNCEMENTS**

Lieutenant Falvey announced that some of the Commissioners will be meeting at 1800 Oakdale tomorrow, and next Thursday at 1820 Market at the LGBT Center, at 6 p.m., to receive public input in regards to the Chief's search.

**PUBLIC COMMENT**

None

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

Michael Murowski voiced his concern that the item be held in open session.

**VOTE ON WHETHER TO HOLD CLOSED SESSION**

Motion by Commissioner Kingsley, second by Commissioner Hammer. Approved 6-0.

**CLOSED SESSION** (7:05 p.m. to 7:32 p.m.)

**PERSONNEL EXCEPTION: Assignment of Disciplinary Charges filed in Case No. IVF C11-024 to a Commissioner for taking of evidence on a date to be determined by the Commissioner** (Assigned to Commissioner Angela Chan, Resolution No. 11-24)

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter, Chief Godown, Director Hicks, Deputy City Attorney Blits, Attorney Fraenkel, Mr. Steve Johnson)

**PERSONNEL EXCEPTION: Discussion and possible action to issue Police Commission subpoenas in the matter of Case No. KMO C10-032**

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter, Chief Godown, Lieutenant Falvey, Deputy City Attorney Blits, Attorney Alden)

**PERSONNEL EXCEPTION: Discussion and possible action to accept or reject stipulated agreement filed in disciplinary Case No. JWA C10-042** (Resolution No. 11-25)

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter, Chief Godown, Lieutenant Falvey, Deputy City Attorney Blits, Attorney Alden, Attorney Stiglich, and member involved)

Motion by Commissioner Chan, second by Commissioner Hammer to accept stipulated agreement with the amendment to the retirement date. Approved 6-0.

**PERSONNEL EXCEPTION: Discussion and possible action to sustain or not sustain disciplinary charges filed in case no. IVF C09-143, and if sustained, decide penalty**

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter, Chief Godown, Lieutenant Falvey, Deputy City Attorney Blits, Attorney Fraenkel, Attorney Alden, Attorney Stiglich, and member involved)

Attorney Stiglich to submit video by February 21<sup>st</sup>.

**PERSONNEL EXCEPTION: Status and calendaring of pending disciplinary cases**

PRESENT: Commissioners Marshall, DeJesus, Chan, Hammer, Kingsley, Slaughter, Lieutenant Falvey, Deputy City Attorney Blits)

No discussion.

**VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION**

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Motion by Commissioner Hammer, second by Commissioner Chan for non disclosure. Approved 6-0.

**DISCUSSION AND POSSIBLE ACTION TO GRANT OR DENY MOTIONS FOR DISMISSAL OF DISCIPLINARY CHARGES FILED AGAINST OFFICER WENDY HURLEY, CASE NO. JCT C06-187; DECISION TO SUSTAIN OR NOT SUSTAIN DISCIPLINARY CHARGES, IF NECESSARY; DECISION TO DECIDE PENALTY, IF NECESSARY**

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Motion by Commissioner Slaughter, second by Commissioner Kingsley to recuse Commissioner DeJesus in the hearings of Officers Hurley and Lewis. Approved 5-0.

Mr. Waukeen McCoy appeared on behalf of Officer Hurley, who was present. Mr. John Alden appeared on behalf of the Department.

Motion by Commissioner Slaughter, second by Commissioner Kingsley to deny Motion to Dismiss disciplinary charges filed against Officer Hurley. Approved 5-0.

**DENIAL OF MOTIONS TO DISMISS DISCIPLINARY CHARGES AND DISPOSITION OF DISCIPLINARY CHARGES FILED AGAINST OFFICER WENDY HURLEY, STAR NO. 61,**

**(FILE NO. JCT C06-187)**

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The hearing of Officer Wendy Hurley, Star No. 61, was called it having been set for this date. Officer Hurley was charged in a properly verified complaint by Heather J. Fong, former Chief of Police of the San Francisco Police Department, with violating the Rules and Procedures, as follows:

**SPECIFICATION NO. 1**

Failure to devote full attention to duty, a neglect of duty (violation of Rule 1 of Department General Order 2.01 of the San Francisco Police Department);

**SPECIFICATION NO. 2**

Engaging in conduct which brings discredit upon the department, a neglect of duty (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department);

**SPECIFICATION NO. 3**

Misuse of department property, a neglect of duty (violation of Rule 23 of Department General Order 2.01 of the San Francisco Police Department);

**SPECIFICATION NO. 4**

Drawing a firearm in a public place, without justification, a neglect of duty (violation of Department General Order 5.02.I.B.1 of the San Francisco Police Department);

**SPECIFICATION NO. 5**

Harassment on the basis of an individual's or group's race, color, national origin, ethnicity ..., a neglect of duty (violation of Rule IV.B.3 of Department General Order 11.07 of the San Francisco Police Department).

Mr. John Alden, Attorney at Law, appeared on behalf of the Internal Affairs Division and the San Francisco Police Department.

Officer Wendy Hurley appeared in person and was represented by Mr. Waukeen McCoy, Attorney at Law.

The Commission took the matter under submission and the following resolution was adopted:

**RESOLUTION NO. 11-26**

**DENIAL OF MOTIONS TO DISMISS DISCIPLINARY CHARGES AND DISPOSITION OF DISCIPLINARY CHARGES FILED AGAINST OFFICER WENDY HURLEY, STAR NO. 61, (FILE NO. JCT C06-187)**

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WHEREAS, on November 29, 2006, Heather J. Fong, former Chief of Police of the San Francisco Police Department, made and served charges against Officer Wendy Hurley, Star No. 61, as follows:

**SPECIFICATION NO. 1**

Failure to devote full attention to duty, a neglect of duty (violation of Rule 1 of Department General Order 2.01 of the San Francisco Police Department);

- (1) At all times herein mentioned Wendy J. Hurley, Star Number 61, (referred to as "the accused") was and is a police officer, employed by the San Francisco Police Department, currently assigned to the Homeland Security Unit.
- (2) As a member of the Department, the accused was and is responsible for knowing and obeying the rules, orders and procedures of the San Francisco Police Department.
- (3) The accused, while in uniform, is a representative of the Department.

- (4) On December 6, 2005, the Department became aware of unauthorized videos that had been posted on the internet. Additional videos were discovered. The accused appeared in the videos.
- (5) The accused did not obtain permission to appear in the unauthorized videos.
- (6) The accused was on-duty while participating in the videos.
- (7) The accused was assigned to the Bayview Police Station.
- (8) The accused was assigned to patrol the Bayview District while on duty.
- (9) The accused was present for the filming of a video entitled, "Bomb Scene."
- (10) Officers were dispatched to a real call of an explosion, at the University of California Labs, which is under construction near the Mission Bay and 16<sup>th</sup> Street. Officer H responded from another district to this call. The blast was determined to have been an M-100 firecracker, although University investigators responded to conduct their own investigation. At the conclusion of the call for service, an officer (hereafter referred to as "Officer A"), the accused and another officer (hereafter referred to as "Officer A"), the accused and another officer (hereafter referred to as "Officer H") created a staged bomb scene, to film another officer's (hereafter referred to as "Officer G") reaction when he arrived. This was all done in a public place, on private property.
- (11) The video begin with Officer H, who is on-duty and in uniform standing at a construction site. Officer H talks about explosions at this location and searching for land mines with a sweeper created out of a ball point pen. He states that he is pretty close to the pier but not anywhere close to it. A marked patrol car can be seen in the background. Also in the background is the accused, on-duty and standing next to a patrol car. Officer G, who is in uniform, on-duty and driving a marked police vehicle, arrives on the scene. Another marked patrol car can be seen parked just outside of the cyclone fence gate. Police crime scene tape is placed around the area.

Officer H starts running as Officer G arrives, holding a cup of coffee, exiting his patrol vehicle. Officer G is shown displaying his middle finger toward the camera. The accused asks, "What's your star number?" As Officer G continues to walk, he states, "You better know my mother fucking star." Officer H is then shown holding and shaking a bundle of flares that are arranged to represent an explosive device. The device is put down on a concrete rock pile. During this part of the video, Officer H, states, "Look, observe, clear the area." Officer G is shown depressing his pic radio microphone, stating, "Yeah there looks like there is no merit to any major 529; looks like fireworks." Officer H then states, "What's that ticking noise?"

- (12) The accused was present for the filming of a video entitled, "Tie my shoe."
- (13) The video shows an officer (hereafter referred to as "Officer XX"), in uniform, at Bayview Station. He is shown wearing his Department baseball cap off-set as he walks through the station, stopping to flash a peace sign. He is then shown sitting in a patrol car, moving his head back and forth. Officer XX is shown kneeling on one knee, tying his shoelaces. Officer XX displays with his hand, the 'hang loose' sign while seated in a patrol car. He is then shown driving with his Department baseball hat off-set and holding a Department radio microphone. Next, Officer XX is shown walking down the street on the sidewalk. He is in uniform and his hat is off-set. Officer XX flashes a peace sign and kneels down on one knee to tie his shoe. He then gets up and begins a series of poses, placing his arms across his chest and torso. In the background you can see a parked patrol car. Officer XX continues to walk, executing different moves with his arms, indicative of gang-like behavior. At one point he point to his baseball cap and is then seen back in the patrol car. The video then fades out. The music that is used in this video scene is of Asian influence and contains profane language that speaks of burglary, rape and other planned felonies.

- (14) The accused state she was present for the filming of this video and participated in the selection of the music.
- (15) The accused appears in a video entitled, "Traffic Copy Gone Wild." While in uniform, an officer (hereafter referred to as "Officer QQ") is seen driving a marked police vehicle, as he conducts a traffic stop on a white Pontiac Firebird driven by a female (hereafter referred to as "Witness 1"). The traffic stop was conducted at Kalmanovitz Street and Orsi Circle. During the traffic stop, Officer QQ approached the Firebird while the accused used a marked police vehicle to block off the street. Officer QQ contacted Witness 1, who is wearing a black tank top and a light colored short skirt. Officer QQ asked Witness 1 step out of the car and then told her to turn around, as he ogles her to the sound of music. After Witness 1 turned around, Officer QQ instructed her to get back into her vehicle. Officer QQ returned to his patrol car and obtained his citation book. Officer QQ appeared to write Witness 1 a citation, while looking at himself in the mirror. Officer QQ issued Witness 1 a citation, and handed her a copy. After a conversation between Officer QQ and Witness 1, Officer QQ returned to his police vehicle, and drove away.
- (16) During the video, there is inappropriate banter between Officer QQ and Witness 1.
- (17) The accused was on-duty and in uniform during the filming of this video.
- (18) The accused appears in a video that includes an officer (hereafter referred to as "Officer WW") pointing a gun at her dog.
- (19) In this video, Officer WW and Officer DD1 are shown in uniform, standing in the front office of Bayview Police Station. On the floor is a small Yorkshire/Chihuahua mix name "Oliver," who belongs to the accused. Officer WW says to the dog, "come here man, sit down." Officer WW tells Officer DD1, "Get back, get back, I don't like this dog." Officer WW repeatedly tells the dog to sit down. Officer WW then states, "This is how you train a dog Bayview-style." As Officer WW tells the dog to "come here," the accused can be seen moving away from her set in the front office, holding a large binder and moving into a doorway. Officer WW then pulls his firearm from his holster and points it at the dog, who is seated on a circular dog cushion. Officer WW states, "sit down, sit down, you no good ... I'll blast you right now, you lousy no good," and the scene concludes.
- (20) The accused brought her dog to work to participate in this video.
- (21) The accused was on duty, in uniform and assigned to Station-keeper duties during the filming of this video.
- (22) The video was filmed near a window at Bayview Police Station.
- (23) The accused appears in a video entitled, "Charlie's Angles."
- (24) The accused and two other officers (hereafter referred to as "Officer Q" and Officer II1" appear in civilian clothing, outside of the Bayview Police Station. They walk into the Station to the theme music of the television show "Charlie's Angels." The officers each have their Department issued star and a holstered firearm displayed outside of their clothing. As the officers are seen walking through the station, the officers' names appear in text, on the screen. The officers then enter an officer's (hereafter referred to as "Officer B") office. They are shown posing and holding their Department issued firearms drawn, in a ready position. The officers say, "Good morning Officer B." Officer B, while seated at his desk, is shown moving his tongue up and down while the text "featuring ..." is displayed. The officers respond by saying, "Ooooh Officer B." They are shown moving their tongues in a licking manner to the right. Officer B is then shown moving his tongue in an up and down motion and the text "Officer B" is displayed.

Next shown is what appears to be a homeless African-American female, who moves her tongue across her lips. The scene appears to take place underneath a freeway. Also shown in the video is a department patrol vehicle.

Officer B reappears, seated, moving his tongue up and down, and followed by the text "as Officer B." The African-American female reappears and says, "Ooooh Officer B," as she moves her tongue across her lips. Officer B is then seen again moving his tongue up and down with the text "as well as Officer B."

Next shown is what appears to be a male dressed in women's clothing, holding a sucker in his/her hand. The person says, "Oh, Officer B," and moves her tongue around her lips.

Officer B reappears and again moves his tongue up and down, followed by the text "the ladies man."

Next an unknown white female appears, wearing sunglasses. This person also appears to be homeless. This person moves her tongue around her lips and says, "Ooooh Officer B."

Officer B reappears again and moves his tongue up and down. Another officer (hereafter referred to as "Officer X"), while in uniform, wearing white-framed sunglasses, and holding papers, enters Officer B's office. The text "Starring, Officer 'Elton John' X" is displayed. Officer X states, "You know cap I'm flattered, but I do realize that I am an attractive man, but put your tongue back in your mouth sir." Officer X is then seen leaving his office. Officer B reappears. He moves his tongue up and down. Another officer (hereafter referred to as "Officer FF"), who is in uniform, is seen seated in a chair in front of Officer B's desk. Officer FF leans forward and puts her right hand to her mouth and says, "Ooooh Officer B," followed by the moving of her tongue across her lips.

Officer B reappears and moves his tongue up and down. At this point, another officer (hereafter referred to as "Officer PP") appears in the Captain's office. Officer PP is observed wearing a blonde-brown wig and wearing a black dress with his shoulders and arms exposed. Officer PP moves his right hand over the right side of his abdomen and breast area.

A reversed image of Officer B, smiling, appears. Officer PP says, "hey cap," and moves his tongue across his lips. The text "introducing Officer Jamie 'Janet' Lewis" appears.

A smiling Officer B reappears. Officer PP then appears to move closer to the camera and moves his tongue in a sexually suggestive licking fashion. Officer B reappears and the scene fades out.

- (25) The accused was involved in and appears in a video entitled, "ear-Tronics."
- (26) The video 'ear-Tronics' begins with voice of another officer (hereafter referred to as "Officer UU") narrating the video. This video is a compilation of cut and pasted scenes. During the narration, the head of Officer A is shown in an inset. Officer A is wearing an ear piece in his left ear and his head rotates from right to left. Later in the scene paper money is shown falling. This is followed with the text "ear-Tronics." Various officers then appear in the following order and make statements regarding earpieces sold by Officer PP; non-uniformed Officer MM, non-uniformed Officer JJ, uniformed Officer QQ, uniformed Officer OO, non-uniformed Officer KK1, non-uniformed Officer LL1, uniformed Officer W, the accused in uniform, uniformed Officer GG1, uniformed Officer BB1, uniformed Officer EE, uniformed Officer DD1, uniformed Officer GG1, uniformed Officer BB1, uniformed Officer EE, uniformed Officer DD1, uniformed Officer M, uniformed Officer AA, uniformed Officer RR, and uniformed Officer F. As part of the video, Officer OO states, "Once you go black, you will never go back," referring partially to the color of the cord. The video scene ends as it begins, with falling money being shown and Officer UU narrating, "With Ear-tronics you

can actually hear your money going down the drain. Ear-Tronics is not to be confused with Butt-tronics a subsidiary of anus incorporated.”

- (27) The accused asked Officer OO for a ride to the Police Officer’s Association for the purpose of bringing her in to say on video, “Once you go black, you will never go back.”
- (28) The accused appears in a video entitled, “Father’s Day Presentation.
- (29) This video scene starts off with the text, “and now, a special Father’s Day presentation, Brought to you by the good ‘ol folk at Bayview Station.” While the text is being displayed, the accused, in uniform, states to Officer PP in the hallway, “You know it’s Father’s Day.” Officer PP responds,
- “Yes.” The accused states, “You know how much it means to me,” to which Officer PP responds, “Yes, yes.”

The video then shows the accused and Officer PP standing in a hallway corridor at the Bayview Police Station. The accused states, “I go you breakfast and special dark chocolate,” to which Officer PP responds, “Special dark chocolate? That’s what I’m talking about.”

The accused then removes from the small of her back, a quarter of a sliced watermelon that is wrapped in cellophane. The accused extends the watermelon to Officer PP and says to him, “And now I want to present you with this.” She hands Officer PP the watermelon. Officer PP accepts the watermelon and after looking at it states, “Watermelon?” The accused then says, “Yes.” Both the accused and Officer PP smile at each other, as Officer PP thanks the accused and says, “Thank you. Watermelon?” Officer PP then states, “Hmmm...I love watermelon.” Officer PP then bites into the watermelon and states, “hmmm ... hmmm ... juicy sweet watermelon, straight from the white folks.” Officer PP points his finger at the accused. The scene then fades out.

- (30) The accused was on-duty and in uniform, when making this video.
- (31) The accused, by failing to devote full her entire time and full attention to duty, has engaged in conduct which constitutes a violation of Rule 1 of Department General Order 2.01 of the San Francisco Police Department, which states:

“1. ATTENTION TO DUTY. 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 assignments.”

#### SPECIFICATION NO. 2

Engaging in conduct which brings discredit upon the department, a neglect of duty (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department);

- (32) The allegations incorporated in Specification No. 1, paragraphs 1 through 25 are incorporated in this specification by reference and re-alleged as though set forth in full.
- (33) The accused, by engaging in conduct which brings discredit upon the Department, has engaged in conduct which constitutes a violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department, which states:

“9. 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.”

SPECIFICATION NO. 3

Misuse of department property, a neglect of duty (violation of Rule 23 of Department General Order 2.01 of the San Francisco Police Department);

- (34) The allegations incorporated in Specification No. 1, paragraphs 1 through 25 and Specification No. 2, paragraphs 26 through 27 are incorporated in this specification by reference and re-alleged as though set forth in full.
- (35) The accused, by failing to use Department property according to Department policies and procedures, has engaged in conduct which constitutes a violation of Rule 23 of Department General Order 2.01 of the San Francisco Police Department, which states:

“23. USE OF DEPARTMENT PROPERTY. Members shall use Department property according to Department policies and procedures. Members shall use the operate Department vehicles and equipment in a reasonable and prudent manner and not allow unauthorized persons in police vehicles or allow them to use Department equipment. Authorization under special circumstances may be granted by a superior officer.”

SPECIFICATION NO. 4

Drawing a firearm in a public place, without justification, a neglect of duty (violation of Department General Order 5.02.I.B.1 of the San Francisco Police Department);

- (36) The allegations incorporated in Specification No. 1, paragraphs 1 through 25, and Specification No. 2, paragraphs 26 and 27, and Specification No. 3, paragraphs 28 and 29, and Specification No. 4, paragraphs 30 and 31, are incorporated in this specification by reference and re-alleged as though set forth in full.
- (39) The accused has engaged in a pattern of conduct which constitutes a violation of Rule IV.B.3 of Department General Order 11.07 of the San Francisco Police Department, which states:

“IV. DEFINITIONS

B. HARASSMENT

3. OTHER HARASSMENT. Although only sexual harassment has been defined in detail above, the law and Department policy also prohibit harassment on the basis of an individual’s or group’s race, color, national origin, ethnicity, pregnancy, childbirth or related medical condition, sexual orientation, religion, age physical or mental disability, medical condition, marital status, political affiliation or belief, having AIDS, ARC, HIV infection or any signs or symptoms thereof. Therefore, harassment (including verbal, visual or physical conduct) on any of these bases is also prohibited.”

WHEREAS, a hearing on said charges were held before the Police Commission pursuant to section 8.343 of the Charter of the City and County of San Francisco on July 8, 2010, July 15, 2010, July 20, 2010, August 17, 2010, August 18, 2010, August 19, 2010, and on February 16, 2011, the matter was submitted to the Police Commission for decision; and

RESOLVED, that the Police Commission hereby denies Motions to Dismiss;

FURTHER RESOLVED , that the Police Commission finds the following:

SPECIFICATION NO. 1 - Sustained on five videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

SPECIFICATION NO. 2 - Sustained on seven videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzuco, DeJesus

SPECIFICATION NO. 3 - Sustained on seven videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzuco, DeJesus

SPECIFICATION NO. 4 - Sustained

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzuco, DeJesus

SPECIFICATION NO. 5 - Not sustained

AYES: Commissioners Chan, Kingsley  
NAYS: Commissioners Marshall, Slaughter, Hammer  
RECUSED: Commissioners Mazzuco, DeJesus

FURTHER RESOLVED, that consistent with the Commission's duty to protect the health, safety, and general welfare of the citizens of the City and County of San Francisco and the public in general, and in order to promote efficiency and discipline in the San Francisco Police Department, the Police Commission orders that Officer Wendy Hurley, Star No. 61, be suspended for three hundred sixty (360) days, representing ninety (90) days for each sustained specifications; and

FURTHER RESOLVED, that said three hundred sixty (360) days suspension shall commence immediately, starting on Thursday, February 17, 2011, at 0001 hours, and terminate on Sunday, February 12, 2012, at 2400 hours.

(These proceedings were taken in shorthand form by Ms. Patricia Rosinski, CSR., Star Reporting)

**DISCUSSION AND POSSIBLE ACTION TO GRANT OR DENY MOTIONS FOR DISMISSAL OF DISCIPLINARY CHARGES FILED AGAINST OFFICER JAMES LEWIS, CASE NO. JCT C06-186; DECISION TO SUSTAIN OR NOT SUSTAIN DISCIPLINARY CHARGES, IF NECESSARY; DECISION TO DECIDE PENALTY, IF NECESSARY**

Mr. Waukeen McCoy appeared on behalf of Officer Lewis, who was present. Mr. John Alden appeared on behalf of the Department.

**PUBLIC COMMENT**

Andrew Cohen addressed the Commission on how the videos were sanctioned by the Department and how this is all political.

Mother of James Lewis addressed concerns on how the Commissioners' minds are already made up.

Motion by Commissioner Marshall, second by Commissioner Kingsley to deny Motion to Dismiss disciplinary charges filed against Officer Lewis. Approved 5-0.

**DENIAL OF MOTIONS TO DISMISS DISCIPLINARY CHARGES AND DISPOSITION OF DISCIPLINARY CHARGES FILED AGAINST OFFICER JAMES LEWIS, STAR NO. 1023, (FILE NO. JCT C06-186)**

The hearing of Officer James Lewis, Star No. 1023, was called it having been set for this date. Officer Lewis was charged in a properly verified complaint by Heather J. Fong, former Chief of Police of the San Francisco Police Department, with violating the Rules and Procedures, as follows:

**SPECIFICATION NO. 1**

Leaving assigned area without permission, neglect of duty (violation of Rule I.A.2 of Department General Order 1.03 of the San Francisco Police Department);

SPECIFICATION NO. 2

Failing to devote entire time and attention to the achievement of the Department's basic to protect life and property, preserve the peace, prevent crime, enforce criminal laws and ordinances, and regulate non-criminal conduct as provided by law (violation of Rule 1 of Department General Order 2.01 of the San Francisco Police Department);

SPECIFICATION NO. 3

Engaging in conduct which brings discredit upon the Department (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department);

SPECIFICATION NO. 4

While acting in the performance of duty, failing to treat the public with courtesy and respect and using harsh, profane or uncivil language (violation of Rule 14 of Department General Order 2.01 of the San Francisco Police Department);

SPECIFICATION NO. 5

Harassment on the basis of an individual's or group's race, color, national origin, ethnicity ..., a neglect of duty (violation of Rule IV.B.3 of Department General Order 11.07);

Mr. John Alden, Attorney at Law, appeared on behalf of the Internal Affairs Division and the San Francisco Police Department.

Officer James Lewis appeared in person and was represented by Mr. Waukeen McCoy, Attorney at Law.

The Commission took the matter under submission and the following resolution was adopted:

**RESOLUTION NO. 11-27**

**DENIAL OF MOTIONS TO DISMISS DISCIPLINARY CHARGES AND DISPOSITION OF DISCIPLINARY CHARGES FILED AGAINST OFFICER JAMES LEWIS, STAR NO. 1023, (FILE NO. JCT C06-186)**

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WHEREAS, on November 29, 2006, Heather J. Fong, former Chief of Police of the San Francisco Police Department, made and served charges against Officer James Lewis, Star No. 1023, as follows:

SPECIFICATION NO. 1

Leaving assigned area without permission, neglect of duty (violation of Rule I.A.2 of Department General Order 1.03 of the San Francisco Police Department).

- (1) At all times herein mentioned James Lewis, Star Number 1023, (hereafter referred to as "the accused") was and is a police officer employed by the San Francisco Police Department, currently assigned to the Support Services Division.
- (2) As a member of the Department, the accused was and is responsible for knowing and obeying the rules, orders and procedures of the San Francisco Police Department.
- (3) The accused, while in uniform, is a representative of the Department.
- (4) On December 6, 2005, the Department became aware of the unauthorized videos that had been posted on the internet. Additional videos were discovered. The accused appeared in the videos.
- (5) The accused did not obtain permission to appear in the unauthorized videos and photographs.
- (6) The accused was on-duty while participating in the videos and photographs.

- (7) The accused was assigned to the Bayview Police Station.
- (8) The accused was assigned to patrol the Bayview District while on duty.
- (9) The accused appears in a video entitled, "I am Not a Dogg." The accused is seen in uniform, in photographs, at the San Francisco Animal Control facility, with an unknown animal control officer. The accused is shown in a push-up position with the animal control officer holding onto his right foot with an animal noose attached to a pole. The accused is then shown inside the Animal Control facility with the animal control officer holding a leash around his neck. The Animal Control officer then attempts to put a muzzle on the accused's face. The accused is next shown in an animal cage with the leash around his neck holding a dog bowl. The accused is then shown on his knees, on the floor, appearing ready to eat out of the dog bowl.
- (10) The accused left his assigned district without permission, in order to make this video.
- (11) The accused is shown in a video entitled, "In the Line of Doodie." The accused is shown in a video scene about the men's restroom in the locker room, at the Bayview Police Station. Officers are shown headed toward the men's handicap stall, and the photographer opens the stall door, exposing the toilet. Text is then displayed on the screen that reads, "WARNING!! What you are about to view may not be aesthetically pleasing. If you are prone to gagging when witnessing globs of shit, please turn away now!" The open toilet is shown again. The text states, "There is no way we're going to show this crap to you!!! Trust me, you will thank me for this!"
- (12) The next the scene shows an officer (hereinafter referred to as "Officer A"), in uniform, in the reflection of the bathroom mirror. Officer A appears to be holding a video camera and clothing. Officer walks through the locker room, towards the accused, who is in uniform. The accused states, "That's a nasty mother fucker, whoever left that, you a nasty, skanky, you so nasty words can't even describe it." Officer A then turns to Officer KK1 who says, "you know what happens? They ho it up and blow it up, barbecue to mildew." The scene shifts and an officer (hereafter referred to as "Officer X"), who is in uniform and driving a marked police car, states, "I thought that was shocking." The accused reappears and says, "Nasty mother fucker." Officer X reappears again and says, "I was blown away by it." The remaining portion of the video does not involve the accused. It was not determined whether or not the accused was on-duty.
- (13) The accused is shown in the video entitled "Station Clown." In this video, an officer (hereafter referred to as "Officer B") appears in a tee shirt seated at his desk. Officer B appears to be typing on a keyboard. The accused then appears outside of Officer B's office. He is wearing a dark colored beanie and an orange City prison outfit, as he slides on his stomach across the floor. Officer B is shown sitting at his desk in front of his computer. The accused then enters Officer B's office and goes into Officer B's closet, where he removes Officer B's uniform jacket, hat and gun belt and puts these items on over the prison uniform. The accused appears to have a handcuff hanging off his left hand. The accused then walks out of Officer B's office and says, "Good job men." Next the scene changes and a patrol vehicle is shown backing into a parking stall at the rear of the Bayview Police Station. The accused is shown again wearing a black beanie and an orange City prison outfit, and is being escorted through a door by an officer (hereafter referred to as "officer HH"). The accused breaks away from Officer HH and runs down the hallway and out the back door leading to the parking lot. Other officers appear to believe the accused is an escaped prisoner and they being to chase him in the parking lot. One officer falls down in the process.
- (14) The accused was on-duty during the filming of this scene.

- (15) Any reasonable officer should know that the filming of this video poses a great officer-safety risk, as well as a great safety risk to the accused.
- (16) The accused is shown in the video entitled "Charlie's Angels." In this video, Officer B reappears and moves his tongue<sup>4</sup> up and down. At this point, the accused appears in Officer B's office. The accused is observed wearing a blonde-brown wig and wearing a black dress with his shoulders and arms exposed. The accused moves his right hand over the right side of his abdomen and breast area. A reversed image of a smiling Officer B appears. The accused says, "Hey cap" and moves his tongue across his lips. The text states, "introducing Officer Jamie 'Janet' Lewis."
- (17) The investigation was unable to determine whether the accused was on-duty.
- (18) The accused is shown in the video entitled "Officer N bicycle qualification." In this video, the accused is seen talking to Fire Department personnel. Next, the scene shifts to the parking lot at Bayview Station. Officer NN appears and talks about failing the bicycle course and hitting Officer B's car with his bicycle. Next, you see Officer NN riding the bicycle qualification course, with the accused providing hand directions. Officer NN appears to be headed toward Officer B's car while the accused attempts to redirect him. A multi-colored screen appears followed by a high pitch noise. Next the following text appears. "Although Officer NN failed his training course for the second time and although he did sustained (sic) numerous injuries to his body and ego, we are happy to inform you that Officer B's vehicle was not seriously damaged during this incident. We wish Officer B's car a speedy recovery!"
- (19) The accused was on-duty during the filming of this video.
- (20) The accused is shown in the video entitled "Weight Loss Advice (for Officer NN1) – By Jimmy Lewis."
- (21) This video starts with Latin music and the text, "Weight Loss Advice (for Officer NN1) – by Jimmy Lewis." The setting is a public location in the Bayview District. The accused is shown holding up his left fingers in a gesture to represent a small amount. The accused stated, "Pinch an inch, too many tacos." Next seen in the background are on-duty officers tending to Officer NN1, whose shirt is torn, exposing his upper body. An African American male is seated on the sidewalk possibly in a hobble restraint. He appears to be a prisoner that is unmonitored, while the accused is talking to the camera. The video then concludes with drop down text, "That's all folks."
- (22) The accused was on-duty and in uniform during the filming of this video.
- (23) The accused is shown in the video entitled "Father's Day Presentation."
- (24) This video scene starts off with the text, "and now, a special Father's Day presentation, brought to you by the good 'ol folk at Bayview Station." While the text is being displayed, an officer (hereafter referred to as "Officer II) states, "You know it's Father's Day," to which the accused replies, "Yes." Officer II states, "You know how much it means to me, " to which the accused responds, "Yes, yes." The scene then show Officer II and the accused standing in a hallway corridor at Bayview Station. Officer II states, "I got you breakfast and special dark chocolate," to which the accused responds, "Special dark chocolate? That's what I'm talking about." Officer II then removes from the small of her back, a quarter of a sliced watermelon wrapped in cellophane. Officer II hands the watermelon to the accused and says to him, "And now I want to present you with this." The accused accepts the watermelon and after looking at it states, "Watermelon?" Officer II replies, "Yes." Both Officer II and the accused smile at each other as the accused thanks Officer II and says, "Thank you, watermelon?" The accused then states, "Hmmm ... I love watermelon." The accused then bites into the watermelon and states, "hmmm ... hmmm ... juicy sweet watermelon, straight from the white folks." The accused points his finger at Officer II. The scene fades out.

- (25) The accused was on-duty and in uniform during the filming of this video.
- (26) The accused is shown in the video entitled “Jimmy, what do you do when you get depressed?”
- (27) This video starts off with the rolling text, “JIMMY WHAT DO YOU DO WHEN YOU GET DEPRESSED.” The accused appears in the driver’s seat of a patrol car, in uniform. Seated next to him is Officer A. The accused states, “When I’m depressed, I sit here in my patrol car and beat my meat.” The accused then laughs and says, “Please.”
- (28) The accused was on-duty and in uniform during the filming of this video.
- (29) Any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule I.A.2 of Department General Order 1.03, which states:
- “A. Patrol Officers shall
2. REMAINING IN ASSIGNED AREAS
- a. Not leave their assigned areas except in the performance of proper police duty, with the permission of a superior officer, or for personal necessity.”

#### SPECIFICATION NO. 2

Failing to devote entire time and attention to the achievement of the Department’s basic to protect life and property, preserve the peace, prevent crime, enforce criminal laws and ordinances, and regulate non-criminal conduct as provided by law (violation of Rule 1 of Department General Order 2.01 of the San Francisco Police Department);

- (30) The allegations incorporated in Specification No. 1, paragraphs 1 through 29 are incorporated in this specification by reference and realleged as though set forth in full.
- (31) Any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule 1 of Department General Order 2.01, which states:
- “ATTENTION TO DUTY. 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 assignments.”

#### SPECIFICATION NO. 3

Engaging in conduct which brings discredit upon the Department (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department);

- (32) The allegations incorporated in Specification No. 1, paragraphs 1 through 29, and Specification No. 2, paragraphs 30 and 31, are incorporated by reference and realleged as though set forth in full.
- (33) Any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule of Department General Order 2.01, which states:
- “MISCONDUCT. Any breach of the peace, neglect of duty, misconduct or any conduct by an officer either within or without the state that tends to undermine 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.”

SPECIFICATION NO. 4

While acting in the performance of duty, failing to treat the public with courtesy and respect and using harsh, profane or uncivil language (violation of Rule 14 of Department General Order 2.01 of the San Francisco Police Department);

- (34) Each allegation incorporated in Specification No. 1, paragraphs 1 through 29, and Specification No. 2, paragraphs 30 through 31, and Specification No. 3, paragraphs 32 through 33, and is incorporated by reference as fully set forth herein.
- (35) Any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule 14 of Department General Order 2.01, which states:

“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. Members shall also address the public using pronouns and titles of respect appropriate to the individual’s gender identity as expressed by the individual. When requested, members shall promptly and politely provide their name, star number and assignment.”

SPECIFICATION NO. 5

Harassment on the basis of an individual’s or group’s race, color, national origin, ethnicity ..., a neglect of duty (violation of Rule IV.B.3 of Department General Order 11.07);

- (36) Each allegation incorporated in Specification No. 1, paragraphs 1 through 29, and Specification No. 2, paragraphs 30 through 31, and Specification No. 3, paragraphs 32 through 33, and Specification No. 4, paragraphs 34 through 35, is incorporated by reference as fully set forth herein.
- (37) Any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule IV.B.3 of Department General Order 11.07, which states:

“IV. Definitions

B. HARASSMENT

3. OTHER HARASSMENT. Although only sexual harassment has been defined in detail above, the law and Department policy also prohibit harassment on the basis of an individual’s or group’s race, color, national origin, ethnicity, pregnancy, childbirth or related medical condition, sexual orientation, religion, age, physical or mental disability, medical condition, marital status, political affiliation or belief, having AIDS, ARC, HIV infection or any signs or symptoms thereof. Therefore, harassment (including verbal, visual or physical conduct) on any of these bases is also prohibited.”

WHEREAS, a hearing on said charges were held before the Police Commission pursuant to section 8.343 of the Charter of the City and County of San Francisco on September 21, 2010, October 5, 2010, and on February 16, 2011, the matter was submitted to the Police Commission for decision; and

RESOLVED, that the Police Commission hereby denies Motions to Dismiss;

FURTHER RESOLVED, that the Police Commission finds the following:

SPECIFICATION NO. 1 - Sustained

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

SPECIFICATION NO. 2 - Sustained on six videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

SPECIFICATION NO. 3 - Sustained on eight videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

SPECIFICATION NO. 4 - Sustained on two videos

AYES: Commissioners Marshall, Slaughter, Chan, Kingsley, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

SPECIFICATION NO. 5 - Not sustained

AYES: Commissioners Chan, Kingsley  
NAYS: Commissioners Marshall, Slaughter, Hammer  
RECUSED: Commissioners Mazzucco, DeJesus

FURTHER RESOLVED, that consistent with the Commission's duty to protect the health, safety, and general welfare of the citizens of the City and County of San Francisco and the public in general, and in order to promote efficiency and discipline in the San Francisco Police Department, the Police Commission orders that Officer James Lewis, Star No. 1023, be suspended for three hundred sixty (360) days, representing ninety (90) days for each sustained specifications; and

FURTHER RESOLVED, that said three hundred sixty (360) days suspension shall commence immediately, starting on Thursday, February 17, 2011, at 0001 hours, and terminate on Sunday, February 12, 2012, at 2400 hours.

(These proceedings were taken in shorthand form by Ms. Patricia Rosinski, CSR., Star Reporting)

ADJOURNMENT

Motion by Commissioner Marshall, second by Commissioner Chan. Approved 5-0.

Thereafter, the meeting was adjourned at 11:24 p.m.

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Lieutenant Timothy Falvey  
Secretary  
San Francisco Police Commission

1071/rct