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

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
CHAIRMAN POLUNSKY: Let me begin by calling the roll.

Commissioner Anderson?

Commissioner Barth?

COMMISSIONER BARTH: Here.

CHAIRMAN POLUNSKY: Commissioner Clowe?

COMMISSIONER CLOWE: Here.

CHAIRMAN POLUNSKY: I am present.

Let the record show that Commissioner Anderson is not present at this time.

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

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

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

COMMISSIONER BARTH: So noted.

COMMISSIONER CLOWE: Second.
CHAIRMAN POLUNSKY: All right. It has been moved by Commissioner Barth and seconded by Commissioner Clowe that the record that has been submitted to us pertaining to the actions and discussions at the last Public Safety Commission be approved.

Any discussion?
If there's no discussion, all in favor please say, "Aye."

THE COMMISSION: "Aye."

CHAIRMAN POLUNSKY: Any against, "No."

Motion passes.

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

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

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

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

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

CHAIRMAN POLUNSKY: What we're going to do is go into executive session. The commission now adjourns to executive session, which is closed to the
public in accordance with the Texas Government Code, Sections 551.071 and 551.074.

(Executive Session was conducted at this time.)

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

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

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

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

COMMISSIONER BARTH: Yes, sir.

CHAIRMAN POLUNSKY: Let the record reflect that Ms. Barth is changing her vote to uphold the director's action. So that vote now will be three to zero to uphold the action.
I will be moving around on the agenda because of time constraints.

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

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

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

CHAIRMAN POLUNSKY: All right. Thank you, sir.

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

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

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

CHAIRMAN POLUNSKY: Thank you, sir. And you have been given a task over the last couple of
weeks. Can you describe to the commission and to the public what your responsibilities have been.

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

CHAIRMAN POLUNSKY: That is the task that I requested?

MR. ESCALANTE: Yes, sir.

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

MR. ESCALANTE: That's correct.

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

MR. ESCALANTE: That is correct.

CHAIRMAN POLUNSKY: Okay. We thank you for the work that you've done with respect to producing this investigation. What the commission -- or at least I would like to see done -- and I believe that the
commission, unless someone tells me differently, would
agree with -- is to have you provide the commission in
public session an overview of what you have found
through your investigations over the last few days.

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

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

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

The -- all the fire alarms sounded. When
it sounded he acknowledged that the alarm had gone off.
And after acknowledging that it went off repeated sounding of other fire alarms were going off. From that initial response, he began calling DPS communications to acknowledge that there was a fire alarm going off at the Governor's Mansion.

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

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

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

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

As the trooper was walking into the back
gate he was approached by an off-duty Austin police
officer that was in plain clothes, and the police
officer had told him that he had observed a suspect or
an individual that was kind of suspicious and had
changed his mannerisms and had moved away from him as
he was trying to get across the street. He crossed the
street over off of 11th Street, 11th and Lavaca, and
the suspect got into his vehicle and turned -- made a
U-turn on 11th Street going back eastbound on the
As the trooper had gotten the information from the Austin police officer, he got -- obtained a business card from him and told the officer that he would get back with him. He wanted to go back up to the front to ensure that the fire department didn't have any trouble getting into the property. The Austin Police Department officer went back to the site where he saw the suspect go into a vehicle and had picked up a cigarette lighter from the -- from the ground and obtained that as evidence. The officer brought that -- that lighter back and gave it to one of the other troopers that was on duty that had responded to the call from the fire, one of the other DPS officers. That DPS officer maintained that property and turned it over to the crime lab.

The trooper that was working on duty had gone back up to the front to ensure that the fire department did not have any problems getting in. Also inquired about any damage that may have been to the front of the fence, construction of the fence, so the fire department wouldn't have any problems getting in. There was no sign of damage or forced entry or intrusion on the front of the fence. At that point in time the fire department
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?
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8 MR. ESCALANTE: Yes, that is correct.
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10 CHAIRMAN POLUNSKY: Let me ask you a
11 couple of questions, and certainly any of the
12 commissioners can join at any time. Can you tell me
13 how many security cameras were stationed at the
14 Governor's Mansion that night?
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16 MR. ESCALANTE: There are 20 cameras that
17 are stationed and 13 of them were working. Seven of
18 them were disabled.
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20 CHAIRMAN POLUNSKY: Can you tell me what
21 the -- the operational condition of the sensors, the
22 motion detection sensors were the night of the fire --
23
24 MR. ESCALANTE: The motion --
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26 CHAIRMAN POLUNSKY: -- which are separate
27 from the security cameras?
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29 MR. ESCALANTE: The motion detectors were
30 actively working. They were not engaged in the sense
31 that they would see an activation or a compromise on
32 that particular beam due to the construction debris and
fencing that was in and around the mansion construction area.

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

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

At that time it was unknown by several other officers, the captain included of the detail, that that piece of equipment was not necessary in order
for those beams to function. And those beams should have been able to — enabled off of another digital display that's on the carriage house console. So those — it's been — the information that I have received from both Lieutenant Armisted and the facilities commission is that those beams were actively working, but were not in a position where they could be reset to detect any intrusion on that device.

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

MR. ESCALANTE: No, sir.

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

MR. ESCALANTE: No, sir.

CHAIRMAN POLUNSKY: Sir, your answer is no?

MR. ESCALANTE: No. No.

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

MR. ESCALANTE: The officer was not at the console that the cameras and the security system is -- is in that -- at that particular point of the
carriage house. He was on a computer on the other side of the room. The room, I'm guessing, is probably about -- oh, about 15 feet long. So he was on the other side of the room not -- he wasn't focused on the cameras itself but was working on another computer.

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

MR. ESCALANTE: Yes.

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

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

CHAIRMAN POLUNSKY: Questions from commissioners?

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

MR. ESCALANTE: Yes.

COMMISSIONER CLOWE: Explain that to us, if you would.
MR. ESCALANTE: That request came from Lieutenant Armisted to Captain Avant in trying to mirror the uniform operations at the Governor's Mansion to keep those the same when the family left, to assign four troopers per shift having a sergeant supervisor to oversee the scheduling and the assignments for that particular task. That memo was taken to the major at the time and there were discussions with the major and the captain on trying to see how they were going to facilitate the needs of the request.

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

That later turned out to have one noncommissioned security officer to adhere to the request that was made on that memo to have two people that were up there. While that memo authorized having commissioned personnel there was a time period where they wanted to attempt to try to make that work with the security officers because that's some of their current function on the Capitol Complex.
This was voiced by the program administrator that they felt more comfortable to have two uniformed personnel. That was later achieved in the process to comply with that memo. From Monday through Friday for a 24-hour shift there were two officers in place at the Governor's Mansion. The Monday through Friday shift there was a point in time where there were -- during the experimental phase there were officers that were brought in from the Capitol Complex and from the patrol division.

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

COMMISSIONER ANDERSON: Were there things -- were their postings in the carriage house that would explain how to use the fire alarm, the
cameras, how to open and close the gates?

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

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

COMMISSIONER BARTH: To follow up on Commissioner Anderson's question, were there times since the Governor vacated the mansion where security
would have never touched the cameras wherever they were set? During that shift they just -- you know, as you said, they could zoom in, zoom out, and look around, but because of training -- and I don't want to put words in your mouth -- where the cameras were never touched during a shift?

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

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

MR. ESCALANTE: That's correct.

COMMISSIONER CLOWE: The --

MR. ESCALANTE: And if the operations of the security, the perimeter beams are working properly and the receiver and the transmitter are working
properly and that information is relayed up to the
console, then when that beam is compromised, that
officer -- even if he's sitting away from the desk, he
could react to that and be able to see that -- that
activity that's taking place. That was not the case.

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

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

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

MR. ESCALANTE: That is correct.

There -- the fire watch with my investigation has
revealed that some people knew about it; some people
don't. It was passed along from one shift to the other
as far as being able to go down -- and I asked
specifically what they were supposed to look for on the
fire watch. Did they actually just do a perimeter
check or did they actually go inside the building of
the mansion. Some officers stayed on the perimeter, some officers stayed on the perimeter and went inside and, you know, looked upstairs and downstairs to make sure that there was no fire hazard. But that was not a consistent plan of action.

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

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

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

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

COMMISSIONER BARTH: Working with the 13,
would that have adequately given you a view if you were on duty?

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

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

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

One camera inside the mansion that was at the back stairs had been disabled for the construction phase. So the other three cameras that were left, those were not observed until they reviewed the film after the fire.
COMMISSIONER ANDERSON: Are you aware of protocols that are in place to review, you know, on a periodic basis the functioning of the various components of the security system at the mansion by anyone, by us, by the facilities commission?

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

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

COMMISSIONER CLOWE: So there had been reports of malfunctioning cameras of the device that
activated the icons on the infrared device and request for more manpower?

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

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

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

When that piece of equipment was removed she asked for a replacement to be brought in. The
facilities commission told me that that piece of equipment is not something that you can go and buy at, you know, Best Buy or Comp USA or, you know, any one of those places. So the decision was made so have that piece of equipment sent out for repair.

The initial thought on the turnaround time was about one week, according to Lieutenant Armisted, trying to, you know, have that piece of equipment fixed and brought back in. It was unknown to me at that time that that system operated without the use of that Crestron, because there is another digital display on there that's got the buttons to acknowledge any alarms that goes off. And then you could -- you know, the officer would have to know how to operate, obviously, the system. And when that alarm went off in that particular zone, that officer would have to navigate that camera to that particular zone.

Before that Crestron tied in that system with the cameras and the perimeter beams, which allowed easy access for the officer to hit an icon on that system and to be able for that camera to navigate to that -- that piece of -- or that zone in that area where that is being compromised.

COMMISSIONER ANDERSON: As a normal matter, a trooper that is working a specific -- you
know, whether it's patrol or whether it's at the Capitol Complex, or whatever, they would look to their sergeant for job procedures, you know, policies and procedures and so forth, right? A trooper, their immediate supervisor is a sergeant typically?

MR. ESCALANTE: That is correct.

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

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

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

MR. ESCALANTE: That's correct. That's not to say that some of those sergeants did not visit
the mansion to check on the troopers. And, you know, initially when things are going on, some of them had gone over there to kind of oversee some of the operations and learn some of the things that they were having to do.

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

MR. ESCALANTE: Yes.

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

MR. ESCALANTE: Yes.

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

MR. ESCALANTE: I feel it was a combination of things. Obviously, one, the equipment wasn't working properly. There were attempts to try to get it working, and that was still -- it was -- always seemed to be a work in from progress type of a
On the -- when the Governor's family left the mansion, there was no transition phase. There was a few officers, I believe, that were -- that had come in and received a little amount of training during that time, or they sat with another officer to kind of oversee what some of the procedures were. There was inadequate number of personnel on the night of the fire with relation to the equipment not working properly. Most of the officers were under the impression that that system was not operable because that Crestron device was not available on that system to tie in that system. There were numerous things that apply to that.

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

MR. ESCALANTE: No. There were some -- and these post orders came -- there were uniform post orders that were written up by -- I believe it was Lieutenant Armisted, dictating what those officers did while the family was in residence. Some of those orders should have applied to the new troopers that were coming in. They could have -- some of those could have been applied to the troopers that were coming in,
as far as the responsibilities on securing -- you know, get certain gates that needed to be closed, what their functions were, being able to relay information in respect to a compromise or a threat. There was mail procedures on when mail came in, who was supposed to bring it and take it.

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

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

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

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

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

MR. ESCALANTE: Some of -- those officers were allowed to be able to watch television up there.

They were allowed to work on the computer and, you
know, work at other stations on the -- up in the carriage house, yes. But there was nothing, you know, written that said, you know, "You have this much time."

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

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

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

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

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

CHAIRMAN POLUNSKY: Anything else?

COMMISSIONER CLOWE: No other questions.
CHAIRMAN POLUNSKY: Sergeant Escalante, do you have anything else you would like to add at this time?

MR. ESCALANTE: No, sir.

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

MR. ESCALANTE: You're welcome.

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

It is my feeling that the security at the Capitol Complex, Governor's Mansion, and other public buildings in this area needs to be assessed or reassessed. To that end, I am requesting that the United States Secret Service come in and do an assessment of the Capitol Complex, the Governor's Mansion, and other public facilities in this city, and possibly others, to advise the Department of Public Safety as to what optimum security measures should be in place. I'm asking them to do this because they are, in my opinion, the preeminent organization or agency in the world to make this type of assessment and have this type of expertise. It should not be a reflection on DPS. I am competent the DPS will work with the US Secret Service in conjunction with this assessment that will be performed expeditiously.
I would also like to make the point that it is the feeling of this commission that what takes place here in this department needs to be transparent, needs to be open, when appropriate, for the public to know exactly what has taken place, and we will continue to go forward with that philosophy.

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

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

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

Colonel Davis?
COLONEL DAVIS: Mr. Chairman, at the
direction of the commission we've had Internal Affairs
look at the allegations made by Mr. Lorance, and all
those allegations have been unfounded.

CHAIRMAN POLUNSKY: Questions?

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

CHAIRMAN POLUNSKY: Could you identify
yourself, please?

MR. RADNEY: Kent Radney.

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

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

COMMISSIONER ANDERSON: Okay. And what
did the lab determine about the documents?

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

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

CHAIRMAN POLUNSKY: Any questions?

COMMISSIONER CLOWE: No questions.

CHAIRMAN POLUNSKY: Thank you, sir.

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

Mr. Ybarra?

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

Good afternoon, Mr. Chairman and commissioners. In reference to the organizational
structure and procurement, it is my understanding that
the results are available to the commission based on
the evaluations team's assessment of the proposal
submitted. Kevin Jones, my procurement manager, will
distribute some information to the commission for your
review. It is my understanding that Commissioner Clowe
will have some comments regarding this issue.

CHAIRMAN POLUNSKY: Thank you.

Mr. Clowe?

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

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

COMMISSIONER ANDERSON: Can I ask you a
COMMISSIONER CLOWE: Certainly.

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

COMMISSIONER CLOWE: That's correct.

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

MR. YBARRA: 27 percent.

COMMISSIONER ANDERSON: Okay. And did that highest-ranking vendor -- you know, I know there were a lot of categories that you scored it against.

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

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

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

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

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

CHAIRMAN POLUNSKY: I'm missing something
here.

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

MR. YBARRA: It is my understanding that
based on how this bid was let that the first step would
be to determine if the price is reasonable. And then
we could move forward with negotiations.

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

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

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

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

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

COMMISSIONER CLOWE: Yes. And,
Commissioners, my sense is that none of you have
individually discussed this matter with the people on
the selection committee or the project officer or the
chief financial officer. And we're in a delicate position here because we are talking about in a public meeting negotiating a contract on behalf of the State of Texas.

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

COMMISSIONER ANDERSON: And the labor rates?

COMMISSIONER CLOWE: -- to this project.

Well, it relates back to an hourly rate.

COMMISSIONER ANDERSON: Okay.

COMMISSIONER CLOWE: And my sense, based on the information I have, is that the respondee, who came in at the top, was not reasonable. And that's why I recommended the second respondee and suggest that we go forward with negotiations with them to see if a contract can be achieved. And I would -- I would suggest that this matter not be delved into in the public meeting because I think it will disadvantage us in acquiring a contract on behalf of the State of Texas. And I mean that because of money. But as individual commissioners you can talk with those people on our staff who have done this work and have your...
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
COMMISSIONER ANDERSON: Right. And I don't want it delayed either. That's -- but --
CHAIRMAN POLUNSKY: Thank you. Let's go to yours for right now.
COMMISSIONER ANDERSON: Okay.
COMMISSIONER CLOWE: Thank you, Oscar.
You stand ready to brief the commissioners individually, don't you?
CHAIRMAN POLUNSKY: This is Item VIII.C, "RFQ for IT optimization assistance in the development of IT strategy."
MR. BRUBAKER: James Brubaker, chief information management service.
Mr. Chairman, commissioners, the department received 23 responses to the RFQ for the IT assistance. Six of those were disqualified for failing to sign the document as required. The remaining 17 were independently scored by a team of IMS employees consisting of Assistant Chief Bryan Lane and manager Elaine Mays, and Jim Kilchenstein, and all scores were submitted to accounting for compilation.
I would tell you the top-scoring vendor is well-known for its fact-based consulting services designed to help its clients use and manage IT to
enable business performance. Their approach design to identify solutions that apply IT to derive improvements creates substantial IT efficiency and strengthen the IT optimization in its operations.

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

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

CHAIRMAN POLUNSKY: Thank you, sir.

Ms. Anderson?

COMMISSIONER ANDERSON: Mr. Brubaker, in the scoring by the scoring team, the top-scoring vendor
was -- you know, approximately how -- I mean, did -- was the No. 2 vendor right there or was there a reasonable amount of distance by which the top-scoring vendor scored by some margin?

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

COMMISSIONER ANDERSON: Yeah, it's eight percentage points higher?

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

COMMISSIONER ANDERSON: Not 8 percent?

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

COMMISSIONER ANDERSON: Do you follow me?

MR. BRUBAKER: Yes, ma'am.

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

MR. BRUBAKER: Yes, that's correct.

CHAIRMAN POLUNSKY: Okay. Is there a discussion?

Make a motion.

COMMISSIONER ANDERSON: Yeah. I move that we proceed with Mr. Brubaker's recommendation to
enter into negotiations with the top-scoring vendor.

COMMISSIONER CLOWE: Second.

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

Any discussion?

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

THE COMMISSION: "Aye."

CHAIRMAN POLUNSKY: Against?

Motion passes.

Thank you.

MR. BRUBAKER: Yes, sir.

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

Colonel Davis?

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

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

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

Oscar?
Mr. Ybarra: I think Farrell is also going to be up here. I will state that this procurement is on track. It's going to be posted tomorrow in the Texas Register with an award date of possibly July 21st.

Commissioner Anderson: This seems to be --

Commissioner Clowe: What was the problem?

Mr. Walker: Each of the respondents that proposed included personnel that didn't have the appropriate certifications.

Commissioner Anderson: And our response to that was?

Mr. Walker: To disqualify each.

Commissioner Anderson: Right. And in this revised RFP relevant qualifications have been made eligible qualifications in the RFQ?

Mr. Walker: I believe so.

Commissioner Clowe: Was that a yes?

Mr. Walker: Yes. We believe -- we believe that we've extended those.

Chairman Polunsky: Ms. Barth, would you like to comment on that?
COMMISSIONER BARTH: I -- we're going to go back. This is the way to say it. My hope is that -- that there won't be other ways to disqualify that we haven't thought through with respect to this RFQ.

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

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

CHAIRMAN POLUNSKY: Okay.

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

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

COMMISSIONER BARTH: No.

CHAIRMAN POLUNSKY: Any additional questions?

COMMISSIONER BARTH: The only thing that I want to make you aware of is, as I reviewed the internal audit report this month and saw where we were with respect to budget versus action, in just about every case we were at least 10 to 15 percent off our
forecast with respect to the number of hours we thought
would be used and what was actually used. So I will
cautions the agency that we're sort of a best foot
forward in terms of how many hours we think the scope
of this job would take. But it wouldn't surprise me if
it doesn't take more.

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

COMMISSIONER BARTH: No.

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

MR. WALKER: Most of them are
overrunning.

COMMISSIONER ANDERSON: Overrunning?

COMMISSIONER BARTH: Overrunning, yes.

COMMISSIONER ANDERSON: Okay. Oh, yeah.

Sorry. I read this backwards.

COMMISSIONER BARTH: Yeah. It's
definitely over.

CHAIRMAN POLUNSKY: Additional
discussion?

Thank you.

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

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

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

CHAIRMAN POLUNSKY: Colonel Davis might be able to respond to that, if you would like.
COLONEL DAVIS: Commissioner Clowe, it's my belief -- and I think there's someone here from Sunset, if you would like to ask them, or they're willing to, you know, talk about it. It's my belief that a business model -- and I'm not -- certainly not a business person, but to apply a business model would require us to increase personnel, increase locations, and those kind of things.

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

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

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

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

In my opinion, these driver's license examiners are the most underpaid group of employees in this department. They have the highest rate of
turnover and they are, therefore, not as well trained
as they might be to implement the requirements of an
ever-increasing important document that this state is
charged with the responsibility of issuing.

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

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

Now, I want to delight the applicants for
a driver's license in the State of Texas, but I don't
want to do it at the sacrifice of meeting the
requirements set down by a statute for a driver's
license in this state and I don't think we're going to
do it with too few underpaid employees and remove the
commissioned officer presence in our offices. And I'm a little concerned and confused about the idea of taking away the management of these officers and leaving them there with a civilian, noncommissioned person supervising them.

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

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

So I'm looking forward to having a better understanding of what the meaning of this recommendation is, and I hope I can get comfortable
with the idea that we're going to do a good job of issuing these licenses and not put them in the hands of people that should not have them, because that is a very dangerous thing if we're just going to run people through the line and not really do the job we're supposed to do. That's my concern.

Thank you, Mr. Chairman.

CHAIRMAN POLUNSKY: Thank you, Mr. Clowe.

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

Are you available to discuss this or --

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

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

MS. TROST: For the record, Amy Trost, from the Sunset Advisory Commission. And not to put off your questions, Mr. Clowe, but I would prefer to address them on Tuesday at the commission hearing because our commission members, of course, have the
report, but we haven't had a chance to discuss it in a
formal setting yet, in an open hearing. And so I would respectfully ask to discuss it on Tuesday.

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

MS. TROST: Thank you.

CHAIRMAN POLUNSKY: Thank you. See you on Tuesday.

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

COMMISSIONER CLOWE: I'm at the pleasure of the commissioners. You know, this is our first opportunity to discuss these in the public. And you and I have visited about this, but I haven't had the opportunity to hear from the other commissioners about it because I'm forbidden to do that. But I would like
to hear what they think about my -- what you think
about my comments on this or any other matter. And I
believe it's posted so we can do that.

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

I'm in agreement, so that's my position.

But if you would like to talk or discuss this among the
other two commissioners, that's fine.

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

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

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

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

CHAIRMAN POLUNSKY: What would it be?

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

COMMISSIONER CLOWE: I call it a command presence. And I can tell you that from my visits to the driver's license office that I have visited, a uniformed trooper makes a world of difference. And, you know, my experience is in business, not in law.
enforcement. And if you take those commissioned
officers out of the management you've got to replace
them with employees that are civilians that are well
paid. I don't see a cost savings there and I don't
know that a different mindset is going to advantage
those officers that are in the offices, the troopers.

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

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

CHAIRMAN POLUNSKY: Well, absolutely.

There's nothing magic about the fact that private
people or business people or noncommissioned
officers -- noncommissioned people are at the
management strata of driver's license.

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

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

COMMISSIONER CLOWE: That's exactly right.

COMMISSIONER ANDERSON: So, you know -- and part of it is how the calendar works. And so one of the things that I would ask the leadership of the department, you know -- and we've asked Oscar before to lay out the -- we need to know when these dates are so that we can move our meetings around to get in front of
those deadlines so that we're not -- we learned a
lesson with this one, but we don't want to have to
learn that one again.

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

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

But if the commissioners and senior
management can sit down and talk about it and to try to
come up with a better solution, I think that's the way
to be helpful to Sunset. And I attended the meeting
with Sunset staff and on some issues they said, "Well,
you know, that's law enforcement and maybe, you know,
your board can help you on it."
Well, here's -- here's the board. Now, we're working on this organizational study. If we can get that RFQ in place and get it going, these are some issues that I think that entity needs to deal with and help us in finding solutions. So I think that's very timely. And I think this board will appreciate the kind of help that will come out of that study on these kinds of issues.

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

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

COMMISSIONER CLOWE: Yes.

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

COMMISSIONER ANDERSON: I'll be real brief.

I think that the devil is always in the details, but I think the recommendation to -- to move toward a civilian business model, however that's defined, which is, you know -- you know, these are high-level recommendations. They're not -- you know, it's not even a business model. It's just
recommendation, has a lot of merit if it can be done in a way that still leaves uniformed presence in a defined role in the DL offices. And one of the reasons I support the recommendation of the Sunset Committee is we have an endemic vacancy problem in our commission force and, you know, we’ve been -- we’ve been told we’re going to have a -- you know, a spike in -- in August. We have a-- you know, we have recruiting challenges, we have pay compensation challenges over there, too. And to have all of those; captains, lieutenants, and sergeants, you know, those experienced people in the DL office when we’ve got manpower shortages, I think, is something that, you know, bears taking a very serious look at. And I also think that in the kinds of function that we expect frontline examiners to do and call center people to do, that civilian management who have experience in those realms, you know, can -- could bring benefits. And so I am very open to that recommendation and looking at it. But I absolutely agree with Commissioner Clowe that it cannot be done in a way that puts at risk the integrity of the driver's license issuing process.

As far as the promotion policy, I actually disagree with what -- so I was on board on the driver's license thing. I disagree with the position
that the commission and the department took on the promotion policy because, again, I think there -- the devil is in the details. I can see, in my view, Sunset was overly prescriptive in recommending two other promotion models that probably don't work here. But I believe, you know, people that I've talked to around the state, you know, that there is room for improvement in how we promote people.

And so I welcome them raising the issue.

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

Maybe that wasn't very brief.

COMMISSIONER BARTH: I'll try to be briefer.

I agree with the recommendation on the DL. I understand the last thing you want to do is compromise the integrity of that ID, for lack of a better way of -- but I do believe that there's perhaps an opportunity to put some sort of quasi-private public operations in that particular office.
With respect to the promotion policy, I don't think what we have is working. I'm glad, you know, Sunset raised it. I don't think what they put as a potential answer is one that perhaps fits us. So, you know, my viewpoint is, I would like to hopefully have the organizational assessment give us some recommendations out there that's, you know, outside of the State of Texas perhaps even that works for this particular law enforcement agency, because, you know, I just do not believe that the promotional policy we have in place is adequate. And a lot of it starts just with compensation, so that has to be addressed.

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

COMMISSIONER BARTH: Okay.

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

We are in agreement with the Sunset
Commission staff recommendation. So that doesn't prevent you from testifying on Tuesday as to what your personal position is, and I would recommend that you do so.

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

And if you put officers in there and you don't have a management that they can relate to and work for, I see problems there. And that's -- that's the answer I'm looking for. How is that going to work? And if you do it like we do it in business -- you know, these are people in the private sector who come in with...
money and they're trying to pay a bill. And you want
to take their money. You don't ask them anything about
their background or -- you just take their money and
you're finished with them. And then they're delighted
and you are, too.

We've got a different situation here.

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

That driver's license is a valuable tool,
and we want to protect the issuance of it. So I'm
really concerned about this and I want to make sure
that the citizens of this state are protected. And I
know you-all do too.
CHAIRMAN POLUNSKY: We do. And I certainly am sensitive to your thoughts and suggestions here. And one thing that I think certainly should come from this, just so it doesn't get somehow skewed in this process, is I think -- notwithstanding the fact we're talking about having a business model or a civilian administration, or however you might want to describe it, I personally feel -- and I think I'm speaking for all the other commissioners. I personally feel that -- that the driver's license function needs to remain as a component of DPS and not moved to any other place or stand up alone or anything of that nature because of the various points that you've made on where we are in the 21st century and how it is something best associated with an agency that is involved in law enforcement as opposed to an agency that isn't. If the recommendation had been -- you know, one that was floating around a year or two ago would have been to move it over to the Texas Department of Transportation, I would violently been opposed to that, because I think that would be very -- very imprudent to do. So I feel that we're going to be where we need to be as long as it's under the auspices of DPS.

But your argument is well taken and, as I
said, I think that, you know, you should feel free to argue it next Tuesday. And, for that matter, I believe that Colonel Davis personally has a position close to yours and I would not object to him articulating his position.

COMMISSIONER CLOWE: Thank you, Mr. Chairman.

CHAIRMAN POLUNSKY: Anything else on that?

COMMISSIONER CLOWE: No, sir.

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

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

COMMISSIONER CLOWE: Thank you.

CHAIRMAN POLUNSKY: Okay. Thank you very much.

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

MR. YBARRA: Oscar Ybarra, chief finance.

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

We worked with the operating shortfall as Commissioner Barth had identified some concerns regarding some of the figures, that they may have been understated. We met with her earlier this month and feel that we've addressed her concerns.
And we have also changed all of the facilities that we're proposing down to $1 as we await the project analysis from the Texas Facilities Commission. This is something we did last session and the Legislature seemed to accept that. My understanding is that information will be coming in in December or early January, and we'll update everyone as soon as that information comes in.

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

CHAIRMAN POLUNSKY: Thank you, Chief Ybarra.

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

MR. YBARRA: From previous commissions, what's happened is we've submitted a list of exceptional items to the commission. We've also at this point provided backup for that information and how that -- how some of this information comes together and how it's derived. In the past commissions have adopted the list that has been proposed or determined that some of this -- they don't want to move on or they want to add to this list.
Once that is adopted we begin utilizing this document for our LAR process, because we will have to enter this information this summer into ABEST along with our base LAR. So some of these figures like has happened here from one commission maybe to the next have changed a little bit; communications, more research, things of that sort, but the list did not change. Once you-all adopt the list, that's the list we move forward with.

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

MR. YBARRA: My experience has been -- of course, you know we have LAR deadlines and we have --
COMMISSIONER ANDERSON: Right.

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

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

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

COLONEL DAVIS: First let me say,

Commissioner Anderson, that these are the requirements
that we believe as an agency that are important today. In January they may be altogether different. The way we change that -- this is a starting block to let the Legislature know the different committees about what we as an agency think our needs are. If that changes all we have to do is substitute that.

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

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

COLONEL DAVIS: I certainly would encourage the members and all the commissioners to have a personal appearance there. And that will be worked out, you know, at the time that -- you know, prior to those hearings. And it's not uncommon, as you say, for a subcommittee to say that, "I have $5 million. Tell me where you want to put it." And certainly that's an
exclusion that needs to be made by the administration
and the commission.

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

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

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

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

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

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

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

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

COMMISSIONER ANDERSON: Well, as
Ms. Barth added a line item, you know, based on, you
know, some sound assumptions and conclusions about the
technology needs of the department, I mean, if in, you
know, this IT assessment that's going to start out --
you know, if it says, you know, we need to, you know,
replace the satellite system, you know, and adopt some
other technology, and that's a $15 million capital
project, up until -- I mean, up until what date can
that $15 million be pushed into this item?

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

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

MR. YBARRA: Right.

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

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

So up until they -- you know, I guess,
conference committee, you know, well, those things are
CHAIRMAN POLUNSKY: It's a starting point?

COLONEL DAVIS: Right.

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

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

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

COMMISSIONER BARTH: I tried to.

MR. YBARRA: You said --

COMMISSIONER BARTH: Look at it now.

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

COMMISSIONER BARTH: I don't want to wait.

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

COMMISSIONER BARTH: All right. Really, when I saw quite a difference -- I mean, it didn't take long to figure out riding in both cars, you know, the situation. I urge strongly we address it immediately. So I think it's --
MR. YBARRA: Right. So it's not in here, but we are moving forward.

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

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

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

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

COMMISSIONER BARTH: Okay.

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

COMMISSIONER BARTH: But what happens if one of these items isn't even on there, okay, that, you know, we -- come January we don't have -- it's not even on the list. Okay? Does that mean it's just basically conversations and then we tell them what we're willing to drop out off the list?
COMMISSIONER ANDERSON: If there was a civilian business model for DL and it required hiring of "X" number of people at an incremental cost to today's salaries of "Y", is that -- is that -- you know, is that considered -- that's not an exceptional item. It becomes part of the base operating expense.

COLONEL DAVIS: Well, it can be a fiscal.

And I think they tell us -- the Legislature can tell us to --

COMMISSIONER ANDERSON: Do that on a --

COLONEL DAVIS: -- do whatever. And --

COMMISSIONER ANDERSON: And we do a fiscal note.

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

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

MR. YBARRA: True.

CHAIRMAN POLUNSKY: Okay. So are we --

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

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.
COMMISSIONER ANDERSON: Seconded.

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

Any discussion?

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

THE COMMISSION: "Aye."

CHAIRMAN POLUNSKY: Any against, "No."

Motion passes. Thank you.

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

We're going to recess for five minutes.

(Brief recess)

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

What I would like to do at this time is to go back to Item VIII, Subsection A, "RFQ to study the management and organizational structure of DPS."

And there's also the action item on that as well, which would be Item IX, "Discussion and possible action on the study of the organization of the department."

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
"senior."

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

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

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

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

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

And so without -- you know, I'm uncomfortable taking the second highest person without -- purely on the basis of -- you know, what the
reasonable cost was. It looks to me like it came down
to a decision of, well, the second highest score had
lower labor rates than the first high scorer. That's
where I am.

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

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

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

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

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

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

MR. FOX: Yes, you may communicate
with -- the chief of finance can communicate with the
evaluation team regarding the evaluation of the RFQs.
COMMISSIONER BARTH: We as commissioners cannot communicate with the evaluation team; is that right?

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

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

MR. FOX: That's correct.

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

MR. FOX: We need some process for independence in the event of protest. And we could satisfy that perhaps by having the director be the one to handle the protest. But that would be the compromise that you would have to run. That's why the typical recommendation is to have staff engage in the communication with the evaluation team so that you can sit independently in the event of protest.
COMMISSIONER BARTH: How does it work if we don't agree with the recommendation?

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

COMMISSIONER BARTH: Is that our only option?

MR. FOX: The --

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

MR. YBARRA: Well --

COMMISSIONER CLOWE: Can't they?

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

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

MR. JONES: Kevin Jones, procurement and contract administrator. I think we -- someone has to
make the determination that the high-scoring vendor's
cost is not reasonable and we would work our way down
to the next. And so you've just got to make that
decision whether those -- those costs are reasonable.

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

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

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

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

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

COMMISSIONER BARTH: Is that correct?
MR. YBARRA: Yes.

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

MR. YBARRA: He made a recommendation.

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

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

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

And so then -- of course, then the third alternative, which is always available, is to give staff instruction to go back and solicit new -- essentially go back and start again with changed
revised criteria to contain any concerns they've got.

I'm just trying to tell you all that I can see are the options.

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

MR. FOX: And you could have gotten --

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

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

MR. YBARRA: And at this point we can --

I believe since a decision wasn't made on whether the
reasonable price, at this point that if we receive
instructions from the commission on what they agree to
we can proceed.

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

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

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

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

COMMISSIONER BARTH: Is that correct?

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

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

COMMISSIONER CLOWE: Well, I made my
Page 90

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 that we ask the administration to pursue a contract with the respondent with the highest score.

5 COMMISSIONER ANDERSON: I second that motion.

6 Any discussion?

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

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

9 THE COMMISSION: "Aye."

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

11 COMMISSIONER CLOWE: Show me showing no.

12 CHAIRMAN POLUNSKY: Show me abstaining.

13 MR. FOX: The motion fails.

14 COMMISSIONER ANDERSON: Even with an abstention?

15 COMMISSIONER CLOWE: Now, we can go forward.

16 COMMISSIONER ANDERSON: The motion failed. Two to one with one abstention. Two is not a
majority on a four-person commission.

COMMISSIONER CLOWE: Even with an abstention?

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

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

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

COMMISSIONER CLOWE: By the majority of the board?

COMMISSIONER ANDERSON: Not the majority of the --

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

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

COMMISSIONER ANDERSON: Yes, sir. We're going to have a revote. Is there any discussion before the revote?

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

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

THE COMMISSION: "Aye."
COMMISSIONER ANDERSON: All opposed,

"No."

The motion carries.

CHAIRMAN POLUNSKY: Show me as abstaining, please.

All right. Are we done with that?

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

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

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

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

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

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

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

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

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

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

COMMISSIONER ANDERSON: Generally
speaking, I'm comfortable with that, but with the
caveat that before that would be done, you know, I
would -- as Commissioner Barth -- and I assume the
others -- would want to know why it failed so that we
had an opportunity to say, "Well, that was a silly
thing to let it fail over," or, "No, you were exactly
right. It should fail. Go to the next person."

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

COMMISSIONER ANDERSON: Right.

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

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

COMMISSIONER BARTH: Agree.

CHAIRMAN POLUNSKY: Thank you, sir.

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

Colonel Davis?

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

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

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

CHAIRMAN POLUNSKY: Any other discussion?

Thank you.

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

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

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

COMMISSIONER CLOWE: Second.

COMMISSIONER ANDERSON: Yeah, thank you.

It will register.

CHAIRMAN POLUNSKY: Is there a second to
the motion?

COMMISSIONER CLOWE: Second.

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

All those in favor please say, "Aye."

THE COMMISSION: "Aye."

CHAIRMAN POLUNSKY: Any against, "No."

Motion passes.

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

Chief Brown?

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

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

COMMISSIONER BARTH: Second.

CHAIRMAN POLUNSKY: It has been moved by Ms. Anderson and seconded by Ms. Barth that the proposed amendment be published in the Texas Register.
as set out.

Any discussion?

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

THE COMMISSION: "Aye."

CHAIRMAN POLUNSKY: Any against, "No."

Motion passes.

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

Chief Brown?

MS. BROWN: Chairman Polunsky, commissioners, this recommended change is in the -- at the direction of the commission that requires applicants for a Texas DL or ID card who are not a citizen or a lawful current resident of the United States to present valid documentation indicating lawful status in the country. Applicants meeting this criteria will be issued a photo type license with the designation of their status on the card. This would be a supplemental expiration date. It would be stated on the face of the license. I have additional samples. We've provided samples of how that could be displayed on the card to you with your commission packet.
CHAIRMAN POLUNSKY: Thank you.
Discussion on this?
We'll entertain a motion.
COMMISSIONER ANDERSON: I move to publish it in the Texas Register for public comment.
COMMISSIONER BARTH: Second.
CHAIRMAN POLUNSKY: It has been moved by Ms. Anderson and seconded by Ms. Barth that the rule as set out be published in the Texas Register for comment.
Any discussion.
There being none, all those in favor please say, "Aye."
THE COMMISSION: "Aye."
CHAIRMAN POLUNSKY: Any against, "No."
Motion passes.
Last one, "Proposed Rule 15.172, 37 Texas Administrative Code, Section 15.172, regarding expiration dates for driver licenses and identification certificates issued to certain non-citizens."
Chief Brown?
MS. BROWN: Chairman Polunsky,
commissioners, this bill attempts to obtain the same lawful presence requirement. However, this bill -- I mean, this rule specifically states that the license will be cause to expire on the date of the immigration
status expiration.

CHAIRMAN POLUNSKY: Thank you.

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

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

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

CHAIRMAN POLUNSKY: You made a motion?

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

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

COMMISSIONER CLOWE: Well, if you table
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.

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.
That being said, if the other commissioners are prepared to act on it today, then --

COMMISSIONER CLOWE: I like that idea as well.

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

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

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

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

COLONEL DAVIS: Okay.

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

MR. MAWYER: Good afternoon.

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

MR. MAWYER: Thank you.

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

MR. MAWYER: Thank you, sir.

CHAIRMAN POLUNSKY: Y'all did a great job.

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

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

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

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

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

In addition to that, this week, actually, there's an analyst school going on in which we've got our analysts, as well as analysts from other intelligence and fusion centers around the state together in a training session. So that will help facilitate some of that communication efforts and accomplish those things.
The draft of the statewide threat assessment has been completed with input from commissioners, the director of Homeland Securities, other fusion centers, and other interested parties. With your approval the document is ready for production and dissemination.

And that concludes my report unless you have any questions.

CHAIRMAN POLUNSKY: Any questions?

I think not.

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

MR. MAWYER: Thank you.

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

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

Commissioners, I enclosed three audit reports for your review; narcotics impress fund, Region 4 audit, which you may have noticed had minor findings, but we had no recommendations. We found things generally operating as per policy. The information systems log audit had a few recommendations. And the network monitoring follow-up found that there's still two recommendations in the
process of being implemented. It's our opinion that
they're making progress and we'll wrap up those two
outstanding recommendations in a reasonable length of
time.

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

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

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

CHAIRMAN POLUNSKY: Thank you,
Mr. Walker.

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

Thank you, sir.

MR. WALKER: Yes, sir.

COMMISSIONER ANDERSON: Just one comment
related to audit, that I want to commend the IMS
organization. They have a number of management
governance, you know, betterment initiatives going on. They're not waiting for the IT assessment. And one of those is to elevate the importance of timely responses on audit findings throughout that department to take that very seriously. And they have a plan being drafted on how they'll do that throughout the IMS organization. But I was glad to see that.

CHAIRMAN POLUNSKY: Thank you, Ms. Anderson.

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

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

COMMISSIONER CLOWE: Good for me.


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

CHAIRMAN POLUNSKY: Right.

COMMISSIONER BARTH: Mr. Chairman?

CHAIRMAN POLUNSKY: Yes, ma'am?

COMMISSIONER BARTH: May I make one remark?

CHAIRMAN POLUNSKY: Absolutely.

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

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

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

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

And the other thing is, you know, I'm not familiar with a practice on a transcript where you have to sit there and listen to the whole thing and correct minor typos throughout it, Dorothy. And I don't think
that's very good use of your time unless there was some legal requirement we did that. But we didn't do it in my other state agency. So we'll let you off the hook.

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

CHAIRMAN POLUNSKY: Okay. Anything else?

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

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

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

Janalyn Reeves, Texas CSR
Expiration Date: 12/31/08
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EBS NO. 211685
IN THE MATTER OF § BEFORE THE
THE APPEAL OF DISCHARGE OF § PUBLIC SAFETY COMMISSION
KEVIN SCOTT LEWIS § 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 Tam O’Leary, 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