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>> Ed Rast: We request you fill out a speaker card, with your name, it's not required. Those who parked in the city garage the validation machine is in the hall. Make sure the microphone is close to your mouth so we can hear you and the videotape can pick it up.
>> Ed Rast: All right, we're going to call the Sunshine Reform Task Force meeting for Thursday, October 4th, 2007, to order. And the first agenda item is approval of the September 20th, 2007, minutes. Do we have a motion? Bob made the motion and the motion was seconded. Approval of the minutes, any comments? Anybody need any more time to read it? Okay. On the minutes, on the motion to accept the minutes, all in favor? [ayes]
>> Ed Rast: Opposed, abstentions. Nancy abstains. Comments from the chair? I think the first thing is Tom Manheim had a brief announcement.
>> Tom Manheim: Thank you, chair member Rast. I just want to let the task force know, Sheila Tucker is with us today. She's here in spirit, I suspect she's actually watching, knowing Sheila. She is home on bed rest. She had some complications with her pregnancy. But she is fine and she is still engaged and assisting that she be -- insisting she be able to work at home while she's at bed rest. She'll continue to be involved, but I wanted to let you know why she wasn't here tonight.
>> Ed Rast: Thank you, Tom. For the task force purposes, Eva will be picking up Sheila's role?
>> Tom Manheim: Yes, thank you. Eva will pick up Sheila's role and helping guide us through the agenda.
>> Ed Rast: Comments from the chair, agenda item 2, comments from the chair. My understanding from the various subcommittees is that we're making a couple of them are close to finishing up with some editorial changes. And others are making good progress. We'll have a report on that a little bit later on. So short comments from the chair tonight. Review of the meeting minutes -- I'm sorry, meeting materials, Eva.
>> The agenda is straightforward. At the rules and open government committee meeting, the council not to be heard before 2:30 on October 31st. The committee also approved a schedule to review the remaining provisions of the face 1 report. That includes two meetings for public meeting and one meeting for closed session. The meeting dates shifted back one week from what's currently listed on the staff memo. The meeting dates are October 17th, 24th, and the 31st. And those items are not to be heard before 3:00 p.m. and the discussion will not go beyond 4:00 p.m.
>> Ed Rast: My understanding is that the rules and open government agendized all the public meeting ones so we can move forward if it goes quickly. Karl, part of the reason that we're delaying that one item to the 31st is because Karl will be able -- he cannot attend until then, am I correct?
>> Karl Hoffower: I was there until yesterday.
>> Tom Manheim: The desire was to consolidate the closed session recording item with the closed session item that the rules committee will consider as a part of the feedback that we've been getting from the different entities. So we are trying to consolidate those closed session items on to the October 31st meeting. But the rest of the public meeting items, the remaining items in phase 1 would go through as expeditiously as Rules can deal with them.
>> Ed Rast: Thank you.
>> One final item. Staff distributed an info memo regarding the implementation of phase one yesterday. We'll be sure to get that out to the task force tomorrow morning.
>> Ed Rast: Okay, that completes that item and the next item is item 4, the master calendar. Tom, go ahead.
>> Tom Manheim: I was going to introduce the master calendar item.
>> Ed Rast: The long awaited master calendar.
>> Tom Manheim: The long awaited master calendar. This is a much more complicated project than anyone would imagine. Looks like we're doing a little bit of a quick shift here. So you can view the master calendar. Howard yielding who is the person doing the shift is the person who's been doing it. It's really been an extraordinary effort on his part. I think I'm going to -- yeah.
>> That laptop supposed to be wireless?
>> While they're doing that Mr. Chair, I apologize, I was asking a person in the audience a question so I missed the vote. I wanted to make sure it was on record that I abstained from approval of the minutes. I was watching on web cam while I was in Florida but --
>> Tom Manheim: While Howard is booting up his computer, his nonstandard computer, I might add -- not city issued computer. Anyway, he will be -- he has really done a terrific job. And I want to compliment him and tell you a little bit about what's -- what he has done. When the City Council heard -- made

decisions about which items to refer to the task force from their original 22 sunshine reform proposals, the master calendar was something they did not refer to you because they just said just go ahead and do it. They wanted to get it up as quickly as possible. It's been a much more complicated project than we imagined, I think, in the beginning, because it not only was a technology challenge but also I think for the organization needing to work through, which meetings were covered, which were appropriate to be on a master calendar, which would be more appropriate on a calendar hosted somewhere else. And I think we had some discussions about that earlier in the year. So the -- what he is going to show you is the -- what we will actually be unveiling officially and may be live on our Website next week, is our expected release date. This is a calendar that will show all of the City's official meetings. As we start, it will be showing meetings that are primarily the City Council meetings, committee meetings, the boards, commissions, advisory boards. And we'll leave it at that point, probably for the first few months, as we work out the kinks, as inevitably there will be kinks. But eventually this will also be a site where ground breakings and ribbon cuttings and community meetings, when staff is going out to the community to get input on things, all of those kinds of meetings, will be posted on the calendar. So for the first time, everybody in the community will be able to go to one central calendar, and actually find out all the meetings that are -- the city is involved with. So with that, I'm going to turn it over to Howard. He's going to walk you through maybe a ten-minute presentation, maybe 15 minutes. I should also reintroduce Dottie Disher, Dottie is the person who will operationally going to make it happen. Howard is the tech guy and Dottie will make it all get posted.
>> Corral the users.
>> Herd the cats.
>> Thanks, Tom. My skills with the microphone are not any better than moving laptops. Bear with me if my voice goes in and out. This is the main page for the master calendar. From here you can access any citien event that's been entered into the calendar. At some point in the future, that's basically anything that's sponsored by the city. For the time being Tom said we're doing Brown Acted meetings. But you can get to anything from this one single page. It's a fully ADA compliant application. It's something the public can use intuitively. Something that doesn't require a whole lot of effort to learn to use and get good at. For instance if I want to find out what's going to happen on October the 16th, I just click on okay the 16th. And I get a short list of somewhat detailed list of all the meetings that are happening on that particular day. If I click on one of them, I get a more detailed page that explains where the meeting is. This is obviously a City Council meeting. There would be too many details to type out on this one page, so we have included a link here to the council agenda.
>> Tom Manheim: It's a Mac. [laughter]
>> Okay. There's also a link to Google maps so you can get directions to City Hall. There's a downloadable attachment. That can give you a quick map of City Hall, explain how to get to council chambers, or where to enter the building. So anyway, it's all right here on this one page for this particular event. And each event has an event details page very much like this one. Dottie's brought to my attention that when you click on an event, down here at the bottom is another entry for all of the recurring events. So these would be a similar entry for every City Council meeting that's occurring in the future. If we go back to the main page, there's another way that I can find events and that is just to simply search. If I type in a particular key word, what comes back is the same calendar, it's just now eliminated all the stuff that I'm not interested in. Things that don't have this particular key word anywhere on the details page.
>> Tom Manheim: Howard, could you go back to that page for one second? I want to point this out. If you put the cursor over it, you automatically get a fly-out page of all the details. Including contacts for the meetings.
>> Ken Podgorsek: That's nice.
>> Ed Rast: One of our meeting recommendations.
>> One other thing here you'll notice some of these events have lines drawn through them. That's because they've been cancelled. If you go over those, it clearly shows the event has been cancelled. We think that may save some people some heartache by coming to City Hall and realizing that the event they planned to come to is no longer taking place.
>> Wish you could do that for agenda items. [laughter] A
>> There's some cool things I wanted really quickly to show you that this can done. One is, you can actually subscribe to these calendars. We've divvied them up into categories. If I'm only interested in City Council meetings I can select that category. I type in my e-mail address, click subscribe, and any time

there's a new event that's entered in that category or any time an existing event is changed, I'll get an e-mail that tells me about the changes or the new event.
>> Do you have an example of that what the detail is when you get the e-mail? You know me. Glutton for punishment.
>> I'll go ahead and subscribe right now.
>> Make sure you put your e-mail in there too.
>> Ken Podgorsek: This is really cool.
>> Ed Rast: So is that one page going to be just for the calendar or for all e-mail lists for the city?
>> Tom Manheim: This is just for the calendar. It's directly linked into the calendar. So it basically monitors all of the meetings that are on the calendar, and looks for changes, and would send them out, or when a new meeting is added.
>> Although this is the e-mail they'll get when they subscribe. It basically says, you subscribed to the calendar at City of San José. Did you really mean to do this? And if you did -- [laughter]
>> I can really give this to you, you have to accept it.
>> Tom Manheim: That's to keep the stammers away.
>> And if you type in the wrong address, you might make somebody mad. This is to unsubscribe. I can't give you an example of a changed event, I haven't the time to do that, you'd all go to sleep. Suffice it to say it is a simple easy to remember text message to describe, gives you a link, tells you where to go look to see what happened or where it is now.
>> That's great.
>> Ed Rast: Say you end up signing up for four or five of these, later on your e-mail address changes, later you unsubscribe and resubscribe with your new address?
>> Yes. That's pretty easy to do. If I go click here, there's nothing here yet because I haven't accepted. But you are right, you would edit your subscriptions and change your e-mail address.
>> Ed Rast: You can change on your subscriptions or you would have to unsubscribe and then resubscribe?
>> Would you have to unsubscribe and then resubscribe with the new e-mail address.
>> Ken Podgorsek: Better get a new box.
>> You can also just sign up for e-mail notifications. Which is different from a subscription, because the e-mail notifications are only tied to this one event. So if I want to get a reminder that the event is taking place, I put in my e-mail address, I tell it how many hours or days before the event I want to get the reminder, and hit "set reminder" and it's in the system and you'll get an e-mail a few hours before this event starts. You can also e-mail it to a friend, print it out, or add this event to your personal calendar. Which it does via an ICS file which is something that works with most e-mail programs, outlook, the I-Cal in my Mac, you can use it in google mail and Yahoo. It is a very versatile way to add an event to a calendar. There's one more thing I think warrants some notice. There's another link you can click on that gives you a quick list of all the different categories I mentioned earlier. City Council meetings, council committees, redevelopment, et cetera. If I clear all these and I'm only interested in administrative meetings, God knows why, but I click that and now I get the same exact calendar. It just has the events that I'm interested in. I think -- all right. Another thing, thank you, Dottie. Basically, anything you hover over, on any of these pages, you'll get a little more detail about what they are.
>> Is that also true when you're on the main calendar, it says five other events, it spreads out a list of all those five?
>> No, you have to click on that one.
>> Tom Manheim: The system, while Howard is working on this, the system is tied to the city's in-house reservation system. When I say Howard has been a magician about this, the little image you get from that software package was he spent a lot of time make it graphically look like a calendar with the graphic interfaces so that it really, I think, work the way a calendar would look, to keep people informed.
>> That's the logical thing of Dottie herding the cats. About half to two-thirds of the events are in this facility. A number of them are offsite and we've got to work to train those users to enter their meetings and us have oversight to be sure it's working the way we want it to. So there's two pieces to it.
>> Tom Manheim: When we post it, we'll have a caveat in place, so people will understand it's a work in progress.
>> Anything else, Howard?
>> That's a pretty good overview. Were there any questions? I can certainly go into more detail on some of these things, if you like.

>> Tom Manheim: We have a fairly full agenda so, if people have questions we'd be happy to answer them but --
>> Ed Rast: Dave.
>> Dave Zenker: This is maybe a question for Tom. Do you have a go-to date?
>> Tom Manheim: We are working on it. For those of you who haven't looked at the calendar, they default to the earliest date. That is a function of the software packages we're working with. We have been trying to change that. What I've asked is that the calendars be set up, so it automatically goes to the most recent date and then you can work back. Yeah, we're working on it.
>> Ed Rast: Additional questions? Thank you very much. I think we all look forward to being able to utilize the master calendar.
>> Thank you for your time.
>> Tom Manheim: Thank you, Howard.
>> Just real quick. The Mac authentic, I did want to demonstrate that the program also is friendly to different operating systems, and you'll notice I was running it on firefox. It works equally well with Internet explorer, or netscape or any of the Internet browsers that anyone would want to use.
>> Ed Rast: Next agenda item, law enforcement, public records. Bert Robinson.
>> Bert Robinson: Here we go. Let me start this off by explaining a little bit about the things that happened between our public meeting, two weeks ago and tonight's hearing. Those of you who attended the public hearing or those of you who watched it on webcast know that we got a lot of useful comments about opening up police records and it gave a lot of grist for the subcommittee to go back and look at our proposals and look at ways the proposals might be modified to handle the concerns raised by members of the public and by the police department. And so we did that on Monday. Because we did that on Monday, and because today is Thursday, we weren't able to do that in a way that enabled us to get some formal recommendations to the task force in appropriate time for consideration at this meeting. So what I'm going to try to do instead, because I think it's the only way we can do this, is go through, as -- I'm going to go through briefly right now some of the -- generally some of the modifications that we're going to be offering. And then, as we go through the proposal from the subcommittee this evening, on police records, we can go through some of these in more detail. I think there's also a possibility that some of you will have amendments to offer from the floor that may be able to address some specific concerns that you had with the proposal. But I feel pretty confident as do the members of the subcommittee, that while we don't have a perfect proposal here, we do have a proposal that can be work with and achieve the results I think we all want to achieve. So what I'm going to do, what I'm planning to do first here in just a moment is to summarize quickly what it is we did at this meeting that you don't have in front of you, so you'll have to remember exactly what I say. And then we'll go through the proposal that you do have in front of you. And I'm going to try to break that in pieces in the presentation to make it a little bit more manageable for us as we discuss. And then hopefully we can go through and vote. What I think is going to need to happen, and I'm told that this has happened with more complicated proposals that have come to the task force in the past, I think prior to my joining the task force, is that we'll want to go through and we'll want to make -- we'll want to go through the specific language we do have, we'll want to make modifications, and we'll want to have closer to final language worked on by Lisa Herrick, probably, and come forward for sign-off. But by then the big issues will hopefully be out of the way. If that sounds like a reasonable way to proceed for everybody, let me quickly go through some of the things that we'll be offering you tonight as proposed modifications to our original proposal. There was a lot of talk about the issue of ongoing investigations and some language that was in our original proposal that specified that the only way to exempt a piece of information from disclosure would be if it would compromise an investigation, quote, where the prospect of progression accuse was likely. It was suggested by a number of people, including Ed Davis, that this language was unworkable. And in the face of such persuasive argument we're going to be suggesting dropping that language. Another thing that came up at the meeting that had come up, and we had struggled at the subcommittee, prior to the meeting, so this was no surprise to us, how do you determine when the investigation is closed and the information is safe to release? We pretty much have agreed among ourselves that this is really not an issue within the expertise of the subcommittee to come to a final conclusion on. So our suggestion on that one is going to be that we -- the task force direct the subcommittee to work with the police department and see whether a workable definition of closed investigations can be devised for inclusion when we give final approval to this document. Gary Kirby for some reason decided to go fishing on Monday rather than join yet another subcommittee meeting, Gary. [laughter]

>> Tom Manheim: Let the record show, he is back tonight.
>> Bert Robinson: And since he has attended possibly more subcommittee meetings than any other subcommittee member, we'll give him a pass. But we didn't get a chance to talk to Gary about this, for completely understandable reasons, we hope this will be acceptable to him. The issue of information contained in reports involving unsubstantiated allegations, we're going to be suggesting that we provide language, this is essentially who do you think it was who burglarized your house? I'm sure it was my neighbor, he is such a jerk. The police talk to the neighbor, he has an alibi, he is released, we'll be recommending that language be devised that would allow that information to be redacted. Adult witnesses. This is an issue that came up that I think a lot of appropriate concern was expressed before the subcommittee. And I think more powerfully really, frankly, in our public hearing. The concern that the police department raised that we found was a powerful concern, that people think if there's any risk that they're going to be endangered by their release of their name to the public, if they give information, that is the last thing that we want to do. So we are actually taking a recommendation here in the police department, in the memo they sent to the task force, and suggesting that we come up with language that allows the identities of adult witnesses to be redacted, unless the witness consents to the release of his or her name. And then on the question of victims, this is an issue that again, we heard a lot of testimony about before the -- in the public hearing. One thing that I think is important to point out here is that in terms of the release of victim identity information, that the proposal from the subcommittee is exactly in line with state law. We have not changed the state law -- and this is not commonly understood, I think, or not universally understood, state law requires the release of a victim's name and age with some exceptions, unless it is necessary to protect the safety of the victim. We're not changing that protocol. We're not trying to make that more permissive, if you will. What state law does allow, the name of a victim can be withheld, at the victim's request, in certain crimes, sex crimes, hate crimes, stalking. That is something the subcommittee is not changing. Those are state law, although state law often says it is a difficult law for the victim, the type of crime. We understand that, that is an issue that people may be suggesting that we're changing the way that information is being released, we really aren't changing that. The one thing I think upon consideration that we felt we were changing in a way that we weren't all comfortable with as we thought it through, had to do with the area of a closed investigation or an unsuccessful investigation. And our thinking there was, that in that event, in when a victim provides information on a crime, even if the identity of the victim is kept confidential, that's going to change because the court process is a public process. Our feeling was, however, that because we're looking at the possibility of opening up records of closed investigations, that in that case, that the police department ought to be allowed to withhold material about the victim that would be invasive of the victim's privacy, unless the victim consents to its release. So those are the five suggestions that we made as a group. With that said, I can now if we're ready sort of plunge into the proposal. One thing, if people think this would be useful, is it worthwhile at all to give another quick summary of what state law currently is in this regard, and what the subcommittee is proposing? Or does everyone feel like they're up on that at this point?
>> What is penal code section number -- [laughter]
>> Bert Robinson: All right. I'm not hearing an outcry for us to repeat our presentation from last time.
>> Ed Rast: Dave.
>> Bert Robinson: Anybody else? Trixie.
>> Trixie Johnson: It just raises a question when we come to doing a final report, how we present it. It's important for people to know what the state law is and how we're differing from it. I think that needs to be really clear. This is state law. We're proposing this change. And that is the way it should be presented, so it's really clear to people when we're making a difference.
>> Bert Robinson: Are you asking that we do that now?
>> Trixie Johnson: Not now, but when the final report comes out, the way the language is presented, should say, here's what the law is now, here's what we're deleting, changing to make different. And I had one more question on a closed investigation. Did you discuss allowing the please to keep back maybe one item or two in their judgment, that only a perpetrator would know? We talked about the responsibility that a closed case just sits there and ten years later, something happens that triggers a remembrance, and you go back. And if you disclose that, that perpetrator may have covered their tracks because they know they can be identified with that.
>> Bert Robinson: You know, I think it's exactly that reason that we're directing the task force to work closer with the police department on closed investigations. That's an excellent point and a point that came

up. We need to try to determine whether there's some way to define a closed investigation that can get us past that problem. Because what you're suggesting gets to the issue of when is an investigation really closed? Closed in a way that it's not going to be reopened. Or that material that's going to come out of the investigation is not going to compromise the possibility that this crime will ever be solved. And that is what we need to do more work on. And that is a situation where we need the expertise of the police department to help us with.
>> Ed Rast: Ed Davis.
>> Ed Davis: Trixie, let me echo what Trixie said. I think that's a very good idea to make though differentiations between how what the task force is doing changes or differs from state law. But in addition to that, one of the things that the work of Bert's subcommittee has done is even when they're parallelling state law, 6254 (f) of the public records act, and this is saying some, is probably the most opaque statutory statement I have ever dealt with. And so simply by restating what 6254 (f) requires, in language that a normal person can understand, is a significant advance. Because a lot of the problems we've had in the past with various police departments is not that they necessarily were trying to withhold information they knew should be disclosed. Simply, they didn't understand it, either. Or it wasn't clear to the person who was working with it. So I think in the presentation, when we present this information to the City Council, to emphasize that one of the things that we have done is to make something incredibly opaque clearer, is going to be very valuable.
>> Ed Rast: Dave Zenker.
>> Dave Zenker: Could you explain this a little bit clearer?
>> Bert Robinson: What we're suggesting is working with a suggestion that was made by the police department. We already had incorporated language in our proposal that allowed the withholding of the names of juvenile witnesses. And the suggestion from the Police Department was, we should do it for all witnesses. The confusion was intended for this kind of circumstance. It is not always the case that a witness will care if his or her name is released. The circumstances where we all think, oh, my gosh, we don't want to release the adult witness's name. When you think of the circumstances, it's a gang-related crime. So what we're suggesting is basically, for those of you who are familiar with sign-ins on the Internet, is basically the opt-in, as opposed to the opt-out. Which says the witness's name would be released only if the witness has said it's okay. If the witness hasn't said anything, if for some reason they forgot to ask, it doesn't get released. The adult witness's name does not get released with the release of the other material unless the witness as said, "I'm fine with that."
>> Ed Rast: Bert, can you clarify, when you are talking about victims under state law, sexual crimes and I believe some others, you say the witness can request to have their name withheld. Because the victim is already traumatized by that crime --
>> That's state law.
>> Bert Robinson: I think you make a good point. That is the way it is in state law. I will tell you -- I shouldn't say that. I don't think they ask, in practice, I will say.
>> Ed Rast: That's my next question.
>> Bert Robinson: For my newspaper's standpoint, we don't print the names of victims of sex crimes, so that's never an issue for us. If the cops don't give us a name, we don't say, "did the victim say they wanted their name withheld?" Even though that's what state law says has to happen. At the request of the victim or at that time request of the victim's parent or guardian if the victim is a minor. There's nothing we can do about that.
>> Ed Rast: Tom Manheim.
>> Tom Manheim: I just wanted to add, it's true the Mercury News does not print those within the news business, that standard that used to be affirmed by everybody, is not --
>> Bert Robinson: I've never seen the police give that out that I can recall.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: In terms of a sexual assault incident, what about the rest of the information regarding the incident, as opposed to simply the name of the victim? Would a victim be able to request that the entire incident report not be made public, because they fear that it's possible from the rest of the information in the report to determine who the victim was from what happened to them?
>> Bert Robinson: That's not something we've considered. That's something that certainly could be considered. The one thing I would mention on that is state law does require the release of the factual circumstances, without any exception for the type of crime. But if the task force wants to consider, in the event of a sexual assault or some other kind of sex crime giving the victim the ability to request that the

incident report or that maybe it's not the entire incident report, Bob. Maybe it's the victim's description of the incident as contained in the incident report, or the information that is detailing the location of the information in the incident report, that is something we could probably disclose. That is something probably that we would need to look at in terms of the requirements of State law. On the places where we're going beyond state law say we want to ratchet it back to these kinds of crimes to only what state law requires, I think we would have the power to do that, absolutely. Anybody else? Or shall we just -- any other questions, or we can just jump in here. Let me go ahead then, into section -- this section which you have in front of you, section 5.1, public information that must be disclosed, 5.11, law enforcement information,5.11.110. Let me say something about this discussion we are about to have because I struggled about how we would do this. In some other issues that we've considered, you can actually go through things sequentially and vote on them without worrying about what's going to happen to the next issue that we're going to take up. You don't have to say, "oh, I'm only in favor of number 2 if number 3 is going to pass. Therefore I can't vote on number 2. I think this one is different. It's different in this way. I don't know, most of us, I think everyone on the subcommittee would say, we're willing to -- we're in favor of releasing police reports only if we understand what's allowed to be redacted. Because we don't think everything in there should be released. A, the way this is constructed, part A here, basically, specifies what ought to be released. Part -- A and B specify that in 010. 020 says when things ought to be released, which places some restrictions on timing, in order to protect investigations, and then the third part, 030 says, here's what can be redacted. So the question is, since they all work together in that way, what's a way that we can discuss this piece by piece, without having to discuss the whole thing? Which I feared would be a little bit disorganized for us. So here's the suggestion that I would make. That we start off, we put this thing on the floor in the form of a motion, that we start off with the discussion of the issue raised by 010, the issue being basically are you willing, under any circumstances, to release -- to stipulate in the sunshine law that these particular police records are public records? Because that will allow us I think to have a conversation about the overarching issue that's before us. And that's an issue, let me stress, I know Trixie is probably aware of this, that's an area where we are deviating from state law. State law does not require -- state law treats police records completely different from the records of any other public agency. There's no requirement to release primary documents. My thinking is we can have that threshold conversation and we can move into the details. It's probably not a good idea to vote on the threshold conversation, do you want to make these public or not, until we are comfortable with what the details are, the protections that the task force is going to approve. So I would suggest we have that threshold conversation, we then go into the details and then we loop back around and vote on the whole thing. But I think as we go through the details we're going to have to have a series of votes because there's going to be some amendments that will be offered as part of that. So I think we'll amend -- we will put a motion on the floor, we'll amend the motion as we go through and then come back at the end and vote on the whole motion. Does that make sense? Does everybody understand what I'm talking about? Do I understand what I'm talking about? Okay. Years of training has paid off. So let's dive into the first part of it here. First part of it here let me start off by saying, we've got two different issues here. We've got reports, police reports, domestic violence reports, lists provided to us by the police department as lists filled out by the police department. That's the first issue. The second issue is investigatory reports. The stuff of the trial if the case is prosecuted. And again, because everything becomes public in court when it goes into court, often become public there except the things that don't end up being part of the court case. So I would -- our suggestion here, on A, is a suggestion that we believe will create some new transparency and we think some new trust between the police department and the citizens of San José that we think will also do a lot for the residents of San José, in terms of understanding crime and its impact on the community, and the way crime -- the way crime is enforced and the way it's prevented. So we're offering that as a suggestion. This is something that is not done on any regular basis, in any other locality in California that we're aware of. Although state law gives the police the discretion to do this now. And many of these records do become public had this goes into court. In my years of a journalist, all of these records have been from a court file, because I found them in a court feel and I read through them. Many other states however, make these kinds of records. I've got, some of you, they were submitted in the packet last time. Florida, Texas, Ohio. It's not an uncommon thing to make these kinds of records public. But it would be unusual in the state of California to do that. Ed.
>> Ed Davis: I just have a question in terms of the biggest departure here, from the California public records act, is the investigatory part of it. Whether we need the definition as broad as it is, investigatory records would include for instance in a rape case, the medical information, in a murder it would include

autopsies, it would include all sorts of forensic reports, ballistics, scientific reports, all interviews of potential witnesses, and in that type of thing. I mean, the list is really very, very extensive. Far beyond what you would find in a police report. So I just want to make sure that that is, A, the intent of the subcommittee, and B, that that's the type of thing that the task force is interested in making public ultimately.
>> Bert Robinson: But as you know, the material you just described, becomes public when the case goes to court. That kind of material, ballistics report, a medical report, a rape exam, all comes into the court process if that case is prosecuted. So while it's a departure of state law in terms of a requirement, as a practical matter, when a case is prosecuted, this was an issue that we discussed on Monday. I don't think the police department, if a case is prosecuted, the police department isn't going to end up handing that stuff out, it's going to come out through a court process. A police report doesn't get released when an investigation is ongoing. In fact we don't suggest in the timing of this that that should be possible. It's different in type. But for cases that are prosecuted, I don't think it's different in actuality. Where it would be different is when a case is closed. Somebody is accused of murder, they're arrested, the case is dropped. If a person said, what was that about? I want to see a file.
>> Ed Davis: If this is different coming from me, arguing the other side of the fence, but somewhere in the neighborhood of 98% of all criminal cases that have been charged don't go to trial. So in 98% of the cases the things we're talking about, you know like the medical reports, and those types of things, never are made public, because there's not a trial. They aren't generally filed in connection with the pretrial proceedings. They may appear in trial when they are introduced. You may very well find a disparity between what this may require be made public at some stage and what actually would become public if indeed there was a trial.
>> Bert Robinson: But the material would have become public had there been a trial.
>> Ed Davis: There is another category too, for example, witness statements. Usually you don't simply introduce the witness statement, even then it might not be introduced into evidence. There still may be a category of evidence even if there's a trial that won't be part of the public record for the trial. So really, this is a big step here that has to be thought through very carefully. I'm very comfortable with the police report part of it and you've got the two exceptions, if it would endanger the safety of someone and if it would jeopardize the safety of someone. With the investigative records or investigative reports, what would inform the task force, if there are other states that release investigatory records, and we can establish a comfort level with that, I think that would be a very strong indicator that you're not going to have a whole lot of problems if you release investigative records.
>> Bert Robinson: Okay, thanks Ed. Karl.
>> Karl Hoffower: I have a question of Mr. Davis. You're saying that 98% of these cases get settled out of court. You're talking about court correct?
>> Ed Davis: Yes,.
>> Karl Hoffower: That's a difference from what we're talking about which is any sort of incident that was documented in a report. And if you look at it from that point of view, that's a little bit different of a breakdown. Because those 98% that don't go to a full trial are still being prosecuted.
>> Ed Davis: I understand. The distinction I was trying to make is if you are assuming that it's okay to release these investigative records because they're going to be part of a court record and thus made available anyway, I'm saying that's not necessarily going to be true. Because 98% of the time it's not going to be part of a public record, part of a court file. And so 98% of the time you wouldn't otherwise get access to it.
>> Karl Hoffower: The only reason you haven't gotten access to it is because there is some sort of a compromise. There was an intent to make it part of the court record. It's that the defendant and the prosecution work out some kind of compromise or plea deal.
>> Ed Davis: Plea deal.
>> Karl Hoffower: There is the intent to enter it into the record, but to save time and money and court expenses they decide to make a plea deal.
>> Ed Davis: I'm not sure that was the intent. When I was a prosecutor, it never crossed my mind that I would enter into this plea deal, because otherwise I would enter this stuff into the court record, that's not generally a decision that goes into entering a plea bargain.
>> Karl Hoffower: Your spent is to bring this fully into trial, and you would be intending to bring these records into the court file. That's a necessary process.
>> Ed Davis: Not necessarily all of them but some of them, yes.

>> Karl Hoffower: My point to bring this up is just because 98% of them settle out of court doesn't mean that it isn't on the tracks to send that information into a court file. Which was kind of what I was kind of getting from that, saying 98% of this will never see the light of day in a courtroom. That isn't because that wasn't your intent, it's just before that information gets put into the file for the trial, you get a plea deal and you close the case.
>> Ed Rast: If the case is prosecuted, isn't a plea deal essentially prosecution and it's entered in?
>> Ed Davis: The judge enters a conviction. Again my point is if the assumption is this information will be made public anyway, eventually, that that assumption is not going to be true.
>> Ed Rast: Ken.
>> Ken Podgorsek: I was wondering if I could -- I wanted to ask a very narrow question, and I wondered Bert if I could ask captain Kirby a question.
>> Bert Robinson: Absolutely.
>> Ken Podgorsek: Captain Kirby. My question is regarding investigatory records, I want to keep this question very narrow, whether these cases have been prosecuted through a plea deal or through the jury. What reason would the police department have for releasing investigatory reports?
>> Not all the ancillary evidence that Mr. Davis was talking about?
>> You mean records or reports?
>> That's important.
>> Ken Podgorsek: That's why I'm trying to understand this. And so let's say, let's take it to the extreme. Let's take it to what Mr. Davis is talking about.
>> And you'd like to know what the police objection is to that statement?
>> Ken Podgorsek: In a successful prosecution.
>> And I apologize for not being attentive when you called me up. I was talking to my cohort DA Joan Mccracken on this very subject. In matters that do go to trial, many pieces of evidence are barred from being presented from evidence by a judge, such as a photograph of bloody tissue damage may be too prejudicial for the jury to see, thus it is in the case file, not being able to be released during the court proceedings, thus it is in the case file. Statements of hearsay, proven to be unfounded, not brought forward as evidence to the prosecution. The public would have the privilege of seeing for the purposes of conviction would be limited. But what the public would be able to see at the conclusion of that case would be expanded beyond normalcy because according to your definition you would have access to everything, even though it wasn't used in the prosecution, it was determined to be too prejudicial, so everybody would have access to that. That would be one major objection we would have.
>> Ken Podgorsek: Let me ask of the committee as a whole, is there a way for you to write language to exclude information, just a thought, exclude information that would not normally be presented to a jury?
>> Bert Robinson: I'm sure that in the case of something that went to trial, you could say, the only information that is going to become public is the information that went before the jury. The only thing I would just -- I would just throw up here because I think it's worth considering is this. Let's talk about a particular item that often gets excluded from court cases. A defendant confesses to a crime. In pretrial motions, there is a determination that, in fact, because of some particular issue surrounding the confession, maybe the defendant wasn't Mirandized properly, the confession won't be allowed to hear that confession at trial the jury would be prejudiced by that confession, it is felt. The case goes to trial and the jury acquits or convicts, the confession becomes public after that process is over. The question that I would pose is, is that a problem? It hasn't -- you haven't tainted the jury. The proceeding is over. And the only issue that I would sort of throw out there is, the court process and the public process aren't the same process. It is something -- we could absolutely craft language, and if the task force wants to suggest that, we could absolutely craft language on a case that goes to trial to say, the only thing that becomes public is what becomes public at trial. It gets difficult when you're talking about cases that didn't go to trial, that were -- that were settled, that were pled out. But you know, it's just an issue of, is the -- should the standard be what the jury heard?
>> Ed Rast: Ed Davis and Bob Brownstein.
>> Ed Davis: I'm glad Ed brought this up, I disagree with him somewhat, in making a distinction between what the jury sees and what's part of the court record. That's probably a battle we don't want to get into. But another issue is the question of when investigative records become public. The way I read this Bert, is you don't wait until after the trial, or a jury's been empaneled, do you?
>> Bert Robinson: Are you reading 020 (b)?

>> I went by what Lisa was saying and what captain Kirby was saying, in terms of admissible evidence I don't think should be the standard.
>> Bert Robinson: Could you write language that would make admissible evidence the standard? The answer is, you could certainly write that for a case that goes to trial. You're saying, you don't think that should be the standard.
>> Ed Davis: No. Because say you have a confession that is in your example, Bert, that was excluded at trial because it was coerced. That's that still is part of the court record and under the law you are entitled, if it is part of the court record, the public is entitled to access to that information. Even though the jury didn't see it the public still has the right to see it. So by crafting a standard that applies only to records that are admitted in the trial, you're actually narrowing what the law says.
>> Bert Robinson: We wouldn't have the power to do that, in the case you just talked about, nothing we could do if the confession is in the court record could prevent that confession from being released. The standard is not what was admissible at trial, rather, what was in the court record.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: There is two points I want to talk about. One flows from the prior conversation and one is a distinct point relevant to this section, records prepared by law enforcement. First, on the issue of investigative records, I'm not -- lean closer. I'm not very persuaded that the standard here should be what might have been released in court or not. The basic way I have been approaching this issue at all is, we need to achieve a balance between, on the one hand, I think a broadly held view that in our system, the government doesn't get to decide for itself whether or not it's doing a good job. The government has to allow the public to make the decision whether it's doing a good job. On the other hand, the interest we have in protecting people's privacy and protecting the capacity of law enforcement agencies that have a unique role in society to be able to do that job effectively. Now as I try to apply that balancing test, I have a host of questions associated with that laundry list of records that Ed Davis just mentioned. I'm not sure to what extent they're useful in helping us determine whether or not the police department is doing a good job. And I can see situations in which they could be a real problem in terms of privacy, at least, and possibly effectiveness of the agency doing its work. I hate to ask the subcommittee which has done a lot of work, to do more work, but I'm going to be very uncomfortable voting in favor of this unless I get a sense, if we're talking about the multiplicity of these kinds of records, whether there isn't some kind of way to say some of these lean more towards, in my balancing test, that they really are important in terms of whether or not the department is doing a good job, versus others that doesn't really lend themselves to that, but could very much be a problem in terms of the other factors I'm trying to balance. For example, I could consider autopsy reports being made public as being extremely intrusive to a family. And you know, how much it helps in terms of evaluating the police department's performance, is something, somebody would have to make that case to me. So that's my overall position on investigatory reports. And I hope as we move forward in this debate I can get some additional information that will help me achieve some sense of where a reasonable end point is on that. On this overall section, I do want to propose an addition to A 1 and 2, I wanted to suggest 3, and that is, report of sexual assaults not be released, except in the case of state law and except that the police determine that the release of information is necessary, either to further an investigation or to protect the public. So that would be a modification that I would make on the top part, the A part.
>> Bert Robinson: Okay, Bob, I think organizationally, there are different places that that might go. Since what you're talking about now I think is something that is specifying a particular sort of crime, when the way this is organized, A is I think talking about individual reports. What you're talking about is a police report having to do with a sexual assault.
>> Bob Brownstein: Right.
>> Bert Robinson: So how we would organize that, I mean --
>> Bob Brownstein: I feel it would fit there because it looked like there was similar things under 1 and 2.
>> Bert Robinson: That's fine. I think the best way we could consider that is not to specify where it would go organizationally but is that an issue we think as a task force it's a good idea.
>> Bob Brownstein: The substantive point is the one I wanted to put in there, and I thought it fit in there.
>> Let me make a comment to the one question you asked. I think our intent proves some of the actions, to come up with a list of things that can be used to protect information that shouldn't be released. So some of the concerns that you raised about things like autopsy reports, as we get into our discussion about what kinds of redactions are we comfortable with are possibly issues that can be handled in that way.

>> Bob Brownstein: I appreciate that.
>> Bert Robinson: Items that invade the privacy of a victim or the victim's family.
>> Bob Brownstein: I appreciate that, many of the things regarding investigatory records, some of my concerns could be met on the redactions point. On the sexual assault point, I think there are certain areas where my position is going to be, the stakes are so high, or the human consequences are so severe, that you want to have language and a direction that makes it unquestionably clear to people who are involved in this process, the degree of protection they're going to get. And one or two others I'll bring up later. There are certain circumstances write don't want people to have to wonder, am I going to be in the report, or not? Is it going to be public, or not? You know, I never got a master's degree in jurisprudence, and I can't tell. There are some areas I'm going to err on side of people telling me, you're going to be okay. This is never going to be in the report unless there's a trial and that process goes forward.
>> Speaking for the subcommittee if I could, that was exactly the process we went through. So we completely understand where you're coming from.
>> Ed Rast: Bob, did you have a comment?
>> Could you repeat that language for those of us who are trying to capture it?
>> Bob Brownstein: Yes, that the reports of sexual assault incidences not be made public except to the extent required by law, and unless the police department determines that information should be released unless it furthers investigation or protects the public.
>> Ed Rast: We've got other speakers. Ed, do you have clarification on that?
>> Ed Davis: Yes, I do. In terms of emphasizing the definition of investigatory record, Lisa brought up a good point in terms of, is that -- is it a record that is generated by the police department? Or is it a record that is in the police department's possession, as a result of their investigation? The distinction being, an autopsy report, say, is done by the coroner, which is the county, not the city. So if -- you know, the police department's going to go and get the autopsy report as part of their investigation. And it's part of the investigatory record. But is that considered an investigatory record, or not?
>> Bert Robinson: Our language is prepared by law enforcement.
>> Ed Davis: Okay, so that would not then -- if the police department is using the FBI's finger print forensic services instead of its own forensic services, the FBI report would not be an investigatory record.
>> Tom Manheim: I would point out in Santa Clara County, the coroner is under the sheriff's medical records are going to get into a Hipaa problem.
>> Ed Rast: We've got a series of other people. Let me ask my question, and then we'll go to Karl, Dave, Trixie and Brenda. My question is simple, section B prepared by law enforcement, what is the public benefit of disclosing these reports? I'm having a hard time seeing -- I hear a lot of objections but I'm having a difficult time seeing the public benefit of disclosing an investigatory reports like ballistics report, autopsies, et cetera. I don't get it somehow.
>> Bert Robinson: I think there are a number of different circumstances that you can imagine in which there would be a public benefit. I can throw out a couple that would be potential examples. Let's talk about a situation where someone has been -- someone has been charged -- someone was arrested and charged, and let's say the case was dropped, and the question was, well, what was going on there exactly, because the charge -- the arrest and the charge are still on my record. The ballistics report shows there was no gunpowder on my hands. Would I want to know that? Would I want to be able to demonstrate that? Maybe. The arrest and the charge are still on my record. I might want to clear that up. Another situation, that's a personal interest and you can detail a number of different situations in which that might play out. Another situation that I think one can describe would be a situation in which to go to the point that Bob was making, which what you're trying to do is to judge the extent to which government acted effectively. If you're looking at any investigation, police investigation, internal investigation, and you want to say, was this done in an appropriate manner? Was this done well? Were all the different possibilities examined and looked at? Was the evidence sifted, were the obvious people interviewed? That's the kind of situation where there might be some watchdog oversight of an individual investigation.
>> Ed Rast: Karl, Dave, Trixie then Brenda.
>> Karl Hoffower: We're dealing with police records because they're the City of San José. When we get into court issues, that's the county of Santa Clara. We are a commission of the City of San José. We can't get too much involved in court issues because it's a different entity. Second thing is, when it comes into police records that we want or public information or public information request I made about the number of individuals who were arrested for resisting arrest. How could you be arrested for resisting arrest, if you

weren't already being arrested for something else? We talked to the department and at the time the chief spoke to us at the NAACP meeting. We would be interested in looking at these reports to see exactly what went on with these individuals and as a civil rights organization we would be interested in seeing details about these not just from a statistical look but also get into the police report and get in to see how this came about, what was going on. That is another reason for civil liberties that we would want to have access to these reports.
>> Ed Rast: Let me see if I'm clear. You're talk about the police reports and the investigative reports or just the police reports?
>> Karl Hoffower: This one example, why we would be interested in the police reports, when it comes to other things, the investigatory reports, we felt it was additional information to be open as a public record to aid when we're trying to make sure from a public perspective that the police are doing the great job that we believe they're doing.
>> Ed Rast: Dave, Trixie, Brenda.
>> Dave Zenker: Dave Zenker. To me to feel comfortable moving ahead, I would need definitions around the terms of investigatory records. We bounced around medical records, rape records. I come from the medical industry where we live under HIPaa and Uber protected.
>> 5.1.1.030 (h) which suggests information which must be removed from a report, information prohibited by state or federal law. We don't have to state that to be the fact, you're absolutely right about that kind of material and we did discuss that.
>> Dave Zenker: I think we're talking about apples and oranges if we're talking about ballistics reports, coroner's reports, those kinds of things, compared to a summary investigative report that would be released by San José PD, I haven't heard what the subcommittee is actually proposing. So I don't know where we're going to land on that but --
>> Bert Robinson: Are you asking that as a question?
>> Dave Zenker: Yes, ultimately, I'm not sure you guys are clear, per se, on what the recommendation is. The investigatory records to me I think is what's really bogging us down when we maybe could be moving forward. Set that one aside for now? Ultimately my second point was on 020 (b) 3, my question there was going to be related to appeals. In the event that the case is prosecuted, there's a conviction or acquittal, and everything is released, how would that affect a defendant's right to appeal?
>> Well, again, you're going into a county situation, and we're just saying that that would be a -- all that evidence we talked about before is entered into the court record. If you go all the way through a jury trial and then you get convicted, right, and there's an appeal, all of that stuff is already going to be entered into the public -- into the court record. We're just talking about access to police information. Not what the DA then takes from the police department.
>> Dave Zenker: Are all if investigatory records public at that point?
>> No, we talked about that before. Only the investigatory records that have been submitted into the court record.
>> Dave Zenker: I guess that's my point, the people who were prosecuted, convicted and wanted to appeal their case, everything could be potentially public at that point, all the records could be public and that could affect their ability to --
>> Again, a possibility for the task force to consider would be to limit it to material that's in the court record.
>> Dave Zenker: So I guess a logistical question is, who filters that?
>> Bert Robinson: What's in the court record?
>> Dave Zenker: Who determines, logistically determines, this is in, this isn't?
>> Ed Davis: In terms of what's in the record, the lawyers control what's in the record. And even the judge can't necessarily say, "I'm not going to put this in the record." The defense attorney for example may want -- let me switch it. If there's a confession that's at issue, and the judge has to decide whether the jury's going to hear the confession, the prosecutor may very well, if it's a written confession, may very well introduce the confession into evidence in his or her argument that it should be admissible. And the judge will decide whether or not it's going to be admit or not. But it's part of the court record because the DA admitted it. Conversely, the defense may have evidence that it wants on the record, and -- or admitted, and they put it in the record and the judge says, no, I'm not going to let them hear that. The lawyers control what's in the court record, and the law is once it becomes part of the court record, unless there's some narrow exceptions met, the public has the right to do that. I agree with Karl that we don't necessarily want to get involved too much with those arguments. But we are a little bit because the

standard of when the investigative records, not reports, but the investigative records are going to be opened up depends on the court proceedings. Let me make one suggestion that might help, at least alleviate some of the concerns here, and again, this doesn't sound like it's coming, you know, something I would normally say given my vent towards access. That the public records act, in several places, uses language about unwarranted invasion of privacy. And I generally don't like that, because it gives too much discretion to governmental entities and what they determine is an unwarranted invasion of privacy. Then you go and you fight about it. I would suggest to you that it might not be a bad idea, in this circumstance, perhaps to use that as a guideline here, when we're dealing with investigative records. Because they're hard to define or put in a lot of standards. A lot of things I've heard here are legitimate privacy concerns. If we make our three exceptions, it would jeopardize an investigation, that it would jeopardize the safety of someone, or would be an unwarranted invasion of privacy, that covers a lot of ground. And it definitely gives the police department a lot of authority. But perhaps because we are going in uncharted waters, it might not be a bad idea at least on a experimental basis, let's do it for six months and see how it works. And see if, in fact, the -- given all these privacy concerns, trust the police department to exercise, you know, good judgment and that language of unwarranted invasion of privacy. It occurred to me, one of the good examples we heard at the last meeting, about people who were upset because they didn't get access to documents, were people who were the subject of police action. And they couldn't even get their own police reports. Now, if we are aware of circumstances where somebody, if we adopted unwarranted invasion of privacy language, and somebody complained that they couldn't get their own police report, because the police were saying access would be an unwarranted invasion of privacy, then we could go back and re-think whether that standard is too broad, and the discretion's being abused. But I think there are so many privacy issues involved here that we're going to have -- we either don't use investigative records as a point of departure or not, or we put restrictions on it such as unwarrant go ahead invasion of privacy to give the police department the opportunity the right to really protect legitimate privacy interests. Again, that's just a suggestion. It may get us a little bit out of the dilemma that we're in.
>> Ed Rast: Trixie Johnson then Brenda.
>> Trixie Johnson: I had the same questions about items for appeal, so that already covered. It occurred to me that in investigatory reports, things that they might want to keep quiet, and I'm not thinking too much about the ones that might go to court, but those that are closed, they have those investigatory reports as well, that might be well where you find the specific information about ballistics or something of that nature that ultimately could solve a crime ten years later.
>> Ed Rast: Brenda.
>> Brenda Otey: I think we need to get a better understanding of what reports are contained in investigatory reports here. Because until we know that we don't know what impact there might be on anybody or any particular circumstances. I understand if it's something that's been prosecuted, then it's already a part of the court record. And that information is released through the courts. If it's something that has been pled, for someone who's pled guilty or whatever, a plea bargain, then that information, that would be released. As far as the cases that would be somewhere between an open and closed case, then releasing information that is in an investigatory record could have some ramifications that we really don't want to be a part of having them be released. I can see that there may be, if the case is -- however we figure out when a record is closed, that would impact on that, as well. But I think we need to get more information about the -- what we're talking about when we talk about investigatory records before we can say anything one way or the other. And I would still, I know it's like the courts are under the county and the police in this case are under the city. But at some point, if you're putting out information that's general information to the public, I would think that it still would have an impact on somebody's right to appeal or you know, the information that is actually just out there for them to have to deal with.
>> Ed Rast: Ken Podgorsek then Bob Brownstein.
>> Ken Podgorsek: I wanted to just comment that Ed Davis's comments, I have two comments. That Ed Davis's comment about unwarranted privacy into this goes a long way to getting more comfortable in this. We need a list and need to know what we're actually talking about and is not such a broad term. I want to just take a question, I want to go to 5.1.1.020 (b) and I want to state a concern I have. I have no problem with 3. I have no problem with cases that have been brought to prosecution, you know, whether there was a acquisition or acquittal, taking into regard appeal, the whole bit, I have no challenge with this concept. My challenge has got to do with closed cases and statute of limitations that have expired. If a case hasn't been brought to prosecution, I don't think the appropriate -- you know we have a legal system that basically assumes that somebody's innocent unless they're proven guilty. If you can't bring that

person to prosecution, it usually means you don't have enough evidence to meet that burden. My challenge is if you start opening up all these cases then are you going to start trying the people in the public eye? Is that unfair -- which I believe very strongly. Is that an unfair invasion not only of their privacy but of their rights as individuals? Because unfortunately when you bring something out to the public eye you don't always get the most fair and balanced review of a case. And in many times, people will pick out the most sensationalistic parts and determine somebody's guilt. You can ruin somebody's life by the presumption of guilt. That said, I don't know if it was Karl or Bert. But I want to bring in that maybe there should be an exception, where a case has closed or the statute of I limitations has expired, the person who was investigated should have the right to see that information, and to be able to possess it. To potentially prove that there was no case, if it ever comes up. Because sometimes human nature being what it is, people have tendency to somehow -- I don't think it is anybody's business other than the people who were involved in that report to see any information for case that were never brought forward for prosecution or where the statute of limitations that is expired. If there's not enough evidence to bring a case to prosecution, there's no reason for that report to be public, in my opinion.
>> Ed Rast: Bob Brownstein then Nancy Williams.
>> Bob Brownstein: Let me offer an addition to Ed Davis. The term unwarranted really implies a standard. That is to say, if you say we're not going to release something that's an unwarranted invasion of privacy, that means it's okay to release something that's a warranted invasion of privacy. What's the standard for warranted? The department's going to use this language, they're entitled to have some notion of what we're thinking about what's warranted. And at least what I'm thinking is, it's warranted, if the information to be disclosed is necessary, in order to be -- in order to evaluate how well the department is doing its job. Which means information that is simply of interest, because it's a celebrity who was arrested, or it's you know, a particularly spectacular crime or something like that, that doesn't count as much in the warranted-unwarranted test, as, for example, the question of whether the police are investigating burglaries in low-income neighborhoods with the same level of investigative action as burglaries in upscale neighborhoods. To me, that's a police practices issue, and that's one where I think it would be more warranted to get information because you're trying to determine whether the department is doing its job right as opposed to just getting details. Because they're interesting details.
>> Ed Rast: Nancy Williams.
>> Nanci Williams: I could think of an example, from a real-life example, I hired a bookkeeper who had embezzled from a previous company. I would like to have gotten the police record before I got burned, too. There are all sorts of individual reasons why these records should be released and there are reasons they shouldn't. As I'm reading this I see myself ogoing back and forth all the time. I know in the public testimony we heard so many great examples of why we need to be more open, and so many great examples, why we need to have closed. I watch law and order, I admit it. They have to filter through this information and decide what's permissible and not permissible, and weigh these complicated court cases. And the idea of that lying on a public information officer, deciding what the public can hear and can't hear, when a judge has to -- has years and years of experience before he's put in that same position to decide what 12 members of a jury can see or not see in a police report. It's a daunting task to think that this task force, a group of civilians, can go through every case and every example and every exception to the rule and come up with a set of rules as to what can be released and not released. It's scary. And Bert, I commend you for trying.
>> Ed Rast: Go ahead and comment.
>> Bert Robinson: Let me just say a couple of things quick. Nanci made a great point, I think that there is a utility to making this sort of information public, that is beyond simply the oversight function, that's beyond the evaluation function. And Nanci's example was a good one. There are times in your personal life when getting information about an arrest, a police action, is personally useful to you on some level. And not simply because you want to tell whether the cops are doing a good job, you want to know if the person who's trying to rent the room from you has been arrested six times on suspicion of child molestation but never charged or whatever. So there are other good examples there. The one other thing, one thing that I just wanted to suggest, Nanci, in terms of the things you just said, because I think you're right, it is a very, very daunting task, it is one authentic I urge us all to remember although I know we do. We are an advisory committee. What we are writing here is going to go through many more steps. So even though I think it's important for us to have language, to look at language, and to debate the impact of language, I think at some point we have to say -- we have to say, it isn't true that just because we're mere civilians, we can't make a suggestion to the City Council, that the it would be a good idea to open up

police records, and they should figure out a way to do it. I think on some level we can do that. And we can -- we have to trust that the process will work in a way that will make this effective. And so I guess all I would say there is, I think we should be careful about the language, but we should also understand that this isn't the final word, whatever we adopt isn't the final word, nor should it be.
>> Ed Rast: Nanci Joe.
>> Nanci Williams: I agree with that. Rather than try to come up with every compensation to the rule, we should have a thought of who the gate keeper should be. When a public request comes in, making the decisions, and even some of the decisions that aren't necessarily in here in the public good and, you know, and looking at all of the unintended consequences.
>> Ed Rast: Joan and Bob.
>> Well, I have to say Nanci, you echoed how I thought. I've been going back and forth, trying to understand what the needs of the police are, the needs of the citizens are, the civil liberties, the public benefits. I remembered back to when we first had comments from groups that wanted to know. Their main concerns I think at the time was to make sure that they were being treated fairly, that there wasn't an issue of profiling, that if there was a rogue policeman, that he would be able to be identified. And to my feeling, that was more of the concern, rather than how the police were operating. But even tonight, I've heard things as to, why it would be a great idea, investigatory records to be released. But I think when this was first brought to our attention, the main thing about making police records transparent was to build the trust of people who already felt that trust had been broken, whether it be by police department policy or individual police officers, whether it be where they live geographically, again, the racial profiling, I think that's something we ought not leave behind as we're talking about the transparency of police records.
>> Ed Rast: Bob, and then come back to me after Bob.
>> Bob Brownstein: First just quickly, in terms of who is the gate keeper in an Applet sense, the subcommittee is hard at work trying to resolve that process. That's our job and we're struggling to deal with that. So it's not like it hasn't been -- that nobody's thinking about it. Getting back to the points that Nanci and Bert made, endless number of examples that you can think about of individual circumstances that it would be useful for somebody to have this information. I completely agree that those exist. But I think that if our approach is to ask the department to apply a balancing test, that's a balancing test that is impossible for the most serious and determined and dedicated people to ever do in a way that's going to satisfy people. Because there are so many different kinds of individual standards that would be brought into the balance of the equation. I continue to think that the primary basis for seeking the release of information that would outweigh the other factors of privacy and potentially some limitation on the ability of the department to be effective is the overriding concern that the public legitimately has that its department, one of the biggest departments in the city, is in fact doing a good job. And I would be I think you're at least giving the people that have to give that balancing test a fighting chance, where other people can look at it and say, yeah, it makes sense, if you have some kind of the standard like that, and if you have just the unwarranted invasion of privacy and no standard, if it means anybody's individual --
>> Do you have a specific idea Bob? Do you have a specific idea?
>> Bob Brownstein: Yeah, I've been saying it several times tonight. The specific idea is that we add to Ed Davis's language about the unwarranted invasion of privacy, that we have a notion of what is a warranted invasion of privacy, what's on the other side of the scale? And it is questions regarding the effectiveness of the police department practices, you know, as a department. As opposed to Nanci's concern, she would like to know whether this person had embezzled before. That's a legitimate concern but not a police issue. Had the tenant done something wrong? It is a legitimate concern but not a police practices issue. I'm suggesting, if you have others, say it, but I'm suggesting that what's strong enough in the public interest to be on the scale to deal with these other things which are also in the public interest, protecting privacy and having the department do a top-notch job, is that question of are they doing the best job they could, and do we have enough attention to tell whether they are or not.
>> You are talking about investigatory records, are you not? Not police records? I think if Nanci could have gotten the police report she would have been good. Okay. I just wanted to understand.
>> Ed Rast: Let me make a comment. We're now an hour and 20 minutes in. And it looks like at least that this has to go back to the committee to work on.
>> Bert Robinson: Let me stop you here for just a minute. Because we can take it back, and we can work on it, and we can work on it, and we can work on it. But I had some suggestions, since I know at some point we all want to be done, don't we? I was going to try to throw something up here and see how we felt about it. What I'm hearing being especially controversial here and where most of the concerns are based

is investigator records. It seems to me that one thing we could do here this evening is we could go ahead and vote on the other part of it, which is part on 5.1.1.010 (a) 1 and 2, but not (b). That is half of our proposal. A second thing we could do, if people are willing to do it, Bob and other people, Ed had suggested some, had made specific suggestions of the way we could amend the investigatory records proposal. It may be that you want us to reexamine those proposals. We could take amendments from the floor. One of the things I would say as a member of the subcommittee is, I understand that we have a lot of -- there are a lot of questions, and people are going back and forth. But I guess I would ask two things. First of all, are there some things that we're ready to do now? And then second of all, if there are some things that we aren't ready to do, what specifically can the subcommittee answer? What I've heard Brenda say, can we have a list of what investigatory list entails. That's something the subcommittee can do. But I turn to the task force here and say, do we think we're ready to go ahead on police reports and other reports? Since I haven't heard a lot of objections to that. And are there other specific things on investigatory records that you'd like for us to get for you and come back with?
>> Ed Rast: Brenda and Bob.
>> Brenda Otey: I guess one thing I wanted to say is, and I'm not sure whether it would be -- if, in Nanci, circumstance, if they had done a background check, would that some kind of information have shown up on that individual? I don't know whether it would have or not. The other thing is, I think it is, if you weigh information in the balance, what really comes up is, we really need to strike a balance. You may not be able to correct everything on one side or the other. But you can address, I believe what Bob was talking about is police practices issues, which would be what you would identify, and how they -- if it's racial profiling, if it's not giving information to the public that they should receive, for example, if a person is the subject of a police report, it seems to me they should be able to get the information and get that report. There's some other circumstances that came to our attention last week, and we need to get some more answers to those questions. There may be some things that we have missed. I think we need to take -- go back into the subcommittee, analyze some things, look at it, and determine if there is a -- if we have an understanding of how to make the changes or not. And if we can come forward with those proposals, if we cannot come forward and say we don't have a way of addressing that and we should not do that. But I would think that at this point, the subcommittee still has some things that need to be answered.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: In terms of how to proceed, let me make a suggestion, that we try and deal with (a) 1 and 2 tonight. But to do that, we have to deal with the information that may be redacted. I know I and possibly others have issues that we want to add to that. Because my willingness to support (a) 1 and 2 was directly related to whether some things will be redacted. I already mentioned my interest in the sexual assault issue. That's one thing we could do. In terms of the investigatory records, we would not make any decision tonight but we would try to provide the subcommittee with whatever we've got in terms of ideas or issues, so you will be as informed as we can inform you, as you go back and continue your deliberations.
>> Bert Robinson: That works for me, if we want to try to proceed that way. Are other people willing to go ahead?
>> Ed Rast: So you're going to start on -- the information to be redacted?
>> Bert Robinson: I was going to go to 03 0. Lisa.
>> Lisa Herrick: I think you can talk about 020 (a).
>> Bert Robinson: Okay. So let me -- let me try this. And see if this works. Let me try putting a motion on the floor. I'm going to try to put a motion on the floor, see how I could -- all right. I would like to move approval of the following portion of the subcommittee's report. I would like to move approval of 5.1.1.010 (a) 1 and 2. 5.1.1.020 (a) and 5.1.1.030 in its entirety, the subcommittee has a list of suggestions that it adopted after the publication of this report, that it envisions adding to 5.1.1.030 and our motion would be that the attorneys prepare appropriate language and that come back to the subcommittee and then back to the full task force for a final. And those were specifically the issues that I mentioned at the beginning of the presentation. Language relating to allowing the redaction of the names of individuals mentioned in police reports or investigations, who are the subject of an unsubstantiated allegation of wrongdoing. Whether the individual has been arrested. That the attorneys also draw up language that would allow the police department to redact the names of adult witnesses to crimes, unless the witness consents to the release of his or her name and actually 5 only applies to investigations so I will skip that one. I think there may be some additional amendments that people would like to offer but I will make that

as a motion. And look for a second. And then we can make additional amendments to the motion as we'd like.
>> Karl Hoffower: Second the motion.
>> Ed Rast: Discussion.
>> Bob Brownstein: I'd like to offer the following amendments. Let me read the list and then I guess we can go through one at a time. First, I'm not comfortable with supporting 5.1.1.020 (a) simply because we will not discuss the moviesless of 020 (c) tonight.
>> Bert Robinson: That makes sense. Let me modify, with the consent of my seconder let me modify my motion in that way --
>> I accept.
>> Bert Robinson: Keep going Bob.
>> Bob Brownstein: The language I brought forth previously regarding sexual assaults, that all that information will not be made public except information that's required by state law or information that the police department determines should be released to the public because it will further an investigation or protect Public Safety.
>> Bert Robinson: I think we'd accept that as a part of our motion.
>> We accepted that in that 5.1.1.030, thank you Lisa, part (b), those crimes are defined under these various sections.
>> Bert Robinson: That's just the name, though. I think Bob is concerned about more than the name.
>> Bob Brownstein: As I mentioned in the rationale earlier, I put that language in that way so people will be --
>> Bert Robinson: Absolutely certain they won't be compromised.
>> Bob Brownstein: They will know for sure that this information is not going to made public.
>> The clarity is acceptable.
>> Bert Robinson: Next Bob?
>> Bob Brownstein: It's a similar kind of concern. In the case of witnesses and informants, I don't have legal language but I think I can make the concept clear. I want the department to be able to make -- to have a clear category that it can tell someone that you will be a confidential witness, you will be a confidential informant, not talk about redaction or anything like that, unless it's in a courtroom, your information is not going to be made public, because several people testified about the difficulty of people understanding, which to them is gobbledygook, and we need this in very, very clear terms and I want that in our proposal.
>> Bert Robinson: The information you're talking about is information I think the subcommittee is in favor of redacting.
>> Bob Brownstein: It is a way of doing (g).
>> Bert Robinson: I'm sure we can figure out language to do that.
>> Bob Brownstein: All right. And I'm not sure how you were handling what the default was in terms of witnessing or informants, that is, if they don't say anything, are they -- is the information public, or --
>> Bert Robinson: It's not. It's opt-in, not opt-out.
>> Bob Brownstein: Okay, then I'm fine.
>> Ed Rast: So let me see if I can clarify.
>> Bert Robinson: Discussion on the motion?
>> Ed Rast: Let me see if I can clarify.
>> Tom Manheim: Clarify on the motion, on the confidential informants and the witnesses, you are protecting the identity only, is that the goal of that or --
>> Bob Brownstein: Protecting the identity of the witness and the informant. Our attorneys will have to figure out how to say this, but the police can make very explicit, understandable to everybody categories, so people can be assured of the reliability of that confidentiality protection.
>> Tom Manheim: We have a category in which to put you and when you go into that category your identity will not be released, essentially, is what you're looking for?
>> Bob Brownstein: Yes.
>> Ed Rast: The motion is 5.1, 5.1.1, law enforcement --
>> Could I make a suggestion that we let the -- Lee Price try to --
>> Ed Rast: Yes, please, Lee.
>> Tom Manheim: Putting her on the spot just a bit.
>> The Clerk:: I'm not sure if all of Bob's amendments were accepted.

>> Bert Robinson: Yes, they were by myself and my seconder.
>> The Clerk:: I will do my best. The motion was initially to approve sections 5.1.1.010 (a) 1 through 2. 5.1.1.020 (a) --
>> Ed Rast: You have a question?
>> Public comment over there.
>> You guys about to vote?
>> The Clerk:: There will be public comment before the vote.
>> Ed Rast: There will be an opportunity to vote. Let me clarify it. What we're trying to do is clarify the motion, then we'll have discussion. Before the vote we'll have public comment. Currently we'll have seven cards, if you put one in it will be eight. And the information is up here, or you can get a copy of it over in the agenda area. Okay? Great. Lee, go ahead.
>> The Clerk:: Okay. So we got through 020 (a). The original motion included then to accept 5.1.1030 in its entirety. The amendments as set forth by task force member Bob Brownstein related to 020 (b) 3. And it was my understanding that you're leaving B out altogether this evening in terms of this vote?
>> Ken Podgorsek: No, he wants that removed.
>> The Clerk:: The subcommittee will then take under consideration?
>> No. In 5.1.1.030, Lee, what we're trying to do is adopt the redactions as they would apply to the law enforcement reports that are specified in 010. They wouldn't apply to investigatory records.
>> The Clerk:: Bob stepped out of the room, and regarding --
>> Bert Robinson: This is a perfect opportunity for me to tell you what Bob meant, since he's not here.
>> The Clerk:: I think he was still concerned about cases that have been acquitted. So I think that was his information for the task force --
>> Bert Robinson: It was Bob's suggestion that we do not do investigatory records.
>> Bert Robinson: We're only consideration 030 as it would apply to police reports, not to vectory reports.
>> Ken Podgorsek: But he had an amendment which you guys agreed to, 5.1.1.020 (a) from the motion.
>> Bert Robinson: We agreed to that because that cement relevant to investigatory reports.
>> The Clerk:: State laws that allow for redactions in cases where the witnesses and informants, in case of witnesses, informants and to provide the police department the ability to develop clear categories that the police department can then ensure individuals that they will -- their information, their identification will be kept confidential. And that as it relates to 030 (g), and that the default in terms of the witnesses and informants is an opt-in and not an opt-out in terms of protecting their identities. So in other words, unless the witness and agrees to releasing their identity, it will be kept confidential.
>> Bert Robinson: Lee, the one thing I made as part of the motion that I'm just making sure you're reflecting here, is the list of redactions, unsubstantiated allegations and to the list of adult witnesses.
>> Brenda Otey: And I believe one of the other things that Mr. Brownstein wanted included -- is under .010, that there be a third category for sexual assault victims. And that be included in there, as well.
>> The Clerk:: That is included. But I think the committee agreed that Lisa would help figure out where that goes. That it wouldn't necessarily be number 3. Is that correct?
>> Bert Robinson: All right.
>> Ed Rast: Discussion. We have a motion on the table. A second. The second has agreed to all the amendments. We have now, discussion. Joan.
>> Just for the interest of brevity, I'll use the last three digits. 030, should we take out investigatory, just until we make the amendments?
>> Ed Rast: Bert, do you accept that as an amendment?
>> Bert Robinson: That was a fine idea.
>> Ed Rast: Karl?
>> Karl Hoffower: I'm reading this to make sure it makes sense. This 030 is actually where we're saying this can be redacted.
>> Bert Robinson: From court or investigatory records. She's suggesting take out investigatory records since we're not doing.
>> Just at this point. It can always be put back in after.
>> Karl Hoffower: I had to read and digest it myself to see if I agree. Regardless of what Bert tells me I should be thinking.
>> The Clerk:: Excuse me, one last clarification, Bert, I think early on when we were talking about when you were just doing your overview, you mentioned 030 (e), the names of juvenile witnesses and dropping juvenile?

>> Bert Robinson: I was going to leave exactly how that should be drafted to Lisa. But my intent was to get in the language on adult witnesses which I've mentioned. It might be that that is not the best method to do it. I've learned not to try to right the language. Because I always mess it up.
>> Ed Rast: Okay, let's try. Dave Zenker then Ed Davis.
>> Dave Zenker: Just to confirm, we are not voting on 020 tonight, that is not part of the motion anymore?
>> Ed Rast: No. Ed Davis.
>> Ed Davis: I just wanted to clarify. I'm not sure I understand what Bob's suggestion is with respect to G. Are we talking about the Brownstein equivalent of a Miranda warning, are we going to tell the police that they have to advise people that they have to remain confidential? I'm saying that a little sarcastically but I'm not sure --
>> Bert Robinson: We are going to try to come up with a proposal and bring it back.
>> Ed Davis: Okay.
>> Bob Brownstein: I'm willing to let you take a shot at putting it together.
>> Ed Rast: Additional discussion. Tom.
>> Tom Manheim: I just wanted to clarify Mr. Davis's question and Bob Brownstein's proposal. My understanding is there should be a very clear category in the exemptions from disclosure that simply said if somebody is a confidential witness or confidential informant, there will be a category that clearly allows the police to say, you are such.
>> Bob Brownstein: My intention is not to mandate a Miranda-type warning. But to enable the police department, such that if they believe it is useful to be able to tell somebody we have a category of confidential, you'll be in it, and you can talk to us, and if somebody asks, can I be sure that I'm not going to have my information revealed unless it's in a courtroom, they can say yes, we have a category, and there's nothing in this ordinance that's going to make us reveal your information.
>> Tom Manheim: So we're not putting an extra burden on the police? Okay.
>> Karl Hoffower: That is the reason for it to be an opt-in. They'd say your identity as a witness is going to be, protected unless you check this box to reveal their name.
>> Tom Manheim: There is two requirements. There is a general default that witness identities would not be released unless somebody specifically said it's okay. Second from that, I believe Mr. Brownstein is proposing is a category where, there's no question, you don't have to check a box, the police can tell you, you oar confidential informant or witness and we're never going to release your name. There are two completely I think requirements or suggestions for that.
>> Ed Rast: And the state public records act has actually a paragraph that addresses that issue, if I remember.
>> Bert Robinson: Other comments on the motion?
>> Ed Rast: Additional comments, discussion? We have no additional discussion from the task force. We have seven cards from the public. First person is Jen Adler and Patrick Don Van. Ms. Adler, you have two minutes.
>> Tom Manheim: Just so you know, I'll be your timekeeper. I'll hold up a 30-second and a time for you.
>> I'm Jen Adler, from the YWCA rape crisis center. For the past seven years I've supervised all of the counselors that work at the rape crisis center. And for about four years before that I did the same position at a domestic violence agency. Now, one of the agencies that I worked at was on the East Coast. I try to do safety planning with them, which is a very important plan for them, violence victims. Their statement would be, I could never call the police because it's going to be printed in the paper the very next day. If it was printed in the paper, their names would be redacted but the identifying information around the situation would be enough so when they sent their children into school the next day, the children's peers would know what happened, their co-workers would know what had happened because of the specifics in the paper. The location of the crime for example. So I know I'm specifically talking about domestic violence but the same would also be true of sexual assault. Because so frequently this is a crime that occurs in someone's home, that is the number one place that sexual assault occurs. It leaves people so they're less likely to come forward and report crimes. Only a third of sexual assaults are reported. So we're looking at leaving all these offenders not being reported, not being held accountability and not being able to be investigated by the police because victims might not know that there's exceptions for their specific situations. Thank you.
>> Ed Rast: Thank you. Patrick Donovan, followed by Bill Lawrence.

>> My name is Patrick Dunnovan. Leaving out specifics for sexual assault, seems like a very good idea. Rape crisis counselors, we help people transfer high schools when the rumors get too bad. We help people quit jobs. We hem people find new places to stay. We sit next to people in court and witness how difficult it is for them to tell even a prosecutor, even a judge, or a jury, the people who are tasked with keeping them safe, about what happened. And what this would do if these things became public would make them have to go through that not just for their one or two days in court, but every day. They would have to be cross examined every day. They may not hear those threats, they may see their symptoms. They may see their students suddenly drop out of school. They may see a friend suddenly use drugs. They may see a patient of theirs come in with more marks of self-injury or lose weight precipitously, because of an eating disorder. Or someone commit suicide. I don't mean to overstate, but this is just the reality of what we work with every day. Thank you.
>> Ed Rast: Thank you. Bill Lawrence, Donna Warlek.
>> Thank you for coming in. I want to commend you people for giving so much time. This is voluntary, I don't know, if you're getting a paycheck. You had a pretty good lunch anyway.
>> Karl Hoffower: Tell me where to go for that!
>> I want to commend Mr. Bob Brownstein. Because I believe he addition for the issues, right-d digs for the issues, right? This man, I don't know if he's ACLU, stay with the city issues because you know, it's the police policies and procedures I think that are at the question here, right? Not if the judge is going to do this or whatever. So -- and to get back onto a thought I had before I came up here, because I get really scattered as soon as I get up here, is you know, we're in a condition in this country where we depend on intelligence, right? We have got -- gone into war because our intelligence agency says, "they have weapons of mass destruction, and they're going to kill everybody in New York City with a mushroom cloud." We went into Iraq because an agency kind of doctors their records. Nobody would have doubted they had nuclear weapons. We go shooting people, killing innocent people, we don't find nothing but now we're stuck in a stagmire, because our intelligence is lacking. The policies in the police department cover information, they don't present it. I went through a trial and found I couldn't get the information. I've told the people here about evidence and I've never been able to get it to you and I've never went in front of a deposition to give evidence. I'm sorry, if I ran out of time, but it doesn't seem like you care about the evidence.
>> Ed Rast: Donna Woleck.
>> It's imperative that the investigatory records are open. The cops torture people during their investigations. Way too many people confess to crimes they didn't commit because of torture. Right now the San Francisco 8 are going through hearings in San Francisco. If you want to read more about them, go to free the SF 8-dot-Org. I have seen the San Francisco -- the San José police department wrongfully detain people who were committing no crime whatsoever and there was no probable cause for detaining them. There have been hundreds of people killed by San José PD in the past 30 years and not one cop has been held responsible or accountable for murder. It cannot be that all those murders were justifiable. Shining the light on law enforcement is the only way we the people and the public can have a way of knowing what the police policies are, what they're writing about us in their records and what their process is. The cops in San José and many other cities are out of control. They cannot be trusted to do a good job. They have been given the green light that they can do whatever they want and they will not be held accountable or responsible for breaking the law against us, the people. People who are wrongfully arrested, wrongfully charged with crimes that they didn't commit have the rights to have these records open. And I would like to know if I can submit a written request regarding 511040 and 511050 because they are not extensive enough. Can somebody answer me that? Can I write --
>> Ed Rast: Yes you can.
>> Tom Manheim: Just please write a letter to subcommittee. That would be helpful.
>> Ed Rast: San Jeev Berry. The ACLU has been concerned and talked about the challenges we've had in terms of getting access to basic reports and police records to be able to evaluate police practices. We do like the police force have an internal balancing act we have to do between our twin concerns of privacy, and transparency. I want to apologize to the subcommittee because some of the concerns, the brief concern I'm going to mention now is not one that we've had the opportunity to mention before to the subcommittee, simply because it's a private conversation we've had. We're a little bit concerned about the concerns with regards to people who have been arrested, where there wasn't a conviction, and ultimately the entire situation was dismissed. In other words, the situation that Ken I believe had alluded to in which people might be arrested, the arrest is later ended, the whole situation is dismissed, and the privacy rights

in terms of not having that sort of information out there tainting how they're perceived in the community either by employers or or by others. That would be a concern to us in terms of that sort of a situation being violated and a person whose arrest was ultimately dismissed facing that kind of a situation, that kind of a challenge. Broadly however, I do want to reassert that -- I do want to say that we do appreciate the Sunshine Reform Task Force, in making these things public and we do have concerns with regard to protecting privacy. Thank you.
>> Ed Rast: Karen Molesky.
>> I'm a San José housewife, grew up in San José. In the past few years I became very much aware of the police brutality in San José. I was unaware of it when I was growing up. I have gotten to know a young man, during this time this young man who has on average two or three times a year, arrested, detained, pulled out of a car, threatened and he even was hit. He never did anything. All charges were never brought. These are the kind of things where it was the arrest for resisting arrest. The point being is this is way more common than people realize. This is happening much more than a murder or rape. This is huge. This is happening all the time. I know this is why the police don't want these records open. We could not get his police records open. I appreciate it is totally not inconsistent with protecting the rights of a rape victim or murder victim. He has the emotional damage of a rape victim. Please don't forget this, thanks very much.
>> Ed Rast: Joann McCracken.
>> With the District Attorney's office. I just urge the committee to avoid voting on the broad proposal of making these public -- the police reports public before you've decided on the exceptions. Respectfully, I'll say it's a mistake to do that. I think to what the parole before you provides for, the immediate release of the records, before charges have been filed, before the D.A. has said no, I'm sorry police department, you need to do further investigation, and the exceptions that are set forth later on that you're not voting for tonight do not adequately cover it. To vote on one thing before you take a look at the important exceptions, I think you're going to find yourself in a corner that you haven't prepared for, it is not what you intended to do. I think one other reason you should not vote favorably on the motion tonight is from the comments I heard tonight I recognize that there are many concerns here and some of the concerns that the committee has, is based on some information that the committee does not have on how the police department does its business and how the District Attorney's office does its business. For example, to say police reports are defined to include juvenile contact reports domestic violence reports, it doesn't recognize that the domestic violent reports are the first reports. The substantive information is contained in the domestic violence reports. Resisting arrest, the concern about that reflects that that statute talks about obstructing a police officer, resisting events or interfering with the policeman's duties. There are so many other things I think the task force needs to know before you can vote on this abuse I think there's some -- there may be some information that you don't have now. Thank you.
>> Ed Rast: Antonio Guerra. Mr. Guerra is the last speaker.
>> Antonio Guerra, mayor's office. After reading 030, section (c) and (d), section (c) starts off with, respect to any other than an arrestee or suspect. Section (d) omits, date of birth, place of employment. Would it be fair to say if someone is a suspect in a case, charges are not brought, that person then, when the police records are public, their address, e-mail, telephone number, et cetera would be available to the public?
>> That's correct. Some of that material is already public under state law as you know.
>> I'm not a lawyer, trying to clarify.
>> I thought you were nodding because you did know. That's the intent that there's a different threshold for the arrestee, than there is for a witness.
>> Don't brag about not being a lawyer.
>> Ed Rast: And we have one more speaker. All right.
>> I agree with the title of D.A. McCracken. For a certain level of disclosure which I don't hear any discussion of. There's been nothing to review the past history of what the current level of disclosure brings, and the effect of investigations on the police department. We're only talking about what it seems to be that what you're going to vote on will do. The 140, the number you gave earlier about arrest, you need to look at the racial interaction, what the race the officers were. What the race of the people being arrested was. Age groups. Number of years on the force, experience the officers had. There's a lot of things and variables there that can tell you about the officer's actions. I had a taser held to my throat because I failed to give a Social Security number to officers on this floor. I had an appointment with Rosa, an attorney, I saw some people running behind cubicals, I assumed it was me, they kept staring at

me. She said I don't know. A few minutes later I had a meeting with her in the front lobby. This is all documented beyond a reasonable doubt. Fact on its face irrefutable evidence. I went from department to department. I had them tell me that I had to put information in writing, I can't make an oral request, dog hearings, tapes of the hearings and files of those are not public record but they all are. She said she wasn't going to inform anybody. You make sure there is no shadow of doubt. Create a list, define it. That's the duty the job contract responsibility as to federal and state responsibility of an attorney to protect our rights. Thank you.
>> Ed Rast: Public testimony is over. Task force.
>> Ed Davis: Ed, if it's appropriate I have one more --
>> Bert Robinson: Ed, I realize there was something I left out. I think the suggestion that Lisa was making on 020 is that we ought to make as part of this motion, 5.1.1.020 (a) and the portion of (c) that applies to police reports but not investigatory reports and the reason that that is important is that it allows the police department to redact information from police reports, from a police report that would endanger safety or endanger the safe conclusion of the investigation. I would like that to be part of the motion.
>> Karl Hoffower: I concur.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: If we're going to do that, and I think it's the right thing to do, Ms. McCracken's testimony I think demonstrates that there were aspects of C that applied to reports, as opposed to investigatory records that we would like to have in our motion, I would add to that, the exemption of secret investigatory techniques or practices. As another piece of information, for (c), 5.1.1.020, I'm amending your amendment to say that in (c) we would also exempt secretive investigative techniques.
>> Bert Robinson: There is some Mercury News model ordinance, we could look at, regarding these reports that might reveal or compromise secrete investigative techniques.
>> You want your language added, is that what you're saying right now?
>> Bob Brownstein: To the aspects of 5.1.1.020 (c), which apply to reports, I would like to add the exemption for secret investigative techniques.
>> Ed Rast: Ken and then Dave.
>> That's fine.
>> Ed Rast: The maker of the motion and the second both agree. Ken Podgorsek and then Dave Zenker.
>> Ken Podgorsek: I want to say that I'm generally happy with the way this is going. This has now been amended so many different ways and this language is so important, because of how it's going to be interpreted and we've already talks about all the positives and the negatives and everything else I'm going to be honest with you, I'm going to vote no. I'm going to vote no not because I'm against where this is going. I would like to see the language, vote ton language. I'm entirely unclear now what I'm voting on. And so I will vote no.
>> Ed Rast: Dave Zenker.
>> Dave Zenker: I'm there with Ken, given alt the moving targets, what this will look like when it sees the light. When will this come back to us?
>> November 1st the public records committee is scheduled to come back to the task force.
>> Bert Robinson: Our intention, regardless of whether this is approved now, is that the language is going to come back to the task force.
>> Ed Rast: Brenda.
>> Brenda Otey: In that same vein, if it's voted on tonight, then it would be like a second reading the next time, so that everyone would have the language in front of them, and see exactly what it says. And then that would be an additional vote on that.
>> Bert Robinson: That's absolutely going to happen. Because we're going to have to revise the language and bring it back to everybody.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: I may be able to vote in the affirmative, if the motion is amended, to we are passing this in concept.
>> You okay with that Karl?
>> Bert Robinson: I don't think it changes procedurally if we say we agree with it in concept.
>> Ken Podgorsek: We've gone through this in the past so --
>> Bert Robinson: I understand.
>> Ed Rast: Tom.

>> Tom Manheim: Just looking at the calendar, I want to make sure staff has time to do the work they need to do before this comes back to the subcommittee. We will have -- staff will have exactly, to the middle of next week and Monday is a holiday to Wednesday to complete the work to get it onto the subcommittee agenda. The subcommittee will have one opportunity to deal with this in order to allow time for it to get back onto the task force agenda for the next time this is agendized a month from now. Just so the task force is confident they can make it through and staff can.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: I have a clarifying question for Bert. Or whoever wants to answer. I heard that unless the witness agreed to publicly be named, it would default to secrecy. Is that in the case of all witnesses, the person who witnesses a car crash, airplane crash, is it just the case of informants or assault victims? Does this give blanket protection to all witnesses? To me that opens up a whole field of groundless accusations and protection of secrecy as well. In certain matters of public affairs, the lobbyist case where the witnesses were in fact named where it was material, because this was events involving public affairs and public money, so you know, is every witness going to basically default to be a secret witness now? And that are raises the whole class of issues that I'm not sure about. So I'm just trying to find out if that's what is being proposed.
>> Bert Robinson: I think our proposal was that it would extend to every witness and it wouldn't distinguish by the type of crime. And just quickly Dan because I'm not sure you were here during this part of the discussion. We did add language to protect against the disclosure of unsubstantiated discussion. Somebody being able to make an unsubstantiated allegation behind the cloak of secrecy, I think we would have language to keep the subject of that allegation protected.
>> Dan Pulcrano: We're saying somebody is charged with a crime but we're not able to say who gave the information to the charging of the crime nor are we able to provide the information which led them to charge the crime. It sounds like we're actually increasing the level of secrecy over the public records act by providing an additional layer of guarantees that no law provides for.
>> Bert Robinson: I don't know what you mean by protecting the information. We're talking about the names of witnesses.
>> Dan Pulcrano: Well, we're saying that if the names of the witnesses default to secrecy, unless they affirmatively default to disclosing, which few would do --
>> Bert Robinson: The last thing that you said is not what we said. We did not say that if the witness cannot be named the information provided by the information cannot be disclosed. That's not part of the motion. Just the name.
>> Dan Pulcrano: Just the name.
>> Bert Robinson: Just the name.
>> Dan Pulcrano: The information can be disclosed, unnamed sources in a newspaper, this is like unnamed sources in a police report?
>> Bert Robinson: Once it goes to court the witness's name is revealed.
>> Dan Pulcrano: It seems to me we're actually increasing the veil of secrecy.
>> Bert Robinson: Have you asked for a police report lately?
>> Dan Pulcrano: I don't think we can get them.
>> Bert Robinson: I don't think we increased the veil of secrecy there, Dan.
>> Ed Rast: Let me ask the clerk, how many amendments did we put on this so far?
>> In her defense, that's an unfair question.
>> Ed Rast: I personally am having a hard timekeeping track.
>> Bert Robinson: I this Ken's comment about agreeing in concept and bringing this back.
>> Tom Manheim: I think between Lisa myself and Lee price we have a good sense of what has been amended, we will be able to capture it. We are not doing anything that is final. Whatever we are doing will come back to the task force for further consideration.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I'm completely comfortable to the approach that this is a direction for drafting and we may choose to modify it for the next meeting. We want to give some sort of direction. Otherwise we will do this all over again and I don't think that's useful.
>> Ken Podgorsek: You remember ancillary bodies.
>> Bob Brownstein: That's an excellent point, Ken.
>> Bert Robinson: We've chewed this pretty hard tonight.
>> Ed Rast: That is basically staff's comment? All right. If we're going to call the question --

>> Let's just vote. Withdraw the motion.
>> Ed Rast: All in favor of the motion. Opposed? Abstentions?
>> Eva, you're abstaining? [laughter]
>> Ed Rast: Eva.
>> I just wanted to make a comment that any task force member who's interested in giving recommendations to the task force, that those are due on Tuesday, by 5:00.
>> To the subcommittee.
>> Sorry, to the subcommittee.
>> Ed Rast: Question of staff. When will the draft be available? Will it be available before Tuesday at 5:00 to look at it?
>> Tom Manheim: No. A draft will be available when the agenda for the subcommittee meeting goes out. We will need all the time between now and then to create that draft. The subcommittee willing then evaluate the information, come back to you for your information, ten days before the next task force meeting.
>> Ed Rast: The next meeting is November 1st. We will agendize that or relatively first. All right. All right. Bert, do you have any other comments on this quit?
>> Bert Robinson: No. Thanks very much, everybody.
>> Ed Rast: Next agenda -- okay. Let's, if the committee would, task force come to order for a minute. Next item is, administration accountability update. Ken Podgorsek.
>> Ken Podgorsek: Good evening. I promise had a we will be very, very brief. This will come to you in a full form at our next meeting. I want to just start and just say that it's a pleasure working with this committee. I've worked with Ed and Bob on the public meetings and I think we're going to -- this is just a pleasure working with them. And this committee has been well staffed by Lisa Sheila and now Eva. I believe you'll hopefully be happy what you see next week, it will be available real soon because the agenda packet has to go out tomorrow since Monday is a holiday. Administration and accountability, we are taking, just to give you without going into a lot of detail, our base concept is, is that we want to encourage the voluntary compliance to the ordinance. We don't look at this as a punitive. We look at this as a very positive function. And so all of our writing, and all of what we're going to bring forward to you, is going to be all based on the pact we want to encourage voluntary compliance. Education, we are going to be recommending that there be regular education and training. The status of the compliance, at least on some regular basis, we're thinking annually, get reports on the status of the compliance of this ordinance. We can go to the next slide. We are going to recommend that a position be created in the City of San José, open government officer which will be a member of senior staff that will report directly to the City Manager, advise City Manager about education and compliance. Staff, we're going to recommend an open government commission. Staff an open government commission, also be a liaison for public records request, including some of the records we're talking about here. Work with the public information manager to facilitate open government, audit closed session, with compliance with the Brown Act. The open government commission, we have used the elections commission. Five neutral and independent members, advise the City Council about the sunshine ordinance, determine the categorization of ordinances, enforce allegation enforcement of the sunshine ordinance. I think that's the end of our slides. Basically we'll go into detail. The document will be available with our packet. Please review it and of course, we're going to be looking at the task force for very constructive suggestions, similar hopefully that we'll be able to get through this, but this is an important part. We spent a lot of time discussing and putting this ordinance together. We need to make sure that we tie the package up really nice, and administration and accountability is going to tie that package up. Thank you.
>> Ed Rast: Bob, do you have any comments? Bob, do you have any comments?
>> Bob Brownstein: No, that was a fine summary.
>> Ed Rast: Karl.
>> Karl Hoffower: I'd like to make a motion to make a referral on the subject of closed session. We used to have a subcommittee on closed session and that information was brought forward. One of the things that we heard at City Council was that councilmembers were uncomfortable in even approving a motion to, in theory, taped closed session, with the accountability of how the process for release or redaction or destruction of that audiotape was brought out as structured language. So I discussed this --
>> Ken Podgorsek: Ettes an unnecessary motion. This item was referred to this committee and we will address that in our --
>> Karl Hoffower: When was it referred?

>> Ken Podgorsek: It was referred way back when, with we passed the closed session.
>> Karl Hoffower: Okay, great, my apologies.
>> Ken Podgorsek: In brief, I don't want to get in detail, it will be in the document, we've listened to counsel, the attorney's office, we believe we have found a solution that will make people happy.
>> Karl Hoffower: I look forward to seeing it then.
>> Ken Podgorsek: And I also believe in the tooth fairy.
>> Karl Hoffower: The reason I did that, and Sheila is not here, I spoke on when the council voted on it afterwards it appeared like the council was sending it back as an issue. Sheila and I had discussed it, she said I should make that as a referral. That's the reason I'm opening my mouth tonight and I'm a little chagrined.
>> Ken Podgorsek: Thank you, we really are appreciative of that.
>> Ed Rast: Public comment.
>> Quick comment. I know we're here late. Any particular reason why the open government official will report to the City Manager as opposed to the City Council?
>> Ken Podgorsek: In fairness, let's discuss that on the 18th. You know, there is -- there is reasoning but it is late and it would take me probably longer than --
>> That's completely understand all right, I understand.
>> Ed Rast: Lee, go ahead.
>> The Clerk:: Thank you. I'm not able to make all the various subcommittee meetings. I try to pop in when I can. I know that Lisa and Eva and Tom have heard me say this. As you look at enforcement and accountability, I would really encourage the committee to think about the options that the council would have if, for instance, a council agenda didn't get posted ten days in advance. And I raise this, because it's a very practical concern, just even a couple of months ago. You know the council has adopted the ten-day rule already. My office had a immigrate deal of difficulty meeting the ten day, which is actually a Saturday. And we did it. But it was very resource-intensive. And it was more costly to the city overall to do it. So I think that there should be some thought about, if the ten-day rule or any of the other rules that would apply to any of the policy bodies, you know, aren't met, for whatever reason, that there should be some remedy or some cure, some opportunity for either Rules Committee to waive it and say, "we've got to have it at City Council meeting," because that would have been the outcome if we hadn't got the agenda posted and distributed ten days prior. Would we have had to cancel the council meeting? I think some thought needs to be given to that and I want you to make sure you hear my concerns on it.
>> Ken Podgorsek: Lisa did bring that up. You should be happy. We actually do beef we have remedies in the document. Now, whether that remedy is a satisfactory remedy or not that will be open for discussion on the 18th.
>> Ed Rast: Agenda item 7, review, status of the 22 reforms.
>> The document in your packet reflects the original 22 reforms that were submitted by the council, were adopted by the council in March of 2006. Of those, 11 were referred to the task force, and the remaining went to staff, for implementation. So phase 1 dealt with some of the recommendations. The task force is taking a look at others through their subcommittees. And many of the other recommendations at a were referred to staff have been implemented. Do you have any questions?
>> Ed Rast: Any questions of the task force members? No questions.
>> Lee may have a comment to make on that, though. Lee.
>> Ed Rast: Lee?
>> The council policy.
>> The Clerk: Thank you, Eva, I nearly forgot. I do. What number was that do you recall? Was it 8?
>> Ed Rast: 7.
>> The Clerk: Go to 7 on page 3 of 6. Number 7, post the City Council policy manual online. I'm very happy to report that we did just that. We are making the official announcement tomorrow in the City Manager's weekly report but it is now online. You can find it if you go to the City Clerk's Website and it's right up at the top and it says new council policy manual. It's searchable. We're in the process of finalizing the Q&A to make sure every policy is a policy it is supposed to be and we are endeavoring that every policy is the most current.
>> Ed Rast: Lee, thank you very much.
>> Tom Manheim: I stumbled upon it a few days ago, didn't know it was up, and it's a great resource.
>> Ed Rast: We're getting the master calendar and the city policies up. Things requested for years are finally up.

>> The Clerk: One other thing too, the city will take action to standardize copies to 20 cent a page.
>> Ed Rast: Better than 25. Or 30. Is there any other discussion on that? All right, so we're -- item number 8, upcoming agenda, work plan.
>> For the next meeting, October 18th, we have technology and ethics reporting out and administration and accountability.
>> Ed Rast: Ken, you're pine with that?
>> Ken Podgorsek: Absolutely.
>> Ed Rast: And then technology? Do you have any issue?
>> Yes, I believe the report's being posted tonight or tomorrow. And we'll be ready to make that report. I anticipate it's not a final report, a progress report to apprise the task force members of what areas we've reached consensus on but final report coming a little bit later.
>> Ed Rast: Ethics. Trixie.
>> Trixie Johnson: Ethics met today. We have a few things we're checking on but essentially ethics is done.
>> I just want to go over the November 1st agenda, because we have public records and administration and accountability. And the turn around for administration and accountability would be awful quick.
>> Ken Podgorsek: We need to move administration and accountability on the draft to the November the --
>> 15th?
>> Ken Podgorsek: 15th, correct.
>> So we'll have only one committee reporting out on the 1st which will be public records.
>> I'm sure we can use the time, you know, I'm sure it would be nice to go home at 7:00.
>> We'll be able to come back to you with final language, assuming we can do this, we'll be able to bring you back final language on the material we spoke with you tonight. I'm not optimistic that we can get investigative records on that kind of turnaround. We've got one subcommittee meeting, right, that we can make between now and then and still make the ten-day notice. We've got that subcommittee meeting scheduled but we'll have to move with with alacrity.
>> Ed Rast: Additional comments, Tom?
>> Tom Manheim: I just want in closing to take a moment to compliment the task force. It was really thoughtful, I think people were really struggling with a hard issue and I think anybody watching has to feel good about the work you're putting in to this. On behalf of all of us, thanks.
>> Thanks, Tom.
>> Ken. Well. We have open forum. Is there any additional public comment?
>> Ken Podgorsek: I move adjournment.
>> Ed Rast: We have one person public comment. Is there additional public comment? You have two minutes. You need to step forward so we can hear you.
>> I guess at this point I was just curious as to wondering when will the next meeting be about this subject?
>> Ed Rast: November the 1st, it will be the first Thursday in November.
>> Thank you.
>> Ed Rast: And sir?
>> If this is any subject matter goes, right?
>> Ed Rast: Any subject matter goes.
>> Kind of saying what I said earlier, I had a taser held to my throat. And I have irrefutable record saying, the attorney said I could come to talk to her any time I want. The police said I couldn't enter the building unless I had an appointment. I thought it was a public building. They said if you didn't answer the question, we're going to tase you, I didn't have much choice. I had my keys out of my pocket, went to where my car was parked. City Clerk's office was asked by me to respect the written respect, I wrote whistle blower across the top. I have special provisions on law, the people that I was blowing the whistle on, worked the street. I would like to know why I have irrefutable evidence no one can refute that a City Attorney told me she's aware that people are not releasing public documents to people but she's not going to do anything about it and the conversation went three times where she said that clear as a bell and I asked her three different ways so she could understand it. It's her duty to tell people what public record is. There should be a list in every department of what is and is not public record. Your dog hearing officer from what I understand is not an attorney but I've been told he is I have irrefutable record of that. I also have record of the fact that dog hearings are public. The place they have the hearing is

public. Nobody wants to release public information, you've got animal control guys training dogs dogs on the side. They're telling people whose dogs they're taking that they can train them. I have records of that, those are in the form of checks.
>> Ed Rast: Okay, thank you.
>> Ken Podgorsek: I move adjournment.
>> Second.
>> Ed Rast: All in favor? And we are adjourned. Thank you.