
OPEN MEETING
PUBLIC SAFETY COMMISSION
JUNE 19, 2008

On the 19th day of June, 2008, the
following meeting was held before Allan B. Polunsky,
Chairman, in Austin, Travis County, Texas.

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A P P E A R A N C E S

COMMISSIONERS OF THE PUBLIC SAFETY COMMISSION:

Allan B. Polunsky, Chair

C. Tom Clowe

Elizabeth Anderson

Carin Marcy Barth

DIRECTOR'S STAFF OF THE DEPARTMENT OF PUBLIC SAFETY:

Colonel Thomas A. Davis, Jr.

Lt. Colonel David McEathron, Assistant Director

Dorothy Wright, Executive Assistant

1 CHAIRMAN POLUNSKY: Let me begin by
2 calling the roll.

3 Commissioner Anderson?

4 Commissioner Barth?

5 COMMISSIONER BARTH: Here.

6 CHAIRMAN POLUNSKY: Commissioner Clowe?

7 COMMISSIONER CLOWE: Here.

8 CHAIRMAN POLUNSKY: I am present.

9 Let the record show that

10 Commissioner Anderson is not present at this time.

11 The Texas Public Safety Commission is
12 called to order in accordance with Chapter 551 of the
13 Texas Government Code, the Open Meetings Act. A quorum
14 of the commission is present and the meeting is now
15 declared open. It is approximately 8:35 a.m.

16 The first item on the agenda is the,
17 "Discussion and possible action on approving the record
18 of the last Public Safety Commission meeting."

19 And each of the commissioners have the
20 transcripts from the past meeting, so I will either
21 entertain a motion for approval or, if there are any
22 corrections that need to be made, then we can certainly
23 discuss them.

24 COMMISSIONER BARTH: So noted.

25 COMMISSIONER CLOWE: Second.

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1 CHAIRMAN POLUNSKY: All right. It has
2 been moved by Commissioner Barth and seconded by
3 Commissioner Clowe that the record that has been
4 submitted to us pertaining to the actions and
5 discussions at the last Public Safety Commission be
6 approved.

7 Any discussion?

8 If there's no discussion, all in favor
9 please say, "Aye."

10 THE COMMISSION: "Aye."

11 CHAIRMAN POLUNSKY: Any against, "No."
12 Motion passes.

13 The next item on the agenda is, "Public
14 comment."

15 Is there anybody here who would like to
16 address the Public Safety Commission at this time?

17 There being none, we will move on to the
18 next item.

19 The next item on the agenda is the,
20 "Discharge appeal hearing of Kevin Scott Lewis."

21 (The Discharge Appeal Hearing of
22 Kevin Scott Lewis was conducted at this time.)

23 CHAIRMAN POLUNSKY: What we're going to
24 do is go into executive session. The commission now
25 adjourns to executive session, which is closed to the

1 public in accordance with the Texas Government Code,
2 Sections 551.071 and 551.074.

3 (Executive Session was conducted at this time.)

4 CHAIRMAN POLUNSKY: The regular session
5 of the Chapter 551 of the Texas Government Code, the
6 Open Meetings Act. During this meeting the commission
7 will be conducting business from the agenda posted in
8 the Texas Register. I would also like to make note
9 that Ms. Anderson is present.

10 Before we move on to other items on the
11 agenda, it has been requested by Ms. Barth that we
12 revisit Item No. V, which was the, "Deliberation,
13 discussion, and possible action, including a final
14 decision, on the discharge appeal of Kevin Scott Lewis.

15 Commissioner?

16 COMMISSIONER BARTH: I would just like to
17 bring the motion back up to go with the agency's final
18 recommendation.

19 CHAIRMAN POLUNSKY: So you're asking that
20 your vote be changed?

21 COMMISSIONER BARTH: Yes, sir.

22 CHAIRMAN POLUNSKY: Let the record
23 reflect that Ms. Barth is changing her vote to uphold
24 the director's action. So that vote now will be three
25 to zero to uphold the action.

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1 I will be moving around on the agenda
2 because of time constraints.

3 The next item will be Item No. XI,
4 "Discussion and possible action on investigations into
5 and resulting from the fire at the Governor's Mansion,
6 including discussion and possible action on deployment
7 and implementation of security personnel or devices in
8 the Capitol Complex."

9 Colonel Davis, would you like to make a
10 report at this time? I know we have a report that we
11 also want to hear from Sergeant Escalante. You
12 certainly have the floor.

13 COLONEL DAVIS: I would defer any comment
14 to the investigating --

15 CHAIRMAN POLUNSKY: All right. Thank
16 you, sir.

17 I would like to call at this time
18 Sergeant Mike Escalante.

19 Sergeant Escalante, can you identify
20 yourself for the record, please?

21 MR. ESCALANTE: Michael Escalante. My ID
22 number is 6175. I'm a sergeant with the narcotics tech
23 unit assigned in San Marcos, Texas.

24 CHAIRMAN POLUNSKY: Thank you, sir. And
25 you have been given a task over the last couple of

1 weeks. Can you describe to the commission and to the
2 public what your responsibilities have been.

3 MR. ESCALANTE: My responsibilities were
4 to determine if there were adequate security provisions
5 in place at the Governor's Mansion during the
6 construction project and to also initiate a second
7 investigation to determine exactly what took place on
8 the morning of the fire.

9 CHAIRMAN POLUNSKY: That is the task that
10 I requested?

11 MR. ESCALANTE: Yes, sir.

12 CHAIRMAN POLUNSKY: And you have, at
13 least in a preliminary sense, conducted those dual
14 investigations and have reached certain conclusions; is
15 that correct?

16 MR. ESCALANTE: That's correct.

17 CHAIRMAN POLUNSKY: And you have
18 articulated some of that information to the commission
19 in executive session a few minutes ago; is that also
20 correct?

21 MR. ESCALANTE: That is correct.

22 CHAIRMAN POLUNSKY: Okay. We thank you
23 for the work that you've done with respect to producing
24 this investigation. What the commission -- or at least
25 I would like to see done -- and I believe that the

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1 commission, unless someone tells me differently, would
2 agree with -- is to have you provide the commission in
3 public session an overview of what you have found
4 through your investigations over the last few days.

5 MR. ESCALANTE: Okay. Beginning on the
6 morning of the fire, on June the 8th, the officer that
7 was -- the trooper that was assigned to the Governor's
8 Mansion had completed a -- his -- that was the second
9 part of his duty. He had worked an official duty of a
10 2:00 to 10:00 shift. I believe he was working over at
11 the history museum at the time. He was assigned there.

12 And to overlap and to be able to
13 facilitate the need over at the Governor's Mansion, he
14 was assigned a 10:00 p.m. to a 2:00 a.m. shift. At the
15 time that he was working up at the Governor's Mansion,
16 the approximate time that he responded to the alarm,
17 the fire alarm, was at 1:35 is what he explained to me.

18 During that time he was not sitting at
19 the console. He was over on a computer station,
20 computer work station, adjacent -- or I say adjacent --
21 away from the console itself not being in -- while he
22 could still view the cameras, not all the cameras were
23 operational during that time.

24 The -- all the fire alarms sounded. When
25 it sounded he acknowledged that the alarm had gone off.

1 And after acknowledging that it went off repeated
2 sounding of other fire alarms were going off. From
3 that initial response, he began calling DPS
4 communications to acknowledge that there was a fire
5 alarm going off at the Governor's Mansion.

6 As he was walking down the stairs and
7 stepped out of the carriage house he smelled smoke.
8 From that time the communication operators advised --
9 or asked if he needed to call the fire department. As
10 he's walking up on the north side of the mansion
11 through the gates he sees through one of the front
12 windows of the mansion that there's a glow from the
13 front of the mansion. As he stepped a little further
14 he could see the glow increasing on the trees that were
15 up front.

16 At that point in time, he went back up to
17 the mansion to get -- well, DPS communications had
18 notified -- had notified 911 to call the fire
19 department. At that time on the 911 report log was
20 a -- the first call initiated came from a citizen at
21 1:44 a.m. There were a second and third call that came
22 in at 1:46 a.m. One of those calls was our DPS
23 communications advising to call the fire -- get the
24 fire department to the Governor's Mansion.

25 As the officer was going back up into the

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1 carriage house to retrieve the gate -- the back gate
2 remote and the cordless phone, he opened the back gate
3 to remove his vehicle that was parked inside the
4 mansion gates and moved it out onto the parking -- into
5 the parking on the outside, on the Lavaca Street side.
6 On the parking, he -- after parking his vehicle, he
7 went back into the -- in through the back gate of the
8 mansion, and at that time he could see the sirens
9 and -- or could hear the sirens and see the fire
10 department trucks coming up Lavaca Street.

11 He waited at the back gate and stopped
12 the fire truck, let them know that the fire was at the
13 front of the building. The fire department went around
14 the block to the Colorado Street side and they got into
15 the front gates to extinguish the fire.

16 As the trooper was walking into the back
17 gate he was approached by an off-duty Austin police
18 officer that was in plain clothes, and the police
19 officer had told him that he had observed a suspect or
20 an individual that was kind of suspicious and had
21 changed his mannerisms and had moved away from him as
22 he was trying to get across the street. He crossed the
23 street over off of 11th Street, 11th and Lavaca, and
24 the suspect got into his vehicle and turned -- made a
25 U-turn on 11th Street going back eastbound on the

1 property.

2 As the trooper had gotten the information
3 from the Austin police officer, he got -- obtained a
4 business card from him and told the officer that he
5 would get back with him. He wanted to go back up to
6 the front to ensure that the fire department didn't
7 have any trouble getting into the property. The Austin
8 Police Department officer went back to the site where
9 he saw the suspect go into a vehicle and had picked up
10 a cigarette lighter from the -- from the ground and
11 obtained that as evidence. The officer brought that --
12 that lighter back and gave it to one of the other
13 troopers that was on duty that had responded to the
14 call from the fire, one of the other DPS officers.
15 That DPS officer maintained that property and turned it
16 over to the crime lab.

17 The trooper that was working on duty had
18 gone back up to the front to ensure that the fire
19 department did not have any problems getting in. Also
20 inquired about any damage that may have been to the
21 front of the fence, construction of the fence, so the
22 fire department wouldn't have any problems getting in.
23 There was no sign of damage or forced entry or
24 intrusion on the front of the fence.

25 At that point in time the fire department

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1 took over and was covering the extinguishing of the
2 fire.

3 CHAIRMAN POLUNSKY: All right. So that
4 is essentially the chronology of the events that took
5 place after the trooper became aware of the fact that
6 there was a fire on the premises?

7 MR. ESCALANTE: Yes, that is correct.

8 CHAIRMAN POLUNSKY: Let me ask you a
9 couple of questions, and certainly any of the
10 commissioners can join at any time. Can you tell me
11 how many security cameras were stationed at the
12 Governor's Mansion that night?

13 MR. ESCALANTE: There are 20 cameras that
14 are stationed and 13 of them were working. Seven of
15 them were disabled.

16 CHAIRMAN POLUNSKY: Can you tell me what
17 the -- the operational condition of the sensors, the
18 motion detection sensors were the night of the fire --

19 MR. ESCALANTE: The motion --

20 CHAIRMAN POLUNSKY: -- which are separate
21 from the security cameras?

22 MR. ESCALANTE: The motion detectors were
23 actively working. They were not engaged in the sense
24 that they would see an activation or a compromise on
25 that particular beam due to the construction debris and

1 fencing that was in and around the mansion construction
2 area.

3 The -- one of the miscommunications was
4 there was a piece of equipment that was on the carriage
5 house that allowed for the cameras to tie in with the
6 security system. When that system was compromised that
7 system would go into an alarm mode and would show an
8 icon on that system where you could activate that icon.
9 And when you activated that icon it -- it generated the
10 camera to be able to identify the certain area that was
11 being compromised so the officer could be able to
12 identify or detect what the problem was in that area.

13 That piece of equipment had been removed
14 from the property for repair. And when that was --
15 that was done approximately -- I believe it was
16 May 16th on the -- on the work order. And during those
17 conversations that Lieutenant Armisted and the
18 facilities commission and the program administrator for
19 the mansion -- they determined that it obviously needed
20 to get fixed, but there was some concern about not
21 having a replacement for that -- for that piece of
22 equipment.

23 At that time it was unknown by several
24 other officers, the captain included of the detail,
25 that that piece of equipment was not necessary in order

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1 for those beams to function. And those beams should
2 have been able to -- enabled off of another digital
3 display that's on the carriage house console. So
4 those -- it's been -- the information that I have
5 received from both Lieutenant Armisted and the
6 facilities commission is that those beams were actively
7 working, but were not in a position where they could be
8 reset to detect any intrusion on that device.

9 CHAIRMAN POLUNSKY: In your opinion, was
10 the trooper who was on duty that evening properly
11 trained in order to operate, oversee the security
12 system in place?

13 MR. ESCALANTE: No, sir.

14 CHAIRMAN POLUNSKY: -- at the Governor's
15 Mansion?

16 MR. ESCALANTE: No, sir.

17 CHAIRMAN POLUNSKY: Sir, your answer is
18 no?

19 MR. ESCALANTE: No. No.

20 CHAIRMAN POLUNSKY: Can you tell me
21 whether the trooper was focused on the security panel
22 at the time the fire was ignited?

23 MR. ESCALANTE: The officer was not at
24 the console that the cameras and the security system
25 is -- is in that -- at that particular point of the

1 carriage house. He was on a computer on the other side
2 of the room. The room, I'm guessing, is probably
3 about -- oh, about 15 feet long. So he was on the
4 other side of the room not -- he wasn't focused on the
5 cameras itself but was working on another computer.

6 CHAIRMAN POLUNSKY: There was one trooper
7 on duty that night; isn't that correct?

8 MR. ESCALANTE: Yes.

9 CHAIRMAN POLUNSKY: Do you feel that that
10 was an adequate number of people to oversee security at
11 the Governor's Mansion?

12 MR. ESCALANTE: No, I do not, with --
13 with the cameras improperly working and the beams
14 inactivated like there were, there should have been
15 additional personnel on the ground, a second set of
16 eyes.

17 CHAIRMAN POLUNSKY: Questions from
18 commissioners?

19 COMMISSIONER CLOWE: Sergeant, you stated
20 that there was an inadequate number of individuals on
21 duty that evening, one trooper. Had there been a
22 request for additional help in the past?

23 MR. ESCALANTE: Yes.

24 COMMISSIONER CLOWE: Explain that to us,
25 if you would.

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1 MR. ESCALANTE: That request came from
2 Lieutenant Armisted to Captain Avant in trying to
3 mirror the uniform operations at the Governor's Mansion
4 to keep those the same when the family left, to assign
5 four troopers per shift having a sergeant supervisor to
6 oversee the scheduling and the assignments for that
7 particular task. That memo was taken to the major at
8 the time and there were discussions with the major and
9 the captain on trying to see how they were going to
10 facilitate the needs of the request.

11 The long term of that is that there were
12 several challenges that were being met during that
13 time. Initially there was one trooper assigned per
14 24-hour shift. That only lasted a few days before the
15 operations of the -- of the mansion were not being
16 effective with all the traffic that was going in and
17 out of the mansion.

18 That later turned out to have one
19 noncommissioned security officer to adhere to the
20 request that was made on that memo to have two people
21 that were up there. While that memo authorized having
22 commissioned personnel there was a time period where
23 they wanted to attempt to try to make that work with
24 the security officers because that's some of their
25 current function on the Capitol Complex.

1 This was voiced by the program
2 administrator that they felt more comfortable to have
3 two uniformed personnel. That was later achieved in
4 the process to comply with that memo. From Monday
5 through Friday for a 24-hour shift there were
6 two officers in place at the Governor's Mansion. The
7 Monday through Friday shift there was a point in time
8 where there were -- during the experimental phase there
9 were officers that were brought in from the Capitol
10 Complex and from the patrol division.

11 While some of those were brought in, some
12 of those received training; some of those did not
13 receive any training. As time moved on and different
14 people came in to do security over at the Governor's
15 Mansion, the training, as it was passed on, some people
16 that were new that had come in were not familiar with
17 the operations of the camera system, were not familiar
18 with the operations of the perimeter beams. Some knew
19 that there were fire log watch provisions to be made.
20 Some said that they did not know that those were in
21 existence. There was no consistent plan of action on
22 that transition phase.

23 COMMISSIONER ANDERSON: Were there
24 things -- were their postings in the carriage house
25 that would explain how to use the fire alarm, the

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1 cameras, how to open and close the gates?

2 MR. ESCALANTE: The open and closing of
3 the gates when a trooper came in, there was some
4 training that involved sitting a couple of hours with
5 another officer there to kind of show him, you know,
6 what opens the front gate, what opens the back gate,
7 when an alarm sounds, how do you disengage that alarm
8 and acknowledge what that threat or compromise may be.
9 There was not -- not any formal training. It was a
10 very small time frame that those officers were
11 introduced to that system. That included the
12 operations of the cameras on being able to pan tilt and
13 zoom in on either a suspect or a license plate from
14 that camera. So there was not anything in writing.

15 When I had requested fire alarm
16 procedures during my interview with Lieutenant Armisted
17 he was trying to produce those. He said, "Yeah,
18 they're here on the board somewhere." So he looked for
19 them and they were not to be found at that time. I
20 don't know whether someone put them away. We looked in
21 another book and couldn't find them. I later obtained
22 them from his office that evening.

23 COMMISSIONER BARTH: To follow up on
24 Commissioner Anderson's question, were there times
25 since the Governor vacated the mansion where security

1 would have never touched the cameras wherever they were
2 set? During that shift they just -- you know, as you
3 said, they could zoom in, zoom out, and look around,
4 but because of training -- and I don't want to put
5 words in your mouth -- where the cameras were never
6 touched during a shift?

7 MR. ESCALANTE: Yeah, cameras were never
8 touched during the shift. Some officers were not
9 comfortable with touching the cameras, moving them.
10 There were times when they had maneuvered the cameras
11 and, you know, something would happen where all the
12 cameras would either go off or they were not -- they
13 lost total picture on the camera itself. And once they
14 got the cameras back up they left them alone in a
15 position that they were last in.

16 COMMISSIONER CLOWE: So one might say
17 that the detail was understaffed, not trained properly,
18 some equipment was faulty, 13 out of the 20 cameras
19 were working, but that might have been adequate if
20 staff had known how to operate the cameras?

21 MR. ESCALANTE: That's correct.

22 COMMISSIONER CLOWE: The --

23 MR. ESCALANTE: And if the operations of
24 the security, the perimeter beams are working properly
25 and the receiver and the transmitter are working

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1 properly and that information is relayed up to the
2 console, then when that beam is compromised, that
3 officer -- even if he's sitting away from the desk, he
4 could react to that and be able to see that -- that
5 activity that's taking place. That was not the case.

6 COMMISSIONER CLOWE: Although the
7 equipment was working it was blocked by construction
8 material, so it was not functioning and not providing
9 security?

10 MR. ESCALANTE: That's correct. It was
11 not functioning properly as it was supposed to.

12 COMMISSIONER CLOWE: And there were no
13 policy instructions readily available as individuals
14 unfamiliar with the detail brought in when manning
15 needs required that so that they might know what to do,
16 such as the fire watch every hour and operate the
17 cameras and that type of activity?

18 MR. ESCALANTE: That is correct.
19 There -- the fire watch with my investigation has
20 revealed that some people knew about it; some people
21 don't. It was passed along from one shift to the other
22 as far as being able to go down -- and I asked
23 specifically what they were supposed to look for on the
24 fire watch. Did they actually just do a perimeter
25 check or did they actually go inside the building of

1 the mansion. Some officers stayed on the perimeter,
2 some officers stayed on the perimeter and went inside
3 and, you know, looked upstairs and downstairs to make
4 sure that there was no fire hazard. But that was not a
5 consistent plan of action.

6 COMMISSIONER BARTH: Had those cameras
7 been moved during that evening at all?

8 MR. ESCALANTE: No, according to the
9 officer that was on duty. He advised me that he had
10 never touched the cameras. And that was one of the
11 reasons early on when he -- he had been working the
12 mansion. He had -- had not touched them because of
13 that.

14 COMMISSIONER BARTH: And which seven
15 cameras could you tell us were out and where they were
16 located?

17 MR. ESCALANTE: Off the top of my head I
18 don't know. But I do have a diagram in which the
19 facilities commission provided to me showing me which
20 cameras were working, the direction of their -- of the
21 camera at that particular time. And that was obtained
22 after the -- that camera system was removed -- or the
23 computer system was removed from the carriage house for
24 investigative purposes.

25 COMMISSIONER BARTH: Working with the 13,

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1 would that have adequately given you a view if you were
2 on duty?

3 MR. ESCALANTE: If those cameras were
4 pointed in the right directions and -- they would have
5 covered enough area to cover the perimeter of the
6 mansion. There would have been enough coverage for all
7 those if they were in a position to cover the areas
8 that were not covered during that time frame.

9 COMMISSIONER ANDERSON: I have another
10 question about the cameras. Some number of the seven
11 that were not working, we have been -- have we been
12 aware and the facilities commission been aware of some
13 of the cameras not working for an extended period of
14 time?

15 MR. ESCALANTE: Yes. There were
16 three cameras that they have been consistently having
17 problems with because of wiring issues, power not able
18 to get to those cameras because of the distance. Three
19 of those cameras were -- those we're aware of, the
20 facilities commission was aware of during that time.

21 One camera inside the mansion that was at
22 the back stairs had been disabled for the construction
23 phase. So the other three cameras that were left,
24 those were not observed until they reviewed the film
25 after the fire.

1 COMMISSIONER ANDERSON: Are you aware of
2 protocols that are in place to review, you know, on a
3 periodic basis the functioning of the various
4 components of the security system at the mansion by
5 anyone, by us, by the facilities commission?

6 MR. ESCALANTE: The troopers when -- when
7 a camera went out -- there was a sign up on the
8 carriage house on one of the bulletin boards that
9 stated, "If you have problems with the cameras, call
10 this company."

11 So some of the cameras would -- I mean,
12 some of the officers would contact the supervisor and
13 let them know or some of the officers took the
14 initiative to call the camera people to come in and fix
15 the camera. And the times that they were -- what I've
16 seen on the work orders, the times that those cameras
17 or problems were alerted to those individuals, work was
18 done on them and the -- and, of course, in some of
19 those the facilities commission was also involved in
20 them, and they indicated whether that camera was able
21 to come back up to normal function or whether it
22 remained disabled because they needed a part or were
23 lacking a part to try the fix that camera.

24 COMMISSIONER CLOWE: So there had been
25 reports of malfunctioning cameras of the device that

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1 activated the icons on the infrared device and request
2 for more manpower?

3 MR. ESCALANTE: Yes. The device, which
4 I'll refer to as the Crestron, that device had been
5 having problems since -- oh, I want to say the latter
6 part of February, early part of March. There was
7 different number of issues that kept having -- they
8 kept having problems with.

9 One of them they thought was the cable.
10 They went ahead and ordered cable to try to bring that
11 system back up again. There were other times when they
12 felt that there wasn't sufficient power to that system
13 that was causing it to not function properly. So there
14 was a number of different troubleshooting ideas that
15 the facilities commission had tried to fix on that
16 Crestron.

17 It was finally determined that it needed
18 to be sent out to be repaired, and that decision was
19 made with consultation of Lieutenant Armisted and the
20 mansion coordinator, who was there, who she had a very
21 strong concern about having that piece of equipment
22 removed because she really felt that was an integral
23 part of the securities system.

24 When that piece of equipment was removed
25 she asked for a replacement to be brought in. The

1 facilities commission told me that that piece of
2 equipment is not something that you can go and buy at,
3 you know, Best Buy or Comp USA or, you know, any one of
4 those places. So the decision was made so have that
5 piece of equipment sent out for repair.

6 The initial thought on the turnaround
7 time was about one week, according to
8 Lieutenant Armisted, trying to, you know, have that
9 piece of equipment fixed and brought back in. It was
10 unknown to me at that time that that system operated
11 without the use of that Crestron, because there is
12 another digital display on there that's got the buttons
13 to acknowledge any alarms that goes off. And then you
14 could -- you know, the officer would have to know how
15 to operate, obviously, the system. And when that alarm
16 went off in that particular zone, that officer would
17 have to navigate that camera to that particular zone.
18 Before that Crestron tied in that system with the
19 cameras and the perimeter beams, which allowed easy
20 access for the officer to hit an icon on that system
21 and to be able for that camera to navigate to that --
22 that piece of -- or that zone in that area where that
23 is being compromised.

24 COMMISSIONER ANDERSON: As a normal
25 matter, a trooper that is working a specific -- you

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1 know, whether it's patrol or whether it's at the
2 Capitol Complex, or whatever, they would look to their
3 sergeant for job procedures, you know, policies and
4 procedures and so forth, right? A trooper, their
5 immediate supervisor is a sergeant typically?

6 MR. ESCALANTE: That is correct.

7 COMMISSIONER ANDERSON: And did I
8 understand you correctly that there was not a sergeant
9 in place at the mansion while it's under construction
10 to supervise these troopers working these shifts?

11 MR. ESCALANTE: There was not a sergeant
12 for that specific task. The troopers were told to
13 report any problems to Captain Avant, who was
14 overseeing any of the security at the mansion itself.
15 Their immediate supervisors, which they did have, were
16 at the Capitol or they were at their patrol stations
17 across the Capitol Complex. So they -- but the
18 sergeants themselves were not on the property to
19 supervise those officers.

20 COMMISSIONER ANDERSON: So they have a
21 regular chain of command up through their sergeants,
22 and then they had, you know, informal to the captain
23 for the work they were doing at the mansion?

24 MR. ESCALANTE: That's correct. That's
25 not to say that some of those sergeants did not visit

1 the mansion to check on the troopers. And, you know,
2 initially when things are going on, some of them had
3 gone over there to kind of oversee some of the
4 operations and learn some of the things that they were
5 having to do.

6 COMMISSIONER CLOWE: And at this point in
7 time your investigation is ongoing and is not complete
8 and you will finally make a report to the chairman and
9 this board at some time?

10 MR. ESCALANTE: Yes.

11 CHAIRMAN POLUNSKY: Although I think the
12 essence of it has been determined, has it not?

13 MR. ESCALANTE: Yes.

14 CHAIRMAN POLUNSKY: All right. So then I
15 would -- I'm not trying to put words in your mouth
16 here, but as I hear what you say, you're saying that
17 there was inadequate training in place both for the
18 individual who was there the night of the incident and,
19 just generally speaking, those who oversaw security at
20 the Governor's Mansion?

21 MR. ESCALANTE: I feel it was a
22 combination of things. Obviously, one, the equipment
23 wasn't working properly. There were attempts to try to
24 get it working, and that was still -- it was -- always
25 seemed to be a work in from progress type of a

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1 situation.

2 On the -- when the Governor's family left
3 the mansion, there was no transition phase. There was
4 a few officers, I believe, that were -- that had come
5 in and received a little amount of training during that
6 time, or they sat with another officer to kind of
7 oversee what some of the procedures were. There was
8 inadequate number of personnel on the night of the fire
9 with relation to the equipment not working properly.
10 Most of the officers were under the impression that
11 that system was not operable because that Crestron
12 device was not available on that system to tie in that
13 system. There were numerous things that apply to that.

14 COMMISSIONER BARTH: Along your
15 investigation, did you find certain -- I call it
16 unwritten policies that -- or procedures that were
17 allowed during the shift?

18 MR. ESCALANTE: No. There were some --
19 and these post orders came -- there were uniform post
20 orders that were written up by -- I believe it was
21 Lieutenant Armisted, dictating what those officers did
22 while the family was in residence. Some of those
23 orders should have applied to the new troopers that
24 were coming in. They could have -- some of those could
25 have been applied to the troopers that were coming in,

1 as far as the responsibilities on securing -- you know,
2 get certain gates that needed to be closed, what their
3 functions were, being able to relay information in
4 respect to a compromise or a threat. There was mail
5 procedures on when mail came in, who was supposed to
6 bring it and take it.

7 COMMISSIONER BARTH: Well, what about
8 during the first shift in terms of, you know,
9 specifically --

10 MR. ESCALANTE: There wasn't anything
11 specific. Everything was broad.

12 COMMISSIONER BARTH: So you didn't
13 necessarily know whether you were supposed to walk
14 every hour to make sure --

15 MR. ESCALANTE: No, ma'am. Some officers
16 knew. Some officers did it just to be able to be
17 vigilant about the property. Some officers weren't
18 sure whether they needed to just stay in the carriage
19 house to maintain the security on the camera station
20 and relied on the perimeters.

21 COMMISSIONER BARTH: And you could be on
22 a computer and still be --

23 MR. ESCALANTE: Some of -- those officers
24 were allowed to be able to watch television up there.
25 They were allowed to work on the computer and, you

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1 know, work at other stations on the -- up in the
2 carriage house, yes. But there was nothing, you know,
3 written that said, you know, "You have this much time."

4 One of the questions I did pose, that if
5 they were given time to work on their weeklies after
6 their shift, you know, an hour or so, to get those
7 kinds of report issues in.

8 COMMISSIONER BARTH: So the one person
9 could watch TV or work on the computer in one area and
10 then with his other eye look at the cameras in the
11 other area? Do I have that right?

12 MR. ESCALANTE: Yes. Yes. That was
13 based on the equipment working properly. If a beam
14 went off and was compromised, then the trooper would go
15 over to the security system, to the camera system, and
16 try to identify where that threat came from.

17 COMMISSIONER BARTH: And depending on the
18 trooper that was on duty, he or she would know whether
19 or not the beam was working?

20 MR. ESCALANTE: That's correct. Most all
21 the troopers that I interviewed all felt that those
22 beams were not working because that Crestron system was
23 not in place.

24 CHAIRMAN POLUNSKY: Anything else?

25 COMMISSIONER CLOWE: No other questions.

1 CHAIRMAN POLUNSKY: Sergeant Escalante,
2 do you have anything else you would like to add at this
3 time?

4 MR. ESCALANTE: No, sir.

5 CHAIRMAN POLUNSKY: Thank you very much.
6 We appreciate the work that you've done on this.

7 MR. ESCALANTE: You're welcome.

8 CHAIRMAN POLUNSKY: Let me make a couple
9 of remarks in conclusion here.

10 It is my feeling that the security at the
11 Capitol Complex, Governor's Mansion, and other public
12 buildings in this area needs to be assessed or
13 reassessed. To that end, I am requesting that the
14 United States Secret Service come in and do an
15 assessment of the Capitol Complex, the Governor's
16 Mansion, and other public facilities in this city, and
17 possibly others, to advise the Department of Public
18 Safety as to what optimum security measures should be
19 in place. I'm asking them to do this because they are,
20 in my opinion, the preeminent organization or agency in
21 the world to make this type of assessment and have this
22 type of expertise. It should not be a reflection on
23 DPS. I am competent the DPS will work with the US
24 Secret Service in conjunction with this assessment that
25 will be performed expeditiously.

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1 I would also like to make the point that
2 it is the feeling of this commission that what takes
3 place here in this department needs to be transparent,
4 needs to be open, when appropriate, for the public to
5 know exactly what has taken place, and we will continue
6 to go forward with that philosophy.

7 This is likely not the finest moment for
8 the Department of Public Safety, but I think it needs
9 to be -- this department needs to be examined in the
10 totality of what it does on a day-to-day basis and
11 certainly, in my opinion -- and I think I speak for the
12 entire commission -- the work that this department does
13 and has done for many years has been superior, has been
14 excellent. And it is in my mind still without question
15 one of the finest state law enforcement agencies in
16 this country, if not the finest.

17 But, nevertheless, we've had a lapse here
18 in this particular situation. We need to identify what
19 took place and address it so that it does not happen
20 again. And we are committed to do that. Thank you
21 very much.

22 Next item, "Report, discussion and
23 possible action on the investigation by Internal
24 Affairs into complaints made by Coy Lorange."

25 Colonel Davis?

1 COLONEL DAVIS: Mr. Chairman, at the
2 direction of the commission we've had Internal Affairs
3 look at the allegations made by Mr. Lorange, and all
4 those allegations have been unfounded.

5 CHAIRMAN POLUNSKY: Questions?

6 COMMISSIONER ANDERSON: Is Mr. Radney
7 here today? I would like to ask him a couple of
8 questions since he's head of Internal Affairs.

9 CHAIRMAN POLUNSKY: Could you identify
10 yourself, please?

11 MR. RADNEY: Kent Radney.

12 COMMISSIONER ANDERSON: Could you remind
13 the commission of the scope of your investigation and
14 the methodology that you use to pursue the
15 investigation?

16 MR. RADNEY: To begin with, the
17 complaints in the manner they were crafted required
18 some initial investigation just to determine what the
19 complaint was. In doing so, interviews were conducted
20 and, in the case of one of the investigations,
21 documents were submitted to the lab for analysis;
22 statements taken of witnesses interviewed. That was
23 essentially the methodology used in conducting the
24 investigations.

25 COMMISSIONER ANDERSON: Okay. And what

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1 did the lab determine about the documents?

2 MR. RADNEY: The lab came back -- the
3 results came back that the -- the documents were
4 questioned documents. There was inconsistencies.
5 There was print inconsistencies. There were lines
6 drawn on some of the documents that appeared to have
7 been drawn by a pen or pencil with a straight edge or
8 perhaps a -- using a line-drawing tool and software
9 like Microsoft Word. But they were -- they did not
10 appear to have been part of an original print that you
11 might find when you print your e-mail.

12 COMMISSIONER ANDERSON: I don't have any
13 other questions.

14 CHAIRMAN POLUNSKY: Any questions?

15 COMMISSIONER CLOWE: No questions.

16 CHAIRMAN POLUNSKY: Thank you, sir.

17 We'll skip down to Item VIII, "Reports,
18 discussion, deliberation and possible action, including
19 award, regarding selection committee recommendation for
20 the following RFQs."

21 Mr. Ybarra?

22 MR. YBARRA: Oscar, Ybarra, chief of
23 finance.

24 Good afternoon, Mr. Chairman and
25 commissioners. In reference to the organizational

1 structure and procurement, it is my understanding that
2 the results are available to the commission based on
3 the evaluations team's assessment of the proposal
4 submitted. Kevin Jones, my procurement manager, will
5 distribute some information to the commission for your
6 review. It is my understanding that Commissioner Clowe
7 will have some comments regarding this issue.

8 CHAIRMAN POLUNSKY: Thank you.

9 Mr. Clowe?

10 COMMISSIONER CLOWE: Mr. Chairman and
11 commissioners, in regard to the RFQ to study the
12 management and organizational structure of the DPS,
13 there were four respondees to the RFQ. They were all
14 qualified. There was a selection committee composed of
15 three individuals within the department and two outside
16 individuals. They scored these applicants or
17 respondees last Friday and the results were tabulated
18 and communicated to me yesterday.

19 Based on the information that I have I am
20 suggesting to the board that we begin negotiations with
21 MGT of America, Incorporated with the hope to resolve
22 those negotiations in a contract which the director
23 would sign and that we would move forward with them on
24 this project.

25 COMMISSIONER ANDERSON: Can I ask you a

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1 question?

2 COMMISSIONER CLOWE: Certainly.

3 COMMISSIONER ANDERSON: This paragraph
4 says the vendors to respondent, they're listed or
5 they're ranked in order. So -- and then we -- but we
6 say we're going to work with the highest-ranking vendor
7 whose price is reasonable, not necessarily the
8 highest-ranking vendor.

9 COMMISSIONER CLOWE: That's correct.

10 COMMISSIONER ANDERSON: I am mindful of
11 the need to protect these bidders, you know,
12 competitive, you know, advantage and so forth. So
13 somebody is going to need to rule me out of order if
14 I'm asking an inappropriate question, but I would like
15 to know, you know, how much -- just in percentage
16 terms, not dollar terms, but in percentage terms how
17 much higher the higher ranks -- highest-ranking
18 vendors' cost is over the -- over the highest-ranking
19 vendor who we have made a judgment the price is
20 reasonable.

21 MR. YBARRA: 27 percent.

22 COMMISSIONER ANDERSON: Okay. And did
23 that highest-ranking vendor -- you know, I know there
24 were a lot of categories that you scored it against.
25 Did that highest-ranking vendor score highest across

1 the vast majority of the criteria or was the
2 highest-ranking vendor with a reasonable price, did
3 that vendor, you know, in some -- in some important
4 criteria score higher? Do you follow me? It was a
5 little awkward.

6 MR. YBARRA: Based on the information I
7 have, Commissioner Anderson, I can tell you that
8 their -- the two top scoring vendors, as far as
9 qualifications are concerned, were not that far apart.

10 COMMISSIONER ANDERSON: Okay. That's
11 helpful. Thank you.

12 CHAIRMAN POLUNSKY: So they were -- just
13 so I understand, close in scoring?

14 MR. YBARRA: I would say they were close
15 in scoring, yes, sir.

16 CHAIRMAN POLUNSKY: I'm missing something
17 here.

18 COMMISSIONER ANDERSON: I mean, do we
19 have an option -- I know this is more work. Do we have
20 an option to try to -- and I don't know what the
21 procurement rules say about this either. Do we have an
22 option to try to enter into negotiations with two
23 vendors and try to get the pricing closer together?

24 MR. YBARRA: It is my understanding that
25 based on how this bid was let that the first step would

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1 be to determine if the price is reasonable. And then
2 we could move forward with negotiations.

3 COMMISSIONER CLOWE: I'm sorry. I
4 couldn't hear what you said, Oscar. Would you repeat
5 that?

6 COMMISSIONER BARTH: I heard it. I don't
7 understand what you said.

8 MR. YBARRA: The first step in making a
9 selection and getting the negotiations with the vendor
10 would be to determine whether the vendor that we're
11 looking to move forward with in negotiations, if their
12 cost is reasonable.

13 COMMISSIONER ANDERSON: And how do we
14 determine what is a reasonable cost for this scope of
15 work? What benchmark do we use?

16 MR. YBARRA: Yesterday evening we
17 communicated with Commissioner Clowe what the results
18 were and identified that the reasonableness of price we
19 discussed with him and that he would move forward in
20 making a determination on which vendor we would move
21 forward with. Is that correct, sir?

22 COMMISSIONER CLOWE: Yes. And,
23 Commissioners, my sense is that none of you have
24 individually discussed this matter with the people on
25 the selection committee or the project officer or the

1 chief financial officer. And we're in a delicate
2 position here because we are talking about in a public
3 meeting negotiating a contract on behalf of the State
4 of Texas.

5 I was briefed yesterday and was given the
6 outline of the bids which relate to the hours that are
7 going to be dedicated and, therefore, the number of
8 people --

9 COMMISSIONER ANDERSON: And the labor
10 rates?

11 COMMISSIONER CLOWE: -- to this project.
12 Well, it relates back to an hourly rate.

13 COMMISSIONER ANDERSON: Okay.

14 COMMISSIONER CLOWE: And my sense, based
15 on the information I have, is that the respondee, who
16 came in at the top, was not reasonable. And that's why
17 I recommended the second respondee and suggest that we
18 go forward with negotiations with them to see if a
19 contract can be achieved. And I would -- I would
20 suggest that this matter not be delved into in the
21 public meeting because I think it will disadvantage us
22 in acquiring a contract on behalf of the State of
23 Texas. And I mean that because of money. But as
24 individual commissioners you can talk with those people
25 on our staff who have done this work and have your

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1 individual questions answered.

2 And if you would like to do that, perhaps
3 we can suggest to the chairman hold off on this item
4 and give you that opportunity, and then we could
5 revisit it later in this meeting.

6 CHAIRMAN POLUNSKY: I would like to delay
7 this until we have that information.

8 COMMISSIONER ANDERSON: So did you put a
9 motion on the floor that we need to do anything about
10 it, or can we just figure it out when we take a break?
11 Can we --

12 COMMISSIONER CLOWE: I think the proper
13 procedure is -- it's on the agenda as an action item,
14 and I think when you're ready to make a decision on
15 this that it can be by direction of the chair to go
16 forward or, if you would like a motion, it -- I had it
17 put on the agenda as an action item, so a motion is in
18 order.

19 But I think it might be well, since
20 you're raising questions that are very reasonable and
21 they're questions that I raised and had my individual
22 briefing on, that you might want to get with the staff.
23 But I would strongly recommend we not have a discussion
24 of the details of where we are on this project in
25 public meeting because I think it will cost the people

1 of the State of Texas money.

2 COMMISSIONER ANDERSON: Right. And I
3 don't want it delayed either. That's -- but --

4 CHAIRMAN POLUNSKY: Thank you. Let's go
5 to yours for right now.

6 COMMISSIONER ANDERSON: Okay.

7 COMMISSIONER CLOWE: Thank you, Oscar.
8 You stand ready to brief the commissioners
9 individually, don't you?

10 CHAIRMAN POLUNSKY: This is Item VIII.C,
11 "RFQ for IT optimization assistance in the development
12 of IT strategy."

13 MR. BRUBAKER: James Brubaker, chief
14 information management service.

15 Mr. Chairman, commissioners, the
16 department received 23 responses to the RFQ for the IT
17 assistance. Six of those were disqualified for failing
18 to sign the document as required. The remaining
19 17 were independently scored by a team of IMS employees
20 consisting of Assistant Chief Bryan Lane and manager
21 Elaine Mays, and Jim Kilchenstein, and all scores were
22 submitted to accounting for compilation.

23 I would tell you the top-scoring vendor
24 is well-known for its fact-based consulting services
25 designed to help its clients use and manage IT to

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1 enable business performance. Their approach design to
2 identify solutions that apply IT to derive improvements
3 creates substantial IT efficiency and strengthen the IT
4 optimization in its operations.

5 They're also well-known for their market
6 independence, which ensures that their advice is about
7 making clients successful and not driving
8 implementation or outsourcing. They're also well-known
9 for their market leading benchmarking capabilities that
10 provide clear and relevant comparisons and best
11 practices to assess and improve performance.

12 Their well-known research helps ensure
13 their analysis and advice is based on a deep
14 understanding of IT environment and the business of IT.
15 Based on my review of the documents -- and I also
16 reviewed the second and third scoring vendor as well --
17 I would respectfully request that the commission
18 authorize the department to proceed with contract
19 negotiation with the top-scoring vendor and, upon
20 successful negotiation of that contract, to award that
21 contract.

22 CHAIRMAN POLUNSKY: Thank you, sir.

23 Ms. Anderson?

24 COMMISSIONER ANDERSON: Mr. Brubaker, in
25 the scoring by the scoring team, the top-scoring vendor

1 was -- you know, approximately how -- I mean, did --
2 was the No. 2 vendor right there or was there a
3 reasonable amount of distance by which the top-scoring
4 vendor scored by some margin?

5 MR. BRUBAKER: The difference between the
6 top-scoring vendor and the second was about 8 percent.
7 And the difference between the second and third was
8 about a half a percent. The second and third were --

9 COMMISSIONER ANDERSON: Yeah. It's
10 eight percentage points higher?

11 MR. BRUBAKER: Yes, ma'am, percentage
12 points.

13 COMMISSIONER ANDERSON: Not 8 percent?

14 MR. BRUBAKER: No, ma'am. That's
15 correct.

16 COMMISSIONER ANDERSON: Do you follow me?

17 MR. BRUBAKER: Yes, ma'am.

18 COMMISSIONER ANDERSON: Because it's more
19 than 8 percent higher score?

20 MR. BRUBAKER: Yes, that's correct.

21 CHAIRMAN POLUNSKY: Okay. Is there a
22 discussion?

23 Make a motion.

24 COMMISSIONER ANDERSON: Yeah. I move
25 that we proceed with Mr. Brubaker's recommendation to

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1 enter into negotiations with the top-scoring vendor.

2 COMMISSIONER CLOWE: Second.

3 CHAIRMAN POLUNSKY: It has been moved by
4 Ms. Anderson and seconded by Mr. Clowe that the staff
5 enter into negotiations with the highest-scored
6 respondent to the RFQs for IT optimization.

7 Any discussion?

8 There being none, all in favor please
9 say, "Aye."

10 THE COMMISSION: "Aye."

11 CHAIRMAN POLUNSKY: Against?

12 Motion passes.

13 Thank you.

14 MR. BRUBAKER: Yes, sir.

15 CHAIRMAN POLUNSKY: Next item on the
16 agenda is the "Discussion and possible action on
17 recommendations by the Sunset Advisory Commission."

18 Colonel Davis?

19 COMMISSIONER CLOWE: Mr. Chairman, did we
20 pass over B intentionally?

21 CHAIRMAN POLUNSKY: That RFQ was
22 disqualified. Do you want to discuss it?

23 I'm sorry. Let me go back. Item B, "RFQ
24 for internal audit and risk assessment services."

25 Oscar?

1 MR. YBARRA: I think Farrell is also
2 going to be up here.

3 I will state that this procurement is on
4 track. It's going to be posted tomorrow in the Texas
5 Register with an award date of possibly
6 July 21st.

7 COMMISSIONER ANDERSON: This seems to
8 be --

9 COMMISSIONER CLOWE: What was the
10 problem?

11 MR. WALKER: Each of the respondents that
12 proposed included personnel that didn't have the
13 appropriate certifications.

14 COMMISSIONER ANDERSON: And our response
15 to that was?

16 MR. WALKER: To disqualify each.

17 COMMISSIONER ANDERSON: Right. And in
18 this revised RFP relevant qualifications have been made
19 eligible qualifications in the RFQ?

20 MR. WALKER: I believe so.

21 COMMISSIONER CLOWE: Was that a yes?

22 MR. WALKER: Yes. We believe -- we
23 believe that we've extended those.

24 CHAIRMAN POLUNSKY: Ms. Barth, would you
25 like to comment on that?

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1 COMMISSIONER BARTH: I -- we're going to
2 go back. This is the way to say it. My hope is
3 that -- that there won't be other ways to disqualify
4 that we haven't thought through with respect to this
5 RFQ.

6 CHAIRMAN POLUNSKY: Okay. But you are
7 satisfied with the RFQ now that -- the one that will be
8 published?

9 COMMISSIONER BARTH: We have made some
10 changes. I have not had the opportunity to look at
11 those changes before it goes out tomorrow.

12 CHAIRMAN POLUNSKY: Okay.

13 COMMISSIONER BARTH: But we have added an
14 additional audit to the list that wasn't on the list
15 with the procurement cards.

16 CHAIRMAN POLUNSKY: Okay. But this is --
17 this is not an action item?

18 COMMISSIONER BARTH: No.

19 CHAIRMAN POLUNSKY: Any additional
20 questions?

21 COMMISSIONER BARTH: The only thing that
22 I want to make you aware of is, as I reviewed the
23 internal audit report this month and saw where we were
24 with respect to budget versus action, in just about
25 every case we were at least 10 to 15 percent off our

1 forecast with respect to the number of hours we thought
2 would be used and what was actually used. So I will
3 caution the agency that we're sort of a best foot
4 forward in terms of how many hours we think the scope
5 of this job would take. But it wouldn't surprise me if
6 it doesn't take more.

7 COMMISSIONER ANDERSON: Don't I remember
8 from looking at that chart that the audits are
9 under-running their projected hours?

10 COMMISSIONER BARTH: No.

11 COMMISSIONER ANDERSON: Oh, they're
12 overrunning their projected hours? Boy, I missed that.
13 Okay. Is that right?

14 MR. WALKER: Most of them are
15 overrunning.

16 COMMISSIONER ANDERSON: Overrunning?

17 COMMISSIONER BARTH: Overrunning, yes.

18 COMMISSIONER ANDERSON: Okay. Oh, yeah.
19 Sorry. I read this backwards.

20 COMMISSIONER BARTH: Yeah. It's
21 definitely over.

22 CHAIRMAN POLUNSKY: Additional
23 discussion?

24 Thank you.

25 Colonel Davis, Sunset Advisory

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1 Commission.

2 COLONEL DAVIS: Mr. Chairman, as you're
3 aware, and the other commissioners, that our response
4 to Sunset was submitted on June the 9th. We have a
5 public hearing that's scheduled for Tuesday. I would
6 be glad to discuss any of the recommendations that --
7 or any of the responses that the department gave for
8 the recommendation of the Sunset Commission.

9 CHAIRMAN POLUNSKY: Are there questions
10 of Colonel Davis on this item?

11 COMMISSIONER CLOWE: Mr. Chairman, I am
12 concerned about the department's response to the Sunset
13 recommendation relative to the business model of the
14 driver's license division, and I am uncertain of just
15 what the recommendation from the Sunset staff means
16 relative to the adoption of a civilian business
17 management model and the removal of commissioned
18 officers from what appears to be based on how I read
19 their recommendation, the managerial side of the
20 function by keeping commissioned officers in the
21 offices. Is there anybody here that can help me with
22 that or is that something we have to get from Sunset
23 staff or somewhere down the line?

24 CHAIRMAN POLUNSKY: Colonel Davis might
25 be able to respond to that, if you would like.

1 COLONEL DAVIS: Commissioner Clowe, it's
2 my belief -- and I think there's someone here from
3 Sunset, if you would like to ask them, or they're
4 willing to, you know, talk about it. It's my belief
5 that a business model -- and I'm not -- certainly not a
6 business person, but to apply a business model would
7 require us to increase personnel, increase locations,
8 and those kind of things.

9 And I will tell you that it's my belief
10 that the supervision of those offices by a commissioned
11 peace officer is certainly in the best interest of the
12 state as far as security goes, the integrity of the
13 driver's license. And I'm not sure I understand -- and
14 we may get some direction Tuesday -- about what the
15 business model is. You know, my thought there would be
16 additional personnel, additional locations, and
17 additional money. So if there's something different
18 from that, hopefully we'll be able to clarify that
19 Tuesday at our public hearing.

20 COMMISSIONER ANDERSON: The way I read it
21 was that it wasn't being prescriptive about what that
22 model had to look like in detail, but that -- but the
23 things you say about the managerial chain, you know,
24 certainly would be part of it.

25 COMMISSIONER CLOWE: Well, I want to tell

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1 you that I have a real concern about what's going to
2 happen here, and I would like to lay a predicate for my
3 concern so you'll understand it. In the beginning the
4 driver's license was a permit to operate a motor
5 vehicle. In recent years it's become an identity card
6 of great importance. It is accepted to enter into
7 federal buildings, to open a bank account, to receive a
8 notarization from a notary public, board an airplane,
9 and it is as close today as we have to a national ID
10 card.

11 And I have gone back and studied the
12 requirements for the issuance of a driver's license in
13 this state today and I think we have done a really good
14 job of seeing to it that when the State of Texas issues
15 a driver's license that person is qualified to receive
16 it. I think the command presence of a commissioned
17 police officer in our driver's license offices is of
18 great importance. Not only is it to maintain a
19 watchful eye over the proceedings in regard to those
20 individuals who are wanted felons, but it enables those
21 people who are clerical individuals in the performance
22 of their duties.

23 In my opinion, these driver's license
24 examiners are the most underpaid group of employees in
25 this department. They have the highest rate of

1 turnover and they are, therefore, not as well trained
2 as they might be to implement the requirements of an
3 ever-increasing important document that this state is
4 charged with the responsibility of issuing.

5 And, Colonel, I have business experience
6 and I can tell you what a business model is designed to
7 do is to delight the customer. And I've run call
8 centers and I've run payment centers, and the employees
9 are trained to watch in a call center a flashing sign
10 that tells you how many minutes the last person that
11 called in has been holding on the phone. And the
12 clerks that work in that center are trying to drive
13 that number down as fast as they can.

14 In our payment centers of the companies
15 that I've run, the goal is to have no more than
16 three people in line. And as those people came in
17 line, when that line got out to six or ten, those
18 clerical employees began to really hustle to get those
19 people out from in front of them.

20 Now, I want to delight the applicants for
21 a driver's license in the State of Texas, but I don't
22 want to do it at the sacrifice of meeting the
23 requirements set down by a statute for a driver's
24 license in this state and I don't think we're going to
25 do it with too few underpaid employees and remove the

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1 commissioned officer presence in our offices. And I'm
2 a little concerned and confused about the idea of
3 taking away the management of these officers and
4 leaving them there with a civilian, noncommissioned
5 person supervising them.

6 I don't see a promotion path for those
7 individuals who are assigned that duty and I don't see
8 a permanent job, you know, rotating, for example,
9 highway patrol troopers in there for a week or
10 two weeks and them having knowledge of what the nuances
11 of this very complicated position are. I'm hopeful
12 that as we get into this process and we understand more
13 about what Sunset has in mind, my concerns can be set
14 to rest.

15 I think, again, the DPS has been assigned
16 a great many functions that have a business aspect, the
17 vehicle inspection, the licensing of concealed
18 handguns, because the Legislature felt if it came here
19 it would be done right. In my opinion, the licensing
20 of the drivers of this state is not being done right
21 because more of people and money than because of any
22 other reason.

23 So I'm looking forward to having a better
24 understanding of what the meaning of this
25 recommendation is, and I hope I can get comfortable

1 with the idea that we're going to do a good job of
2 issuing these licenses and not put them in the hands of
3 people that should not have them, because that is a
4 very dangerous thing if we're just going to run people
5 through the line and not really do the job we're
6 supposed to do. That's my concern.

7 Thank you, Mr. Chairman.

8 CHAIRMAN POLUNSKY: Thank you, Mr. Clowe.

9 Well, the department has taken the
10 position that is in favor of the recommendation. I
11 guess we could hear from the representative of the
12 Sunset Commission staff, if that person would like to
13 come forward.

14 Are you available to discuss this or --

15 MS. TROST: Not to -- not at all to put
16 you off, but I would prefer, since we haven't
17 discussed --

18 CHAIRMAN POLUNSKY: Amy, come up and
19 identify yourself so we can have you on the record, if
20 you would, please.

21 MS. TROST: For the record, Amy Trost,
22 from the Sunset Advisory Commission. And not to put
23 off your questions, Mr. Clowe, but I would prefer to
24 address them on Tuesday at the commission hearing
25 because our commission members, of course, have the

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1 report, but we haven't had a chance to discuss it in a
2 formal setting yet, in an open hearing. And so I would
3 respectfully ask to discuss it on Tuesday.

4 COMMISSIONER CLOWE: And I want you to
5 understand, Amy, that the commission has not had a
6 meeting since these recommendations came out. And I
7 attended the senior management meeting with staff and
8 was benefitted by being there. But this is the first
9 time the commissioners have sat so we can deliberate
10 these items, so this is my first opportunity to
11 concern -- express my concerns to you. So I'll look
12 forward to that.

13 MS. TROST: Thank you.

14 CHAIRMAN POLUNSKY: Thank you. See you
15 on Tuesday.

16 Mr. Clowe, what do you propose? Do you
17 want to have a discussion among all of us here as to
18 this particular provision or all of the
19 recommendations, or what -- what are you thinking?

20 COMMISSIONER CLOWE: I'm at the pleasure
21 of the commissioners. You know, this is our first
22 opportunity to discuss these in the public. And you
23 and I have visited about this, but I haven't had the
24 opportunity to hear from the other commissioners about
25 it because I'm forbidden to do that. But I would like

1 to hear what they think about my -- what you think
2 about my comments on this or any other matter. And I
3 believe it's posted so we can do that.

4 CHAIRMAN POLUNSKY: We can certainly do
5 it, and I'm happy to accommodate you and everyone else.
6 I am in agreement with the staff recommendation. And,
7 as such, I'm the one responsible for the department
8 taking the position that it did. I think Colonel Davis
9 has voiced his concern here today and to me personally,
10 so, you know, if anyone is going to take the fall for
11 the position that the department has taken, it would be
12 me.

13 I'm in agreement, so that's my position.
14 But if you would like to talk or discuss this among the
15 other two commissioners, that's fine.

16 COMMISSIONER CLOWE: Well, let me ask you
17 before we get to that, how would you address my
18 concerns when you say you're in agreement? Do you have
19 any of the concerns that I voiced?

20 CHAIRMAN POLUNSKY: I certainly have some
21 of the concerns that you voiced. I feel strongly there
22 should be commissioned officers retained at high volume
23 at least driver's licenses offices within the
24 department so that they can -- for those people on
25 outstanding warrants and provide professional law

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1 enforcement security and so on.

2 My feeling or my thought is that at the
3 upper management area of driver's license that it might
4 be a better way to go to have kind of a civilian group
5 or mindset or number of people that they're approaching
6 it from a different perspective than, say, commissioned
7 officers might.

8 COMMISSIONER CLOWE: And what would that
9 mindset or that perspective be?

10 CHAIRMAN POLUNSKY: What would it be?
11 Well, I think it would be probably a little more
12 customer service-oriented. I understand what you've
13 just said and we're -- I understand your point. Your
14 point is necessarily -- we're not trying to be
15 unfriendly to customers, but you're concerned about the
16 law enforcement side of things and you feel that having
17 law enforcement people involved in the hierarchy or in
18 the chain of command basically to the top is a more
19 efficient way to bring law enforcement into the
20 driver's license issuance process.

21 COMMISSIONER CLOWE: I call it a command
22 presence. And I can tell you that from my visits to
23 the driver's license office that I have visited, a
24 uniformed trooper makes a world of difference. And,
25 you know, my experience is in business, not in law

1 enforcement. And if you take those commissioned
2 officers out of the management you've got to replace
3 them with employees that are civilians that are well
4 paid. I don't see a cost savings there and I don't
5 know that a different mindset is going to advantage
6 those officers that are in the offices, the troopers.

7 I'm just not -- you know, if we can do it
8 better I'm for that. But I don't see the plan in this
9 that really is going to make it better. But we've got
10 to do something because, in my opinion, our driver's
11 license program is not functioning well right now. And
12 that's a breakdown between the driver's license
13 function and IMS, and it's going to be critical when
14 the real ID comes along. It's going to get to
15 criticalness then.

16 So this is an opportunity to make it
17 better, and I would like us to think about what we're
18 really doing before we just go into it and say, "Well,
19 we're going to get a private business mentality and
20 that's going to make it better." I've seen some
21 businesses that were really messed up.

22 CHAIRMAN POLUNSKY: Well, absolutely.
23 There's nothing magic about the fact that private
24 people or business people or noncommissioned
25 officers -- noncommissioned people are at the

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1 management strata of driver's license.

2 And to take this one step further, I am
3 sensitive to your point. And your point is that we
4 have not had an opportunity to meet among all of us so
5 that we could discuss this and reach a census. So this
6 was kind of an unwieldy situation where because of Open
7 Meetings Act requirements and so on we couldn't be
8 passing this information around. So we probably should
9 have had a special meeting or an earlier meeting to sit
10 down and go through all of this.

11 COMMISSIONER ANDERSON: I think we owe
12 that to department staff because I think, you know,
13 it's an awkward position when department staff
14 promulgates, you know, draft documents without having
15 had the benefit first of the commission attempting to
16 reach consensus on policy guidance which we then ask
17 them to go put on paper. So --

18 COMMISSIONER CLOWE: That's exactly
19 right.

20 COMMISSIONER ANDERSON: So, you know --
21 and part of it is how the calendar works. And so one
22 of the things that I would ask the leadership of the
23 department, you know -- and we've asked Oscar before to
24 lay out the -- we need to know when these dates are so
25 that we can move our meetings around to get in front of

1 those deadlines so that we're not -- we learned a
2 lesson with this one, but we don't want to have to
3 learn that one again.

4 COMMISSIONER CLOWE: I think that's real
5 important. And, you know, the Sunset review is an
6 opportunity to bring all the expertise to bear and to
7 benefit from that and come up with good solutions to go
8 to committee -- Sunset committee to go to Legislature.

9 And while we're on the subject, I'll
10 bring up another one that I'm concerned about, and
11 that's the promotion clause. That is a very difficult
12 issue to deal with. And I think it affects recruiting
13 and I think it affects retention. And I don't think
14 the Parks & Wildlife or the TABC promotion policy is
15 the answer for us. Ours is much more complex. Our
16 system is larger. We have many more promotions. And
17 I'm still working on what I think in my mind might be a
18 better way to do it. I haven't gotten there.

19 But if the commissioners and senior
20 management can sit down and talk about it and to try to
21 come up with a better solution, I think that's the way
22 to be helpful to Sunset. And I attended the meeting
23 with Sunset staff and on some issues they said, "Well,
24 you know, that's law enforcement and maybe, you know,
25 your board can help you on it."

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1 Well, here's -- here's the board. Now,
2 we're working on this organizational study. If we can
3 get that RFQ in place and get it going, these are some
4 issues that I think that entity needs to deal with and
5 help us in finding solutions. So I think that's very
6 timely. And I think this board will appreciate the
7 kind of help that will come out of that study on these
8 kinds of issues.

9 Those are the two that really concern me
10 the most of all those, those two issues in this
11 recommendation.

12 CHAIRMAN POLUNSKY: Well, I think that
13 your position on the promotional issue is reflected in
14 the department's response, is it not?

15 COMMISSIONER CLOWE: Yes.

16 CHAIRMAN POLUNSKY: Well, I'll leave it
17 to the rest of you. I mean --

18 COMMISSIONER ANDERSON: I'll be real
19 brief.

20 I think that the devil is always in the
21 details, but I think the recommendation to -- to move
22 toward a civilian business model, however that's
23 defined, which is, you know -- you know, these are
24 high-level recommendations. They're not -- you know,
25 it's not even a business model. It's just

1 recommendation, has a lot of merit if it can be done in
2 a way that still leaves uniformed presence in a defined
3 role in the DL offices. And one of the reasons I
4 support the recommendation of the Sunset Committee is
5 we have an endemic vacancy problem in our commission
6 force and, you know, we've been -- we've been told
7 we're going to have a -- you know, a spike in -- in
8 August. We have a-- you know, we have recruiting
9 challenges, we have pay compensation challenges over
10 there, too. And to have all of those; captains,
11 lieutenants, and sergeants, you know, those experienced
12 people in the DL office when we've got manpower
13 shortages, I think, is something that, you know, bears
14 taking a very serious look at. And I also think that
15 in the kinds of function that we expect frontline
16 examiners to do and call center people to do, that
17 civilian management who have experience in those
18 realms, you know, can -- could bring benefits. And so
19 I am very open to that recommendation and looking at
20 it. But I absolutely agree with Commissioner Clowe
21 that it cannot be done in a way that puts at risk the
22 integrity of the driver's license issuing process.

23 As far as the promotion policy, I
24 actually disagree with what -- so I was on board on the
25 driver's license thing. I disagree with the position

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1 that the commission and the department took on the
2 promotion policy because, again, I think there -- the
3 devil is in the details. I can see, in my view, Sunset
4 was overly prescriptive in recommending two other
5 promotion models that probably don't work here. But I
6 believe, you know, people that I've talked to around
7 the state, you know, that there is room for improvement
8 in how we promote people.

9 And so I welcome them raising the issue.
10 It's a -- you know, it's a critical human capital
11 management issue. I don't think you can legislate it,
12 and so I do think it's incumbent on us, in conjunction
13 with the organizational assessment, to take a hard look
14 at ourselves, but to be open to the notion that, you
15 know, we don't always just have to do everything the
16 way we've always done everything.

17 Maybe that wasn't very brief.

18 COMMISSIONER BARTH: I'll try to be
19 briefer.

20 I agree with the recommendation on the
21 DL. I understand the last thing you want to do is
22 compromise the integrity of that ID, for lack of a
23 better way of -- but I do believe that there's perhaps
24 an opportunity to put some sort of quasi-private public
25 operations in that particular office.

1 With respect to the promotion policy, I
2 don't think what we have is working. I'm glad, you
3 know, Sunset raised it. I don't think what they put as
4 a potential answer is one that perhaps fits us. So,
5 you know, my viewpoint is, I would like to hopefully
6 have the organizational assessment give us some
7 recommendations out there that's, you know, outside of
8 the State of Texas perhaps even that works for this
9 particular law enforcement agency, because, you know, I
10 just do not believe that the promotional policy we have
11 in place is adequate. And a lot of it starts just with
12 compensation, so that has to be addressed.

13 COLONEL DAVIS: Mr. Chairman, at the
14 request of Commissioner Barth, we have a group of
15 people that are looking at the promotional process in
16 other states. We'll have that report in August at your
17 request.

18 COMMISSIONER BARTH: Okay.

19 CHAIRMAN POLUNSKY: Well, Mr. Clowe, I
20 think that with respect to the driver's license issue
21 that three out of four of us have a position where we
22 are in agreement with the Sunset staff recommendation.
23 And we're in agreement in proposing the -- you know, we
24 are -- I'm sorry. It's already a long day.

25 We are in agreement with the Sunset

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1 Commission staff recommendation. So that doesn't
2 prevent you from testifying on Tuesday as to what your
3 personal position is, and I would recommend that you do
4 so.

5 COMMISSIONER CLOWE: Well, I'll be there
6 and I hope I can express, as I've attempted to today, a
7 concern that is not necessarily an opposition to the
8 recommendation, but a concern about the result of the
9 recommendation and the preservation of the integrity of
10 the issuance of the driver's license and how that's
11 achieved. And I'm long on business experience and
12 short on law enforcement experience, and having those
13 troopers in those offices when it gets hectic and when
14 there are language difficulties, when a person comes in
15 who has an outstanding warrant for their arrest or when
16 there's someone who's inebriated or under the influence
17 of drugs, I can tell you those clerical people are not
18 trained, they're not authorized. They're business
19 people. They're not supposed to deal with that.

20 And if you put officers in there and you
21 don't have a management that they can relate to and
22 work for, I see problems there. And that's -- that's
23 the answer I'm looking for. How is that going to work?
24 And if you do it like we do it in business -- you know,
25 these are people in the private sector who come in with

1 money and they're trying to pay a bill. And you want
2 to take their money. You don't ask them anything about
3 their background or -- you just take their money and
4 you're finished with them. And then they're delighted
5 and you are, too.

6 We've got a different situation here.
7 What is the civilian business model that we're going to
8 adopt for the issuance of driver's license? You know,
9 I've got a hunting license and that's a lot easier to
10 get. All you've got to do is show your driver's
11 license to get your hunting license. I went on an
12 airplane the other day and I took out my Department of
13 Public Safety ID card and I handed it to the TSA person.
14 And they looked at it. They said, "Well, I don't think
15 that is what I want." And I said, "Well, now it's a
16 picture ID. It identifies me. It says who I am."
17 "Well, I don't think that's what I want." And I said,
18 "What you really want is my driver's license, isn't
19 it?" And they said, "Yes, sir, that's what we really
20 want." So I just pulled it out and gave it to them.

21 That driver's license is a valuable tool,
22 and we want to protect the issuance of it. So I'm
23 really concerned about this and I want to make sure
24 that the citizens of this state are protected. And I
25 know you-all do too.

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1 CHAIRMAN POLUNSKY: We do. And I
2 certainly am sensitive to your thoughts and suggestions
3 here. And one thing that I think certainly should come
4 from this, just so it doesn't get somehow skewed in
5 this process, is I think -- notwithstanding the fact
6 we're talking about having a business model or a
7 civilian administration, or however you might want to
8 describe it, I personally feel -- and I think I'm
9 speaking for all the other commissioners. I personally
10 feel that -- that the driver's license function needs
11 to remain as a component of DPS and not moved to any
12 other place or stand up alone or anything of that
13 nature because of the various points that you've made
14 on where we are in the 21st century and how it
15 is something best associated with an agency that is
16 involved in law enforcement as opposed to an agency
17 that isn't. If the recommendation had been -- you
18 know, one that was floating around a year or two ago
19 would have been to move it over to the Texas Department
20 of Transportation, I would violently been opposed to
21 that, because I think that would be very -- very
22 imprudent to do. So I feel that we're going to be
23 where we need to be as long as it's under the auspices
24 of DPS.

25 But your argument is well taken and, as I

1 said, I think that, you know, you should feel free to
2 argue it next Tuesday. And, for that matter, I believe
3 that Colonel Davis personally has a position close to
4 yours and I would not object to him articulating his
5 position.

6 COMMISSIONER CLOWE: Thank you,
7 Mr. Chairman.

8 CHAIRMAN POLUNSKY: Anything else on
9 that?

10 COMMISSIONER CLOWE: No, sir.

11 CHAIRMAN POLUNSKY: One other thing, Tom,
12 that certainly resonates here is that, you know -- and
13 Beth has also, obviously, made the point -- we need to
14 be much more careful in the future to look at these
15 timelines, and when something is coming up that is, you
16 know, going to be of importance, but it doesn't
17 necessarily fit into our usual meeting schedule, then
18 we just need to call a special meeting or rearrange our
19 schedule, put together a workshop, or do something that
20 will enable the four of us to sit down with staff, and
21 possibly without staff, and discuss these matters so
22 that there's a consensus. This last situation really
23 proved -- even though that there's -- there's now the
24 ability for two people to talk to each other, it's --
25 you know, we're still prohibited from doing anything

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1 more than that.

2 So if we're going to take a position on
3 an issue, we're going to have to have a called meeting,
4 go through the legal procedures, and sit down and
5 discuss these matters among each other and come to
6 resolution. And I'm certainly committed to do that,
7 and I would assume you-all are as well.

8 COMMISSIONER CLOWE: Thank you.

9 CHAIRMAN POLUNSKY: Okay. Thank you very
10 much.

11 Budget matters, "Discussion and possible
12 action on exceptional items list."

13 MR. YBARRA: Oscar Ybarra, chief finance.

14 Mr. Chairman commissioners, we provided
15 you -- the commissioners with a new book with a new
16 summary regarding the exceptional items, and we
17 attempted to highlight all of the changes that we made
18 in order for the commission to be able to see what was
19 changing. As far as a list is concerned that did not
20 change. Basically some of the figures did.

21 We worked with the operating shortfall as
22 Commissioner Barth had identified some concerns
23 regarding some of the figures, that they may have been
24 understated. We met with her earlier this month and
25 feel that we've addressed her concerns.

1 And we have also changed all of the
2 facilities that we're proposing down to \$1 as we await
3 the project analysis from the Texas Facilities
4 Commission. This is something we did last session and
5 the Legislature seemed to accept that. My
6 understanding is that information will be coming in in
7 December or early January, and we'll update everyone as
8 soon as that information comes in.

9 That's my brief summary on the
10 exceptional items, and I would like to open this up to
11 any discussion or questions you may have and defer to
12 the commission on how you want to proceed.

13 CHAIRMAN POLUNSKY: Thank you,
14 Chief Ybarra.

15 COMMISSIONER ANDERSON: I have a
16 question. What action are you asking of us?

17 MR. YBARRA: From previous commissions,
18 what's happened is we've submitted a list of
19 exceptional items to the commission. We've also at
20 this point provided backup for that information and how
21 that -- how some of this information comes together and
22 how it's derived. In the past commissions have adopted
23 the list that has been proposed or determined that some
24 of this -- they don't want to move on or they want to
25 add to this list.

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1 Once that is adopted we begin utilizing
2 this document for our LAR process, because we will have
3 to enter this information this summer into ABEST along
4 with our base LAR. So some of these figures like has
5 happened here from one commission maybe to the next
6 have changed a little bit; communications, more
7 research, things of that sort, but the list did not
8 change. Once you-all adopt the list, that's the list
9 we move forward with.

10 COMMISSIONER ANDERSON: Now, we're going
11 to be making changes, I suspect, as late as January of
12 next year on all these facilities issues. What do
13 we -- what would be the process? I mean, were we to
14 adopt this list today, what would then be the process
15 for if we had new positions because of an
16 organizational assessment and we adopt some sort of
17 changes to the organizational structure that require --
18 you know, we're going to need more personnel, you know,
19 or the IT assessment lays out some things in terms of
20 priorities in the roadmap that make some of this stuff
21 in the IMS section -- you know, it becomes overtaken by
22 events or we have to add things, what is the process
23 for doing that?

24 MR. YBARRA: My experience has been -- of
25 course, you know we have LAR deadlines and we have --

1 COMMISSIONER ANDERSON: Right.

2 MR. YBARRA: -- to submit LBB in the
3 governor's office and several other entities. We --
4 through the session we would have to update the
5 Legislature on what we were proposing, what's changed
6 and the reasons behind that.

7 But this is going to be the building
8 block that has to go in our LAR. If things change
9 through communication with the Legislature, the
10 commission, the directors would provide that
11 information to the Legislature.

12 COMMISSIONER ANDERSON: Okay. And at
13 what point in the process -- you know, if this list
14 goes in and -- I don't see a grand total, but the last
15 time I looked at it, it was \$500 million or some such.
16 If this -- you know, if the commission were to vote
17 this list, at what point in the process do the
18 conversations occur about priorities? You know, if
19 you've only -- you know, if we're not going to get
20 \$500 million, but we're only going to get \$200 million,
21 what becomes the priorities? What is the process for
22 doing that and letting the commission drive those
23 decisions?

24 COLONEL DAVIS: First let me say,
25 Commissioner Anderson, that these are the requirements

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1 that we believe as an agency that are important today.
2 In January they may be altogether different. The way
3 we change that -- this is a starting block to let the
4 Legislature know the different committees about what we
5 as an agency think our needs are. If that changes all
6 we have to do is substitute that.

7 The procedure to do that is in committee
8 hearings and in the budget hearings. We first have a
9 subcommittee hearing, and that's where these things are
10 kind of worked out in the House and the Senate. It
11 goes from that to the House appropriations to Senate
12 finance. It goes from there to the conference
13 committee. So there's about three opportunities to do
14 something.

15 COMMISSIONER ANDERSON: I'm really asking
16 about the process for the commission to provide
17 direction to who's doing the testimony in those about
18 what the priorities are.

19 COLONEL DAVIS: I certainly would
20 encourage the members and all the commissioners to have
21 a personal appearance there. And that will be worked
22 out, you know, at the time that -- you know, prior to
23 those hearings. And it's not uncommon, as you say, for
24 a subcommittee to say that, "I have \$5 million. Tell
25 me where you want to put it." And certainly that's an

1 exclusion that needs to be made by the administration
2 and the commission.

3 But there's no date deadline to say that
4 what we submit on September the 1st or August 31st is
5 what we're going to have to go with. It's subject to
6 change. It's a starting block for the different --
7 different committees to start working on.

8 COMMISSIONER BARTH: Commissioner
9 Anderson, when I met with the CFO -- several months ago
10 I had the opportunity to ride with the highway patrol
11 and Rangers. And the gentleman I rode with for the
12 highway patrol, he had the in-car communication system,
13 which I think is a very powerful necessary tool for our
14 officers.

15 I rode with a Ranger who didn't even have
16 a GPS system in his car. I found it quite
17 disconcerting to think that if he needed to get
18 somewhere he actually had to pick up the phone and get
19 directions. We could even afford a Garmin in there at
20 this point, I was thinking. And so if you look there's
21 an additional item in there that I requested that would
22 make sure that all of our cars would be equipped,
23 because I felt like it was an important item on the
24 communications that wasn't in there. So part of this
25 exceptional list is sort of figuring out along the way

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1 priorities.

2 COMMISSIONER ANDERSON: And I don't have
3 an answer to the question I asked, so I'm -- so I don't
4 know if I'm ready to -- I don't know what -- if we vote
5 this list, I don't understand the implications of doing
6 that.

7 MR. YBARRA: As far as if you approve
8 this list, if you-all as a commission determine that,
9 you know, the order as we go on into August, that can
10 be changed also. But the list is, "This is what we're
11 going to incorporate."

12 I think you're asking, does the
13 commission determine the priority. And the answer is,
14 you do as far as what you want to say is most
15 important. In most cases we've gone and said they're
16 all important.

17 COMMISSIONER ANDERSON: Right. That's
18 your going-in position.

19 MR. YBARRA: And we defer to the
20 Legislature to tell us what they feel is most important
21 on our list or what they want to add.

22 COMMISSIONER ANDERSON: Well, as
23 Ms. Barth added a line item, you know, based on, you
24 know, some sound assumptions and conclusions about the
25 technology needs of the department, I mean, if in, you

1 know, this IT assessment that's going to start out --
2 you know, if it says, you know, we need to, you know,
3 replace the satellite system, you know, and adopt some
4 other technology, and that's a \$15 million capital
5 project, up until -- I mean, up until what date can
6 that \$15 million be pushed into this item?

7 MR. YBARRA: Probably late July, early,
8 early August.

9 COMMISSIONER ANDERSON: That's -- this is
10 the whole purpose of me asking these questions.

11 MR. YBARRA: Right.

12 COMMISSIONER ANDERSON: And my whole
13 reluctance to just say it's just about voting a list.
14 I mean, I know there's a deadline.

15 COLONEL DAVIS: Commissioner Anderson,
16 that -- that doesn't preclude us or the commission --
17 if we have this list and the study comes back and it
18 says, "We need \$15 million for 'X' in October," okay,
19 that's an additional item that -- that we could go to
20 the membership and to the committees and say, "Hey,
21 we've got a new list. Here's -- look, you know, we did
22 the study. We need this worse than we need this other
23 deal."

24 So up until they -- you know, I guess,
25 conference committee, you know, well, those things are

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1 subject to change.

2 CHAIRMAN POLUNSKY: It's a starting
3 point?

4 COLONEL DAVIS: Right.

5 CHAIRMAN POLUNSKY: By the way, did you
6 slip an earmark in here?

7 COMMISSIONER BARTH: That's what -- I
8 didn't use that word. Call it what you may.

9 MR. YBARRA: Commissioner Barth,
10 actually, that's not in here, but there -- I was just
11 assuming. Remember our conversation in Houston?

12 COMMISSIONER BARTH: I tried to.

13 MR. YBARRA: You said --

14 COMMISSIONER BARTH: Look at it now.

15 MR. YBARRA: In our conversation in
16 Houston you said you don't want to wait.

17 COMMISSIONER BARTH: I don't want to
18 wait.

19 MR. YBARRA: And we're moving in that
20 direction.

21 COMMISSIONER BARTH: All right. Really,
22 when I saw quite a difference -- I mean, it didn't take
23 long to figure out riding in both cars, you know, the
24 situation. I urge strongly we address it immediately.
25 So I think it's --

1 MR. YBARRA: Right. So it's not in here,
2 but we are moving forward.

3 COMMISSIONER BARTH: Well, I didn't get
4 my earmark --

5 MR. YBARRA: We're moving forward with
6 what we have now.

7 COMMISSIONER BARTH: Let me ask you a
8 question. And there's no -- I agree with
9 Commissioner Anderson that we may find that in a study
10 on -- especially in the IT area with such large numbers
11 that we may be rearranging the whole deck here.

12 COMMISSIONER ANDERSON: Yeah. There's no
13 way there's enough money.

14 COMMISSIONER BARTH: Okay.

15 MR. YBARRA: And, see, this -- what we've
16 done in the past is we've presented the -- both Houses
17 with an updated exceptional items list and highlight,
18 "Here's what's changed and why," you know, after the
19 LAR had been submitted because things have changed.

20 COMMISSIONER BARTH: But what happens if
21 one of these items isn't even on there, okay, that, you
22 know, we -- come January we don't have -- it's not even
23 on the list. Okay? Does that mean it's just basically
24 conversations and then we tell them what we're willing
25 to drop out off the list?

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1 COMMISSIONER ANDERSON: If there was a
2 civilian business model for DL and it required hiring
3 of "X" number of people at an incremental cost to
4 today's salaries of "Y", is that -- is that -- you
5 know, is that considered -- that's not an exceptional
6 item. It becomes part of the base operating expense.

7 COLONEL DAVIS: Well, it can be a fiscal.
8 And I think they tell us -- the Legislature can tell us
9 to --

10 COMMISSIONER ANDERSON: Do that on a --

11 COLONEL DAVIS: -- do whatever. And --

12 COMMISSIONER ANDERSON: And we do a
13 fiscal note.

14 COLONEL DAVIS: -- they may ask us for a
15 fiscal note, and that would be in addition to our
16 budget.

17 COMMISSIONER ANDERSON: Right. Well, of
18 course, sometimes we put in fiscal notes and we get the
19 legislation without the money that was in the fiscal
20 note.

21 MR. YBARRA: True.

22 CHAIRMAN POLUNSKY: Okay. So are we --

23 COMMISSIONER BARTH: We have to have a
24 list. Okay?

25 COLONEL DAVIS: Right. You've got start

1 somewhere.

2 COMMISSIONER BARTH: So some of these
3 items, you know, I would call then carryovers would be
4 the best way to call them. So --

5 COLONEL DAVIS: Sure.

6 COMMISSIONER ANDERSON: Right.

7 CHAIRMAN POLUNSKY: Okay. So we need to
8 take action on this and approve the list as it is
9 constituted today.

10 MR. YBARRA: Right. And if y'all
11 determine you want to make a change at the next meeting
12 you can make a change.

13 COMMISSIONER ANDERSON: When is your
14 deadline for it to go in the initial submission,
15 August?

16 MR. YBARRA: With data entry involved and
17 re-auditing the document, you know --

18 COMMISSIONER ANDERSON: When is the
19 deadline to LAR -- to LBB?

20 MR. YBARRA: LBB, I believe, is
21 August 20th, around about. Right around in there.

22 CHAIRMAN POLUNSKY: Okay. We'll, I'll
23 entertain a motion for the approval of the exceptional
24 items list as presented by staff.

25 COMMISSIONER BARTH: So moved.

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1 COMMISSIONER ANDERSON: Seconded.

2 CHAIRMAN POLUNSKY: It's been moved by
3 Ms. Barth and seconded by Ms. Anderson that the
4 exceptional items list as presented be approved.

5 Any discussion?

6 There's no discussion. All in favor,
7 please say, "Aye."

8 THE COMMISSION: "Aye."

9 CHAIRMAN POLUNSKY: Any against, "No."
10 Motion passes. Thank you.

11 Would you like to take a break, Mr.
12 Clowe?

13 We're going to recess for five minutes.

14 (Brief recess)

15 CHAIRMAN POLUNSKY: This session of the
16 Texas Public Safety Commission is now being convened
17 according to Chapter 551 of the Texas Government Code
18 and Open Meetings Act.

19 What I would like to do at this time is
20 to go back to Item VIII, Subsection A, "RFQ to study
21 the management and organizational structure of DPS."
22 And there's also the action item on that as well, which
23 would be Item IX, "Discussion and possible action on
24 the study of the organization of the department."

25 I'm going to go back to

1 Commissioner Clowe. What do you recommend, sir?

2 COMMISSIONER CLOWE: I recommend that
3 the --

4 CHAIRMAN POLUNSKY: Just -- without
5 naming particular --

6 COMMISSIONER CLOWE: -- second-ranked
7 respondent.

8 CHAIRMAN POLUNSKY: Okay. Is that in
9 form of a motion?

10 COMMISSIONER CLOWE: Well, it can either
11 be the direction of the chair or a motion, whatever
12 pleases.

13 CHAIRMAN POLUNSKY: All right. Well,
14 it's not going to be the direction of the chair because
15 I'm recusing myself from this particular award since
16 it's come to my attention I know people who are
17 involved in this company. So I will have nothing to do
18 with this particular action.

19 COMMISSIONER CLOWE: Well, then,
20 who should I address?

21 CHAIRMAN POLUNSKY: The senior member
22 would be Ms. Anderson.

23 COMMISSIONER CLOWE: Madam Chair, I --

24 COMMISSIONER ANDERSON: In tenure at the
25 department. Let's be clear about what we mean by

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1 "senior."

2 CHAIRMAN POLUNSKY: It's senior all the
3 way around.

4 COMMISSIONER CLOWE: There were about a
5 dozen things that flashed through my mind and I can't
6 say any of them.

7 Madam Chair, I move that the board direct
8 the staff to proceed with negotiations with the number
9 two respondent, hopefully to conclude in the forming of
10 a contract.

11 COMMISSIONER ANDERSON: I don't think we
12 have a second to that motion, so let's have some
13 discussion if there's discussion from anyone.

14 This is an awkward process to, you know,
15 be picking a vendor, haven't seen the proposals, you
16 know, just had a four-minute conversation about the
17 scoring. I'm -- you know, I'm uncomfortable taking the
18 second highest scoring vendor because I'm not
19 comfortable that the delta in the -- what it comes down
20 to is labor rates. And I did look at the labor rates,
21 and I don't think either vendor's labor rates are out
22 of whack for what it is we're asking them to do.

23 And so without -- you know, I'm
24 uncomfortable taking the second highest person
25 without -- purely on the basis of -- you know, what the

1 reasonable cost was. It looks to me like it came down
2 to a decision of, well, the second highest score had
3 lower labor rates than the first high scorer. That's
4 where I am.

5 COMMISSIONER CLOWE: Well, I don't think
6 it would be proper for me to go into this in a public
7 meeting and give you further details. I think each
8 commissioner has to satisfy themselves.

9 COMMISSIONER ANDERSON: Does anybody
10 have -- Oscar, what are our options?

11 MR. YBARRA: We haven't made a decision
12 at this point. So if you desire you can get more
13 information from our staff, my staff, as to -- and
14 maybe discussions with the valuation team to satisfy
15 commissioners as to what direction to go. So we're --
16 WE'RE still at where we started at this point.

17 COMMISSIONER BARTH: Is it correct with
18 respect to having discussions with the evaluation team?

19 MR. FOX: You can communicate with
20 evaluation team, with the chief of finance.

21 COMMISSIONER BARTH: I'm sorry. I didn't
22 hear you.

23 MR. FOX: Yes, you may communicate
24 with -- the chief of finance can communicate with the
25 evaluation team regarding the evaluation of the RFQs.

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1 COMMISSIONER BARTH: We as commissioners
2 cannot communicate with the evaluation team; is that
3 right?

4 MR. FOX: I would recommend -- I think --
5 it is within your discretion to communicate with the
6 evaluation team. But since you would ultimately hear
7 any protests regarding the evaluation of the award, I
8 would not recommend it. I would recommend, rather,
9 that the communication be through the chief of finance.
10 But -- but the law would let you.

11 MR. YBARRA: If the commission -- I mean,
12 the director -- correct me if I'm wrong -- can make a
13 determination of whether the protest would go forward
14 to the commission, right?

15 MR. FOX: That's correct.

16 MR. YBARRA: And if you-all are satisfied
17 with that, then would they be able --

18 MR. FOX: We need some process for
19 independence in the event of protest. And we could
20 satisfy that perhaps by having the director be the one
21 to handle the protest. But that would be the
22 compromise that you would have to run. That's why the
23 typical recommendation is to have staff engage in the
24 communication with the evaluation team so that you can
25 sit independently in the event of protest.

1 COMMISSIONER BARTH: How does it work if
2 we don't agree with the recommendation?

3 MR. FOX: You can give the instruction to
4 essentially go back and start again.

5 COMMISSIONER BARTH: Is that our only
6 option?

7 MR. FOX: The --

8 COMMISSIONER CLOWE: I don't think so. I
9 think if you -- you can make a motion for a different
10 outcome.

11 MR. YBARRA: Well --

12 COMMISSIONER CLOWE: Can't they?

13 MR. YBARRA: I think we -- I think -- as
14 I'm listening to my procurement staff in the
15 discussions we had yesterday a decision has been made
16 that the first vendor price is not reasonable.

17 COMMISSIONER CLOWE: Well, not really,
18 Oscar, the way I see it. What I see is that the
19 chairman asked me for a recommendation, and I made that
20 recommendation. If the commission rejects that
21 recommendation, the commission can take a motion for a
22 different action. You only have to go back and start
23 over again.

24 MR. JONES: Kevin Jones, procurement and
25 contract administrator. I think we -- someone has to

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1 make the determination that the high-scoring vendor's
2 cost is not reasonable and we would work our way down
3 to the next. And so you've just got to make that
4 decision whether those -- those costs are reasonable.

5 COMMISSIONER ANDERSON: And I asked
6 earlier what the basis was for the determination that
7 the cost wasn't reasonable, and it looks pretty
8 arbitrary. I mean, it feels pretty arbitration.

9 MR. JONES: I don't believe our section,
10 my staff, we've had the expertise to determine whether
11 that cost is reasonable.

12 COMMISSIONER ANDERSON: Well, who made
13 the determination about whether the cost was
14 reasonable?

15 MR. YBARRA: I think what we're saying
16 is -- and I mean Commissioner Clowe -- is he made a
17 recommendation to the commission. So a decision on
18 whether it's reasonable has not been made. So that
19 means if -- that means that, yes, you -- if that's the
20 case -- and I believe it's correct -- then we can deal
21 with the highest-scoring vendor from a qualifications
22 perspective.

23 COMMISSIONER CLOWE: That's the way I see
24 it.

25 COMMISSIONER BARTH: Is that correct?

1 MR. YBARRA: Yes.

2 COMMISSIONER BARTH: Will someone
3 clarify, because the question is --

4 MR. YBARRA: He made a recommendation.

5 COMMISSIONER BARTH: My question is, if
6 we don't -- if we decide to go with a -- to reject the
7 recommendation and go with -- make an alternate motion,
8 are we permitted to do that?

9 MR. FOX: Well, I guess I'm not sure I
10 understand the alternate motion, what that would be.
11 If it was to be -- to go to -- to me the ranges of
12 motions you could make is you could just give
13 instruction to staff pursuant with negotiating an
14 award. That would be one -- one direction you could
15 give.

16 Another one is -- to be more directive is
17 to -- if you made a determination that the highest
18 position was out of -- out of scale for reasonableness
19 and cost, then you would be in a position to give
20 directions to communicate -- or to have staff
21 communicate and negotiate with the next position.

22 And so then -- of course, then the third
23 alternative, which is always available, is to give
24 staff instruction to go back and solicit new --
25 essentially go back and start again with changed

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1 revised criteria to contain any concerns they've got.
2 I'm just trying to tell you all that I can see are the
3 options.

4 COMMISSIONER ANDERSON: Okay. Those are
5 the -- and you've mentioned three. But I thought I
6 heard a fourth option coming from the table that said a
7 determined -- you know -- and I don't know how you
8 would do this in the form of a motion, but somehow move
9 that the -- you know, that all the vendors' costs were
10 reasonable and, therefore, direct the staff to
11 negotiate with the highest-scoring vendor, because the
12 only reason that that's not recommended is because
13 somebody made a decision, based on criteria -- I still
14 don't know what it is -- that the highest-scoring
15 vendor's price wasn't reasonable.

16 MR. FOX: And you could have gotten --

17 MR. YBARRA: Commissioner Anderson, I
18 don't think anybody has made that decision at this
19 point.

20 COMMISSIONER ANDERSON: Okay. Implicitly
21 it was made because I don't know why else -- if that
22 decision wasn't made why we would be recommending the
23 second-highest scoring vendor.

24 MR. YBARRA: And at this point we can --
25 I believe since a decision wasn't made on whether the

1 reasonable price, at this point that if we receive
2 instructions from the commission on what they agree to
3 we can proceed.

4 COMMISSIONER BARTH: Can I go back and
5 just ask again why we didn't go with the
6 highest-scoring vendor?

7 COMMISSIONER CLOWE: The chairman asked
8 me for a recommendation. I made a recommendation based
9 on the information that I had. That's what happened.

10 MR. YBARRA: And that information was
11 made available to Commissioner Clowe at about 7:00 p.m.
12 last night as the qualification information became
13 available.

14 COMMISSIONER CLOWE: Then I made a motion
15 and it wasn't seconded. So in my view the commission
16 now can make any motion it wants to relative to this
17 subject. We haven't gone with anybody yet.

18 COMMISSIONER BARTH: Is that correct?

19 MR. FOX: You've not made a -- there's no
20 motion that's up for consideration at this stage.

21 COMMISSIONER ANDERSON: I'm still sitting
22 in the temporary chair here, so, you know, normally the
23 people in the temporary chair don't make the motions,
24 right? I mean it's not prohibited, but --

25 COMMISSIONER CLOWE: Well, I made my

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1 motion and it failed, so I think I've done my duty.

2 COMMISSIONER ANDERSON: You're done.

3 COMMISSIONER CLOWE: I've done my duty.

4 COMMISSIONER BARTH: I'll make a motion
5 that we ask the administration to pursue a contract
6 with the respondent with the highest score.

7 COMMISSIONER ANDERSON: I second that
8 motion.

9 Any discussion?

10 Hearing none, I assume we're ready to
11 vote.

12 All in favor of the motion, please say
13 "Aye. "

14 THE COMMISSION: "Aye."

15 COMMISSIONER ANDERSON: All opposed to
16 the motion, please say, "No."

17 COMMISSIONER CLOWE: Show me showing no.

18 CHAIRMAN POLUNSKY: Show me abstaining.

19 MR. FOX: The motion fails.

20 COMMISSIONER ANDERSON: Even with an
21 abstention?

22 COMMISSIONER CLOWE: Now, we can go
23 forward.

24 COMMISSIONER ANDERSON: The motion
25 failed. Two to one with one abstention. Two is not a

1 majority on a four-person commission.

2 COMMISSIONER CLOWE: Even with an
3 abstention?

4 MR. FOX: Even with an abstention. You
5 have to have -- you have to get to three.

6 COMMISSIONER CLOWE: If I abstained and
7 it's 2-0 can it go forward?

8 MR. FOX: The action is by the majority
9 of the board. That's --

10 COMMISSIONER CLOWE: By the majority of
11 the board?

12 COMMISSIONER ANDERSON: Not the majority
13 of the --

14 MR. FOX: Not the majority of those who
15 voted.

16 COMMISSIONER CLOWE: Okay. Madam
17 Chairman, would you call for a revote, please?

18 COMMISSIONER ANDERSON: Yes, sir.

19 We're going to have a revote. Is there
20 any discussion before the revote?

21 Hearing none, I assume we're ready to
22 vote.

23 All in favor of the motion, please say,
24 "Aye."

25 THE COMMISSION: "Aye."

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1 COMMISSIONER ANDERSON: All opposed,

2 "No."

3 The motion carries.

4 CHAIRMAN POLUNSKY: Show me as

5 abstaining, please.

6 All right. Are we done with that?

7 COMMISSIONER ANDERSON: Do we know what
8 we're doing?

9 MR. YBARRA: As far as if negotiations
10 fail with the number one ranking vendor, do -- can we
11 have permission to begin negotiations with the
12 number two vendor?

13 CHAIRMAN POLUNSKY: I'm still going to be
14 out of this.

15 COMMISSIONER ANDERSON: We are interested
16 in the commissioner's thoughts on that.

17 COMMISSIONER BARTH: I would like to know
18 before, why? Before I am comfortable proceeding, am I
19 allowed to know why?

20 MR. FOX: Again, you're acting as a
21 board. So it would -- if the negotiation failed, it
22 would be something that would have to come up again at
23 the next meeting. So I don't know that you will be
24 able to have -- I don't know how you would structure a
25 motion, an action that would give you the results where

1 it's something that's approved that hasn't actually
2 been approved. So --

3 COMMISSIONER ANDERSON: Well, you know,
4 we continue to be in a difficult position, but, you
5 know, the reason that negotiations failed might be a
6 concession that this body might be willing to make to
7 that vendor that would then cause those negotiations to
8 succeed. So without --

9 COMMISSIONER BARTH: So if the
10 negotiations fail we can't understand why they failed.

11 MR. FOX: No. I mean, totally you can
12 have that communicated to you. What I was -- what I
13 wasn't sure about is if the motion -- if the
14 negotiations failed, does the commission then want to
15 have an approved negotiation with the next one in line
16 kind of as a standing order?

17 If there's a condition that has to
18 occur --

19 COMMISSIONER ANDERSON: Generally
20 speaking, I'm comfortable with that, but with the
21 caveat that before that would be done, you know, I
22 would -- as Commissioner Barth -- and I assume the
23 others -- would want to know why it failed so that we
24 had an opportunity to say, "Well, that was a silly
25 thing to let it fail over," or, "No, you were exactly

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1 right. It should fail. Go to the next person."

2 MR. FOX: To the extent that it's just
3 presented as information, that's fine. But if it's
4 presented where it's actually action --

5 COMMISSIONER ANDERSON: Right.

6 MR. FOX: -- taken in communication in
7 between meetings that would not be acceptable. So you
8 would have to -- you would have to describe it as
9 permission to proceed, with the understanding that
10 staff is to inform you if there is a failure that the
11 plan would then be for the department to continue with
12 the award to the next entity. That is the action at
13 this meeting right now.

14 COMMISSIONER ANDERSON: I wouldn't be
15 prepared to make -- to accept those conditions today.

16 COMMISSIONER BARTH: Agree.

17 CHAIRMAN POLUNSKY: Thank you, sir.

18 Next item is, "Discussion and possible
19 action reference driver license checkpoints."

20 Colonel Davis?

21 COLONEL DAVIS: Mr. Chairman, you had
22 asked at the meeting prior to -- or instructed general
23 counsel to prepare a document that would relate the
24 legal responses to conducting driver's license,
25 registration, and insurance checkpoints. You've been

1 furnished a copy of that.

2 I think it's the recommendation of
3 general counsel that without the authority granting --
4 being granted by a governance is that we're not able to
5 do that legally.

6 COMMISSIONER ANDERSON: It was very
7 helpful. The brief was very helpful in understanding
8 the situation. Good work.

9 CHAIRMAN POLUNSKY: Any other discussion?
10 Thank you.

11 Jump over to Item XX, "Discussion and
12 possible action on publication of proposed rules." The
13 first one, "Proposed amendment to Rule 1.211, 37 Texas
14 Administrative Code, Section 1.211, regarding
15 dishonored payment device fees."

16 MR. HAAS: What the amendment does is
17 raise the current cost of the dishonored check fee from
18 \$25 to \$30, which is the maximum allowed by law. We --

19 COMMISSIONER ANDERSON: Is an option -- I
20 mean, I move posting in the -- I mean, it's pretty
21 clear. I mean, it's pretty -- I move --

22 COMMISSIONER CLOWE: Second.

23 COMMISSIONER ANDERSON: Yeah, thank you.
24 It will register.

25 CHAIRMAN POLUNSKY: Is there a second to

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1 the motion?

2 COMMISSIONER CLOWE: Second.

3 CHAIRMAN POLUNSKY: All right. It's been
4 moved by Ms. Anderson and seconded by Mr. Clowe that
5 the proposed rule as previously set out to be published
6 in the Texas Register.

7 All those in favor please say, "Aye."

8 THE COMMISSION: "Aye."

9 CHAIRMAN POLUNSKY: Any against, "No."

10 Motion passes.

11 The second would be the, "Proposed
12 amendment to Rule 15.1, 37 Texas Administrative Code,
13 Section 15.1, regarding residency requirements for
14 driver licenses and personal identification
15 certificates."

16 Chief Brown?

17 MS. BROWN: Chairman Polunsky,
18 commissioners, this rule simply extends the residence
19 authority to identification cards.

20 COMMISSIONER ANDERSON: I move that we
21 post it in the Texas Register for public comment.

22 COMMISSIONER BARTH: Second.

23 CHAIRMAN POLUNSKY: It has been moved by
24 Ms. Anderson and seconded by Ms. Barth that the
25 proposed amendment be published in the Texas Register

1 as set out.

2 Any discussion?

3 There being none, all those in favor
4 please say, "Aye."

5 THE COMMISSION: "Aye."

6 CHAIRMAN POLUNSKY: Any against, "No."

7 Motion passes.

8 C, "Proposed Rule 15.171, 37 Texas
9 Administrative Code, Section 15.171, regarding
10 cancellation of driver licenses and identification
11 certificates issued to certain non-citizens."

12 Chief Brown?

13 MS. BROWN: Chairman Polunsky,
14 commissioners, this recommended change is in the -- at
15 the direction of the commission that requires
16 applicants for a Texas DL or ID card who are not a
17 citizen or a lawful current resident of the United
18 States to present valid documentation indicating lawful
19 status in the country. Applicants meeting this
20 criteria will be issued a photo type license with the
21 designation of their status on the card. This would be
22 a supplemental expiration date. It would be stated on
23 the face of the license. I have additional samples.
24 We've provided samples of how that could be displayed
25 on the card to you with your commission packet.

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1 CHAIRMAN POLUNSKY: Thank you.

2 Discussion on this?

3 We'll entertain a motion.

4 COMMISSIONER ANDERSON: I move to publish
5 it in the Texas Register for public comment.

6 COMMISSIONER BARTH: Second.

7 CHAIRMAN POLUNSKY: It has been moved by
8 Ms. Anderson and seconded by Ms. Barth that the rule as
9 set out be published in the Texas Register for comment.
10 Any discussion.

11 There being none, all those in favor
12 please say, "Aye."

13 THE COMMISSION: "Aye."

14 CHAIRMAN POLUNSKY: Any against, "No."
15 Motion passes.

16 Last one, "Proposed Rule 15.172, 37 Texas
17 Administrative Code, Section 15.172, regarding
18 expiration dates for driver licenses and identification
19 certificates issued to certain non-citizens."

20 Chief Brown?

21 MS. BROWN: Chairman Polunsky,
22 commissioners, this bill attempts to obtain the same
23 lawful presence requirement. However, this bill -- I
24 mean, this rule specifically states that the license
25 will be cause to expire on the date of the immigration

1 status expiration.

2 CHAIRMAN POLUNSKY: Thank you.

3 COMMISSIONER ANDERSON: I have a question
4 for counsel. Other than posting a rule to get public
5 comment, what other options are available to the
6 commission to post not a rule, but something that would
7 allow us to get public comment on this conceptually?

8 MR. FOX: We could publish the -- you
9 could conduct a hearing on this and it could be
10 published in the register in what they call the "In
11 Addition" section or -- or actually conducting a
12 hearing and not as -- not as proposing a rule. So it
13 would be a notice of hearing regarding the
14 consideration of the concept of, and then we would
15 articulate the concept. So it would be a hearing on
16 the issue rather than a hearing on a proposed rule.

17 COMMISSIONER ANDERSON: I'm going to move
18 to table this one because I think we might want some
19 time to explore that option.

20 CHAIRMAN POLUNSKY: You made a motion?

21 COMMISSIONER ANDERSON: Yeah. Nobody --
22 nobody is seconding it.

23 CHAIRMAN POLUNSKY: Is there a second to
24 Ms. Anderson's motion?

25 COMMISSIONER CLOWE: Well, if you table

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1 it you've got to bring it back up eventually. But you
2 can just pass it if you want to. You could -- you
3 could request the chair to pass it.

4 COMMISSIONER ANDERSON: Well, I'm not,
5 you know, certain that -- I'll withdraw my motion.

6 CHAIRMAN POLUNSKY: All right. Well, is
7 there a motion to adopt it?

8 COMMISSIONER CLOWE: I would request,
9 Mr. Chairman, this item be passed at this time. And
10 that's just a request.

11 CHAIRMAN POLUNSKY: All right. I think I
12 have a sense of the commission. XX, Section D,
13 proposed rule is being passed. Thank you.

14 Do you want to get into strategic
15 planning?

16 COMMISSIONER ANDERSON: Mr. Chairman, in
17 keeping with a conversation I had with you about, you
18 know, the importance of this document and the depth of
19 the document, and so forth, you know, as I suggested to
20 you, we might want to have what would be an open
21 meeting, but would be sort of a workshop format to take
22 the time, you know, when we're fresh on a day to go
23 through this in some detail. It would need to be done
24 in pretty short order, you know, because of the
25 deadlines we're facing. And so that's my suggestion.

1 That being said, if the other
2 commissioners are prepared to act on it today, then --
3 COMMISSIONER CLOWE: I like that idea as
4 well.

5 COMMISSIONER BARTH: Can someone
6 articulate the deadlines? Does that mean we're meeting
7 next week?

8 COMMISSIONER ANDERSON: July the 11th.
9 So we could meet the week of the 30th. It would be
10 better for me than next week.

11 COMMISSIONER BARTH: I just wanted to
12 understand what the deadlines were.

13 CHAIRMAN POLUNSKY: Okay. Well, I agree
14 with that as well. So we'll pass on this item, and I
15 would request that the director plan a meeting/workshop
16 so that the commission can discuss and review the
17 department's strategic plan in detail with all the time
18 necessary for us to deliberate on that sometime in the
19 upcoming next two weeks.

20 COLONEL DAVIS: Okay.

21 CHAIRMAN POLUNSKY: This may be our last
22 item, but I'm going to XV, "Report, discussion and
23 possible action on the Statewide Threat Assessment and
24 status of the Fusion Center construction and
25 participation of other agencies."

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1 That would be Chief Mawyer.

2 MR. MAWYER: Good afternoon.

3 CHAIRMAN POLUNSKY: By the way, before
4 you start your presentation, I want to commend you and
5 your people for the job that you-all did on those eight
6 liners.

7 MR. MAWYER: Thank you.

8 CHAIRMAN POLUNSKY: I think you've been
9 extremely professional and I'm quite pleased about it.
10 And I think the rest of us are as well.

11 MR. MAWYER: Thank you, sir.

12 CHAIRMAN POLUNSKY: Y'all did a great
13 job.

14 MR. MAWYER: Appreciate it. I'll pass
15 that on.

16 Kent Mawyer, chief of criminal law
17 enforcement. Mr. Chairman, commissioners, the Fusion
18 Center is operational. The secure area for information
19 and work space has been cleared and federal agency
20 requirements are being implemented so that its
21 classified databases can be brought in. And they're
22 still in progress. There are dependencies with the
23 federal agencies that we're still dealing with, but we
24 are making progress.

25 The Texas Department of Criminal Justice,

1 Texas Parks & Wildlife, Texas Alcoholic Beverage
2 Commission, Austin Police Department, FBI, and Secret
3 Service have all been extended formal invitations to
4 co-locate to the Fusion Center. At this point, FBI and
5 Department of Criminal Justice have been the only two
6 to commit. The others are still discussing it within
7 their agencies, I guess, as to determine whether they
8 have resources and how they would allocate those
9 resources.

10 Austin Police Department has tentatively
11 committed. They've obtained dollars within the
12 three-county area here to possibly open their own
13 center, but are still looking at other possibilities
14 with us.

15 In addition, the Drug Enforcement
16 Administration is already in the building and is
17 relocating their personnel to the first floor level
18 where the Fusion Center is located.

19 In addition to that, this week, actually,
20 there's an analyst school going on in which we've got
21 our analysts, as well as analysts from other
22 intelligence and fusion centers around the state
23 together in a training session. So that will help
24 facilitate some of that communication efforts and
25 accomplish those things.

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1 The draft of the statewide threat
2 assessment has been completed with input from
3 commissioners, the director of Homeland Securities,
4 other fusion centers, and other interested parties.
5 With your approval the document is ready for production
6 and dissemination.

7 And that concludes my report unless you
8 have any questions.

9 CHAIRMAN POLUNSKY: Any questions?

10 I think not.

11 Thank you very much. You did a good job
12 on that. Thank you.

13 MR. MAWYER: Thank you.

14 CHAIRMAN POLUNSKY: Mr. Walker, can you
15 give us a quick audit inspection report?

16 MR. WALKER: Ferral Walker, director of
17 audit inspection.

18 Commissioners, I enclosed three audit
19 reports for your review; narcotics impress fund,
20 Region 4 audit, which you may have noticed had minor
21 findings, but we had no recommendations. We found
22 things generally operating as per policy. The
23 information systems log audit had a few
24 recommendations. And the network monitoring follow-up
25 found that there's still two recommendations in the

1 process of being implemented. It's our opinion that
2 they're making progress and we'll wrap up those two
3 outstanding recommendations in a reasonable length of
4 time.

5 Our inspection program continues on as
6 scheduled. We expect to have several reports to you
7 next month. Management is working on responses now,
8 some of which we've received; others which we haven't.
9 But we'll have several reports to you next time.

10 With that -- well, I might tell you, I'm
11 losing one staff member. We got the news early this
12 week or late last week, actually. It's my least senior
13 member, but we'll be looking for a new person beginning
14 July 1st.

15 With that, that's all I have to report
16 unless you have questions.

17 CHAIRMAN POLUNSKY: Thank you,
18 Mr. Walker.

19 Are there any questions for Mr. Walker at
20 this time?

21 Thank you, sir.

22 MR. WALKER: Yes, sir.

23 COMMISSIONER ANDERSON: Just one comment
24 related to audit, that I want to commend the IMS
25 organization. They have a number of management

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1 governance, you know, betterment initiatives going on.
2 They're not waiting for the IT assessment. And one of
3 those is to elevate the importance of timely responses
4 on audit findings throughout that department to take
5 that very seriously. And they have a plan being
6 drafted on how they'll do that throughout the IMS
7 organization. But I was glad to see that.

8 CHAIRMAN POLUNSKY: Thank you,
9 Ms. Anderson.

10 A couple of us have some time constraints
11 that are going to require us to leave here in the next
12 couple of minutes, so there are various parts of the
13 agenda that we're not going to be able to address
14 today. I apologize for that. We'll certainly make
15 sure that we go through the division reports and other
16 things that have not been addressed today that are on
17 today's agenda at our next meeting.

18 Let me ask the commission about the next
19 meeting. It's been noted here that the third Thursday
20 of July is July the 17th. Is that a date that would be
21 acceptable for everybody?

22 COMMISSIONER CLOWE: Good for me.

23 CHAIRMAN POLUNSKY: Okay. July 17th.

24 COMMISSIONER ANDERSON: Then we'll do the
25 strategic plan thing, which will be a public meeting in

1 between.

2 CHAIRMAN POLUNSKY: Right.

3 COMMISSIONER BARTH: Mr. Chairman?

4 CHAIRMAN POLUNSKY: Yes, ma'am?

5 COMMISSIONER BARTH: May I make one
6 remark?

7 CHAIRMAN POLUNSKY: Absolutely.

8 COMMISSIONER BARTH: I would like to
9 thank whoever put the information for this meeting
10 electronically. I'm not sure who facilitated and made
11 that happen, but I very much appreciate it. Thank you.

12 COMMISSIONER ANDERSON: On that topic, do
13 you think -- I was sort of surprised that, the first
14 thing in the document was, you know, 139 pages of last
15 meeting's transcript. I don't need that.

16 MS. WRIGHT: That was there to see what
17 y'all wanted to do.

18 COMMISSIONER ANDERSON: Yeah. I don't
19 need that. And we -- y'all have it available, so if I
20 want to just get a transcript, you know, we can do
21 that. But let's take that out.

22 And the other thing is, you know, I'm not
23 familiar with a practice on a transcript where you have
24 to sit there and listen to the whole thing and correct
25 minor typos throughout it, Dorothy. And I don't think

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1 that's very good use of your time unless there was some
2 legal requirement we did that. But we didn't do it in
3 my other state agency. So we'll let you off the hook.

4 MR. DAVIS: We're going to get a draft
5 copy and then let her look at it, or someone look at
6 it, and then go back.

7 CHAIRMAN POLUNSKY: Okay. Anything else?

8 All right. There being no further
9 business, the Texas Public of Safety Commission is now
10 adjourned.

11 (Proceedings concluded at 2:51 p.m.)
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1 REPORTER'S CERTIFICATE

2
3 I, Janalyn Reeves, CSR, certify that the
4 foregoing is a correct transcription of the proceedings
5 in the above open meeting.
6

7
8 

9 Janalyn Reeves, Texas CSR
10 Expiration Date: 12/31/08
11 Esquire Deposition Services
3101 Bee Caves Road, Suite 220
Austin, Texas 78746
(512) 328-5557



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IN THE MATTER OF

THE APPEAL OF DISCHARGE OF

KEVIN SCOTT LEWIS

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BEFORE THE

PUBLIC SAFETY COMMISSION

IN AUSTIN, TRAVIS COUNTY, TX


ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Kevin Scott Lewis, on the 19th day of June, 2008. Mr. Lewis received adequate notice of the hearing on this matter and did appear in person and through counsel. Pursuant to §411.007, Government Code, the Commission proceeded to hear evidence in the above-captioned matter.

After reviewing all of the evidence presented at the hearing, the Commission finds that there is just cause to discharge Kevin Scott Lewis and affirms the Director's decision in this matter.

On motion of Commissioner Tom Clowe, seconded by Commissioner Allan Polunsky the discharge was affirmed.

ENTERED AND SIGNED on the 19th day of June, 2008.


Allan B. Polunsky, Chair
Public Safety Commission

