

**CITY OF LAREDO  
CITY COUNCIL MEETING**

**CITY COUNCIL CHAMBERS  
1110 HOUSTON STREET  
LAREDO, TEXAS  
5:30 P.M.**

**MINUTES**

**M96-S-40**

**NOVEMBER 6, 1996**

**I. CALL TO ORDER**

With a quorum present Mayor Saul N. Ramirez, Jr. called the meeting to order.

**II. PLEDGE OF ALLEGIANCE**

Mayor Saul N. Ramirez, Jr. led in the Pledge of Allegiance.

**III. ROLL CALL**

**IN ATTENDANCE:**

SAUL N. RAMIREZ, JR.,	MAYOR	
LOUIS H. BRUNI,	"	, DISTRICT II
ALFONSO I. "PONCHO" CASSO,	"	, DISTRICT III
ELISEO VALDEZ,	"	, DISTRICT V
JOE A. GUERRA,	"	, DISTRICT VI
MARIO GEORGE ALVARADO,	"	, DISTRICT VII
CONSUELO "CHELO" MONTALVO,	"	, DISTRICT VIII
GUSTAVO GUEVARA, JR.,	CITY SECRETARY	
FLORENCIO PENA, III,	INTERIM CITY MANAGER	
JERRY CAIN,	ASST. CITY ATTORNEY	

**ABSENCES:**

Mayor Ramirez excused himself from the discussions because he feels that to discuss policy and procedures on how investigations are made should be directed by the Police Chief or Interim Police Chief. He feels that if there are any inconsistencies or any investigations that might have been boxed or tampered with, that there is the Internal Affairs Division of the Police Department that should handle that and that we have the District Attorney's Office if there were any crimes that were committed as a result of boxed investigations.

Motion to excuse Mayor Ramirez, Cw. Moreno, and Cm. Perez.

Moved : Cm. Guerra

Second: Cm. Valdez

For: 5

Against: 0

Abstain: 0

(Mayor Protem Casso was chairing the meeting and not voting.)

**IV. CITY MANAGER'S REPORT**

2. Discussion and possible action concerning the invocation of Section 2.06, entitled "Investigation" of the Charter of the City of Laredo, Texas, to interview subpoenaed Laredo Police Officers to inquire into the procedures they followed in criminal investigative matters under Executive Session pursuant to Texas Government Code, Section 551.074.

Cm. Valdez went on record stating that all he was here for is to live up to his responsibility as a City Councilman and wants to make sure that the City Attorney keeps them in line as far as sticking to the guidelines that are set forth and whatever is within their parameter and responsibility and added that beyond that he will not assume any responsibility if they deviate.

Cm. Alvarado also acknowledged what Cm. Valdez mentioned and added that they voted on this unanimously as a Council and thinks they need to go forth with the intent of what they are here for. He added that for the benefit of the D.A.'s Office they do not propose to go into any specific details of any case and that this will involve procedural matters.

Mrs. Monica Notzon, First Assistant District Attorney, stated her concern was regarding the subpoenas that were issued on this case. Her concern arose when she read an article in the newspaper, she understands that since then the City Council has decided to stick to generalities and just discuss general procedures regarding the administration and regarding evidence procedures with the Police Department, if that is the situation, she has no problem with that. She thinks that the D.A.'s Office as a whole feels that council should look into the policies and procedures of the Police Department.

Their problem came when the situation arose about specific cases that had been mentioned in the press, such as the Smily Case and the death of Hector X. Gutierrez that was also mentioned, because they seriously and strongly feel that the information from these cases is privileged. She felt and expressed her concerns to Mr. Cain that if she did not somehow come forward and say they are claiming their privilege to have this information exempt from discussion in public forum, she felt that if she would not do this, she felt that she would somehow waive that privilege and because it is her responsibility to prosecute these cases and because she has families of victims that are relying on her to see that justice is done, she felt that she should come forward and tell council that she respects what they are doing, but if their questions are going to be dealing about specifics of these cases, she felt it necessary to express her concerns. This information is not only privileged under criminal law, it is privileged under civil law and under the open records law and she felt that if it was going to be mentioned, asked and answered, that there might be steps the D.A.'s Office

would have to take, to prevent the action or to remedy the action.

Motion to go into Executive Session pursuant to Texas Government Code, Section 551.074.

Moved : Cm. Guerra  
Second: Cw. Montalvo  
For: 5

Against: 0                      Abstain: 0

Note: The following Police Officers were subpoenaed.

1. Leo Hernandez
2. Arturo Galvan
3. Gaspar Ambrose
4. Abraham Romero
5. Felix R. Tellez
6. Antonio (Tony) Cavazos, Jr.
7. Agustin Dovalina, III
8. John Payle \*
9. Jorge Almazan \*
10. G.E. Martinez \*
11. J.L. Martinez \*

Note: \* Statements by the following officers were done in public forum.

After executive session Mayor Protem Casso announced that no formal action was taken in executive session.

Investigator Jorge A. Almazan explained the definition of "evidence" in reference to the tapes. He gave Cm. Casso a copy of his experience and training records in the Police Department, said these records can be verified for an accurate figure at the Texas Commission of Law Enforcement Officers Standard and Education and the transcripts can be verified at the university.

Investigator Almazan stated that everyone in the media said that those tapes were evidence. He added that physical evidence is defined by The Texas Code of Criminal Procedure Article 38.35 (a)(2) which says any tangible object, anything or substance relating to a criminal offense. The word here that is most important is "relating" because it has to relate to a criminal offense. The deceased body was found on June 16, 1992, and what was immediately surrounding the deceased was photographed, documented, and the evidence that was present there with him, his surroundings, were properly seized on that day as evidence. It wasn't until June 17, 1992 that they found out that he had died of other than natural causes that they went back to see if they had overlooked anything. At that point they got consent from a relative of the deceased to obtain those video tapes just in case they might have some kind of evidential value to the

case itself. He said that they are not directly linked to the deceased and they didn't cause the deceased's death in any way and they are not evidence.

Cm. Casso stated it is not up to him to determine what is evidence. He seizes property from that home, has it for four (4) years and four years later it surfaces up and creates a scandal in this community because of the fact that those videos surface after four years. He also says that he did not have a beta machine to view these tapes.

Mr. Almazan answers, "that is correct" and added that the department nor the city ever provided him with the equipment required to view those tapes. He asked them, he reported to G.E. Martinez to get the Beta Machine and was told that he was going to try and get one. He asked him a couple of times. He believes these machines are no longer in production. When you seize something, it is either illegal or unlawful to possess it in the first place, that is not confiscated evidence, those tapes are not illegal or unlawful to possess. The other question there is "recovered property", it is not recovered property because it was never stolen.

Cm. Casso stated that he had the property for four years, not only did he have video tapes, but he had currency. Why did he stay with the currency? Why didn't he turn in the address book, and everything else that was taken? If he needed a Beta Machine and that was why he was holding to the videos because he needed a Beta Machine, why did he hold on to the currency, the telephone address book, and the plastic bags of assorted magazines?

Investigator Almazan stated that the list of telephone/address names needed to be checked out on each listing to see what was the relationship or the business with the deceased person. He didn't know that the money was there in the bottom of the shirt pocket of the deceased, he never noticed it there. As far as why so long? In local law enforcement they do not have the luxury to stay on one single case even if it is a murder for "x" amount of period of time. They are assigned additional cases almost on a daily basis. They do not have the luxury to see if there are more clues, they work as diligently as possible.

Cm. Casso stated he does not believe that after four years of having possession of this he did not notice there was money.

Inv. Almazan stated when he checked the complete shirt on July 12, 1996 that is when he found out that the money was there. He stated he was going to turn them in, the shirt is not evidence, the deceased was not wearing it at the time, the shirt was taken because the name and address booklets were in the front shirt pocket and just so they wouldn't be all over the place, they kept it with them. At the bottom of the booklets, that's where the money was and that's when he

discovered it, this year.

Cm. Casso asked if the tapes were in his locker for four years?

Inv. Almazan answered, "yes sir, that's where they've been." The only reason he brought them into the property room was to continue keeping control over these items, so that maybe in a future date he would have a chance to continue viewing them and if there was something there, maybe it would help the case.

Cm. Casso stated that something they have been discussing is the chain of custody, the way the evidence is handled, evidence should be logged in immediately, and not four years later.

Inv. Almazan stated the custody was with him, he had control of them, he was following orders of Sgt. Martinez, and if he violated those orders he would have been in violation. He said he was instructed to keep them with him, and to him that is an order, until he finishes viewing them and until he finished checking out the names on the list, this order was given by G.E. Martinez. To the best of his recollection there are 15 VHS tapes and 18 beta tapes.

Cm. Casso asked Investigator Almazan if he was aware that this action deviated from the prescribed rules and regulations.

Investigator Almazan stated that there is an exception to those prescribed rules and regulations under 6.14.001 the second paragraph, that states "property or evidence, which this does not qualify as such, will be turned in without delay and no later than the officers end of shift unless prior approval by supervisor is obtained" so he does not see the violation. He stated that his only intent was to solve the case and still wants to solve the case.

John Payle, Patrol Crime Scene Investigator, stated he has been a Police Officer for 17 years, during the course of employment he had much training including 15 years in Identification School in Austin, Texas (80 hrs), advanced Print School (40 hrs), Crime Scene Photography, and numerous crime scene schools.

Cm. Casso asked him regarding some prints that supposedly were lost regarding a certain case? What is the official version of PD regarding some prints that were lost?

Mr. Payle answered, "I don't know of any case that any prints were lost by me or anyone else."

Cm. Alvarado asked if he is not aware of any case where fingerprints were missing in any case?

Mr. Payle answered, "no".

Cm. Alvarado asked that he describe his duties and what they involve and Mr. Payle explained the procedure.

Cm. Casso wanted Mr. Payle to explain the chain of custody, and how is it done, because the way they log in evidence vs. the way they log in fingerprints. He asked that he explain who has keys, what is it he does, and wanted him to explain all the procedure.

Officer Payle stated that when a crime investigator or the detective take prints they go into the property room, which Abraham Romero has a key to, they deposit those prints in a metal box that has a padlock. He added that I.D. has a key to that padlock and everyday or every other day they go and empty that box that contains the latent prints, the prints are analyzed to see if they have any value, they get classified and then get filed.

Cm. Casso stated that then this means that only the I.D. Section has a key to enter the box, but they do not have a key to enter the property room where the evidence is stored. He asked if when they take anything from that box is it logged anywhere?

Officer Payle answered that there is a log there, before they turn in the prints, they have to log in what they are turning into that box. When they take something out, they do not log out what they are taking.

Cm. Casso asked how is Officer Romero going to be held responsible for evidence when anybody can go in there and take what they want without having to write anything in.

Officer Payle stated that the property officer does not have custody of latent prints, the I.D. Section does, it has nothing to do with the property section, they just have that box there for security reasons.

Cm. Casso wanted to know if they have records when they turn them over the D.A.'s Office or the District Clerk's?

Officer Payle answered that they don't turn any records to them, they keep their own evidence and their own cases.

Cm. Casso asked about prints that have to be used in court.

Officer Payle answered that they do not turn them over to the court, they take them personally to court when they get subpoenaed. If they have to leave or turn them over to court for evidence, the District Attorney keeps them there as evidence.

Cm. Alvarado wanted to know if they get a receipt?

Officer Payle replied that they do not get a receipt when they go to court. It depends on the person that is in charge of that case, if he is doing the comparison he takes the prints and if another officer is doing the comparison then he takes the prints. The other officer that has that duty is Victor Rios.

Gabriel E. Martinez, Sgt. for the Police Department, stated he has worked with the Police Department for approximately 28 years. He has received countless hours of training and has been assigned to approximately 100 cases since 1990 to date, most of them homicide. He stated he has work with a local law firm, Whitworth, Borchers, Morales, and Persons, for 14-15 years. He is still employed by them. His duties there are to answer all the alarm calls after hours and on weekends when he is off. He has never provided any information or shared any information regarding a crime scene to this particular law firm. He has been receiving a monthly salary for his services with the law firm.

Cm. Bruni asked Florencio Pena, Interim City Manager, if it is proper for a police officer to be working for a criminal law firm?

Florencio Pena, Interim City Manager, stated he can refer to the Police Department Policy Manual that in order to work off duty, they must obtain permission from the Police Chief and in no manner can they be involved in providing information that may conflict with their normal official duties as a police officer.

Sgt. G.E. Martinez stated he has a signed permission form.

Cm. Bruni stated that he thinks that it is a conflict for a detective or a sergeant who minutes crime scenes to be working for a law firm that has criminal attorneys that are working there, to him this is conflict for any reason whether he is guarding the premises.

Cm. Casso stated that the problem they have is that he has been one of the lead persons in some major murders in this town, investigating major murders, and yet that firm has also defended or has been the defense counsel of some major murders and they consider it a huge conflict of interest. It appears as a huge conflict of interest that he is one of the main individuals investigating some of these murders and yet he is working for the same law firm that defends these people.

Sgt. G.E. Martinez stated he has worked one case with this so called lawyer worked. The defendant was convicted and he is presently serving time.

Cm. Casso wanted Sgt. Martinez to elaborate on the videos that Officer Almazan was saying that he did not have.

Sgt. Martinez stated that he was the supervisor assigned to the case, picked them up, and that there was no evidence. He added he did try to get a Beta Machine, he went downtown to try to borrow one from one of the merchants. Months later in a party at an officer's residence, Mr. Almazan found one and it did not work. A few months later, another officer got another one and he got to see three of the beta videos, and later on he was transferred. The Beta Machine was gotten within the second year.

Cm. Casso stated it is ignorant to say that the videos were not important when he has not even seen all the videos.

Captain J. L. Martinez stated that he has been a Police Officer for 24 years and has had several trainings from identification to investigations.

Cm. Casso questioned Mr. Martinez regarding lost prints and wanted to know what he knows about them?

Captain J.L. Martinez replied that he does not know anything about lost prints and explained the procedure taken for the chain of custody and fingerprints. He added that once the evidence is submitted, we do not get any evidence back, it stays with the District Clerk. Once the case is disposed he does not know what happens to the evidence.

Cw. Montalvo asked if he gets something in writing to say that they are releasing those fingerprints to whoever so that later on they won't be back and say that the department is responsible for not giving out this fingerprints.

Captain J.L. Martinez stated that if an identification is made and the individual is identified a letter is submitted to the D.A.'s Office saying that in that particular case, that individual was identified through latent fingerprints and we identify the index or whatever finger it is on that latent print, but they don't get anything else, the letter is more than enough to keep record of the fingerprints.

Cw. Montalvo asked, if the D.A.'s Office asks for some information, how are they going to find out if you are giving them the full amount of information that was taken during that homicide or murder or whatever the case is?

J.L. Martinez answered that it is the responsibility of the case officer to make an actual report of all the evidence that is submitted including weapons, latent prints, clothing, forensic analysis from the medical examiner, etc.

Cm. Alvarado asked if this was brought to his attention and if he acted on it to find out what actually happened.



J.L. Martinez replied that it was never brought to his attention and that the case is still pending and he cannot discuss any pending case because he thinks they are violating the law and himself too, talking about that case. He added that he took the action necessary to clear the Police Department with the District Attorney's Office, but that again this is a pending case and is it still opened.

**V. ADJOURNMENT**

Motion to adjourn.

Moved : Cm. Bruni  
Second: Cm. Alvarado  
For: 5

Against: 0                      Abstain: 0

Adjournment time: 10:50 p.m.

I HEREBY CERTIFY THAT THE ABOVE MINUTES CONTAINED IN PAGES 01 TO 09 ARE TRUE, COMPLETE AND CORRECT PROCEEDINGS OF CITY COUNCIL MEETING HELD ON NOVEMBER 6, 1996. A CERTIFIED COPY IS ON FILE AT THE CITY SECRETARY'S OFFICE.

  
GUSTAVO GUEVARA, JR.  
CITY SECRETARY

MINUTES APPROVED ON: December 2, 1996