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NEW MEXICO LAW ENFORCEMENT ACADEMY
REGULAR BOARD MEETING AND PUBLIC HEARING

June 2, 2011

9:00 a.m.

New Mexico Law Enforcement Academy
4491 Cerrillos Road
Santa Fe, New Mexico 87507

REPORTED BY: Jan A. Williams, RPR, NM CCR 14
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(1161K) JAW

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BOARD MEMBERS

Gary K. King, Attorney General

Raymond Schultz

Bernardino M. Perez

James R. Coon

Robert Shilling

Harry Betz

Raymond Schultz

Nate Korn

ALSO PRESENT

Zachary Shandler

Ernest Holmes

Matthew E. Jackson

Monique Lopez

Gilbert Najjar

Gregg Marcantel

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1 ITEM NO. 1: CALL TO ORDER

2 MR. KING: All right. I'm going to go ahead
3 and call the meeting to order. Good morning,
4 everybody. It's a pleasure to see you all and be here
5 with you this morning. This is sort of a new room for
6 us here. Some of you guys are way back there in the
7 back. It's a beautiful room.

8 And I want to welcome everybody. This is our
9 first meeting of 2011. And also our first meeting in
10 the new administration I think, although I thought I
11 was going to have a bunch of new board members. But
12 it looks like we're all pretty similarly situated
13 here.

14 ITEM NO. 2: ROLL

15 MR. KING: But I think just for everybody's
16 sake and for roll call, I'll just have everybody
17 introduce themselves and their organization. So,
18 Nate, how about if we start with you.

19 MR. KORN: My name is Nate Korn and I'm a
20 citizen-at-large.

21 MR. PEREZ: Matt Perez. I'm also a
22 citizen-at-large.

23 MR. BETZ: Harry Betz, Chief of Police, Santa
24 Ana Pueblo.

25 MR. SHILLING: Robert Shilling, Chief, New

1 Mexico State Police.

2 MR. COON: Rob Coon, Sheriff, Chaves County.

3 MR. SCHULTZ: Ray Schultz, Chief of the
4 Albuquerque Police Department.

5 MR. SHANDLER: I'm Zach Shandler, I'm their
6 attorney.

7 MR. KING: Okay. And we sort of have staff
8 sitting down at the bottom. But why don't you guys go
9 ahead and introduce yourselves to everybody. I think
10 most people know you.

11 MR. JACKSON: Matt Jackson, I'm the
12 administrative prosecutor for this board.

13 MR. HOLMES: Earnest Holmes, investigator
14 with the New Mexico Law Enforcement Academy.

15 MS. LOPEZ: Monique Lopez, New Mexico Law
16 Enforcement Academy.

17 MR. KING: Thanks. And so I think we have a
18 quorum.

19 ITEM NO. 3: APPROVAL OF AGENDA

20 MR. KING: The next item on the agenda is
21 approval of the agenda. And it's my understanding
22 that we have in front of us an amended agenda. And
23 hopefully it's been passed out and everybody has it
24 available to them.

25 Are there any additions or corrections to the

1 agenda that we have before us? Seeing none I'll take
2 a motion to approve the agenda.

3 MR. COON: Mr. Chairman, I make a motion we
4 approve the agenda for the June 2nd meeting.

5 MR. KING: Do I hear a second?

6 MR. BETZ: I'll second.

7 MR. KING: All in favor say aye.

8 (Those in favor so indicate.)

9 MR. KING: Any opposed?

10 The agenda is approved. The one that says
11 amended agenda on the top here.

12 ITEM NO. 4: APPROVAL OF MINUTES, DECEMBER 7, 2010

13 MR. KING: So the next item on the agenda is
14 approval of the December 7th amendments -- I mean
15 minutes. I'm sorry. Are there any comments or
16 questions about the minutes from the December 7th
17 meeting? Okay. Seeing none I'll take a motion for
18 approval of the minutes.

19 MR. BETZ: I make a motion to approve the
20 minutes.

21 MR. KING: Okay. It's been moved that we
22 approve the minutes. Second?

23 MR. COON: Second.

24 MR. KING: It's been seconded. All in favor
25 say aye.

1 (Those in favor so indicate.)

2 MR. KING: Any opposed? The minutes from
3 December 7 are approved.

4 ITEM NO. 5: ELECTION OF VICE CHAIR

5 MR. KING: The next item on the agenda is
6 election of a vice chair, which as you all know is
7 going to be pretty important because in my role as
8 Attorney General, it's very interesting to me, I'm the
9 chairman of the board in my role as Attorney General.

10 But because of the fact that we have somebody
11 from the Attorney General's Office who is the
12 administrative prosecutor, I do not chair the meetings
13 during that segment where we do certification issues
14 and such. And the vice chairman always does that. So
15 it's a very important position.

16 What I don't know, because I don't have any
17 particular briefing, is if we have somebody who has
18 already volunteered to be the vice chair. So that
19 being said --

20 MR. KORN: Mr. Chairman, I would nominate
21 Chief Ray Schultz.

22 MR. KING: Okay. Mr. Korn has nominated
23 Chief Schultz.

24 MR. COON: I'll second that.

25 MR. KING: And we have a second for that.

1 MR. SCHULTZ: Just because I got a cup of
2 coffee.

3 MR. KING: Are there any other nominations?
4 Chief Schultz, I think you'll do a great job.

5 Are there any other nominations? Okay.
6 Seeing none do I have a motion that the nominations
7 cease?

8 MR. BETZ: I make that motion.

9 MR. KING: There's a motion that nominations
10 cease. Is there a second for that?

11 MR. SHILLING: Second.

12 MR. KING: Okay. All in favor say aye.

13 (Those in favor so indicate.)

14 MR. KING: So that being said, with having
15 one nominee, I will take a motion that Chief Schultz
16 be elected by acclamation.

17 MR. KORN: I make so motion.

18 MR. KING: A motion by Nate to elect Chief
19 Schultz as the vice chair by acclamation. Is there a
20 second?

21 MR. BETZ: I'll second.

22 MR. KING: Seconded. All in favor say aye.

23 (Those in favor so indicate.)

24 MR. KING: Okay. So that motion carries.

25 And so, Chief Schultz, you'll be serving as the vice

1 chair of the committee. Congratulations. We
2 appreciate that. Chief Schultz has been a great
3 member of this committee and been very active and we
4 appreciate your service.

5 ITEM NO. 6: APPOINTMENT OF NEW DIRECTOR

6 MR. KING: The next item on the agenda is
7 appointment of a new director. And I have on my
8 agenda that that agenda item is going to be led by
9 Secretary of the Department of Public Safety Gordon
10 Eden. Mr. Eden.

11 MR. EDEN: Thank you, Mr. Chair. And
12 welcome. And, Chief Schultz, that railroad job was
13 faster than the Rail Runner. But anyway welcome to
14 the vice chair position.

15 I would also like to just take this
16 opportunity to -- I think everybody knows him. And
17 welcome Chief Shilling who is also a Deputy Secretary
18 of the Department of Public Safety to the board as
19 well as Chief Harry Betz. And we look forward to your
20 leadership with the New Mexico Law Enforcement Academy
21 Board.

22 It took awhile, but the process changed for
23 us to find a director for the academy. It was
24 important for me to find somebody who knew enough
25 about training, had a background in training, but also

1 understood the needs of the various police departments
2 and sheriffs agencies throughout the State of New
3 Mexico.

4 It also required me to reorganize the
5 Department of Public Safety, which now within the
6 Department of Public Safety we have two deputy
7 secretaries. Chief Shilling is over the law
8 enforcement operations and the law enforcement
9 programs. And Deputy Secretary Gregg Marcantel will
10 be the deputy secretary over the new half of DPS,
11 which is our statewide law enforcement programs and
12 services.

13 We've seen over the years how our support
14 services at the Department of Public Safety has
15 diminished with the legislature and with the executive
16 branch. Many people do not understand how important
17 that second part of DPS is, because we do provide
18 services statewide to law enforcement agencies. And
19 the vast majority of those services are consumed by
20 state, local, and county law enforcement services.

21 The shift is so that everybody understands
22 that our technical services division, our Law
23 Enforcement Academy, as well as our records section
24 are services that are provided to all law enforcement
25 agencies, just not the Department of Public Safety.

1 So as I began rethinking how I wanted the
2 organization to look, I had to find somebody who had a
3 background and expertise in those areas. I approached
4 Gregg when I think he was still with the sheriff's
5 department. I really don't remember.

6 And I was speaking to him about some of the
7 things that I was thinking about. And then I
8 recognized that he has a real passion to serve in such
9 a capacity. I approached the governor's office. The
10 governor's office concurred.

11 And so what we've done within the Department
12 of Public Safety is eliminate three positions, the
13 division director over technical services, the
14 division director over the Law Enforcement Academy,
15 and I just lost the third division. Anyway and
16 combined that under the leadership of Deputy Secretary
17 Gregg Marcantel.

18 Similarly we did that on the law enforcement
19 side several years ago, where Chief Shilling is
20 actually the Chief of the New Mexico State Police and
21 a division director, but he also serves in the
22 capacity as the deputy secretary.

23 We believe this reorganization will function
24 better and provide better services to our law
25 enforcement partners throughout the State of New

1 Mexico.

2 So let me tell you a little bit about Gregg.

3 I personally came to know Gregg during the Michael
4 Astorga hunt. It was a very tragic event for the
5 Bernalillo County Sheriff's Department. And Gregg was
6 the lead investigator on the homicide of Deputy James
7 McGrane, Jr.

8 It was during that time I saw his
9 professional work ethic, I saw his passion for law
10 enforcement. I also saw his ability to bring together
11 statewide law enforcement resources for a common goal.
12 All these things were very important to me. And
13 that's how I actually became acquainted with Gregg.

14 As a U.S. Marshal I worked with him
15 frequently on different types of cases and various
16 different assignments. And I never knew him on a
17 personal level, just on a professional level. And I
18 thought this would be the right fit at the right time.

19 Gregg has a distinguished law enforcement
20 career. Please do not hold it against him, but he's
21 from Louisiana. But he has actually been in New
22 Mexico for now most of his life. He's a former
23 Marine. I would ask you not to hold that against him
24 also.

25 But in that Gregg has also served not only

1 the Bernalillo County Sheriff's Department with honor,
2 dignity, and that's the department he retired from, he
3 also has served as our FBINA coordinator and helping
4 our FBINA program expand throughout New Mexico.

5 He's quite accomplished in his career. And
6 again based on my recommendation to the governor's
7 office and their concurrence, he was named the deputy
8 secretary and his first day of work was yesterday.

9 So that's the information I would like to
10 provide to you. And I would ask your approval and
11 appointment for him as our new Law Enforcement Academy
12 director. And I'll stand for questions.

13 MR. KING: Thank you. Any questions for the
14 secretary?

15 MR. SCHULTZ: Mr. Chairman, if I may.
16 Mr. Secretary, I know as the state continues to
17 struggle with budgets, I know one of the items coming
18 up in the director's report is going to be the
19 resignation of another instructor.

20 What is the long-term plan to make sure that
21 Gregg has the support and help that he needs to
22 properly staff the facilities here and have the
23 resources that he's going to need to continue to run
24 all the programs that the academy does run?

25 MR. EDEN: Again I think one of the problems

1 we've had is that the legislature -- we have not done
2 a very good job of educating the legislature that the
3 New Mexico Law Enforcement Academy provides statewide
4 services.

5 During this last legislative session by the
6 legislators, I continued to hear it referred to as the
7 "state police academy." In one particular hearing,
8 they wanted to know why we needed \$800,000 to run a
9 state police academy and a budget for the academy.

10 I believe that we actually have a new
11 generation of legislators that are on board. And I
12 think we've done a poor job of educating them about
13 the separation of what does the Law Enforcement
14 Academy do versus how the state police operates their
15 academy.

16 We plan on working towards having a better
17 relationship with our legislators, making them aware
18 of the function and the need of this academy.

19 The other thing we're currently looking at is
20 having them reclassified as commissioned law
21 enforcement officers. So they would be able to take
22 advantage of a law enforcement pension if they choose
23 to come to work here.

24 We've been working very diligently with our
25 HR person within the Department of Public Safety to

1 see if that can be accomplished. And we look forward
2 to advancing that.

3 The other thing again is, because of quite
4 frankly the crisis of the state budget, positions had
5 to be cut from various divisions within the Department
6 of Public Safety. And all the divisions took
7 significant hits with that.

8 One of the things I've asked Gregg to do is
9 to reach out again to our law enforcement community
10 and make sure that we have staff of well-qualified
11 volunteer instructors that we could use until we can
12 move beyond and get to a place where we can continue
13 in the hiring process.

14 We did receive approval from both DFA and the
15 governor's office probably eight weeks ago to classify
16 the law enforcement instructors as emergency hires.
17 They agreed to that. And we've already gone through
18 one round of interviews for hiring for those
19 positions. And we'll begin -- I think we're going to
20 repost the position, the positions, and go through the
21 hiring process for that.

22 To his credit, and I want to give him public
23 credit for it, Chief Shilling has been very involved
24 in making sure that this academy is staffed up
25 correctly, meaning the Law Enforcement Academy, just

1 short of giving up state police positions to make sure
2 that we have adequate staff over here. That is the
3 commitment that I've received from Chief Shilling.

4 So I believe that together, within the
5 Department of Public Safety, we can make sure that we
6 have good classes, we have excellent instructors, and
7 that we're able to meet the needs of state and local
8 law enforcement. I don't want to steal any -- because
9 I know that Deputy Secretary Marcantel would like to
10 address you.

11 But with the concurrence of Chief Shilling,
12 the other deputy secretary within the Department of
13 Public Safety, we are looking at and revising the
14 curriculum for the academy. And we've already begun
15 that process.

16 MR. KING: Thank you. Any other questions
17 for the secretary?

18 MR. KORN: Mr. Chairman, I have not so much a
19 question as a comment, if I may.

20 MR. KING: Please.

21 MR. KORN: Mr. Chairman and Secretary Eden, I
22 wanted to compliment you on your selection of Gregg
23 Marcantel. I'm one of those people that liked his
24 predecessor, Art Ortiz. And he brought the Law
25 Enforcement Academy to a level that I thought was

1 high.

2 And it was going to be difficult to find
3 somebody to take that baton and build it to the next
4 level. But in Gregg Marcantel I think you've found
5 the exact right person. And you mentioned passion a
6 couple times when you gave us your presentment.

7 And I think that exactly personifies
8 Mr. Marcantel. He's passionate about everything he
9 does. He's been an officer from the ground up as a
10 line officer, sergeant, then ultimately captain of the
11 sheriff's department. I've seen him bring groups
12 together.

13 And he's smart and he cares about law
14 enforcement, he cares about officers. And I think
15 that's what's needed to take us to the next level. So
16 I congratulate you.

17 MR. EDEN: Thank you.

18 MR. KING: I agree with that. I think we'll
19 have some opportunity for discussion for a second and
20 other folks can make comments if they want. Zach, do
21 we have to take a vote on approval of the director?

22 MR. SHANDLER: Mr. Chairman, yes.

23 MR. KING: Okay. So having had Mr. Marcantel
24 presented as the nominee for director of the academy,
25 then I'll take discussion, any other discussion that

1 we have on that. And then I'll take a motion for
2 approval. Any other discussion? Okay. Seeing none,
3 any motions?

4 MR. SHILLING: I'll move for approval of the
5 director.

6 MR. KING: Chief Shilling moves for approval.
7 Second.

8 MR. COON: Yes, sir. It is my honor to
9 second it.

10 MR. KING: All right. Any further
11 discussion? All in favor say aye.

12 (Those in favor so indicate.)

13 MR. KING: Any opposed? All right. The
14 board has approved Mr. Marcantel. And I do think he's
15 a great choice.

16 So, Mr. Marcantel, the floor is yours. We'll
17 give you an opportunity to address the board.

18 MR. MARCANTEL: Mr. Chair, members of the
19 committee, folks here in the audience, I just want to
20 thank you for your blessing. I've had extraordinary
21 opportunities in the 32 years I've been in this
22 business. And many of them I didn't deserve.

23 With all of the folks that could have been
24 chosen to take on this endeavor, I'm not sure that
25 that's not one of the undeserved blessings. But I

1 accept it wholeheartedly.

2 I do so because I have a lot to pay back in
3 all the blessings in my career. There are folks on
4 the board here, there are folks that I've met and
5 talked to in the audience today to include yourself,
6 Mr. Chair, that have been a part of helping me mold
7 some effective points in my career.

8 And so my love for the law enforcement
9 community is directly related to the experiences I've
10 shared with many, many of you here. So God bless you
11 and thank you for your confirmation. I appreciate it
12 from the bottom of my heart.

13 MR. KING: Thanks. And welcome to you,
14 Mr. Marcantel.

15 (Applause)

16 MR. KING: I don't know if you should sit
17 down yet. I'm going to allow them to have questions
18 for you. Chief Schultz.

19 MR. SCHULTZ: I did have one question for
20 Mr. Marcantel. I noticed today we've got pink papers
21 and pink Post-Its and pink folders and you're wearing
22 a pink necktie. Is that going to be the official
23 color of the New Mexico Law Enforcement Academy?

24 MR. MARCANTEL: We certainly want to make
25 sure we're doing everything to coordinate all of our

1 efforts. That's one of our goals.

2 MR. SCHULTZ: And I do want to echo the
3 comments of Nate. And I've had a chance to know Gregg
4 for over 20 years. There's no doubt in my mind that
5 his dedication to the State of New Mexico law
6 enforcement community will be second to none.

7 I know he has always taken his assignments
8 working for the sheriff's department with the utmost
9 professionalism and has always gone above and beyond.
10 And I know he'll do exactly the same for everyone in
11 the State of New Mexico.

12 So congratulations, Gregg. And I look
13 forward to many great things over the next several
14 years.

15 MR. MARCANTEL: Thank you, sir, for your kind
16 words.

17 MR. KING: All right. Any other questions
18 for Mr. Marcantel?

19 MR. BETZ: Just one you might need to get on
20 your calendar. We have people in Washington that want
21 to sit down and talk to you already.

22 MR. MARCANTEL: Absolutely, sir.

23 MR. BETZ: I'll be the liaison for it.

24 MR. MARCANTEL: Your email is the same. I'll
25 send you an email today. Yes, sir.

1 MR. KING: Excellent. Thank you,
2 Mr. Marcantel.

3 ITEM NO. 7: DIRECTOR'S REPORT

4 MR. KING: The next item on the agenda is the
5 director's report. And since you're brand-new, I
6 guess you don't get to do the report. So let's give a
7 call to Mr. Najjar. Thank you.

8 MR. NAJAR: Mr. Chairman, board members,
9 guests here with us today, on behalf of the new
10 director, until he gets his feet on the ground here
11 with us, I'll walk through some of the director's
12 responsibilities today.

13 So in the director's report, you'll find kind
14 of the summary of what's transpired here at the
15 academy since our last board meeting at the Isleta on
16 December 7, 2010.

17 One of the highlights I think that has
18 occurred is we were able to advertise for the vacant
19 bureau chief position for the basic academy. We had a
20 selection process. And in that process we were able
21 to identify, make a job offer, and have that job offer
22 accepted by Phillip Gallegos who is our new bureau
23 chief.

24 His background is the last nine years he has
25 been the assistant director of the Law Enforcement

1 Academy in Farmington. So he's going to hit the
2 ground running with this. He's already put together
3 our next schedule and made a lot of adjustments. So
4 we're very happy with that selection. And I think
5 he'll do a great job for the Law Enforcement Academy.

6 And as you heard we've got a new director
7 obviously. The memorial that was held last week was
8 well attended. Many of you here were also present for
9 that. We got some very, very good remarks and
10 compliments on the continuation of that memorial,
11 especially by the families.

12 And our continuing to reach out to the
13 families is one of the things they really emphasized,
14 that they wanted us to make sure that the board
15 doesn't forget the fallen officers and that this
16 memorial does continue in the future.

17 The next item on there you'll see is that we
18 had a letter of resignation tendered by Mr. Phillip
19 Hill. One of the things I'm fortunate that we have
20 here at the DPS is we have an exit interview process.

21 And so during that exit interview with
22 Mr. Hill, I was able to salvage his employment here
23 with us in terms of, while he is leaving the basic
24 academy and we are going to be left with only one
25 active instructor in the basic academy, over in the

1 Critical Incident Response Training Bureau where we do
2 our dispatch academies, we were able to transfer him
3 over there and have him assume the responsibilities
4 for running the four dispatch academies,
5 telecommunicator academies annually.

6 Plus he'll pick up the ICS, HAZMAT training,
7 critical incident management training, and the variety
8 of other training courses that we do out of the
9 Critical Incident Response Training Bureau.

10 So having zero instructors there, now I at
11 least have one. And as you heard by the Secretary,
12 Mr. Marcantel, we are proceeding with looking at the
13 reclassification and hopefully in the near future
14 readvertisement of the other vacancies that we have
15 for the Law Enforcement Academy so that we get those
16 positions filled and get back on track.

17 The next item here, and it's a further item
18 on the agenda, and I'll just reference it now. We'll
19 talk more about it when we get to it. There were two
20 bills that resulted in what will be modifications to
21 the biennium in-service training and modifications to
22 the basic curriculum that were enacted by the
23 legislature and signed by the governor. So we'll talk
24 more about that later.

25 Basic police officer training class 181

1 graduated 16 cadets on January 26th. 180 graduated 45
2 cadets on February 3rd. Cert by waiver graduated
3 February 18th with 11 officers. And CIRT/PST
4 graduated 24 new dispatchers/telecommunicators from
5 PST class 115.

6 Upcoming on our schedule, and we're a little
7 tentative, but we feel I think that we can proceed
8 with continuing and not having to postpone the basic
9 class 182; that's scheduled to start June 20th this
10 month. Our next PST class, our
11 telecommunicator/dispatch class is scheduled for July
12 11. That is on track. And then our next cert by
13 waiver class No. 73 will be August 1st, 2011. And
14 that's the director's report. If there are any
15 questions.

16 MR. KING: Thank you, Mr. Najjar. Questions?

17 MR. KORN: Mr. Chairman.

18 MR. KING: Mr. Korn.

19 MR. KORN: Mr. Najjar, last time you gave us a
20 report on pending disciplinary cases.

21 MR. NAJAR: Yes.

22 MR. KORN: Can you tell us how many are
23 pending through the court system? I believe that's it
24 through the --

25 MR. NAJAR: The summary report, with the

1 departure of Art, Ernie and I have not had a chance to
2 recompile that for you. We will have a summary report
3 available to you prior to the next board meeting.
4 They'll tell you which ones are pending and at what
5 level they are at for you.

6 MR. KORN: And will that be prior to the
7 board meeting --

8 MR. NAJAR: Yes.

9 MR. KORN: -- by email or at the board
10 meeting?

11 MR. NAJAR: No. We'll get that to you prior
12 to the board meeting.

13 MR. KORN: Thank you, sir.

14 MR. KING: I would think it would be useful,
15 as soon as you have it completed, to get out to the
16 board members. Thank you. Any other questions for
17 Mr. Najjar? Okay. I don't think that we have to have
18 an approval for. So thank you, Mr. Najjar.

19 ITEM NO. 8: PUBLIC COMMENTS

20 MR. KING: The next item on the agenda is
21 public comment. And sometimes I have a list. Today I
22 don't have a list. Are there comments from the
23 public? All right. Seeing none, we'll move on to the
24 next agenda item.

25 ITEM NO. 9: OLD BUSINESS

1 MR. KING: The next item on the agenda, No.
2 9, old business. Medical Review Board, I have Jordan
3 Grady on here.

4 Mr. Grady, are you going to make a
5 presentation to us?

6 MR. GRADY: Yes, sir.

7 MR. KING: I'm sorry. I missed part of the
8 last meeting. So if I seem not to be up on old
9 business, that's why.

10 MR. GRADY: Good morning, Mr. Chair, members
11 of the board. My name is Jordan Grady. I'm a newly
12 graduated member of the Albuquerque Police Department.
13 Back in November I was part of the Medical Review
14 Board which examined my -- basically I had an
15 examination to apply for the police academy.

16 And my depth perception did not meet the
17 standards. And so the Medical Review Board was
18 convened to see if my depth perception would be, in
19 fact, okay to allow me to go through the academy.

20 They did, in fact, allow me to start the
21 academy. I had several different doctors assess my
22 vision. They all gave me the go-ahead. And then
23 throughout the academy I was measured and tested, my
24 shooting, my driving, all that sort of thing. And I
25 passed all of those things.

1 I ended up graduating fourth in the academy.
2 And I'm here to appeal to the board just to make sure
3 that I'm able to continue to serve the Albuquerque
4 community.

5 MR. KING: Okay. Thank you, Mr. Grady.
6 Zach, is there an action we need to take here?

7 MR. SHANDLER: Sheriff Coon was in charge of
8 the Medical Review Panel that met at least once and I
9 think may have met electronically. And in order to
10 make sure that this cadet, if that's the right word,
11 had the required physical requirements -- and my
12 memory of that, Sheriff Coon, is that there were some
13 initial letters from doctors. And then the panel
14 wanted to see additional letters?

15 MR. COON: Right. I think Mr. Grady went to
16 his own personal physician. And we asked him to go
17 outside to another physician and get a second opinion.
18 He did that.

19 We had two doctors on this panel,
20 Dr. Lieberman and Dr. Taylor. I guess they're both --
21 they weren't eye doctors. But they were some kind of
22 doctor.

23 And as far as we know, this is the very first
24 Medical Review Board we ever had. So we called it the
25 Grady law, the Grady bill, since he is the first one.

1 But again I think Mr. Grady, that everything
2 we asked him to do, we asked him to be monitored by
3 APD. We asked him to let us know how his -- how he
4 was progressing. One of the big problems we were
5 having was maybe with his driving. His depth
6 perception, whether he's going to be rear-ending other
7 cars or whatever.

8 And obviously that worked out very well for
9 you. And we got letters from APD plus the different
10 doctors that give him the okay. So they're the
11 experts. And we just went with them. And we feel
12 like he's done everything we've asked him to do and
13 has passed every test we've asked him to do.

14 MR. KING: Okay. Thank you, Sheriff Coon.

15 Mr. Grady, I notice that you have some folks
16 here. They're just here if we have questions? Will
17 you introduce them and let us know who they are. I
18 don't know that we'll have questions for them.

19 MR. GRADY: Absolutely. This is Lieutenant
20 Anthony Montano. He's in charge of the Albuquerque
21 Police Academy. This is my training officer, Officer
22 Donna Richter. And this is Detective Holly Anderson
23 who was my recruiting -- she did my background
24 investigation, all that sort of thing.

25 MR. KING: Okay. I take it then that you all

1 are here to say that you are confident that there are
2 no medical issues that would keep Mr. Grady from
3 participating in law enforcement?

4 MR. MONTANO: Mr. Chair, members of the
5 board, as director of training for the Albuquerque
6 Police Academy, I had a chance to evaluate Recruit
7 Officer Grady. I was aware of his condition and the
8 issues that were brought to me when I first started at
9 the academy.

10 I can tell you without a doubt that Recruit
11 Officer Grady is a phenomenal recruit officer. He has
12 demonstrated nothing less but above-par performance
13 while at the academy. And it has extended during his
14 time as a recruit officer with Officer Richter.

15 MR. KING: Thank you. We appreciate that
16 report. Anything else that you all have to add? You
17 don't have to, but you're welcome to.

18 MS. RICHTER: I've been training him for the
19 last two weeks since he completed the academy. And he
20 is probably one of the best first-phase recruit
21 officers I've ever had. He's doing exceptionally well
22 in all aspects including driving. He's doing very
23 well.

24 MR. KING: Okay.

25 MS. ANDERSON: Nothing to report, sir.

1 MR. SHANDLER: Mr. Chairman, behind tab 9 on
2 the back of the page is the Medical Review Board's
3 recommendation. And that happened on December 15th
4 which was after your last meeting.

5 The recommendation is to approve the grant of
6 the waiver of 10.29.9.7G(1)(D). And since it's a
7 subcommittee, that recommendation needs to go to the
8 full board at this meeting. And so you may look for a
9 motion to accept that recommendation.

10 MR. KING: Okay. And that is what I will do.
11 Is there a motion to accept the recommendation of the
12 review panel?

13 MR. KORN: Mr. Chairman, I would move to
14 accept the recommendation of the review panel.

15 MR. KING: Okay.

16 MR. SHILLING: I'll second.

17 MR. KING: Mr. Korn. Seconded by Chief
18 Shilling. All in favor say aye.

19 (Those in favor so indicate.)

20 MR. KING: Any opposed? All right.
21 Mr. Grady, thank you. It sounds like we owe you some
22 thanks because these could be issues in the future.
23 I'm glad it's not an issue for you. And we welcome
24 you into the ranks of law enforcement.

25 But based on what Sheriff Coon said, it's

1 probably good for us to get a chance to see how this
2 operates because it may come up again in the future.
3 But thank you very much.

4 MR. GRADY: Thank you for your time. Thank
5 you very much.

6 ITEM NO. 10: RATIFICATION OF CERTIFICATIONS FOR LAW
7 ENFORCEMENT OFFICERS

8 MR. KING: All right. Item No. 10, new
9 business, ratification of certifications for law
10 enforcement officers. Mr. Najjar, are you going to
11 present that?

12 MR. NAJAR: Yes. On behalf of the Director
13 of the Law Enforcement Academy, I do affirm that the
14 certification numbers and the individuals that I will
15 read here have completed all the necessary
16 requirements for certification and ratification of the
17 law enforcement certificates beginning with -- and
18 I'll jump around. We've got some odd certification
19 numbers.

20 These are law enforcement officers.
21 10-0227-P through 10-0231, consecutively. Then
22 10-0212-P consecutively through 10-0226-P. Then we
23 have an individual, 02-0050-P, 71-1744-P, 82-0381-P,
24 00-046-P, 02-0050-P, 02-0092-P, 04-0084-P.

25 Then consecutively beginning with 11-0001-P

1 through 11-0101-P. And finally 71-1744-P, 81-0110-P,
2 82-0381-P, 83-0309-P, 94-0296-P, 95-0035-P, and
3 95-0066-P.

4 MR. KING: Thank you, Mr. Najar. Is that all
5 the police officer certifications?

6 MR. NAJAR: That's all the law enforcement
7 officer certifications.

8 MR. KING: Questions from the committee?
9 Seeing none, I'll take a motion to approve or to
10 ratify those certifications.

11 MR. BETZ: Motion.

12 MR. KING: I have a motion. Second.

13 MR. SCHULTZ: Second.

14 MR. KING: Seconded by Chief Schultz. All in
15 favor signify by saying aye.

16 (Those in favor so indicate.)

17 MR. KING: Any opposed? Those certifications
18 are ratified.

19 ITEM NO. 11: RATIFICATION OF CERTIFICATIONS FOR
20 PUBLIC SAFETY TELECOMMUNICATOR

21 MR. KING: Item No. 11, ratification of
22 certificates for public safety telecommunicator.
23 Mr. Najar.

24 MR. NAJAR: These are our
25 telecommunicator/dispatcher 911 operators. Again on

1 behalf of the director, I affirm that each of these
2 individuals have completed the necessary requirements
3 for lawful state certification as telecommunicators
4 beginning with 11-001-PST through 11-003-PST,
5 individually 96-0045-PRD. Then continuing with
6 11-0004-PST through 11-0037-PST.

7 MR. KING: Okay. Questions of the committee?

8 MR. BETZ: Yes. On Ms. Chavez, is there
9 another action pending on her, did I see something
10 further back on Jeannine Chavez?

11 MR. NAJAR: No.

12 MR. KING: Any other questions? All right.
13 I'll take a motion.

14 MR. SHILLING: So moved.

15 MR. KING: Okay. It's been moved that we
16 ratify these. Second.

17 MR. COON: Second.

18 MR. KING: Second by Sheriff Coon. All in
19 favor signify by saying aye.

20 (Those in favor so indicate.)

21 MR. KING: Any opposed? Those certifications
22 are ratified as well, item No. 11. Thank you,
23 Mr. Najjar.

24 ITEM NO. 12: DISCUSSION - SETTING ADMINISTRATIVE
25 HEARINGS WHEN OFFICER HAS PENDING CRIMINAL CASE

1 MR. KING: Item No. 12, discussion, setting
2 administrative hearings when an officer has a pending
3 criminal case. Zach, is that yours?

4 MR. SHANDLER: Yes, Mr. Chairman. As
5 Mr. Korn indicated in his comments, the board has
6 always been concerned about the backlog of cases, of
7 disciplinary cases.

8 The board has a contract hearing officer who
9 takes that responsibility seriously and has docketed
10 over 20 cases in the last six months and has
11 successfully made it through several of those cases
12 which will be presented later today. And some of them
13 have resulted in settlement.

14 However, there are a couple that are still
15 lingering. And we wanted to bring them to the
16 policymakers for further instruction on how to handle
17 that. So the next three items will be under that
18 umbrella.

19 Under item 12, the tab 12, you'll see that
20 there's a motion for continuance in there. And I want
21 to draw you to paragraph No. 3. Here the setup is the
22 hearing officer will calendar a hearing. The officer
23 will retain counsel. And then you may see a motion
24 like this.

25 And in paragraph 3, "The respondents are

1 currently involved in preparing for their defense due
2 to criminal indictments and are being represented in
3 those matters by different legal counsel. Respondents
4 through their counsel have requested that this matter
5 be postponed until they've had an opportunity to have
6 their pending criminal matters resolved."

7 It has been the custom of the hearing officer
8 to grant those motions to continue. But to use a
9 cliché, I think he started to gnash his teeth about it
10 a little bit.

11 The disadvantage from the process side is
12 that the criminal side can take a long period of time.
13 And so these continuances can add up and add up and
14 cases can be years from the time of the LEA-90 which
15 is the complaint form to when the hearing officer gets
16 the report.

17 And that kind of aggravates I think the point
18 that Mr. Korn makes, that we have this backlog and it
19 keeps building up. And so we've been trying to
20 brainstorm about ideas of how to resolve that. But we
21 run into kind of a due process issue.

22 And I might turn this over to Mr. Jackson, if
23 he wants to provide more specific illustrations. But
24 if you do have a criminal case at the same time as the
25 administrative case, sometimes the DAs would prefer

1 their case to go first.

2 And sometimes the civil prosecutor may prefer
3 that as well because there may be controversial
4 evidence, key witnesses, and it may be that the
5 criminal justice system is the better process in terms
6 of the due process protections. So that's the dilemma
7 that hearing officers run into.

8 And we're not really sure if the board just
9 wants to keep with the status quo and we'll keep
10 granting these continuances or whether the board wants
11 to set some type of permissible timetable, like a
12 year.

13 We'll give you a year of continuances. And
14 if the criminal system hasn't gone, we're going to go
15 ahead and set it, no more continuances, and how to
16 balance out the civil and criminal process.

17 The final note I will say before I open it up
18 is that the hearing officer does read the Garrity
19 rights to these officers, which says that anything
20 they say at the administrative hearing can't be used
21 against them criminally. But that may not be
22 sufficient enough for the district attorneys or for
23 the defense attorneys. But we do try to provide that
24 protection.

25 So with that as a setting, first I just want

1 to turn it to Matt Jackson, as your administrative
2 prosecutor, and make sure that I didn't misstate
3 anything.

4 MR. KING: Mr. Jackson.

5 MR. JACKSON: No, that was accurate. I think
6 it may be somewhat illuminative to talk a little bit
7 about the process and some of the concerns that need
8 to be balanced as the board thinks about this issue.

9 The first is the former director, Mr. Ortiz,
10 was very aggressive, and I think properly so, about
11 pursuing disciplinary matters. He did not want
12 officers under a cloud. If somebody was suspected of
13 doing something, he thought it was best to take action
14 as soon as possible.

15 What we ended up working out was a system.
16 And this was primarily an exercise of prosecutorial
17 discretion; whereby, if we agree that there was a
18 factual basis and a legal basis to proceed independent
19 of the criminal charges for the same underlying
20 conduct; that is to say, that we didn't need the
21 conviction in order to secure an action against a
22 certification, then we would generally proceed.

23 This is because in many cases there would be
24 a settlement if the facts were not vigorously
25 contested. In other cases the criminal justice system

1 is somewhat unpredictable and there was not a great
2 deal of utility for us to wait.

3 This is particularly true in the domestic
4 violence cases, where frankly the criminal justice
5 system has failed as to police officers who are
6 charged with domestic violence.

7 However, there are cases where we did think
8 there was a factual basis. But I strongly felt that
9 the administrative hearing process was not an adequate
10 fact-finding tool for the charges. These would be
11 very serious criminal charges in most cases, such as
12 CSP on a minor.

13 And as much respect as I have for the
14 administrative process and the board's determinations,
15 I don't think it is consistent with due process
16 concerns to have an administrative hearing over a law
17 enforcement certification be the place where the
18 factual determination is made as to whether somebody
19 is a child molester. So in those cases we would
20 typically wait to even bring the action until the
21 criminal charges were resolved.

22 Now, the issue that Zach has brought up are
23 the cases that fall sort of in between that, where
24 the -- there is some basis, a sufficient basis to go
25 ahead and file a Notice of Contemplated Action and

1 serve that on the officer but there is criminal matter
2 pending that is either -- the resolution of which
3 would either be very helpful to the prosecution in
4 resolving the case because that decision would
5 normally be dispositive of the administrative process
6 and also there may be facts that need to be elucidated
7 from the respondents.

8 And as Mr. Shandler has alluded to, despite
9 the reading of the Garrity warnings, there are real
10 concerns about that. And so we would have -- if these
11 hearings were to go forward, we would have situations
12 where the officers would invoke their privilege
13 against self-incrimination.

14 Whether the Garrity warning is in effect in
15 this case I don't believe has been litigated in this
16 state. Mr. Shandler may be able to shed some more
17 light on that.

18 But even if it has, in many of these cases,
19 the administrative defense for the officer and the
20 criminal defense are being handled by different
21 attorneys who may or may not be in contact with each
22 other. And so that disconnect may lead to
23 difficulties in the fact-finding process if these
24 cases were to proceed while the criminal charges are
25 still pending.

1 So there is some real tension between the
2 need to resolve these cases in a timely manner and
3 both the ability to resolve them satisfactorily for
4 the board on the one hand and the due process rights
5 of the respondents on the other.

6 It may be that we need to just adopt a policy
7 where we don't begin these actions until whatever
8 criminal charges have been resolved. But I'm not sure
9 that that is consistent with the policy goals of the
10 board.

11 MR. KING: Question, Chief Shilling.

12 MR. SHILLING: I'm curious how soon after --
13 IPRA, Inspection of Public Records, is for lack of a
14 better term the bane of my existence sometimes. But
15 how soon after one of those administrative hearings
16 does that record become public?

17 MR. JACKSON: My understanding -- and
18 Mr. Shandler again is the board counsel and may be
19 able to shed a little bit more light on this. And he
20 also just knows IPRA better than I do. My
21 understanding is that that record is public as soon as
22 it is available; that is to say, compiled by the
23 court, simply because these are public hearings.
24 Anybody can show up and watch if they want.

25 MR. SHANDLER: That's correct.

1 MR. SHILLING: So we risk -- because exhibits
2 will be entered into the record, testimony will be
3 solicited, gathered, things like that, if there was a
4 serious criminal charge, you could potentially -- the
5 media would get ahold of that, publish facts about the
6 case before a criminal trial proceeded.

7 Regardless of Garrity or not, you're clouding
8 a jury pool or something in that nature. And that's
9 what you're kind of getting at?

10 MR. JACKSON: Yes, Mr. Chair and Chief
11 Shilling. That's actually an aspect that I hadn't
12 brought up, though you're absolutely correct. That
13 there is a potential media taint for a jury pool in a
14 criminal trial if there is another proceeding that
15 goes -- that happens before that.

16 As a factual matter, we've only had really
17 significant media interest in one proceeding before
18 the board during the time that I've been prosecuting
19 before the board.

20 Now, the officers, they'll show up on the
21 news usually before we get the reports. Not always,
22 sometimes we get the reports first. But once the
23 process is started, I've only seen significant
24 interest in one case.

25 MR. KING: Yes, Sheriff Coon.

1 MR. COON: What happens if we have -- if we
2 have one of these hearings and revoke somebody's
3 certification and six months later he goes to trial
4 and is totally exonerated. What safeguards do we
5 have, are we going to give him back his certification,
6 is he going to have to appeal it, what's he going to
7 have to do to get his job back?

8 MR. JACKSON: Mr. Chair and Sheriff Coon,
9 again this is an issue that to my knowledge has not
10 been decided by the New Mexico courts. However, in
11 the criminal system, as you are well aware, the
12 standard of proof is beyond a reasonable doubt.

13 The standard of proof for the board's
14 purposes is only a preponderance of the evidence. So
15 the failure to satisfy the reasonable doubt standard
16 should not have any preclusive effect or reversing
17 effect on an administrative decision by the board.

18 MR. SCHULTZ: Mr. Chairman, if I may.

19 MR. KING: Sure.

20 MR. SCHULTZ: And that was what I was going
21 to bring up, is different standards and the different
22 burdens of proof. But isn't it also true that in an
23 administrative hearing that you will allow a third
24 party representative to provide information on behalf
25 of the respondent officer; the officer does not have

1 to testify on his own, that you will allow third party
2 information to be introduced through another person?

3 MR. JACKSON: Mr. Chair and Chief Schultz,
4 that is correct. There is no obligation on the part
5 of the respondent to testify. As a practical matter,
6 I sometimes call the respondent as a witness,
7 sometimes I don't.

8 If the prosecution calls the respondent in
9 these cases and there's no criminal charge pending,
10 then they are obligated to testify just as they would
11 in any other civil proceeding. If the criminal charge
12 is pending, however, there is a question about the
13 invocation of the self-incrimination privilege even in
14 the face of the Garrity warning.

15 MR. SCHULTZ: If I may real quick as well.

16 MR. KING: Go ahead, Chief.

17 MR. SCHULTZ: And I'm sure I do more of these
18 hearings than anybody else internal within my
19 organization just because of the number of IA cases
20 that come through.

21 But one of the things that I see is that very
22 often the district attorney's office, depending on
23 what action is taken administratively, will not go
24 forward with criminal charges because they feel that
25 justice has been done because the employer has taken

1 action against the employee. So now I think we're
2 going the opposite way to say, well, let's put it all
3 back on the DA's back.

4 And then we also have the other issue that,
5 look, now you still have the officer, depending on
6 what the allegation is, who is still out there
7 performing his or her law enforcement duties; and
8 we've basically turned a blind eye waiting for the
9 district attorney's office to do something should that
10 officer go out and commit some type of egregious act.
11 I think we've got even bigger exposure there.

12 MR. JACKSON: Mr. Chair and Chief Schultz, I
13 think that that's a valid concern. Certainly in
14 litigation, when there are multiple venues and
15 multiple parties that are involved in litigation on
16 the same transaction of facts, nobody wants to be the
17 first into the breach there. Somebody has got to be.

18 And you raise valid issues as to if the
19 employment matter proceeds and the department takes
20 action that the DA believes is sufficient,
21 particularly given the docket pressures on our
22 district attorneys, there may not be a criminal
23 result.

24 But I do want to address a related concern
25 which is sort of the flip side of my response to

1 Sheriff Coon, which is that if the administrative
2 process goes forward and fails under a preponderance
3 of the evidence standard, that may pose some serious
4 res judicata problems for the criminal prosecutor,
5 because the defense could come forward and say they
6 only had to prove this conduct up in a very loose
7 administrative proceeding with relaxed rules of
8 evidence, they only had to prove it to a preponderance
9 of the evidence, and they couldn't do it. As a result
10 the criminal case will die.

11 I'm not saying that that's a guaranteed
12 result. But I'm sure that there are defense attorneys
13 out there who would feel very confident making that
14 argument.

15 MR. KING: Chief Shilling.

16 MR. SHILLING: I would be curious what the
17 industry standard is with other licensing or
18 certifying bodies. As an example, what does the
19 medical board do with M.D.s who are charged
20 criminally? Do they wait until the criminal case has
21 been adjudicated before they proceed with suspending
22 or revoking a license for an M.D. or for a nurse or
23 something like that?

24 MR. JACKSON: Mr. Chair and Chief Shilling, I
25 definitely can't answer that as to the medical board.

1 Our office doesn't handle those. With regard to other
2 licensing agencies, I think that -- I think that
3 handling varies from board and commission to board and
4 commission.

5 From conversations that I've had with my
6 colleagues, it seems that the issue of criminal
7 conduct looms a lot larger before this board than it
8 does before the other boards and commissions. And
9 that's not because police officers are somehow more
10 prone to criminal activity. It's just for many of the
11 licensing agencies, criminal conduct simply isn't
12 relevant.

13 But police officers are held to a higher
14 standard because they hold a public trust that a
15 massage therapist or a trainer for a racehorse or even
16 a doctor wouldn't have.

17 So with the other commissions and boards, you
18 only see that interaction with the criminal justice
19 system where the criminal conduct in some way relates
20 to their professional licensure, in the case of
21 something like Medicare fraud for a doctor.

22 MR. KING: All right. Any questions.

23 MR. BETZ: One question is is there any case
24 law out there, anything demonstrated where we've
25 actually lost cases because the administrative action

1 was not followed through or was not founded?

2 MR. JACKSON: Mr. Chairman, Chief Betz, I am
3 unaware of any such case. If the administrative
4 process goes forward and then that is appealed to the
5 district court, I do not handle that appeal; because
6 that is an appeal of a board action and board counsel
7 would handle that. And Mr. Shandler has been the
8 board counsel for some time. So he might be able to
9 answer that better than I.

10 MR. KING: Do you know?

11 MR. SHANDLER: Mr. Chairman, that has not
12 come up in the last six years.

13 MR. KING: Okay. Nate.

14 MR. KORN: Sir, I have a question. It seems
15 to me that the law enforcement board is empowered to
16 certify law enforcement officers and suspend,
17 decertify, or question whether they have a right to
18 continue being law enforcement officers. And that's
19 our goal as the law enforcement board.

20 That's a different goal than the criminal
21 system. And our job is simply to investigate and
22 prosecute and decide on what's going on as far as law
23 enforcement officers that get into trouble.

24 And if we start letting ourselves worry about
25 DAs and the way DAs worry about things and how DAs are

1 going to take it and whether defense attorneys are
2 going to bring up res judicata, then I think that this
3 long, long system of backlog of cases is going to grow
4 and grow and grow.

5 And I think we owe a duty to the public to
6 take care of our own business in our own house. And
7 if people come before us as law enforcement officers
8 that are accused of a crime or accused of an
9 irresponsibility, it's our job to figure that out and
10 do it quickly.

11 We owe that to the law enforcement officer.
12 We mostly owe that to the public that we serve. So I
13 think all this talk about what's the DA going to worry
14 about or what's going to happen in the criminal case
15 is so far at the outskirts of what we should be
16 deciding that it shouldn't even be part of this.

17 I think we should be worried about the
18 backlog and get rid of that backlog and get these
19 cases finished. And that's been my continuing
20 objection as I've learned more about it, that there's
21 way too many cases that are pending and not being
22 resolved.

23 MR. JACKSON: Mr. Chairman and Mr. Korn, if I
24 may briefly address your comment, I certainly
25 understand your concern and share your goal.

1 One of the bases that the board uses to
2 suspend or revoke a certification is a provision that
3 is in the rule which says that an officer's
4 certification may be suspended or revoked for acts
5 indicating a lack of good moral character, which
6 adversely affects an officer's ability to perform his
7 or her duties.

8 That provision is frequently contested in the
9 administrative process as being overly vague or broad
10 and not really having enough content to allow officers
11 to govern their conduct appropriately.

12 Now, I would argue, and I think that you
13 would agree, that when the conduct has risen to the
14 point where there are criminal charges pending, those
15 arguments as to vagueness or overbreadth of that
16 provision are substantially weakened.

17 But the other issue with that rule which
18 again has come up repeatedly is that it is not a
19 straightforward enactment by rule of something that's
20 in the enabling act for the Law Enforcement Academy
21 Board.

22 The board provides that there has to be a
23 finding of good moral character in order to certify
24 somebody. It also provides that the failure to
25 satisfy the qualifications for certification can

1 result in denial, suspension, or revocation.

2 And it is true that provision in -- well,
3 29.7.13, that this rule, this provision on moral
4 character, provides the board a basis to deny or
5 suspend. And so it requires a deep reading that is
6 potentially a vulnerable challenge of the enabling
7 statute.

8 And since we put so much weight on this moral
9 character provision in the prosecution process, the
10 actual determinations of criminal liability that would
11 otherwise provide just easy cases, like if somebody
12 has a conviction, it's trivial to deny or suspend
13 them; there are provisions that explicitly govern
14 that.

15 But for this moral character provision, we're
16 in a little bit fuzzier world. And that's why we end
17 up concerning ourselves with the interactions with the
18 other legal processes.

19 MR. KORN: Mr. Chairman, if I can just follow
20 up on that, the reason this whole discussion came to
21 us is to decide whether we're going to tell the
22 hearing officer to move ahead or issue adjournments.

23 Our job is to move ahead. I mean that's what
24 the statute says, that's what the common understanding
25 of what our board is all about says. And, you know,

1 the statute says moral character and that's what we're
2 to decide. That's the job we took when we became
3 board members and counsels to the board.

4 Let's move ahead. I mean let's just keep
5 moving ahead. What sense is there to be scared of,
6 oh, my gosh, they may sue us. Sure, they may sue us.
7 They may win, they may lose. Let's move ahead. Let's
8 do our jobs. Let's not be scared of what may happen
9 downstream or to the criminal case afterwards.

10 MR. JACKSON: Mr. Chair and Mr. Korn,
11 certainly regardless of whether the board decides to
12 stop granting these continuances or to continue
13 granting them, I will certainly prosecute the cases to
14 the best of my ability on the timeline provided by the
15 hearing officer.

16 MR. KORN: Mr. Chairman, if I may then, the
17 whole point of the discussion was whether we should
18 give instructions to the hearing officer to move ahead
19 or to issue adjournments. I would make a motion that
20 we say -- or as a policy, we'll have to ask how that
21 would be done.

22 But as a policy I think we should give
23 instructions to the hearing officer, move ahead, the
24 default is always to move ahead. And if there's some
25 reason as Chief Shilling pointed out that it may

1 somehow taint the media where we might want to in rare
2 cases not move ahead, then we can give instruction as
3 a board.

4 MR. KING: I'll tell you what, let's forego
5 the motion for the time being until we're done with
6 discussion. I don't know that -- I don't know what
7 process we have to use to give more formal direction
8 to the hearing officer. So I'll ask you about that in
9 a second. Let me get through all the questions.

10 MR. PEREZ: Sir, did I hear you say that we
11 as a board cannot compel a person who comes before --
12 a law enforcement officer to answer to us?

13 MR. JACKSON: Mr. Chair and Mr. Perez, I am
14 saying that that is the position that has been taken
15 and will be taken in the future by respondent's
16 counsel. As far as whether that's true as a legal
17 matter, that has not been determined by a New Mexico
18 court.

19 Under Garrity it may be that the
20 self-incrimination privilege does not apply because
21 they face no criminal liability for anything that they
22 say in the hearing. But again, at least in the New
23 Mexico courts, it has not been decided in any recorded
24 decision of which I'm aware whether that warning is
25 effective.

1 And as there are frequently different counsel
2 representing these respondents in the administrative
3 matter than in the criminal matter, that failure of
4 communication may mean that we do face a refusal to
5 testify.

6 Now, the legal consequences of that in New
7 Mexico law, if we were in court, would sometimes be
8 problematic; because in court you're not allowed to
9 take an adverse inference from that in New Mexico. In
10 many other states you are. But again in the
11 administrative process, it's unclear whether that
12 adverse inference is available.

13 MR. PEREZ: I think, therefore, that since
14 it's unclear, we should proceed and demand that
15 they -- I've been on this board for seven years now.
16 And this is my last meeting. I think that legal
17 issues are not our concern. This is an administrative
18 board.

19 And since I have been on this board, we have
20 had attorneys come in with respondents and desired to
21 speak for them. I think that as their employer, the
22 State of New Mexico, these officers answer to the
23 people of New Mexico.

24 We as a board I think empower them, certify
25 them, or decertify them acting on behalf of the people

1 of New Mexico. And we were set up as that board.

2 Again the legal issues I'm not saying are not
3 important. But that is not our concern.

4 This is an administrative board. And if we
5 don't act, the system is going to crash. We must take
6 action. And we should not be concerned about whether
7 the man has an attorney or not.

8 And I think that when they do show up with
9 attorneys, that's fine, if they want to, if they want
10 to pay for them. But that gets into the whole
11 business of if you have enough money to hire an
12 attorney and a so-called good attorney, that makes you
13 less innocent.

14 We know that that works very well in this
15 country, that everybody lawyers up. And up to the
16 President of the United States can vacate certain
17 rulings. I think that is not our concern.

18 This country was based upon common sense.
19 The juries are still made up not of attorneys but of
20 common people. And I think we are supposed to
21 represent -- there has been a lot of criticism of this
22 board because there are only two citizen
23 representatives at large.

24 And I am former law enforcement. I don't
25 think that you are, sir, correct? So he is the only

1 pure one here we might say. And again I think that we
2 have by law in New Mexico and we've been able to
3 responsibly carry forth our duties as representatives
4 of the people.

5 And I think it is very important to have law
6 enforcement experience on the board because this is a
7 very -- everybody is technical these days. But a law
8 enforcement officer has the power of life and death.
9 And more so than that in a way is the ability to
10 arrest a person.

11 To stop a person from acting and to stop his
12 movements is a very powerful one. The freedom of an
13 American citizen. I've been assigned abroad in nine
14 different countries. And we still have -- even though
15 we have a flawed system, we still have the best. And
16 we don't fear the police coming into our homes in the
17 middle of the night and taking people away.

18 And I think that boards like this are very
19 important to act in an administrative capacity using
20 common sense and not the law. The law is based on
21 precedent. It is not necessarily based on right and
22 wrong.

23 The business of moral turpitude, we've gone
24 into that many times before in my seven years that
25 we've been here. And it's, quote, vague. But then

1 it's not vague because it is left to this board to
2 determine what is moral turpitude.

3 And things do change with time. What was
4 considered immoral in dress at the turn of the century
5 is very different from what it is now. This board is
6 to determine what is moral turpitude.

7 And I think that we cannot give that up and
8 go back to the legislature, because they'll give us
9 some fine decision that will make this board useless.
10 So I think that we have this opportunity to act, we
11 have a responsibility to act.

12 And if we put this off on the courts or the
13 law or what somebody might say, we're not doing our
14 duty. I think we should be aggressive. And as long
15 as we have this power, we should use our common sense
16 as a board, not as individuals, to make our
17 determinations and to work for the people of the State
18 of New Mexico.

19 MR. KING: Thank you, Mr. Perez. Response,
20 Matt.

21 MR. JACKSON: No, Mr. Chair.

22 MR. KING: Okay. Other questions, comments?
23 Okay. Let me then -- I get to go last. More a
24 comment than a question too. I mean I think that we
25 have struggled with this.

1 I think one of the things that we haven't
2 raised where you see this a lot in New Mexico it seems
3 to me like is in -- with regard to drunk driving. And
4 I see that I have my DWI prosecutor back there. We
5 have that bifurcated system where we have the
6 administrative revocation of licenses and then we have
7 the criminal cases.

8 And I think that probably in New Mexico that
9 we move forward with those administrative revocations
10 without worrying about what's going on in the criminal
11 cases by and large, although I suspect that there
12 are -- that lawyers make motions to stretch out the
13 administrative hearings there too. I used to do some
14 of those a long time ago. It's been awhile since I've
15 done those kind of hearings.

16 So I actually agree that there is nothing
17 that I'm aware of from a legal point of view that
18 would keep us from proceeding with our administrative
19 hearings here related to that.

20 And I think I'm at least hearing from the
21 public members, and I don't know that the other law
22 enforcement members have weighed in one way or the
23 other on this, that the sense of this board is that we
24 should not certainly automatically grant any sorts of
25 extensions of time in these just because there's a

1 criminal hearing that's taking place.

2 My own thought is that I would be reticent to
3 take away from the hearing officer the authority to
4 look at the facts of any particular case and decide
5 whether to grant an extension of time or not. That
6 sort of seems to me to be in the discretion of the
7 hearing officer or the purview of the hearing officer,
8 because there might be other facts.

9 You were talking about cases like where
10 there's CSP of a minor or something like that. We
11 should take action as quickly as we possibly can to --
12 in a case like that.

13 Maybe to at least suspend a license or
14 something like that, because you don't want somebody
15 who's got, you know, significant charges like that
16 hanging over their head. I think the public would be
17 appalled if we -- if we in any way allowed them to
18 continue to be out there on the street doing law
19 enforcement with those kind of charges. The same
20 thing with domestic violence frankly.

21 But once again it's kind of hard for us as a
22 board to look at all the facts in all of those cases
23 effectively since we just meet once a quarter or
24 whatever, that the hearing officer I assume considers
25 these things on a fairly regular basis.

1 So, you know, having said all of that, Zach,
2 is there an action that we need to take today? I mean
3 could we -- or is there an action we can take in the
4 future, can we make a rule on this on or do we need a
5 rule on this?

6 MR. SHANDLER: Mr. Chairman, I don't think
7 you need to do a rulemaking. I think the hearing
8 officer is looking for direction. And whether you
9 want to memorialize that as a vote or whether you just
10 want Mr. Korn's statement to be that instruction; and
11 seeing no dissent from the other members, I will
12 convey that to him. It's up to you how you would like
13 to proceed.

14 MR. KING: Okay. I don't know, Nate. Like I
15 said I told you I would leave it up to you to make a
16 motion. If you want us to take a formal vote on that
17 and if you can boil it down to something that we can
18 vote on. I mean we probably need something where we
19 all understand what we're voting on.

20 MR. KORN: Could we make it in the form of a
21 motion that the default for the board, if the board
22 agrees, that the hearing officer grants no extensions
23 from administrative hearings unless there is
24 overriding reasons that he thinks -- in which case he
25 would present it back to the board to decide.

1 This way he would have direction that every
2 case moves along as quickly as possible. And if he
3 feels that there is some reason, instead of granting
4 it, he could bring it back to us for a final
5 resolution. Can that be boiled down, is that an
6 appropriate motion? Is the board even in agreement
7 with me? I don't know.

8 MR. KING: Let me do that first. Is there
9 agreement on the board that the sense of the board
10 should be that there shouldn't be any automatic
11 granting of extensions of time just because there is a
12 criminal action pending?

13 MR. SCHULTZ: Mr. Chairman, I think I agree
14 with just because there's a criminal action pending
15 should not be a reason. But at the same time, there
16 may be conflicts. So I think to say no extensions,
17 period, may be going too far the other way.

18 I'm thinking two meetings, six months, the
19 hearing officer may, you know, provide an extension or
20 a delay, whatever you want to call it, for up to
21 180 days which would be two board meetings. And if
22 it's going to be longer than that, then they have to
23 come back to us and say this is what the problem is.

24 MR. KING: And I heard Chief Shilling say
25 something about, you know, that -- certainly not more

1 than a year. That we should say that if the criminal
2 case takes more than a year, that we're going to
3 proceed no matter what. I mean that's another
4 possibility of doing that.

5 But, Nate, does that make sense to you, to
6 basically say --

7 MR. KORN: I think what Chief Schultz is
8 saying is that there may be reasons for a delay that
9 are appropriate such as an inability to get witnesses
10 or being out of town or getting sick. But what I'm
11 trying to do is unhook it from any other hearing such
12 as a criminal matter or grand jury.

13 I don't think there should be any connection
14 or nexus between anything that goes on between us and
15 any claim that there is a criminal hearing pending,
16 therefore, there should be delay.

17 And so if I understand Chief Schultz right,
18 yeah, I agree that obviously the hearing officer has
19 to say, sure, we'll grant an extension for any number
20 of routine reasons but not as a connection or hook to
21 a criminal matter.

22 MR. KING: And it might extend out our
23 meetings a little bit so that's kind of up to you
24 guys. But I suppose that we could ask the hearing
25 officer, and I think that they would do it, to have a

1 list of extensions that have been granted to show to
2 us at every meeting or whatever so that we would know
3 why. Is that doable?

4 MR. SHANDLER: Yes.

5 MR. KING: And it might not even extend our
6 agenda that much. I don't know how often they grant
7 extensions. But if we sort of had a list of here are
8 the extensions that were granted during this
9 three-month period and here are the reasons why, then
10 we would start to get an idea I suspect about why.

11 MR. KORN: And, Mr. Chairman, I wasn't
12 suggesting that we second-guess the hearing officer.
13 I think on routine, you know, extensions that happen
14 all the time, that's not our -- we as a board I don't
15 think care about that.

16 I'm just saying any request for a delay
17 that's connected to a criminal matter or a grand jury
18 or anything that might have another pending matter
19 should be automatically denied by the hearing officer.
20 That's -- that's the default. And a question about
21 that should come to us.

22 I surely don't think the hearing officer
23 would be doing any of us a service by giving us a
24 laundry list, okay, these are the 20 defense attorneys
25 that have asked for 20 extensions. And I'm told that

1 the board has to decide because the board should be
2 saying no.

3 MR. KING: No. And I don't think it's
4 necessarily in the purview, I don't think we would
5 want it to be in our purview for us to decide on every
6 motion for extension. It's not a particularly good
7 use of our time. That is why we have hearing
8 officers, to make those kind of decisions.

9 So once again let me ask this question, is it
10 the sense of the board, is everybody comfortable with
11 telling the hearing officer that we don't think that a
12 motion just on the grounds that there's a pending
13 criminal matter is sufficient grounds to grant an
14 extension? Is that the way I'm trying to say it?

15 MR. SCHULTZ: Yes.

16 MR. KING: Is that correct?

17 MR. KORN: Yes, that's correct, Mr. Chairman.
18 That's a better way of saying what I was trying to
19 say.

20 MR. KING: Okay. So do you want to make that
21 a motion, basically that we just send that along as
22 the sense of the board?

23 MR. KORN: Yes. That would be the essence of
24 my motion, that if -- that there would be no delays
25 for the reason that there is other criminal or other

1 matters that short of -- let me rephrase that.

2 The motion would be that there would be --
3 the board would say as a default that there would be
4 no delays granted because of other criminal matters.

5 MR. KING: Right. Can I say that again the
6 way I said it as a lawyer?

7 MR. KORN: Yours was better.

8 MR. KING: Are you okay with that? So
9 basically the motion would be that we pass along our
10 sense to the hearing officer that a motion for an
11 extension of time that is based solely on the fact
12 that there are other pending matters in any other
13 jurisdictions, how about that, criminal matters, other
14 jurisdictional matters, is not a sufficient ground for
15 granting an extension of time all by itself.

16 MR. KORN: Sure.

17 MR. SHANDLER: But if there's an overriding
18 reason to bring that to the board.

19 MR. KING: Yeah. And that we also will ask
20 the hearing officer to give us sort of a synopsis
21 report on -- at least for the foreseeable future on
22 extensions that have been granted and what grounds
23 have been used to grant that. Is that all right?

24 So we're not taking discretion away from the
25 hearing officer right now. We're going to tell him

1 our sense is that they shouldn't be granting
2 extensions just because defense counsel have raised
3 the fact that there's a hearing in another
4 jurisdiction.

5 And then over the course of the next two or
6 three meetings, as we look at why extensions have been
7 granted, maybe that will give us a better idea as to
8 whether we need do some sort of rulemaking or
9 something that's more formal. Is that all right?

10 MR. KORN: I would agree.

11 MR. KING: All right. So that's the motion.

12 Is there a second? I'll second it. All in favor say
13 aye.

14 (Those in favor so indicate.)

15 MR. KING: Any opposed?

16 (Those opposed so indicate.)

17 MR. KING: Okay. Yes. Mr. Perez. Okay.

18 Show Mr. Perez voting no. Do you want to explain your
19 vote?

20 MR. PEREZ: No. I think I've said my peace.
21 Thank you.

22 MR. KING: Okay. And like I said that's not
23 really exactly a binding thing. I mean it's the sense
24 of the board. But I think the hearing officer will
25 understand what our direction is. Okay. Thank you,

1 Mr. Shandler.

2 ITEM NO. 13: DISCUSSION - HANDLING ADMINISTRATIVE
3 PENALTIES WHEN OUT-OF-WORK OFFICER DOES
4 NOT MAINTAIN TRAINING

5 MR. KING: The next item on the agenda, No.
6 13, handling administrative penalties when out-of-work
7 officer does not maintain training. Is that something
8 that you want to explain?

9 MR. SHANDLER: Okay. Mr. Chairman, members
10 of the board, the same topic, general topic. If
11 someone has something a bad allegation against them by
12 their employer, they quit their job. They still have
13 their certification, but they're not working.

14 And we get this backlog situation that we're
15 trying to resolve. So maybe it's multiple years
16 before they get in front of the board's hearing
17 officer. Meanwhile they're so used to getting their
18 training done through their agency they haven't done
19 their training.

20 So the hearing officer is finding situations,
21 and you'll see in tab 13 in bold in two recent hearing
22 officer's reports, he's noted that when your
23 prosecutor presents what's called the POST form, that
24 it shows they're out of compliance with their
25 training. And that alone could be a disciplinary

1 ground.

2 So he was looking for some direction on how
3 to handle specifically when someone is out of work and
4 they're not keeping up with their certification
5 requirements, their gun training for lack of a better
6 word, do you want your prosecutor to add that as an
7 additional charge during the process or is that just
8 going to muck up the system more than it will solve
9 things? I don't know if Mr. Jackson wants to comment
10 further.

11 MR. JACKSON: Mr. Chairman, members of the
12 board, I would like to comment briefly. This POST
13 profile is normally the first exhibit introduced at an
14 informal hearing before the board. And it's
15 introduced simply to show that the respondent is a
16 certified law enforcement officer and subject to the
17 jurisdiction of the board.

18 Now, this hearing officer that we have now,
19 Mr. Radosevich, reads it very carefully. And he's
20 uncovered these training issues. I have not had any
21 cases brought to me that -- where the failure to
22 maintain the biennium was a basis to proceed.

23 I would need to think about it I think a
24 little bit more. But it may be that when you have a
25 termination situation because of a serious allegation,

1 that the failure to maintain could be an additional
2 grounds that may, in fact, help speed up the process.

3 It will lengthen the hearing a little bit,
4 but only a little bit. But it does provide an
5 independent basis for certification action that
6 doesn't depend -- that doesn't have the interplay with
7 the factors that we were talking about on the previous
8 agenda item.

9 And that may serve to move things along,
10 though the rate that it would speed things up would
11 largely depend on how long after the most recent
12 biennium training the respondent had been terminated.

13 You know, if they've just done their training
14 and then they get fired for misconduct, that's
15 probably not going to speed it up too much because
16 they've got another couple of years. But if it's
17 about time for them to get training and they've got
18 misconduct, it may move things along pretty quickly.

19 MR. KING: Comments especially out of law
20 enforcement? Have you guys seen this?

21 MR. COON: I think that's kind of piling on a
22 little bit. If you've suspended a guy or you've fired
23 a guy, you know, he's not going to have the money to
24 go to police classes.

25 He's probably not going to be welcomed at his

1 department to come take these classes. And another
2 department isn't going to let him. I think that's
3 just -- you know, that's just adding insult to injury,
4 piling on for a better word, maybe a cheap shot, just
5 one more kidney punch.

6 And I don't think that's fair regardless of
7 what the guy did or how heinous it was or how minor it
8 was. That's still to me piling on.

9 MR. SCHULTZ: Mr. Chairman, I kind of agree
10 with Mr. Jackson. I think No. 13, item 13 in the
11 agenda, does help push item 12 a little bit quicker
12 because of the pending training issues.

13 I don't think it needs to be an issue for the
14 hearing officer to consider. However, I think that
15 the license of the officer should still be in a level
16 of suspension -- not suspension is the word. But not
17 active until he or she comes into compliance.

18 And it's their responsibility to do that. I
19 don't think the employer -- I want to make sure that
20 we don't create a situation where the original
21 employer would be responsible for bringing that
22 officer back into compliance to make up any
23 maintenance training. It would be the officer's
24 responsibility.

25 So I guess what I'm trying to say is I think

1 that the hearing officer in his final conclusions
2 should just note that because of the fact the officer
3 hasn't maintained the training -- that the issue in
4 front of him has been resolved. But there is still
5 this item out there which would bring -- in order to
6 bring the officer to full compliance would include
7 making up training and qualifications, et cetera.

8 MR. KING: Can I ask you guys a quick
9 question, because I don't know the answer exactly. I
10 mean if somebody, say, doesn't get their firearms
11 certification or, you know, keep it up or whatever, is
12 it sort of automatic that they get pulled off-duty?

13 MR. COON: Well, they should. I mean your
14 department ought to do that. Now, whether it's being
15 done or not we don't know.

16 MR. SCHULTZ: Mr. Chairman, we have to sign
17 an affidavit every two years that shows that they're
18 current with everything. Plus there's the quarterly
19 LEA registry affidavit that we have to sign as well
20 that shows that --

21 MR. KING: But there's not something that the
22 state does that's sort of automatic that says you're
23 just -- you're not -- you're automatically not
24 certified if you don't -- if you don't do all these
25 things. We still have to take some action?

1 MR. SCHULTZ: Yes.

2 MR. KING: Notwithstanding the fact that
3 within an agency there might be some automatic action
4 that happens where you take them off the beat or take
5 their gun away.

6 MR. COON: Right.

7 MR. KING: All right. Other comments? Do we
8 have any sense of the group to give to the hearing
9 officer then? The hearing officer will be able to
10 read our comments in the transcript.

11 MR. SHANDLER: Mr. Chairman, it sounds like
12 there's at least two different ideas. One is, you
13 know, should Mr. Holmes, when he gets the file, also
14 say okay let's look at the POST and see if this person
15 is out of compliance, should I add that as a charge
16 when I forward the paperwork to Mr. Jackson.

17 And Mr. Coon said, well, there may be
18 practical reasons why that may be considered piling on
19 to not do that approach.

20 The second approach I think what Chief
21 Schultz says is that, in the hearing officer's report,
22 when he does see that in the POST, not to make it an
23 additional grounds for suspension or like another
24 60 days or what have you, but to say these are the six
25 things you have to meet in order to get your

1 certification back. And No. 6 is to make sure you
2 have now been brought current.

3 MR. KING: And that makes sense. It just
4 seems to me like that would be automatic, if you're
5 out of training or whatever, that you couldn't --
6 certainly if your certification has been suspended,
7 that you couldn't get it back until you showed that
8 you were current with everything.

9 Any other discussion? Is there any action
10 that we need to take on that? I'm pretty comfortable
11 with that.

12 MR. SHANDLER: If you're comfortable with
13 that.

14 MR. KING: All right. So I think that
15 there's no action necessary on that one. We'll pass
16 that sense along to the hearing officer.

17 ITEM NO. 14: SELECTION OF BACKUP HEARING OFFICER

18 MR. KING: Item No. 14, selection of backup
19 hearing officer. Mr. Shandler.

20 MR. SHANDLER: Mr. Chairman, you'll see in
21 your packet behind item 14 that the hearing officer is
22 still in law enforcement. So occasionally he does
23 have some conflicts. So I need some backup hearing
24 officers.

25 The one that's in the packet here is J. David

1 Smoker. So I need a hearing officer for that. And
2 also Chris Pino. Those names are both public record.
3 And I want to tell them because you may have
4 conflicts.

5 But these two are stalled out because I need
6 another hearing officer. So I'm not quite sure how to
7 motivate you to volunteer. So they're stalled out
8 until I get a volunteer for Smoker and Chris Pino.

9 MR. KING: Okay. A member of the board could
10 be the hearing officer in those cases?

11 MR. SHANDLER: That's right.

12 MR. KING: Who else would be qualified to be
13 a hearing officer in a case like that?

14 MR. PEREZ: Excuse me. Would I be qualified?
15 I'm going off of the board now.

16 MR. KING: When Mr. Perez retires from the
17 board, would he still be somebody who would be
18 qualified to be a hearing officer?

19 MR. SHANDLER: Mr. Chairman, the legal answer
20 is if the board voted to do that, that qualifies him.
21 He doesn't have to be a board member or not.
22 Financially he would have to work out whether he wants
23 to be a volunteer or a contractor.

24 MR. KING: And I don't know what the -- I
25 don't see the secretary anywhere. I don't know what

1 the government would think about somebody leaving the
2 board and then contracting to be a hearing officer. I
3 don't know what the understanding on that would be,
4 but it could be an issue. Sheriff Coon.

5 MR. COON: Sir, is this -- I think I was the
6 hearing officer on the first -- is this the same
7 incident?

8 MR. SHANDLER: This is the same one. You
9 were the hearing officer on this. And then you had
10 done a lot of duty. So then we had Robert Force and
11 then Robert went off. And then we haven't backfilled
12 that yet.

13 MR. KING: Let me keep asking a question
14 because I don't know this. Do we have some sort of
15 budget that we can use to hire a hearing officer?

16 MR. SHANDLER: Mr. Chairman, I don't handle
17 the budget items.

18 MR. KING: Mr. Najjar, how does that work?

19 MR. NAJAR: Mr. Chairman, board members,
20 historically it hadn't been a budgetary issue for us.
21 But over the last five, six years, we have had to
22 start allocating funds for hearing officers.

23 The message that we've often given the board
24 and probably would continue to give the board is
25 sometimes hearing officers are extremely expensive.

1 There are hourly rates. So we try to encourage
2 volunteers from the board to assist us in that. But
3 we are funded and can pay for hearing officers, if
4 necessary.

5 MR. COON: I'm extremely expensive, I just
6 never got paid.

7 MR. KING: I understand that, Sheriff Coon.

8 MR. KORN: Mr. Chairman, I would volunteer to
9 be a hearing officer. I would either not accept any
10 money or would be accepting a small stipend and would
11 apply that to a charity.

12 MR. KING: So a per diem or something like
13 that. Okay. So Member Korn has volunteered. Is this
14 for both of these cases?

15 MR. KORN: At least for one of them. I don't
16 know the time that's required. My business is --

17 MR. KING: Unfortunately I don't know either.
18 Mr. Najjar, do you have a feeling in either of these
19 cases if they're going to be time-consuming?

20 MR. NAJAR: I don't know.

21 MR. SHANDLER: Mr. Chairman, they're usually
22 half-day matters. You will get a file in advance. It
23 requires maybe some preparation, maybe an hour or so
24 preparation. Show up at the hearing. I'm there as
25 your attorney.

1 Like I say they're usually a half a day. And
2 then at the completion you give me oral instruction.
3 And then I write up your decision. And so then there
4 will probably be another hour afterwards where you
5 will have to review whether I've accurately captured
6 your ruling.

7 MR. KORN: Mr. Chairman and Mr. Shandler,
8 Mr. Pino, what department is he with?

9 MR. SHANDLER: Okay. Chris Pino I'm pretty
10 sure was at Rio Rancho at the time of the incident. I
11 believe he is now at a neighboring tribal -- Isleta,
12 Mr. Holmes?

13 MR. HOLMES: He's at Isleta now.

14 MR. KORN: I'm not sure if I may or may not
15 know Mr. Pino. I'm sure I don't know Mr. Smoker.

16 MR. KING: Actually let's do it this way,
17 Nate has volunteered to be a hearing officer as
18 backup. Let's look at the cases and see if that
19 works. Is there anybody else on the board that wants
20 to volunteer?

21 Because I assume that, if we present a case
22 to any member of the board, that they would be able to
23 look at it first and see if there's a conflict and all
24 those kind of things. You don't have to decided today
25 is what I'm saying. But I appreciate that. Anybody

1 else?

2 I'm guessing I cannot volunteer because of
3 the same problem that I have with all these other
4 things. Anybody else on the board? Does the board
5 want to give approval or authority? I don't know if
6 we have to do that.

7 Authority to either Mr. Najjar or -- like I
8 said I don't know how we choose a contracted hearing
9 officer. But would that be done -- if we just give
10 authority to Mr. Najjar to hire a hearing officer on an
11 individual basis, you know, if we have to, to make the
12 case move forward?

13 MR. SHANDLER: That sounds appropriate, yes.

14 MR. KING: Would that be appropriate? Chief
15 Shilling.

16 MR. SHILLING: Mr. Chairman, I would just
17 offer, we have a hearing officer process on the
18 discipline side near the state police house. And
19 we've gotten really good at the RFP process and the
20 contract process for those.

21 And we would be more than happy to assist the
22 LEA with that endeavor as well because we have one
23 basically full time.

24 MR. KING: Let's do that. If the board is
25 comfortable with that -- I don't know that I should

1 make motions myself as the chairman. I would just
2 make a motion that we give sufficient authority to
3 Mr. Najjar to review his budget.

4 And in cases where we just are -- where a
5 case is not moving along and we have to have a hearing
6 officer to either individually approach members of the
7 board. And if none of them can do it for whatever
8 reason, conflicts or whatever, to give him enough
9 authority to issue an RFP and get a hearing officer
10 for an individual case. Is that something we can do?

11 MR. SHANDLER: That's right. It would be
12 great if there was a motion.

13 MR. KING: Okay. So that is a motion.

14 MR. BETZ: Second.

15 MR. KING: Okay. Hopefully the transcript
16 will have that down carefully. Like I said it's just
17 granting authority to Mr. Najjar to issue an RFP in
18 cases where there's conflict or some other reason that
19 nobody on the board can do that.

20 But first thing he'll do is ask members of
21 the board if we can do that. And you can do that by
22 an email or something. All right. All in favor
23 signify by saying aye.

24 (Those in favor so indicate.)

25 MR. KING: Any opposed? Okay.

1 We have been sitting here a long time. I'm
2 going to call a recess for ten minutes. We'll start
3 back at a quarter to.

4 (Recess.)

5 ITEM NO. 16: DISCUSSION -- CBW REQUIREMENTS
6 AND INTERNATIONAL L.E.O.

7 MR. KING: I'm going to bring the meeting
8 back to order. And the next item on the agenda is
9 item No. 16, a discussion of CBW requirements and
10 international L.E.O. It sounds interesting to me.
11 And I have here that the San Juan County Sheriff's
12 Office is here. Go ahead and introduce yourself.

13 MR. UTLEY: Mr. Chairman, members of the
14 board, my name is Shane Utley. I'm a captain with the
15 San Juan County Sheriff's Office. I would like to
16 introduce Senior Constable Brighty Abbott. She's a
17 constable with the New South Wales Police Department
18 stationed out of Sydney, Australia.

19 And Brighty also has a dual citizenship in
20 the United States. Her father is actually a U.S.
21 citizen and her husband is a U.S. citizen as well.
22 Constable Abbott had applied to the San Juan County
23 Sheriff's Office and has passed all pre-employment and
24 pre-academy criteria.

25 In consideration of Constable Abbott's

1 education and experience, we feel she possesses the
2 necessary criteria to qualify her as a candidate to
3 the certification by waiver program.

4 Constable Abbott has served as a law
5 enforcement officer in Australia for nine years.
6 She's completed her Associate's degree with the
7 Charles Sturt University. The Associate's degree in
8 policing practice is 69 weeks in length. The first 27
9 weeks are campus studies at the police college and the
10 remaining 42 weeks are completed through a distance
11 education while working at the local area command.

12 On-campus education classes were held five
13 days a week for eight hours a day. Upon review of all
14 areas of basic law enforcement knowledge and
15 practicum, we believe that she meets all areas that
16 are mandated by the State of New Mexico with the
17 exception of the U.S. Constitutional laws and the New
18 Mexico laws and procedures, radio procedures, the Safe
19 Pursuit Act, and first aid.

20 Per the certification by waiver, of course,
21 curriculum, the U.S. and New Mexico laws and the
22 state's Safe Pursuit Act are addressed. Radio
23 procedures and first aid will be addressed by the
24 local agency level and taught by certified
25 instructors.

1 Constable Abbott received 36 hours of
2 advanced motor vehicle operation in addition to the
3 basic motor vehicle operation training she received
4 while in her academy. She also received a silver
5 certificate for graduating from that.

6 This allows officers to pursue and operate
7 motor vehicles in a high-stress situation. Constable
8 Abbott is also a domestic violence liaison officer and
9 a training officer and worked with agencies and
10 victims combining domestic violence.

11 Constable Abbott, she actually authored a
12 book for police and victims which is utilized across
13 Australia for handling domestic violence situations.

14 Constable Abbott received advanced training
15 in the areas of domestic violence, youth offenders,
16 and, of course, she maintained all of her training --
17 her continuing training that she has to have to be a
18 police officer.

19 Based on Constable Abbott's education,
20 training, and experience, the San Juan County
21 Sheriff's Office asks the board to acknowledge her
22 accomplishments and accept her as a candidate for the
23 certification by waiver program.

24 What we have here is we handed out some stuff
25 to you. Of course, the first thing here is a copy of

1 her resume. And then the second handout that we
2 handed is, of course, the police academy degree which
3 is from Australia.

4 And what we did at the sheriff's office is we
5 actually took -- and we looked at all of her training
6 certificates and the things that she did. And then we
7 took a copy of the New Mexico Law Enforcement
8 Academy's curriculum. And we put them side by side
9 and looked at them.

10 And after reviewing those side by side, the
11 only difference was what I previously talked about,
12 was, of course, she did not possess the U.S.
13 Constitutional laws and New Mexico laws and procedures
14 portion of the academy. She did not possess, of
15 course, the Safe Pursuit Act or the first aid
16 training.

17 However, the certification by waiver class,
18 it does teach the U.S. Constitutional laws and New
19 Mexico laws and procedures and it does teach the Safe
20 Pursuit Act. So, you know, that leaves the first
21 aid -- actually the first aid and the Safe Pursuit
22 Act, sorry about that, to be taught by us.

23 So kind of the bottom line here is we're just
24 asking you to review her credentials and see if she
25 can be a candidate for cert by waiver in lieu of

1 having to attend a full academy.

2 MR. KING: Interesting question. Thank you,
3 Captain. Questions. Actually, Chief Shilling, go
4 ahead.

5 MR. SHILLING: Mr. Chairman, I was going to
6 go to Deputy Director Najjar and see if we've had any
7 of these in the past with international police
8 officers.

9 MR. NAJAR: Mr. Chairman and board members,
10 this is a unique situation. We've never had a request
11 to recognize basic law enforcement training from any
12 agency or entity outside of the United States.

13 There's a form that is required. The
14 standard for New Mexico is that a state post, a police
15 officer standards and certification agency within one
16 of the 50 states will accredit or affirm that the
17 basic law enforcement training that was received by
18 that officer that is coming to New Mexico has been met
19 by that state.

20 We accept that. So we've never had anyone --
21 the individuals that have come in that have attended,
22 I think we've had a couple from England, one from
23 Canada that went through our entire basic training
24 academy, even though they had prior training.

25 So this is the first time we have a request

1 to recognize the basic law enforcement training from a
2 foreign country. So there is no precedent for this.
3 And the standard is traditionally we would accept the
4 certification from a state post, Texas, California,
5 whoever, that their state standards for certification
6 have been met. It's new.

7 MR. SHILLING: Mr. Chairman, Counsel, just to
8 follow up, there wouldn't be any rule prohibiting us
9 from recognizing such, is there?

10 MR. SHANDLER: Mr. Chairman, I think the law
11 for cert by waiver says the director with the approval
12 of the board shall waive the basic training program
13 when there is a furnishment of evidence of
14 satisfactory completion of a basic law enforcement
15 training program which is comparable to or exceeds the
16 standards of the programs of the academy.

17 That's State Law 29.7.10. So I think what's
18 in front of you is the documents that have been
19 presented to you is that evidence that shows the
20 academy or training program is comparable or exceeds
21 the standards of the New Mexico Law Enforcement
22 Academy.

23 MR. KING: Chief Betz.

24 MR. BETZ: Mr. Najjar, did you get a chance to
25 look at her packet yet, have you looked at it?

1 MR. NAJAR: Yes, sir, Mr. Chairman and Chief
2 Betz. We did review it. I've been in communication
3 with Captain Utley on this. The comparability I think
4 is present as we evaluated it in terms of the hours.

5 The standard for the New Mexico threshold is
6 a minimum 800 hours of combined basic law enforcement
7 and/or in-service advanced training. So as long as we
8 meet that 800-hour threshold, then we would recognize
9 it from any other state. There wouldn't be a problem
10 with us if this were another state in the union.

11 MR. COON: We also do this military. We have
12 people that have come in through MPs, SPs, whatever
13 throughout the military, have come in and done cert by
14 waiver.

15 MR. PEREZ: Question.

16 MR. KING: Yes, Mr. Perez.

17 MR. PEREZ: About a year and a half or two
18 years ago, we had an issue arise about the high school
19 certificate. And we went round and round. And there
20 was the issue was an officer here at the time from
21 Mexico.

22 And I think that the rule was changed by this
23 board over my objection, that it had to be an American
24 high school accreditation. That has put us in a box
25 here now. This lady did not attend an American high

1 school.

2 MR. SHANDLER: Let me -- I believe that's for
3 the certification into the basic. And this I think is
4 a different statute. Now, my memory may be incorrect.
5 I thought he was an applicant in the basic. Gil, do
6 you remember?

7 MR. NAJAR: That's correct.

8 MR. SHANDLER: Okay. So State Law 29.7.6,
9 qualifications for a basic, is the citizen -- I'm
10 sorry. Holds a high school diploma. And so you're
11 correct, your memory of it. This is 29.7.10,
12 certification by waiver. And it does not have that
13 language in there.

14 MR. PEREZ: It does not say they have to have
15 a high school diploma?

16 MR. SHANDLER: It does not say that in 10.

17 MR. PEREZ: Excuse me. Did that officer --
18 did he continue or what was the situation with him?

19 MR. NAJAR: Mr. Chairman, Mr. Perez, the
20 individual resolved that by getting a GED here in the
21 United States.

22 MR. PEREZ: Okay.

23 MR. KING: Mr. Perez, are you done?

24 MR. PEREZ: Yes, sir. Thank you.

25 MR. BETZ: Just one question. Under the

1 Charles Sturt University, I do know of some cases
2 involving colleges. Is that recognized by the U.S.
3 Department of Education or whoever blesses these
4 things? Is that something that will fold over? You
5 know, because sometimes you will get a degree in one
6 place and they'll accept it someplace else.

7 MS. ABBOTT: Chairman and members of the
8 board, I believe that it's an international accredited
9 university. They do take international students that
10 have actually already started their college degree
11 within the United States and other countries. It's
12 internationally accredited with regards to credit
13 points as well.

14 MR. KING: Other questions of the committee?

15 MR. KORN: Mr. Chairman and folks from San
16 Juan County, I have a question. And I got in just a
17 couple minutes late so maybe you've already discussed
18 this. How did you -- did you discuss how Constable
19 Abbott happened to come to San Juan County?

20 MS. ABBOTT: I reluctantly for lack of a
21 better word -- my husband has been wonderful to me and
22 been within Australia for the last 11 to 12 years.
23 And I've been a police officer there for nine years.
24 So he supported me through that process.

25 And then he wanted to spend some time with

1 his family. We both felt it was very important for
2 our children to experience the American side of their
3 family with my dad being from Minnesota as well.

4 So we have moved over here so that they get
5 to know the American side of their family. The only
6 reason I didn't want to leave was the love of my job.

7 MR. KORN: Back in South Wales?

8 MS. ABBOTT: Yes.

9 MR. KORN: And your husband is employed in
10 San Juan County I gather?

11 MS. ABBOTT: At this point in time, he is
12 not. He's been here for three weeks. I came ahead of
13 the family and my children. And I had the benefit of
14 doing ride-alongs with the sheriff's department. I
15 was able to do eight or nine ride-alongs.

16 I was able to compare apples to apples. I
17 was able to see how law enforcement was very similar,
18 people are very similar, the laws are very similar. I
19 obviously have a lot to learn with regards to New
20 Mexico law. But the way that it is enforced and the
21 way that you learn it and you look it up is
22 international. And I feel very confident that I would
23 be able to do that.

24 MR. KORN: And one other question. When you
25 first went to the police department and said you were

1 interested in applying with your accent, what did they
2 say to you?

3 MS. ABBOTT: I had the benefit of having a
4 brother-in-law within the fire department. And he had
5 already passed on my resume. So when I went in, he
6 had done introductions for me.

7 MR. COON: When you did the ride-alongs, did
8 you feel like you were driving since you were sitting
9 on the right side?

10 MS. ABBOTT: I had grown up with my dad from
11 Minnesota. So every year I had done Christmas. And
12 then when I met my husband, I had worked previously in
13 Northern Florida. So I had previously lived in
14 Florida and I have lived for a short period of time in
15 Texas.

16 MR. BETZ: For the captain, do you do a
17 pre-test for -- you know, to make sure they can get
18 through the recert for the physical and everything?

19 MR. UTLEY: Yes. We have actually already
20 hired her. So, of course, we're hoping that you'll do
21 a cert by waiver because of our budget and just the
22 constraints of having people on the streets, you know.

23 But she does meet all qualifications that she
24 could do the basic academy if we had to do that as
25 well. So she has met everything. We've done a full,

1 complete, and thorough background on her. Everything
2 was great. We wouldn't have offered the job if she
3 wouldn't have passed everything.

4 MR. BETZ: The states normally get them from
5 us. So I don't know about Australia.

6 MR. KORN: Mr. Chairman, I would like to
7 acknowledge that I think it's a wonderful opportunity
8 for San Juan County and the state to have somebody
9 from an international background kind of contributing
10 to us and also learning from us and we can learn from
11 them. So I think it's a great opportunity for all
12 parties.

13 MS. ABBOTT: Thank you.

14 MR. UTLEY: I think, as I mentioned earlier,
15 she is basically the expert out of her section there
16 in Sidney, Australia, on domestic violence. And she
17 actually wrote or authored a book, I think she has a
18 copy here today, that is used throughout Australia on
19 domestic violence.

20 So we are looking forward to using her
21 expertise with us as well. I mean certainly they're
22 doing things there that maybe we could do different
23 here.

24 MR. KORN: May we pass around the book?

25 MR. UTLEY: Yes.

1 MR. PEREZ: And you have dual citizenship?

2 MS. ABBOTT: I do, yes, sir.

3 MR. KING: Other questions of the committee?

4 My understanding then is our approval of this would
5 just get you into the cert by waiver class, right? So
6 you still have some hoops to jump through. All right.
7 I'll take a motion.

8 MR. COON: Mr. Chairman, I make a motion we
9 accept this young lady into the cert by waiver class.

10 MR. KING: All right. Sheriff Coon made the
11 motion.

12 MR. BETZ: Second.

13 MR. KING: Chief Betz seconded. All in favor
14 say aye.

15 (Those in favor so indicate.)

16 MR. KING: Any opposed? The motion carries.
17 So we'll approve her to move forward to cert by
18 waiver.

19 I hope we all do learn something from you. I
20 think there is some good opportunity for some
21 discussion about what works. Congratulations.

22 MS. ABBOTT: Thank you very much.

23 ITEM NO. 17: DISCUSSION - HB93 AND OTHER
24 TRAINING ISSUES

25 MR. KING: The next item on the agenda, item

1 No. 17, discussion of House Bill 93 and other training
2 issues. Mr. Najjar.

3 MR. NAJAR: Mr. Chairman, board members, we
4 would like to take the opportunity at this time -- we
5 know you're all aware of the changes that the
6 legislature enacted here and specifically in two areas
7 that will impact the biennium training.

8 The board will act in the fourth quarter of
9 this year to approve the biennium requirements for
10 2012/2013. Part of that rulemaking process that we'll
11 engage in in the fourth quarter of this year will
12 include adoption of the new requirements that have
13 been established.

14 So we want to take this opportunity to just
15 briefly cover some of the highlights or the important
16 aspects of the training that's being required and then
17 see if there is some guidance or some direction that
18 the board wishes us to proceed with in terms of
19 establishing the training curriculums to meet the
20 requirements that have been set here.

21 And I wanted to specifically look at what was
22 defined here, because the training as defined or
23 described in the legislation and what is the hours
24 that have been identified within the legislation are
25 not consistent -- would not probably work given the

1 vast amount of information and topics, the variety of
2 topics that the legislature says we must cover that
3 includes a practicum.

4 So the first area under House Bill 93 has to
5 do with interactions with persons with mental
6 impairment. And as you know we've been working on
7 this for some time. This is block nine and ten of the
8 800-hour curriculum that we're continuing to modify.

9 It says "A minimum of 40 hours of crisis
10 management, crisis
11 intervention/confrontation/de-escalation practicum and
12 proper interaction with persons with mental
13 impairments."

14 The mental impairment definition becomes
15 important here. If you look over on the next page,
16 under letter D, paragraph D, it says "As used in this
17 section, mental impairment includes mental illness,
18 developmental disability, post-traumatic stress
19 disorder, dual diagnosis, autism, youth in crisis, and
20 traumatic brain injury."

21 So that's what we need to instruct within the
22 curriculum that we will design and develop to meet the
23 requirements of this legislation. So when we look at
24 the definition here, it says "A minimum of two hours
25 of crisis management." We don't know that that is

1 achievable within two hours.

2 That includes if you're doing a class of 40
3 officers, 20 to 40 officers in a classroom, to include
4 within two hours delivery of these topics and include
5 a practical exercise which will be a scenario with
6 some actors in the roles of individuals with mental
7 impairment.

8 That's one of the things we wanted to bring
9 to your attention. It's a 40-hour crisis for the
10 basic academy. Some of the academies have already
11 incorporated in that sense the 40-hour requirement.

12 But it's now I think a question of do we want
13 that standardized so all nine academies are teaching
14 the basic same curriculum or do we want some
15 flexibility within that. So that's something we would
16 like to present to you for your discussion.

17 The telecommunicator is one that also kind of
18 confounded us, because it calls for the identical
19 training there; but to be done and completed within
20 one hour. So we do have a curriculum that we borrowed
21 from the Houston Police Department.

22 They have a very, very well-established CIT
23 program in Houston that includes our dispatchers, the
24 telecommunicators, and specific training for them,
25 none of which can be accomplished within one hour.

1 The basic program is a minimum of 16 hours. But we
2 would like you to consider that as well.

3 And then the next section applies -- and it's
4 important on the next page, page 3, it says "The chief
5 law enforcement officer of a state, county, or
6 municipal law enforcement agency who was elected or
7 appointed prior to July 1, 2011," so all those
8 incumbent individuals who are heads of agencies "must
9 also complete the training and minimum of two hours."

10 And that must be done by July of next year.
11 So there is -- that's the only one that has a time
12 constraint that is of concern to us. Again the issue
13 is within two hours. Is it even feasible to
14 accomplish that type of training even at this
15 executive level for these individuals.

16 So we would like some input and feedback from
17 you all as to any direction you can provide to us on
18 that.

19 The other part of the legislation that does
20 impact us that we're not as concerned about had to do
21 with the child abuse incident training. That is
22 already a part of all the basic 800-hour curriculum.
23 So we're covering that. Not a problem there.

24 The guidance and direction we're seeking is
25 now it must become as well part of the mandated

1 training hours for each biennium cycle. We've already
2 got the domestic violence, pursuit, hate crimes,
3 ensuring child safety, Amber Alert, missing persons,
4 and then we've also got a DWI.

5 So now that 40 hours is being eaten up quite
6 a bit now as the legislature continues to kind of
7 mandate these hours. And they're mandated for each
8 and every biennium cycle. So our request here for the
9 child abuse part of it is is one hour adequate in your
10 opinion, some guidance there, or should the Law
11 Enforcement Academy look at a more in-depth training
12 program under child abuse.

13 MR. PEREZ: Mr. Chairman.

14 MR. KING: Mr. Perez, go ahead.

15 MR. PEREZ: Mr. Najjar, do you know the
16 history of this legislation?

17 MR. NAJAR: We tried to research that. In
18 terms of the child abuse, we're still waiting on some
19 feedback from the original bill sponsor.

20 We've had an individual identified with Child
21 Protection Services that is probably or hopefully will
22 provide us some of that history as to why this came
23 about, was there a specific law enforcement incident
24 or incidents out there that led to them going to the
25 legislature to require us to be trained. So we're

1 still researching that. We have not had any specific
2 feedback on that at this point.

3 On the CIT part of it, that's an ongoing
4 issue for the state. And the National Alliance for
5 the Mentally Ill had met with us, they had advised us
6 they were going to proceed with that. We had provided
7 them guidance with what we would prefer to see in the
8 legislation.

9 And within I guess their organization and
10 within their interaction with the legislature, kind of
11 our direction and guidance to them kind of was
12 dropped. And they went off into the direction and the
13 result was the bill you have before you.

14 MR. PEREZ: This business of youth in crisis,
15 these things are very, very broad. Would these things
16 not automatically be dealt with in the academy in
17 training for the general citizenry? Because we
18 recognize that there are -- these people are part of
19 the regular citizenry, the officers that are trained.

20 MR. NAJAR: We've been looking at this for
21 the last three years. When we talk about two areas,
22 PTSD -- actually three, PTSD, TBI, traumatic brain
23 injury, then the youth in crisis, within the CIT
24 training curriculum and the mental illness part of it,
25 those weren't very adequately addressed and in some

1 instances have not been addressed in the training at
2 the basic level.

3 So we definitely felt that we could support
4 the introduction of PTSD, youth in crisis. And as we
5 researched that, I think Ohio and a couple of states
6 have developed curriculums for youth in crisis. It is
7 an area that in law enforcement we have not addressed.

8 MR. PEREZ: Thank you.

9 MR. KING: Chief Shilling, I saw your hand.
10 Question.

11 MR. SHILLING: Mr. Chairman, sir, just a
12 little historical on the child abuse training. The
13 genesis of that was a community meeting in Dona Ana
14 County regarding some child abuse cases that were high
15 profile in the media.

16 And as a result of that community meeting, my
17 understanding is there's a recommendation for enhanced
18 law enforcement training in that realm.

19 MR. KING: Chief Betz.

20 MR. BETZ: Yes, a question for Mr. Najar.
21 Would it be too late -- because I notice it says
22 municipal. We have nothing in here with regard to
23 tribal.

24 Due to the fact that 80 percent of my
25 clientele are nonnative, if this is going to be

1 something omitted, they'll take it to heart. And they
2 won't pursue this, where I think it has to be included
3 to ensure we're included in that.

4 MR. KING: Can I address that. I don't
5 remember our office being specifically involved in
6 this legislation one way or the other. But my general
7 theory about this is that it looks to me, in looking
8 at the language quickly, that it sets sort of minimum
9 standards but not maximum standards or whatever.

10 So I assume that if the Law Enforcement
11 Academy decides that they need to add some things to
12 curriculum or something like that, that the academy
13 could do that and that the board can recommend that or
14 whatever.

15 And I was looking even at the hours. I
16 noticed, Mr. Najjar, where you were saying that two
17 hours is not enough to fit that in. Just looking at
18 the language real quick, it said a minimum of two
19 hours. And so I think there's some discretion there
20 if you feel like you've got to have two and a half or
21 three.

22 The biggest problem is that issue of how do
23 you fit all the different trainings that the
24 legislature requires to do into your 40 hours. And
25 that's a real logistical problem I suspect.

1 It strikes me that if there are -- if that
2 language is too restrictive, that it might be that we
3 as the board could encourage them to add training on
4 certain things. Do you agree or disagree, Mr. Najjar?

5 MR. NAJAR: Mr. Chairman, we agree. We do
6 encounter those instances where some of our chiefs and
7 sheriffs are very literal. And what they'll confront
8 us with is have you addressed this with the board,
9 because the law says one hour, why are you making us
10 go for three hours.

11 So as long as the discussion is taking place
12 and we receive guidance from you, I think that will
13 generally satisfy the head of an agency that at least
14 your input was solicited and we are proceeding with
15 guidance from you.

16 MR. BETZ: I don't know if you heard me. I
17 said I wonder if you would -- you don't mention tribal
18 until there. And I can see some of the chiefs out
19 there, the tribal chiefs, saying, well, it doesn't
20 apply to us.

21 MR. NAJAR: It applies to everyone who has a
22 New Mexico State law enforcement certification. If
23 they're a chief or a sheriff or a tribal officer that
24 is not certified, then it's not going to apply to
25 them.

1 MR. KING: Sheriff Coon.

2 MR. COON: Mr. Najjar, this is a little bit
3 off subject here. But when a recruit comes out of the
4 academy and has his 800 hours and he graduates the
5 first half of the biennium, like 2010/2011, he comes
6 out in 2010, how many hours does he have -- does he
7 have to make up -- does he have 20 hours to make up in
8 2011 or will his 800 hours count for the whole
9 40 hours cycle?

10 MR. NAJAR: Mr. Chairman, Sheriff Coon, the
11 way the rule reads is that if you graduate and are
12 certified in the first year of the biennium, you're
13 responsible for 20 hours of training. If you graduate
14 in the second year, you're not responsible for
15 anything until the following biennium.

16 MR. COON: Okay.

17 MR. KING: Chief Schultz.

18 MR. SCHULTZ: Mr. Chairman, as a result of
19 House Bill 93, there's a working group that's been
20 formed down in Bernalillo County consisting of
21 Dr. Troy Rogers who is one of the -- my department's
22 psychologists. He's been working hand in hand with
23 representatives from NAMI and FIC who were the two
24 groups that really pushed House Bill 93.

25 Included in the working group has been

1 representatives from the University of New Mexico
2 Mental Health Hospital as well as some other folks.
3 The only aspect that is missing right now is a
4 representative from the VA.

5 As a result of -- part of the legislation
6 here specifically talks about PTSD disorders because
7 of some of the incidents occurring throughout the
8 state involving recent veterans who have returned from
9 overseas.

10 I would invite and maybe suggest that we have
11 Mr. Najjar or a representative from the academy join
12 that working group as they continue to try to develop
13 a curriculum. And I know the curriculum that they are
14 trying to develop would be one that would have the
15 minimal amount of training required by the ordinance.

16 But it would be modular. So individual
17 agencies could decide if they want to do just the two
18 hours or they want to do ten, 20, 30, or up to
19 40 hours of entire CIT certification. So I think that
20 might be a good place for us to start. And I would
21 make that offer available.

22 MR. KING: You all have the invitation.

23 MR. NAJAR: Thank you, Chief. And with the
24 director's direction on that, I'll contact you on
25 that.

1 MR. KING: Other questions of the committee?
2 Chief Shilling.

3 MR. SHILLING: Mr. Chairman, before we move
4 on on this, I just want to get it in and on the record
5 for the board's consideration maybe in the future.

6 The legislation of mandatory training hours
7 for law enforcement becomes really problematic for the
8 LEA in trying to fit those hours in in the appropriate
9 place and a lot of times to the detriment of other
10 training hours because of time limitations, things
11 like that.

12 I've had some very frank discussions with
13 legislators that have dropped various bills having to
14 do with law enforcement training, that that's what the
15 academy board is for and should be approached in
16 trying to promulgate new training or address deficient
17 training in the law enforcement community.

18 And I don't know if the board shares the same
19 opinion that I do. But for future consideration and
20 as we move forward, do we as a board want to maybe try
21 and educate the legislature, because it -- sometimes
22 they don't understand that we have a board that
23 promulgates the rules that puts together the basic
24 curriculum for law enforcement.

25 And again I go back to my original point.

1 The legislation of mandatory hours in certain blocks
2 of instruction, they don't understand the train wreck
3 that it causes at the academy level in trying to put
4 that together without input from the board. We're
5 left with just dealing with the hand that we're dealt.

6 And I just wanted to get that in before we
7 moved off of this topic, if as a board we want to for
8 the future come up with a plan in maybe educating our
9 legislators or some other aspect of how we can better
10 facilitate the implementation of new and innovative
11 training into the curriculum.

12 MR. KING: And I'm wondering, I don't know
13 that the board has ever done this. But it might be
14 worthwhile before the next legislative session to
15 actually come up with like a white paper that we can
16 adopt or something like that that we can submit to
17 the -- maybe even something we could submit to the
18 interim committees in the legislature that lets them
19 know what kind of problems we think it causes and
20 actually at least encourage them that, when they have
21 constituents that come to them to talk about training,
22 that they should send them to us first and see if we
23 can discuss it.

24 And, Mr. Najjar, I think you said that the
25 academy staff has had discussions with NAMI previously

1 and such. But I don't remember them ever coming
2 before the board and asking us to consider these kinds
3 of things, they kind of went straight to the
4 legislature.

5 And I'll actually volunteer my labor too. I
6 think I'm going to try and be more aware of this.
7 When these come up in the legislature in the future, I
8 think that we as law enforcement need to weigh in a
9 little bit.

10 It used to be a problem in schools that, you
11 know, they mandated -- at one point in time, the
12 legislature, when I was in the legislature, mandated
13 that you had to teach an hour's worth of math every
14 day in school or something like that. And it really
15 screwed up the curriculum, for the legislature to be
16 setting curriculum in the schools.

17 And I think we're at a point where it's
18 causing similar problems for our law enforcement
19 training here, that it's certainly not best for the
20 legislature to be setting individual numbers of hours
21 and those kinds of things.

22 And we ought to weigh in on that a little
23 bit. So there are a couple ways that we do that.
24 Maybe we should actually add it as an agenda item to
25 develop at least a white paper or policy statement or

1 something that we could submit to the legislative
2 interim committees just as here are the problems.

3 I mean the legislature is the legislature,
4 they can do it if they want to. But I think you're
5 right. I think we ought to educate them a little bit.

6 MR. SHILLING: Director, do you have a
7 comment?

8 MR. MARCANTEL: If I may, sir. Mr. Chair and
9 members of the board. It strikes me -- and I'm
10 getting my sea legs here. But it strikes me that for
11 us to take a position to educate our lawmakers on kind
12 of the functioning and training of our law enforcement
13 community, we might want to look at -- and I don't
14 know the last time we did a job/task analysis that we
15 could base a strong position on.

16 But some sort of a JTA in the near future to
17 be able to base what the minimum training functions
18 for a police officer are, to form the backbone of I
19 think our positions to educate the lawmakers.

20 Just a thought. It may be out of context
21 right now because I've still got a lot to learn. But
22 it's something that's certainly been something I've
23 been thinking about as I have moved in this new
24 position.

25 MR. KING: I think we have a little time for

1 that particular issue. So, Mr. Najjar, do you need
2 approval in us on something specific today?

3 MR. NAJAR: No, sir.

4 MR. KING: You're going to go forward?

5 MR. NAJAR: Yes.

6 MR. KING: Okay. And, Mr. Marcantel, we
7 actually look forward to the next meeting where you
8 can come and explain to us everything that you've done
9 on this issue and others.

10 But I think it is -- it creates a very
11 difficult task for you all to fit everything into the
12 time that's allotted on these. And I know that we've
13 discussed that some before. All right. Since there
14 doesn't appear to be any action that needs to be taken
15 on that, are there any other questions?

16 Okay. I think we'll probably move on to the
17 next agenda item, although we're at that point in the
18 agenda with where I'm going to turn the gavel over to
19 the vice chair.

20 Before I do that, I note that Mr. Perez said
21 this was going to be his last board meeting. And I
22 certainly want to extend the thanks of the board and
23 the law enforcement community for all of the good work
24 that you've done.

25 You've predated me on the board. You've been

1 here seven years. And I think the state really
2 appreciates your service to law enforcement.

3 MR. PEREZ: Thank you.

4 (Applause)

5 MR. KING: So that being said, I think I'm
6 going to declare another very short -- because I don't
7 know what you all decided about lunch. Obviously this
8 is going to go into the afternoon.

9 But it looks like you could get quite a bit
10 done this morning yet. So let's just take like a
11 five-minute recess to reset and let everybody get set
12 up. And then we'll move on to item No. 18 on the
13 agenda. So a five-minute recess.

14 (Recess.)

15 MR. SCHULTZ: We'll go back on the record and
16 back into session. This part of the meeting is the
17 disciplinary matter portion of the meeting, which we
18 will have presentations by Mr. Jackson.

19 Before we actually start with the individual
20 cases, I know very often we have conflicts with board
21 members and individual cases that are set for the
22 board today. And we'll just kind of go through and
23 identify the cases that you will be recusing
24 yourselves from. And I will actually start.

25 I will be recusing myself from item No. 27,

1 the case of Alfred Walck. And item No. 32, Tim
2 Chavez. Sheriff.

3 MR. COON: I have none.

4 MR. SHILLING: Mr. Vice Chairman, item No.
5 21, William Cunningham, I will recuse myself from.
6 And item No. -- that's the only one that I see right
7 now, Mr. Vice Chairman. As I get to them, if I think
8 I've missed one, I'll speak up.

9 MR. SCHULTZ: Chief Betz.

10 MR. BETZ: Mr. Vice Chair, I don't believe I
11 have any.

12 MR. SCHULTZ: Mr. Perez.

13 MR. PEREZ: No, sir.

14 MR. SCHULTZ: Mr. Korn.

15 MR. KORN: Mr. Vice Chairman, I will have to
16 recuse myself from Item No. 27, Alfred Walck, because
17 he's a friend of mine. But I may have a comment.

18 MR. SCHULTZ: So with four is that a problem
19 with a quorum?

20 MR. SHANDLER: It could be a problem. I'll
21 think about that while the other things are going on.

22 ITEM NO. 18: CHRISTOPHER LARSON

23 MR. SCHULTZ: So with that we'll move to item
24 No. 18, Christopher Larson.

25 MR. JACKSON: Thank you, Mr. Chair. The

1 respondent, Christopher Larson, in this case has
2 agreed to a stipulated order. The alleged conduct is
3 that while he was an officer in the employ of the Game
4 and Fish Department, he used some inappropriate
5 language when talking to two hunters.

6 They referred to people that were in the next
7 camp over as dirty Mexicans. There are some fact
8 questions that would have been developed here had this
9 gone to a formal hearing, which, of course, it may
10 still if the board declines to approve the stipulated
11 order.

12 Mr. Larson at the informal hearing maintained
13 that he was referring to the condition of the
14 neighboring camp which he said was dirty, there were
15 beer cans and whatnot, and that the occupants of the
16 camp were, in fact, Mexican Nationals.

17 The director, then Director Ortiz,
18 recommended a suspension of 60 days I believe. The
19 Notice of Final Decision does not specify a time. But
20 if my recollection is correct, it was a recommendation
21 for a suspension of 60 days.

22 Mr. Larson did not accept that
23 recommendation. And so a Notice of Final Decision was
24 issued. And this case was set to go to a formal
25 hearing. But the director and at that point Acting

1 Director Valverde and Mr. Larson agreed to a
2 suspension of 30 days with the normal associated
3 sanctions of one-year probation, ethics course,
4 community service. Mr. Larson is not here today, but
5 his counsel is. Does the board have any questions
6 from me at this time?

7 MR. SCHULTZ: Any questions for Mr. Jackson?

8 MR. KORN: No, Mr. Vice Chair.

9 MR. SCHULTZ: Would counsel like to address
10 the board?

11 MR. MITCHELL: Good morning. My name is Gary
12 Mitchell, I'm counsel for Officer Larson who -- let me
13 just point out some additional facts. Because of this
14 he resigned his commission with the Game and Fish
15 Department.

16 Subsequently and after visiting with me,
17 which frankly some of you know me. This wasn't
18 exactly the best experience for this young man when I
19 indicated to him that this type of conduct especially
20 in New Mexico is inappropriate and was certainly
21 something that he needed to become much more mature
22 about.

23 Even though he was raised in New Mexico,
24 raised in Las Cruces, graduated from UNM, pursued his
25 career based upon his degree of wildlife management in

1 the agency that he chose to pursue it and lost that
2 career because of this, I indicated to him that this
3 type of locker room type conduct that you may have
4 done when you were playing football and joking amongst
5 your teammates and calling each other names is not
6 acceptable as an officer.

7 He acknowledges that. The chief of police in
8 Artesia, New Mexico, who knew this young man has
9 subsequently given him a job. We made certain that
10 the chief and the Artesia Police Department were fully
11 aware of what was going on here.

12 They have agreed, if this board approves this
13 stipulation, to that suspension. They have made
14 arrangements for that suspension. They have made
15 arrangements for him to continue work after having
16 served that suspension and especially after pursuing
17 the ethics course that's been recommended.

18 So we have worked hard at that. We have
19 accomplished that. We need your consent. He is a
20 well-educated young man with a good heart. And had we
21 had a formal hearing on this matter, we would have
22 brought in a number of witnesses on his behalf that
23 were raised with this young man primarily in an
24 Hispanic culture frankly, even though he is not
25 Hispanic, that would have come in.

1 And some of those witnesses would have held
2 positions as high as Assistant U.S. Attorneys. They
3 would have talked about that he's not a racist young
4 man, that this was based on the culture he was raised
5 in, and, you know, it was a comment that shouldn't
6 have been made.

7 So he's had lots of instruction on that now.
8 And I know that the chief in Artesia is not going to
9 tolerate any further misconduct such as that.

10 And having represented a number of law
11 enforcement officers over the years, I had an in-depth
12 conversation with him about this, because I think most
13 people that know me know I'm very intolerant of that
14 kind of conduct and don't approve of it and think
15 that, you know, if you represent the State of New
16 Mexico in some capacity, you have to learn how to
17 speak to people, communicate well with people.

18 And as a lawyer I don't do it. And as a
19 police officer, no matter what branch you're in, it
20 casts dispersions on all of us when you do such
21 conduct. He's learned his lesson. I would ask for
22 approval.

23 And he apologized -- let me tell you the
24 reason he's not here. He called me late last night
25 begging me -- the chief is -- we're short of officers

1 today. He's on duty. The chief has asked me if
2 there's any way that I can be at work today.

3 And it's real difficult for him to turn down
4 a chief who has given him a second chance. And I
5 understand that. And I appreciate that loyalty to his
6 department. So I would hope you do too. Thank you.

7 MR. SCHULTZ: Any questions of the board of
8 Mr. Mitchell?

9 MR. BETZ: Do we know, do we have any other
10 disciplinary problems in the past with this young man?
11 Does anybody know? Mr. Jackson or Mr. Holmes?

12 MR. JACKSON: There was a minor matter at
13 some time in the past that was handled at the agency
14 level and did not rise to the level the board needed
15 to address. And I don't recall what that matter was.

16 MR. MITCHELL: Was it the car wreck?

17 MR. JACKSON: It may have been.

18 MR. MITCHELL: Over by -- I know Sheriff Coon
19 knows that area real well. Over by the lake, where
20 there was a question of who was at fault, whether a
21 camper had his lights on and when was Game and Fish --
22 or whether he had his lights on or who should have
23 stopped at a place that wasn't designated by signs at
24 the lake, that type of incident. If that's the one
25 that counsel is referring to.

1 MR. BETZ: If I could ask you one other
2 question. Has he gone through any type of sensitivity
3 training, something, anything? Do we know?

4 MR. MITCHELL: We are -- that's part of this
5 recommendation. Part of the stipulation is that he go
6 through an ethics class or sensitivity training. And
7 I would leave that up obviously to the board.

8 I would hope that it is an ethics class but
9 with an emphasis on sensitivity training. And frankly
10 it's a matter of communication skills really. You
11 really need to develop that. Thank you.

12 MR. KORN: I have a question or a comment.
13 Do you know -- I understand your point. If I was in
14 your position representing the respondent, I might
15 also characterize what he said as locker room banter
16 as you said.

17 However, making a comment that has subliminal
18 racist comments to it rises well different than locker
19 room banter. And those of us that are in minorities
20 such as myself take this sort of comment in a far
21 different way than we would between comments and
22 locker room banter.

23 So what I worry about and the only reason I'm
24 raising this is if you're just vocalizing your
25 thoughts, that's one thing. But if he thinks that

1 what he said was a comment done in the spirit of
2 locker room banter, then I personally have a real
3 problem with that.

4 MR. MITCHELL: No. What I'm vocalizing is
5 what witnesses who I spoke with on behalf of this
6 young man -- because I was trying to find out where
7 this came from. Was this a cultural situation for the
8 young man, is this the way he was raised, was it that
9 kind of problem.

10 And from what I gathered from them, from his
11 friends and associates that he grew up with, was that
12 this more likely than not did not come from
13 upbringing. It came from just trash talk that he had
14 found acceptable and which frankly -- and some of your
15 board members here know me well enough to know that
16 when I talked to this young man about it, I find that
17 type of comment extremely humiliating and aggravating
18 in the State of New Mexico.

19 I am extremely proud of this state because we
20 are so culturally diverse. And we're so culturally
21 acceptable here. So it's an affront to all of us.
22 And I stressed that to him. And I wanted to make sure
23 that it wasn't just the law enforcement talking to
24 him, his own attorneys talked to him extremely hard
25 about this.

1 MR. KORN: So my question to you, though,
2 Mr. Mitchell, are you recounting your spin on this all
3 or is that --

4 MR. MITCHELL: I'm recounting what witnesses
5 told me.

6 MR. KORN: No. I'm asking what your client
7 told you.

8 MR. MITCHELL: My client was extremely
9 remorseful about it.

10 MR. KORN: Did he describe it as locker room
11 banter?

12 MR. MITCHELL: No, he did not. He described
13 it in -- in the transcripts that we have from the
14 statement given to Game and Fish, when they talked to
15 him about it, he described it as unacceptable, totally
16 unacceptable. He described it as an affront -- in his
17 words, affront. I'll use his words.

18 He described it as demeaning to the
19 department. And he realized he made a horrible
20 mistake that he intended to correct. He is fully
21 responsible and fully acceptable.

22 MR. KORN: Okay. Thank you.

23 MR. PEREZ: Question.

24 MR. SCHULTZ: Mr. Perez.

25 MR. PEREZ: Did he apologize to the witnesses

1 that heard the remark?

2 MR. MITCHELL: That I cannot answer, because
3 part of the instructions in this case is that I as his
4 attorney give him his don't be interfering with these
5 witnesses until we get this matter over with. There
6 comes a point in time when it's perfectly acceptable
7 to sit down and talk to somebody that might have given
8 testimony against you.

9 And it's generally after we have concluded
10 the matter rather than -- because I didn't want some
11 type of intimidation type conduct to come before this
12 board either. I'm sure he will. There was a state
13 police officer who was one of the reporting parties of
14 this as well as a representative of the Land
15 Commission.

16 MR. PEREZ: But as far as you know, he did
17 not make an apology to them on the spot?

18 MR. MITCHELL: No, not on the spot, because
19 it was reported later.

20 MR. PEREZ: Did they confront him?

21 MR. MITCHELL: Correct me if I'm wrong,
22 Counsel. They were offended by it, they let him know
23 they were offended by those comments. And they made a
24 report rather quickly afterwards.

25 MR. PEREZ: So they told him they found it

1 offensive?

2 MR. MITCHELL: That's my understanding.

3 MR. JACKSON: My understanding was that it
4 was not -- and again I would have to refer to
5 documentation that I don't have today. That it was
6 more of a sudden change of demeanor on the part of
7 the -- the state police officer and the Deputy Land
8 Commissioner were the hunters that Mr. Larson was
9 talking to.

10 And that after Mr. Larson said these things,
11 that the conversation -- the tone of the conversation
12 changed. And I don't remember whether there was an
13 explicit mention, an explicit confrontation by the
14 hunters with Mr. Larson, or whether it was just that
15 change in demeanor followed by the complaint.

16 MR. MITCHELL: What my client indicated to me
17 is that he realized from their -- because they were
18 asking him about hunting and that sort of thing. And
19 when he made this comment, that he could tell that it
20 offended them.

21 Now, they didn't make a direct comment. And
22 this wasn't a confrontation. I don't want you to
23 think that it was a confrontation when one officer
24 says something to another officer. But he could tell
25 by the nature of the way they received it that it was

1 unacceptable.

2 MR. PEREZ: But he didn't apologize?

3 MR. MITCHELL: He didn't apologize
4 immediately and he hasn't. But he will. And he's
5 made it real clear. And I think you'll see, if you
6 look at the transcripts of what took place by the
7 investigating officers in this particular case, he was
8 very apologetic. He realized he made a horrible
9 error. He realized it cost him a career.

10 MR. SCHULTZ: Anything else from the board?

11 Thank you, Mr. Mitchell.

12 MR. MITCHELL: Thank you.

13 ITEM NO. 20: MANUEL MELENDEZ

14 MR. SCHULTZ: Item No. 19 has been
15 withdrawn, which takes us to item No. 20, Manuel
16 Melendez.

17 MR. HOLMES: Mr. Chairman, members of the
18 board, this case pertains to Manuel Melendez who is
19 formerly with the Dona Ana County Sheriff's Office.
20 And Mr. Melendez was suspended from the Dona Ana
21 County Sheriff's Office for -- a 60-hour suspension is
22 what he received based on the fact that he was going
23 home for lunch -- working graveyard shift, going home
24 for lunch at four o'clock in the morning, and in some
25 cases not reporting back -- not going back on duty,

1 even though acknowledging by radio that he was back on
2 duty but actually not leaving the house.

3 According to the report that we received, the
4 police report, several dispatchers and other officers
5 working the field complained that they were unable to
6 get in touch with him for supervision matters. And as
7 a result of that, the higher up on the chain of
8 command decided they were going to -- that they
9 monitor his unit by putting in a monitoring device.

10 And this was done from April 4th to
11 April 13th. And it was confirmed through the
12 surveillance in the monitoring device that that was,
13 in fact, happening; that he was going home to eat.
14 And he was taking an average of about two hours. That
15 he would stay home instead of going out on the streets
16 and doing his supervisory duties.

17 Mr. Melendez, of course, when he was
18 contacted and told about what they found was that
19 he -- his wife was pregnant at the time. And she was
20 having difficulties during that pregnancy. So he was
21 helping out by preparing the children to go to school
22 and being there for her in case he was needed.

23 But, nonetheless, that was improper because
24 he could have notified other supervisors or he could
25 have taken some -- I guess they have leave that's

1 allowed for people that are in a situation like him.

2 His wife was having a hard time.

3 He could have taken some family or medical
4 leave. But anyway Mr. Melendez is here and he's with
5 his attorney. And his attorney has -- through his
6 attorney, Mr. Melendez has agreed to a 90-day
7 suspension, a one-year probation, ethics training, and
8 16 hours of community service. Any questions?

9 MR. SCHULTZ: Any questions for Mr. Holmes?
10 Mr. Melendez.

11 MR. GRIEGO: Mr. Chairman, members of the
12 board, my name is Thomas Griego. I'm representing
13 Mr. Melendez. As you can see he's here. And he would
14 like to address you and to answer any questions
15 directly, straight from the horse's mouth as it were.

16 So I'm going to be very brief. I only want
17 to point out that I see four good public policy
18 reasons why an agreement ought to be accepted here in
19 this case. Please keep in mind that this was not a
20 case in which there was a public complaint or a charge
21 filed.

22 It was the -- it was the internal
23 investigation of a sheriff's department that was
24 policing its own, doing a fair job of doing its
25 investigation and taking care of matters internally.

1 I think that's important to know because the
2 explanations that my client wants to give you today go
3 not to trying to excuse his conduct or excuse his
4 behavior or to deny that he acted in a manner that was
5 not strictly honest and did not reflect well upon him
6 as a police officer or his department. He
7 acknowledges that and it's so stated in the settlement
8 agreement that has been reached.

9 But you have discretion in the amount of --
10 the length of a suspension that's going to be issued.
11 And so I think, if you are going to exercise that
12 discretion, you ought to know something about the man,
13 you ought to be able to speak with him directly.

14 And he ought to be able to address you face
15 to face rather than listening to an attorney argument.
16 So that's policy -- that's a public policy issue to
17 me. I think that's important.

18 The other thing that's important is that I
19 just heard this morning a lot of talk about the
20 backlog. To the extent that agreements can be reached
21 and entered into and formal hearings avoided, this
22 board and the state are served by helping to make some
23 inroads into that backlog a little more quickly than
24 might otherwise be.

25 It gives -- another public policy reason that

1 I think underlies why this or a similar agreement
2 ought to be approved by you is that it gives a deputy
3 such as Deputy Melendez an opportunity to accept
4 responsibility for his actions, to express that to
5 you. And it makes him a better man and a better
6 officer if he remains employed in that capacity.

7 Another public policy reason. Because this
8 was an internal investigation and stalwart work by his
9 own department that uncovered this conduct, by
10 approving a settlement agreement, you would be
11 approving in a way -- you would be bolstering his
12 sheriff, you would be bolstering his department in the
13 decisions that they made.

14 A decision was made in Dona Ana County that
15 he would serve a 60-hour suspension. At the
16 conclusion of his presentation to you, one of the
17 things that he's going to do aside from just asking
18 you to approve the settlement agreement, whereby he is
19 offering to accept a 90-day suspension, is to plead
20 for a further reduction in the amount that he's agreed
21 to take.

22 Just as you have discretion to reject a
23 director's stipulated agreement and to impose a
24 harsher sentence, likewise you have discretion to
25 impose a lesser sentence.

1 What he will be asking you is to exercise
2 mercy, which in this case would be the better part of
3 discretion in my opinion. And I think I've cited you
4 some public policy reasons why doing so would be a
5 good idea.

6 If you have any questions, I would be happy
7 to answer them. Otherwise I would prefer that
8 Mr. Melendez address you directly and that you ask any
9 questions of him. Are there questions for me?

10 MR. SCHULTZ: Mr. Griego, just one item. You
11 said a 60-hour suspension. Our notes say 80. Was
12 that 80 or 60?

13 MR. GRIEGO: Originally in the contemplated
14 action there was an 80-hour suspension. And one of
15 the findings of fact that the -- that an investigation
16 uncovered that carried that 80 hours forward, in truth
17 it was only 60 when the final action came down from
18 his department.

19 And I think it took this -- the proposed
20 settlement to correct that. The 80-hour figure kept
21 carrying forward in the investigation. The reality is
22 it turned to be 60.

23 I would also point out that Mr. Melendez did
24 already complete some of what was in the stipulated
25 agreement in terms of community service. He's

1 completed over 20 hours in graffiti removal and some
2 other community service with an organization.

3 We've brought a letter, if you care to look
4 at it, concerning that. He has also already completed
5 the ethics course. So you will be hearing from a man
6 who valued his career, has the integrity as a man and
7 as a deputy to accept responsibility for his actions,
8 but simply wants to explain to you why he did what he
9 did and hope that that mitigates the suspension that
10 you would mete out today.

11 MR. SCHULTZ: Mr. Melendez.

12 MR. KORN: Mr. Vice chair, can I make a
13 comment.

14 MR. SCHULTZ: Sure.

15 MR. KORN: And, sir, I'm sorry. Your first
16 name is?

17 MR. GRIEGO: Thomas.

18 MR. KORN: And your last name is?

19 MR. GRIEGO: Griego.

20 MR. KORN: Griego. Mr. Griego, I just want
21 to clear up two things in your comments so that we can
22 listen to him and know that they're separate from what
23 you said.

24 But as a public policy, if you're saying that
25 the offense that he did was less important as a public

1 policy because it was done in secret and only the
2 department found out and that it was internal and
3 that's a good public policy reason for giving him a
4 lesser sentence, then I don't know that I personally
5 would agree with you.

6 And the second public policy you brought up
7 was that there was a large backlog. And so if we find
8 that -- a negotiated settlement here, we'll be doing
9 ourselves and the public a favor by not having a
10 larger backlog, that's not our purpose either. That's
11 why Mr. Jackson is here. And Mr. Jackson will take
12 care of all the backlog I have great confidence.

13 And finally the last thing is that we would
14 be supporting the sheriff. Well, the sheriff has his
15 department and we have our board. And these things
16 are all separate.

17 So while I understand you have a job to do
18 for your client, I don't know that you've moved this
19 case along that much by swaying the members of the
20 board. And I speak for myself.

21 MR. GRIEGO: Permit me to respond. I don't
22 know what I could have said to give you the idea that
23 I think this is a lesser offense because it was
24 uncovered by the department. That wasn't -- if I
25 communicated that to you, please believe me, I have

1 miscommunicated. That was not my intent at all.

2 MR. KORN: What you said was there was no
3 public complaint. And, therefore, as a public policy
4 it was better.

5 MR. GRIEGO: As a public policy, you would --
6 the public policy aspect I was addressing is, by
7 accepting something similar or close to what the
8 sheriff meted out in discipline, you are enhancing the
9 sheriff -- encouraging him to correct his own
10 department.

11 MR. KORN: And we're a different board.

12 MR. GRIEGO: I understand.

13 MR. KORN: We're a different organization.

14 MR. GRIEGO: I understand that. No dispute.
15 I'm not suggesting that you're in any way mandated to
16 do it or that it constitutes any kind of a legal
17 argument.

18 I'm simply making a policy statement that
19 helping local departments police their own is a good
20 public policy. And it's my opinion that by bolstering
21 what the local sheriff did in this particular case,
22 not in every case, in this case, you would be doing
23 that. And that's serving public policy.

24 With regard to reducing your caseload, you
25 and I are simply going to have to differ on whether

1 that serves public policy or not. I happen to think
2 that for the other reasons, other good reasons why you
3 ought to enter into stipulated agreements, not the
4 least of which is allowing -- as I said allowing some
5 deputy or officer to have some control over his own
6 destiny and accept responsibility on a personal level.

7 Aside from those you are collaterally
8 reducing your caseload having less formal hearings.
9 And you and I may simply disagree whether public
10 policy is served by that.

11 MR. KORN: We're here to keep Mr. Jackson
12 fully employed.

13 MR. GRIEGO: Anything further? Mr. Melendez.

14 MR. SCHULTZ: Mr. Melendez.

15 MR. MELENDEZ: Vice Chairman, members of the
16 board, I stand before you to take responsibility for
17 what I did. There's no excuse. It's not something I
18 tried to hide. It's something that happened.

19 It's not something that ever happened to me.
20 But given my particular situation at that time, it
21 happened to me. And it's something that I'm
22 responsible for. No one else. I don't shift blame to
23 anybody. That is something I did. And it's something
24 that I have to live up with for the rest of my life.

25 The circumstances as to what had occurred

1 during that time frame of April of last year was as I
2 said my wife was pregnant. And this was our third
3 child. This pregnancy was very difficult on her. To
4 the point where she was almost always throwing up and
5 just not getting enough sleep, not being able to watch
6 our other two children at the same time.

7 I was trying to balance two interests at the
8 same time, that of my department and that of my
9 family. Given that I was the only supervisor
10 county-wide through that whole time frame, I did
11 not -- by trying to please the interests of the
12 department, I tried to remain at work so that I could
13 still do my job and monitor my radio, my cell phone.

14 I know the complaint came in saying that
15 people weren't able to get ahold of me. If you look
16 at the investigative file, I have letters from the
17 deputies on my shift and the dispatchers working those
18 dates that there was never an issue of them not
19 getting ahold of me.

20 If I ever believed that there was no way I
21 could answer my phone or radio given those time
22 frames, I would have tried to file for FMLA for that.
23 But again I didn't. And I'm responsible for that.

24 I was there at my house. I was there. I
25 don't deny not being there. Whether I was reading my

1 reports or typing in reports on the laptop in my unit,
2 it doesn't matter. I was there. And I was there for
3 my lunch.

4 And after I went 10-8 which is back in
5 service at six o'clock in the morning, I remained
6 there at my residence from six to 6:30, helping get my
7 children ready for daycare and school. And helping
8 her -- well, the morning sickness part I won't go into
9 details for. But I was there.

10 It was pointed out to me and I accept the
11 responsibility and the punishment that came with it.
12 I understand the position I placed my department in.
13 I understand the potential of all the things that
14 could have gone wrong.

15 Lucky for everyone that something bad didn't
16 happen that I would have to be responsible for a lot
17 more. I understand that. And if I could say sorry to
18 everybody in Dona Ana County, I would say sorry to
19 them.

20 If I let it -- my deputies down, you know,
21 I've already apologized to them in person, to the
22 sheriff, to the captains of what I did. I worked hard
23 for my entire career. Up until last year in April, I
24 have never had any written action, any negative
25 impacts on my -- on anything in my record.

1 I've worked hard to keep it that way. And I
2 know that I didn't believe that I would go through a
3 whole career without something bad happening. I was
4 just realistic. But I accept this part. And after
5 that I've worked hard to improve upon that and make
6 myself a better person.

7 After that given incident in April, I was
8 given the Supervisor of the Quarter award by the
9 sheriff and the administration right after that. I
10 transferred stations to Chaparral, New Mexico, after a
11 rotation. And in that six-month time frame, I was
12 then given a letter of appreciation for the work I did
13 in that area.

14 I want to continue to strive to be the best
15 possible law enforcement officer I can be. I want to
16 continue serving the people not only of the Dona Ana
17 County, but of the state and the people that travel
18 through our state. I hope that I can continue to do
19 that and serve that purpose for the state as a New
20 Mexico law enforcement officer.

21 MR. SCHULTZ: Any questions for Mr. Melendez?
22 Sheriff Coon.

23 MR. COON: Have you actually served your
24 60 hours suspension?

25 MR. MELENDEZ: Yes, sir.

1 MR. COON: And the reimbursement for the
2 hours claimed?

3 MR. MELENDEZ: I never had to reimburse
4 anybody or requested to reimburse any hours.

5 MR. COON: No. I'm talking about at pay --
6 without pay are you going to reimburse Dona Ana County
7 for the hours?

8 MR. MELENDEZ: That was never a requirement.

9 MR. COON: Okay. Also if -- you're still
10 actively with Dona Ana County right now?

11 MR. MELENDEZ: As of this Tuesday, I resigned
12 my position with the Dona Ana County Sheriff's
13 Department pending hiring with the New Mexico State
14 University Police Department.

15 MR. COON: If we give you 90 days, 60 days,
16 whatever, are they aware of that, are they going to --

17 MR. MELENDEZ: Yes.

18 MR. COON: Are they going to hire you and let
19 you mop floors for 90 days or are they going to hold
20 off 90 days before they hire you?

21 MR. MELENDEZ: They're aware of it. And I
22 did explain to them I still had -- at the time when I
23 was going through the initial hiring process with the
24 New Mexico State University Police Department, I
25 informed them that I -- I didn't schedule a date for

1 this hearing with the board.

2 And I told them it was still pending. And
3 they are aware of it. As far as them hiring me, I
4 don't know.

5 MR. COON: And this question might --
6 obviously they think -- they thought a lot of you in
7 Dona Ana County to give you supervisor of the quarter
8 or whatever and your letters of commendation after
9 this happened?

10 MR. MELENDEZ: Yes.

11 MR. COON: Why are you changing jobs?

12 MR. MELENDEZ: The department at this given
13 point, not then, at this given point is going in a
14 direction that for me as a supervisor in the
15 department I don't totally agree with.

16 I've been asked to do stuff, to write people
17 up for certain things that I don't agree with. I was
18 asked to put two deputies on performance improvement
19 plans for 90 days and dailies for 90 days because they
20 didn't make enough arrests in three months.

21 Even though they wrote over close to 300
22 citations and took several dozen reports. When
23 asked -- when I asked the captain how many arrests
24 they should be making, because obviously there is a
25 number and they're not meeting it, he told me there's

1 not a number, just write them up.

2 I was just -- I did not want to be that type
3 of a supervisor. I want to encourage them to grow. I
4 don't want to negatively punish them for something
5 when they've been working hard. And I work with these
6 people on a regular day-to-day basis.

7 I understand I need to take orders and I need
8 to do what I'm told to do. But at the same time too,
9 the direction in which they were going is just not the
10 direction in which I myself wanted to follow through
11 with.

12 MR. COON: Okay. But getting back to if this
13 board gives you 30, 60, 90 days suspension, you're not
14 going to be able to work for Dona Ana -- I mean for
15 New Mexico State University for that 90 days as a
16 certified law enforcement officer.

17 You can be a paper shuffler or a civil
18 process server or something like that. But that's
19 going to be 60, 90 days out of your back pocket. Are
20 you aware of that?

21 MR. MELENDEZ: Yes.

22 MR. COON: Okay.

23 MR. SCHULTZ: Other questions from the board?
24 Mr. Korn.

25 MR. KORN: Sir, when you -- did you know that

1 it was wrong to take longer for your lunch hour than
2 you were taking?

3 MR. MELENDEZ: Yes.

4 MR. KORN: So you didn't think you were
5 answering calls as a supervisor during the time that
6 you were home?

7 MR. MELENDEZ: They didn't give me calls
8 particularly that they give the deputies. I just
9 monitored where they went and what they did. But I
10 knew that it was wrong. And like I said I'm fully
11 responsible.

12 MR. KORN: But as a supervisor you don't get
13 calls for service, you get calls for assistance from
14 your deputies?

15 MR. MELENDEZ: Right. I get called on the
16 radio or my cell phone. That's about it. Or I'll
17 show up if they're on a call and just check up on them
18 and make sure everybody is doing their job.

19 MR. KORN: And I understand you think that
20 you were taking the -- you were receiving calls, that
21 you weren't diminishing that degree of your
22 responsibility?

23 MR. MELENDEZ: No, no. I understand that
24 again it's not what the department was paying me to
25 do, it's not what it was intended a lunch break or

1 being able to go home for. My responsibility was to
2 the deputies and being out there. And I accept the
3 responsibility that I was not doing that.

4 MR. KORN: And I assume since they were
5 looking for you, sir, the surveillance must have
6 thought they weren't reaching you?

7 MR. MELENDEZ: That's what the initial
8 internal was started on, saying that they couldn't
9 reach me. That's why it was started. But it was
10 never investigated in that area.

11 MR. KORN: Thank you.

12 MR. PEREZ: Question.

13 MR SCHULTZ: Mr. Perez.

14 MR. PEREZ: You were not ordered to reimburse
15 Dona Ana County for the time that you didn't work?

16 MR. MELENDEZ: No. That was never required
17 or never asked of me.

18 MR. PEREZ: Do you not think that it's
19 something you should volunteer, when you didn't work
20 and you got paid?

21 MR. MELENDEZ: I was working to some capacity
22 but not to the entire capacity which they wanted. If
23 you read Lieutenant Avada's report, he even states
24 there's no doubt in his mind that I was monitoring my
25 radio. And again I was still receiving calls from

1 deputies on my cell phone.

2 I accept the responsibility that I made a
3 mistake, that I should have been out there with them.
4 Even if I never got a call for service or never a call
5 for assistance.

6 But to me at the time I didn't believe that I
7 was -- I don't want to give a percentage of how much
8 work I was doing to say that I should pay or should
9 not pay back. But I believe that I was -- should have
10 been out there with them instead of just monitoring my
11 radio.

12 MR. PEREZ: Thank you.

13 MR. SCHULTZ: Thank you. Any other
14 questions?

15 MR. SHANDLER: What was the period of time
16 this conduct occurred, was it a month, two weeks?

17 MR. MELENDEZ: No. It was maybe -- it was --
18 I believe it was a week or two, if I can recall. If
19 they had approached me obviously with it before and
20 just told me why are you going home, take FMLA, I
21 would have took FMLA.

22 But I just kept doing -- being there with my
23 family, helping them out and still trying to monitor
24 and do my job at the same time. But I believe it was
25 a week or two.

1 MR. SHANDLER: What's the department's policy
2 about going home for lunch, is that allowed?

3 MR. MELENDEZ: Going home for lunch, yes, is
4 allowed.

5 MR. SHANDLER: So it's only from five in the
6 morning until six in the morning that's in dispute?

7 MR. MELENDEZ: No. I would go to the front
8 of my house and park from four in the morning to five
9 in the morning, do my paperwork in my unit and in my
10 laptop which has mobile Cadvisor, which I can monitor
11 all the calls the deputies are dispatched to, even out
12 of radio range, because obviously I can't monitor the
13 deputy in Hatch or the deputy in Chaparral or Santa
14 Teresa.

15 There's no way I could be everywhere. So I
16 have a Cadvisor which allows me to see everything
17 they're doing. From four to five, I would be in front
18 of my residence in my unit doing my paperwork, reading
19 reports, corrections.

20 And from five to six I would take my lunch.
21 And from six to 6:30 is when I would still stay 10-8
22 and at my residence for the last half hour shift.

23 MR. SHANDLER: Okay. And were you demoted by
24 your employer for this?

25 MR. MELENDEZ: No.

1 MR. SHANDLER: And then finally, Mr. Holmes,
2 you've heard all this. Do you still stay with your
3 recommendation of 90 days or why did you find that
4 90 days was an appropriate sanction?

5 MR. HOLMES: The answer to that question is
6 actually there were some letters that were sent to us
7 by dispatchers and others that were working under his
8 command or his shift that were saying that he was
9 always available as far as they were concerned to
10 assist them if they needed assistance.

11 And we did get some letters indicating
12 that -- even from dispatchers that he was available.
13 And they never had any trouble contacting him.

14 MR. SHANDLER: Thank you.

15 MR. SCHULTZ: Thank you, sir.

16 MR. MELENDEZ: Thank you.

17 MR. SHILLING: Mr. Vice Chair, a point of
18 order. If we excuse ourselves or recuse ourselves --
19 I'm new at this -- do we step out?

20 MR. SCHULTZ: Actually you can sit through
21 this portion. But when we go into executive session,
22 then you'll step out.

23 MR. SHILLING: Thank you, sir.

24 ITEM NO. 21: WILLIAM CUNNINGHAM

25 MR. SCHULTZ: The next item is item No. 21,

1 William Cunningham.

2 MR. HOLMES: Mr. Chairman, members of the
3 board, Item No. 21 pertains to a former state police
4 officer, William Cunningham. On February 21st, 2010,
5 Officer Cunningham was the only -- the sole officer
6 providing -- assigned to the Santa Fe district.

7 During that time on that date, there was a
8 drowning that took place at Las Campanas. It's a
9 community outside of Santa Fe. And there was a
10 drowning there. And Mr. Cunningham was unavailable to
11 handle the call in a timely manner.

12 He did respond. But it was an hour after the
13 incident had happened. There was another officer who
14 was working on special assignment. And he responded
15 to that call because they couldn't get ahold of
16 Officer Cunningham who was supposed to have been the
17 one to answer the call.

18 Well, it was later determined that when he
19 was questioned, when the officer, Officer Cunningham,
20 was questioned by a supervisor later on to determine
21 why there was a delay in him responding to the
22 drowning call and why some other officer had to answer
23 that call, he wasn't very truthful about where he was
24 at.

25 He claimed that he was working at a different

1 part of the district, outside the district. And so
2 the supervisor looked into that. And it was
3 determined through the coordinates, through GPS and
4 the CAD system, that he was working actually way out
5 of his assigned district. He was actually in the
6 Bernalillo area.

7 When they went back and they checked the
8 movement of the unit, his assigned unit, they found
9 that he had -- actually he was supposed to go on duty
10 at seven. And he gave a 10-8 which means going on
11 duty, you all know that.

12 But he was at home. Actually the unit didn't
13 move from the house until later, about an hour later.
14 It showed that he came to the state police office,
15 checked on some report, then he traveled -- he was
16 still in his assigned area in his district.

17 He traveled south and gave out I think about
18 three citations on the Albuquerque highway. Well, he
19 didn't stop there, he continued from there, he went
20 into the Bernalillo area. And he remained there for a
21 little bit over an hour.

22 And that's when -- while he was there is when
23 the drowning incident occurred. And he didn't respond
24 to that until later because his radio was off. And
25 there was no way they could communicate with him. And

1 so the other officer who was on duty was assigned.

2 And finally it wound up with -- the sheriff's
3 office did the initial -- the main investigation.
4 When the respondent, Mr. Cunningham, was questioned,
5 they asked him about his dailies.

6 And he wasn't very truthful on his dailies,
7 because he put -- the information that he put on his
8 dailies and CAD system and the coordinates where the
9 unit was at at the time that he wrote on the dailies
10 did not match at all. So, therefore, he was -- there
11 was some action taken. And he was dismissed,
12 terminated from the New Mexico State Police.

13 The incident, the drowning incident that took
14 place in Las Campanas was -- there was a state police
15 officer who responded. But it wasn't the state police
16 officer that was assigned for regular duties on that
17 day. He was on a special assignment. So he had to
18 leave his special assignment to check on that
19 drowning. Any questions?

20 MR. PEREZ: A question.

21 MR. SCHULTZ: Mr. Perez.

22 MR. PEREZ: Did the person who drowned die?

23 MR. HOLMES: Yes.

24 MR. SCHULTZ: Any other questions for

25 Mr. Holmes?

1 MR. KORN: Mr. Vice Chair, I have a question.

2 MR. SCHULTZ: Mr. Korn.

3 MR. KORN: Mr. Chairman, Mr. Holmes, this
4 is -- is it you that signed the suggestion of a 60-day
5 suspension?

6 MR. HOLMES: The what?

7 MR. KORN: The recommended suspension.
8 Because it says director.

9 MR. HOLMES: That was -- what happened here
10 is that there was an informal hearing requested.
11 Mr. Bregman is the attorney. He came with
12 Mr. Cunningham. But once the informal hearing
13 started, they requested to just go ahead and go to the
14 next level of a formal hearing.

15 So the informal hearing never took place.
16 Nothing was said there, nothing was discussed there.
17 So prior to the formal hearing, Mr. Bregman came in
18 with his client and we talked about it. He said what
19 can you offer.

20 I said, well -- I discussed it with Mr. Najjar
21 here who is the assistant director. And I also
22 discussed it with Mr. Valverde, the inspector at that
23 time.

24 And we figured that we weren't sure the board
25 was going to be -- that we were going to have a board

1 meeting before the deadlines. And they agreed to
2 accept a 60-day suspension. And so we came up with a
3 stipulated order based on that.

4 MR. BETZ: Mr. Vice chair, so did -- was
5 there an investigation of what he was doing back down
6 in Bernalillo?

7 MR. HOLMES: He told the investigators that
8 he was -- that his daughter was having a soccer game
9 there. And she had forgot her knee pads. And he went
10 to take them over to her.

11 MR. SCHULTZ: Any questions? Is
12 Mr. Cunningham present?

13 MR. HOLMES: I don't know. I don't see his
14 attorney here.

15 MR. SCHULTZ: William Cunningham?

16 MR. HOLMES: I don't see him.

17 MR. SCHULTZ: Okay. Thank you, sir.

18 ITEM NO. 22: MANUEL SOTO

19 MR. SCHULTZ: Item No. 22, Manuel Soto.

20 MR. JACKSON: Mr. Vice Chair, this is an
21 incident that involved two officers in El Paso. They
22 were off duty. Mr. Soto tased another patron at a --
23 I believe it was an IHOP, a 24-hour IHOP/Denny's kind
24 of place in El Paso.

25 The other patron was part of a group that had

1 been baiting Mr. Soto and the other officer. Mr. Soto
2 was not in uniform. The other officer was. And they
3 kept asking him are you a police officer and actually
4 explicitly asking to be tased, not just sort of they
5 were asking for it, they actually did ask to be tased.

6 So the other officer lent Mr. Soto his taser.
7 And Mr. Soto did tase the other customer that was
8 asking for it. And then they left. The El Paso
9 police were then notified, though no charges were ever
10 filed in the case.

11 Now, an informal hearing was held for both of
12 these officers. And the other officer whose taser
13 actually was -- that was resolved short of bringing it
14 to the board. The director just issued a cautionary
15 letter for that officer because he didn't actually
16 perform the act, he just provided the equipment.

17 An informal hearing was held for both of
18 them. And -- well, two separate hearings. But for
19 this same incident. And one of the things that became
20 clear in there is that one of the members of the other
21 group in the restaurant was either a trainee or an
22 applicant for another -- for a department in the area.
23 It was either Las Cruces, Sunland Park, or Dona Ana
24 County. My recollection is not clear on which one.

25 At any rate, during the informal hearing,

1 Acting Director Valverde was impressed with Mr. Soto's
2 candor and his sincere remorse. He did not hedge in
3 any way when taking responsibility for his actions.
4 He freely admitted that what he did was a bad
5 decision, that he should not have done what he did,
6 that he should not have tased this other customer.

7 And the story that he told was entirely
8 consistent with the reports that we had. The acting
9 director felt that Mr. Soto would be a good candidate
10 to address the cadet class on issues of misconduct as
11 the board has provided for sometimes in the past.

12 And as a result what otherwise would have
13 been a 30-day suspension has been reduced to a 14-day
14 suspension because of the added sanction of addressing
15 the cadet class. As I said the other officer in this
16 case was resolved with a cautionary letter.

17 This is certainly a light suspension. But we
18 believe that both because of the circumstances
19 surrounding the underlying conduct and then Mr. Soto's
20 full embrace of his responsibility for the conduct
21 that it is appropriate for a light sanction in this
22 case. Are there any questions?

23 MR. SCHULTZ: Sheriff Coon.

24 MR. COON: What was a Las Cruces uniformed
25 officer doing in El Paso? Did they ever bring that

1 out?

2 MR. JACKSON: They had -- I think that the
3 other officer had just gotten off duty. And this
4 is apparently a restaurant where officers frequently
5 eat, if they're out late at night.

6 MR. COON: In El Paso?

7 MR. JACKSON: Yeah.

8 MR. COON: That just seems kind of strange to
9 me, that you would be eating lunch in El Paso or
10 dinner if you live in Las Cruces.

11 MR. JACKSON: I'm trying to remember where
12 the other officer was employed at the time. That
13 may -- that may have borne on that answer. I don't
14 think he was LCPD at the time, I think he was either
15 Dona Ana or Sunland Park. That makes a little bit
16 more sense.

17 MR. COON: Yeah, Sunland Park maybe.

18 MR. SCHULTZ: Mr. Perez.

19 MR. PEREZ: What is a short dry burst?

20 MR. JACKSON: I think that is a typo. I
21 believe that means a dry stun, where the taser is
22 applied directly to the skin or clothing of the
23 subject rather than using the projectile function of
24 the device. And somebody with more law enforcement
25 training than a lawyer like me could probably answer

1 that a little bit better.

2 MR. SCHULTZ: He's not actually shot with it,
3 just has contact with it.

4 MR. PEREZ: You mean just touch them?

5 MR. SCHULTZ: Yes.

6 MR. COON: You just have contact with the
7 taser.

8 MR. PEREZ: But no electrical charge?

9 MR. SCHULTZ: No. While it's on. There's an
10 electrical charge.

11 MR. PEREZ: Okay. No prongs. Thank you.

12 MR. SCHULTZ: Any other questions?

13 MR. KORN: I have a question. Mr. Vice
14 Chairman, Mr. Jackson, the officers were off-duty, if
15 I read things correctly, and the crowd there was it
16 says rowdy and intoxicated?

17 MR. JACKSON: Yes, that is correct.

18 MR. KORN: So the one rowdy and intoxicated
19 gentleman kept -- if I read this right, dared the
20 off-duty officer to tase him?

21 MR. JACKSON: Yes, Mr. Korn.

22 MR. KORN: So he complied.

23 MR. JACKSON: Yes.

24 MR. KORN: He did what he was asked to do.

25 MR. JACKSON: Yes, he did. He did as

1 requested and tased this individual.

2 MR. KORN: I'm just trying to play devil's
3 advocate here. But if it was his own taser, you know,
4 that you can buy, would there be -- would you be
5 bringing an action before the board?

6 MR. JACKSON: That's an interesting question.
7 I think that since it did come to the attention of the
8 El Paso police, probably we would. But I would need
9 to think about that a little bit more fully before I
10 gave any sort of definitive answer on that.

11 MR. KORN: So what do you see generally as
12 the misconduct then?

13 MR. JACKSON: The misconduct is that he did
14 use a taser that belonged to a law enforcement agency
15 of the State of New Mexico.

16 MR. KORN: But it was against a rowdy and
17 intoxicated patron.

18 MR. JACKSON: It was against a rowdy and
19 intoxicated individual who did ask for it, which is
20 why the sanction is light.

21 MR. KORN: But, Mr. Jackson, I could do the
22 same thing. And we would neither be prosecuted nor
23 brought before anybody.

24 MR. JACKSON: No guarantee of that. If
25 things played out the same way, then sure.

1 MR. KORN: El Paso didn't.

2 MR. JACKSON: El Paso didn't. But I think
3 that was largely because the subject ended up not
4 wanting to press the issue.

5 MR. KORN: He was passed out.

6 MR. JACKSON: Perhaps. And I should
7 emphasize that given the circumstances, this was late
8 at night as an all-night restaurant in El Paso. And
9 the crowd was rowdy and intoxicated. But in the case
10 of neither Mr. Soto nor the other officer is there any
11 allegation that either of them had been consuming
12 alcohol prior to the incident.

13 MR. KORN: Okay. Thank you.

14 MR. SCHULTZ: Is Mr. Soto here?

15 MR. HOLMES: Mr. Chairman, members of the
16 board, Mr. Soto called me just a couple hours ago at a
17 break. And he had car trouble and he's between here
18 and Las Cruces somewhere. So he was having car
19 troubles this morning and he didn't think he was going
20 to be here on time.

21 MR. SCHULTZ: No problem.

22 ITEM NO. 23: GREG LYNCH

23 MR. SCHULTZ: Item No. 23, Greg Lynch.
24 Mr. Jackson.

25 MR. JACKSON: We may need to withdraw item

1 No. 23, though there is a potential for discussion
2 that relates back to some of the issues that we were
3 discussing this morning.

4 Mr. Holmes, did we ever get a signed
5 stipulated order?

6 MR. HOLMES: No, we didn't.

7 MR. JACKSON: Okay. At this point, since we
8 don't have the signed stipulated order from the
9 respondent, I think I'm going to decline to present
10 the stipulated order at this time. Because we did
11 that in one other instance and it was kind of a mess
12 subsequently, though we got it cleared up.

13 But Mr. Holmes is concerned. And I believe
14 that once the new director becomes familiar with the
15 disciplinary process, he will share this concern. And
16 I share this concern, that there is sometimes a gaming
17 of the system.

18 Mr. Lynch was served with an NCA. And since
19 we're not presenting the stipulated order, the
20 underlying content isn't germane. But an informal
21 hearing was held. And at that informal hearing,
22 Mr. Lynch orally agreed to a stipulated order.

23 Now, the stipulated order was drafted. And
24 Mr. Holmes, the investigator, has been unable to
25 locate Mr. Lynch to get him to sign it. So he

1 continues to work as a dispatcher. I don't know.

2 MR. HOLMES: He resigned recently.

3 MR. JACKSON: He recently resigned his role
4 as a dispatcher. But we don't have the matter
5 resolved for the board. And this is not the only type
6 of circumstance in which this can occur.

7 When a respondent agrees to some discipline
8 at the informal hearing or in a phone conversation
9 subsequent to that, I'm not sure that that's binding
10 on them. But if they later don't sign off, then the
11 process is further delayed and the backlog increases.

12 So it might be useful to get some guidance
13 from the board on what sort of things that the
14 director and I might do in order to avoid this
15 situation as much as possible.

16 One idea that did occur to me is that the
17 directors, both Acting Director Valverde and Director
18 Ortiz before him, were fairly relaxed when it came to
19 the timelines that are provided in the rule.
20 Extensions were granted generously.

21 And frankly we also took advantage of that
22 time just because the timelines and the rule don't end
23 up seeming to have much legal effect. It's not
24 something that's ever going to be a real bar.

25 But it might be better if we treated any sort

1 of discussion of stipulated orders as something that
2 was running parallel to and not interruptive of the
3 normal NCA respond within a week, informal, within
4 14 days; and NFD, a Notice of Final Decision, 45 days
5 after the NCA; and just keep that process moving apace
6 regardless of what sort of discussions are being held
7 in view of perhaps an eventual stipulated order.
8 That's one idea. I would certainly welcome others.

9 MR. KORN: Mr. Vice Chairman, I have an idea.
10 One idea that I think you can do is do the reverse of
11 it. Instead of sending letters asking them to come in
12 and increasing the urgency of it, I think you should
13 start with the most urgent and say your license is
14 being revoked unless we hear from you in 30 days.

15 And then you'll get responses. Then you
16 won't have to wait. But, you know, there's no reason
17 that we have to coddle people to get them to respond
18 to Mr. Holmes when we have the power to revoke their
19 license if they're not responsive. And if they
20 respond, then the director can take it from there and
21 decide which areas to start applying.

22 MR. SHANDLER: And that is one part of the
23 equation. The other part is let's say the board today
24 decides to reject one of these settlement agreements
25 and maybe go up to 120 days or something like that.

1 How long is that deal on the table? And that's been a
2 vague area that we've come to you as the policymakers.

3 So first Mr. Jackson is asking on the front
4 end, at the informal hearing, how long should that
5 deal be on the table for Mr. Lynch. April 12th it
6 looks like when the informal was. So he's getting
7 close to 30 days or so. But then on the back end
8 here, how long would your deal stay on the table as
9 well?

10 MR. KORN: Thirty days and the license would
11 be revoked would be my deal. And then I think people
12 would be much more responsible to reply to deals that
13 are coming and either accept or refuse.

14 MR. SHANDLER: Yeah. But the revoke part,
15 Mr. Vice Chair, the rule says that if someone doesn't
16 respond, then it's the penalty that the director has
17 imposed in the process.

18 So, although that would create a strong
19 incentive, that may mean the director every time has
20 this incentive to say revoked instead of maybe, you
21 know, 90 days or four months or something like that.

22 MR. KORN: That's true. And I understand
23 it's up to the board and the new director. But I
24 think if the director uses that power, then he's going
25 to have a whole bunch of responsive people dealing

1 with him instead of having to have Mr. Holmes spend
2 his time and spin his wheels trying to get people to
3 even take him seriously.

4 MR. SHANDLER: Okay. I'll work with the
5 staff.

6 MR. SCHULTZ: And I understand what Mr. Korn
7 is saying and what Zach is saying. I guess what I
8 would suggest is at -- you know, at the informal
9 hearing, just like we do when we don't accept what's
10 recommended and the parties are here. We ask them to
11 go to the back of the room and come to a settlement
12 usually during the time of the meeting.

13 I would suggest that at the informal hearing
14 process that, when a decision is made, that that
15 agreement be made right then and there. And I don't
16 know why we need to give the person time to go home
17 and think about it.

18 The hearing has been heard. The director has
19 made a decision. The director has made an offer.
20 They accept it or reject it right then and there.
21 That way it's done. We don't have to worry about the
22 games and the gamesmanship that's being played.
23 Mr. Holmes.

24 MR. HOLMES: If I may, Mr. Chairman,
25 sometimes what happens is we do try to make those

1 decisions right after the hearings, informal hearings.
2 But sometimes there are things that need to be looked
3 on a little bit further before we can make an adequate
4 recommendation and it would be appropriate for the
5 board.

6 And sometimes we don't have that information.
7 And so we have to look into that. So it might take a
8 couple of days or it depends on what kind of
9 information we're trying to ascertain.

10 But certainly I think I've been trying to get
11 these cases moved as fast as we can. And I know that
12 we have a backlog right now. And it's not just one
13 reason. There are several reasons.

14 One of the things is that if we bring a case
15 here to the board and the board -- and like Zach said,
16 if you increase it, then we have to wait for that
17 person -- that person may not be here. So we have to
18 wait for that person to see if he's going to accept
19 that 30 days addition to what was recommended.

20 And then sometimes they'll say, well, let me
21 talk to my attorney. We have one case like that that
22 took a long time before the attorney decided, well,
23 yeah, we'll accept it. But I think there ought to be
24 some deadlines.

25 But I think if we follow what's on the rules

1 now, to respond within a certain amount of time, seven
2 days, 14 days, if we follow that without deviating, I
3 think we'll be all right. But it's the times that
4 everybody is asking for a waiver of timeliness for
5 whatever reason.

6 And their agreement -- like Matt said, they
7 have been accepted. And they're given the opportunity
8 to -- for that extension of time. And I think that's
9 what's causing a lot of the delays in these cases.
10 And some of them are not for good reasons at all,
11 because the guy is going to be on vacation or things
12 of that nature.

13 MR. SCHULTZ: I think that we need to get
14 back to the basics and following the rules. And the
15 seven to 14 days is a good starting point for
16 Mr. Shandler to work with the new director.

17 And now that we've been kind of following a
18 standard set pattern discipline because we see the
19 same type of violations, I think as we go forward, we
20 should treat most of these cases like we do a standard
21 IA case.

22 When a person comes in in an IA case, they
23 already know what the range is, they know what they
24 may be facing. Bring that up during the informal
25 hearing process and try to get it resolved when

1 possible right then and there at the time of the
2 hearing.

3 MR. HOLMES: Let me just bring up another
4 point before we get off the subject. If the board
5 accepts let's say a suspension or whatever, I know
6 that we've done it in the past, but just for future
7 hearings, the board has allowed retroactive
8 suspension.

9 And I hope it doesn't happen anymore in the
10 future, because if the officer is suspended
11 retroactive and at that time the officer makes an
12 arrest or does something that might go into a court of
13 law, they will say, well, you weren't supposed to be
14 an officer, you were suspended according to the board.

15 MR. SCHULTZ: I believe there's only been one
16 case in the last six years, because the previous --
17 previously, over six years ago, that was the history,
18 to make them retro. I think about six years ago we
19 made the decision that they would not be retroactive.

20 MR. HOLMES: Right. So just make them aware
21 of what could happen.

22 MR. SCHULTZ: So do we need a motion on this?

23 MR. SHANDLER: No. This item has been
24 withdrawn. And I think the policymakers have given
25 direction to the staff.

1 MR. JACKSON: And thank you. There are some
2 ideas there that are going to be productive
3 respectively.

4 ITEM NO. 24: ROBERT SALAZAR

5 MR. SCHULTZ: We'll move forward to item
6 No. 24, Robert Salazar.

7 MR. JACKSON: Item No. 24 is Robert Salazar.
8 This is a domestic violence incident. The respondent
9 and his wife had been having a number of arguments.
10 And the continuation of one of these ended up in a
11 mutual physical altercation between the respondent and
12 his wife.

13 An informal hearing was held. The respondent
14 fully accepted the responsibility for his actions. He
15 realizes that what he did he should not have done,
16 even though it was not a -- it was not a one-way
17 incident. It was a fight between the husband and the
18 wife. That doesn't excuse it.

19 And Mr. Salazar realized that. And he has
20 agreed to the standard suspension for domestic
21 violence of 60 days with a one-year probation, an
22 ethics training course, eight hours community service,
23 and an anger management course. Are there any
24 questions?

25 MR. SCHULTZ: What is the status of the

1 criminal charges and the extent of injuries?

2 MR. JACKSON: The extent of injuries, there
3 are no lingering injuries. The injuries were not
4 terribly severe at the time. But they existed. But
5 again minor. And the criminal charges -- let me
6 double-check. But I believe that -- I believe that
7 after a referral to the -- I want to say the DA, that
8 no charges ended up being filed.

9 MR. COON: Alcohol involved?

10 MR. JACKSON: Alcohol was not involved. This
11 was a fight that happened -- it was a verbal
12 altercation that started the night before. And
13 apparently they went to bed angry, they woke up, and
14 the fight continued. But there was no alcohol
15 involved in this particular incident.

16 MR. SCHULTZ: Any other questions?

17 Mr. Salazar present? Okay.

18 ITEM NO. 25: SHARON MILLS

19 MR. SCHULTZ: I think we're on Item No. 25,
20 Sharon Mills.

21 MR. JACKSON: Item No. 25 is Sharon Mills.
22 Ms. Mills broke into a residence that of her
23 ex-husband, stole some guns, some cash, a knife, and a
24 computer. These were later found in her piano upon
25 the execution of a search warrant.

1 Well, the guns -- the guns were. The
2 computer and the cash were never found. There was
3 also a ring stolen. This was learned at the informal
4 hearing on this. And I do not recall the eventual
5 disposition of that. I think that also may have gone
6 missing.

7 Ms. Mills had an informal hearing. She did
8 take responsibility for her actions. There were some
9 substance issues. There was an interaction between
10 alcohol and antianxiety medication that may have
11 contributed to her conduct, though, of course, the
12 involuntary intoxication is not a defense to the
13 conduct.

14 And this is, of course, serious. This is not
15 only a burglary, it's a burglary of firearms. And as
16 a result Ms. Mills has agreed to voluntarily
17 relinquish her certification.

18 I am not sure whether that is something that
19 requires board action simply because the certification
20 is her property and she can give it up at her will.
21 But out of an abundance of caution, we are presenting
22 it to the board so the board can accept it and,
23 therefore, ratify, sort of double cover to make sure
24 the relinquishment is valid.

25 MR. COON: Was she charged?

1 MR. JACKSON: She entered into a
2 preprosecution diversion on this. And she has
3 completed most, if not all, of the sanctions that were
4 associated with that.

5 MR. KORN: Mr. Vice Chairman, can I ask
6 Mr. Shandler a question?

7 MR. SCHULTZ: Sure.

8 MR. KORN: Is relinquishing a certification
9 the same as being decertified?

10 MR. SHANDLER: We can talk about that in the
11 closed session.

12 MR. KORN: Okay.

13 MR. JACKSON: And there is an agreement that
14 has been -- well, the relinquishment document I
15 believe has been provided. Do we have that?

16 One of the terms of this, and I think this is
17 why I'm really concerned about it perhaps requiring
18 board action, is it does involve an agreement by her
19 not to reapply for certification in the future.

20 MR. SCHULTZ: Is Ms. Mills present? Okay.

21 ITEM NO. 25A: MATTHEW SPEAR

22 MR. SCHULTZ: The next item has been added,
23 it's item No. 25A, Matthew Spear.

24 MR. JACKSON: Yes. Mr. Spear was a cadet
25 here at the academy. He was expelled from the academy

1 for violation of sexual harassment policy and for
2 dishonesty in the investigation that was associated
3 with that.

4 Mr. Spear appealed his expulsion because the
5 expulsion in the first instance is within the
6 authority of the director. And then the expelled
7 cadet can appeal that decision of the director to the
8 board, which is the procedural posture that we were in
9 in this case.

10 And the appeal was set to be heard. But
11 after numerous conversations with Mr. Spear's counsel,
12 the director, the acting director, agreed to a
13 stipulated order settling the appeal, under which the
14 order would resolve these allegations, the allegations
15 that led to his expulsion, in exchange for him
16 dropping his appeal.

17 In addition, Mr. Spear would not be eligible
18 to reapply to the academy until three years from the
19 date of his expulsion which was October of last year.
20 So again the benefit that accrues to the board from
21 ratifying the stipulated settlement of appeal is that
22 the issue is resolved and the cost of the hearing is
23 saved.

24 And by agreeing not to reapply for three
25 years, though Mr. Spear does intend to reapply right

1 now anyway at the expiration of that period, that
2 hopefully law enforcement in New Mexico will benefit
3 from a chastened young man who has had a few years to
4 mature and realize the error of his ways.

5 And the benefit that accrues to Mr. Spear as
6 a result of the ratification of this stipulated
7 settlement of appeal is that these allegations would
8 be resolved and would not be a basis for denying him
9 admission to the academy in the future.

10 I have been in contact with Mr. Spear's
11 counsel. And he has told me that after a lot of
12 thought and discussion, they have decided that they
13 would not address the board. So they're not present
14 today.

15 But they did ask me to make sure that the
16 board understands that that is not intended to reflect
17 a lack of understanding of the seriousness of the
18 proceedings and is definitely not intended to be
19 disrespect for the board. It is simply an
20 attorney-client decision that they chose not to
21 address the board on this matter.

22 MR. SCHULTZ: Mr. Jackson, looking at the New
23 Mexico POST employee profile, on the bottom it says
24 that as of October 21st it was a five-year not
25 eligible for reapplication. So which one, is it three

1 or five?

2 MR. JACKSON: The five-year was the
3 director's initial decision when Director Ortiz
4 expelled him back in October. Three years would be
5 the term of the agreement.

6 MR. SCHULTZ: Any questions? Mr. Perez.

7 MR. PEREZ: Yes. He was in basic officer
8 training, he was training to become a law enforcement
9 officer?

10 MR. JACKSON: That is correct.

11 MR. PEREZ: But it says that he had been one
12 in Rio Rancho.

13 MR. JACKSON: Well, the normal process is
14 that somebody will apply and become a police officer
15 through an agency. And then that agency will sponsor
16 their attendance at this academy or one of its
17 satellite academies. And that's what happened here,
18 is that he had been hired by Rio Rancho and then sent
19 to the academy.

20 When he was hired by Rio Rancho, he was not a
21 certified law enforcement officer. He was operating
22 under the provision that provides that a -- that
23 somebody who is working for a New Mexico law
24 enforcement agency may work for up to one year without
25 certification provided that they're making progress

1 towards that certification.

2 MR. PEREZ: What did the sexual harassment
3 entail?

4 MR. JACKSON: All right. The sexual
5 harassment appeared to include that Mr. Spear -- well,
6 this is what he was asked. And so these would be
7 things that probably related to the complaint, whether
8 he had rubbed this other cadet's thigh or massaged her
9 shoulders, which he denied; and whether he had asked
10 for this other cadet's phone number who was the
11 roommate of the cadet who he allegedly touched.

12 So the complaint came from the cadet that was
13 allegedly touched who I believe was the -- some sort
14 of squad leader. I'm not sure what the internal
15 organization of cadets is here.

16 But the harassed cadet had some sort of power
17 over Mr. Spear. And unfortunately, during the
18 pendency of this thing, that relationship was allowed
19 to remain in place, which I think may have complicated
20 the investigative process.

21 MR. SCHULTZ: There's no certification in
22 question here?

23 MR. JACKSON: There's no certification in
24 question. There is an appeal of the expulsion that
25 would otherwise come to the board after a hearing on

1 that appeal. But this stipulated settlement of the
2 appeal would short-circuit that process. And then
3 Mr. Spear would be able to reapply in October of 2012
4 I think.

5 MR. SCHULTZ: That's if he finds a sponsoring
6 agency.

7 MR. JACKSON: If he finds a sponsoring
8 agency.

9 MR. PEREZ: Thank you.

10 MR. SCHULTZ: Any other questions? Thank
11 you.

12 MR. JACKSON: Thank you.

13 MR. SCHULTZ: Now, a review of formal
14 hearings.

15 MR. SHANDLER: Mr. Chairman, now is the time
16 that you can entertain a motion to go into closed
17 session and then a motion to second and then a roll
18 call.

19 MR. SCHULTZ: I'm looking for a motion.

20 MR. COON: Mr. Chairman, I make a motion we
21 go into closed session.

22 MR. SCHULTZ: We have a motion. Do I have a
23 second?

24 MR. BETZ: I'll second.

25 MR. SCHULTZ: We have a second by Chief

1 Betz. Roll call, please.

2 MS. LOPEZ: Chief Robert Shilling.

3 MR. SHILLING: Present.

4 MS. LOPEZ: Sheriff James Coon.

5 MR. COON: Yes.

6 MS. LOPEZ: Chief Harry Betz.

7 MR. BETZ: Present.

8 MS. LOPEZ: Chief Raymond Schultz.

9 MR. SCHULTZ: Yes.

10 MS. LOPEZ: Nate Korn.

11 MR. KORN: Present.

12 MS. LOPEZ: Matt Perez.

13 MR. PEREZ: Yes.

14 MR. SCHULTZ: So we do have a motion and a
15 vote to go into closed session. At this time we'll go
16 into closed session. Nothing will be discussed in
17 closed session other than the orders that are in front
18 of the board. We'll move to items Nos. 18 through
19 25A.

20 MR. SHILLING: Mr. Vice Chairman, a point of
21 order, a question. Recusals on the formal hearings,
22 do you want to hear those now or once we go behind
23 closed doors?

24 MR. SHANDLER: Did you have some of those
25 too?

1 MR. SHILLING: I don't know what the general
2 legal advice has been to board members. Number 28, I
3 would consider I probably need to recuse myself on
4 that, as well as No. 30.

5 MR. SCHULTZ: Okay. It's been noted. And
6 then we'll address that as we get into the formal
7 hearing process.

8 MR. SHANDLER: So you're now off the record.

9 MR. SCHULTZ: We are off the record.

10 (Recess from 1:10 p.m. to 3:30 p.m.)

11 MR. SCHULTZ: I'll entertain a motion that we
12 go back into session.

13 MR. COON: Mr. Vice Chair, I make a motion we
14 go back into session.

15 MR. BETZ: I'll second.

16 MR. SCHULTZ: I have a motion and a second.

17 We need a roll call vote, please.

18 MS. LOPEZ: Chief Shilling.

19 MR. SHILLING: Here.

20 MS. LOPEZ: Sheriff Coon.

21 MR. COON: Here.

22 MS. LOPEZ: Chief Betz.

23 MR. BETZ: Here.

24 MS. LOPEZ: Chief Schultz.

25 MR. SCHULTZ: Yes.

1 MS. LOPEZ: Nate Korn.

2 MR. KORN: Here.

3 MS. LOPEZ: Matt Perez.

4 MR. PEREZ: Yes.

5 MR. SCHULTZ: And for the record, while in
6 executive session, the board did not discuss anything
7 other than the disciplinary actions that were
8 scheduled to be heard by the board today.
9 Mr. Shandler.

10 MR. SHANDLER: Mr. Vice Chair, No. 18,
11 Christopher Larson. The proposed stipulated order as
12 presented by the board staff, do you accept or reject
13 it?

14 MR. COON: Mr. Vice Chair, I make a motion
15 we accept the recommendations on Christopher Larson of
16 a 30-day suspension.

17 MR. SCHULTZ: We have a recommendation for
18 acceptance from Sheriff Coon. Is there a second?

19 MR. KORN: Second.

20 MR. SCHULTZ: Second from Mr. Korn. Any
21 discussion? Hearing no discussion, the board will
22 accept the recommendation of the Notice of
23 Contemplated Action which will include a suspension of
24 30 days. Okay. And with that we need a vote. All in
25 favor say aye.

1 (Those in favor so indicate.)

2 MR. SCHULTZ: All those opposed? Approved.

3 MR. SHANDLER: Mr. Chairman, No. 19 has been
4 withdrawn from the agenda. Mr. Vice Chairman, item
5 No. 20, Manuel Melendez, you heard information from
6 both your staff and from Mr. Melendez. Do you accept
7 or reject the proposed stipulated order?

8 MR. SCHULTZ: Do I hear a motion from the
9 board?

10 MR. SHANDLER: And let me try to fill in.
11 The proposed stipulation is for 90 days for an event
12 involving allegations of financial issues/derelection
13 of duty. Generally the board has gone from four to
14 six months for those types of conduct.

15 You heard about aggravated and mitigating
16 circumstances. But 90 days may be below the board's
17 general matrix. And maybe the board would want to
18 consider the matrix of, you know, maybe at least
19 180 days which would be more consistent with your
20 matrix.

21 MR. COON: Mr. Vice Chair, I make a
22 recommendation that we change the 90-day suspension to
23 180 days suspension, one-year probation, ethics
24 training course, and 16 hours of community service.

25 MR. SCHULTZ: We have a motion to reject the

1 recommended agreement from the director and request
2 that the director go back and speak with Mr. Melendez
3 and/or his attorney and look at the same terms and
4 conditions; however, changing the recommended
5 revocation to at least 180 days. Is there a second?

6 MR. BETZ: Second.

7 MR. SCHULTZ: Second from Chief Betz. All
8 those in favor say aye.

9 (Those in favor so indicate.)

10 MR. SCHULTZ: All those opposed say nay.
11 That passes.

12 MR. SHANDLER: Okay. Mr. Chairman, that
13 offer on the table for 180 days, would you agree that
14 it should be on for seven days; and if not, then the
15 process will continue pursuant to the rule. Is that
16 acceptable, Mr. Vice Chair?

17 MR. SCHULTZ: Mr. Shandler, that is. And
18 that was discussed as to putting a time limit in which
19 that these offers would be accepted by the board. So
20 seven days is what was discussed and decided upon.

21 MR. SHANDLER: Mr. Chairman, the next item is
22 21, William Cunningham. Again the decision is whether
23 to accept or reject the proposed stipulated order.
24 This proposed stipulated order is for 60 days. It's
25 involving allegations of dereliction of duty and lying

1 to coworkers.

2 The matrix as previously stated for
3 dereliction of duty is usually much longer than that.
4 And so perhaps the board, to be consistent with the
5 matrix, and may want to consider at least 180 days up
6 to revocation. It is dependent on the board's view of
7 what you heard in terms of aggravating and mitigating
8 circumstances.

9 So does the board accept or reject the
10 proposed stipulated order?

11 MR. KORN: Mr. Vice Chair, I would make a
12 motion that we reject the stipulated order and we send
13 it back to the director for examination to determine
14 180 days up to revocation based on the fact that it
15 was complete dereliction of duty that put the lives of
16 citizens of the State of New Mexico in jeopardy.

17 MR. SCHULTZ: We have a motion to reject the
18 request from the director, requesting that the
19 director go back and meet with Mr. Cunningham and come
20 back with a recommended discipline of 180 days up to
21 revocation as per the reasons stated by Mr. Korn. Is
22 there a second?

23 MR. COON: Second.

24 MR. SCHULTZ: Seconded by Sheriff Coon. All
25 those in favor say aye.

1 (Those in favor so indicate.)

2 MR. SCHULTZ: All those opposed? It passes
3 unanimously.

4 MR. SHANDLER: Okay. And let the record show
5 that Chief Shilling recused on 21, correct?

6 MR. SHILLING: Correct.

7 MR. SHANDLER: Mr. Vice Chair, item 22,
8 Manuel Soto. We have a proposed stipulated order for
9 14 days. Does the board accept or reject this
10 proposal?

11 MR. SCHULTZ: Is there a motion from the
12 board? Not hearing one, I will make a motion that we
13 accept the recommended discipline of a revocation of
14 14 days, eight hours community service, ethics course,
15 and to address a future cadet class. Is there a
16 second?

17 MR. COON: Second.

18 MR. SCHULTZ: Having a first and a second,
19 all those in favor say aye.

20 (Those in favor so indicate.)

21 MR. SCHULTZ: All those opposed say nay. It
22 passes unanimously.

23 MR. SHANDLER: I'm just being a lawyer, I'm
24 anxious about verbs. So 14 days is suspension. The
25 revocation is usually for longer terms.

1 MR. SCHULTZ: I'm sorry. Yes.

2 MR. SHANDLER: Mr. Vice Chair, item 23 was
3 withdrawn from the agenda.

4 Mr. Vice Chairman, item 24, Robert Salazar.
5 The proposed stipulated order is for 60 days for an
6 allegation of domestic violence. That is consistent
7 with your matrix. Does the board accept or reject the
8 proposed stipulated order on Robert Salazar?

9 MR. SCHULTZ: Is there a motion from the
10 board?

11 MR. COON: Mr. Chairman, I make a motion that
12 we accept the recommendation from the director's
13 office for a 60-day suspension, one-year probation,
14 ethics training course, eight hours community service,
15 and anger management.

16 MR. SCHULTZ: We have a recommendation to
17 accept the director's recommendation as stated by
18 Sheriff Coon. Is there a second.

19 MR. SHILLING: Second.

20 MR. SCHULTZ: We have a first and a second.
21 All those in favor of accepting the director's
22 recommendation say aye.

23 (Those in favor so indicate.)

24 MR. SCHULTZ: All those opposed? Okay. That
25 passes unanimously.

1 MR. SHANDLER: Mr. Vice Chair, item 25 is
2 Sharon Mills. I have in my hand for the board a
3 document signed by Sharon Mills, a voluntary
4 relinquishment of certification, where she admits the
5 allegations contained in the Notice of Contemplated
6 Action.

7 And that she, quote, further agrees that at
8 no time in the future will I seek to be certified as a
9 law enforcement officer in the State of New Mexico.
10 Does the board want to accept or reject the proposed
11 voluntary relinquishment of certification?

12 MR. SCHULTZ: Is there a motion from the
13 board to accept or reject the respondent's
14 relinquishment of her certification?

15 MR. BETZ: I make a motion to accept the
16 director's recommendation.

17 MR. SCHULTZ: From Chief Betz. Is there a
18 second?

19 MR. KORN: Second the motion.

20 MR. SCHULTZ: Second from Mr. Korn. All
21 those in favor of accepting the relinquishment from
22 Ms. Mills for police certification please say aye.

23 (Those in favor so indicate.)

24 MR. SCHULTZ: All those opposed? We'll
25 accept that.

1 MR. SHANDLER: Mr. Vice Chair, item 25A is
2 Matthew Spear. This was an appeal. And there's a
3 proposed stipulated order about when he can reapply to
4 the academy. And before I proceed further, I just
5 want to make sure we had all the dates correct.

6 Mr. Vice Chair, the relevant dates are "The
7 respondent has knowingly and voluntarily agreed to the
8 stipulated order to assume and accept responsibility
9 for this conduct described in the release letter dated
10 January 21, 2010?"

11 "The respondent hereby agrees to dismiss his
12 appeal of his release from the academy with the
13 understanding that he may reapply to the academy three
14 years from the date of his release, October 21, 2013."
15 Does the board want to accept or reject the proposed
16 stipulated order?

17 MR. SCHULTZ: Do I hear a motion from the
18 board to accept or reject the stipulated order?

19 MR. COON: Mr. Vice Chair, I make a motion
20 that we accept the stipulated order to where Matthew
21 Spear from January 21, 2010, cannot reapply until
22 January 21st, 2013.

23 MR. SCHULTZ: Actually I believe it would be
24 October.

25 MR. COON: October. I'm sorry. October.

1 MR. SCHULTZ: So the motion by Sheriff Coon
2 is that we would accept the stipulated order effective
3 through the 21st day of October, 2013. Is there a
4 second?

5 MR. SHILLING: Second.

6 MR. SCHULTZ: We have a second from Chief
7 Shilling. All those in favor that we accept the
8 stipulated order say aye.

9 (Those in favor so indicate.)

10 MR. SCHULTZ: All those opposed? That will
11 be accepted.

12 ITEM NO. 26: JESUS ROYBAL

13 MR. SHANDLER: Mr. Vice Chair, the next item
14 is 26, Jesus Roybal. These are formal hearings
15 presented in front of a hearing officer and the record
16 has been closed.

17 Your hearing officer based on the record
18 recommended a suspension period up to one year
19 including the additional conditions agreed to by the
20 parties in their prior proposed stipulated order.

21 Does the board wish to enter an order
22 suspending Jesus Roybal for one year?

23 MR. SCHULTZ: Is there a recommendation from
24 the board to suspend the license of Jesus Roybal?

25 If not, I would make a request that the board

1 consider the revocation of Jesus Roybal for a period
2 of one year due to the fact that Mr. Roybal has been
3 involved in multiple incidents which would be
4 considered extenuating circumstances. So we would
5 request the revocation of one year.

6 MR. SHILLING: I'll second the motion.

7 MR. SCHULTZ: We have a first and a second
8 for revocation for one year. All those in favor say
9 aye.

10 (Those in favor so indicate.)

11 MR. SCHULTZ: All those opposed?

12 MR. SHANDLER: A final order will be entered
13 to that effect. And also he was in a position of
14 authority as a city manager.

15 ITEM NO. 27: ALFRED WALCK

16 MR. SHANDLER: Item No. 27, Alfred Walck.
17 Earlier this morning Member Korn talked about that
18 he considered recusing himself from this case because
19 he said that he may be a friend of Mr. Walck.

20 In further consultation with counsel, we've
21 discussed this matter. And I had advised him that he
22 is eligible to vote in this matter. He is not a
23 friend of Mr. Walck. Instead Mr. Walck is one of many
24 customers to his business but does not fall within the
25 legal rubric of substantial interest. The purchases

1 that he may or may not make at the store is not
2 substantial under the Governmental Conduct Act.

3 So, Mr. Korn, you are eligible to vote in
4 No. 27. Do you wish to become eligible?

5 MR. KORN: Yes, I wish to participate.

6 MR. SHANDLER: Okay. Mr. Vice Chair, your
7 hearing officer suggested a possible suspension range
8 of 30 to 90 days based on the conduct. However, those
9 findings may have been based on policy violations
10 which may be beyond the jurisdiction of this
11 particular board.

12 Therefore, the board may want to consider, if
13 there has only been policy violations that have been
14 proven up and those are beyond your jurisdiction, then
15 perhaps there aren't actionable grounds in this
16 particular matter. So what is the pleasure of the
17 board in this matter?

18 MR. COON: Mr. Chairman, since you excluded
19 yourself from this, we felt that the 48 hours that
20 Mr. Walck was given by the Albuquerque Police
21 Department was sufficient punishment for Mr. Walck;
22 and, therefore, don't want to take any more action
23 towards him.

24 MR. SHANDLER: So is that in the form of a
25 motion?

1 MR. COON: That's in the form of a motion.

2 MR. BETZ: I second.

3 MR. SCHULTZ: Can I say this?

4 MR. SHANDLER: I think you have recused
5 yourself from voting. But you can still be the
6 presiding officer. So you can call for the vote.

7 MR. SCHULTZ: Okay. So I call for a vote
8 based on the motion made by Sheriff Coon that no
9 further action is warranted in this particular matter
10 involving Alfred Walck. All those in favor say aye.

11 (Those in favor so indicate.)

12 MR. SCHULTZ: All those opposed? It passes
13 unanimously. And, of course, I did not vote on this
14 issue.

15 ITEM NO. 28: EXEVIUS SEALS

16 MR. SHANDLER: Item 28, Exevius Seals. Your
17 hearing officer heard this matter and found that the
18 burden of the proof is on the state. But that the
19 state was unable to provide sufficient proof of the
20 chain of documents tracking the criminal complaint's
21 journey.

22 And he actually recommended a dismissal of
23 this case against the respondent. What's the board's
24 pleasure in this matter?

25 MR. SCHULTZ: Actually I'll make a motion in

1 this with one myself. I would like to make a motion
2 that we do accept the finding and recommendation of
3 the hearing officer that the case be dismissed.

4 However, I would also request that the
5 director contact the officials from the Valencia
6 County Sheriff's Department to make sure that they are
7 provided with information and sufficient training to
8 help them develop policy when it comes to the proper
9 filing and routing of criminal complaints. Is there a
10 second?

11 MR. KORN: I second the motion.

12 MR. SCHULTZ: A first and a second. All
13 those in favor say aye.

14 (Those in favor so indicate.)

15 MR. SCHULTZ: All those opposed?

16 MR. SHANDLER: And let the record reflect
17 that Chief Shilling recused on item 28, correct?

18 MR. SHILLING: That is correct, sir.

19 ITEM NO. 29: RICHARD GONZALES

20 MR. SHANDLER: Item 29, Richard Gonzales.
21 Your hearing officer heard this matter and recommended
22 that the board may want to consider a suspension
23 ranging from 180 days to 365 days based on the
24 information provided at the hearing.

25 Earlier at this meeting, we talked about

1 Melendez and Cunningham. Well, specifically Melendez
2 where there were allegations of financial issues. And
3 there the board recommended at least 180 days.

4 And so it may be consistent with practice
5 within this meeting itself for a 180-day sanction for
6 Mr. Gonzales based on the record. What's the board's
7 pleasure for Richard Gonzales?

8 MR. SCHULTZ: Is there a motion from the
9 board?

10 MR. COON: Mr. Vice Chair, I make a motion
11 that we suspend Mr. Gonzales for 180 days.

12 MR. SCHULTZ: We have a motion for a
13 recommended suspension of 180 days. Is there a
14 second?

15 MR. BETZ: I second.

16 MR. SCHULTZ: A first and a second. I would
17 also like to add for the record that there was
18 discussion about the fact that Richard Gonzales was in
19 a position of authority and held the rank of sergeant
20 which added to the circumstances surrounding the
21 proposed discipline. All those in favor say aye.

22 (Those in favor so indicate.)

23 MR. SCHULTZ: All those opposed? It passes
24 unanimously.

25 ITEM NO. 30: KELSEY COTTON

1 MR. SHANDLER: Mr. Chairman, the next item is
2 No. 30, Kelsey Cotton, a telecommunicator. You have
3 the hearing officer's report in front of you.

4 The hearing officer recommended a suspension
5 ranging from 180 days to 365 days, but allowed that
6 you weigh the above possible aggravating and
7 mitigating circumstances.

8 Hearing officer did point out as aggravating
9 circumstances that a 911 call involving a reported
10 domestic violence is not just a regular call from a
11 citizen. And the board may want to weigh whether this
12 penalty should be aggravated because her inaction on a
13 911 call according to her employer was inexcusable and
14 unconscionable.

15 So the board may want to consider based on
16 that aggravating that proposed suspension. What is
17 the wish of the board?

18 MR. SCHULTZ: Do we have a recommendation
19 from the board?

20 MR. KORN: Mr. Vice Chair.

21 MR. SCHULTZ: Mr. Korn.

22 MR. KORN: I would make a motion that we
23 reject the recommendation of the hearing officer and
24 we would recommend as a board that Kelsey Cotton,
25 because of her dereliction of duty, again putting the

1 lives of the citizens of New Mexico in jeopardy, grave
2 jeopardy, and also being the only link between remote
3 locations and law enforcement, because of all that
4 dereliction of duty, we would recommend that her
5 certification be revoked, her certification be
6 revoked.

7 MR. SCHULTZ: We have a recommendation for
8 reasons stated by Mr. Korn for revocation of license
9 from Kelsey Cotton. Is there a second?

10 MR. PEREZ: Second.

11 MR. SCHULTZ: We have a second from
12 Mr. Perez. All those in favor of revocation please
13 say aye.

14 (Those in favor so indicate.)

15 MR. SCHULTZ: All those opposed? The
16 revocation passes.

17 MR. SHANDLER: And for the record Chief
18 Shilling recuses; is that correct, sir?

19 MR. SHILLING: That is correct.

20 ITEM NO. 31: ANDREW SCRIBNER

21 MR. SHANDLER: Item 31 is Andrew Scribner.
22 Your hearing officer reviewed this matter and
23 recommended a period of suspension of 12 to 18 months.
24 The rationale was the event was an aggravated DWI.

25 Within the board's matrix, that's a year

1 right there. And this was the second alcohol-related
2 event within a short period of time, especially within
3 a period of time after receiving certification;
4 therefore, that might be an additional aggravator.

5 So the hearing officer recommended up to
6 18 months of suspension. What's the board's position
7 on this matter.

8 MR. SCHULTZ: Do we have a recommendation
9 from the board?

10 MR. KORN: Mr. Vice Chair, we would make a
11 motion to accept the hearing officer's recommendation
12 of 18 months.

13 MR. SCHULTZ: We have a recommendation to
14 accept the hearing officer's recommendation of
15 revocation for 18 months. Is there a second?

16 MR. BETZ: I'll second.

17 MR. SCHULTZ: A second from Chief Shilling.
18 All those in favor of an 18-month revocation please
19 say aye.

20 (All those in favor so indicate.)

21 MR. SCHULTZ: All those opposed? It passes
22 unanimously.

23 ITEM NO. 32: TIM CHAVEZ

24 MR. SHANDLER: Mr. Vice Chair, item 32 is Tim
25 Chavez. There was a hearing in front of a hearing

1 officer with testimony. Your hearing officer based on
2 the record recommended a revocation in this matter.

3 The basis is that there is no doubt that
4 Mr. Chavez demonstrated a lack of moral character in
5 having nonconsensual sexual intercourse with a minor.
6 This action does adversely affect an officer's ability
7 to exercise his duties as a certified law enforcement
8 officer.

9 What's the board's pleasure on this matter?

10 MR. SCHULTZ: Do we have a recommendation
11 from the board?

12 MR. BETZ: I would like to make a motion for
13 recommendation that it be revoked for life.

14 MR. SCHULTZ: A recommendation for a life
15 revocation from Chief Betz. Is there a second?

16 MR. COON: I'll second it.

17 MR. SCHULTZ: A second from Sheriff Coon.
18 All those in favor of a lifetime revocation please say
19 aye.

20 (Those in favor so indicate.)

21 MR. SCHULTZ: All those opposed? For the
22 record I did not vote on this item, I recused myself.
23 Is there any other business from the board?

24 MR. SHANDLER: I'll turn it over to the
25 deputy director for scheduling the next meeting.

1 ITEM NO. 33: SCHEDULING OF NEXT MEETING

2 MR. NAJAR: Mr. Vice Chairman, board members,
3 the only item left on the agenda is your consideration
4 for the next dates for the next board meeting for the
5 next quarter, July, August, September.

6 If you can give us some ideas. I know
7 September is usually a busy time for agencies, state
8 fair, that kind of deal. I don't know if you want to
9 pick something in August. But if you can give us some
10 guidance, we'll try to set that up for the next
11 quarter.

12 MR. COON: Mr. Najjar, I would make a motion
13 that we hold our next hearing -- and we've always done
14 it once a year -- in Ruidoso in August, when it's nice
15 and cool. And I'm sure we can get the convention
16 center or someplace up there.

17 MS. LOPEZ: Did you guys like the one that I
18 did last time, where we had it?

19 MR. COON: At the convention center?

20 MS. LOPEZ: Yes.

21 MR. SCHULTZ: Or that hotel that's right --

22 MS. LOPEZ: It was right next to the hotel.

23 MR. SCHULTZ: Yeah, the golf course.

24 MR. COON: The Lodge.

25 MS. LOPEZ: Okay. I'll contact them.

1 MR. NAJAR: And Thursday is still a good day
2 of the week? We'll send you some options on the exact
3 dates in August. But is Thursday still the preferred
4 meeting date? Okay.

5 MR. KORN: Mr. Vice Chair, I have a question.
6 Are we going to have four meetings this year? Are we
7 going to start loading up towards the last quarter?

8 MR. SCHULTZ: Actually I think we need to get
9 some appointments from the governor's office first to
10 make sure we have a -- because I know I think we're
11 all kind of in question as to who is actually going to
12 be on the board.

13 And I know there's been some discussions by
14 liaison folks from the governor's office that's in
15 charge of boards and commissions. So at this point in
16 time, I think we just plan the first meeting. And
17 then hopefully the next meeting we'll be a little bit
18 more solidified and we can figure out the schedule for
19 the rest of the year.

20 MR. KORN: Thank you.

21 MR. SCHULTZ: So if you could give us a
22 couple dates in August, that would be great. I know
23 there's one week I'm gone I know for sure. And, of
24 course, with school starting, that's when school
25 starts as well.

1 MS. LOPEZ: Maybe late August?

2 MR. SHILLING: Earlier might be better.

3 MR. SCHULTZ: Yeah, earlier might be a little
4 bit better.

5 MS. LOPEZ: Okay.

6 MR. COON: May I say one thing, Mr. Chairman,
7 Vice Chairman. They have us -- the new Lawman that
8 just come out is one with the officer of the year on
9 it. But Jack LeVick also did a limited edition one
10 with the sergeant that was killed up in Afghanistan
11 from Farmington.

12 But he did this basically for the family.
13 And there's very few of these out. So if you want
14 one, you can get it with Jack LeVick.

15 MR. SCHULTZ: Any other business before the
16 board today?

17 ITEM NO. 34: ADJOURNMENT

18 MR. COON: Mr. Chairman, I would make a
19 motion we adjourn.

20 MR. SCHULTZ: I have a motion to adjourn. Is
21 there a second?

22 MR. BETZ: Second.

23 MR. SCHULTZ: We have first and second to
24 adjourn. We're done.

25 (At 4:00 p.m. the meeting was adjourned.)

1 REPORTER'S CERTIFICATE

2
3 I, JAN A. WILLIAMS, New Mexico CCR #14, DO
4 HEREBY CERTIFY that on June 2, 2011, the proceedings
5 in the above captioned matter were taken before me,
6 that I did report in stenographic shorthand the
7 proceedings set forth herein, and the foregoing pages
8 are a true and correct transcription to the best of my
9 ability.

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JAN A. WILLIAMS, RPR
Bean & Associates, Inc.
New Mexico CCR #14
License Expires: 12/31/11

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25 (1161K) JAW

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DATE: June 2, 2011

JOB NUMBER: (1161K) JAW

WITNESS NAME: Hearing

CASE CAPTION: DPS Board Meeting and Public Hearing

ATTORNEY: MR. GILBERT NAJAR

DOCUMENT: Transcript / Exhibits / Disks / Other _____

DATE DELIVERED: _____ DEL'D BY: _____

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ATTORNEY: MR. ZACHARY SHANDLER

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