
OPEN MEETING
PUBLIC SAFETY COMMISSION
MAY 16, 2008

On the 16th day of May, 2008, the
following meeting was held before
Allan B. Polunsky, Chairman, in Austin, Travis County,
Texas.

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A P P E A R A N C E S

COMMISSIONERS OF THE PUBLIC SAFETY COMMISSION:

Allan B. Polunsky, Chair
C. Tom Clowe
Elizabeth Anderson
Carin Marcy Barth

DIRECTOR'S STAFF OF THE DEPARTMENT OF PUBLIC SAFETY:

Colonel Thomas A. Davis, Jr.
Lt. Colonel David McEathron, Assistant Director
Dorothy Wright, Executive Assistant
Mary Ann Courter, General Counsel

1 CHAIRMAN POLUNSKY: Good morning, ladies
2 and gentlemen. I would like to call the roll at this
3 time.

4 MS. Anderson?

5 MS. ANDERSON: Here.

6 CHAIRMAN POLUNSKY: Ms. Barth?

7 MS. BARTH: Here.

8 CHAIRMAN POLUNSKY: Mr. Clowe?

9 MR. CLOWE: Here.

10 CHAIRMAN POLUNSKY: I'm present. Forum
11 is present.

12 Public Safety Commission is now convened
13 in accordance with Chapter 551 of the Texas Government
14 Code dealing with the Meetings Act. During this
15 meeting the commission will be conducting business with
16 the agenda posted in the Texas Register.

17 As I've stated, a forum of the commission
18 is present and the meeting is now declared open. It is
19 9:30 a.m.

20 The first item on the agenda is approval
21 of the minutes from March 11, 2008 and also April 24,
22 2008 for the Public Safety Commission meetings.

23 MR. CLOWE: So moved.

24 MS. ANDERSON: Second.

25 CHAIRMAN POLUNSKY: It has been moved by

1 Mr. Clowe and seconded by Ms. Anderson that the minutes
2 from March 11th and April 24th be approved as
3 presented.

4 Is there any discussion?

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

7 THE COMMISSION: "Aye."

8 CHAIRMAN POLUNSKY: Any against, "No."

9 Motion passes.

10 Next item on the agenda is public
11 comment. Is there anybody here that would like to
12 address the commission at this time?

13 There being no public comment, we will
14 move on.

15 I am going to deviate from the agenda as
16 it has been published and move to Item X. That is the
17 discussion of driver's license expiration dates and
18 language testing options. What I would like to address
19 at this time is the discussion and possible action on
20 driver's license expiration dates.

21 Ms. Brown, I don't know if you're
22 prepared to make a presentation on this, but I might be
23 able to set the stage to some degree.

24 It has come to our attention over the
25 last year or so that there are problems in the system,

1 so to speak, because we are in a situation where the
2 driver's license division is issuing driver's licenses
3 to foreign nationals who are in this country under some
4 type of a visa. And there are, as you may know,
5 several types of visas that these people are able to
6 enter the country under. But these visas have
7 expiration dates and they are time certain. And at the
8 time those dates expire, then either those people are
9 required to go back to the country which they came from
10 originally or have those visas extended in some manner.

11 But nevertheless, in the past the
12 department has been in a situation where
13 notwithstanding it being quite obvious when somebody
14 comes into a driver's license office that they have a
15 visa that could expire in three months, six months,
16 nine months, they end up with a driver's license that
17 has an expiration date of six years and then a renewal
18 date possibly over the internet of another six years.
19 And, therefore, the result being that we have people in
20 this country using identification when they are
21 illegally in this country.

22 So I personally, and in talking to other
23 members of the Public Safety Commission, feel that it
24 is a very problematic problem or problematic issue that
25 we are involved in here and the action needs to be

1 taken to address this. I don't know if it would be
2 appropriate for you to discuss this at this time. I
3 know there's some people here, including the United
4 States attorney from the Northern District, who has
5 been involved in this issue quite personally because of
6 prosecutions that he's been involved in. And I would
7 like to hear from him at some point.

8 But do you have anything you would like
9 to add or would you like us just to discuss this among
10 ourselves and ask for people to come forward and make
11 any presentation or share any thoughts that they may
12 have.

13 MS. BROWN: Chairman Polunsky, my name is
14 Judy Brown with the driver's license division. I will
15 be glad to draft the administrative rule language based
16 on your direction and discussion or comments that we
17 have here today and have that ready for June. You've
18 very eloquently laid out the issue and it is
19 problematic for a number of reasons. But we'll be glad
20 to -- to draft that language and have the
21 administrative rule ready for your review at the next
22 commission meeting.

23 CHAIRMAN POLUNSKY: Okay. Well, I
24 appreciate that very much.

25 I would like to call any person who is

1 interested in this issue to testify at this time. Are
2 there people here who would like to discuss or testify
3 or make comments regarding this particular agenda item?

4 Mr. Roper?

5 MR. ROPER: Would you like to hear from
6 me?

7 Good morning.

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

10 MR. ROPER: All right. My name is
11 Richard Roper. I'm the US attorney for the Northern
12 District of Texas. To give you an idea of what that
13 covers, it's about 100 counties in -- in Texas,
14 essentially the Dallas/Fort Worth area, the Panhandle,
15 down through south of San Angelo. I have four offices.
16 In the Dallas/Fort Worth area there are two, and then I
17 have one in Lubbock and Amarillo. And there are
18 four districts in Texas, you folks probably know, and
19 I'm one of four US attorneys.

20 I've been a prosecutor 25 -- well,
21 26 years now. I was with the district attorney's
22 office in Tarrant County for five years. I was an
23 assistant US attorney for a number of years. And I've
24 been the US attorney since 2004. So there you go.

25 The -- you know, we had a case involving

1 a defendant who pleaded guilty that was involved in
2 moving some folks that had -- foreign nationals that
3 were visa overstays, meaning their visa had expired and
4 they were illegally in the country. And it turned out
5 that they were coming down, showing a false address,
6 and presenting some documents to DPS and obtained
7 driver's license. And the -- the problem, the offense,
8 the fraud, was the fact that they were lying on
9 their -- showing they had residency. But I think
10 because of what we saw in that case, we contacted DPS
11 and the governor's office and I think the DPS made
12 changes to help avoid that.

13 During the course of that, I did notice
14 what I think the Chair pointed out was a problem in
15 that because driver's license in Texas have a six-year
16 expiration date, it's possible for a person to come in
17 an obtain a driver's license using a foreign passport
18 along with a valid visa and have a I-94, which shows
19 the expiration of that visa, and get a driver's
20 license. But as the Chair pointed out, the driver's
21 license expiration date would be beyond the expiration
22 date of the visa.

23 For instance, a man or a woman has -- a
24 foreign national has a visa that expires in
25 three years, but if they went down and got a driver's

1 license they would actually -- that driver's license
2 would be valid for six years. So -- and why is that
3 important? Of course, that's for you to decide. I'm
4 not a policy maker. I'm a prosecutor.

5 But what I see, you know, really,
6 essentially, are Texas -- all -- we don't have a
7 national ID card, but really the driver's license is
8 just about it. That's really the main ID. And from my
9 experience, I think most information we obtain on just
10 about any kind of law enforcement initiative I've ever
11 seen, especially terrorism -- and I've had some
12 experience in cases we've had in my district, as well
13 as I'm on a committee in the Department of Justice.
14 Most good successful initiatives we've had in the area
15 of terrorism don't happen as a result of some visa
16 intercept or a national security wiretap, you know, the
17 more provocative, exciting, and kind of top-secret type
18 initiatives. Really, a lot of the good initiatives
19 happen because of police work down on the ground. You
20 know, there was a good cash of -- of evidence that was
21 highly probative of terrorist activity in our country
22 that was obtained by a park police officer that sees
23 somebody taking pictures, you know. And that caused
24 park police officer to ask questions, to approach that
25 person.

1 And when you -- when a trooper stops
2 somebody on the street out of -- and they have a
3 driver's license, it would cause that trooper not to
4 take further action and use his skills as a law
5 enforcement officer to try to find out if there's any
6 kind of criminal activity. And I think that's why it's
7 important.

8 So, you know, I think that's a good step
9 if you will consider that. Of course, again, I'm
10 certainly not a policy person. You folks are. You
11 have the skills and the talent to do that. But I think
12 that it would be a good measure to consider.

13 CHAIRMAN POLUNSKY: Thank you, Mr. Roper.
14 So, in other words, if I understand you correctly, what
15 you're essentially saying here is that it would enhance
16 national safety and very possibly cut down on potential
17 terrorist acts in this country --

18 MR. ROPER: Well, you know, the lessons
19 from 911, one of the -- the findings was the -- a
20 failure of -- some of those people were visa overstays.
21 And when you have a driver's license that's valid, that
22 kind of gives you cover many times. Nobody is going to
23 know that you're a visa overstay. And the only way you
24 can find that out is because it's almost impossible for
25 immigrations and customs and enforcement to deal with

1 that. And, of course, that's another problem chairman.

2 But when you have a valid driver's
3 license you pretty much have cover for -- in your
4 ability to -- to work and live and move about in our
5 country. It's pretty unfettered when you have a valid
6 driver's license. That's why those folks were coming
7 down from New York. They couldn't get one in New York,
8 so they were coming down here to Texas. And, of
9 course, what they were doing was illegal. But,
10 nevertheless, they were trying to take advantage of
11 what they saw was a loophole or an opportunity for
12 fraud. I guess that would be a better way to say it.
13 And that's the problem. That's why those driver's
14 license are so important. So --

15 CHAIRMAN POLUNSKY: If I'm again, I'm,
16 reading you correctly, it's your opinion that it's in
17 the public's best interest that the commission and the
18 Department of Public Safety take some type of action
19 that would either terminate the driver's license
20 simultaneous to the termination of a visa or take some
21 other action so that the general public is put on
22 notice that somebody is in this country carrying a visa
23 that may have expired?

24 MR. ROPER: Yeah.

25 CHAIRMAN POLUNSKY: I think it's a good

1 idea. Or both.

2 Would you like to ask any questions?

3 MS. ANDERSON: No. But I appreciate the
4 US Attorney taking the time to come down here and give
5 us the benefit of his perspective today.

6 MR. ROPER: Okay. Thank you. We work
7 well -- I've worked with troopers all my career, or
8 rangers, and I just want to say we work well on the
9 highway enforcement initiative that we've had. You
10 know, I've got I-40 and I-10 and I-20 and I-35. And I
11 think DPS is engaged in that initiative, which I think
12 is so important. You know, getting the drugs going
13 eastbound or northbound and trying to capture the
14 proceeds of the unlawful activity going back toward the
15 border, that's so important. And I hope you folks
16 continue to support such an important initiative.

17 And I take my hat off. I had it --
18 Colonel Davis for the work that DPS has done in that
19 regard, and I really appreciate it. They're engaged.

20 Also, I'm -- I was the chair of ARCIDA,
21 North Texas and DPS has been a great partner in that as
22 well. So thank you. Sure appreciate it.

23 CHAIRMAN POLUNSKY: Thank you. Are there
24 any other questions?

25 MR. CLOWE: I would like to also thank

1 you for being here this morning. And I think that you
2 got to the question that I had by way of the chairman's
3 comment. If I understand correctly, what you think
4 would remedy this problem is some identification on the
5 driver's license that it expires with the legal entry
6 time that would be on a visa.

7 MR. ROPER: Yes. So that the -- the same
8 day when the visa expires. Now, you know, it may be
9 those folks could get -- go to ICE and get an
10 extension. And, if that's the point, they could come
11 back and get another license.

12 MR. CLOWE: And I would like to ask a
13 question for amplification of that. In line with that
14 thought, how would that be represented on a driver's
15 license? Could we have some discussion about how a
16 trooper or a law enforcement official would see that on
17 the driver's license itself so that we could get into a
18 practical understanding of how that identification
19 would come forward?

20 CHAIRMAN POLUNSKY: Well, certainly.
21 And, Mr. Clowe, I'm not sure Mr. Roper would be the
22 most appropriate person to answer that question, but
23 I've had some discussions with Ms. Brown and she may
24 want to come up here. But I think what Mr. Roper is
25 suggesting is -- you know, it's pretty simplistic in

1 the sense that if somebody comes into a driver's
2 license office and they produce documentation,
3 passport, visa, and so on, and that visa expires on
4 December 25th, 2008, then that would be the expiration
5 date stamped on the driver's license as well. It would
6 not go on for
7 six years. It would terminate on December 25th, 2008,
8 or whatever date that might be.

9 There are other ways to approach this, in
10 my opinion, over and above just to have that additional
11 layer of safety. And I've had some discussions with
12 Ms. Brown, and you may have seen examples of what those
13 discussions led to. But another way -- or, in my
14 opinion, a collateral way to address this is to
15 specifically state on the driver's license -- and there
16 is a field -- a minimum that is available both on the
17 driver's licenses that we use now and the new licenses
18 that will come out of the reengineered -- or
19 reengineering program. And that field will
20 specifically state the expiration date of the visa.

21 So somebody can just look at it and see
22 the -- you know, the visa will expire at such and such
23 date. And then you can take it a step -- a couple
24 steps further. You can -- you can put up on the top
25 where right now it might say "Under 21," or some other

1 notification -- this is kind of a special situation --
2 and put "Foreign National." You can take it a step
3 further from there. You can -- you can have licenses
4 produced for this class of applicant that would be, for
5 want of a better discussion, or better description, I
6 should say, vertical like for a minor as opposed to
7 horizontal, like adults or people, the majority,
8 utilize.

9 So there are different ways to do it.
10 But -- but in my mind you give a license -- you issue a
11 license for the period of which that visa is good. As
12 Mr. Roper said, if that visa is extended through ICE,
13 then they'll just have to come back and get -- get
14 their license extended or renewed.

15 And the other track is that we -- we put,
16 you know, sufficient information on these licenses so
17 that when somebody -- when a law enforcement officer
18 comes into contact with somebody and looks at their
19 license, it will be very obvious to that person or
20 someone at the airport or any other place where they're
21 checking identification will have something basically
22 jump out at them and scream out, you know, "Somebody is
23 here on a visa and that visa may have expired." And so
24 people can take appropriate action at that point.

25 MS. ANDERSON: And we could use a

1 different -- you know, use red or a different front
2 size or something to draw the --

3 CHAIRMAN POLUNSKY: Well, you might have
4 to ask Ms. Brown about that because there may be issues
5 about -- because of the equipment that we have and so
6 on in doing a major surgery to these licenses. But I
7 don't know. Why don't you respond to that.

8 MR. DAVIS: Chairman, let me make one
9 comment before --

10 CHAIRMAN POLUNSKY: Yes, sir.

11 MR. DAVIS: -- before Chief Brown starts
12 talking. And I agree with what Mr. Roper is saying.
13 From a law enforcement standpoint we have a problem in
14 the way to -- us to address this. It's going to be
15 through legislation, which we're going to propose again
16 in January. But this measure is something similar to
17 what we did when this case in Dallas became evident to
18 us. We changed our rule to state that -- that you must
19 have a visa or be here legally and it must be issued
20 for a year. You must have six months remaining on it.

21 But the point that gets us is our statute
22 requires us to issue that license for six years. We
23 have to get that statutorily changed to meet this thing
24 that we're -- that we're talking about here today.
25 And -- and I think from a law enforcement standpoint

1 it's a good thing for us to do what we're talking about
2 and identify that that visa is going to expire
3 whenever.

4 So that kind of gets us up to where we
5 are today to have this discussion. If we made some
6 changes as far as the law goes and as far as our
7 rulemaking authority -- and I think if we propose that
8 rule to do this and the commission acts on that, then
9 this is another step for us to get in a better position
10 to do exactly what the people at law enforcement want
11 to do.

12 I'm sorry. Now go ahead.

13 MS. BROWN: To answer your question,
14 Commissioner Anderson, Chairman Polunsky and I had a
15 discussion -- it was late Wednesday evening, Tuesday
16 evening, and we overnighted these items to him as a
17 sample. I did not get them to you. I provided some
18 copies this morning.

19 It is a surgery in a sense. You've seen
20 the production's facility and the tedious nature that
21 it has to go through. The samples here lay out the
22 opportunity for us to add printing on the base document
23 before it's laminated.

24 MS. ANDERSON: Yeah. Okay.

25 MS. BROWN: There are some limitations

1 because of the real estate on the face of the license.
2 We've discussed putting it on the back of the license,
3 determined that that's probably not the best because it
4 may be missed.

5 MS. ANDERSON: Right.

6 MS. BROWN: And so with our vendor we
7 worked to try to find space. This -- this --

8 MS. BARTH: Chairman Polunsky, can I ask
9 a question?

10 CHAIRMAN POLUNSKY: Ms. Barth.

11 MS. BARTH: Chief Brown, how do other
12 states do it, this -- give this --

13 MS. BROWN: I will tell you that the
14 majority of the states have been successful in passing
15 legislation to cause the license to expire when the
16 visa expires. Those states that have legal presence
17 requirements, residence requirements have also been
18 successful in causing the license to expire with the --
19 with the same date as the visa expiration --

20 MS. BARTH: But physically what does
21 the -- does the license look any different in those
22 states?

23 MS. BROWN: It's going to range. Many of
24 those have an opportunity to put "Nonresident" on the
25 license or put some other formal notification on that

1 license that that person is a nonresident of this
2 country. Others simply make it expire on -- on that
3 date. That's a little bit more difficult of a training
4 mechanism, but in and of itself, because that date is
5 very rarely going to coincide with the date of birth,
6 and most states' licenses their expiration coincides
7 with that. That in and of itself becomes an obvious
8 feature. It's going range from state to state and
9 their legislative process.

10 MS. BARTH: And how many states have the
11 legislation already in place that we probably need to
12 change?

13 MS. BROWN: I do not have that exact
14 number at this point. I think the last time we did a
15 survey on the residency requirement which ties this in,
16 there were 10 or 12 left that had not implemented
17 something like that.

18 MS. BARTH: So we're in the minority?

19 MS. BROWN: We are in the minority.

20 MS. BARTH: Okay.

21 MS. BROWN: Real ID will also -- as we
22 will have to address that in the next session, will
23 also have significant requirements with labeling the
24 face of the license with regards to this issue itself.

25 MS. BARTH: Thanks.

1 CHAIRMAN POLUNSKY: Anything else, Ms.
2 Barth?

3 MS. BARTH: No, sir.

4 CHAIRMAN POLUNSKY: Mr. Clowe?

5 MR. CLOWE: This is the discussion that I
6 wanted to hear, and I think it goes to the issue of --
7 we say this is a good thing to, do but how effective is
8 it going to be when we do it? And I'm not sure what
9 I'm seeing here. This is the first time I've seen
10 this.

11 When I've been carded going through a
12 line to get on an airplane --

13 MS. BARTH: I thought you were saying a
14 bar.

15 MR. CLOWE: I passed that stage. Now
16 they want to know if I'm young enough.

17 When I've been carded -- and that's
18 really what it is -- getting ready to board an
19 airplane, they don't look at anything other than my
20 picture. They just look at me and they look at my
21 picture. My sense is that's what they do.

22 Same thing applies when I'm making a
23 credit card purchase -- and this would be another
24 instance where this could come into play -- and they
25 say, "May I have a picture ID?" They look at the

1 picture. They don't look at the expiration date.

2 My interest is, if we're going to do
3 this, let's get that expiration date big enough and
4 prominent enough that it catches the eye of the person
5 who's examining the document.

6 Have you seen this.

7 MS. BARTH: No, I haven't.

8 MR. CLOWE: And I understand the real
9 estate problem. But if it's not prominent and it's not
10 eye-catching, you really haven't accomplished the goal.

11 MS. BROWN: I totally agree with you,
12 sir. The other elements on the face of the license are
13 statutory requirements. We'll do the best that we can
14 in conjunction with our vendor. We may want to use a
15 different color rather than -- I mean, we can test
16 colors and styles and front sizes and styles of -- I
17 mean, we'll reach the maximum limitation that we have
18 available within the real estate. I don't know any
19 other option short of totally redesigning the card.
20 And that adds time and considerable more expense in the
21 factory in which the cards are produced today.

22 CHAIRMAN POLUNSKY: Thank you.

23 MS. ANDERSON: Changing the base paper
24 color or something might put something --

25 MS. BARTH: It seems to me you might just

1 put a stamp under the face.

2 MS. BROWN: Again, when you look at
3 changing the printing technology it's significant. I
4 would invite you to tour the facility. It's pretty
5 complicated to see the process and how it's laid out.
6 And I'm not trying to negate your comments because I
7 absolutely agree. We've talked to the vendor about an
8 overlay. We've talked to -- within this pricing, we
9 have changing the color of the Teslin, and we could do
10 a significant background color change that would call
11 attention. There's a number of options that we will
12 work through to find the -- find the best possible
13 style.

14 MR. DAVIS: The process that we're going
15 through now is 90 percent of it is -- is for security
16 reasons. And the point that needs to be made that
17 other states have acted upon is that our law in Texas
18 is a driver's license law. It's a law that the
19 citizens of this state have written to demonstrate the
20 ability for people to drive. It's not an
21 identification law. We've made it an identification
22 law by the times we live in. And certainly we have to
23 address the law to make it a stronger identification
24 law as opposed to a license to drive.

25 MS. BROWN: I will make every --

1 CHAIRMAN POLUNSKY: Chief Brown?

2 MS. BROWN: I will make every effort to
3 have some samples provided with our commission report
4 next month. Timing will be an issue, but we'll work
5 with the vendor to have some art rendering-type samples
6 provided so you can look at what -- the options we've
7 addressed and comment or select from those
8 opportunities.

9 CHAIRMAN POLUNSKY: Okay. Thank you.
10 Any other discussion? I'm going to have a
11 recommendation that I would like to make to y'all
12 unless there's further discussion.

13 I would like the commission to direct the
14 chief of the driver's license bureau or division
15 through two different rules. And Ms. Courter is going
16 to be involved in this as well, but two different rules
17 for us to -- to discuss and possibly act on in our June
18 meeting.

19 One would be the commission -- possible
20 commission rulemaking action that would limit the term
21 of the driver's license to coincide with the -- the
22 term that is stated on the visa or, put another way, as
23 we've discussed here today, have dual expiration dates
24 where the driver's license would expire when the visa
25 expires.

1 Second from that, in a second rule, you
2 know, that we could discuss and possibly go forward on
3 would be -- and this would be more where Chief Brown
4 would be of assistance and, as she's volunteered here a
5 few minutes ago, have the commission look at various
6 options as to what could be designed or incorporated
7 into the present driver's licenses that are in use now
8 and the driver's licenses that will be in use in the
9 future so that it becomes very obvious that the
10 individuals holding this Texas driver's license is a
11 foreign national in this country on a visa with a
12 specific expiration date.

13 So that would be two separate rules for
14 us to consider in our next meeting. Any thoughts or
15 comments on those recommendations?

16 MR. CLOWE: I would be in favor of that.

17 CHAIRMAN POLUNSKY: Would you care to
18 make a motion, Mr. Clowe?

19 MR. CLOWE: So moved.

20 MS. ANDERSON: Second.

21 CHAIRMAN POLUNSKY: It's been moved by
22 Mr. Clowe and seconded by Ms. Anderson that legal staff
23 formulate two rules on the subject matters that we've
24 just now discussed with respect to the driver's
25 license. One being having an expiration date that is

1 the same as the expiration date as issued visa, and
2 then the second, the commission and then the department
3 discussing ways to design driver's licenses that
4 vividly state to the public that that individual who
5 holds that license is a foreign national with a visa
6 that has a specific expiration date.

7 And we can take these up at the next
8 meeting and pass one vote or none, I would assume but I
9 would make a point that one is not mutually exclusive
10 of the other. We can certainly theoretically do both
11 of these, take both actions, if the majority of the
12 commission so desires at the next meeting.

13 All right. There's a motion on the
14 floor. Would you like to discuss it, Mr. Clowe?

15 MR. CLOWE: I would just like to clarify
16 in my own mind, in the consideration that you've
17 described, that would be the consideration of draft
18 rules that Chief Brown would come forward with for
19 publication.

20 CHAIRMAN POLUNSKY: Right.

21 MR. CLOWE: And we would go through the
22 publication process and then there would be adoption at
23 a later meeting than the June meeting after the
24 appropriate time requirements have been met.

25 CHAIRMAN POLUNSKY: You're exactly right,

1 Mr. Clowe. What we're doing here is we're -- we're
2 going to ask the staff to come back with the
3 appropriate language that we can accept or modify or do
4 with as we wish. And if it -- if we take affirmative
5 action on either or both of these -- these action or
6 these proposed rules, then they would be -- they would
7 be published in the Texas Register and we would take
8 action on them most likely at the July meeting.

9 MR. CLOWE: Thank you.

10 CHAIRMAN POLUNSKY: Any other discussion?

11 There's a motion and a second on the
12 floor. All those in favor, please say, "Aye."

13 THE COMMISSION: "Aye."

14 CHAIRMAN POLUNSKY: Any against, "No."

15 Motion passes.

16 Mr. Roper, thank you very much for being
17 here this morning.

18 MR. ROPER: Thank you.

19 CHAIRMAN POLUNSKY: And I greatly
20 appreciate it. Thank you for your work. Appreciate
21 that as well.

22 All right. We're going to go back to the
23 stated agenda as published. The next item on the
24 agenda is, "Discussion and possible action on the
25 discharge appeal of DPS employee Aaron Ragland,

1 pursuant to Government Code Chapter 411,
2 Section 411.007."

3 Any discussion by commission members on
4 this item? This is the case we heard in our last
5 meeting. Each of you have received in our last meeting
6 a binder that had all the relevant information. And
7 also we obviously heard public testimony at our last
8 meeting through the hearing process. So the floor is
9 open for either discussion or some type of motion.

10 MR. CLOWE: I'm prepared make a motion,
11 Mr. Chairman.

12 MS. BARTH: I have some questions.

13 CHAIRMAN POLUNSKY: All right. Ms.
14 Barth, what questions?

15 MS. BARTH: I'm not sure who --

16 CHAIRMAN POLUNSKY: Well, just throw them
17 out and we'll see.

18 MS. BARTH: Okay. I've got actually
19 four. Trooper Ragland, based on what I've read,
20 appeared to be a very good employee in all other
21 respects. Is there any less discipline that could be
22 reasonable under the circumstances?

23 CHAIRMAN POLUNSKY: I believe that's
24 directed to you, Colonel Davis.

25 MR. DAVIS: I would say the punishment

1 fits past disciplinary actions that have been handed
2 out for similar action, that in each case it has been
3 reviewed by general counsel, and the report or the
4 investigation and the recommendation of the chain of
5 command, and then they go back and review like cases
6 and that punishment is within that range.

7 MS. BARTH: So where it's happened
8 previously, something has happened previously, there
9 weren't any exceptions? This is a consistent policy?

10 MR. DAVIS: I would say that -- I won't
11 say positive that there was no exceptions, but I would
12 say that -- that the conduct in this case and conduct
13 in similar cases, the punishment was the same. The
14 range was the same.

15 MS. BARTH: Are personnel records
16 discoverable or admissible in future matters where
17 Trooper Ragland might be testifying?

18 MS. COURTER: Yes. Since this was
19 introduced in a public hearing, it would be
20 discoverable should he have to testify in court.

21 MS. BARTH: So maybe you can take it a
22 little bit further with respect to the credibility of
23 him as a witness for the state in the future.

24 MS. COURTER: There are -- it's
25 considered Brady material and --

1 MS. BARTH: I'm sorry. I can't hear you.

2 MS. COURTER: It's considered Brady
3 material under Brady versus Maryland, where a
4 prosecutor has an obligation to present to defense
5 counsel information regarding the credibility of a main
6 witness, including a police officer, and it's -- it's
7 considered impeachment evidence, perhaps, depending on
8 the case as far as credibility.

9 MS. BARTH: There was evidence offered
10 along the way with respect to conduct on -- related to
11 the employee training sessions, and I want to know
12 whether we were going to be looking into this matter as
13 well. And, if this is true, will those employees be
14 punished?

15 MR. DAVIS: There has been some
16 allegations of misconduct along those lines by one of
17 the people that testified at the last meeting, and
18 they -- those are being looked at by Internal Affairs
19 at this time. If there's substance to it, certainly
20 there will be appropriate disciplinary action taken.

21 MR. CLOWE: And I would like to emphasize
22 that last point that you just made. Those were serious
23 allegations. They were numerous. They were
24 wide-sweeping and, in my mind, they are separate and
25 apart from the issue that's before this board at this

1 time. But they are, nonetheless, very serious. And my
2 hope is, Mr. Chairman, that they will be thoroughly
3 investigated and a report will come to this commission
4 on those allegations because of the fact that they were
5 made before this board and are part of this public
6 record.

7 CHAIRMAN POLUNSKY: Mr. Clowe, do you
8 have a recommendation on how you would like to
9 formulate and receive those recommendations and
10 information.

11 MR. CLOWE: I would like for the director
12 to give us the results of the internal affairs
13 investigation that he says is ongoing at this time when
14 it's concluded. I think any time someone makes those
15 kinds of allegations, as broad and serious as they were
16 to this board, we are obligated to see that they're
17 investigated and satisfy ourselves as to the validity
18 of it. So if we could hear from the director, I think
19 that's the channel to have that information come to us.

20 CHAIRMAN POLUNSKY: Colonel Davis,
21 there's a request before you. Can you respond to that,
22 please?

23 MR. DAVIS: Mr. Clowe, as I said, we're
24 investigating -- our Internal Affairs are investigating
25 those allegations at this time. I would be happy to

1 make a report on the conclusion of that. I can't make
2 any other comment now because I don't -- other than the
3 allegations that were made, I don't have any
4 information on the investigation or the validity of
5 them.

6 MR. CLOWE: If that's -- that's
7 sufficient, I think, at this time, with the
8 understanding that we will hear from you.

9 MR. DAVIS: You will hear from me.

10 MS. BARTH: That's all the questions I
11 have.

12 CHAIRMAN POLUNSKY: Ms. Anderson, do you
13 have any questions?

14 MS. ANDERSON: No.

15 CHAIRMAN POLUNSKY: Okay. Well, we
16 have -- we have to take some position on this discharge
17 appeal.

18 MR. CLOWE: I'm ready to make a motion,
19 Mr. Chairman.

20 CHAIRMAN POLUNSKY: All right.
21 Mr. Clowe, would you like to make a motion?

22 MR. CLOWE: I move the board vote to
23 uphold the director's recommendation for separation
24 from the agency.

25 MS. ANDERSON: Second.

1 CHAIRMAN POLUNSKY: It has been moved by
2 Mr. Clowe and seconded by Ms. Anderson that the
3 commission uphold the director's recommendation this
4 DPS employee Aaron Ragland be terminated from the
5 agency as recommended by the director.

6 Discussion?

7 There being known, all in favor, please
8 say, "Aye."

9 THE COMMISSION: "Aye."

10 CHAIRMAN POLUNSKY: Any against, "No."

11 Motion passes. Thank you.

12 Next item on the agenda is, "Discussion
13 and possible action on policies and procedures for
14 discharge appeal hearings."

15 Who's going to make this?

16 MS. COURTER: I will, sir.

17 Mr. Chairman, commissioners, based on the
18 comments that were made at the April commission
19 meeting, I have prepared for you the changes to the
20 policies and procedures for discharge hearings. They
21 take into account the issue -- in addition to the
22 policies and procedures the -- the motion for
23 reconsideration that came up at the last -- at the last
24 meeting. What these new procedures would do is make it
25 clear that as soon as an employee appeals the

1 discharge, the department would make sure that the
2 appealing employee receive the entire investigation
3 file. We've been doing that, but we're making it clear
4 in the policies they get -- as soon as they appeal they
5 will get a copy of the entire investigation. Copies
6 will be made at that time for all the commissioner so
7 they will be prepared to send -- be sent to you in
8 plenty of time before the scheduled discharge hearing.

9 There are also new provisions that each
10 party would provide any other exhibits to opposing --
11 to the opposing parties within 15 days that would be in
12 addition to the investigation file. If there were any
13 other exhibits that the parties would like to present
14 to the commission, they would be exchanged between the
15 parties. And if there were objections to that, it
16 would give the parties time to either work out the
17 objections and -- or if that could not be worked out
18 to -- those -- those documents that were not agreed to
19 would be voted on to see whether they would be entered
20 into evidence, and that decision would be made at the
21 hearing itself.

22 But the commission members would receive
23 all the documents, the complete file, any other
24 exhibits that would have been agreed to by the parties
25 prior -- at least a week prior to the scheduled hearing

1 of the employee.

2 There's also a provision for stipulation
3 of facts. If the parties can get together and they can
4 stipulate to certain facts that they do agree on rather
5 than presenting -- having the department present the
6 case, that stipulation of facts can be worked out ahead
7 of time, and that would also be provided to the
8 commission.

9 Then if the final language makes it clear
10 that after the commission deliberates and -- and votes
11 on the decision for the discharge, that that order that
12 is -- is made by the Public Safety Commission is final
13 and it may be appealed to district court pursuant to
14 411.007 and no motions for hearing would be considered
15 by the Public Safety Commission.

16 So if the commission approves of these
17 changes, then this new policies and procedures would be
18 effective from this date and everybody who was waiting
19 for an appeal hearing would be sent a copy of the new
20 procedures so they would be able to prepare under the
21 new guidelines for the future hearings.

22 CHAIRMAN POLUNSKY: Thank you,
23 Ms. Courter.

24 Questions? Mr. Clowe?

25 MR. CLOWE: And so this is a policy or a

1 procedure that you're recommending for clarification.

2 It is not a rule?

3 MS. COURTER: It is not a -- it is not
4 required to be a formally adopted rule. Under the
5 Administrative Procedure Act, the formally adopted
6 rules affect the rights and duties of the public. This
7 is an internal procedure within the department when
8 employees appeal the director's decision to discharge.
9 By statute they are put on suspension without pay. So
10 they are still technically employees of the department
11 until the ruling is made.

12 That's why -- that status is in the
13 statute and that's why at the last hearing Ms. Ragland
14 brought up the issue of Mr. Ragland not getting the
15 vacation pay that he might have been owed. And that is
16 because under government code provisions for all state
17 employees, that if you have any accumulated vacation
18 you are -- you may be paid for that at the time of
19 separation from state employment.

20 But by our statute, the employee if --
21 upon appeal to the Public Safety Commission they are
22 placed in leave without pay status. So these are not
23 required to be -- since they do not affect the rights
24 and duties of the public in general, these are policies
25 and procedures which the commission may approve.

1 MR. CLOWE: And in line with that, if I
2 may, Mr. Chairman, you and I had a lengthy discussion
3 about her comments during that hearing and her lack of
4 understanding of the point that you just made. And
5 that was of concern to me because at a time where any
6 employee is separated from the agency, they need to be
7 advised of their status and aware of what the rules are
8 that they will have to follow. And so it comes to the
9 question of where is this codified in the agency as a
10 policy or a practice so that every employee may be
11 aware of it well?

12 MS. COURTER: Well, it's -- well, it's
13 statutory. And when they are placed on suspension
14 without pay status, the benefits coordinator for the
15 department gives that information to ERS. For example,
16 I checked Mr. Ragland's records and he was sent
17 notifications since he was still an employee, albeit in
18 suspension with pay status, he was given the
19 opportunity by notifications from the Employees
20 Retirement System to continue on with the group
21 insurance coverage should he want to take advantage of
22 that. And the State co-pay was not applicable, but he
23 could have paid -- if he had other -- paid his portion
24 of the -- to be kept on the state group insurance. And
25 he was sent those notifications as far as his status

1 was through our benefits coordinator.

2 MR. CLOWE: And my sense is that there
3 was not an understanding of that on the lady's behalf
4 and perhaps not on behalf of her husband. And I'm --
5 I'm wondering how that information can be given to
6 individuals so affected so that there will not be that
7 issue of lack of understanding which resulted in some
8 feelings that were not positive. How can we
9 communicate that status to individuals so effective?

10 MS. COURTER: Well, I already spoke with
11 the benefits coordinator. And when we send in the
12 paperwork as far as a status change, there can be a
13 letter sent out from the benefits coordinator
14 confirming that status and what their options are. And
15 then ERS actually takes over from them and -- from that
16 point and actually sends the notifications about how
17 much you would owe for insurance should you want to
18 continue on the group insurance during this status.

19 MR. CLOWE: I think that would be
20 helpful. And I think that would have removed some of
21 the lack of understanding that was addressed.

22 Now, back to my other question, where is
23 this policy codified in the department so that people
24 who are interested in this, if the commission adopts
25 this policy, will be able to go to it and be aware of

1 it?

2 MS. COURTER: Right now it is just sent
3 out to -- it is not codified anywhere. It is not in
4 the -- in the manuals anywhere. When people are
5 discharged and they appeal to the commission, they --
6 as soon as they appeal one of the first thing that
7 happens is they are sent the copy of the policies and
8 procedures about how to proceed with the appeal.
9 They're sent -- that is sent from my office.

10 As soon as that appeal comes in, each
11 appellant automatically receives a copy.

12 MR. CLOWE: Well, that's where they'll
13 get the information of what the process is?

14 MS. COURTER: Yes.

15 MR. CLOWE: And if they hire an attorney,
16 that attorney will contact your office and --

17 MS. COURTER: Yes, that's how it works.

18 MR. CLOWE: -- get that same information?

19 MS. COURTER: Yes. And we send -- if
20 they tell us ahead of time they are represented by an
21 attorney, we have that on record and send out that
22 information to them.

23 MR. CLOWE: Thank you.

24 CHAIRMAN POLUNSKY: Ms. Anderson?

25 MS. ANDERSON: I have one question for

1 our counsel. On Page 2 of the policy, at the top of
2 the page in the section titled "Contacting the PSC,"
3 the language there is "should refrain." And I'm -- I'm
4 wondering why we say "should" instead of being more
5 black and white that -- you know, "must not" or --

6 MS. COURTER: Okay.

7 MS. ANDERSON: I mean, I think we're a
8 little vague there, and my recommendation to the
9 commission would be that we make it clearer that they
10 are not to contact members of the commission.

11 MS. COURTER: That can be clarified.

12 CHAIRMAN POLUNSKY: Anything else?

13 MS. ANDERSON: No.

14 CHAIRMAN POLUNSKY: Ms. Barth, do you
15 have anything?

16 MS. BARTH: I have -- also going down to
17 the investigation file, I would like it to have a
18 timeline on it, 15 days, that we have to provide the
19 files within 15 days of the request. Maybe I'm missing
20 it, but does -- it just says, "We'll provide a copy."

21 MS. COURTER: Oh, we could provide a
22 timeline in there. We actually do it sooner than --

23 MS. BARTH: Well, whatever the -- I just
24 would like to have a number of days and not leave that
25 open.

1 MS. COURTER: All right. We can put
2 15 days. That would be easy.

3 CHAIRMAN POLUNSKY: Anything else?
4 Okay. So we're going to incorporate
5 these changes?

6 MS. COURTER: Yes, I will. If there's --
7 if there's a motion to approve the policies with the
8 two recommended changes, then the commission act on
9 that.

10 MS. ANDERSON: So moved.

11 MS. BARTH: Seconded.

12 CHAIRMAN POLUNSKY: Okay. It has been
13 moved by Ms. Anderson and seconded by Ms. Barth that
14 the proposed changes as set out, plus the
15 two additional changes that have been discussed at the
16 meeting here this morning be adopted.

17 Any discussion?

18 There being no discussion, all in favor,
19 please say, "Aye."

20 THE COMMISSION: "Aye."

21 CHAIRMAN POLUNSKY: Any against, "No."

22 Motion passes. Thank you very much.

23 Next item, "Discussion and possible
24 action on the agency's procurement of Directors and
25 Officers Liability Insurance Coverage." Who will be

1 presenting that?

2 MS. COURTER: Mr. Chairman,
3 commissioners, I will be presenting that agenda item.
4 To give you an update, at the April meeting, the
5 commission approved Option 3 subject to some
6 conditions. And some of the conditions were easy. The
7 first one was getting -- identifying which covered
8 state agencies have at-will employees. The answer to
9 that is DPS is the only non-at will agency that would
10 be covered under -- under that policy -- under that
11 general policy. All the other agencies that were
12 represented by SORM and the underwriter are at-will
13 agencies.

14 The other issue was identifying who the
15 insurer has as a list of currently approved outside
16 counsel and if that outside counsel would be paid for
17 without out-of-pocket expenses by the commissioners.

18 Well, the answer to the out of pocket is
19 that you would not -- commissioners for outside counsel
20 would have no out-of-pocket expenses under this --
21 under this policy. The -- as proposed at the April
22 meeting. The issue is the list of outside counsel that
23 has been approved, very few are even in Texas. Most of
24 them were out of -- were out of state and it -- it did
25 not give the commissioners the flexibility to choose

1 outside counsel. The outside counsel would have to
2 follow very strict litigation guidelines, which would
3 be very difficult to get approved in -- and answered,
4 period, if the commissioners were sued. And there
5 would be a 20-day answer period to get it not only
6 approved by the Attorney General's office, but for
7 future payments for paying attorneys' fees past the
8 deductible would -- would be very restrictive and
9 difficult to do.

10 So based on the comments by
11 Commissioner Barth what I did was I worked out what I
12 think is a -- a beneficial change to the proposal. And
13 it has been okayed by the AG's office since they would
14 have to approve outside counsel. Is -- is that the
15 insurer -- insurance company would not get involved in
16 the outside counsel's litigation strategy because the
17 litigation strategy would actually have to be approved
18 in conjunction with an underwriter.

19 Right now the way we handle outside
20 counsel, we have a good relationship with the Attorney
21 General's office. They approve the contract. They
22 approve the payments after it's reviewed. After -- if
23 outside counsel bills the agency, that is reviewed and
24 looked at. They approve. And no out-of-pocket
25 expenses are paid by any individuals for that outside

1 counsel representation.

2 What this means for the change in the
3 policy is that if in the unlikely event that outside
4 counsel fees would go over the deductible, we could not
5 refer those for collection to the insurance company. I
6 think that's very unlikely that those fees would --
7 would reach over that deductible. It would not affect
8 any adverse judgment. But this would give the
9 commissioners more flexibility in choosing outside
10 counsel, in arranging outside counsel with the Attorney
11 General's office. And I have presented this to SORM,
12 these two changes, which we would delete -- the two
13 changes would be delete the choice of panel counsel
14 endorsement from the policy completely and add one
15 provision in the defense provisions of the -- of the
16 policy. And instead of just saying, "The Attorney
17 General of the State of Texas shall defend the insured
18 for any claim," it would say, "The Attorney General of
19 the State of Texas and any outside legal counsel
20 approved by him pursuant to Article 9, Section 16.01
21 General Appropriations Act shall defend the insured for
22 any claim."

23 And the Attorney General's office, I
24 wanted to get their buy in, and I did, from both the
25 chief of the general counsel's division, who approves

1 all outside counsel contracts, and from the chief of
2 the general litigation division, who would assign
3 attorneys and get involved in working with outside
4 counsel on employment law violations. And also that
5 same chief is the liaison for the Attorney General's
6 office with SORM.

7 And we have reached an agreement in
8 principal yesterday afternoon. They have not yet been
9 able to incorporate that into the actual proposal
10 itself, but they did send an e-mail and said they do
11 agree to make those two changes. So those -- the
12 motion was contingent on the satisfaction of Ms. Barth.
13 I -- I agreed with her. There were problems with that
14 list that they sent for outside counsel. It -- I --
15 there was very few even Texas attorneys on there. And
16 it would be -- despite the representations that it
17 would be easy to give them a name, you -- it -- it does
18 not work that easily. You just cannot give an
19 attorney's firm or a name and commit them to something
20 that they -- in the future that they would have no idea
21 whether they would take the case to it and come about
22 and be limited to those strict litigation guidelines by
23 the insurer.

24 I think these changes would satisfy
25 the -- and give the commissioners a comfort level

1 should the Attorney General approve any outside counsel
2 that they would need. The Attorney General, of course,
3 has a constitutional duty to defend, so all that would,
4 of course, have to be cleared with the Attorney
5 General's office. We do not have a problem with
6 working with them and they're very quick on responding
7 to us should the need arise for outside counsel.

8 There are also a couple of other issues
9 that were changed in -- in the proposal as I was
10 working through it. We got the deductible changed to
11 our benefit with no additional cost. It was -- it
12 was -- the proposal before you in April was \$300,000,
13 got it down to \$250,000. And there were some general
14 exclusions for law enforcement agencies which --

15 MS. BARTH: I found it extremely odd we
16 have them present --

17 MS. COURTER: Yes.

18 MS. BARTH: -- and then send over a
19 contract that had an exclusion for law enforcement
20 agencies.

21 MS. COURTER: Yes. But we straightened
22 that out, so that -- so that was changed. So the --
23 since the motion was contingent on Ms. Barth's
24 satisfaction and Ms. Barth made the motion at the April
25 meeting, just procedurally if Ms. Barth would consider

1 withdrawing that motion and then the commission could
2 consider new motions based on the suggested proposal
3 today.

4 MS. BARTH: I would be happy to withdraw.

5 CHAIRMAN POLUNSKY: Help me with this. I
6 mean, you withdraw a motion from a meeting that's
7 adjourned?

8 MS. COURTER: Well, it's --

9 MS. BARTH: Can we amend the motion?

10 MS. COURTER: It was a contingent motion
11 and she was not satisfied. The other option would be
12 the motion fails.

13 CHAIRMAN POLUNSKY: Okay. Well, she's
14 formally going to withdraw her motion. Was there a
15 second to that, I would assume?

16 MS. COURTER: Yes. It was seconded by
17 Commissioner Anderson.

18 MS. ANDERSON: I withdraw my second.

19 CHAIRMAN POLUNSKY: All right.

20 Ms. Barth, would you like to make a new
21 motion.

22 MS. BARTH: I have a couple of questions
23 real quick.

24 CHAIRMAN POLUNSKY: Go right ahead.

25 MS. BARTH: I want to make sure that the

1 policy clearly states that should there be an adverse
2 judgment, regardless of who defends the agency, the
3 insured will be paying that claim. Is that correct?

4 MS. COURTER: Yes, that is correct.

5 MS. BARTH: It specifically states that?

6 MS. COURTER: Those sections are not
7 changed. They would pay over the deductible.

8 MS. BARTH: Right. Right. Okay. And I
9 then have a question with respect to payment of the
10 premiums.

11 MS. COURTER: Yes. Chief Ybarra is
12 prepared to -- if the commission authorizes this, the
13 director would sign the authorize to bind coverage and
14 Chief Ybarra would get -- the insurance company would
15 send us a voucher, and he's prepared to pay that.

16 The other issue that came up at the April
17 meeting was -- was about how -- they had indicated at
18 the April meeting, the presenters, that if -- fiscal
19 year was the way to go, and we had this gap in between
20 now and September 1. That was worked out where as soon
21 as the authorization to bind coverage assigned, it
22 would be a year from that date, which is more
23 advantageous.

24 In other words, if the authorization to
25 bind was signed sometime next week, say, May 20th, it

1 would run -- the policy would run from May 20th, 2008
2 through May 19th, 2009.

3 MS. BARTH: I would like to make a motion
4 to incorporate the changes the general counsel has
5 outlined out. And I'll go ahead and put the feet on
6 the response.

7 CHAIRMAN POLUNSKY: All right. A motion
8 has been made by Ms. Barth that the change and
9 recommendations that have been set out by the general
10 counsel be incorporated and that the policy be
11 purchased and commenced as soon as expeditiously
12 possible. Is there a second to the motion?

13 MR. CLOWE: Second.

14 CHAIRMAN POLUNSKY: Second by Mr. Clowe.

15 Any discussion on the motion?

16 There is none.

17 All in favor, please say, "Aye."

18 THE COMMISSION: "Aye."

19 CHAIRMAN POLUNSKY: Any against, "No."

20 Motion passes. Thank you very much.

21 MS. BARTH: Thank you very much for
22 working through these issues.

23 CHAIRMAN POLUNSKY: Next item on the
24 agenda is, "Commission member reports."

25 All of you are involved in various areas

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that you're overseeing or even more involved in the sense that you're involved in putting the RQs together so on. This is an opportunity for any member of the commission to inform the rest of us as to what's happening or if there's anything that we should know about. No one is obligated to make a report. It's just an opportunity for us to hear it if somebody feels that they would like to make a report.

Anybody want --

MS. BARTH: I was going to wait until we went into executive session.

CHAIRMAN POLUNSKY: Okay.

MR. CLOWE: Oh, the budget matters?

MS. BARTH: Yeah.

MR. CLOWE: That was my question. Do you want it now or do you want it then?

CHAIRMAN POLUNSKY: Well, we can wait. I just want to make sure that the commission members have an opportunity to discuss anything, for that matter, but certainly something specifically that they're involved in. So it's just there as a vehicle to allow people to speak. But certainly no one -- we can move it on.

MR. CLOWE: No, no, no, no.

MS. ANDERSON: Whoa, whoa. You know I am

1 never at a loss for words.

2 CHAIRMAN POLUNSKY: You took the words
3 right out of my mouth actually.

4 Ms. Anderson?

5 MS. ANDERSON: I think -- and I want to
6 thank the various members of staff in the areas that
7 I'm about to address because we made a lot of progress
8 in these areas in the last -- since we were last
9 together in April.

10 With respect to the Fusion Center, the
11 construction is underway there. I had a report from
12 Chief Mawyer yesterday that I had an opportunity to
13 read last night, as well as got an opportunity to look
14 at the products, both actual and proposed, that the
15 Fusion Center will produce. And we'll have some more
16 discussion about that. But, you know, it's important
17 the have a Fusion Center. It's also important for the
18 Bureau of Information Analysis to be producing items
19 both for DPS and for other partners in law enforcement
20 community. So it's good to see that list.

21 I also am aware that a gentleman from the
22 Department of Homeland Security by the name of
23 Charles Allen is going to be in Austin next week, and
24 he's apparently very senior person that Steve McCraw
25 has coming down to meet with the heads of the Fusion

1 Centers around the state, you know, to sort of talk,
2 you know, to again advance the agenda of Fusion Centers
3 and their value to us here in Texas. So those are all
4 good things.

5 With respect to TDEX, Mr. Gavin has had a
6 busy time since our last meeting and has reached out to
7 Department of Criminal Justice to have some additional
8 discussions about bringing more probation and parole
9 data into TDEX because that's another useful data --
10 set of data elements for investigators around the
11 state.

12 He also came up with a very, I thought,
13 great idea to do open houses regionally around the
14 state to -- to brief local law enforcement agencies
15 that are not participants in TDEX today on the merits
16 of TDEX and how to get involved and so forth. So he'll
17 be -- be putting those in place, and I really
18 appreciate the initiative and energy behind -- you
19 know, behind that proposed effort.

20 There's also progress on the sort of
21 crime mapping front, you know, and there's some -- we
22 have to sort of crawl, walk, run. You can't map the
23 whole -- you can't do real-time crime mapping across
24 the whole State of Texas, but you can, you know, in
25 smaller mileage kind of parameters. So there's a lot

1 of work being done in that area, too, that will pay
2 dividends to law enforcement community.

3 In terms of the IT assessment that just
4 out of the gate a little ahead of the other two
5 assessments, if I have my numbers right, we received
6 23 proposals in response to that assessment, the
7 procurement organization did. 26 of them were
8 disqualified, so that still leaves 17 proposals that
9 are in the process of being scored. And that process
10 is just sort of at its inception, so we don't have a
11 firm target for knowing when all that scoring will be
12 done. And, because of that, we don't know how the
13 scores will lay out, you know. And if you've got, you
14 know, two or three vendors that are practically tied,
15 then, you know, at staff's option they may have oral
16 presentations to help, you know, as an additional
17 decision element. But that's -- that's moving forward,
18 and I was very pleased with the level of interest
19 expressed in the five new services to the department.

20 And then yesterday we had a great review
21 of the driver's license reengineering project with the
22 key development vendor BearingPoint. And there are
23 just a couple of -- this is, you know, a very visible
24 and strategic effort for the department because it's
25 how law-abiding citizens interact with the department,

1 is when you go get your -- get your driver's license.
2 So it's very -- very -- you know, very visible, very
3 important project, and everybody has worked, you know,
4 very hard on it.

5 The IMS organization most recently has
6 worked with the driver's license division and all the
7 contractors to essentially make a decision that because
8 of the capacity on the big mainframe computer and
9 the -- what's needed to process these peaks is all --
10 we process 25,000 driver's licenses a day. And, you
11 know, there were severe concerns about the mainframe's
12 ability to handle the workload and about the amount of
13 money that would have to be spent to therefore increase
14 the size of the mainframe. And IMS and the driver's
15 license division went through an evaluation -- a
16 business case analysis and actually are -- have
17 determined that the better thing to do was to
18 re-platform, get it off the mainframe, which is shared
19 with other applications, and put it in a distributed
20 dedicated server environment through much more current
21 technology. So that was very, very good team work.

22 It does sort of delay the -- you know,
23 the headquarter's pilot because they've got to stand up
24 that hardware and then BearingPoint has to do all the
25 performance testing to make sure that this thing runs

1 fast enough and so forth. But it's the right thing to
2 do.

3 The other outstanding item really is
4 around satellite response time out to the field
5 offices, and we're not quite to the point where we're
6 able to test that. But we have to have enough speed in
7 that satellite connection that we don't slow up lines
8 and have a long time to get transactions back out in
9 the field. So that's an open item.

10 And then finally we had the -- a very
11 good -- and I appreciate everybody's participation
12 yesterday afternoon with the division chiefs and
13 general counsel and members of the IMS staff and really
14 an IT board meeting where we -- and the roll of the IT
15 board is to manage the IT portfolio of DPS, whether
16 those systems are actually owned by the divisions or
17 whether they're owned and managed by IMS, and to --
18 with an additional role to prioritize projects, to
19 approve projects, to monitor in-process projects, and
20 to approve major scope changes and budget changes to IT
21 projects.

22 And so we had a good discussion. We took
23 a couple of actions, the leadership did. And then, you
24 know, sort of the key message here is that -- that,
25 really, there are no IT projects. There are only

1 business projects that use technology to enable
2 business skills. So the business has to own, you know,
3 the IT environment. So that was -- sorry that was so
4 long, but a lot of progress. And I appreciate
5 everybody's work on all these issues.

6 MS. BARTH: Commissioner Anderson, all of
7 these projects going on, I was wondering when I could
8 have this information out on a website that I could
9 click and read online.

10 MS. ANDERSON: We did talk about that,
11 but I -- then I left the country.

12 MR. MAWYER: We have three proposals.
13 One of them will be FTP, one of them be a secure site,
14 and another one will be just to set up a URL where they
15 can log into security. We're ready to make that
16 decision. I would assume the FTP probably is not a
17 good option. It would be one of the other two. But
18 I'll let you look at those and --

19 MS. ANDERSON: So -- yeah. So you
20 just -- yeah. Okay. Well, maybe we can talk a little
21 bit about that when we take a break so we can get that
22 underway. Sorry I didn't -- we didn't get that
23 finished for today.

24 MS. BARTH: Can we address that?

25 MS. ANDERSON: Sure.

1 MS. BARTH: The other thing I would like
2 to say is Chief Mawyer was kind enough to educate me
3 for several hours on the Fusion Center, and I
4 appreciate you taking the time to do that for me.

5 CHAIRMAN POLUNSKY: Thanks for the work
6 you're doing on that.

7 Mr. Clowe?

8 MR. CLOWE: Will you entertain some
9 discussion about funding at this point for these
10 projects?

11 MS. ANDERSON: Yes.

12 MR. CLOWE: My sense is that funding is
13 an issue going forward. And in identifying needs as
14 they are expressed in the exceptional items request
15 there seems to be money needs for people, particularly
16 in the examiners for driver's license and in staff for
17 IMS. There seem to be hardware needs for IMS relative
18 to satisfying the business requirements of the
19 division. And in my conversations with the leadership
20 it seemed like everything that was on the exceptional
21 items request in that area, as well as other areas, is
22 critical.

23 And how do you view all of that coming
24 together and the funding being available to do the
25 things that are going to come out of the work that

1 you're doing? And I will entertain a reverse question
2 from you when I make my report.

3 MS. ANDERSON: No, it's a very fair
4 question. There's a lot of stuff on there. And -- you
5 know, and I don't see anything on that list that looks
6 like fat to me. You know, we have a very complicated
7 environment. The only thing that might change my mind
8 is that if we -- is if we had different sourcing
9 alternatives, you know, that put us in a month-to-month
10 kind of situation with a third-party vendor so that we
11 didn't have capital means. You know, that might change
12 some of that equation.

13 But until we get through this assessment
14 that is -- will be awarded shortly, you know, I don't
15 think we can make changes to the exceptional item
16 request. We've asked this assessment for -- to include
17 sourcing strategies in their -- you know, as part of
18 their scope. And it's very hard to -- you know, people
19 in the Legislature are not IT people. So it is -- it's
20 going to take a supreme communications effort to
21 explain this.

22 And I've also asked staff -- you know, we
23 have a -- what I characterized yesterday as a spaghetti
24 bowl of systems. And it's normal that that happens.
25 They build up over time. Everything is incremental.

1 No system ever gets retired. I heard a number that I
2 won't even repeat in a public setting about how many
3 individual access database applications we have across
4 the department. And, you know, some of that we -- we
5 need to go through a paring process because we've
6 got some -- there's some slop in the system, some waste
7 in the system.

8 Same thing with our storage areas. We're
9 not terribly efficient in how we manage home
10 directories and, you know, e-mail archives. And we
11 don't have a policy in place that sets maximum storage
12 limits for those things. So we're growing our storage
13 needs at, you know, "X" terabytes a quarter, and that
14 all costs money too. So we've got some scrubbing to do
15 around some of those issues.

16 But in the main, the requests are -- you
17 know, are needed. And if we don't make the investment
18 to hire project managers, you know, we'll continue to
19 have what we have today, is we have programs -- we have
20 projects that have had -- you know, in two cases we
21 have projects that have had a couple of false starts
22 where we're sort of back at ground zero.

23 So, you know, we -- I'm committed to
24 trying to make sure we only spend what we need to
25 spend, but that we do what we need to do. So that's

1 not terribly specific, but --

2 MR. CLOWE: I certainly agree with that,
3 and I think the area that you've mentioned and the two
4 that I've mentioned are critical. And I like what you
5 said about we've got to do a job of making that need
6 known to the Legislature and the leadership because we
7 have a critical need for compensation to have the
8 quality of person and retain those people to be able to
9 do the things that the business needs are requiring.

10 So my hope is that we'll go forward and
11 justify the exceptional item as best we can and having
12 done our homework on a logical and very persuasive
13 manner and get the money that we need to do that job.

14 MS. ANDERSON: And it really has to be
15 tied to the DPS business mission and objectives. And
16 there's got to be a direct relationship between the
17 IT -- in the case of IT, or the personnel investments,
18 and the mission of DPS.

19 And in the case of IT, the strategic
20 planning guidance coming out of the governor's office
21 and DIR and the LBB actually requires us to answer a
22 pretty specific set of questions about how we use
23 technology and how that's tied to the -- to the mission
24 and the business goals of DPS.

25 CHAIRMAN POLUNSKY: Mr. Clowe, anything

1 else?

2 MR. CLOWE: No further questions of
3 Commissioner Anderson.

4 CHAIRMAN POLUNSKY: Ms. Barth?

5 MS. BARTH: No.

6 MR. CLOWE: I have a report and I think
7 this is a good time to get into it, if I may.

8 CHAIRMAN POLUNSKY: Certainly.

9 MR. CLOWE: I have been smoking
10 cigarettes and eating Bon-Bons. I haven't really been
11 doing anything.

12 CHAIRMAN POLUNSKY: I've heard that, as a
13 matter of fact.

14 MR. CLOWE: Well, it's confirmed.
15 Chief Christian has done all the work, and I would like
16 for him to come forward and give our report, if he
17 would, please. And then I'll follow his comments with
18 a remark, too.

19 MR. CHRISTIAN: Burton Christian, chief
20 of administration.

21 After the last commission meeting on the
22 24th of April, Chairman Polunsky assigned a committee
23 to start the process of hiring an outside consultant to
24 review the management organizational structure of the
25 department and make recommendations for improving

1 operational effectiveness and efficiency. Under the
2 direction of Commissioner Clowe, this committee put
3 together an RFQ, which was reviewed by the division
4 chiefs, changes made, and the department received
5 delegation authority from the SAO and approval from the
6 governor's office. In the RFQ came out in Texas
7 Register today, and a copy of that is in your notebook
8 under Budget Matters Tabs, C1.

9 Vendors have until June 6th to submit
10 responses to the RFQ. And the earliest date that a
11 contract can be executed is June the 16th. We're
12 currently finalizing the scoring matrix and making
13 evaluation team assignments. A draft matrix was given
14 to Commissioner Clowe just this morning. Barring any
15 unforeseen circumstances, our selection recommendation
16 should be provided to you at the June 19th commission
17 meeting.

18 MR. CLOWE: And to supplement what you've
19 said, Chief Christian, would you name the members of
20 the nuts and bolts committees that did service in this
21 effort.

22 MR. CHRISTIAN: Yes. That would be, in
23 accounting, Contract Specialist Paula Ramsey; internal
24 auditor, Ferral Walker; and in the office of general
25 counsel, Aline Aucoin.

1 MR. CLOWE: And, commissioners, I would
2 like to tell you that this group really worked under a
3 deadline to get a very comprehensive and broad, in my
4 opinion, RFQ out. We got the prompt attention of the
5 SAO through our purchasing folks. We got approval from
6 the governor's office very promptly. We made the
7 deadline Wednesday noon, I think it was, last. And
8 this was out and published as of today.

9 Now, it is broad and extensive, and our
10 hope is that we'll have a broad interest expressed on
11 the behalf of those who are qualified and they'll come
12 forward eager to participate. We met with the state
13 auditor's office on this, and Auditor Keel was there
14 personally. He sat in for the entire meeting and gave
15 us a number of very helpful comments individually from
16 himself and from his staff.

17 I met with the leadership of this agency
18 and the Sunset Committee, and they are very supportive
19 as we reviewed their issues of this RFQ and feel like
20 this is in no way in conflict with their work, but, in
21 fact, is broader and more comprehensive and will be
22 very beneficial to this agency.

23 The senior leadership of the agency has
24 been very cooperative in this effort, and my hope is
25 that we'll see a result that is not only going to be

1 beneficial, but, in fact, may be cost-saving through a
2 more efficient organization to the agency.

3 And I have dared to entertain that
4 thought with the hope that more efficiency might reduce
5 cost reduction. And we'll see if that outcome comes
6 about, but that's a hope that I have at this point in
7 time.

8 The final thing is that Chief Christian
9 and I are working on members of the scoring committee,
10 and my sense is that it would be correct and beneficial
11 to have some outside members, outside of the agency, as
12 participants in that. And he will be announcing those
13 members shortly. I believe that's necessary before
14 June 6th.

15 MR. CHRISTIAN: That would be the
16 earliest. That's when the submittals, the responses to
17 the RFQ, review. So we would like to have all that in
18 place, the matrix and evaluation team, prior to that
19 date so we can start.

20 MR. CLOWE: So we're moving ahead timely
21 on all fronts?

22 MR. CHRISTIAN: Yes, sir.

23 MR. CLOWE: Anything further, Chief?

24 MR. CHRISTIAN: No, sir.

25 CHAIRMAN POLUNSKY: Mr. Clowe, let me

1 thank you on behalf of the commission, and certainly
2 myself, for all the time you put into this. You did,
3 as we've discussed previously, a lot of traveling,
4 extensively spoke to a number of employees across the
5 state, aggressively embraced, you know, the schedule
6 that -- that I was somewhat imposing on you that this
7 needed to be moved as quickly as possible. You've
8 exercised excellent leadership in this respect. And
9 here we are at our third meeting and the RFQ is being
10 published in the Texas Register today. So I think
11 that's a very positive commentary.

12 And I would echo the remarks of
13 Commissioner Clowe that Chief Christian really assumed
14 a lot of responsibility here and made a lot of things
15 happen in a very fast manner and has done very well.
16 So the final finished product is something that should
17 lead to an assessment that will very likely serve this
18 agency for years to come as a blueprint as to which
19 direction we should be headed.

20 So, anyway, I am -- I'm personally
21 pleased with the work that you did and all the other
22 members besides Chief Christian who are in here today
23 and some who are not. So, you know, a job well done.

24 Any further discussion?

25 Let's take a ten-minute break, and we

(Brief recess.)

First, we are also looking at adding sex

1 offender data to the TDEX. While we don't want to
2 duplicate systems like TCIC or computerized criminal
3 history, the idea of adding sex offender data to TDEX
4 has some benefits. And we're looking now to ask the
5 vendor to look at the time frames and the cost of doing
6 that.

7 We're also considering TDEX to provide
8 some near real-time crime data along the border to help
9 measure the effectiveness of the border enforcement
10 activities. There's some challenges to doing that, but
11 there's also some possibilities. Of the 16 county
12 sheriffs along the borders, nine do not have automated
13 record management systems. But we've asked the vendor
14 to look at possibly creating a web-based data entry
15 screen for those agencies that manually report that so
16 that they can report that crime incident data to TDEX.

17 And we also caution in that regard that
18 any TDEX crime stats would be limited to, you know,
19 that specific purpose, you know, and a limiting number
20 of agencies, because uniform crime reporting will
21 remain the statewide crime statistics program. Also,
22 Chief Gavin is here today. If you would like anymore
23 information in reference to TDEX or have any questions
24 of him, he would be glad to respond.

25 CHAIRMAN POLUNSKY: Thank you,

1 Chief Christian.

2 Questions?

3 MR. CLOWE: No questions.

4 CHAIRMAN POLUNSKY: Next division, Texas
5 Highway Patrol.

6 MR. BECKWORTH: Assistant
7 Chief Lamar Beckworth, Texas Highway Patrol.
8 Mr. Chairman, commissioners, you have a copy of our
9 report. I draw your attention to Page 2,
10 Officer-Involved Shooting. On April 29th, 2008,
11 Trooper Scott Burns, Highway Patrol, Jefferson, was
12 pursuing the driver of a 1997 Dodge Intrepid on
13 Farm-to-Market Road 729 in Marion County. The suspect
14 turned onto Farm-to-Market Road 1969 and stopped
15 abruptly. He exited the vehicle, pulled a shotgun, and
16 discharged five round, fatally wounding Trooper Burns.

17 The suspect, along with a female subject,
18 fled the area in a vehicle. At that time a 72-hour
19 manhunt began which involved multiple federal, state,
20 and local agencies. The search ended on May the 1st,
21 when the suspect took his own life as police closed in
22 on him near Marion Lake Mott in Cass County. The
23 alleged accomplice was taken into custody at the scene
24 where criminal charges are pending.

25 At this time I would like to take the

1 opportunity to openly express our appreciation to all
2 the law enforcement agencies involved in that
3 significant manhunt. And I also would like to thank
4 the personnel, the department, and all of the community
5 involved in the funeral services for Trooper Burns and
6 the support that they have shown to Mikalah and their
7 six-month-old daughter. I would like to -- that's all
8 I have on our report unless you have additional
9 questions.

10 CHAIRMAN POLUNSKY: Well, obviously, this
11 has been a very, very sad occurrence losing a member of
12 the department family. I, along with two other
13 commissioners -- Beth was out of the country and was
14 unable to attend, but we did attend the funeral. And
15 it was quite obvious by attending the funeral and
16 seeing the response from the community and outlying
17 areas around the community how revered and loved
18 Trooper Burns really was, both as a trooper in the
19 Texas Highway Patrol Division and as a member of that
20 community for many years. You know, words escape me in
21 a situation like this when a loss like this is
22 sustained.

23 It's horrible. And getting a call from
24 Colonel Davis, one of those late-night calls to be
25 informed that a tragedy such as this has taken place is

1 really -- really one of the very lowest of low points
2 that you can experience. It just indicates the type of
3 danger that the highway patrol and other divisions of
4 this department are exposed to on a day-to-day basis
5 and how every day you people put your lives on the line
6 for the citizens of Texas.

7 And I think that -- I may be overstating
8 it a bit, but I don't think quite much. I think that I
9 can speak for about 26 million people in this state in
10 thanking you and what everyone else does who are
11 members of this fine department in protecting us from
12 evil people and evil causes.

13 But, again, I would like to extend my
14 condolences and my sympathy to Trooper Burns' family.
15 It was just really heartbreaking talking to them and
16 seeing, you know, the result of this thoughtless act.
17 Unstable person, quite obviously. But, in any event, I
18 personally again would like to thank you-all. I was
19 moved by that ceremony. I was moved by the opportunity
20 of meeting those people. And, again, it just -- it
21 goes to show what you-all do every day for Texas and,
22 you know, the dangers that you subject yourself to in
23 discharging your duties.

24 So I would just like to make those
25 personal comments.

1 MR. BECKWORTH: Thank you very much.

2 Any additional questions?

3 CHAIRMAN POLUNSKY: Are there any
4 questions?

5 MR. CLOWE: No questions.

6 MR. BECKWITH: THANK YOU.

7 CHAIRMAN POLUNSKY: Thank you very much.

8 Next report? Chief Brown?

9 MS. BROWN: Chief Brown, with the
10 driver's license division.

11 I would like to call your attention to
12 just one item in my report. With regards to the CDL
13 disqualifications I would like to provide a little
14 background on that situation. We were contacted by
15 Chief Carillo of the Laredo Sector Border Patrol in
16 reference to the convictions in US courts of CDL
17 drivers either smuggling immigrants or drugs across the
18 borders and being stopped by the border patrol.

19 The US courts were not interested in
20 submitting those convictions, and are not interested in
21 submitting those convictions to the department. There
22 is a CDL federal disqualifier. If you're smuggling
23 humans, human smuggling, there's a mandatory
24 disqualification that we should be imposing. If it's
25 drug, there is a lifetime disqualification that we

1 should be imposing.

2 We worked out with the border patrol.
3 They are actually -- once those convictions are
4 finalized they are submitting certified copies of those
5 court convictions to us and, therefore, we are then
6 able to process them through the CDL laws and
7 disqualify those drivers.

8 Since the time of submission of the
9 report we have received five total convictions through
10 the border patrol from those courts. Four of those
11 have been through human smuggling and one of those has
12 been for drugs. So we have processed the
13 disqualifications on all five of those. Out of those
14 four that were for human smuggling, three of those are
15 out of state drivers. Again, we have disqualified
16 their privileges and notified the corresponding state
17 that we have disqualified them based on that conviction
18 in Texas.

19 The border patrol, you may begin to see a
20 media campaign that they are putting out called Texas
21 Hold 'Em. It's a pretty catchy campaign. Their
22 attempt to put those on road signs and truck stops, on
23 billboards to educate the CDL community that it may
24 only be a year in jail, but it could be a lifetime
25 disqualification of your CDL privilege. So we hope,

1 along with the border patrol, that that will make some
2 stride in discouraging the CDL drivers from doing those
3 activities.

4 Unless you have any questions about
5 anything else in my report or division.

6 MS. ANDERSON: I have one question.

7 MS. BROWN: Yes, ma'am.

8 CHAIRMAN POLUNSKY: Ms. Anderson.

9 MS. ANDERSON: With regard to the address
10 verification follow-up that's being done about these
11 addresses that have 35 and more DLID cardholders, is
12 there any way or any thoughts about -- in the system
13 somehow, you know, flagging those addresses so that --
14 so that when somebody -- or providing the field offices
15 with a list of those addresses. But to look down a
16 list of 226 is not too practical. Is there anything
17 like that in your planning process now or in the
18 future?

19 MS. BROWN: In the current system, what
20 we would like to do, because the query has been built
21 to define this, is to periodically come back in an
22 rerun -- we can rerun these individual addresses or,
23 again, we can rerun the large file. What we would like
24 to do in Phase 2 of DLR, so as to not push our dates
25 out, is to actually cause a flag to be created if

1 there's a certain number or above records with that
2 address. Other states are doing that. As I've talked
3 to some of my counterparts it is oftentimes an
4 amendment or a place that has a more mobile community
5 and it's a factor that delays the process. However, I
6 think in some of these cases it might be worth that
7 delay.

8 In addition to that, as we've looked at
9 these situations, we've also talked to several
10 legislatures and committees with regard to things that
11 we could do statutorily that would help restrict this
12 and, again, provide benefit to law enforcement and to
13 our process.

14 MS. ANDERSON: Thank you.

15 CHAIRMAN POLUNSKY: Any other questions
16 of Chief Brown?

17 Thank you very much.

18 MS. BROWN: Thank you.

19 CHAIRMAN POLUNSKY: Next division report?

20 MR. COLLEY: Mr. Chairman, commissioners,
21 I'm Jack Colley, chief of division. You have a copy of
22 the report in front of you. I only highlight a couple
23 of things. First and foremost, we're still in a --
24 even though it's rained a lot and we've had a lot of
25 storms we're still in the wild fire season. Extended

1 drought continues in Texas where about
2 1.2 million acres in Texas has been destroyed, some,
3 you know, 160 homes also destroyed. But, much more
4 about important, about 8,000 homes saved. Our job is
5 not to be on CNN. And, to that end, we're
6 accomplishing that.

7 There's also a cost associated with that,
8 about \$37.7 million in terms of, you know, state
9 resources being committed to this effort. And we
10 expect it to continue into the summer, which is even
11 more critical. We've never faced this before where we
12 go in from a winter fire season into a summer fire
13 season, and we don't see anything that's going to
14 change that.

15 With respect to what's upcoming, a big
16 effort, of course, to prepare the state for Mother
17 Nature's WMD, which is a catastrophic hurricane.
18 Probability low, consequence disastrous in terms of
19 what we do with that. We spent about \$2.7 million to
20 do that. And we're in the process of finishing a
21 series of hurricane exercises on the coast that will
22 culminate next week in a hurricane conference we have
23 every year. It will be in Galveston. We'll have about
24 3,000 attendees.

25 What's unique about Texas is it's not

1 just the people from the coast that will attend, but
2 also we'll have attendees from Amarillo and Lubbock and
3 El Paso, Wichita Falls, San Angelo, and other places
4 that are prepared to receive evacuees. It's a major
5 operation in Texas in terms of what we have to do to
6 evacuate the coast in different particular areas.

7 And that conference next week is not just
8 a conference. It's also a training conference in which
9 we bring together these -- the evacuating communities
10 with our hosting communities. And that's a major plus
11 for what we need to do.

12 One of the mandates we had after
13 Hurricane Katrina and Rita was to develop a tracking
14 system for evacuees. We were one of the few states
15 that actually took that on and thus be able to track
16 a -- someone who is evacuated from that. We
17 successfully did that. It was a private sector
18 partnership that we did with our private sector
19 partners to be able to accomplish that. We were
20 notified a couple weeks ago that that system had been
21 awarded a national award by Computer World. And it's a
22 major deal. We will receive a national award for that
23 in Washington in June.

24 They came down, went through all the
25 process, had to validate all the technology to be able

1 to do that. So we're very happy about that. We also
2 have several other states that are now adopting that
3 system. And that is a simple system to track people
4 with special needs, evacuees when they are evacuated,
5 be able to track them through the process and also
6 where they're sheltered and have some basic data on
7 them. So we're very happy with that. And that award
8 was announced next week.

9 Subject to question, Mr. Chairman, that's
10 the end of my report.

11 CHAIRMAN POLUNSKY: Thank you,
12 Chief Colley. Are there any questions for
13 Chief Colley?

14 MR. CLOWE: Chief, there was an article,
15 I think, in the Dallas paper about evacuation practices
16 from the Lower Valley in the case of a hurricane.
17 Would you brief us on that so we'll know what your
18 position is on that with the practice.

19 MR. COLLEY: Are you -- with respect to
20 the border patrol or?

21 MR. CLOWE: Yes.

22 MR. COLLEY: Yes, sir. There's been some
23 recent articles in which the border patrol has
24 announced that -- publicly that they will screen at the
25 bus departure points individuals for their immigration

1 status. We feel that -- and we worked several years in
2 the Valley. It is a complicated situation there. A
3 lot of colonias and those. It's the governor's
4 position, and has been, that we'll rescue all citizens.
5 When they face a catastrophic hurricane there is a --
6 there is no -- there's no room for -- you know, time
7 and speed is of essence. And so it's our position that
8 we'll evacuate everyone there because the priority is
9 life and saving a life.

10 We've worked with the border patrol.
11 This is -- we're reengaging that conversation with
12 them. In the past we've had understandings with them
13 about how to get people out of those kill zones -- and
14 that's what they are. During Hurricane Dean when we
15 moved almost 3,000 buses and four million gallons of
16 fuel and all of that to the Valley, a very successful
17 operation, the border patrol cooperated very much with
18 us in being able to enhance the speed of being able to
19 get those out. This is a departure from that. While
20 we're sitting here I have a note to call the sector
21 chief in there. So I think this will be clarified.
22 But clearly Governor Perry's position is that the
23 saving of lives takes priority.

24 MR. CLOWE: Thank you.

25 CHAIRMAN POLUNSKY: Further questions?

1 Chief Colley, you were not at our last
2 meeting, but I wanted to publicly acknowledge the fine
3 work that you did and, of course, everyone else under
4 you, in San Angelo. It was really a sight to behold.
5 So another favorable entry to your resume. Thank you.

6 MR. COLLEY: Thank you very much.

7 CHAIRMAN POLUNSKY: Next division report?
8 Chief Mawyer?

9 MR. MAWYER: Kent Mawyer, chief of
10 criminal law enforcement.

11 Mr. Chairman, commissioners, just a
12 couple of updates in regards to the Fusion Center
13 transition process. As of yesterday we've made a
14 complete transition from the state operations center
15 over to this building, the 24/7 call center. We've
16 allocated -- or I should say reallocated space on the
17 first floor of this building to accomplish everything,
18 at least at this point, that would become the Fusion
19 Center proper. That includes space allocated for
20 federal partners, state partners that have been
21 invited, and some local partners that have been
22 invited.

23 Over the next couple of weeks we'll be
24 doing some within-the-building moves of our strategic
25 analysts to the first floor. And that's more of a

1 logistics issue than anything else. But, for the most
2 part, we're all in one place now. And we believe that
3 within -- certainly within the timeline that you
4 provided at the last meeting that we'll be ready to go.

5 The only dependencies at this point are
6 in regards to the classified space. We've identified
7 what the requirements are, the specifications, things
8 of that nature. However, we are at the whim of the
9 federal agencies to get that accomplished because they
10 contract for themselves in terms of the infrastructure
11 for technology, building programs of working with us
12 to -- for the physical space build-out. But even once
13 that is accomplished, the federal certification process
14 then comes into play.

15 And with that, unless you have any
16 questions.

17 CHAIRMAN POLUNSKY: Questions?
18 Ms. Anderson?

19 MS. ANDERSON: I just have one request.
20 On Page 2 of the report describes a threat assessment
21 produced by BIA regarding Mexican drug trafficking
22 organizations effect on Texas that was disseminated to
23 members of the Legislature, second paragraph.

24 MR. MAWYER: Yes, ma'am.

25 MS. ANDERSON: And I -- at least this

1 commissioner would be interested in receiving a copy of
2 that report.

3 MR. MAWYER: Yes, ma'am. I can make that
4 happen.

5 CHAIRMAN POLUNSKY: Mr. Clowe?

6 MR. CLOWE: Chief, how many outside
7 entities are affiliated with our Fusion Center here?

8 MR. MAWYER: In -- currently physically
9 in place we have Fincen, which is a financial center
10 out of the federal system, we have Drug Enforcement
11 Administration, we have a commitment -- or a
12 recommitment from the local FBI office to put a person
13 back in. With that, it's my understanding -- and
14 perhaps Mr. Allen can clarify when he's here next week,
15 we've gotten a commitment from them for a reports
16 officer and an intelligence analyst to come in here.

17 ICE has indicated that they will place
18 someone here. Not happened yet. Same with Alcohol,
19 Tobacco, and Firearms. We've reached out to the
20 Department of Criminal Justice to put someone here, as
21 well as the TABC, Parks & Wildlife. Austin PD has been
22 invited. We've allocated space in the 24/7 call center
23 for them. Again, they've not made formal commitments
24 to put a physical presence here, but the space is there
25 if they want to come -- if any of these people want to

1 guess, conversations or meetings, if you will, with not
2 only North Texas, but Dallas Police Department's
3 intelligence center, Houston PD intelligence center,
4 San Antonio, El Paso to, if you will, formalize
5 whatever the relationships should be, and certainly to
6 leverage their resources and vice versa. You know,
7 each one of those centers have -- have their benefits,
8 have their good things, and we believe going forward
9 that it will be a plus for everyone.

10 MR. CLOWE: Thank you.

11 CHAIRMAN POLUNSKY: Further questions?

12 Thank you very much.

13 MR. MAWYER: Yes, sir.

14 CHAIRMAN POLUNSKY: Next report?

15 MR. KAUFMAN: Ray Kaufman, chief of the
16 rangers.

17 Mr. Chairman, commissioners, last time
18 Commissioner Anderson had requested that we include the
19 total files open, which we've done on the bottom left
20 of the report there. Also effective June 1st, we will
21 fill our last seven remaining vacancies that we have,
22 and so we'll be 100 percent June 1st.

23 With that, unless you questions, I have
24 no other comment.

25 CHAIRMAN POLUNSKY: Unfortunately, you've

1 lost somebody since our last meeting?

2 MR. KAUFMAN: Yes, sir, Captain Caver.

3 CHAIRMAN POLUNSKY: Captain Caver was in
4 charge of the operation in San Angelo and Eldorado.

5 MR. KAUFMAN: He's retiring. He's taking
6 a job up in the Dallas area.

7 CHAIRMAN POLUNSKY: Questions for the
8 chief?

9 MR. CLOWE: No questions.

10 CHAIRMAN POLUNSKY: Thank you very much.

11 MR. KAUFMAN: Yes, sir.

12 CHAIRMAN POLUNSKY: Chief Brubaker?

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

15 Mr. Chairman, commissioners, you have our
16 report. There's really nothing I have to add to that,
17 but I would be happy to answer any questions you might
18 have.

19 CHAIRMAN POLUNSKY: Questions for
20 Chief Brubaker?

21 MS. ANDERSON: I don't have any
22 questions. I just want to thank the chief for putting
23 together -- and your staff for putting together the
24 operational metrics pages of this report which
25 summarize for us and give us a sense of the amount of

1 volume and amount of effort just on a monthly basis
2 that goes on to keep your infrastructure up and running
3 and all those spam e-mails you're filtering out.

4 CHAIRMAN POLUNSKY: Any other reports?

5 Okay. We will go back to "Budget
6 matters."

7 "Discussion and possible action on
8 proposed Exceptional Items."

9 MS. BARTH: Mr. Chairman, I have so many
10 questions on exceptional items that I would propose to
11 have a -- some sort of a forum meeting about the
12 exceptional items. I don't know if it's in the best
13 interest of this commission, so to speak, to spend the
14 amount of time that I think needs to be spent on these
15 exceptional items for me to understand. I appreciate
16 what they've done, but I truly don't understand with
17 respect to costs associated with buildings, operating
18 costs, the numbers we've plugged in for utilities, why
19 we're asking a certain number for gasoline when we know
20 it's going to be higher than that.

21 So I would request that we set up between
22 now and our June meeting a time to really spend on
23 these exceptional items. They might can answer my
24 questions now, but that's up to you.

25 CHAIRMAN POLUNSKY: If I understand you

1 single commissioner to get her questions answered. I
2 reviewed it and although I don't have the scale or the
3 ability that she has, and I'm glad to see that come to
4 bear, I'm satisfied with getting -- I've made my
5 comments to the senior leaders of the agency, and I'm
6 not sure that a full commission meeting is the best
7 route to go for examination. I'm just bringing that up
8 for discussion.

9 MS. BARTH: And I'm -- Commissioner
10 Clowe, I'm not looking for a full commission meeting,
11 so to speak. And I don't know what the time is --

12 MR. CLOWE: Oh, okay. I thought you
13 wanted --

14 MS. BARTH: No, I don't know what the
15 timing is with respect to when these exceptional items
16 are to be submitted.

17 MS. ANDERSON: Yeah. And I'm not sure
18 what action we're -- what action we're being asked to
19 take today, you know. And if there's time, I'm
20 certainly comfortable deferring. And I have some
21 questions, too, that I could probably deal with
22 offline. And most of my questions are about IT details
23 that I can do offline.

24 What I'm interested in is sort of us
25 having some forward visibility, you know, what is the

1 rest of the process? I mean, if the commission were to
2 approve, after all of our questions were answered, and
3 we would say today -- you know, we would say at some
4 point, "Okay, we approve this big \$500 million list
5 as -- you know, as it sits today," then could you-all
6 help us understand then how we go about prioritizing
7 within the 500 million items? Could somebody address
8 that?

9 MR. DAVIS: Let me spend just kind of a
10 minute maybe if I could get us to where we got this
11 book here today. Back in -- I don't know -- first of
12 the year, Colonel Keith and I and the division chief
13 starting talking about exceptional items, what are the
14 needs of the agency. We asked each one of the division
15 chiefs to write down what they thought the needs would
16 be for their division for the next two years, and any
17 programs out further than that that we need to address
18 with the Legislature. All right? Those requests came
19 back. This is the detailed explanation, the best we
20 can give in a page or two. And it's not -- sometimes
21 it's not a lot of detail about what they believe the
22 needs of the agency or their particular division will
23 be.

24 Our job, I think, as a -- the
25 administration and the commission is to look at these

1 requests. And some of these, I think, members of the
2 commission have expressed some requests, too. And if
3 you have anything that's outside this list, certainly
4 it's important that we incorporate that. But we've
5 made an attempt to identify what we believe are the
6 priorities of the agency based on what is currently
7 happening today. Who knows what's going to happen next
8 January when the Legislature gets here. These things
9 could completely change. The priorities could change.

10 But I believe our job and before we
11 submit our budget as required to be submitted in
12 August, we need to have as part of that submission a
13 finalized list and explanation of items that we want to
14 ask for in addition to our budget request. We had the
15 details of how to submit the budget a couple weeks ago
16 and we're working on that. So -- and that will be
17 presented to you, the commission, which will need
18 approval sometime in August when we have our August
19 meeting.

20 So that's kind of how we got to where we
21 are today. These are the needs that we have identified
22 as being needs today. And, as I said, they're subject
23 to change. The buildings that were in here, some of
24 those were not exceptional items last time. Some of
25 those are critical for lab in other locations. And I

MR. DAVIS: And the reason for that, commissioner, is if -- if we go to the Legislature and someone said, "We've got \$5 million or \$50 million or \$500 million, what is the most important thing in your list?" And we need to be prepared to have some order there that -- you know, our first item on the list may cost \$100 million and they say, "We've only got \$5 million." You know, what are you going to do? So we have to go, you know, wherever. So, you know, we need to have those in some kind of order of what we and y'all, as the commission, think are the direction that

1 the agency needs to go.

2 CHAIRMAN POLUNSKY: Ms. Barth?

3 MS. BARTH: Let me ask you a question. I
4 don't have a problem going forward with this list
5 knowing that we're going to probably par it down and
6 look through these numbers. As I understand it will be
7 harder along the way. Is that --

8 CHAIRMAN POLUNSKY: Well, I believe
9 that's what Colonel Davis is saying. But I want to
10 make sure that you're comfortable.

11 MS. BARTH: You know, what I want to make
12 sure we do this time around is with respect to -- a
13 couple of things that caught my eye was the fuel
14 charges, you know, and what we are asking for and where
15 I thought we would really be, and are we asking for
16 enough. Utilities is another that caught my eye along
17 the way. And I know -- I believe the last legislative
18 session the legislators did approve additional funding,
19 I think, maybe even across the board, for utilities
20 across agencies in the increase. I just want to make
21 sure those -- that we're -- we're not -- we may not be
22 asking enough.

23 MR. CLOWE: Yeah, that's a good point.

24 MS. BARTH: That's my concern in looking
25 at the list, is that there were several items on that

1 list that I was concerned we were under-asking, and I
2 wanted to understand what the rationale was behind it.

3 MR. CLOWE: And we're just having a
4 discussion now about this and what the philosophy of it
5 is. I think Commissioner Barth has made an excellent
6 point on two areas that certainly came to our attention
7 and that fuel is the one that probably got the
8 brightest light glowing. But my sense about this
9 process from past experience is that they've approached
10 it correctly. They have asked the division chiefs,
11 "What are your needs?" And the division chiefs have
12 come forward with that. And they have reviewed them
13 and put them in this book for us to look at.

14 Now, in my review of this, I didn't see
15 anything that was frivolous at all. And I have said to
16 the senior leadership that I think we should go forward
17 with this request intact. My sense is that you just
18 don't get what you ask for. And you need to be
19 prepared when you put forth your request for the
20 request, what have you got to have, what is your
21 priority? And there's where the hard job comes for the
22 senior leadership to be able to respond to that. And I
23 put my two cents in that I think we've got some people
24 needs that go ahead of some other needs. If we don't
25 stop this turnover in DL and IMS, you know, we're going

1 to be in worse trouble than we're in.

2 So I've offered my opinion as just one
3 commissioner informally about where I think our needs
4 are. And when that prioritization comes into play, I
5 think it's up to the colonels to tell us how they rank
6 it. And then if we have an agreement or disagreement,
7 that's when we would express it. But we're not there
8 yet, in my opinion.

9 I think the due diligence that
10 Commissioner Barth is expressing in this area is great,
11 but I think that could be done -- I thought you were
12 asking for kind of a public workshop, and I
13 misunderstood. I think that could be done one-on-one.
14 And I kind of had that. I didn't do with it with Oscar
15 and his staff. I just took the document and covered it
16 with the colonel. But that's my sense of the process.

17 MS. BARTH: And I don't disagree at all
18 with respect to what's -- with the list here. Okay? I
19 would agree 100 percent. I don't think there's any
20 fat. If anything, I am just very concerned --

21 MS. ANDERSON: About some of the
22 assumptions that --

23 MS. BARTH: -- some of the assumptions
24 and the cost behind them that we're coming in too low,
25 that fuel is not going to be \$2.67.

1 MR. CLOWE: It's not going to be. It's
2 not today. And the point is made in this document, if
3 we can just kind of get into a little bit of detail,
4 the way we've been able to get by up to now is not
5 filling those FTE positions. And we're going to try to
6 fill those FTE positions so we've got to have some
7 money. And, you know, that's where, as
8 Commissioner Anderson said, we've got to be very
9 persuasive and we've got to do our job, along with the
10 colonels, saying, "We must have this money if you want
11 the quality of law enforcement to continue in this
12 state." And all the other business processes that have
13 come to DPS, you know -- Mr. Chairman, I don't mean to
14 sound evangelical, but I want to make a point. So much
15 has come to the DPS because the DPS does such a great
16 job in the area of law enforcement. We inspect
17 vehicles, we issue driver's license. We do so many
18 other things because when the DPS does it, it gets done
19 right.

20 MS. ANDERSON: Crime labs.

21 MR. CLOWE: Now we've got all these
22 noncommissioned employees. We're not compensating
23 them, but we're holding them to a standard of
24 performance that you hold the standard up for
25 commissioned officers, and they perform because of a

1 one of the reasons we're doing it in my mind. But, I
2 mean, it's certainly a valid point. And, of course, it
3 was also referenced to a smaller degree, particularly
4 with respect to the driver's license division in the
5 draft Sunset Commission report.

6 But I agree with you, Commissioner Clowe,
7 that we need to use more of a business model on a lot
8 of the areas -- in a lot of the areas that we're
9 currently operating under so that we can more
10 efficiently utilize the commissioned officers for what
11 they were trained for at the beginning.

12 I would also like to extract another
13 piece out of what Commissioner Clowe said, and that is
14 that -- I understand the concept of moving or utilizing
15 those salary slots in the vacant FTEs to fund other
16 aspects of the department, but I am firmly committed,
17 and I think the balance of the commission is as well --
18 I mean, certainly Mr. Clowe just said as much -- that
19 we fill these positions as we go forward. And I think
20 you'll be seeing rather soon some initiatives to
21 aggressively fill those positions, recruit new
22 officers, and enlarge the size of this department as
23 far as at least filling the vacant positions. So
24 that's not going to be a way in the future of robbing
25 Peter and paying Paul in this budget process. At least

1 I hope it isn't, because my sincere hope is that we are
2 staffed at 100 percent so that we can best utilize this
3 agency and perform services that, you know, as
4 Mr. Clowe said, we will be asked to perform in the
5 future.

6 Go ahead.

7 MS. ANDERSON: The other nugget that I
8 wanted to extract from Commissioner Clowe's -- you
9 know, sort of implicit in his comments is the need, I
10 believe, for the commission and department leadership
11 to have an explicit legislative strategy that keeps us
12 all on the same page during the legislative session,
13 around the same messages, and the same priorities.
14 And, you know, we had a great example of very
15 succinctly simply stated message from the commissioner
16 about that we do this great job with our commissioned
17 force in the area of law enforcement and our core
18 mission, but we are not funded at a level to
19 appropriately support the people that are exercising
20 the core mission. That's the kind of clear, everybody
21 could understand that message. And so, you know, I
22 will be, you know, challenging all of us to make sure
23 that we have that explicit strategy not only around
24 exceptional items, but around the things we discussed
25 earlier today, around any changes that might be needed

1 at the driver's license law or other legislative things
2 so that we're -- you know, that we have that prepared,
3 you know, and, you know, well in advance and that
4 we've, you know, vetted it and we've signed off on it
5 so that we're all prepared to speak.

6 MR. DAVIS: Commissioner, that's the
7 express purpose of this document, is for us, the
8 administration, and members of the agency, and also for
9 the commissioners, to make our needs known to members
10 of the Legislature, because, you know, we have a law
11 against lobbying, but there's no law against providing
12 information about the needs of the agency. And that
13 needs to occur as soon as we get this document
14 finished. And we can't wait until January to do that.
15 And certainly that's -- any success we've had in the
16 past has been built on that same premise that we get
17 the word out and that we, the administration and the
18 commission, are on the same page. And that is why we
19 are putting this together at this time.

20 And hopefully our discussion, everybody
21 will be comfortable with the priorities that we set
22 today. But, here again, remember that in January there
23 may be different priorities. You know, who knows
24 what's going to happen between now and January. So,
25 you know, today these are our needs. January, this is

1 subject to revision.

2 CHAIRMAN POLUNSKY: Mr. Clowe?

3 MR. CLOWE: To the point that
4 Commissioner Anderson just made, the current best
5 example that I can think of is the criticism of the
6 department in falling behind in handgun -- concealed
7 handgun issues. The increase in applications is, I
8 think, around 37 percent. It's a business function and
9 it just got handed to the DPS and we've done it and
10 we've done a great job, and it shot up by 37 percent.
11 We don't have the people. We can't get the part-time
12 or the temporary people. And my sense about a big
13 problem this agency had is we have all of these
14 business functions that we've been assigned and we
15 don't have the people to do job. And so that's why
16 Commissioner Anderson's comment about a unified
17 consistent expression of the need is so important.

18 I think it goes to the senior leadership
19 to make these prioritizations with our guidance. And
20 I'm putting an early vote in for increased compensation
21 for people to keep them in this agency and get the kind
22 of performance that is expected of us when those
23 prioritizations come about.

24 But you're right, Colonel, that comes at
25 the midnight hour. That doesn't happen in a commission

1 meeting. That happens late at night when somebody
2 says, "You've got this much. What are you going to do
3 with it?" And that's when we need to be there to help
4 guide it, if it still works the way I thought it worked
5 the last time.

6 CHAIRMAN POLUNSKY: It still works that
7 way.

8 MR. DAVIS: I think it still works that
9 way.

10 CHAIRMAN POLUNSKY: Ms. Anderson?

11 MS. ANDERSON: I promise this is my last
12 point on this discussion. But back to sort of the
13 business model discussion and the concealed handguns,
14 you know, there might -- and I -- is that done with
15 sort of -- does that program fund itself out of the
16 fees for -- well, you know, there's an example of it's
17 not funded on an elastic basis with demand, so we've
18 got a flawed business model at the outset and you --
19 there might be a legislative proposal that ought to be
20 made that says "for concealed handguns or other
21 regulatory programs" where the cost to run the program
22 is elastic based on the demand from the citizenry, that
23 we get those structured as -- you know, that we -- that
24 we develop a plan for a business model that would allow
25 us to have -- that we would be able to staff up because

1 as you have increased applicants you have increased fee
2 income that would fund, you know, additional -- and
3 they would probably have to be, you know, contract.
4 You have to have a base level of FTEs with an elastic
5 layer above it.

6 But, I mean, it's an example of --
7 sometimes it's not just asking for more permanent FTEs
8 that will be persuasive with the Legislature, but a
9 business model change might be more appropriate.

10 MR. CLOWE: I think that's one of the
11 culture changes that I'm identifying that I hope comes
12 out of that organizational study, that we are doing so
13 much more in this agency now in addition to law
14 enforcement that relates to business activities. We've
15 got to begin to recognize that and, as you say, plan
16 for it and budget for it. You just start the most
17 interesting discussions.

18 CHAIRMAN POLUNSKY: Well, let me clarify
19 something. It was my understanding that, for example,
20 the fees that come in for the permitting process for
21 the concealed handguns really we don't keep that money.
22 We're funding this from another source.

23 MR. DAVIS: Right.

24 CHAIRMAN POLUNSKY: So there is no
25 correlation between fees coming in from the applicants

1 for these permits and -- isn't that where the problem
2 is? I mean, this is -- I think it's how the
3 Legislature funds it.

4 MR. DAVIS: Let me -- let me explain
5 this. When the concealed handgun laws were passed we
6 were asked what would it cost to issue a license. And
7 we said it would cost "X" number of dollars for
8 paperwork, "X" number of dollars for background, all
9 those things, and we set the fee. And the Legislature
10 said, "Okay. Based on the number of people we think is
11 going to come in we'll give you 'X' number employees."

12 All right. The people that come in, we
13 send those checks to the comptroller. They -- the
14 Legislature, which is their prerogative -- and they do
15 it all the time. Same thing with driver's license. We
16 get that money. We get other money that goes to
17 general revenue, and that's a funding issue that the
18 members of the Legislature do. And I think that's
19 their call. Certainly I will tell you it would be to
20 our advantage to them to do what you're talking about.
21 But we have to look at their -- their funding
22 mechanisms that they do there.

23 MS. ANDERSON: Right. I mean, I'm not
24 saying we can drive that train. I'm not trying to make
25 a naive statement. But I'm just saying from a truth

1 and budgeting perspective, which, you know,
2 Governor Perry made an issue in the last session of the
3 Legislature, it's something that we ought to -- as we
4 develop a legislative strategy, we ought to evaluate
5 whether we want that kind of a discussion to be part of
6 the strategy or not.

7 MR. DAVIS: Just as a matter of fact with
8 concealed handguns, Chief Christian gave me a note here
9 that we were appropriating \$4.4 million in fiscal year
10 2008 and we're anticipating that we're going to collect
11 \$9.1 million.

12 CHAIRMAN POLUNSKY: 4 point doesn't
13 provide the level of service that the public is
14 expecting?

15 MR. DAVIS: Not with the significant
16 increase that we've seen in the last four or
17 five months probably.

18 MS. ANDERSON: Are those -- the time
19 frames to issue the licenses like 30 days, or whatever
20 the date, 60, is that in the statute?

21 MR. DAVIS: Yes.

22 MR. CLOWE: Well, and if it expires and
23 you haven't gotten your renewed license you don't have
24 a license.

25 MR. CHRISTIAN: Correct.

1 MR. CLOWE: So you're outside of the
2 license. And the media has made a point of that in
3 their criticism of this agency.

4 CHAIRMAN POLUNSKY: Yeah, but they're not
5 taking into effect as to what the cause factor here is.
6 And it appears that we're not bringing it to their
7 attention for, I guess, obvious reasons. But, you
8 know, maybe we ought to.

9 MR. CLOWE: They don't write what we tell
10 them, do they Tela.

11 TELA: Sometimes they do and sometimes
12 they don't, sir.

13 CHAIRMAN POLUNSKY: We'll learn about
14 that. I mean, it's not a wise position for us to take
15 to be bouncing things back to the State Legislature.
16 But, unfortunately, that's the root of this problem as
17 I see it.

18 MR. CLOWE: But the bigger issue in my
19 mind is we're doing all these extra things, we're doing
20 them in a superior way. We've got to get some funding
21 to continue and take on more things, which I think
22 we're going to be asked to do.

23 CHAIRMAN POLUNSKY: And I think we need
24 to get the funding mechanism addressed so that fees
25 collected are utilized directly to provide service so

1 you don't get into this warp that we're in right now.

2 So that would be something else I would like to see.

3 But, anyway, generally speaking, I'm in
4 agreement, I think, that certainly the Public Safety
5 Commission needs to work in tandem with the senior
6 leadership and put together a united front that we're
7 all on the same page on and go to the Legislature
8 starting next January and make a strong case for
9 adequate funding for this department because this
10 department is one of the shining examples in my mind
11 of, you know, success. And, you know, we need to be
12 funded at a level where we can continue that high level
13 and also take on these other responsibilities that are
14 being referenced here as well, because as time goes by
15 other things will be coming our way and we need to be
16 able to address those when asked. But, anyway,
17 certainly unified strategy on this thing is paramount.

18 So back to you, Ms. Barth. How do you
19 wish to address this? Would you like to have a
20 meeting?

21 MS. BARTH: Yeah, I would like to go
22 ahead and set up a meeting with the budget office and
23 understand the numbers with the intent -- with the idea
24 that -- you know, the commissioners have made this very
25 important point and we're continually using unfilled

1 position dollars to cover, you know, deficits that I
2 think we can see, when I looked at these numbers, that
3 we're going to have shortfalls again with these
4 numbers. And at some point, given that we've reached
5 the goal of full employment in this agency, we're not
6 going to have that money to be moving around. And so I
7 just want to make sure that we have put a contingency
8 in these numbers that is realistic based on the next
9 two years plus when we will see funding, specifically
10 in areas where there are big budget numbers and big
11 swings like utilities and like fuel.

12 So that -- I could go forward and I just
13 am real concerned with the estimates. I'm thinking in
14 the back of the mind, if we don't get there we'll use
15 the unfilled positions. And part of what I would like
16 to do is to, you know, make sure that the mentality of
17 the Legislature is we're planning on filling these
18 positions. This isn't really an option anymore.

19 CHAIRMAN POLUNSKY: Point very well
20 taken. All right. So, Oscar, can you set up a meeting
21 with Ms. Barth and have your people go over and sit
22 down with her or any other commissioner that either now
23 or in the future needs information?

24 MR. YBARRA: Yes, sir.

25 CHAIRMAN POLUNSKY: Okay. This is an

1 action item, correct?

2 MS. COURTER: Yes, it is.

3 MR. McEATHRON: Can I point out
4 something?

5 CHAIRMAN POLUNSKY: Yes, you can.

6 MR. McEATHRON: And that's why we printed
7 draft and work sheet all over this because it is a work
8 in progress. You know, some of the numbers are
9 highlighted just because we're waiting for TFC to
10 provide us with those numbers. And we expect to get
11 them in June we hope. We asked for them back in
12 November -- October, November. The -- there's some
13 issues in here that -- in the draft that we gave you
14 where we duplicated a couple of numbers, not
15 significant amounts, as we double filed some positions,
16 but we'll got those corrected. And then there's one
17 issue that came up where we're getting all these labs
18 put in across the state and hopefully they'll be
19 operational during this. And we've got operating money
20 for those labs, but we don't have FTEs that we need to
21 be the custodial help in those labs. So we want to add
22 that to it.

23 There's one other issue that's not in
24 here, and we keep it as a side page, is board of
25 security-type operations. So we're working on several

1 plans that we discussed earlier on -- several plans
2 on -- as that question comes up of what we can do and
3 where we can do. We would like to at this time, with
4 y'all's approval, is not just call the board of
5 security operations, but court order security because,
6 you know, the court orders are a real problem across
7 the state also. And, you know, when we do things on
8 the border they figure out things to get around, and so
9 we've got to beef up the border on a lot of the border.

10 So that's not a part of this plan.
11 That's a separate issue. And with that said, the real
12 ID stuff in here is really informational. That's got
13 to be a physical note tied to real ID. And so we're
14 just putting it in here for everybody's information.
15 And then when you get back to probably the personnel
16 issues we're going to -- if y'all agree that we can ask
17 for all this, we're going to set this up in the
18 strategies kind of like you said, Ms. Barth, of where
19 these people are. If it's driver's license people,
20 we'll put all the driver's license people in a section.
21 If it's crime lab people, we'll put it all in the crime
22 lab section, rather than spread it out like it is. We
23 were trying to show you what individual people and what
24 the reasoning for having them. But we'll be happy to
25 provide that.

1 They've already got a lot of the
2 background information that got us to these numbers,
3 and I think you'll be happy to know that they've done a
4 lot of work.

5 MS. BARTH: What action do we need to
6 take on this?

7 MS. COURTER: Well, it's a possible
8 action item. If you feel like you want to take some
9 action, it is posted for action. If you feel as if you
10 need to approve it, if you were inclined to approve it
11 as it is --

12 MS. BARTH: Can we not just use it as an
13 information item right now?

14 MS. ANDERSON: Can we just give it formal
15 direction and keep marching?

16 CHAIRMAN POLUNSKY: Direction.

17 MS. BARTH: Yeah, let's keep going.

18 MS. ANDERSON: Keep marching in this
19 direction.

20 MR. McEATHRON: Okay.

21 CHAIRMAN POLUNSKY: Okay. So I think
22 everyone understands what the position of the
23 commission is. Okay. Thank you.

24 MR. CLOWE: Great job.

25 CHAIRMAN POLUNSKY: Thank y'all.

1 MR. MCEATHRON: Thanks.

2 CHAIRMAN POLUNSKY: You're off the hot
3 seat now.

4 The next item is, "Discussion on contract
5 and spending authority within DPS." That would be --
6 okay.

7 MR. YBARRA: Oscar Ybarra, director of
8 staff, accounting and budget approval.

9 Mr. Chairman, commissioners, last time
10 around -- I've got more direction on exactly what the
11 commission wanted to see. If you'll look at my report,
12 Item B basically identifies the approval authority
13 within the agency from a contract perspective and also
14 with designated amounts. From a contract perspective
15 there are five individuals within the agency that can
16 execute contracts. That's the director, the assistant
17 director, the chief of finance, the assistant chief of
18 finance, and the accounting manager.

19 There is a specific process that has to
20 be followed before a contract can be executed, and that
21 is via either a grant or contract tracking mechanism.
22 In this case the -- what we call the project director,
23 who is initiating the process, will get their division
24 chief's approval on this tracking sheet to state that
25 this is officially being requested and approved.

1 It then is submitted either from a grant
2 perspective to the grant coordinator in the agency or
3 to the procurement manager. They then look at that
4 document and ensure that it is an eligible purchase and
5 submit the information to general counsel for review.
6 This all has to transpire before it's even eligible for
7 signature.

8 Then it would come back to accounting.
9 If I receive general counsel's approval, I -- and, of
10 course, everybody else involved, I will execute the
11 contract and it will also be distributed to the colonel
12 and lieutenant colonel for their review also.

13 From an approval limit perspective
14 throughout the agency, some of the common factors is,
15 for the most part, anything over \$10,000 is being
16 approved by high-level management.

17 That concludes my report. I would be
18 glad to answer any questions if you have any.

19 CHAIRMAN POLUNSKY: All right. I'm
20 sorry. Questions?

21 MS. BARTH: What does it mean "excluding
22 purchase card holders"? I mean, this is a very -- I
23 appreciate you putting this together. That is the only
24 thing I didn't understand, is how much do they have --
25 purchase card holders can put on a purchase without --

1 MR. YBARRA: They can -- they can make an
2 individual purchase up to \$2,000. We created that
3 mechanism to try to eliminate some of the paperwork
4 coming into accounting and -- but most of that, as you
5 can see, is being approved by high-level management.

6 So --

7 MS. BARTH: It's like a credit card
8 purchase?

9 MR. YBARRA: Yes. Yeah, it's a
10 procurement card.

11 MS. BARTH: Procurement card. Okay.

12 MR. YBARRA: Yes.

13 MS. BARTH: Okay. Thank you very much.
14 That's all I have. I really appreciate you putting
15 this. This is exactly what I wanted to see. Thank
16 you.

17 CHAIRMAN POLUNSKY: You've set out two on
18 the staff can enter contracts?

19 MR. YBARRA: Yes. It's in the general
20 manual of who can. The director, the assistant
21 director, myself --

22 CHAIRMAN POLUNSKY: Right. I see that.
23 But I'm still not clear what the general counsel's
24 position is with respect to the Public Safety
25 Commission.

1 MS. COURTER: If the issue is actually
2 executing the contract, which means actually signing
3 off on the contract, the commission has authority to do
4 that. There are some mechanisms, if you choose to go
5 that route, to set up. For example, we would have to
6 have the signature card on file with the comptroller's
7 office and such like that to set it up for actually the
8 signing authority. But the -- but the commission as a
9 body has authority to tell the executive director to
10 sign this contract or not sign this contract. You have
11 that authority now without the actual execution
12 authority of actually signing the contract yourself.

13 So if the commission wishes to -- before
14 the director, after all this process goes through, as
15 Oscar explained, at certain levels or certain types of
16 contracts the commission can direct the director to
17 hold off on signing them before it's approved by the
18 commission as a body. If there are certain types of
19 either money levels or of a high priority interest
20 contracts or any -- in any method you choose, then you
21 can set up a process to just direct the colonel that we
22 would look to see as a body all these types of
23 contracts before you sign it. That is -- that is your
24 option.

25 CHAIRMAN POLUNSKY: All right. Well,

1 you've mentioned high interest contracts and that's
2 what I'm interested in. And specifically what I'm
3 interested in is the -- are the RFQs that are out there
4 that we're going to be receiving responses to here in
5 the next few weeks or days. So you're telling me, if I
6 understand you correctly, that the commission can
7 select the vendor and direct or request -- or direct, I
8 guess --

9 MS. COURTER: What you can do is ask that
10 the presentation after the selection criteria and the
11 selection process goes through, that before the award
12 is made to the successful vendor that -- do not make
13 the award before the commission as a body sees it and
14 reviews it. Heres staff's presentation on the process.
15 And then if you are -- if you like that recommendation
16 based on the criteria, you can then direct the director
17 to sign -- to make the award and sign the contract with
18 that successful vendor.

19 CHAIRMAN POLUNSKY: And what if we don't?

20 MS. COURTER: Then you could direct the
21 colonel to not sign the contract and start all over
22 again with the RFQ process. But what the commissioners
23 cannot do is substitute their judgment for -- and
24 rescore, in effect. You cannot -- once the selection
25 committees come up with their scoring and

1 recommendation on that matrix, there cannot be any
2 rescoring done by the body.

3 CHAIRMAN POLUNSKY: Well, I'm not
4 suggesting that any rescoring take place, but there
5 might be a situation where the company with the second
6 highest score might have, in our opinion, more
7 qualifications than the companies that score highest.
8 We're not able to come in and choose that second
9 highest scoring company. We have to go back to the
10 entire drawing board, so to speak?

11 MS. ANDERSON: We didn't set these up as
12 best value?

13 MS. COURTER: Yes. I mean, that's part
14 of the matrix.

15 MS. BARTH: I want to be careful not to
16 put my lawyer hat on. I'm really bad at it. But what
17 you're saying, I think, is after the selection
18 committee has made a recommendation to the commission
19 that, "This is the route we choose," if we decide not
20 to accept the recommendation from the selection
21 committee, we have to start again; is that correct?

22 MS. COURTER: Yes.

23 MS. BARTH: Okay.

24 MS. ANDERSON: Does the process permit if
25 you have "X" number of applicants and the -- let's say

1 you have eight or nine applicants and the top two are
2 within one point of each other, one gets 96, one gets
3 95, is there any discretion in the process at that
4 point for orals or something like that?

5 MS. COURTER: Yes, ma'am. There can't --
6 and we have also done in the past negotiations with
7 two top vendors at the same time for -- to work out the
8 details. We've gone where we've -- we've gone through
9 negotiations for the actual contract short listed. And
10 then sometimes if that doesn't work out we go to the
11 next one, or you can do that at the same time.

12 MS. BARTH: But those two orals, so to
13 speak, you know, if you were to do it, are for the
14 selection committee, that ultimately would make the
15 recommendation to the commissioners; is that right.

16 MS. COURTER: Yes.

17 MS. BARTH: Okay. I just want to make
18 sure you understand that.

19 MS. ANDERSON: Yeah, I do.

20 MS. BARTH: Okay.

21 CHAIRMAN POLUNSKY: Does the colonel have
22 this discretion or is the high score the winner under
23 all circumstances?

24 MS. BARTH: It's not the high scorer
25 necessarily on the best value. It's what is

1 recommended, right?

2 MS. COURTER: Yes.

3 MR. McEATHRON: Right. Kevin, tell them
4 how.

5 MR. JONES: Yes. It's all based on --
6 Kevin Jones, procurement contracts administrator, DPS.

7 Yes, it's based on the criteria that's
8 scored, and that's how we come up with the selected
9 vendor.

10 MS. ANDERSON: Have you developed a
11 scoring matrix waiting, et cetera?

12 MR. JONES: There were -- the RQs that
13 are out, those are being developed right now.

14 MS. ANDERSON: And will the commission
15 have the authority or the ability to review those since
16 we --

17 MR. JONES: Yes.

18 MS. ANDERSON: I mean, that's where we
19 have an ability to bring our expertise to the process,
20 because we --

21 MR. JONES: Yes. Yes.

22 MS. ANDERSON: Well, you know, I don't --
23 I think we need that -- we need to have that ability
24 for input at that stage.

25 MR. YBARRA: The commission can also

1 select the committee. And it doesn't have to be within
2 DPS. It can be outside of DPS, whatever you feel --

3 MR. CLOWE: And that's exactly what we're
4 doing. I mentioned Chief Christian is going to
5 announce the selection committee, and he and I are,
6 according to your instructions, Mr. Chairman, working
7 together on that. And I'm exercising oversight on it.
8 And he has provided me with a draft copy of the
9 criteria for selection, which I will go over with him
10 and act on behalf of the board, as you have directed me
11 to, to take the selection committee to a scoring
12 criteria that is in line with this board's thinking.

13 It's a process that has to be done at
14 arm's length to be done correctly, but the commission,
15 this board, can have oversight. And I think that's
16 where you are headed, is it not? That's what you want?

17 CHAIRMAN POLUNSKY: I want oversight at a
18 bare minimum. Again, these are very important
19 contracts that affect the agency at every sense of the
20 word, and I want to make sure that the commission has
21 more than adequate input to ensure in our minds that
22 the firms and companies, or whoever end up with these
23 contracts, are the best ones out there.

24 MR. CLOWE: Counselor, you correct me if
25 I'm incorrect, but the chairman has assigned certain

1 commissioners to follow and be involved in direct
2 certain activities regarding each of these RFQs. But
3 any other commissioner on an individual basis can get
4 involved and give input.

5 MS. COURTER: Yes, sir.

6 MR. CLOWE: And is encouraged, I would
7 imagine, by the chairman to do so. And this board
8 cannot act as a selection committee. We have to have a
9 selection committee, although we can be instrumental in
10 the selection of that committee. And then if we are
11 not satisfied, as the chairman has stated, with our
12 oversight at the recommendation, we reject it.

13 MS. COURTER: You not only have the
14 authority and right to choose the people on the -- on
15 the scoring committee, but you have a right to look at
16 the scoring matrix and the weight given to certain
17 factors and give your input as to whether those factors
18 and scores --

19 MR. CLOWE: And I just said that. I just
20 said I'm working with Chief Christian on that. We're
21 doing that. And that's what the chairman wants, I
22 think.

23 MS. COURTER: And each of the other
24 commissioners can -- you know, can do that with --
25 before -- before the selection committee meets to

1 select, they can look at the scoring matrix that has
2 been prepared by staff.

3 MS. BARTH: I haven't seen anything with
4 respect to a scoring matrix on the audit risk
5 assessment. So I don't know where that is, nor was I
6 apprised with respect to selection committee and who
7 could or couldn't be on a selection committee. I
8 believe we are still on this timeline, are we not?

9 CHAIRMAN POLUNSKY: So how will we
10 address that?

11 MR. YBARRA: I'm sorry, sir?

12 CHAIRMAN POLUNSKY: How will we address
13 that? How will you address that?

14 MR. YBARRA: Well, as far as getting the
15 information and being involved, it would be very
16 similar with the actual scope that we provided the
17 commissioners for them to look over and identify and
18 through communication of the maybe changes it would
19 like or what kind of input they want to provide
20 regarding the scoring matrix, how -- what -- the score
21 from a percentage perspective, whatever their input may
22 be through communication.

23 CHAIRMAN POLUNSKY: Okay. I understand
24 the theory of it all.

25 MS. BARTH: How do I get a working

1 document on a matrix? When will I see the working
2 document on the matrix?

3 MR. YBARRA: We're working on a draft
4 right now. I expect to have it to you no later than
5 Monday.

6 MS. ANDERSON: The only thing in here is
7 90 percent on competence, knowledge, and qualls, and
8 10 percent on references, on the organizational one,
9 for example. And that's -- you know, that doesn't tell
10 me without seeing the detailed matrix and weights --
11 and I would like to see them -- I don't want to see
12 them for the IT assessment, obviously. I would like on
13 that selection committee.

14 MS. BARTH: I mean, I think we should see
15 all three of the major contracts.

16 MS. ANDERSON: Right. Everybody ought to
17 see all three.

18 MR. YBARRA: Yes, ma'am.

19 MS. BARTH: And a list of qualifications
20 on the selection committee.

21 CHAIRMAN POLUNSKY: Excuse me?

22 MS. BARTH: The names of the people that
23 are going to be on the selection committee
24 qualifications.

25 CHAIRMAN POLUNSKY: Okay. Did you hear

1 that, Oscar?

2 MR. YBARRA: Yes. So you want us to go
3 ahead and provide the people that are eligible to be on
4 the committee for your selection?

5 CHAIRMAN POLUNSKY: And what their
6 qualifications and --

7 MR. YBARRA: Okay.

8 CHAIRMAN POLUNSKY: -- and resumes and --
9 correct?

10 MR. CLOWE: Yeah. And I guess I would
11 just like to add one word of caution. And I'm sure the
12 commissioners are aware of this, but the scoring
13 criteria is very confidential and must be closely held,
14 because it's the guideline for selection. It's the
15 scorecard. So we need to be, as I'm sure each
16 commissioner and all of us will be --

17 CHAIRMAN POLUNSKY: And the
18 employees that are -- and the DPS employees that are
19 privy to it as well, equal measure.

20 MR. CLOWE: The members of the selection
21 committee, absolutely. And I'm sure that's part of
22 your understanding and every member of the selection
23 committee understand that.

24 MR. JONES: Everyone will sign a
25 nondisclosure form who's involved.

1 MS. BARTH: And how many people do you
2 typically have on a selection committee?

3 MR. JONES: Three to five.

4 MS. BARTH: And how many would typically
5 be from the outside?

6 MR. JONES: The majority of the time it's
7 DPS personnel.

8 MS. BARTH: Only?

9 MR. JONES: Yes. But there may be
10 certain circumstances where we bring someone up from
11 like a non-state agency or something look that.

12 MS. BARTH: Have you in the past?

13 MR. JONES: We have. I couldn't tell you
14 what projects.

15 MS. BARTH: A bunch, a few?

16 MR. JONES: I would say a few.

17 MS. BARTH: Less than five?

18 MR. JONES: Probably so.

19 CHAIRMAN POLUNSKY: Okay.
20 chief Brubaker, you're going to get information to
21 Ms. Anderson? You're getting information to all of us?

22 MR. YBARRA: Yes, sir.

23 CHAIRMAN POLUNSKY: Any comment?

24 MR. CLOWE: Mr. Chairman, are you
25 satisfied with your questions and -- I met with the

1 general counsel and got satisfied on this issue. I
2 think it's a very important one and --

3 CHAIRMAN POLUNSKY: Am I satisfied? I
4 mean, this is a real convoluted process that we're
5 going to have to go through. And I can't emphasize it
6 strongly enough that I want to make sure that the
7 Public Safety Commission is extremely comfortable with
8 whoever we choose in all three of these endeavors. So,
9 I mean, I guess we can get there from here, but it
10 seems like kind of a real winding road that we're going
11 to have to travel. We're just going to have to be
12 diligent and get involved as best as we can, best we
13 can legally in the selection process.

14 MR. CLOWE: You're exactly right. And
15 let me say a word in defense to the process. It's sure
16 in the way the private sector does it. But it was put
17 into place, I think, to protect openness in government
18 and the equal opportunity for anyone who wants to bid
19 on government work. And it's the way every agency does
20 it, to my knowledge. And I don't think we had a
21 choice.

22 And they are unusual in that we're going
23 to have this oversight role. Usually the executive
24 director oversights this and the board is used as an
25 appeal body if there's an appeal. And we're just not

1 doing that in this case. But it's a good process, I
2 think, and it will work for us. And I think the
3 members of each group have been greatly diligent and
4 we'll get there.

5 And even if we get to the point where,
6 you know, we reject and do not announce a successful
7 bidder, that's the way process works and we just might
8 have to go back and go again. But I'm hopeful that
9 will not happen and we'll have a good result in all
10 three instances. But I want you to be totally
11 satisfied that we're doing everything the way you want
12 it done.

13 CHAIRMAN POLUNSKY: Well, I think we're
14 doing everything we can to reach the end that I'm
15 looking for. And I understand the legal roadblocks and
16 the way this has been designed so that, you know, as
17 much -- it's objective and not commissioners throwing
18 business to friends of theirs, and so on, which, I'm
19 sure, is what the underlying reason is as to why it's
20 been structured in this manner.

21 MR. CLOWE: Commissioner Anderson, you're
22 right. The 90/10 is pretty generic. But when you get
23 down to the scoring matrix it is very specific.

24 MS. ANDERSON: Right. Well, that's why I
25 would like to see them, because that's big enough to

1 drive a truck through.

2 MR. CLOWE: And you'll get there, I
3 think, in the detail.

4 MS. ANDERSON: I'm sure I will.

5 MR. CLOWE: You know, it's the
6 government's way.

7 MS. ANDERSON: Right. But if you can't
8 see it, then, I mean, you can't see how the thing has
9 been set up. I'll just leave it at that.

10 MR. CLOWE: Well, the reason I'm sort of
11 trying to respond is that I'm comfortable with it. I'm
12 down in the detail. And the people that have worked on
13 this have really done a good job, and I think we're
14 heading there.

15 CHAIRMAN POLUNSKY: I know that. I mean,
16 I do not question that whatsoever. They're exceptional
17 exemplary job.

18 Okay. To answer your question, yeah, I'm
19 okay with it.

20 MR. CLOWE: Okay. Because, you know, if
21 you're not satisfied, we need the stop an back up.

22 CHAIRMAN POLUNSKY: I'm okay with it.

23 Any other comments on that?

24 All right. Thank you.

25 We've had -- the next item on the agenda

1 would be the, "Organizational assessment." We've had
2 Chief Christian make some comment on that. Is there
3 more that you would like to get into?

4 All right. The next would be, "Auditing
5 and risk assessment."

6 MS. BARTH: I think we're moving along.
7 We need to understand -- I need to understand potential
8 selection committee and what we're thinking there. And
9 I haven't seen any kind of scoring matrix whatsoever,
10 so I can't comment on that at all.

11 MR. YBARRA: I'm speaking for Ferral, but
12 I believe he's working on that as we speak. And as
13 soon as that was completed he is planning on providing
14 that to you for your review.

15 MS. BARTH: Okay.

16 CHAIRMAN POLUNSKY: Okay.

17 MS. BARTH: I do want to thank, actually,
18 Mr. Walker and the other people who helped get this RFQ
19 out. I really appreciate them moving so quickly on the
20 time information. So thank you.

21 MR. YBARRA: If I may say also to the
22 commission that the SAO and the governor's office were
23 instrumental in working with us in reducing the
24 timeline dramatically with their cooperation.

25 CHAIRMAN POLUNSKY: I would agree with

1 that 100 percent. Mr. Mitchell is here, and he was
2 very helpful in expediting the process on the
3 governor's side. And without his assistance we would
4 be probably a month behind. So I agree and concur.
5 Thank you.

6 Ten-minute recess.

7 (Brief recess.)

8 CHAIRMAN POLUNSKY: We are hereby
9 reconvening the meeting at 1:00 p.m.

10 "Performance Measures Reevaluation."

11 MR. MCEATHRON: Do y'all have any
12 questions?

13 MS. BARTH: We just got the bullet the
14 other day.

15 MS. ANDERSON: I just haven't -- I just
16 got back and so I have not been through the whole book.
17 But I brought Section 1 with me and did look at that.
18 And, you know, I appreciate the efforts that you-all
19 have gone through to -- and, you know, based on what
20 I've read you have made some proposed changes that I
21 hope will be favorably received that get us to a better
22 set of measures that are closer perhaps to what we
23 ought to be measuring.

24 And my comment about this is that
25 everything is connected to everything else. And so

1 when we think about the exceptional items report, I
2 just want to -- just want to make sure that you've gone
3 through some checkpoint that says for exceptional items
4 other than -- I mean, not gasoline and utilities, but
5 for exceptional items where we're asking for increased
6 staff because of, you know, increased workload, and so
7 forth, that we have a corresponding -- that we can also
8 tie it back to here's a measure that relates to that
9 exceptional item request which -- because that then
10 says, "We're asking for additional resources to fulfill
11 the mission of this agency and, oh, by the way, we are
12 willing to be measured and held accountable on the
13 results and the benefits that derive from receiving
14 increased resources." And we're putting a measure in
15 there that says, "We're willing and welcome the
16 opportunity to be accountable."

17 So I'm just asking you to just go through
18 these with the exceptional items list -- and I have not
19 done that crosswalk at this point -- and just make sure
20 that we've done that.

21 MR. McEATHRON: And we always are. And
22 each one of the division sheets, you know, can respond
23 to their individual measures as they're laid out in the
24 book. There's -- you know, most of the time when we
25 add resources to a strategy that has a measure, the LBB

1 then responds with -- whatever the Legislature gives
2 us, they'll up that measure or change it to a different
3 strategy if we're moving things around in the agency.

4 So that's -- that's something that kind
5 of happens automatically. But we have a difficult
6 time. Sometimes we don't believe their formula is
7 accurate because they'll increase us by 5 percent, but
8 increase the performance measure by 25 percent, or
9 something like that. So we've got be careful to watch
10 on how to do it.

11 You hit things right on the head.
12 Everything ties together. You know, what we're doing
13 with the exceptional items ties to our strategic plans
14 and our responses to strategic plans, which ties to our
15 performance measures. And so we're doing our best to
16 keep it all coordinated and make sure that we're saying
17 the same thing in each of the documents.

18 CHAIRMAN POLUNSKY: Thank you.

19 "Audit & Inspection report," Mr. Walker.

20 MR. WALKER: Harold Walker, director of
21 audit and inspection.

22 There are two things I would like to add
23 to the report that I gave you prior to this meeting
24 today. First of all, our risk assessment is proceeding
25 as planned. Most business units have provided me their

1 data. I have commitments from the few units that
2 haven't that they'll have that information to me by
3 May 31st.

4 The only other thing I have is that we --
5 our two new internal audit staff members are doing a
6 great job. They hit the ground running. From the work
7 that I've seen so far, I think we can expect some great
8 things from them in the future.

9 That concludes my report unless you have
10 additional questions.

11 MS. ANDERSON: I have one question for
12 you. When we were discussing earlier the contract
13 spending authority, the subject of P cards came up. Is
14 that something that your organization has audited, the
15 usage of P cards in the past?

16 MR. WALKER: We have done some work
17 there; P cards, travel cards.

18 MS. ANDERSON: Well, I encourage you
19 to -- as you go through fiscal '09 audit planning to,
20 you know, have that in the mix. I don't know where it
21 will fall out in a priority. But, you know, I live in
22 Dallas, Texas and the Dallas Morning News -- you know,
23 the DISD had horrible, you know, abuses of purchasing
24 cards by DSD employees that led to indictments and so
25 forth. I'm not suggesting we have that here, but

1 that's just a risk area that ought to be factored in.

2 MR. WALKER: Well, I can tell you, based
3 on the work that we have done, that Oscar's folks do a
4 very good job of keeping us on the straight and narrow.

5 MS. ANDERSON: Straight and narrow?
6 Good.

7 MR. WALKER: It's hard to get through
8 their audit process. But I will certainly keep that in
9 mind.

10 MS. ANDERSON: Thanks.

11 MS. BARTH: I have one quick question.
12 Do you think you could give us a monthly report with
13 respect to audits completed, hours, actual versus
14 budget?

15 MR. WALKER: I'll be glad to, yes, ma'am.

16 MS. BARTH: That would be great. Thank
17 you.

18 CHAIRMAN POLUNSKY: Anything else for
19 Mr. Walker?

20 Thank you.

21 Okay. We're on final adoption. There
22 are several rules that are set out for final adoption.

23 MS. FULMER: I'm going to cover all of
24 those for you.

25 I'm Valerie Fulmer. I'm an assistant

1 chief in the administration division, and my area of
2 responsibility is the regulatory licensing service.

3 One of the things we do is private
4 security licensing. And we have -- as a way of just a
5 brief introduction, we have a private security board
6 that is made up of seven members. It's also appointed
7 by the governor's office. They have two sort of main
8 focuses. One of them is recommending rules that are
9 related to the Private Security Act. Another one is
10 hearing -- hearing hearings regarding individuals who
11 have been denied or had licenses suspended or revoked.

12 So these rules are a little bit different
13 than any of the other DPS rules that you'll see. When
14 you see these they are already up for final adoption.
15 They have already been on the agenda of the private
16 security board, which meets quarterly. The public has
17 had an opportunity to come and discuss them before they
18 make a rule recommendation. Once they vote on the rule
19 recommendation, then it comes through the department's
20 process and goes through out general counsel. It is
21 put in the Texas Register, which is another period for
22 public comment.

23 Once that period is over, then it comes
24 to the commission for a final decision. All of the
25 rules that we have before the commission today are

1 based on changes to the statute during the last
2 session. There was an omnibus bill that made a lot of
3 substantive and non-substantive changes to the Private
4 Security Act, and we had to create some rules in
5 accordance with that.

6 The first one is just simply a repeal of
7 a rule. It required that a licensee be in what they
8 call good standing. There have been several
9 legislative changes since that time that have put into
10 statute the requirements they had in rules so the rule
11 is no longer necessary. So we're suggesting repealing
12 that.

13 Do you want to -- should we take all of
14 these at once.

15 MS. COURTER: It's up to the Chair.

16 CHAIRMAN POLUNSKY: I would like to take
17 them all at once.

18 MS. FULMER: Okay. When you look at the
19 changes or the addition of Section 35.42, the Private
20 Security Act requires that the private security board
21 come up with a list of Class B misdemeanors that would
22 disqualify an individual from registration or licensing
23 for a five-year period. They've got -- they've got
24 sort of two different categories. They have Class B
25 misdemeanors that would always disqualify an individual

1 for five years and another class of categories where,
2 depending on the circumstances behind the conviction,
3 they might disqualify an individual.

4 The addition of Section 35.43 deals with
5 other than honorable discharges. A requirement for
6 commissioning is that you not have had a dishonorable
7 discharge or an other than honorable discharge for
8 certain reasons, and the statute required the board to
9 come up with the circumstances. So this provides
10 circumstances under which a discharge that's classified
11 as other than honorable would disqualify you.

12 And, finally, the addition of
13 Section 35.45 dealing with sex offender registrants.
14 For the first time September 1st, sex offenders are no
15 longer eligible to have private security licenses.
16 They did make an exception to allow the board to
17 consider certain circumstances, and they asked --
18 again, they asked the board to come up with the
19 circumstances under which they might license someone.
20 And they have to look at that criteria at any hearing
21 that comes up with a sex offender who wishes to be
22 licensed. So they've come up with the factors there.

23 I am happy to talk more in detail about
24 them if you wish.

25 CHAIRMAN POLUNSKY: Let me see. Are

1 there questions?

2 MS. BARTH: Just need a motion to accept.

3 CHAIRMAN POLUNSKY: We've got enough
4 detail here.

5 Yes, I would like to have a motion that
6 we adopt the rules that are set out in Agenda Item
7 XV.A, B, C, and D.

8 MS. BARTH: So moved.

9 MS. ANDERSON: Second.

10 CHAIRMAN POLUNSKY: Moved by Ms. Barth,
11 seconded by Ms. Anderson that the items set out in
12 XV.A, B, C, and D be approved. Discussion?

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

15 THE COMMISSION: "Aye."

16 CHAIRMAN POLUNSKY: Any against?

17 Motion passes.

18 Next item -- thank you very much.

19 Next item is, "Discussion and possible
20 action on appointments of Special Rangers and Special
21 Texas Rangers pursuant to Gov. Code Chapter 411,
22 Sections 411.023 and 411.024. Special Rangers
23 Garry H. Clayton, Luis J. Flores, Peter M. Smith,
24 Gary R. Stone."

25 Colonel Davis, I think we're familiar

1 with Mr. Stone. Do you want to give us any background
2 on the others?

3 MR. DAVIS: The first three on the list
4 are recommended. I would recommend the department --
5 from the department approval.

6 CHAIRMAN POLUNSKY: You're recommending
7 the first three?

8 MR. DAVIS: First four.

9 CHAIRMAN POLUNSKY: First four.

10 MR. DAVIS: Or the four.

11 CHAIRMAN POLUNSKY: The four.

12 MS. ANDERSON: So moved.

13 MS. BARTH: Second.

14 CHAIRMAN POLUNSKY: I'm not sure I got
15 the right answer to that question, Tom.

16 MR. DAVIS: Let me start over.

17 The department recommends that all four
18 be approved.

19 CHAIRMAN POLUNSKY: All right. But my
20 question is, who are these people?

21 MR. DAVIS: They're retired members of
22 the agency. The -- Clayton spent 31 years, six months;
23 Flores, 26 years; Peter Smith, 26 years; Gary Stone,
24 28 years. All honorably retired from the agency.

25 CHAIRMAN POLUNSKY: Okay. Thank you.

1 Motion?

2 MS. ANDERSON: It's been moved and
3 seconded.

4 CHAIRMAN POLUNSKY: I just wanted to get
5 some response.

6 MR. DAVIS: He's trying to wake me up.

7 CHAIRMAN POLUNSKY: It's almost over.
8 All right. WHO --

9 MS. ANDERSON: I moved and --

10 CHAIRMAN POLUNSKY: All right. Moved by
11 Ms. Anderson, seconded by Ms. Barth that the
12 four individuals set out in Item -- Agenda Item XVI be
13 awarded the appointment as special rangers.

14 Discussion?

15 No discussion, all in favor, please say,
16 "Aye."

17 THE COMMISSION: "Aye."

18 CHAIRMAN POLUNSKY: Any against, "No,"
19 Motion passes.

20 All right. Date for the next meeting.

21 MR. CLOWE: The 19th.

22 MS. BARTH: 19th would be good.

23 CHAIRMAN POLUNSKY: That's okay? What
24 about you?

25 MS. ANDERSON: Uh-huh.

1 CHAIRMAN POLUNSKY: June 19th for the
2 next meeting.

3 Are there any items that a commissioner
4 would like to have included on the June 19th or future
5 agenda?

6 MR. CLOWE: Well, I think we'll have
7 certainly reports on these RFQs.

8 CHAIRMAN POLUNSKY: Okay. Anything else?

9 MR. CLOWE: We're going to have proposed
10 rules per your instructions on the driver's license
11 issue.

12 CHAIRMAN POLUNSKY: Right. So that will
13 definitely be at our next meeting.

14 MS. ANDERSON: I can't think of anything
15 today.

16 CHAIRMAN POLUNSKY: Okay. Well, if you
17 do, please let me know.

18 MR. CLOWE: We've got ten days prior.

19 CHAIRMAN POLUNSKY: Okay. Any further
20 discussion by members of the commission?

21 MS. ANDERSON: I mean, for the benefit of
22 the -- I think you overheard part of my discussion with
23 the colonel but -- about the Sunset report issuance
24 providing input, if we have any. Can -- should we --
25 would you just take -- for the benefit of the entire

1 commission take us through that -- how we should do
2 that?

3 MR. DAVIS: Okay. We are to receive our
4 preliminary Sunset report next Tuesday or Wednesday.
5 If the commission has any input the department has "X"
6 number of days to respond, the 1st of June, to make our
7 response to that. And we would certainly welcome your
8 comments and include those in our response. We can do
9 that by e-mail or by phone. If you have any concerns
10 about any issues, we would be glad to discuss those and
11 incorporate those into our response.

12 MS. BARTH: Who should get the comments?

13 MR. DAVIS: Send them to me.

14 CHAIRMAN POLUNSKY: Thank you.

15 Also, I would like to inform the other
16 commissioners that Chief Mawyer has indicated that if
17 anyone is interested he would be happy to show any
18 member of the commission the site for the Fusion Center
19 here after the meeting is adjourned. He's available to
20 walk anybody through or answer any questions, I guess,
21 with respect to what's going on with respect to that
22 project.

23 All right. Any other discussion?

24 MR. DAVIS: Are we going to have a
25 discharge hearing in June?

1 CHAIRMAN POLUNSKY: Sure.

2 MS. ANDERSON: In the interest of --

3 CHAIRMAN POLUNSKY: Okay.

4 MS. ANDERSON: And I have one last
5 comment that I didn't raise during the contract of
6 spending authority discussion. But I've since talked
7 with Chief Brubaker, and I understand from him,
8 Chief Ybarra, that on the grant contract track sheet
9 that you will add for any IT-related goods and services
10 that the chief is on that sheet.

11 MR. YBARRA: Already done.

12 MS. ANDERSON: Okay. Thank you, sir.
13 Appreciate that.


14 CHAIRMAN POLUNSKY: Okay. Anything else?

15 There being no further business, this
16 meeting of the Texas Public Safety Commission is now
17 adjourned. It is 1:15.

18 (Proceedings concluded at 1:15 p.m.)
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1 REPORTER'S CERTIFICATE

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

7
8 
9 Janalyn Reeves, Texas CSR 3631
10 Expiration Date: 12/31/08
11 Esquire Deposition Services
12 101 Bee Caves Road, Suite 220
13 Austin, Texas 78746
14 (512) 328-5557

15 EBS NO. 210322
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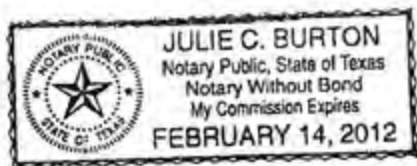
I, Dorothy Wright, have read the foregoing transcription of the May 16, 2008 Public Safety Commission meeting and hereby affix my signature that same is true and correct, except as noted on the attached list.

Dorothy Wright

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, Julie C Burton, on this day personally appeared Dorothy Wright, known to me or proved to me under oath to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 11th day of June, 2008



Julie C Burton
NOTARY PUBLIC IN AND FOR
THE STATE OF Texas

CHANGES AND SIGNATURE

PAGE – LINE	CHANGE	REASON
3 – 10	forum to quorum	Transcribed wrong word
3 – 17	forum to quorum	Transcribed wrong word
16 – 1	front to font	Transcribed wrong word
21 – 16	front to font	Transcribed wrong word
25 – 8	vote to both	Transcribed wrong word
32 – 7	known to none	Transcribed wrong word
49 – 2	RQs to RFQs	Transcribed wrong word
55 – 12	Mawyer to Brubaker	Inserted wrong name
61 – 24	Ferral to Farrell	Misspelled name
70 – 6	Beckwith to Beckworth	Transcribed wrong name
82 – 15	Kaufman to Coffman	Misspelled name twice
83 – 2	Kaufman to Coffman	Misspelled name
83 – 5	Kaufman to Coffman	Misspelled name
83 – 11	Kaufman to Coffman	Misspelled name
87 – 12	Keith to McEathron	Transcribed wrong name
109 – 7	Director of to Director's	Transcribed wrong word
116 – 11	waiting to weighting	Transcribed wrong word
126 – 11	Ferral to Farrell	Misspelled name
127 – 13	bullet to book	Transcribed wrong word
129 – 20	Harold to Farrell	Transcribed wrong name
132 – 20	out to our	Transcribed wrong word

IN THE MATTER OF
THE APPEAL OF DISCHARGE OF
AARON RAGLAND

§
§
§
§
§

BEFORE THE
PUBLIC SAFETY COMMISSION
IN AUSTIN, TRAVIS COUNTY, TX

ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Aaron Ragland, on the 24th day of April, 2008. Mr. Ragland 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 Aaron Ragland and affirms the Director's decision in this matter.

On motion of Commissioner Clowe, seconded by Commissioner Anderson, the discharge was affirmed.

ENTERED AND SIGNED on the 16th day of May, 2008.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter B
Section Number 35.14

The Texas Department of Public Safety adopts the repeal of Section 35.14, concerning Prohibitions, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2265).

Adoption of the repeal is necessary due to it having been rendered redundant by H.B. 2833, Acts 2007, 80th Leg. R.S. (amending Chapter 1702 of the Occupations Code).

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 16, 2008, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter C
Section Numbers 35.42, 35.43, and 35.45

The Texas Department of Public Safety adopts new Sections 35.42, 35.43, and 35.45, concerning Standards, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2266).

Adoption of new Section 35.42 is necessary because Section 1702.113(b) of the Occupations Code was amended to require that the Board establish which Class B misdemeanors are to be disqualifying under that section. The Board is of the opinion that the prohibitive Class B misdemeanors are directly related to the provision of services regulated by the Private Security Act, and that the discretionary offenses may, under certain circumstances, be so related, in that the license may offer the license holder an opportunity to commit further such offenses. In addition, the Board believes that the commission of such offenses raises doubts regarding whether the individual's judgment and character is suited to the provision of regulated services.

Adoption of new Section 35.43 is necessary because Section 1702.113(a) of the Occupations Code was amended to require that the Board establish the circumstances under which an "other than honorable discharge" is to be disqualifying under that section. The Board is of the opinion that military discharges under "other than honorable conditions" should be prohibitive when they are based on classified criminal offenses, and that the term of disqualification should track the statutory criteria associated with the level of the offense. For those that are not based on a classifiable offense, the Board believes a ten year term of disqualification is appropriate, based on the various circumstances that can result in such a discharge.

Adoption of new Section 35.45 is necessary because Section 1702.113(a) and Section 1702.3615 of the Occupations Code were amended to require that the Board establish the factors to be considered in determining whether circumstances warrant approval of an application where the application has been denied solely because of the applicant's status as a registered sex offender. The Board is of the opinion that the proposed criteria will enable it to fairly evaluate the applicant's fitness for licensure. The criteria include the age of the applicant at the time of the underlying offense, the classification of the offense, any evidence of rehabilitation or recidivism, the amount of time that has passed, and the relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.



Allan B. Polunsky, Chair
Public Safety Commission

