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NEW MEXICO LAW ENFORCEMENT ACADEMY  
REGULAR BOARD MEETING AND PUBLIC HEARING

Tuesday, December 8, 2009  
9:00 a.m.  
14500 Central Avenue, S.W.  
Albuquerque, New Mexico 87121

Reported By:  
TANYA M. NIMS, RPR, NM CCR #168  
Los Lunas, New Mexico 87031

1           A P P E A R A N C E S

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4           B O A R D M E M B E R S

- 5           James Coon
- 6           Robert Force
- 7           Donald Gallegos
- 8           Arsenio Jones
- 9           Kevin Mariano
- 10          Bernardo Perez
- 11          Raymond Schultz
- 12          Faron Segotta

13

14          A L S O P R E S E N T

- 15          Monique Croker
- 16          Ernest Holmes
- 17          Matthew Jackson
- 18          Arthur Ortiz
- 19          Zachary Shandler
- 20          Marissa Tapia

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1           A G E N D A I T E M I N D E X

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1 (At this time, Mr. Segotta and Mr. Shandler are not  
2 present.)

3 ITEM #1: CALL TO ORDER

4 MR. GALLEGOS: Good morning, everybody. Welcome  
5 to the regular board meeting of the New Mexico Law  
6 Enforcement Academy. My name is Donald Gallegos. I'm the  
7 Eighth Judicial District Attorney, which is Taos, Colfax,  
8 and Union County.

9 I'm also the district attorney's delegate to this  
10 board. And this is usually chaired by the Attorney  
11 General's Office; however, they were not able to make it  
12 at this point.

13 I want to do a couple of just real quick  
14 housekeeping matters. I don't think they'll take very  
15 long. And then we'll proceed to the regular agenda  
16 items.

17 The first thing I want to do, folks, is request  
18 just a brief moment of silence for the passing of a couple  
19 of people who are very near and very dear to us. And, of  
20 course, the first one is Governor King, who as we all know  
21 passed away not too long ago and is also the father of our  
22 board chairman.

23 The other person is a little closer to home. My  
24 little brother Joey was in Iraq serving his country, and  
25 he died over there in October. And so I know there are

6

1 others that have passed; and others, unfortunately, who  
2 will.

3 So for their -- in their memory, and also for  
4 those who are still serving with us, I'm just going to ask

5 for a brief moment of silence.

6 (There was a pause in the proceedings.)

7 MR. GALLEGOS: Thank you all.

8 ITEM #2: ROLL

9 MR. GALLEGOS: We'll proceed with the first item

10 on the agenda, which is the call to order. We did that.

11 The second is the roll call.

12 MS. CROKER: Donald Gallegos.

13 MR. GALLEGOS: Here.

14 MS. CROKER: Faron Segotta. {No response.}

15 Sheriff Coon.

16 MR. COON: Here.

17 MS. CROKER: Kevin Mariano.

18 MR. MARIANO: Here.

19 MS. CROKER: Chief Schultz.

20 MR. SCHULTZ: Here.

21 MS. CROKER: Sergeant Jones.

22 MR. JONES: Here.

23 MS. CROKER: Robert Force.

24 MR. FORCE: Here.

25 MS. CROKER: Matt Perez.

7

1 MR. PEREZ: Here.

2 MR. GALLEGOS: And I have been remiss. I guess

3 already. It didn't take that long. But we do have a new

4 board member. Correct?

5 MR. MARIANO: Yes.

6 MR. GALLEGOS: All right. Would you mind, sir,  
7 introducing yourself and let the folks know who you are.

8 MR. MARIANO: Good morning. My name is  
9 Kevin Mariano. I'm the -- was the chief at Acoma, the  
10 Pueblo of Acoma, now moved into another higher position as  
11 Safety Operations Director is what I am now at the Pueblo.

12 I oversee the fire department, courts, and of  
13 course the law enforcement area. I look forward to being  
14 on part of the board here and doing what I can and  
15 learning as much as I can. I know I'm still young.

16 And so I appreciate the offer of being here, and  
17 I'm honored to do this. So I'll continue to do my best as  
18 I go forward with this. So, thank you, again.

19 MR. GALLEGOS: Thank you and welcome.

20 ITEM #3: APPROVAL OF AGENDA

21 MR. GALLEGOS: The next item is the approval of  
22 the agenda. If everyone on the board has had an  
23 opportunity to look at the agenda, I'll entertain a motion  
24 to approve.

25 MR. COON: I make a motion to approve the agenda.

8

1 MR. GALLEGOS: Moved by Sheriff Coon. Do I hear  
2 a second?

3 MR. JONES: I'll second it.

4 MR. GALLEGOS: Seconded by Sergeant Jones. All  
5 those in favor say aye.

6 THE BOARD: Aye.

7 MR. GALLEGOS: Any opposition say nay. {No  
8 response.} Okay. The motion passes. And, Monique, I  
9 also probably -- or I should have noted for the record  
10 that we do have a quorum for today.

11 MS. CROKER: Thank you.

12 ITEM #4: APPROVAL OF MINUTES, 9/24/09

13 MR. GALLEGOS: All right. Next item would be the  
14 approval of the minutes. They are attached in your  
15 packets. If you need to review them real briefly and then  
16 I'll entertain a motion to approve.

17 MR. SCHULTZ: Mr. Chairman, I move that we accept  
18 the minutes as provided.

19 MR. GALLEGOS: Moved by Chief Schultz. Do I hear  
20 a second?

21 MR. COON: I'll second.

22 MR. GALLEGOS: Seconded by Sheriff Coon. All  
23 those in favor say aye.

24 THE BOARD: Aye.

25 MR. GALLEGOS: Any opposition say nay. {No

9

1 response.} Okay. Motion passes.

2 ITEM #5: DIRECTOR'S REPORT

3 MR. GALLEGOS: We'll move onto the next item,  
4 which is the director's report. Mr. Ortiz.

5 MR. ORTIZ: I'll come up here. I have a bit of a  
6 cold, and I don't want to hamper Tanya.

7 Good morning, Mr. Chairman, Board Members, Ladies



8 and Gentlemen. Welcome. The following is a description  
9 of the activities in the New Mexico Law Enforcement  
10 Academy that have transpired since September 24th, 2009,  
11 the board meeting which was held in Red River.

12 I'd also like to begin by introducing and  
13 welcoming the newly appointed tribal Pueblo chief  
14 representative Kevin Mariano from the Acoma Police  
15 Department. I do have a brief bio, which I'll share with  
16 everyone.

17 Chief Mariano is a Native American enrolled in  
18 the Pueblo of Acoma where he grew up and attended the  
19 local elementary school and later graduated from Grants  
20 High School. He obtained his first job at a trailer  
21 manufacturing company in Albuquerque, New Mexico, and  
22 continued on choosing a different employment career and  
23 worked his way into the Department of Corrections.

24 He graduated from the New Mexico Department of  
25 Corrections Academy in Santa Fe, New Mexico. After

10

1 graduating from the corrections academy, he obtained  
2 employment in the corrections department in Grants.

3 He continued his interest in the law enforcement  
4 field and pursued a career in law enforcement where he  
5 joined the Cibola County Sheriff's Department Reserve  
6 Officer Program. He applied for a police officer and  
7 successfully was hired at the Laguna Police Department and  
8 started his career in law enforcement.

9 He attended the Law Enforcement Academy in  
10 Santa Fe and graduated and returned back to the Laguna  
11 Police Department as a certified police officer. Through  
12 the years at Laguna Police Department, he moved into  
13 investigations and worked as an investigator for the  
14 Laguna Police Department.

15 He continued to take on challenges and moved up  
16 in rank as sergeant with the Laguna Police Department.  
17 Through his dedication and commitment he continued to move  
18 up in rank and later achieved the position of lieutenant  
19 with the Pueblo of Acoma Police Department.

20 During this time he served as lieutenant and  
21 acting chief of police and thought why not make the move  
22 towards full-time chief of police. He applied for the  
23 chief's position with Acoma, and he was hired and  
24 currently has been in the position for seven years.

25 He is currently pursuing a degree in the criminal

11

1 justice field and in the health field. During the years  
2 of working in the law enforcement field, he has obtained  
3 considerable knowledge in the areas of domestic violence,  
4 child abuse, protection orders, investigation, and  
5 administrative management.

6 Again, I'd like to thank Mr. Mariano and  
7 Governor Richardson for making that appointment. And we  
8 welcome you aboard.

9 The next item that I have is the four-year term

10 of District Attorney Representative Donald Gallegos will  
11 expire on December 31st. And at this time we want to  
12 thank Donald and present him with a plaque for his  
13 commitment and service to the citizens of the law  
14 enforcement community.

15 MR. COON: Wow.

16 MR. GALLEGOS: Thank you, Art.

17 MR. ORTIZ: There you go.

18 MR. GALLEGOS: Thanks.

19 {Applause.}

20 MR. ORTIZ: I'll let you read it. I'm a little  
21 stuffy here.

22 MR. GALLEGOS: "The New Mexico Department of  
23 Public Safety, Law Enforcement Academy, Donald Gallegos,  
24 Board Member. In grateful appreciation for a dedication  
25 and loyalty to the Department of Public Safety Training

12

1 Academy and Law Enforcement Officers of New Mexico,  
2 2009." Thank you all. It's been my honor.

3 MR. ORTIZ: Thank you.

4 Congratulations are also in order for  
5 Chief Schultz on being reappointed as chief. We are all  
6 pleased for that. And we want to extend our  
7 congratulations to you as well, Chief. Thank you.

8 {Applause.}

9 MR. ORTIZ: Okay. Also going on at the  
10 academy -- I'm sure a lot of you may have heard in the

11 news media about the furloughs. Governor Richardson has  
12 implemented a mandatory furlough plan. The furlough will  
13 consist of a total of five days from now until June 30th  
14 of 2010.

15       The dates, there has been some changes. I did  
16 put them in the director's report. For Thursday,  
17 December 24th, would be the first furlough date. That has  
18 remained. The one Thursday, December 31st, they are  
19 changing that to March 5th. And then Friday, January 15th  
20 of 2010; Friday, April 2nd, 2010; and Friday, May 28th of  
21 2010.

22       The staff will be off those days except the only  
23 alternative plan we have is for the basic academy. With  
24 the academy class going on, we have alternative dates for  
25 them. So during the breaks of the classes, basic staff

13

1 will be taking their furlough days.

2       The misconduct stats update. Currently -- and  
3 there is some misprints, but I'll update you. As of  
4 yesterday, I received three more. So we have 117 reported  
5 misconducts this year for 2009. Currently we have 38 open  
6 cases. There's one for 2007 pending. Five for 2008. And  
7 32 for 2009.

8       Eight of the open cases are pending formal  
9 hearings, and six of these cases are pending court  
10 hearings. So I want to thank Matt Jackson with the AG's  
11 office in working with us, and I think we are moving the

12 cases along fairly well.

13 Also, a lot of you have received a letter in the  
14 mail regarding the Magdalena marshal. And if you notice  
15 in your packets, in the way back I put some -- Tab 28.  
16 There's some letters and documents regarding the Magdalena  
17 marshal.

18 And Zack Shandler -- who's on his way; he called  
19 that he's running late -- but he was going to address that  
20 because back in August I brought that to the Attorney  
21 General's attention. And he does have some information to  
22 share with you. So when he arrives, we'll have him  
23 address that with the board.

24 Due to the hiring freeze, five positions remain  
25 vacant. And another welcome is for Marissa Tapia. I'd

14

1 like for her to stand up. She was hired as the secretary  
2 in the Advanced Training Bureau, and she began in  
3 October. So we'd like to welcome her.

4 MS. TAPIA: Thank you.

5 {Applause.}

6 MR. ORTIZ: And Meliza Romero, she's Gil Najar's  
7 secretary. She was chosen as employee of the quarter for  
8 July through September. Also some good news. A lot of us  
9 have been dealing with Chief Sanders from Hobbs.

10 {At this time, Mr. Segotta entered the meeting.}

11 MR. ORTIZ: Just to let the board know, they made  
12 a decision on the physical fitness for Chief Sanders where

13 he had to take the physical fitness testing. He did. He  
14 took the bike test at UNM. He was successful, and he  
15 passed the bike test. He then had to fulfill the other  
16 requirements of the Agility I and Agility II, and he did  
17 pass those and he was successful.

18 He is scheduled tomorrow to take the LEOCE test.  
19 If he's successful and passes that, he will then be  
20 certified. I'm sharing this because I think some of you  
21 may have been getting calls from citizens as well. I  
22 think that will probably put an end to it.

23 At this time, I'll go ahead and call Bureau Chief  
24 Mark Shea to share the advanced report. And I'll be back  
25 for the basic.

15

1 MR. SHEA: Morning, Members of the Board. Just  
2 to give you a very brief recap as to what has transpired  
3 with the Advanced Training Bureau since our last meeting.  
4 We have two -- since we did have our September meeting, we  
5 have completed 4,914 contact training hours of 266  
6 students in our advanced training classes.

7 That's both with in-house training staff, which  
8 consists of Elliott Guttmann, our staff attorney and  
9 instructor, and Brian Coss as our other instructor.  
10 Everything else we rely upon adjuncts and contract  
11 classes.

12 We currently have a certification by waiver  
13 previous training Class 68 in session. We did seat 14

14 students in that class. Once we complete that, that will  
15 give us an additional 1,680 hours of training for a total  
16 of 6,594 contact training hours during this session of 280  
17 students.

18 Just to give you a recap of the year to date,  
19 since January 1 of 2009, we have completed 23,728 contact  
20 training hours around the state of police officers.

21 That's, again, with two instructors in our bureau and the  
22 contracts that we do put in place. And that provided that  
23 training to 873 officers in this state.

24 We've been kind of concentrating on getting  
25 instructors trained up. I didn't get the number to tell

16

1 you, but we try to maximize our benefit by training  
2 instructors so they can go back to their agencies and  
3 their regions and provide training since we are short --  
4 so short staffed.

5 Other than that, we've continued to assist with  
6 the cert bureau with the public safety telecommunicator  
7 academy training providing assistance with that and with  
8 the basic program, especially since we're short staffed  
9 there with providing training there.

10 With that, I'll entertain any questions if there  
11 are any. Thank you.

12 MR. GALLEGOS: Thank you.

13 MR. ORTIZ: The Basic Bureau report, that's also  
14 included in Tab 5. There has been some changes.

15 Class 178 began on September 14th with 39 cadets. They  
16 were down to 29. We did have to -- I had to release one  
17 yesterday for disciplinary matters. So the class is now  
18 down to 28.

19 The cadets, they are scheduled to graduate on  
20 February the 3rd, 2010. And we're so shorthanded in the  
21 Basic Bureau right now with just two instructors. On the  
22 Critical Incident Response Bureau PST Class Number 110 was  
23 held from October 19th to November 5th, 2009, and 29  
24 students graduated.

25 And those are the highlights. Any questions on

17

1 the director's report?

2 MR. COON: I've got a comment, Art. I know you  
3 all are very shorthanded. I wouldn't mind sending one of  
4 my people. And I'm sure there's sheriffs and chiefs. We  
5 could help that being short up there by maybe furloughing  
6 some of our -- or letting somebody come up for a week at a  
7 time just to help out and file paperwork or teach a class  
8 or do whatever you all needed.

9 But I would be more than happy to send one of my  
10 instructors up there. It gives them a break, and it gives  
11 them something they like doing. And I'm sure there's  
12 other sheriffs and chiefs that would do that. I think  
13 might be a solution to some of your short --

14 MR. ORTIZ: Yes, sir. And we did send letters  
15 out to all of the agencies asking for any adjunct



16 instructors. And we have gotten quite a few responses

17 back with offers such as yours to come in and help.

18 And we couldn't do it without the adjuncts. I

19 want to thank you and all the other agencies for offering

20 and helping out with that. Any other questions? Okay.

21 That's it. Thank you.

22 MR. GALLEGOS: Thank you, Mr. Ortiz. Next item

23 on the agenda is -- well, before I get to that, I just

24 want to note for the record that Chief Segotta is here.

25 Good to see you.

18

1 MR. SEGOTTA: Thanks.

2 ITEM #6: PUBLIC COMMENTS

3 MR. GALLEGOS: Now we'll get to public comments.

4 If anyone has any comments to make for the board, what I

5 will ask you is to come up to the podium, let us know who

6 you are. If you're just a citizen, that's fine; or if you

7 represent a department or whatever.

8 And try and speak up a little bit. We don't have

9 microphones this morning, so all of us if we can try to

10 remember to speak up a bit. Okay. Any public comments?

11 Okay. I don't see any, for the record. So that means we

12 can move on.

13 ITEM #7: PUBLIC HEARING: 2010-2011 IN-SERVICE

14 TRAINING CYCLE

15 MR. GALLEGOS: The next item is public hearing --

16 Item 7. That's 2010-2011 inservice training cycle. And I

17 believe what I'll do first of all is ask Mr. Shea to just

18 give a brief description of what that is.

19 MR. SHEA: Thank you, Mr. Gallegos. Members of  
20 the Board, unfortunately, in your packets and the packets  
21 that the audience received, the copy that was originally  
22 sent out of the biennium inservice training requirement  
23 updates was the one from the last board meeting.

24 So we do have a corrected copy that we'll pass  
25 around in the room. You should have a corrected copy in

19

1 front of you. We did incorporate the recommendations from  
2 the September board meeting as to the changes from our  
3 original proposal.

4 Some of the highlights of that are we did include  
5 dropping the SFST refresher requirement from eight hours  
6 to four hours. So we have reduced that. We've maintained  
7 our ensuring child safety requirement at one hour,  
8 dropping that from the four that when we originally  
9 implemented that.

10 The only requirement that is not a statutory  
11 requirement that we are putting in is the continuation of  
12 the requirement for firearms training. What we have done  
13 with that is eliminate specifying specific instructional  
14 objectives for that particular requirement.

15 We're keeping it at four hours, but we have also  
16 broadened it to include all weapons systems that agencies  
17 may allow their officers to utilize. So as an agency, if

18 you want to do four hours of training with a back-up  
19 weapon, patrol rifle, shotgun, whatever the weapon system  
20 may be, we've broadened it.

21 And you can of course continue with doing handgun  
22 training. But we've made it more broad so that it gives  
23 more discretion to the agencies to do that training. Our  
24 goal is to provide firearms training or to encourage law  
25 enforcement agencies to do firearms training and not just

20

1 their annual qualifications.

2 And it does specify that the qualifications do  
3 not count towards the training.

4 On Item 7 under the first paragraph A for the  
5 off-highway vehicle enforcement, it says four hours. We  
6 would like to amend that to three. With discussion with  
7 Game and Fish, which is the lead agency for providing that  
8 training in the state, the curriculum that will be  
9 applicable to all officers who may be required to enforce  
10 that statute, we have determined that three hours is  
11 adequate for that.

12 So that will free up another hour of  
13 discretionary training for agencies to do that training  
14 which they may want to do with their local communities.

15 The only other change significant is under B on  
16 page 2, paragraph 3. We did list recommended topics. The  
17 Attorney General's Office has put together a human  
18 trafficking investigations curriculum, which we will make

19 available on our website.

20 We also have the entering missing persons in the  
21 NCIC. Major Schilling will have a curriculum which we  
22 will have up on the website for that. And our legal  
23 update, we will have that available for all agencies to  
24 utilize.

25 I didn't mention in the Advanced Training Bureau

21

1 report, you all received a CD. On that CD is the current  
2 legal curriculum that is for the 800-hour basic academy  
3 and also post-academy training. So it's got profiling on  
4 there. It's got hate crimes on there. It's got the  
5 domestic violence. It's got state statutes,  
6 constitutional law.

7 All of that is on that CD. It's in a different  
8 format from what is up on the website currently. It's in  
9 a -- we're calling it online, but what it is, once the  
10 information is delivered when you read the content, then  
11 there is a set of facts that are highlighted in blue.

12 And then after that there is the answer as to how  
13 the law is applied to that particular set of facts. So  
14 this will facilitate agencies to use this as a training  
15 aid. We piloted this with Cert by Waiver 68, which is  
16 currently in session.

17 We had given the applicants or the successful  
18 candidates for CBW 68 that CD prior -- two weeks prior  
19 coming to the class and attending Elliott Guttman's

20 presentation so that they could review that material.

21       And then we requested feedback from them as to  
22 whether or not it assisted them in assimilating the law  
23 block information. And we got a lot of positive feedback  
24 on that particular CD. We wanted to make sure that we did  
25 have some in-user feedback before we put it up on the

22

1 website, which we'll be doing here shortly.

2       Elliott Guttmann is here. He just arrived. So  
3 if there's any question with regard to that, I'll  
4 certainly defer those questions to Elliott so he can  
5 answer those questions. That's been an ongoing project.  
6 Elliott has put a huge amount of time into it.

7       And I think from a standpoint of giving  
8 cutting-edge legal training across the state, making it  
9 available besides the direct delivery by instructors, it  
10 will make that available for agencies to download, use  
11 in-house instructors, or have officers read it and become  
12 familiar with it, use it as a resource.

13       Then you go to Section 10.29.7.9, which deals  
14 with the public safety telecommunicators. The changes  
15 there have mirrored what we have put into place for the  
16 law enforcement officers. And cleaned up the language so  
17 it's made it more broad. Taken out a lot of the specifics  
18 as to what particular topic areas and made the -- those  
19 hours that are required for the public safety  
20 telecommunicators to be discretionary at the point of the

21 agencies and what their local needs are.

22 MR. GALLEGOS: Thank you, Mr. Shea.

23 MR. SHEA: Yes, sir.

24 MR. GALLEGOS: And, again, this is part of the

25 public hearing process, so I'm going to go ahead and

23

1 describe that as follows: We will now declare that this

2 public hearing is open.

3 And we will begin again with staff providing

4 testimony and information to the board as to why in their

5 opinion this rule should or should not be adopted. And

6 the board is free to ask questions at that time.

7 Then we will move to the audience and allow the

8 audience to make any public comments they wish for the

9 record. Again, any public comments should be presented at

10 the podium. Please identify yourself for the purposes of

11 the record.

12 When we have received all the testimony, we will

13 close the hearing; and we will begin with our deliberation

14 process.

15 Mr. Ortiz, I know we had a description of the

16 changes, but would you present yourself or members of your

17 staff with any consideration on this rule at this time.

18 MR. NAJAR: Mr. Chairman, Board Members, and

19 guests present, it is the request of the Law Enforcement

20 Academy Board that the recommended changes be adopted and

21 that this rule be modified so it is effective for the

22 2010-2011 inservice training cycle, with the one amended  
23 reference to the three-hour versus four-hour for the  
24 off-highway vehicle training.

25 MR. GALLEGOS: Okay. Thank you. Now we go to

24

1 any questions from the board on this. Are there any  
2 questions from anybody from the board?

3 MR. SEGOTTA: Mr. Chairman, do we have to amend  
4 on Section 10.29.8.7.B because we reduced the hour minimum  
5 from four to three? Do we have to change that then? It  
6 says you have eight remaining hours; wouldn't it be nine  
7 now? Am I reading that right?

8 If you took an hour away, don't you have to add  
9 it back somewhere?

10 MR. SHEA: Chief Segotta, that's just  
11 paragraph 8. So it's not 8 remaining hours, it's --

12 MR. SEGOTTA: Oh, it's paragraph --

13 MR. SHEA: -- Item 8.

14 MR. SEGOTTA: There you go.

15 MR. GALLEGOS: Oh. Subparagraph 8. Yeah.

16 MR. SEGOTTA: It makes sense now.

17 MR. SCHULTZ: Mr. Chairman, just for  
18 clarification, the crisis intervention training, the 24  
19 hours mandatory is no longer present for the 2010 cycle?

20 MR. ORTIZ: Correct. Yes.

21 MR. SCHULTZ: I just wanted to make sure. Thank  
22 you.

23 MR. GALLEGOS: Thank you, Chief. Any other  
24 questions from the board? Need more time to look at it or  
25 are you guys ready to move on? Okay. We'll go ahead now

25

1 and move to the public for any comments regarding the  
2 changes to the rule.

3 Are there any comments out there?

4 MR. SNYDER: Mr. Gallegos?

5 MR. GALLEGOS: Yes, sir.

6 MR. SNYDER: I'm Pat Snyder. I'm the assistant  
7 chief of law enforcement for the Department of Game and  
8 Fish. And we do appreciate and support the board and the  
9 academies making that OHV as part of the mandatory  
10 training.

11 We currently already have a three-hour course  
12 accredited that we have given to our officers. So that  
13 would probably roll over. That course should be  
14 reaccredited I think in early 2011. And the department  
15 will definitely help support the academy with that  
16 training. Thank you.

17 MR. GALLEGOS: Great. Thank you, sir. Any other  
18 comments or questions? Okay. At this point, I will close  
19 the hearing at this point on the rule.

20 We will now move to a discussion by the board  
21 regarding the proposed rule. Are there any comments or  
22 questions from the board? If -- hearing none or seeing  
23 none, I guess I will entertain a motion to approve the



24 rule.

25 MR. SCHULTZ: Mr. Chairman, I'd like to make a

26

1 motion that we approve the rule as amended here today with  
2 the three-hour change to the off-road vehicle training.

3 MR. GALLEGOS: I have a motion by Chief Schultz.

4 Do I hear a second?

5 MR. FORCE: Second.

6 MR. GALLEGOS: Seconded by Mr. Force. Any  
7 discussion on the motion? Hearing none, then all those --  
8 wait. Let me double-check. Does this need to be a roll  
9 call? I don't think so. Let me check.

10 Okay. It doesn't need to be. I just wanted to  
11 be very sure on this. Okay. All those in favor of the  
12 motion to approve the rule as amended please say aye.

13 THE BOARD: Aye.

14 MR. GALLEGOS: Any opposition say nay. {No  
15 response.} Okay. The motion passes.

16 ITEM #8: DISCUSSION: REPORTING REQUIREMENTS

17 AND LEA-90A AFFIDAVIT FORM

18 FOR REPORTING MISCONDUCT

19 MR. GALLEGOS: And we'll move onto the next item,  
20 which is, "Discussion: Reporting Requirements and LEA-90A  
21 Affidavit Form for Reporting Misconduct." This is Item  
22 8. Mr. Ortiz.

23 MR. ORTIZ: Mr. Chairman, Board Members. In  
24 Tab 8 -- and we've done some additional work on this with

25 the thanks of Sam Trujillo from -- the chiefs association

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1 president. We were able to have a working session, and we  
2 came up with some additional information.

3 I'll have him come up and discuss that further.

4 But I think we've made good progress. And I'm -- I would  
5 like to see the board maybe adopt this and send it on to  
6 public hearing at the next board meeting.

7 I think we've been dealing with this issue for  
8 almost three years now, and I think it's time to make a  
9 decision. I think the recommendations from the chiefs  
10 association I think I'm happy to see that we're getting  
11 some progress.

12 And I think holding the other agencies that are  
13 failing to comply with the rules, holding them  
14 accountable, I think will change that and get them to  
15 comply.

16 Also, in your folder, you'll see I did include  
17 just a newspaper clipping from the Santa Fe New Mexican.  
18 And if you read it, it's not facts. They are saying that  
19 no reports are being submitted to the academy; that  
20 agencies aren't reporting. I disagree with that.

21 I wish the reporter would have researched it a  
22 little bit further and contacted me. Like I say, 117  
23 cases have been reported so far this year. But this  
24 appears to be the perception of the public and the media.

25 And I think by us toughening up the rule and

1 making sure that these other agencies that are  
2 noncompliant, that they conform with the rules and we hold  
3 them accountable. And so I'm pleased with the work  
4 Sam Trujillo has done.

5 At this time I'll go ahead and pass it to

6 Sam Trujillo, unless you have any questions of me.

7 MR. GALLEGOS: Any questions for Director Ortiz?

8 MR. FORCE: I do, Mr. Chairman. Director, on --  
9 under the rule under 10.29.1.11.B(4) and also under C(4),  
10 that's the statement where on the grounds for action where  
11 you have an officer who commits an act which indicate a  
12 lack of good moral character.

13 That always seems to be -- that clause seems to  
14 be such a problem in trying to interpret what is quote,  
15 unquote good moral conduct. And would you be against the  
16 board just striking that and then looking at making a more  
17 definitive statement as to what we're looking for on  
18 review of certification issues.

19 MR. ORTIZ: Right. And as you'll see, one of the  
20 problems we've had and some of the questions have been  
21 what should -- and it's on page 6 under D on the reports.  
22 When you see what we've done in working with Sam, it's  
23 always been, okay, everybody has a different  
24 interpretation.

25 So he says, "Why don't we just create a list on

1 what we have to report?" And I thought, "Well, we can't  
2 foresee everything that's going to happen out there." But  
3 I think this is a good starting point, at least if we have  
4 some of the majority ones.

5 What I did is I -- on the database that I have, I  
6 have over 700 misconduct cases dating back to 1998, I  
7 believe -- or 1995. So I got the majority of those. And  
8 we included those in here on the majority of the cases  
9 that are being reported.

10 MR. FORCE: Right.

11 MR. ORTIZ: And so we incorporated those into  
12 here. So I'm pleased with that. Like I said, I know it's  
13 not the answer. It's not going to fix everything. But at  
14 least it lets these agency heads know when their officer  
15 is involved in misconduct and it's listed that they'll  
16 report it.

17 MR. FORCE: And that's why I was asking because  
18 to me, under Subsection D(1), it would seem more  
19 appropriate to actually insert D(1) under the paragraph of  
20 B(4) and C(4) and obliterate that term of moral -- quote,  
21 unquote, lack of good moral character.

22 What we need is something that's more definitive.  
23 Just I guess being a concern to me is you have a chief who  
24 says, "Well, I don't think it's good moral -- to me, it  
25 was good moral character;" but then the board may view and

1 say, "Well, no. We don't think that was good moral

2 character."

3       And to me it just gives a very clear  
4 distinctiveness as to what are we expecting the chiefs to  
5 report, first. And, secondly, what have the chiefs  
6 understood as to what is to be reported. So I'm just  
7 asking for your opinion on just getting away from the  
8 whole terminology of "good moral character."

9       MR. ORTIZ: And that seems to be a problem.  
10 Because looking back at Tom Lyons, when he was here, at  
11 one time he went and asked the Attorney General for an  
12 opinion -- for a definition on moral turpitude. And I was  
13 there. And I'm sorry I didn't provide copies of that.

14       Mr. Najar stated that it's also defined in the  
15 state statutes. But everybody interprets that  
16 differently. And I agree; we do have issues with that.

17       MR. FORCE: Just to me it seems that we've  
18 already got in the statute, and then when we reiterate it  
19 in the NMAC without defining in the NMAC, what are we  
20 really talking about in specific issues. If you have a  
21 specific -- and I agree with you on one end. I don't  
22 think you can delineate every single thing that an officer  
23 would do.

24       It would give concern along for this board to  
25 take action, but at least having a general caveat list

1 gives us a solid groundwork of clear understanding. To  
2 me, a lot of the discussion that we've heard from the

3 chiefs and the sheriffs concerns with the board is why are  
4 we reviewing certain cases that I guess in our view is a  
5 lack of good moral character, but in their view may not  
6 be.

7 But yet when you look at a specific outline, I  
8 think there would be an agreement, as you've done in  
9 here. That's why I guess I'm advocating to just strike  
10 out "good moral character."

11 MR. ORTIZ: Where's Mr. Trujillo? Sam, why don't  
12 you come up. He's been in communication with some of the  
13 other chiefs, and maybe he would like to share some of the  
14 input he's received from them on this.

15 MR. TRUJILLO: Mr. Chairman, Members of the  
16 Board, my name is Sam Trujillo. I'm the director of the  
17 Alamogordo Department of Public Safety, and I'm currently  
18 serving as president of the New Mexico Association of  
19 Chiefs of Police.

20 I have been working with the director on this  
21 particular issue, which is not an easy issue, as you can  
22 imagine. This is -- actually came before the police  
23 chiefs earlier this year when the director raised a lot of  
24 concerns about what was and what was not being reported.

25 It caused a lot of controversy in our

1 membership. We set up a committee to meet with the  
2 director and come up with some draft language. That  
3 language was brought before this board in the Red River

4 meeting but still had a lot of concerns involving policy  
5 issues compared to misconduct reporting.

6       What we tried to come up with is some language to  
7 address those concerns that were raised by the academy  
8 director and still stay away from the policy decisions.  
9 When we were going through this, it was clear that two  
10 basic issues was trying to identify crimes involving moral  
11 turpitude and good moral character.

12       And like Mr. Force indicated, it is subject to  
13 interpretation. In New Mexico the courts haven't been  
14 real clear on that decision either. So what we tried to  
15 do is look over the last 10 years what was being reported  
16 to the academy and then try to categorize those issues  
17 into what is good moral character and what is moral  
18 turpitude.

19       And what we come up with is the language that you  
20 have on page 6 under -- trying to define moral turpitude  
21 for this section and lack of good moral character. This  
22 is being offered for discussion only. We still feel  
23 there's some work that needs to be done on this, but we  
24 wanted to present this to the board so we kind of get an  
25 indication on what direction you are headed.

33

1       The lack of good moral character is actually a  
2 term that's not in state statute. It is a term that's  
3 used in the rules. And if we do strike that from the  
4 rules, it would solve a lot of those problems on exactly

5 what is being reported.

6 Moral turpitude is an item that is in state  
7 statute. So the problem comes up with, one, what are we  
8 going to report. What does the academy need to know as  
9 far as conduct by officers are concerned; and how do we  
10 get that information to every law enforcement agency in  
11 New Mexico so they are clear on what's being report.

12 If we leave it vague like it is right now, then  
13 each department's going to see it differently and then  
14 trying to report it. And, of course, if you're trying to  
15 have some type of disciplinary action against that chief  
16 executive officer, it's not going to make a lot of sense  
17 because how are you going to interpret it whether they did  
18 it right or wrong.

19 So in our opinion, we need to either take some of  
20 that language out and -- or identify exactly what you're  
21 wanting to report.

22 And this right here is an attempt to keep the  
23 language in and then clearly identify what is being  
24 reported using what has been reported over the last 10  
25 years at the academy.

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1 MR. GALLEGOS: Are there any questions for  
2 Mr. Trujillo from the board?

3 MR. FORCE: Mr. Chairman. Chief, again, I guess  
4 my concern is actually placing those two -- you already  
5 covered the lack of -- or moral turpitude under D(1) and



6 D(2). Has the committee discussed actually inserting that  
7 language directly into the grounds that deal with police  
8 officer, telecommunicator actually in there? First -- I  
9 guess that's what would be my first question.

10 And, secondly, and this is kind of where I was  
11 kind of going was if you have an officer who just simply  
12 does not tell the truth for some -- for any reason, that  
13 in itself would be grounds for action, the way this is  
14 worded, correct?

15 MR. TRUJILLO: That's correct.

16 MR. FORCE: So what we would be looking at would  
17 be a tremendous increase -- in the way this is currently  
18 worded, we would probably be looking at a tremendous  
19 increase in the number of misconduct reports going across  
20 the state into the board, because when you look at all  
21 these violations, they -- that's just about probably  
22 inclusive of most actions against officers on  
23 administrative issues, as well as policy issues. Agree?

24 MR. TRUJILLO: Yes, sir, I do agree.

25 MR. FORCE: So I guess -- for discussion

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1 purposes, I guess this is what -- and I know we talked  
2 about it at the Red River. But did you guys talk about  
3 like having a minimum threshold of saying, "When an  
4 administrative sanction is placed against the officer,  
5 that it encompasses X number of hours of suspension that  
6 goes along with these violations, that that action then

7 would be mandatorily reported."

8 My concern is that we don't -- I don't think that  
9 it's right that this board reviews every administrative  
10 issue that happens with an officer out in the field.

11 There needs to be a minimum threshold of mandatory  
12 reporting. Are you -- am I making myself clear?

13 MR. TRUJILLO: Yes, you are. I'd like to address  
14 the first part of your question about being -- the  
15 language being added into the Section B, under  
16 10.29.1.11(B). The language is already in there in  
17 general terms. It talks about good moral character and  
18 moral turpitude. The problem is what is that.

19 And so if we want to identify that, do we want to  
20 put a definition of what this board sees as the definition  
21 of those two items in that section. And we did address  
22 that, but only in the reporting guidelines with it.

23 I think we're all in agreement as far as the  
24 police chiefs are concerned, and what I can get from the  
25 conversations with the board is that we do not want to

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1 report everything. We do want the departments to handle  
2 those policy violations internally with it.

3 MR. FORCE: Right.

4 MR. TRUJILLO: But if the policy violations  
5 involves one of these items that are listed in the state  
6 statute and in the rules, then that's what triggers the  
7 report. But moral turpitude and good moral character,

8 where do you draw the line on that.

9 And that's what I see as the problem right here.

10 So if we want to say -- and it's -- whatever we come up  
11 with is not going to catch everything. So we kind of just  
12 used what the -- what has been reported to the academy as  
13 the standard and saying, "If these things occur, you have  
14 to report that."

15 I don't know if it completely does that here. If  
16 we take away the good moral character, I think it will go  
17 a long way to exactly what is being reported because now  
18 what we're talking about is crimes involving moral  
19 turpitude. If that doesn't -- if the situation that a  
20 department has does not fall into that category, then it  
21 does not have to be reported to the academy.

22 If it does, then we report it to the academy.

23 And that would limit it. There are going to be some  
24 problems. There's going to be some items that slip  
25 through the cracks. One of the concerns that always comes

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1 up is domestic violence.

2 Domestic violence is not in the state statute.

3 Domestic violence is not in the rules. So you have an  
4 officer that is charged with domestic violence, is that a  
5 reportable situation or not. I believe the board would  
6 expect those -- that type of arrest to be reported. And  
7 it's not real clear in here. So it would fall under moral  
8 turpitude.

9 Mr. Chairman, if I might.

10 MR. GALLEGOS: Yes, go ahead.

11 MR. TRUJILLO: What I'm hearing is that we do  
12 still want to clean up this language so we can provide  
13 better guidance to the law enforcement agencies. But  
14 perhaps it's -- it would be better for us to get rid of  
15 the language involving good moral character and stick  
16 specifically with moral turpitude and maybe define those  
17 items that are listed under D(1) as the items for what is  
18 moral turpitude.

19 MR. GALLEGOS: Do we have any comments or  
20 questions from the board on that?

21 MR. PEREZ: Mr. Gallegos.

22 MR. GALLEGOS: Yes, Mr. Perez.

23 MR. PEREZ: Again, this is something that has  
24 been rehashed many, many times. And I think that is the  
25 reason why we have a board. That's a reason why there is

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1 a Supreme Court in this country, because laws are made and  
2 somebody has to interpret the final determination of what  
3 those things mean on a case-by-case basis. That is the  
4 reason for the board.

5 If we tried to make this thing down to a  
6 checklist, that's exactly what's going to do to get rid of  
7 this board. If a law enforcement leader, chief, or a  
8 sheriff does not know what moral turpitude means or lack  
9 of good moral character, he shouldn't be in the position

10 that he is in.

11 That's something that comes with years of  
12 experience. It comes with a thing called common sense. I  
13 defy anybody to give me a legal definition of what common  
14 sense is. If we take this out -- this was something that  
15 was given to us by the legislature.

16 And if you kick it back to the legislature and  
17 say, "We need specific violations exactly what do you mean  
18 by good moral character or moral turpitude," they are  
19 going to come up with lists that are going to be all over  
20 the place because there are many people there.

21 We have a duty here, and that duty has been given  
22 to us to determine these things. I think this is a great  
23 authority that we have and a great power to No. 1, protect  
24 the citizens of the state; and, No. 2, to protect the  
25 rights of police officers involved.

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1 And to give this thing away or to ask for further  
2 definition is giving away the power of this board. There  
3 are serious moves afoot already to disband this board, to  
4 make it an all-citizen committee.

5 There's a lot of criticism that the fact that we  
6 are law enforcement officers or all -- or all former law  
7 enforcement officers and they say that we cannot police  
8 ourselves. If we give up moral turpitude and good moral  
9 character, we're answering that.

10 We're saying, "We cannot police ourselves; you do

11 it for us." And I think that's going to be the end of  
12 this board and the end of good law enforcement in this  
13 state. I think we need it the way it is.

14 That's why we are here to use our good judgment  
15 and experience to determine these things on a case-by-case  
16 basis. If that is not our purpose, then what are we here  
17 for except to meet and eat and greet every three months  
18 and have camaraderie and friendship.

19 This is our responsibility to determine basically  
20 what is good moral character and moral turpitude in the  
21 law enforcement field. It's very narrow. And I welcome  
22 that obligation.

23 MR. GALLEGOS: Thank you, Mr. Perez. May I just  
24 ask is that -- so your position on the proposed changes  
25 that you're okay with what's there?

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1 MR. PEREZ: I like those things. Those are good  
2 suggestions. I think they are excellent. It defines it  
3 better. It's that area, that realm. But to try to define  
4 exactly what discrimination is, good moral character,  
5 sexual harassment, we all know what it is.

6 But to -- if you want to get down and try to  
7 parse this thing, it's like trying to figure out how many  
8 angels can stand on a pinhead. And you get into those  
9 type of philosophical arguments which lead to absurdity.

10 We are here because of our experience and good  
11 common sense and good moral character. We're supposed to

12 have it. And if we don't know what it is and we have to  
13 ask somebody, I don't want to be on this board.

14 MR. GALLEGOS: Thank you. Just one more  
15 question. One of the suggestions I believe that  
16 Chief Trujillo made was that you would get rid of the  
17 phrase "lack of good moral character" but include the  
18 following definitions into the above, moral turpitude.

19 Was that -- did I hear you correct on that?

20 MR. TRUJILLO: Mr. Chairman, this is actually  
21 expanding the requirements for reporting, not diminishing  
22 them. Good moral character is not in state statute and  
23 was not presented from the legislature to the board. Good  
24 moral character was developed by the board in the rules.

25 MR. GALLEGOS: Okay.

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1 MR. TRUJILLO: And so what we tried to do is  
2 identify more items than are currently listed in the rules  
3 involving the moral turpitude, the crimes involving moral  
4 turpitude. So we've expanded those.

5 MR. GALLEGOS: Okay. Thank you. Any other  
6 questions or comments?

7 MR. JACKSON: First of all, I want to make sure  
8 it's clear that I'm not speaking for Zack, who is the  
9 board counsel. I just want to speak on this from my  
10 perspective as a prosecutor.

11 The moral character provision is problematic  
12 because it is the broadest and it's the provision under

13 which we bring most of our misconduct cases that are  
14 contested. If there's a conviction, there's typically not  
15 much to contest.

16 With that said, we feel that it's a useful  
17 provision because there are instances in which we believe  
18 that misconduct has occurred but perhaps not provable in a  
19 criminal context, but with the relaxed burden attaches in  
20 a civil proceeding, we think that we can show that  
21 misconduct occurred.

22 The way that we've been defending the moral  
23 character provision in the rule is to say that the statute  
24 provides that one of the bases for denial, suspension, or  
25 revocation of a certification is the failure to satisfy

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1 the qualifications for certification, which are provided  
2 in 29-7-6.

3 We regard that as an ongoing obligation on the  
4 part of a certified law enforcement officer. So if at any  
5 point they start to fail to satisfy those qualifications,  
6 for example, if they started doing things that show that  
7 they no longer have good moral character, then we believe  
8 that we can suspend or revoke their license at that point.

9 And that's where the good moral character  
10 provision is. That's in 29-7-6. And because it is a  
11 qualification, it's imported into 29-7-13, giving a basis  
12 for the language and the rule.

13 And that's the concern here is that if we divorce



14 these enumerated categories in the proposed D(2) -- if we  
15 divorce those from the good moral character language, I  
16 think that I am going to encounter a lot of opposing  
17 counsel in these proceedings that say, "You've enumerated  
18 these categories. There's no basis for them in the  
19 statute."

20 But if those enumerated categories are tied to  
21 good moral character, if they are an explanation of what  
22 the board feels the good moral character requirement in  
23 29-7-6 is about, then I think that's something that I can  
24 defend in an administrative proceeding. Thank you.

25 MR. GALLEGOS: Great. Thank you, Mr. Jackson.

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1 Any other questions? Comments from the board?

2 MR. SCHULTZ: Mr. Chairman? A question for  
3 either Mr. Jackson or Mr. Ortiz. As reports of misconduct  
4 are submitted to the director via the Law Enforcement  
5 Academy Board, are those retrievable through public  
6 records requests or are they protected?

7 MR. ORTIZ: Once a notice of contemplated is  
8 served on them, then it is a matter of public record.

9 MR. SCHULTZ: I'm talking about before.

10 MR. ORTIZ: Before.

11 MR. SCHULTZ: Before. I mean, we submit the  
12 report to you. Can anybody say, "I want copies of every  
13 report that's been submitted through a public records  
14 request within the past 30 days to the LEA"?

15 MR. ORTIZ: I would confer with the AG's office.  
16 My answer would be if the notice of contemplated action  
17 hasn't been served, if we determined it was a policy  
18 violation and took no action and returned it back to the  
19 agency, I would not reveal that.

20 MR. HOLMES: I think -- if I may. What happens  
21 in a case like that, if somebody's inquiring about certain  
22 reports and if we don't have all the details, we refer  
23 them back to the agency.

24 They say, "What happened with the Albuquerque  
25 Police Department," for example. "He's accused of this

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1 and that." And we have a report but it's not a complete  
2 report, we refer them back to the agency because at that  
3 point in time the notice of contemplated action has not  
4 been served. So it's not a matter of public record from  
5 our perspective.

6 We refer them back to the agency. If they want  
7 to know something about a certain officer, it goes back to  
8 the agency. If they want to give that information, it's  
9 up to them.

10 MR. JACKSON: I think that this question is  
11 probably better addressed to Zack when he's here. My  
12 understanding is that prior to the issuance of a notice of  
13 contemplated action -- and actually prior to the  
14 introduction of -- the introduction of any part of the  
15 file that I receive from the director or the director

16 receives from an agency on a misconduct, prior to the  
17 introduction of that into evidence, I think that falls  
18 within one of the IPR exceptions.

19 I don't know which one, because I'm not really an  
20 IPR guy. But I think that those are protected until such  
21 time as they are entered into evidence.

22 MR. SCHULTZ: And the reason why I bring that up  
23 for discussion purposes is I think the chiefs would like  
24 to have that, as we could protect our folks as we send up  
25 the notices. I mean, unless there's contemplated action,

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1 I would hate for that to become public because it's a  
2 disservice to our employees, as we're just following the  
3 directive of the statute.

4 That there would be some level of protection, I  
5 don't know if that would need to be included in draft  
6 language as well, that the documentation submitted would  
7 not be public information absent a court order.

8 MR. GALLEGOS: Or that could be -- you know, for  
9 the record, IPRA stands for Inspection of Public Records  
10 Act.

11 That may already be a statute, as I believe it  
12 may be. By analogy, the Arrest Records Information Act,  
13 none of that is public record unless or until there's a  
14 formal charge. But that's just by analogy. So I imagine,  
15 Chief, to address that concern, something that says  
16 pursuant to or in accordance with the provisions of

17 whatever statute that is in the IPRA.

18       So I don't know. That's just a suggestion, but  
19 this is the time to make those suggestions because if I'm  
20 correct -- and I think I am -- this is just discussion and  
21 then we decide whether it moves forward to the rule-making  
22 process or whether it stays in the works process.

23       So we can just note that suggestion now maybe or  
24 if you want to make that as an actual.

25       MR. SCHULTZ: I think I'd like to talk with Zack

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1 when he comes back. I think it's important. I mean, as a  
2 number of cases and documented reports are sent to  
3 Mr. Ortiz, I would like to have some level of protection  
4 for the employee.

5       It's not going to -- they are not going to read  
6 about it in the paper before they receive a notice of  
7 contemplated action.

8       MR. GALLEGOS: I think maybe what we can do,  
9 unless Zack tells me differently -- he's not here; we have  
10 some leeway -- is to finish up the discussion. And we can  
11 leave that item tabled -- temporarily tabled until Zack  
12 gets here, get comment on that, and then we can move on  
13 from there, if that's okay.

14       MR. SCHULTZ: Sure.

15       MR. GALLEGOS: Are there any other questions or  
16 comments on anything else?

17       MR. FORCE: Mr. Chairman. Again, I guess my -- I

18 don't have a problem with the way it's currently drafted  
19 other than the very last -- this is what really concerns  
20 me. It's the very last sentence under D under the  
21 reports, where it says, "Should an agency fail to timely  
22 report misconduct without a written exception from the  
23 director, the Academy Board may, in its discretion, take  
24 disciplinary action concerning the certification of the  
25 agency's chief officer."

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1 My only concern with that is that -- my primary  
2 concern is that under the current rule we really are still  
3 being somewhat very vague as to what the chief is required  
4 to report. And -- because when I look at the standards of  
5 particularly the issues of good moral character, there are  
6 a lot of those issues that are very vague, that are  
7 extremely opened to interpretation, and have very  
8 technical rule-making.

9 So, again, my concern is if you have an officer  
10 who lied to an investigator, to a supervisor and the chief  
11 executive officer handles that complaint, that misconduct  
12 internally as a policy infraction and then somehow or the  
13 other this board gets wind of that and then this board can  
14 technically come right back against the chief and say,  
15 "Well, you failed to report; therefore, we are going to  
16 discipline you."

17 And in all practicality, I think there ought to  
18 be a standard as to what is it that that moral character

19 resultant is that requires the chief executive officer to  
20 report. You know, the moral turpitude issues are clearly  
21 defined because the individual has to be convicted of that  
22 within the language of this reading.

23 But the good moral character -- a lack of good  
24 moral character, the standard there is for committing an  
25 act. It's not for being convicted. It's for committing

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1 the act, under B(4).

2 So, I mean, that's where I guess my concern is if  
3 there was a language in there saying, "Good moral  
4 character, blah, blah, blah that results in a blah, blah,  
5 blah suspension, then that makes it mandatory for that  
6 chief executive officer to report."

7 The good moral character to me is the one that I  
8 have the greatest concern because, again, we're putting a  
9 pretty strong teeth here at taking action against a chief  
10 executive officer for failing to report.

11 MR. GALLEGOS: Anything else? Thank you,  
12 Mr. Force. Any other questions or comments? I do have  
13 one real quick. On D, subparagraph 2, fraternizing with  
14 minors. What is that?

15 MR. TRUJILLO: Mr. Chairman, what that was is an  
16 attempt to include several items that were reported as  
17 misconduct cases into one term.

18 MR. GALLEGOS: Would that be like drinking with  
19 minors? I mean, I'm not sure what that is.

20 MR. ORTIZ: That's included up above, providing  
21 alcohol to minors, possession.

22 MR. GALLEGOS: Yeah, those are separate, clearly  
23 defined.

24 MR. COON: Well, we've had where they've been  
25 texting back and forth. We've got some cases where

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1 there's been some officers that have -- sexual suggestions  
2 to young girls. I think that would fit under that also.

3 MR. TRUJILLO: The items that were reported to  
4 the academy involved relationships with minors.

5 MR. COON: Right.

6 MR. TRUJILLO: And we kind of generalized that  
7 into that term.

8 MR. GALLEGOS: Into the relationships? Do you  
9 think that maybe, Mr. Jackson, probably -- I'm not sure if  
10 that definition is sufficient or if it's overly vague to  
11 cause some problems in interpretation.

12 We know that's going to happen, as Mr. Perez  
13 said. We have to leave it to the collective wisdom of a  
14 board. But as a prosecutor, I'm not sure, you know, if I  
15 saw that fraternizing with -- because you could be at a  
16 graduation party. You could be at a wedding dance or a  
17 party, and you're going to be talking to minors.

18 And I'm not sure where....

19 MR. JACKSON: It gave me some concern as well. I  
20 didn't know whether it was perhaps a term of art within

21 the law enforcement community of which I was unaware, but.

22 MR. TRUJILLO: Mr. Chairman, if I might. These  
23 items were being offered because they were some of the  
24 items that were reported over the last 10 years. In the  
25 final version -- if this is the route that we're headed,

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1 then the final version is we're going to clean up a lot of  
2 that language because we still have similar issues with  
3 the sexual harassment.

4 There's various levels of that that are normally  
5 handled through policy violations with the department or  
6 the -- with the township. So those are items that we may  
7 at least in the final draft want to remove and stick  
8 strictly to the items that involve the criminal acts.

9 MR. GALLEGOS: I understand that. And, you know,  
10 I'm only saying it because it might raise a concern  
11 later. There might be a way to define it clearly. I  
12 mean, sexting, intimate physical relationships, sexual  
13 relationships. I mean, there are some things that could  
14 get the ACLU type lawyers kind of chomping at the bit if  
15 they see this kind of language as a basis for discipline.

16 My recommendation is kind of take another look at  
17 that. If I had something to offer, I certainly would; but  
18 I'm drawing a blank right now about what could adequately  
19 take the place and still give good guidance under the  
20 concern that I know that you have.

21 MR. FORCE: Mr. Chairman. I know I'm sounding



22 like a broken record, but to me this is where the problem  
23 is at is on that lack of good moral character. The  
24 question to me is what triggers the report? What triggers  
25 the mandatory report of that lack of good moral character

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1 to this academy board? What is it that triggers it?

2 And as it's currently worded, it's a commission  
3 of the act. It's just somebody who commits the act. And  
4 that is an extremity vague trigger. And, again, that's  
5 why I would like to see what triggers that.

6 However it's defined -- and I agree with  
7 Mr. Perez -- sexual harassment is kind of -- it's a very,  
8 very broad statement. A lot of those issues are extremely  
9 broad.

10 But if you have a trigger mechanism in there that  
11 says it results in the chief executive officer or that  
12 department disciplining the officer that involves X number  
13 of suspension time, that's a trigger of the mandatory  
14 report that this board would then review.

15 Because we have the trigger effect on the moral  
16 turpitude and the trigger effect is a conviction.

17 MR. GALLEGOS: Well, if I'm correct, Mr. Force,  
18 the report just kicks in the investigation side. Now, the  
19 investigation side doesn't mean we always get the -- get  
20 the full picture. I mean, is that correct, Mr. Ortiz?

21 MR. ORTIZ: And on a lot of these cases, we do  
22 not have the conviction; however, the act did occur and

23 the officer is not being held accountable. So we go under  
24 the moral character, like Mr. Jackson was stating. And  
25 that's how it's presented to the board.

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1 MR. GALLEGOS: Okay. All right.

2 MR. HOLMES: I think -- if I may. I think on  
3 some of those cases that he's talking about they are in  
4 the computer in our database, those are -- perhaps there  
5 could be different language, but communicating sexual  
6 language either written or in other inappropriate manner,  
7 texting or whatever, however you want to put it, but  
8 that's what it was about.

9 It was communicating either with text messaging  
10 material or language that was sexual in nature with  
11 minors. And that's what that brought that about.

12 MR. GALLEGOS: I'm just thinking maybe that can  
13 be defined a lot more clearly by saying, texting, sexting,  
14 whatever. I mean, the federal -- the feds also have -- or  
15 we have also, I mean, you know, the downloading sexually  
16 explicit material harmful to minors, that kind of stuff  
17 also.

18 You may also want to look at if any other  
19 neighboring states have a similar type of provision. I'm  
20 sure there's a way to clean it up by just making it more  
21 clearly defined that this is what it means.

22 Yes.

23 MR. HATCHER: Mr. Chairman, Commissioners, I'm

24 Roger Hatcher, chief of Tucumcari Police Department. And

25 I kind of agree with Mr. Force in regards to some kind of

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1 trigger mechanism. Because if we suspend an officer, they  
2 have an appeal process that they're going to go through or  
3 have the right to go through.

4 And if that appeal is held up by a hearing  
5 officer, that gives not only us but this board a better  
6 foundation for looking into that violation, whatever it  
7 is, especially whenever it revolves around moral  
8 turpitude.

9 If I have an officer that does something that I  
10 think is unbecoming an officer and I suspended him for 40  
11 hours and he goes through the appeal process and that  
12 suspension is upheld and I report it to this board, I  
13 think it gives you very good, solid ground to look into  
14 that. Thank you.

15 MR. GALLEGOS: Thank you. Anything else? I  
16 think what we'll do at this point to move on is we'll  
17 temporarily table this item until Mr. Shandler gets here.  
18 We need some clarification on the public records access  
19 point. And at that point, of course, we'll present it  
20 back to the board should we move it onto the next step or  
21 should we leave it for some more work.

22 MR. FORCE: Mr. Chairman. Just to expedite the  
23 time, I guess the question I have is even if Zack comes  
24 and tells us the misconduct report is open -- currently

25 today it's under the Open Records Act for discovery, that

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1 would be a consideration we could put into this NMAC, I  
2 believe, and actually say that it's protected.

3 So that still would not alleviate us moving  
4 forward with this issue. So I would recommend let's take  
5 a vote on it, move forward with it; and then when we get  
6 to the next hearing, we can make that modification as  
7 necessary.

8 MR. GALLEGOS: I'm quite all right with that. In  
9 fact, I'll entertain that as a motion then. Did everybody  
10 understand the nature of the motion? If you want to  
11 restate that, Mr. Force.

12 MR. FORCE: I would recommend approval of this  
13 item to move forward with it under the stipulation that  
14 modifications may be made at the next hearing that deal --  
15 that address specifically the confidentiality of the  
16 misconduct report being submitted to the academy.

17 MR. GALLEGOS: And that's in the form of a motion  
18 also.

19 MR. COON: I'll second.

20 MR. GALLEGOS: And moved by Mr. Force. Seconded  
21 by Sheriff Coon. And any discussion on the motion?  
22 Seeing none -- I just have one real quick point. I think  
23 it's probably better just to get it to the next step.

24 It certainly doesn't mean it's going to be  
25 ratified, but that can also give -- has room for changes,

1 modifications, amendments, et cetera. So it's probably  
2 better to get this thing -- it's been languishing for a  
3 while.

4 With that, all those in favor of the motion say  
5 aye.

6 THE BOARD: Aye.

7 MR. GALLEGOS: Any opposition say nay. {No  
8 response.} The ayes have it. The motion passes.

9 And let's just try to remember when Mr. Shandler  
10 gets here we can clarify that one for the record.

11 ITEM #9: RATIFICATION OF CERTIFICATIONS  
12 FOR LAW ENFORCEMENT OFFICERS

13 MR. GALLEGOS: Let's go onto new business. We  
14 have the ratification of certifications for law  
15 enforcement officers. It's Item 9.

16 MR. ORTIZ: Mr. Chairman, Board Members, the  
17 director has verified that the listed police officers  
18 beginning with Certification No. 09-0171-P through  
19 09-0251-P have all met the standards and requirements for  
20 the law enforcement certification, and we request that the  
21 board ratify their certification.

22 MR. GALLEGOS: All right. With that, I'll  
23 entertain a motion to ratify.

24 MR. FORCE: Mr. Chairman, I'd make a motion to  
25 ratify the listing and for the record to redact the Social

1 Security numbers.

2 MS. CROKER: I apologize.

3 MR. ORTIZ: She got it on the dispatchers. And  
4 she thought she had clicked it to delete that column, but  
5 something happened. We caught that mistake.

6 MR. GALLEGOS: There is a motion to ratify  
7 subject to deletion of the Social Security numbers. Do I  
8 hear a second?

9 MR. SCHULTZ: Second.

10 MR. GALLEGOS: Seconded by Chief Schultz. All  
11 those in favor say aye.

12 THE BOARD: Aye.

13 MR. GALLEGOS: Any opposition say nay. {No  
14 response.} And sorry. I forgot to ask for discussion,  
15 but I didn't hear any. Let's move on. That motions  
16 pass.

17 ITEM #10: RATIFICATION OF CERTIFICATIONS  
18 FOR PUBLIC SAFETY TELECOMMUNICATORS

19 MR. GALLEGOS: Let's move onto Item 10, which is  
20 ratification of certifications for public safety  
21 telecommunicators. Mr. Ortiz.

22 MR. ORTIZ: Yes. Mr. Chairman, Board Members,  
23 the director has verified that the list of dispatchers  
24 beginning with Certification No. 09-0101-PST through  
25 09-0128-PST and 02-0036-PST have all met the standards and

1 requirements for certification, and we request that the

2 board ratify their certification. And the socials are

3 deleted on that.

4 MR. GALLEGOS: All right. I'll entertain a

5 motion to ratify.

6 MR. SCHULTZ: Move to ratify.

7 MR. GALLEGOS: Moved by Chief Schultz. Do I hear

8 a second?

9 MR. SEGOTTA: Second.

10 MR. GALLEGOS: Seconded by Chief Segotta. Is

11 there any discussion on the motion? Seeing none, I call

12 for a vote. All those in favor say aye.

13 THE BOARD: Aye.

14 MR. GALLEGOS: Any opposition say nay. {No

15 response.} The ayes have it. The motion passes.

16 ITEM #11: DISCUSSION: 4/10 WORK WEEK

17 FOR CADETS AT ACADEMY

18 MR. GALLEGOS: We are off to Item 11, which is

19 discussion of a 4/10 work week for cadets at the academy.

20 This is by Chief Trujillo.

21 MR. TRUJILLO: Mr. Chairman, Members of the

22 Board, Sam Trujillo in from Alamogordo. During the last

23 academy board meeting in Red River, this issue about the

24 cadet schedule at the Law Enforcement Academy was brought

25 up by the board.

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1 I asked to be on this agenda to provide the board

2 with additional information about this schedule as far as

3 the police association is concerned.

4 In 2004, the academy was operating under a 4/10  
5 schedule, Monday through Thursday, 10-hour shifts and  
6 decided to change to a 5/8 schedule. That issue was  
7 brought before the police chiefs association in 2004. And  
8 the police chiefs unanimously voted to oppose changing the  
9 schedule for our personnel to a 5/8 schedule.

10 The issue was again brought up before the police  
11 chiefs in April of this year. And once again they voted  
12 to go back to the 4/10 schedule as we did in 2004. A  
13 letter was submitted to this board, the academy board,  
14 back in 2004 by myself and we submitted a letter from the  
15 police chiefs association to the cabinet secretary  
16 addressing this issue once again.

17 We received a letter back from the cabinet  
18 secretary who denied our request. The police chiefs have  
19 expressed a variety of concerns involving this 5/8  
20 schedule that we're currently operating under right now  
21 with our recruits.

22 A couple issues that were raised were that in  
23 some jurisdictions nine-hour travel time to and from the  
24 academy, which is already shortening an already short  
25 weekend; difficulty in reconciling payroll because

1 employees are not available during normal work hours;  
2 difficulty in conducting vehicle maintenances that may  
3 need to be required; difficulty in scheduling doctor



4 appointments for those employees that are injured at the  
5 academy; and being able to address issues with our own  
6 personnel.

7 We also learned that the 4/10 schedule would  
8 result in approximately -- actually, over \$1,000 worth of  
9 savings every week from the Law Enforcement Academy if it  
10 were implemented right now.

11 What we're asking as customers, basically, of the  
12 Law Enforcement Academy is that we believe our personnel  
13 will be better suited if we could move them back to the  
14 4/10 schedule so that we can appropriately address issues  
15 in our own departments.

16 So what we're asking is support from the academy  
17 board to move in that direction.

18 MR. GALLEGOS: Thank you, Chief. Any questions  
19 from the board? Or comments?

20 MR. FORCE: Mr. Chairman. This would probably go  
21 to Director Ortiz. Under the -- is this something that's  
22 at our board's authority?

23 MR. ORTIZ: Mr. Chairman, Board Members, I took  
24 this to the Attorney General's, into the legal department  
25 at DPS. Germaine Chappelle and Zack Shandler have been in

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1 communication, and they are researching it to have a  
2 definitive answer on that.

3 So at this time, we're just opening it up for  
4 discussion, but we're going to wait and see what legal

5 comes up with.

6 MR. FORCE: And that would be my concern. To me,  
7 this is probably more of an operational issue. And, I  
8 mean, as a board member, I don't mind standing and  
9 saying -- voicing my opinion, whether it agrees or  
10 disagrees with the cabinet secretary.

11 But my concern is whether the purview of this  
12 board really wants to take the reach into the operational  
13 function of the academy, so. But I do have concerns when  
14 we have the chiefs association that are in tandem telling  
15 us there's concerns and that they are not being addressed.

16 MR. ORTIZ: Mr. Chairman, Board Members, in your  
17 packets, I also did include the state statute with the  
18 powers and the duties of your board. And that is in your  
19 red file as well.

20 MR. GALLEGOS: Mr. Ortiz, while we don't have a  
21 definitive decision yet from Mr. Shandler or --

22 MR. ORTIZ: Not at this time. When Mr. Shandler  
23 gets here maybe we can address that with him as well. He  
24 has been in conversation with DPS legal department.

25 MR. GALLEGOS: I did have a couple of concerns

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1 which were actually offsetting. And one was, of course,  
2 the concern brought by Mr. Force, which is are we in some  
3 way being asked to micromanage what the academy is  
4 supposed to be doing.

5 On the other hand, is this a matter of policy,

6 which I believe the statute does leave up to us to set.

7 There is a potential for conflict there. And I guess I  
8 would be more comfortable if I -- if I saw a legal opinion  
9 that said yes or no or we don't know.

10 Even that one would be leave it up to the -- then  
11 the board can comfortably decide whether they want to take  
12 it on or not.

13 So any other questions or comments? Is it  
14 something also that we probably can't discuss too much  
15 until we get that decision?

16 MR. FORCE: That's what I would -- Mr. Chairman,  
17 I'd recommend we table this item until Zack can be in  
18 attendance.

19 MR. GALLEGOS: You can put that in the form of a  
20 motion.

21 MR. FORCE: I would so move.

22 MR. GALLEGOS: Mr. Force has moved to table  
23 Item 11 pending further research. Do I hear a second?

24 MR. JONES: Second.

25 MR. GALLEGOS: Seconded by Sergeant Jones. Any

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1 discussion on the motion?

2 MR. COON: Mr. Gallegos. I can't speak for all  
3 sheriffs. I'd like to speak for the majority of them. We  
4 are in agreement with the chiefs that we would like a  
5 4/10-hour day. I've got guys that I've hired and women  
6 that I hadn't seen for 22 weeks.

7 They get in on a Friday night; I don't see them.  
8 They leave Sunday afternoon; I don't see them. They can't  
9 drop off the car and get the oil changed on them because  
10 the mechanics aren't there on the weekends.

11 It's just -- it would be so, so much simpler to  
12 do a 4/10. Guys that are maybe subpoenaed to court --  
13 it's not often they do -- but if they are doing a -- if  
14 they are with an FTO and they witness something, they are  
15 subpoenaed to court, that could all be set up on Fridays.

16 I think it's a -- it would be a win-win for  
17 everybody if we could do this.

18 MR. GALLEGOS: Thank you. Any other discussion?  
19 No?

20 MR. MARIANO: No.

21 MR. GALLEGOS: Okay. I will say that in my  
22 district, the majority of chiefs and sheriffs have also  
23 voiced similar opinions and have asked me to, you know,  
24 look into it. But until we answer that question, I think  
25 it's probably more prudent that we move on.

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1 So if there's no other comments or questions,  
2 then I'll go ahead and call for a --

3 MR. PEREZ: I have one question. Mr. Segotta, it  
4 says here that you are the deputy secretary of the  
5 Department of Public Safety and you are also the chief of  
6 the New Mexico State Police.

7 The question is: In your opinion does the

8 secretary of public safety have direct jurisdiction over  
9 the academy or does the board?

10 MR. SEGOTTA: Mr. Chairman, Mr. Perez, I think  
11 the board is designed to overlook certain things. And I'm  
12 not the expert on this, but I don't think the board in my  
13 opinion was designed to look at the operations of the  
14 academy.

15 I think the board was specifically designed to  
16 oversee curriculum and the discipline and the  
17 certification of officers, but not to tell the director or  
18 the cabinet secretary what the work schedule is and what  
19 the lunch menu is going to be.

20 Because I could see it going down to that level.

21 That's just my opinion.

22 MR. GALLEGOS: Okay. Any other questions for  
23 discussion? I'll call for a vote then. I believe the  
24 motion is to table. All those in favor say aye.

25 THE BOARD: Aye.

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1 MR. GALLEGOS: Any opposition say nay. {No  
2 response.} All right. Item 11 is tabled. Okay.

3 This takes us to the next part, which is our  
4 disciplinary matters. And I think what we did last time,  
5 Gentlemen, is to look at some of the items and decide  
6 whether we had any abstentions, list those, and then we  
7 can try to approve or do whatever by group.

8 Do you want to do that? We'll start with

9 Items 12, 13 -- well, 12 through 18, which are the  
10 stipulated orders. And I'll start on my left-hand side  
11 with Mr. Mariano.

12 MR. MARIANO: Right.

13 MR. GALLEGOS: If you have any conflict with any  
14 of those particular items, if you'd let us know.

15 MR. MARIANO: Okay.

16 MR. GALLEGOS: Are there any in there that --

17 MR. SEGOTTA: I have one conflict.

18 MR. GALLEGOS: You don't have any, Mr. Mariano?

19 MR. MARIANO: The first one actually just had a  
20 recommendation that as far as defensive driving --

21 MR. GALLEGOS: No. On the agenda.

22 MR. MARIANO: Oh, I'm sorry.

23 MR. GALLEGOS: Sorry about that. The first --

24 MR. MARIANO: Catching on.

25 MR. GALLEGOS: If you look down at disciplinary

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1 matters. If you look Items 12 through 18 --

2 MR. MARIANO: No, I don't have --

3 MR. GALLEGOS: Okay, no abstentions?

4 MR. MARIANO: No.

5 MR. GALLEGOS: Thank you, sir. Mr. Force?

6 MR. FORCE: No, sir.

7 MR. GALLEGOS: All right. Chief Schultz?

8 MR. SCHULTZ: No. 14.

9 MR. GALLEGOS: Any others?

10 MR. SCHULTZ: No.

11 MR. SEGOTTA: Mr. Chairman, I have a conflict on  
12 No. 16 and No. 17.

13 MR. ORTIZ: Sir, maybe 15 as well.

14 MR. SEGOTTA: Oh, yeah. I'm sorry. I didn't see  
15 15. Yes, I do have on 15 as well. Sorry.

16 MR. GALLEGOS: Okay. Sheriff Coon?

17 MR. COON: None.

18 MR. GALLEGOS: Sergeant Jones?

19 MR. JONES: None.

20 MR. GALLEGOS: Mr. Perez?

21 MR. PEREZ: None.

22 MR. GALLEGOS: All right. If we look at the next  
23 ones, which are revocations by default, Items 19 through  
24 22, we'll do the same process. Mr. Mariano.

25 MR. MARIANO: None.

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1 MR. GALLEGOS: Mr. Force.

2 MR. FORCE: No, sir.

3 MR. GALLEGOS: Chief Schultz.

4 MR. SCHULTZ: None.

5 MR. GALLEGOS: Chief Segotta.

6 MR. SEGOTTA: Mr. Chairman, I do. And I'm  
7 checking here just to make sure I got the names right.  
8 All of the names look familiar.

9 MR. GALLEGOS: That's quite all right.

10 MR. ORTIZ: 19 and 21.

11 MR. SEGOTTA: Yes, 19 and 21; I have a conflict

12 with those.

13 MR. GALLEGOS: Okay. 19 and 21. Sheriff Coon.

14 MR. COON: None.

15 MR. GALLEGOS: Sergeant Jones.

16 MR. JONES: None.

17 MR. GALLEGOS: Mr. Perez.

18 MR. PEREZ: None.

19 MR. GALLEGOS: All right. The next group would

20 be appeal on revocation of certification, Items 23

21 and 24. Mr. Mariano.

22 MR. MARIANO: None.

23 MR. GALLEGOS: Mr. Force.

24 MR. FORCE: None.

25 MR. GALLEGOS: Chief Schultz.

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1 MR. SCHULTZ: None.

2 MR. GALLEGOS: Chief Segotta.

3 MR. SEGOTTA: None.

4 MR. GALLEGOS: Sheriff Coon.

5 MR. COON: None.

6 MR. GALLEGOS: Sergeant Jones.

7 MR. JONES: None.

8 MR. GALLEGOS: Mr. Perez.

9 MR. PEREZ: None.

10 MR. GALLEGOS: Okay. And then we do also have a

11 couple of items on formal hearing, Items 25 and 26.



12 Mr. Mariano.

13 MR. MARIANO: None.

14 MR. GALLEGOS: Mr. Force.

15 MR. FORCE: None.

16 MR. GALLEGOS: Chief Schultz.

17 MR. SCHULTZ: None.

18 MR. GALLEGOS: Chief Segotta.

19 MR. SEGOTTA: None.

20 MR. GALLEGOS: Sheriff Coon.

21 MR. COON: None.

22 MR. GALLEGOS: Sergeant Jones.

23 MR. JONES: None.

24 MR. GALLEGOS: Mr. Perez.

25 MR. PEREZ: None.

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1 MR. GALLEGOS: Okay. And for myself, I didn't

2 note any there that I had any particular conflict with.

3 ITEM #12: DANIEL ALVARADO

4 MR. GALLEGOS: Okay. So we'll begin with

5 Mr. Alvarado, Mr. Jackson. Item 12.

6 MR. JACKSON: Following also what we did last

7 time, I think I'm going to give very brief summaries.

8 MR. GALLEGOS: Yes, please.

9 MR. JACKSON: There was a car accident involving

10 this officer on duty. There was some questions about the

11 veracity of his account of the accident. And then it was

12 also discovered that he had written some inappropriate

13 things on the cartridges in his handgun.

14 We had an informal hearing. Determined that  
15 while we could not impugn the credibility of his account  
16 of the accident, so the recommended suspension of 30 days,  
17 one-year probation, ethics training, and eight hours of  
18 community service is based only on the writing on the  
19 bullets.

20 Does anybody have any questions on that?

21 MR. PEREZ: Yes. Is this 22 caliber Glock  
22 handgun, was that an issue weapon?

23 MR. JACKSON: Yes, it was.

24 MR. COON: It's not a 22 caliber. It's a  
25 Model 22, I'm sure.

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1 MR. PEREZ: Oh, I see it.

2 MR. GALLEGOS: Any other questions for  
3 Mr. Jackson?

4 MR. PEREZ: Excuse me again. It says 40, 22  
5 caliber. So it's not a 22? It's a --

6 MR. SCHULTZ: It's a Glock.

7 MR. PEREZ: My question is are 22's issued to law  
8 enforcement officers as issue weapons?

9 MR. JACKSON: I don't think so. I don't know  
10 though.

11 MR. PEREZ: So this would be a personal weapon  
12 that --

13 MR. SCHULTZ: It's a typo. It's not a 22.

14 MR. JACKSON: It's a typo. It was a  
15 service-issued weapon.

16 MR. PEREZ: So there are two typos in this. It's  
17 not a caliber. It's a Model 22. So these are issue  
18 bullets then, issue weapon?

19 MR. JACKSON: Yes.

20 MR. PEREZ: Okay. Thank you.

21 MR. GALLEGOS: Are there any other questions for  
22 Mr. Jackson? Is Mr. Alvarado here today?

23 MR. ALVARADO: Yes, Mr. Chairman.

24 MR. GALLEGOS: Would you like to address the  
25 board, sir?

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1 MR. ALVARADO: Chairman and Members of the Board,  
2 first, I just want to go ahead and extend my gratitude to  
3 Director Ortiz and for staff for overlooking these  
4 circumstances regarding my crash and giving me the benefit  
5 on that.

6 Initially, I was upset about the writing on the  
7 bullets. It was intentional. It was just a joke. But in  
8 retrospect, I understand that not everybody has a sense of  
9 humor. Some people don't see it as funny as, you know, I  
10 had.

11 And it was -- to clarify that, Mr. Perez, it was  
12 a Glock 22. My duty weapon, a Glock 22, 40 caliber, is  
13 what it was.

14 So, no, I just want to go ahead and thank

15 Mr. Ortiz and staff for giving me the benefit on the  
16 crash. And I think that his recommendation and  
17 stipulation was appropriate.

18 MR. GALLEGOS: Any questions from the board for  
19 Mr. Alvarado?

20 MR. SCHULTZ: Mr. Alvarado, what happened in  
21 January of 2006?

22 MR. ALVARADO: In January of 2006, if that's when  
23 the bullets? Was that...

24 MR. SCHULTZ: Were you separated from employment  
25 with your Dona Ana County Sheriff's Department?

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1 MR. ALVARADO: And, Mr. Chief Schultz, it's real  
2 confusing on how this happened. Yes, I was separated from  
3 employment twice. So I was sort of put in administrative  
4 leave. Then rehired. And then put in administrative  
5 leave for a second time.

6 MR. SCHULTZ: All as a result of this incident?

7 MR. ALVARADO: All as a result of the incident of  
8 the crash, sir.

9 I was never really given the opportunity within  
10 my department to rebut the issue with the bullets. The  
11 day that I was terminated for the first time and placed on  
12 administrative leave -- when I was placed on  
13 administrative leave within my department is when the  
14 ammunition was discovered, the writing on the projectiles,  
15 when they were inventorying my weapon.

16 So when I was actually terminated was the day  
17 that I was given -- you know, was read Garrity and told,  
18 "Okay, look. We have an internal investigation in  
19 reference to this, but then you're terminated." So I  
20 never had a formal rebuttal or an appeal so to speak.

21 So they just -- in a sense they just added this  
22 into the file as I was getting terminated. But it was  
23 not -- it was an issue that had been already -- I'll be  
24 honest with you guys. As a joke -- it was intended as a  
25 joke during briefing. I brought it in.

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1 I showed it to a lot of, you know, the -- amongst  
2 the other guys that were there already in our briefing  
3 room. Everybody -- you know, some of them thought it was  
4 funny. I guess some of them didn't think it was funny.

5 And it went on for a period of eight months. I  
6 forgot I even had the ammunition in one of my magazines  
7 until I had gotten placed on administrative leave and my  
8 weapon was taken.

9 MR. PEREZ: It says here that you were untruthful  
10 during the administrative investigation.

11 MR. ALVARADO: No, sir.

12 MR. PEREZ: You were not?

13 MR. ALVARADO: No, sir, I was not.

14 MR. PEREZ: Why were you terminated?

15 MR. ALVARADO: I was terminated for a crash, sir.

16 MR. PEREZ: And you said that you were thankful

17 that we have overlooked that issue. I don't know that  
18 that issue has been brought to us or we overlooked that?

19 MR. ORTIZ: The evidence we felt was insufficient  
20 on the crash, so we took no action on the crash.

21 MR. PEREZ: Okay.

22 MR. ORTIZ: It was inconclusive based on the  
23 state police investigation report was supporting what he  
24 was --

25 MR. PEREZ: Was there any finding on the

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1 untruthfulness on his part during the administrative --

2 MR. ORTIZ: No.

3 MR. GALLEGOS: Any other questions?

4 MR. MARIANO: As mentioned here, as far as a  
5 crash, was there any point of defensive driving training?

6 MR. ALVARADO: Yes, sir. I did attend defensive  
7 driving within the department.

8 MR. GALLEGOS: Any other questions?

9 MR. COON: Are you currently --

10 MR. FORCE: Mr. Chairman?

11 MR. GALLEGOS: I have Sheriff Coon first, and  
12 then I'll --

13 MR. FORCE: I'm sorry.

14 MR. COON: Are you back employed with a police  
15 department right now?

16 MR. ALVARADO: No, I'm not, sir.

17 MR. COON: Did you have these rounds loaded in

18 the weapon or just in a magazine pouch?

19 MR. ALVARADO: I'm not sure if it was in the  
20 weapon or wearing one of my magazine pouches. I really  
21 don't know.

22 MR. COON: You know you realize the -- what would  
23 happen if you were in a shooting?

24 MR. ALVARADO: Yes, sir.

25 MR. COON: And how liable this would be for your

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1 department when they look down and see the inscriptions  
2 you've written down on these --

3 MR. ALVARADO: Yes, sir.

4 MR. COON: -- these cartridges? Okay.

5 MR. GALLEGOS: Anything else, Sheriff?

6 MR. COON: No, sir.

7 MR. FORCE: Mr. Alvarado, we've got a data sheet  
8 here. And I think Chief Schultz is about as confused as I  
9 am. On the data sheet it says that you were hired in  
10 August of 2005 with Dona Ana County SO?

11 MR. ALVARADO: I believe so. And then 2005.

12 That sounds about right.

13 MR. FORCE: Then it says that you were terminated  
14 on January 20th of 2006.

15 MR. ALVARADO: I believe the first initial  
16 termination, yes, sir.

17 MR. FORCE: Okay. And then this incident took  
18 place a year and eight months later in August 2007. Where

19 the crash occurred?

20 MR. ALVARADO: The crash was in August of 2006,  
21 if I'm not mistaken.

22 MR. FORCE: Because our record says on  
23 August 25th, 2007.

24 Matt, could you --

25 MR. JACKSON: I'm trying to find the -- the POST

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1 that is in the binder does not appear to be consistent  
2 with the POST that I've got. I have his hire date as  
3 1/20/06 in the file that I was using.

4 MR. FORCE: Right. And he was terminated the  
5 same day.

6 MR. JACKSON: I don't see a termination on here.

7 MS. CROKER: I'm sorry, sir. It's up to Dona Ana  
8 County Sheriff's Department to update us with their  
9 employment. So they might not have submitted an LEA-82 to  
10 state that he was employed back again and when he was  
11 rehired in 2007 or whatnot.

12 So that's why this seems a little bit he -- they  
13 never sent an LEA-82 stating that rehire and terminated  
14 again, if that's the case.

15 MR. GALLEGOS: Can you help clear that up,  
16 Mr. Alvarado?

17 MR. ALVARADO: Well, I've been deployed {sic}  
18 support division. I started off as an animal control  
19 officer before I joined the academy. So I've been with



20 the Dona Ana Sheriff's Department since I believe the year  
21 '04/'05. I didn't actually become a deputy 2006 after  
22 graduating the academy January.

23 Like I said, the first initial termination, I'd  
24 have to look it up. But then they would resend it. And  
25 then it was going through the procedural processes as

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1 formal rebuttal. And then it was into August I got --  
2 that's when I guess the second termination happened.

3 It's real confusing. I mean, it would take us  
4 all day. You know, I've got a big booklet here. And  
5 that's why it's still going through litigation right now.

6 MR. JACKSON: If I may. The documents that we've  
7 got from Dona Ana shows -- do say that the accident  
8 occurred in 2007. So I'm not sure what the discrepancy is  
9 in the POST. If there was any sort of change in his  
10 employment status in 2006 it's not covered in the scope of  
11 his NCA.

12 MR. GALLEGOS: Any other questions? Anything  
13 else for Mr. Alvarado? Okay. Seeing none, thank you,  
14 sir.

15 MR. ALVARADO: Thank you, Chairman, Members of  
16 the Board.

17 ITEM #13: RUSTY CALLAWAY

18 MR. GALLEGOS: Next item is No. 13, Rusty  
19 Callaway. Mr. Jackson.

20 MR. JACKSON: Mr. Callaway had a recalcitrant

21 suspect in custody who required medical clearance. And  
22 the hospital was taking a lot of time in getting the  
23 suspect in and getting him cleared. And the suspect was  
24 insulting and even threatening not only to Mr. Callaway,  
25 but also to passers-by and to the hospital personnel.

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1 Mr. Callaway eventually responded to this by  
2 using some equipment from -- some materials from the EMT's  
3 bag to gag the suspect. And he later also used his tazer  
4 on the suspect.

5 (At this time, Mr. Shandler entered the hearing.)

6 MR. JACKSON: We had an informal hearing. We  
7 feel that excessive force is serious. However, I think  
8 that there were mitigating circumstances. It could have  
9 been handled better both by the hospital and by  
10 Mr. Callaway. They should have gotten the suspect out of  
11 there rather than going through these actions.

12 But we've recommended a six-month suspension with  
13 a one-year probation, ethics training, anger management,  
14 community service, use-of-force training. And we believe  
15 that he is a good candidate to address the cadet class.

16 MR. GALLEGOS: Okay. Mr. Callaway, is he here?

17 MR. CALLAWAY: Yes, sir.

18 MR. WILSON: If the board please. Gentlemen, my  
19 name is Ken Wilson. I'm an attorney and I've been  
20 retained by Mr. Callaway. If I could have your permission  
21 to speak briefly on his behalf, I would appreciate that.

22 MR. GALLEGOS: Sure. Good morning.

23 MR. WILSON: This is really a tragic incident.

24 The facts that have been related are basically correct.

25 Mr. Callaway had a citizen under arrest, who had been

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1 injured and taken to the emergency room for treatment

2 prior to being incarcerated.

3 The emergency room was busy. The doctors had

4 other emergencies going on. They couldn't get to this

5 person immediately. Mr. Callaway stood guard over this

6 person for over six hours.

7 During that period of time, the citizen's

8 behavior was extremely egregious, very abusive, very

9 insulting, very assaulting. He was making threats to

10 passers-by.

11 The situation was that this person that had been

12 injured -- had fallen and appeared to have a seizure

13 during the time that he was waiting to be treated.

14 So Mr. Callaway felt that he had to keep him

15 close to the emergency room door so they could summon

16 medical help if he were to actually have a seizure.

17 So Mr. Callaway was having to guard this person

18 near the doorway with people coming by. The citizen was

19 threatening people. In one instance he was making racial

20 slurs to a young Hispanic man. And it appeared that there

21 might be some retaliation by bystanders, and Mr. Callaway

22 had to handle that.

23 A lady and a young girl, they came by. The  
24 citizen said, "I see that you see me. And if you testify  
25 and try to put me in jail, I know who you are. I will

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1 come and get you."

2 So this person was not only being disruptive and  
3 abusive, he was actually committing crimes of intimidating  
4 witnesses and assaulting persons in the police presence.  
5 Mr. Callaway admits that he gagged this person and used a  
6 tazer on him.

7 Probably immaterial, but it was effective. That  
8 certainly stopped the threats and the assaults. But  
9 Officer Callaway takes accountability. He recognizes that  
10 even though this was an egregious situation, that he was  
11 under tremendous distress, that his actions did not  
12 comport with the policy of his police department for the  
13 use of force.

14 Officer Callaway has stated that he takes  
15 accountability for that. He has stated that he intends to  
16 make this a learning experience and use this experience to  
17 be a better police officer in the future.

18 The agreed stipulated order that is before you  
19 provides that he will be placed on suspension for six  
20 months and probation for a year and that he has five  
21 things that he must do that are remedial in nature.

22 He must take an ethics course, a police  
23 use-of-force training course. He must address the recruit

24 class and discuss his -- what he has learned by his  
25 experience. He has to take some anger management

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1 counseling. He has to do community service.

2 As a show of his good faith, he has already  
3 completed the community service. He has made arrangements  
4 for the counseling, and that will be done immediately.

5 He's prepared to do the training and address the class as  
6 soon as the opportunity is made available to him.

7 I believe that the stipulated order is fair under  
8 all the circumstances, but I would ask that you consider  
9 one thing: If Officer Callaway is able to complete the  
10 five remedial actions in less than six months, I would ask  
11 if you consider reinstating him in less than six months;  
12 when he completes his remedial action, that his suspension  
13 be lifted.

14 I think that would be a win-win situation. It  
15 would motivate him to go forward and do these things. And  
16 it would reward him for promptly and honestly doing what  
17 he says that he will do. But that's the recommendation.  
18 I would invite Mr. Callaway to speak to you.

19 MR. GALLEGOS: Thank you, sir. Mr. Callaway.

20 MR. CALLAWAY: I do take full responsibility for  
21 what I've done. Nobody else can take responsibility. I'm  
22 the one who took the actions. I did do that. I never  
23 tried to lie to anybody. I never tried to talk my way out  
24 of it. I stood up and said I did it.

25        There was other circumstances involved also. I

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1 did call my on-call supervisor twice, who refused to show  
2 up on my scene. I look back at it now, I probably could  
3 have called out another entity to come out and stand by  
4 for me while I took a break and walked away from this  
5 individual.

6        Like my attorney here Mr. Wilson said, the  
7 individual's making racial comments. I was asked why I  
8 didn't take him further to the end of the hospital. I'm  
9 not a medical professional. The individual was falling  
10 down on the ground having a seizure.

11        According to the EMS, it was a fake seizure. But  
12 the way I looked at it at the time, if I had taken him to  
13 the end of the hospital -- like was suggested later on --  
14 and the individual died on me, then I would also have been  
15 liable for his death, for not having him close enough to  
16 EMS.

17        So, therefore, I moved him from in front of the  
18 emergency door over here to another entrance in which I  
19 was in direct contact with EMS and the hospital. I  
20 couldn't put him in my unit because I was a K9 officer  
21 with the T or C Police Department. So I had no way to put  
22 him in my unit. My canine was secured in my unit.

23        I couldn't have put him into the other officer's  
24 car who was there because she also had another suspect,  
25 who was inebriated, intoxicated, 19 years of age, passed

1 out in the back of her unit, who the individual that I had  
2 arrested was fighting with at the time.

3 If I would have taken this 19-year-old out, set  
4 him in the wheelchair, he would have fallen out of the  
5 wheelchair, busted his head. I would have been liable for  
6 that.

7 So, I mean, I really -- looking back at it, I  
8 really don't know the right answers for the deal. I know  
9 I would never take the same steps that I took this time.  
10 I mean, I would definitely -- if I call for assistance  
11 from my sergeant next time and he does not respond, I  
12 would go up the chain. That's what I was faced with. I  
13 did spend six hours with this individual.

14 I was reading my criminal complaint, probable  
15 cause to the district attorney's office. While doing so,  
16 the sergeant that I called was sitting in his office after  
17 we arrived at the police station. While talking to the  
18 DA's office, my sergeant's sitting back laughing at  
19 everything that I've done.

20 So, therefore, my sergeant was hearing me read  
21 off the criminal complaint, probable cause; he thinks it's  
22 funny. I had another sergeant who signed off on my report  
23 once it was done. So, therefore, I mean, yes, I did. I  
24 done what I done. By I think that it probably should have  
25 gone farther when they were doing the investigation.

1 MR. GALLEGOS: Thank you, sir. Any questions  
2 from the board? Yes, Mr. Force.

3 MR. FORCE: Mr. Callaway, I just got a couple of  
4 questions. It's my understanding on this, this individual  
5 was under arrest when you took him to the hospital for a  
6 medical clearance; is that correct?

7 MR. CALLAWAY: In my report I put that he was  
8 already under arrest prior to getting to the hospital,  
9 which that was a typo. He was not in handcuffs once  
10 arriving to the hospital.

11 He didn't start getting belligerent until he got  
12 to the hospital. And I didn't have all the facts, so  
13 therefore I didn't place him under arrest immediately at  
14 that point. I had him transported to the hospital. I  
15 advised them not to let him leave because he may be placed  
16 under arrest at a later time, pending my investigation.

17 Once I had found out, I went to the -- of the  
18 whole totality of the circumstances, then I went to the  
19 hospital; and at that point is when I placed him under  
20 arrest.

21 MR. FORCE: So the sequence of events that took  
22 place with the gagging and all that, was that prior to or  
23 after the handcuffing?

24 MR. CALLAWAY: That was after, sir.

25 MR. FORCE: So you had already handcuffed him and

1 then he continued to be belligerent?



2 MR. CALLAWAY: Yes, sir.

3 MR. FORCE: Okay. So did you have any other  
4 problem after you gagged him?

5 MR. CALLAWAY: Just when -- right after I gagged  
6 him, he stood up to me like he was going to try to  
7 head-butt me. And I dry stunned him for like two  
8 seconds. He sat back down. And I had the EMS come and  
9 check vitals, make sure he was okay. And that was the end  
10 of the altercation.

11 MR. FORCE: Okay.

12 MR. GALLEGOS: Any other questions? Okay. Thank  
13 you, sir.

14 ITEM #14: TIM SEZ

15 MR. GALLEGOS: Next item, No. 14, Tim Chavez.

16 MR. JACKSON: This is an alleged sexual assault  
17 on a minor. This is an ongoing case -- I mean, this is a  
18 case where the conduct is dated back to 2005. The NCA was  
19 issued before I took over as prosecutor for this board.

20 There are a number of concerns with the case.  
21 It's been in the media. There was a trial and hung jury  
22 leaning towards acquittal. And the employment matter was  
23 also recently handled. Judge Lang ruled no probable cause  
24 to fire, ruled for back pay.

25 Despite this, the respondent has agreed to a

1 six-month suspension, one-year probationary period, ethics  
2 training, and eight hours of community service. This

3 is -- because even though there was no showing of criminal  
4 conduct, trolling -- trolling chat lines or computer lines  
5 or whatever for young people and not making sure that  
6 person that you're involved with is of the age of consent  
7 is a moral character issue.

8 MR. GALLEGOS: Okay. Is Mr. Chavez here? Does  
9 anyone from the board have any questions for Mr. Jackson  
10 at this time?

11 MR. PEREZ: Excuse me. Is a 14-year-old a minor,  
12 is that statutory rape?

13 MR. JACKSON: I am not a criminal lawyer. I  
14 think that Mr. Gallegos -- yeah, I think it is.

15 MR. GALLEGOS: Yes.

16 MR. JACKSON: Though --

17 MR. GALLEGOS: If consent was an issue, if  
18 she's -- it's statutory. That's the lowest it could go.  
19 But if it was against her will, then it goes up in degrees  
20 based on her age.

21 MR. PEREZ: With her will or not, would it be  
22 considered statutory rape?

23 MR. GALLEGOS: At the very minimum.

24 MR. PEREZ: And that's a felony?

25 MR. GALLEGOS: Yes, it is. A fourth-degree

1 felony.

2 MR. JACKSON: And the allegation here was that it  
3 was nonconsensual. However, the witness has proved to be

4 extremely problematic, so.

5 MR. GALLEGOS: Okay. Any other questions?

6 MR. FORCE: Mr. Chairman. Is this a stipulated  
7 agreement? I'm understanding this correct?

8 MR. GALLEGOS: Yes.

9 MR. FORCE: So, Director Ortiz, can you explain  
10 the -- your recommendation?

11 MR. ORTIZ: Well, my first recommendation was  
12 revocation. Did not want to go there. We discussed it,  
13 if we went through a formal hearing, how our outcome would  
14 be. At that point we tried to bargain. And my next  
15 recommendation was a two-year suspension. They took it to  
16 Mr. Chavez. He disagreed.

17 We came down. After discussing it with  
18 Mr. Jackson if we went to a formal hearing and it got  
19 appealed to district court, would we be able to win this.  
20 And Mr. Jackson felt probably not.

21 So that was the best we could get out of them to  
22 accept was six months. So that's where we're at.

23 MR. GALLEGOS: Any other questions?

24 MR. FORCE: I still have one, if you don't mind.

25 MR. GALLEGOS: No, no. I don't.

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1 MR. FORCE: Mr. Jackson, do you think six months  
2 is about all? I mean, my concern here based on the facts  
3 that's been laid in front of us, it's a pretty grievous  
4 allegation.

5 I mean, just the issues with the facts of which  
6 you've given to us, if those are established, to me, I  
7 mean, I've got severe concerns over a six-month  
8 suspension.

9 MR. JACKSON: I understand your concerns,  
10 Mr. Force. However, as stated, the witness is very  
11 problematic. She had credibility problems at the trial.

12 I think that the allegations are terrible. I  
13 think that there was some misconduct here. We have a lot  
14 of difficulty proving it, and we've managed to get an  
15 agreement that he will serve some suspension for whatever  
16 did happen.

17 MR. COON: And there's a DNA match here. Isn't  
18 that worth something?

19 MR. JACKSON: The DNA match is worth something.  
20 But, again, to go just to the history of this, this was --  
21 the initial meeting was not in person. The girl did not  
22 look 14. I think that the jury was inclined to believe  
23 that she had successfully deceived him as to her age and  
24 as to the consent issue.

25 But I don't know what the jury thought, but that

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1 seems to be the case here.

2 MR. COON: Was this an on-duty or off-duty  
3 incident?

4 MR. ORTIZ: It was off duty.

5 MR. JACKSON: Off duty, yeah.

6 MR. GALLEGOS: Okay.

7 MR. PEREZ: And Chief Schultz, of course, we  
8 can't talk about this; but, again, this is an issue of  
9 moral turpitude or moral character. And this board is not  
10 a legal board. We are a board of nonattorneys.

11 And the fact that whether a person can be  
12 convicted or not I think is important, but our issue goes  
13 beyond that. We go into moral character and moral  
14 turpitude. Here's exactly a case where we don't need  
15 convictions.

16 And, unfortunately, Mr. Chavez is not here to  
17 explain himself.

18 MR. ORTIZ: For the record, he is represented by  
19 an attorney, Mr. Fred Mowrer. And like I said, I'm not  
20 happy with this either. I wish the sanctions would be  
21 more severe. But it's a closed case unless we reject and  
22 go for revocation and let it go to district court for an  
23 appeal. And I've no problem with that as well.

24 And that would test our moral character issue  
25 here, which we're talking about.

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1 MR. GALLEGOS: Not our moral character.

2 MR. ORTIZ: The issue of moral character that  
3 everyone has, right.

4 MR. GALLEGOS: Right. Mr. Force.

5 MR. FORCE: Yeah. Mr. Ortiz, was Mr. Mowrer and  
6 Mr. Chavez given notice of the board's meeting today?

7 MR. ORTIZ: Oh, yes. Yes. I sent a letter to  
8 all of them. In fact, I just got the signed stipulated  
9 order yesterday. You'll see on the fax it came in around  
10 right after lunch, I believe; and it was the last-minute  
11 deal.

12 Mr. Mowrer was trying to get him to agree to the  
13 two year. And Mr. Chavez felt that based on the jury's  
14 verdict and the judge reinstating him with backpay, he  
15 felt he did no wrong. And he would not accept a two-year,  
16 would not accept a one-year.

17 MR. FORCE: Did Mr. Mowrer or Mr. Chavez contact  
18 your office about whether they were going to attend here  
19 today or not?

20 MR. ORTIZ: They were well advised of it, and I  
21 spoke with the secretary. They did not tell me if they  
22 would be present or not.

23 MR. GALLEGOS: Anything else? What's this  
24 Livelinks? Does anybody know?

25 MR. SCHULTZ: No one admitted here.

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1 MR. GALLEGOS: Is it like a chat room or texting  
2 or?

3 MS. CROKER: I think it's like a chat date line.

4 MR. JACKSON: I think it's one of those party  
5 lines that they advertise late on television.

6 MR. FORCE: It's clear nobody wants to admit to  
7 anything. But I do have one last question.

8 Mr. Ortiz, I understand Mr. Mowrer. I'm sure he  
9 clearly understanding the difference between the burden of  
10 proof, the preponderance of the evidence versus proof  
11 beyond a reasonable doubt standard.

12 In the discussions with Mr. Chavez, was there any  
13 discussion that you had with him over those standards of  
14 proof?

15 MR. ORTIZ: No. I've never seen Mr. Chavez or  
16 have met with him. All my communications were with  
17 Mr. Mowrer, and he wanted to resolve this.

18 MR. FORCE: Okay.

19 MR. GALLEGOS: Anything else? Okay. Thank you.

20 ITEM #15: MICHAEL GARCIA

21 MR. GALLEGOS: Let's go onto Item 15, Michael  
22 Garcia.

23 MR. JACKSON: This is a domestic violence case.  
24 We were set to go to formal hearing on this, and then we  
25 came to an agreement with his counsel for a suspension of

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1 one year, two-year probation, ethics training, anger  
2 management, alcohol screening and assessment, and eight  
3 hours of community service.

4 There was physical violence in addition to  
5 harassment over the cell phone and an allegation that the  
6 respondent flattened her tires. Any questions on this?

7 MR. PEREZ: He was a New Mexico State Police  
8 officer at the time. Was any action taken against him by

9 the New Mexico State Police?

10 MR. SEGOTTA: He resigned in lieu of  
11 termination. And the case was brought to the board for  
12 consideration for his certification.

13 MR. PEREZ: So now he's rethinking it?

14 MR. JACKSON: I'm sorry?

15 MR. PEREZ: So he did resign? But now he wants  
16 in again?

17 MR. JACKSON: No.

18 MR. ORTIZ: He wants to keep his certification.

19 MR. FORCE: Mr. Chairman. Director Ortiz, on  
20 your recommendation, is that consistent with the previous  
21 recommendations that you've made regarding cases of  
22 similar kind?

23 MR. ORTIZ: No. On this one here my  
24 recommendation was a revocation, and that's why I went to  
25 a formal hearing. And at the day of the formal hearing,

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1 speaking with Mr. Jackson, there was some issues regarding  
2 the court documents regarding the deferred sentence.

3 And so it wasn't considered as a conviction at  
4 that point.

5 MR. JACKSON: Yeah. Our initial review of this,  
6 it suggested that there may be a Lautenberg Amendment bar,  
7 that is that there was a conviction of an assault against  
8 a household member, but that that would serve to prevent  
9 him from carrying a weapon at any time and that would



10 result as a revocation of his certification.

11       However, shortly before the hearing, we actually  
12 managed to get copies of the court documents rather than  
13 reports about those court documents. And the judgment  
14 was -- itself was deferred. The sentence was not  
15 deferred, but the judgment was deferred.

16       So there was no conviction despite the guilty  
17 plea. The court did not arrive at a decision pending  
18 results of a probationary period, which was successfully  
19 completed.

20       MR. GALLEGOS: Go ahead, Mr. Force.

21       MR. FORCE: Mr. Jackson, here's my concern. This  
22 is Number 2. And I hope that this course changes. But my  
23 concern, again, is just looking at the basics of the facts  
24 that are given to us. And I can contrast those with the  
25 recommendation that this is completely inconsistent at

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1 least with my tenure on the board.

2       And, again, I'm not the litigator here. But I  
3 guess my concern would be if the facts were established as  
4 they were given to us, the result would be a much stronger  
5 disciplinary action on the certification.

6       And what I'm hearing from you is there is a  
7 question as to whether the proof is there?

8       MR. JACKSON: Well, I'm not sure that -- that I  
9 agree. The suspensions that I've seen in my time as the  
10 prosecutor in domestic violence cases have been very,

11 very -- very fact specific, very case by case.

12       There was, you know, the -- I believe -- I  
13 believe it was actually a year ago. It may have been in  
14 the spring meeting. There was an officer who had choked  
15 his wife into unconsciousness. That ended up with a  
16 smaller suspension approved by the board than this one.

17       MR. FORCE: Okay.

18       MR. GALLEGOS: Anything else? All right. Is  
19 Mr. Garcia here?

20       MR. GARCIA: First thing I'd like to say to all  
21 the board and Mr. Ortiz, thank you for the stipulated  
22 order. I've taken, you know, responsibility for putting  
23 myself in the wrong place, wrong time on this incident.

24       I've already currently began counseling before  
25 the stipulated order and have already started making

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1 efforts toward the stipulated order conditions also. And  
2 I have done the -- I have already the counseling is  
3 consisting of anger management and substance abuse and  
4 alcohol abuse.

5       MR. GALLEGOS: Are there any questions from the  
6 board. Comments? Mr. Perez?

7       MR. PEREZ: You resigned?

8       MR. GARCIA: Yes.

9       MR. PEREZ: And now you want to keep your  
10 certification?

11       MR. GARCIA: I would like to, sir.

12 MR. PEREZ: Did you throw this woman to the  
13 ground?

14 MR. GARCIA: Not intentionally.

15 MR. PEREZ: What do you mean "not intentionally"?

16 MR. GARCIA: What happened, sir, was the night of  
17 the incident, I had found a designated driver home from  
18 the bar. I made a contact with her coming up the hill  
19 from trying to get in her vehicle.

20 I had stood in her way and told her she shouldn't  
21 be driving because she was also intoxicated. She was  
22 intoxicated at the bar, making a scene. That's why I left  
23 her there and got a designated driver home.

24 When I stood in her way -- I was basically just  
25 standing in her way, and she kind of pushed at me. And I

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1 was intoxicated, and I grabbed onto her. And we were  
2 just -- you know, out of reaction, we both fell to the  
3 floor.

4 And at that time is when she said I had hit her  
5 basically that night.

6 MR. PEREZ: Did you hit her?

7 MR. GARCIA: I didn't hit her, no.

8 MR. PEREZ: You were intoxicated?

9 MR. GARCIA: I was intoxicated.

10 MR. PEREZ: So your body hit her, but you don't  
11 know that you hit her for sure?

12 MR. GARCIA: I did not hit her. I did not throw

13 no punches. I did not -- no slaps, no nothing. I had  
14 basically just stood in her way, telling her, no, don't  
15 drive. Telling her that she has a five-year-old son and  
16 she shouldn't be driving under the influence of alcohol.  
17 Telling her to call back whoever brought her to take her  
18 home.

19 MR. COON: Is this your wife or your girlfriend?

20 MR. GARCIA: I had only been with her for maybe a  
21 month.

22 MR. COON: So a girlfriend.

23 MR. GARCIA: Girlfriend.

24 MR. GALLEGOS: Anything else from the board?  
25 Chief?

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1 MR. SEGOTTA: No.

2 MR. GALLEGOS: Thank you.

3 ITEM #16: WESLEY LACUESTA

4 MR. GALLEGOS: Next item is Item 16, Wesley  
5 LaCuesta.

6 MR. JACKSON: This is a case that is similar in  
7 many ways to Mr. Garcia's case. It's a domestic violence  
8 case where the initial review indicated that there was a  
9 Lautenberg Amendment problem. It turned out not to be the  
10 case.

11 The conduct in this case is a little bit more  
12 severe with the reaching in and pulling the victim's car  
13 window out in an attempt to get her out of the car. This

14 was also scheduled for a formal hearing, but we came to an  
15 agreement of an 18-month suspension with a two-year  
16 probationary period, ethics training, anger management,  
17 and community service.

18 And the director believes that he is a good  
19 candidate to address the cadet class.

20 MR. GALLEGOS: And any questions from the board?  
21 Was there a criminal case?

22 MR. JACKSON: There was a criminal case, and it  
23 ended up in the similar posture where there was a guilty  
24 plea that was deferred, pending probationary period, and  
25 then it was dismissed.

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1 MR. GALLEGOS: Early on you mentioned that there  
2 was another one. Are they styling these orders deferred  
3 or conditional discharge? There's another level --

4 MR. JACKSON: There are a variety of ways that  
5 I've seen it. In this case it was a -- this is a judgment  
6 of deferred is written in on the form.

7 MR. GALLEGOS: It says deferred imposition or  
8 deferred judgment --

9 MR. JACKSON: The form says, "The court hereby  
10 enters a judgment of" and it has a blank. And it just  
11 says "deferred" in the blank.

12 MR. GALLEGOS: Okay. All right. I forgot they  
13 do those forms.

14 MR. JACKSON: For, yeah, in a lot of these.

15 There is another issue in this case which is that this may  
16 end up being a background suspension and I -- but the --  
17 the respondent in this case is -- his name showed up on  
18 the list for the child support obligations, which affects  
19 an indefinite suspension.

20 We trust him to take care of that. And this  
21 suspension will run in the background concurrently with  
22 that. Not consecutively.

23 MR. GALLEGOS: Okay. Any questions from the  
24 board? No? Mr. LaCuesta.

25 MR. LACUESTA: Good morning. First of all, I'd

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1 like to say that I'm ashamed to be here standing in front  
2 of you and all wasting your time like this. I made a  
3 terrible mistake last year.

4 I accept the recommendations by the director, and  
5 I take full responsibility for my bad actions and  
6 decisions I made last year. Since this calamity has come  
7 about, though, it's been very difficult, of course, to my  
8 reemployment.

9 That's why I have fallen behind in my child  
10 support obligations. It's not my intent not to take care  
11 of my child support obligations. It's just been really  
12 tough finding the work.

13 My character, if I may say to save face, it's not  
14 defined by the incident that occurred last year. I had a  
15 good career and honorable career and I was on a good

16 track. I harbor no resentment towards my agency.

17       Actually, it puts a hole in my heart, and I miss  
18 my unit every day. And I miss the guys out in the field.  
19 So I do feel I've taken a pretty good punishment for my  
20 actions. I do hope to get back upright and do what I  
21 really love to do; and that's being in law enforcement.  
22 So, that's all I have to offer.

23       MR. GALLEGOS: Thank you, sir. Any questions  
24 from the board? Comments? Yes, Mr. Perez.

25       MR. PEREZ: The grabbing the estranged wife, this

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1 is domestic violence?

2       MR. JACKSON: Yes.

3       MR. PEREZ: Thank you.

4       MR. GALLEGOS: Anything else? Seeing nothing,  
5 thank you. Oh, sorry. Mr. Force.

6       MR. FORCE: Mr. Chairman. Mr. LaCuesta, you're  
7 clearly understanding that if you fail to pay child  
8 support then your certification will be automatically  
9 revoked?

10       MR. LACUESTA: Yes. I'm working -- I've got some  
11 things I'm trying to work on very quickly and trying to  
12 come up with the money for that. I'm aware of that, sir.

13       MR. FORCE: I urge you especially in light of all  
14 the issues here to get that taken care of.

15       MR. LACUESTA: Yes. I have a question for the  
16 director. I have until the 10th. Is that close of

17 business on the 10th?

18 MR. ORTIZ: Yes. I sent him a certified letter  
19 informing him he had 30 days to come in compliance or we  
20 would take action on his certification.

21 MR. LACUESTA: And if I may exchange with the  
22 director. I went and checked the child support  
23 enforcement division trying to get this compliance up.

24 And it was explained to me there was a new law  
25 where they do a motion and they can do an order, which

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1 would be in lieu of or actions for compliance because it  
2 takes a little bit longer sometimes for the full  
3 compliances to come.

4 Would that suffice to show proof that I'm in  
5 compliance?

6 MR. ORTIZ: If you are in compliance -- I get a  
7 monthly report from them. And if your name is off the  
8 list, that will show that you're in compliance. If your  
9 name comes up again, I will contact you and let you know.

10 MR. LACUESTA: I'm confident we'll have something  
11 up and to the director by the 10th.

12 MR. GALLEGOS: Okay. Thank you.

13 MR. LACUESTA: Thank you, sir.

14 ITEM #17: LAURA MCALISTER

15 MR. GALLEGOS: Next item, No. 17, Laura  
16 McAlister.

17 MR. JACKSON: This is a case of an officer who



18 was with the -- who was called into duty to investigate a  
19 late night fatality accident. And she reported to duty  
20 with bloodshot eyes, slurred speech, and a smell of  
21 alcohol. We came to an agreement for a 90-day suspension  
22 in this case, so.

23 MR. GALLEGOS: Okay.

24 MR. JACKSON: Not really much else to this one.

25 MR. GALLEGOS: It's pretty straightforward. Any

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1 questions from the board? No? Is Ms. McAlister here  
2 today? Was there a -- let's see. Was there a DWI that  
3 was charged?

4 MR. JACKSON: There was not.

5 MR. GALLEGOS: They did the investigation, but  
6 they didn't charge her?

7 MR. JACKSON: They investigated her, but -- yeah,  
8 there was no -- I have no awareness of a DWI charge  
9 stemming from this. I don't think there was one.

10 She showed up to the scene. She was taken  
11 from -- she did not drive from the scene of the accident  
12 that she was investigating. She was taken from the scene  
13 by another officer because of the concerns over DWI.

14 MR. GALLEGOS: Okay. All right. Any questions?  
15 Okay. For the record, Ms. McAlister did not -- is not  
16 here.

17 ITEM #18: ROBERT VALENZUELA

18 MR. GALLEGOS: So we'll go to the next item,

19 No. 18, Robert Valenzuela.

20 MR. JACKSON: This is a DUI driving motorcycle  
21 crash. And there was some deceptive conduct associated  
22 with this particular case. The respondent denied being  
23 the driver of the motorcycle and stated that his friend  
24 was driving and -- but he was not consistent about which  
25 friend was driving. And there was no evidence to support

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1 the existence of a friend driving.

2 I was not present at the informal hearing for  
3 this, but he and his chief did meet with the director to  
4 discuss this. And he admitted at that point that he was  
5 driving a motorcycle at the time of the crash.

6 And we recommend a 90-day suspension, one-year  
7 probationary period, ethics training, alcohol screening  
8 and assessment, and 16 hours of community service.

9 MR. GALLEGOS: Any questions from the board?

10 MR. SCHULTZ: I have a question I think for  
11 Mr. Ortiz. This event occurred six months after  
12 graduating from the Law Enforcement Academy.

13 Do we ever recognize any type of probationary  
14 period or increase the sanction when we have an event of  
15 this magnitude happen within months of graduating from the  
16 academy?

17 MR. ORTIZ: Yes. Because I do address the cadets  
18 before graduation. And we have them also going to the  
19 other academies to address them as well. And I'm trying

20 to get the point we do not want to see them at the academy

21 for misconduct.

22 In fact, we're going to have one that came out in  
23 the paper. She was celebrating being a year graduating  
24 the academy and got arrested for DWI. So that will be  
25 coming before the board here shortly. So I'm very

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1 disappointed in that.

2 We did have a class. Elliott Guttman also did a  
3 legal update with them, and she was in that class. And we  
4 brought up the misconduct again. She was sitting in  
5 there, and the next thing we know we are surprised and  
6 shocked she gets a DWI.

7 But I do tell them the consequences are going to  
8 be more severe if I see you in my office for misconduct.

9 MR. SCHULTZ: But you tell them that, and we've  
10 got one here; and it's the typical 90-day suspension. So  
11 there's no additional sanction --

12 MR. ORTIZ: Right.

13 MR. SCHULTZ: -- on Mr. Valenzuela.

14 MR. ORTIZ: Right. He was out of the academy  
15 down south. And so I didn't have an opportunity to  
16 address him.

17 MR. GALLEGOS: Anything else? Is Mr. Valenzuela  
18 here?

19 MR. VALENZUELA: Yes, sir. I take full  
20 responsibility for my actions on that. I concur with the

21 director's recommendation. I completed all of what he has  
22 asked me to do on that. Like I said, I accept full  
23 responsibility.

24 MR. GALLEGOS: Any questions for Mr. Valenzuela  
25 from the board? Mr. Perez and then Sheriff Coon.

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1 MR. PEREZ: Did you lie in the administrative  
2 inquiry? Did you lie to your superiors?

3 MR. VALENZUELA: No, sir.

4 MR. PEREZ: You did not?

5 MR. VALENZUELA: No, sir.

6 MR. PEREZ: At first you did not say that you  
7 were not on the motorcycle?

8 MR. VALENZUELA: Can you tell me the question  
9 again.

10 MR. PEREZ: Did you lie during the administrative  
11 inquiry? Did you lie to your superiors?

12 MR. VALENZUELA: In my department?

13 MR. PEREZ: Yes.

14 MR. VALENZUELA: No, sir. And I have my chief  
15 right there. He can....

16 MR. GALLEGOS: Is your chief here with you?

17 MR. VALENZUELA: Yes. It's Chief Vega.

18 MR. GALLEGOS: Would you be able to answer that  
19 question, sir? And please identify yourself for the  
20 record.

21 MR. VEGA: Chief Vega, Columbus police.

22 MR. PEREZ: Sir, did he lie to you about being  
23 the driver of the motorcycle?

24 MR. VEGA: During the internal affairs  
25 investigation, he was honest with it.

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1 MR. PEREZ: Well, we have it -- it says here the  
2 respondent denied being the driver of the motorcycle  
3 involved in the crash by stating his friend was driving.

4 MR. VEGA: I believe that was part of the  
5 criminal investigation.

6 MR. PEREZ: But he did not lie to you? He did  
7 not say that he was not driving it? What do you mean it  
8 was part of the investigation. It's really simple. Did  
9 he lie to you? Did he say --

10 MR. VEGA: And I said, "No, sir."

11 MR. PEREZ: He didn't?

12 MR. VEGA: No.

13 MR. PEREZ: He did not deny driving the  
14 motorcycle?

15 MR. VEGA: No.

16 MR. ORTIZ: Maybe I can clarify something,  
17 Chairman, Board Members. He was employed with the  
18 sheriff's department at the time. Mr. Vega is the chief  
19 of Columbus, so he didn't have anything to do with it.

20 Where he was untruthful was at the time of the  
21 crash investigation when the investigating officers  
22 arrived at the scene, he did not admit to being the

23 driver. He said somebody else was the driver and they ran  
24 off. So he was untruthful at the time of the crash  
25 investigation.

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1 Then I think when it got into the internal  
2 affairs investigation, then he's saying he was truthful at  
3 that point.

4 MR. PEREZ: But my question was initially you  
5 denied being the driver of the motorcycle?

6 MR. VALENZUELA: Yes, sir.

7 MR. PEREZ: You lied to your superiors?

8 MR. VALENZUELA: Yes, sir.

9 MR. PEREZ: Thank you.

10 MR. GALLEGOS: Sheriff.

11 MR. COON: They solved my question. I was asking  
12 if he was employed now. And obviously with Columbus PD.

13 MR. VALENZUELA: Yes, sir.

14 MR. SCHULTZ: Mr. Valenzuela, your BAC was a  
15 .27?

16 MR. VALENZUELA: Yes, sir.

17 MR. SCHULTZ: And you had just graduated from the  
18 Law Enforcement Academy six months prior to this event.

19 MR. VALENZUELA: Yes, sir.

20 MR. SCHULTZ: Do you remember the classes that  
21 you took on standardized field sobriety and intoxicated  
22 drivers and fatal accidents and motorcycle accidents? I  
23 mean -- I guess what I want to -- you spent a lot of time

24 in the academy.

25 You took an oath to enforce these laws, and

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1 within six months you're out violating them yourself. I  
2 mean, how come you missed that in the academy? How come  
3 that didn't make an impression on you?

4 MR. VALENZUELA: I don't know, sir.

5 MR. SCHULTZ: That's all.

6 MR. GALLEGOS: Thanks. Anyone else? Anything  
7 else from the board? All right. Thank you, Gentlemen.

8 MR. VALENZUELA: Thank you.

9 ITEM #19: RONALD CHAVEZ

10 MR. GALLEGOS: The next ones are revocation by  
11 default. Item 19 is Ronald Chavez.

12 MR. JACKSON: This one is a little bit different  
13 from most of those we've seen, even though in the binder  
14 this is listed as misconduct. This is not technically a  
15 misconduct.

16 As discussed earlier, one of the grounds for  
17 revocation or suspension of a license is a failure to  
18 satisfy the qualifications. And there were concerns that  
19 he was -- that the respondent in this case was no longer  
20 psychologically fit for duty. And then there was a report  
21 that substantiated that.

22 So we sent out a notice of contemplated action to  
23 sign for, but there was no response within the  
24 provided-for time. So we ask for revocation by default.

25 MR. GALLEGOS: All right. Any questions from the

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1 board for Mr. Jackson? Seeing none, is Mr. Chavez here by  
2 any chance? I don't see any response.

3 ITEM #20: JULIO LEDEZMA

4 MR. GALLEGOS: So we'll go onto the next item,  
5 No. 20, Julio Ledezma.

6 MR. JACKSON: On this one there was -- I'm  
7 sorry. He was assigned to respond to a 911, and there  
8 were some concerns about hidden reporting, that he was  
9 back and forth from different locations. It looked like  
10 he was not being honest about his locations.

11 And then there was a separate incident where he  
12 was dispatched to a domestic call and didn't really take  
13 the appropriate action, given that there was physical  
14 evidence, admission of guilt -- not "quilt" -- and  
15 eyewitnesses to the assault.

16 So there was an NCA issued on this, and it was  
17 signed for; but there was no response. So we ask for  
18 revocation by default on this as well.

19 MR. GALLEGOS: And you did send out the notice?

20 MR. JACKSON: Yes. And it was signed for.

21 MR. GALLEGOS: Any questions from the board?

22 Seeing none, we'll go ahead onto the next item.

23 ITEM #21: MICHAEL TAFOYA

24 MR. GALLEGOS: No. 21, Michael Tafoya.

25 MR. JACKSON: This is a telecommunicator who was



1 impersonating a New Mexico State Police officer at a mall  
2 in northern California. He had -- to affect this, he had  
3 stolen a badge from a friend of his from the state  
4 police.

5 We had an informal hearing. And there was a  
6 notice of final decision sent out after a proposed  
7 stipulated order, and there was no response within the  
8 allotted time. So we're asking for revocation by default  
9 on this as well.

10 MR. GALLEGOS: And notice was sent out?

11 MR. JACKSON: I believe so.

12 MR. ORTIZ: Excuse me.

13 MR. JACKSON: A notice was sent out --

14 MR. ORTIZ: On all of these notices, certified  
15 letters were sent out. And they were either unclaimed.

16 MR. GALLEGOS: In this particular case it was  
17 unclaimed?

18 MR. ORTIZ: It was unclaimed.

19 MR. GALLEGOS: And that was to the last address  
20 that you had?

21 MR. ORTIZ: Yes. And I also ran them through the  
22 Accurint at MVD and sent it to the current address.

23 MR. GALLEGOS: I just want to make that for the  
24 record, especially when they are unclaimed. If I catch  
25 it -- I don't know if I did on the other ones or not --

1 but when they are unclaimed, I want to try to make the  
2 record clear.

3 We've had times in the past -- this board has --  
4 where they'll come in later on and say, "Well, I never got  
5 notice." And we have to show that we, you know, made a  
6 diligent effort through whatever addresses we did have at  
7 the time, so. Okay. Any questions from the board?

8 Seeing none, we'll go ahead and move onto the  
9 next one.

10 ITEM #22: BRIAN VIGIL

11 MR. GALLEGOS: No. 22, Brian Vigil.

12 MR. JACKSON: This one I am going to let the  
13 director present. My office did not review it before it  
14 was issued. But unlike the cases in the previous meeting,  
15 that shouldn't be taken as a -- as any sort of a  
16 discordance on what the appropriate course of action in  
17 this particular case is.

18 MR. ORTIZ: On May 11th, 2009, the respondent  
19 Mr. Brian Vigil was arrested in Santa Fe for an armed  
20 robbery of a local pharmacy store. He was terminated by  
21 the Espanola Police Department. The Espanola Police  
22 Department submitted a misconduct report.

23 I prepared a notice of contemplated action. And  
24 I sent it to your office for review. Anyway, it was sent  
25 to the respondent. It was signed for acknowledging

1 receipt. No response received on the notice of

2 contemplated action.

3 I, therefore, sent a notice of final decision,  
4 which was mailed on September 10th. And it was signed for  
5 acknowledging receipt. And he also failed to respond to  
6 both the NCA and the NFD. Therefore, I present it to the  
7 board as an order of default for revocation.

8 MR. GALLEGOS: Any questions from the board? I  
9 have one. This didn't come through your office,  
10 Mr. Jackson?

11 MR. JACKSON: As the director said, it was sent  
12 to my office. However, it was issued before we were able  
13 to review it.

14 MR. GALLEGOS: Oh, okay. And there aren't any  
15 problems with that -- I guess, that type of procedure,  
16 Zack, that you know of?

17 MR. SHANDLER: We can discuss that in closed  
18 session if you wish.

19 MR. GALLEGOS: All right. Okay. Any questions  
20 from the board then? {No response.}

21 ITEM #23: WILLIAM P. BREEDING

22 MR. GALLEGOS: I'll go ahead and move onto the  
23 next item, Item 23, William Breeding. Oh, and I -- let me  
24 backtrack again. Just for the record, I know I called if  
25 Mr. Chavez was here. I did not ask if Mr. Ledezma,

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1 Mr. Tafoya, or Mr. Vigil were here.

2 I thought it was pretty obvious, but I want to

3 make sure. For the record, none of those individuals were  
4 here this morning.

5 So now onto Mr. Breeding, Item 23. That's on  
6 appeal on revocation of certification. Mr. Ortiz.

7 MR. ORTIZ: This would be Mr. Breeding presenting  
8 his case before the board.

9 MR. GALLEGOS: All right. Mr. Breeding, are you  
10 here?

11 MR. BREEDING: Yes.

12 MR. GALLEGOS: Good morning, sir.

13 MR. BREEDING: Good morning. First off, thank  
14 you all very much for having me here. I know that I've  
15 missed a couple of the board meetings due to family and  
16 financial obligations. First off, I would like to say  
17 that I'd really like to have my certification back and get  
18 back into law enforcement.

19 I've been working as a miner ever since, and  
20 mining is not as good as police work. I was a good police  
21 officer for the Truth or Consequences Police Department  
22 for five and a half years. And there at the end, I made  
23 some mistakes, which I will take full blame for and do  
24 whatever it takes to get my certification back.

25 MR. GALLEGOS: Okay. Any questions from the

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1 board for Mr. Breeding?

2 MR. FORCE: I do. Was there any -- what was the  
3 reason that you didn't appear?

4 MR. BREEDING: The reason I didn't appear at the  
5 first hearing?

6 MR. FORCE: Uh-huh.

7 MR. BREEDING: I had five children at the time,  
8 and work and feeding them was more important.  
9 Unfortunately, I was the only person in the house working.

10 MR. FORCE: Did you notify the director's office,  
11 make a phone call to say, "I can't make the meeting" or --

12 MR. BREEDING: No, I did not.

13 MR. FORCE: Did you get the notices?

14 MR. BREEDING: Yes, I did get the notices. I got  
15 a phone call on my answering machine when I got home at  
16 eight o'clock at night. By then it was too late to call  
17 back, so.

18 MR. FORCE: At eight o'clock at night about the  
19 board meeting the next day?

20 MR. BREEDING: That I had missed.

21 MR. FORCE: Oh, that you had missed.

22 MR. BREEDING: That's when I check the answering  
23 machine. The one in Red River I was unable to attend.  
24 Once again, I was working. And I heard the weather  
25 conditions were pretty bad up there, and my vehicle wasn't

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1 working properly, so.

2 MR. ORTIZ: An NCA was issued. He did respond to  
3 that. And we scheduled an informal hearing, and he failed  
4 to appear at that, at which point I then sent him a notice

5 of final decision. And he failed to respond to that.

6 And it was presented to the board for a default  
7 by revocation. And the board acted on that at the  
8 September 25th, 2008 meeting. And I guess what he's  
9 asking here today is just to start the process over.

10 And then we'll have to start the informal hearing  
11 and go that route.

12 MR. GALLEGOS: Is that what you're asking, sir?

13 MR. BREEDING: Yes, if I may.

14 MR. GALLEGOS: Okay. Any other questions from  
15 the board? {No response.} I have one. What have you  
16 done to address any of these concerns?

17 MR. BREEDING: Any of the concerns stated in  
18 there?

19 MR. GALLEGOS: Yes.

20 MR. BREEDING: I've cut back dramatically on my  
21 drinking. I plan on attending an alcohol screening. I  
22 also need to go to some counseling. I'm still continuing  
23 to raise my disabled son.

24 And I do a lot of things around the community  
25 that they go unseen, but I let a lot of people stay at my

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1 house. I take in unwanted people quite a bit. I help out  
2 the children. A lot of children.

3 MR. GALLEGOS: Are you a single parent then?

4 MR. BREEDING: Well, I have a girlfriend, who is  
5 with me today. But I have been a single parent for years.

6 MR. GALLEGOS: Okay.

7 MR. COON: You say you're thinking about getting  
8 some counseling or are you getting some counseling?

9 MR. BREEDING: I need to get some counseling in  
10 the near future. My son attends a lot of counseling  
11 sessions and psychiatric sessions. And I need to get it  
12 coordinated to where I can go about the same time he goes.

13 Otherwise, I'll be missing work all the time  
14 going to counseling.

15 MR. COON: And you slowed down on your drinking  
16 or you quit drinking or?

17 MR. BREEDING: I've slowed down dramatically on  
18 my drinking.

19 MR. COON: What's a slow down? I mean, what's --

20 MR. BREEDING: I only drink Saturdays,  
21 occasionally Sundays. Only some days off.

22 MR. FORCE: Mr. Chairman. Mr. Breeding, this  
23 action was taken a little over a year ago by this board to  
24 revoke your certification. And, I mean, the action was  
25 taken. And then I guess the concern that I have is you

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1 were given notice, you received a notice, right?

2 But for reasons because of conflict with your  
3 work schedule and taking care of your kids you didn't  
4 appear. But you never gave notice to the board. And then  
5 you got notice of revocation in September of 2008,  
6 correct?

7 MR. BREEDING: Yes.

8 MR. FORCE: That this board was revoking you.

9 And then all of a sudden in July then you send a letter to  
10 us requesting us to reconsider; is that right?

11 MR. BREEDING: July 2009. That is correct.

12 MR. FORCE: Right, July 2009. So we're now at a  
13 year past the revocation action that this board took. And  
14 what's the basis for why we should reconsider it?

15 MR. BREEDING: Right now I have vacation time, so  
16 I would be able to appear. I started a new job at  
17 St. Cloud Mining Company, and I didn't have vacation time  
18 at all to appear at the -- any of the meetings.

19 MR. FORCE: So because of your convenience, now  
20 you want us to reconsider the action we took against you?

21 MR. BREEDING: The September notification that I  
22 had received on the revocation, at that time I thought I  
23 didn't want to go back to law enforcement. I was really  
24 unsure. I didn't know exactly what course of action to  
25 take. That is why I didn't respond in September.

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1 As a matter of convenience, I'm sorry if I  
2 inconvenienced the board. But I do want to get back to  
3 doing what I know how to do.

4 MR. GALLEGOS: Any other questions? {No  
5 response.} What was your employment history?

6 MR. BREEDING: I was there for --

7 MR. GALLEGOS: As a police officer. I'm sorry.



8 MR. BREEDING: I started on April 1st, 2002. I

9 was certified out of Class 160.

10 MR. GALLEGOS: All right. Anything else? Is

11 there any -- yes.

12 MR. FORCE: I've got one last I guess question

13 for Mr. Breeding. In the August 31st e-mail that you sent

14 or letter, it says in there that -- looks like the fourth

15 paragraph in -- it says, "Recently I see a decline in what

16 I consider real police work in the T or C area. I'm not

17 saying that I would go back to the T or C Police

18 Department, but I am requesting to have what is rightfully

19 mine."

20 Are you understanding that you don't have a right

21 to the certification; it is given by earning.

22 MR. BREEDING: I understand that. But I feel

23 that -- at that time I felt that the T or C Police

24 Department had stripped it away from me.

25 MR. FORCE: Well, the T or C Police Department

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1 didn't revoke your certification; this board did.

2 MR. BREEDING: Right. Because I failed to

3 appear.

4 MR. FORCE: Because you did not come forward.

5 MR. BREEDING: Right.

6 MR. FORCE: And what I'm hearing from you is you

7 didn't come forward because it was inconvenient. You

8 didn't want to take time off of work. It wasn't important

9 for you enough at the time. You didn't want to make the  
10 phone call to the director to simply say, "Hey, a lot is  
11 going on. Can I reschedule with something else?"

12 That's my concern, Mr. Breeding. You didn't make  
13 any effort at all. And then all of a sudden today you  
14 want us to stop what has been already put into motion and  
15 reconsider. Do you understand that?

16 MR. BREEDING: Yes, I understand that. And like  
17 I said, I apologize if I'm inconveniencing the board. But  
18 I would like to get back to work.

19 MR. GALLEGOS: Anything else? {No response.}

20 Thank you, sir.

21 MR. BREEDING: Thank you.

22 ITEM #24: ELROY ZUNIE

23 MR. GALLEGOS: Next item also is an appeal,

24 No. 24, Elroy Zunie. Mr. Zunie.

25 MR. ZUNIE: Yes, sir.

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1 MR. GALLEGOS: Did I pronounce that right?

2 MR. ZUNIE: Yes, sir, you did.

3 MR. GALLEGOS: All right.

4 MR. ZUNIE: I'm here today to apologize. I let  
5 myself down and my family. And I'm asking you and the  
6 board for forgiveness. The reason why I didn't come to  
7 the first meeting, I got a job as a security guard, and I  
8 got off working. And this was back in, I believe, March.

9 At the time I thought I was done with law

10 enforcement because I'd been in law enforcement for 22  
11 years. I thought I was over with it. But as the time  
12 went on, I dearly missed being in law enforcement.

13 The one -- the one that was held in Ruidoso, I  
14 didn't have any gas money to go down there. I wanted to,  
15 but I just didn't have any money to go down there. I'm  
16 truly sorry that this thing happened. And, again, I'm  
17 asking for your forgiveness.

18 MR. GALLEGOS: Okay. You're asking us to --

19 MR. ZUNIE: Reconsider.

20 MR. GALLEGOS: -- start the process again, as  
21 Mr. Ortiz said?

22 MR. ZUNIE: Yes, sir. If that's what it takes to  
23 have my certification renewed.

24 MR. GALLEGOS: Which would mean having to go back  
25 before you entered into a stipulated order?

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1 MR. ZUNIE: I do believe I signed a voluntary  
2 relinquishment.

3 MR. GALLEGOS: Yes.

4 MR. ZUNIE: But, like I said, I dearly miss being  
5 in law enforcement. I miss helping other people. That  
6 was my -- my life, I guess.

7 MR. GALLEGOS: Any questions from the board?

8 MR. SEGOTTA: Mr. Chairman, I don't have a  
9 question; but just for the record, I'm going to defer on  
10 this individual. I do oversee the DPS Motor

11 Transportation Division.

12 MR. GALLEGOS: Abstain on that?

13 MR. SEGOTTA: Yes.

14 MR. COON: I've got a question. What were you  
15 originally charged with in front of this board?

16 MR. ZUNIE: I think I was charged for -- there  
17 were tribal charges against me, but -- for assault and I  
18 think criminal mischief, meaning I broke the man's  
19 glasses. But they were -- I was never -- I never went to  
20 court. It was dismissed.

21 MR. COON: Was this while on duty or off duty?

22 MR. ZUNIE: It was off duty, sir.

23 MR. GALLEGOS: Any other questions or comments.

24 And if I may, sir, the reason you didn't -- you

25 relinquished voluntarily is you were down on law

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1 enforcement? That means you didn't want to -- I mean, at  
2 that time --

3 MR. ZUNIE: At that time I felt that, you know,  
4 22 years was the best I had been in law enforcement. I  
5 thought I was over with it. But I'm not.

6 MR. GALLEGOS: And what more -- can you be a  
7 little more specific? What do you want to do?

8 MR. ZUNIE: Just I guess my love for the job, I  
9 guess, being able to help and/or assist other people in  
10 need. Like if they -- you know, if somebody calls asking,  
11 you know, for help, I was there. You know, I kind of took

12 pride being what I used to do.

13 MR. GALLEGOS: And you were in motor transport?

14 MR. ZUNIE: Yes, sir.

15 MR. FORCE: Mr. Chairman?

16 MR. GALLEGOS: Yes, Mr. Force.

17 MR. FORCE: Just a couple questions. You signed

18 the agreement?

19 MR. ZUNIE: Yes, sir.

20 MR. FORCE: Do you remember the date that you

21 signed that in February? I mean, do you remember signing

22 it?

23 MR. ZUNIE: I do remember signing it and taking

24 it to the tribal courts and handing it.

25 MR. FORCE: And when you signed it, I mean, were

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1 you drinking?

2 MR. ZUNIE: No, I wasn't.

3 MR. FORCE: Were you under the influence of any

4 drug?

5 MR. ZUNIE: No. No.

6 MR. FORCE: Did you clearly understand the

7 agreement, that you read it through and did you really

8 understand it?

9 MR. ZUNIE: Not really.

10 MR. FORCE: In what way did you not understand

11 it?

12 MR. ZUNIE: I -- I really -- I don't know. I --

13 I think it meant that I can't -- I think one of the

14 agreements was I can't be in law enforcement.

15 MR. FORCE: Yeah. Under paragraph B, under 5(B),

16 it clearly says that you agree not to work as a law

17 enforcement officer from that date of the agreement

18 forward. And it also gave you the ability under

19 paragraph F that you might be able to reapply with this

20 board's approval.

21 My question to you, Mr. Zunie, is real pointed.

22 You signed a document, an agreement, you put your name on

23 the document --

24 MR. ZUNIE: Yes.

25 MR. FORCE: -- saying, "I'm agreeing to

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1 relinquish my certification."

2 MR. ZUNIE: Yes, I did.

3 MR. FORCE: "I'm agreeing to revoke my

4 certification." You put your pen to the paper?

5 MR. ZUNIE: I know I said that, and I know I

6 signed it because, like I said, I thought I was done with

7 law enforcement. I thought 22 years was good enough for

8 me.

9 MR. FORCE: Well, Mr. Zunie, my concern -- and

10 this is just me as one individual on this board -- your

11 word is your bond.

12 MR. ZUNIE: I understand.

13 MR. FORCE: When you put your pen to the paper,

14 when you put the pen on the paper and you signed your  
15 name, that is a contractual agreement between you and this  
16 academy board as to what the conditions were.

17 I mean, I don't think the academy -- this board  
18 is not deciding whether you can or cannot reapply. The  
19 concern I have is you're asking us to retract and to throw  
20 away a written agreement that you agreed with voluntarily,  
21 knowingly, and not under any type of circumstances that  
22 wouldn't be unwarranted for that signature.

23 So can you help me understand why outside of the  
24 bounds here? I don't get it. I mean, you put your name  
25 to the paper here and now you're saying, "Ignore it."

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1 MR. ZUNIE: I think one of the reasons why was my  
2 wife wanted me out of law enforcement. And I just -- I  
3 think I just wanted to please her at the time. And my --  
4 you know, at the time I said, "Yeah, okay. I'm done."

5 But, truthfully, I wasn't. I still wanted to be  
6 in law enforcement. I kind of shouldn't have done that,  
7 but I did. And I regret signing the agreement.

8 MR. FORCE: I feel bad for you too, to be honest  
9 with you. I mean, it doesn't preclude you from going back  
10 through the academy again. Personally, I think that would  
11 have been your gentleman's approach was to ask to go back  
12 through the academy instead of asking us to rescind an  
13 agreement that you put your John Henry on.

14 MR. ZUNIE: I know. I know.

15 MR. GALLEGOS: Any other questions? Yes,

16 Mr. Perez.

17 MR. PEREZ: You were charged with assault. Who  
18 did you assault?

19 MR. ZUNIE: It's a gentleman that my wife had an  
20 affair. And when she tried to call off the affair, he  
21 raped her. And I was really -- we were at the time going  
22 through -- I was going -- trying to get divorced.

23 But at the time I was taking her home to her  
24 house, and at that time I saw that gentleman. And I don't  
25 know what happened next, but I confronted him. And I

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1 followed him to the Zuni tribal headquarters. And I did  
2 confront him.

3 I tried to reason with -- or tried to talk to  
4 him, but he just gave me a smirk and slapped me. And that  
5 was it for me. I lost it.

6 MR. PEREZ: What do you mean you lost it? What  
7 did you do?

8 MR. ZUNIE: I started -- I assaulted him.

9 MR. PEREZ: Speak up, please.

10 MR. ZUNIE: I assaulted him.

11 MR. PEREZ: What did you do when you assaulted  
12 him?

13 MR. ZUNIE: I punched him in the face. I don't  
14 know how many times.

15 MR. PEREZ: You don't know how many times?



16 MR. ZUNIE: No, sir.

17 MR. PEREZ: Thank you.

18 MR. GALLEGOS: Any other questions? So,  
19 Mr. Zunie, just real quick. There's nothing barring you  
20 from reapplying at this point? There's no reason why you  
21 couldn't do that?

22 MR. ZUNIE: {Nodded.}

23 MR. GALLEGOS: Okay.

24 MR. JACKSON: Actually, there's a provision in  
25 the stipulated voluntary relinquishment that says that he

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1 will not apply for recertification.

2 MR. GALLEGOS: I thought I read something  
3 different. Hold on. I thought I read on page 3,  
4 paragraph F.

5 MR. JACKSON: Well, 3 and F are -- 3(F) is not  
6 quite the same as 5(A) on the previous page, where it  
7 says, "Respondent agrees to permanently relinquish New  
8 Mexico law enforcement certification on and as of  
9 March 26th, 2009 and never reapply for certification as a  
10 law enforcement officer in New Mexico in the future."

11 MR. GALLEGOS: Where was that again?

12 MR. JACKSON: That is towards the bottom of  
13 page 2.

14 MR. GALLEGOS: And to never reapply. But then  
15 there's language that says, however, if he reapplies and  
16 the board chooses not to deny his application. I -- your

17 opinion, Mr. Jackson, what controls?

18 MR. JACKSON: Well, my opinion is that he's  
19 agreed not to do it. However, if he violates that  
20 provision of his -- of the agreement, the board is within  
21 its discretion to go ahead and go with that if the board  
22 so desires.

23 MR. GALLEGOS: Well, let me tell you how I feel.  
24 I signed my name onto this order. If I have conflict in  
25 provisions there, I'm going to choose to err on the side

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1 that he can reapply.

2 I know it's up to the board to decide that. I'm  
3 only speaking for me. But you can blame me for that that  
4 I didn't read it more carefully, because I would have  
5 probably said we'd better correct some language here.

6 If the agreement was never reapply, then  
7 definitely we're bound there. But I see some  
8 contradicting language there.

9 MR. FORCE: Mr. Chairman. I saw that under A,  
10 but I took it that under paragraph F that the stipulation  
11 was if the respondent reapplies for certification and the  
12 board chooses not to deny his application, that the only  
13 way that he would be able to reapply is with this board's  
14 approval.

15 Now, I guess, Mr. Zunie, I mean, in consideration  
16 of what we talked about, would you -- I mean, that to me,  
17 again, I think what you should have done with at least to

18 get my vote to help you out would have been to ask this  
19 board to apply for reentry into the academy.

20 MR. ZUNIE: How would I go about doing it?

21 MR. GALLEGOS: Speak to the director.

22 MR. FORCE: I mean, to kind of nip it in the  
23 bud -- Zack, I don't know if I'm out of order here, but --  
24 and we can go into the session, but my feeling is to  
25 consider an application for approval for you to reenter

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1 into the academy with the director's approval.

2 So, I mean, you'd have to meet all the  
3 qualifications that's stated under the qualifications for  
4 a police officer. I don't have a problem with you  
5 reapplying and going back through the academy.

6 MR. GALLEGOS: I don't either. And I would just  
7 recommend for the future that we look at that language  
8 again so that we don't find ourselves in maybe that  
9 predicament. If they say that they are never going to  
10 reapply again, then we shouldn't even have any of that  
11 other language.

12 If we feel -- maybe another discussion for a work  
13 session, which I won't be here for, to decide how those  
14 orders are going to be crafted with Mr. Jackson, I guess.  
15 But that's just a suggestion.

16 Mr. Force.

17 MR. FORCE: This is a technical point. Zack, can  
18 we amend when we go into closed session at this point to

19 make a request -- I guess to do a twofold request on  
20 Mr. Zunie's behalf. One is as he stated to retract the  
21 revocation; and, B, to consider a reapplication ability.

22 MR. SHANDLER: Mr. Chairman, all options are kind  
23 of on the table during the executive session, and we can  
24 narrow that out in the executive session.

25 MR. GALLEGOS: Okay. Thank you.

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1 MR. ZUNIE: Thank you.

2 ITEMS 25 & 26: SEAN MCGARRY & DAVID RAELE

3 MR. GALLEGOS: The next items are formal  
4 hearings. No. 25 is Sean McGarry and No. 26 is David  
5 Rael.

6 MR. SHANDLER: So, Mr. Chairman, the formal  
7 hearings we handle in executive sessions. This is the  
8 time you customarily go through the list of disciplinary  
9 matters, and people announce for the record if there have  
10 been any recusals.

11 MR. GALLEGOS: I did that at the beginning. Do I  
12 announce those for the record or we can just go into  
13 session --

14 MR. SHANDLER: Were they already announced for  
15 the record?

16 MR. GALLEGOS: {Nodded.}

17 MR. SHANDLER: Okay. If it was already announced  
18 for the record, entertain a motion to go into executive  
19 session and a second and a roll call vote.

20 MR. GALLEGOS: At this time, I'll entertain a

21 motion to go into executive session.

22 MR. COON: Mr. Chairman, I make a motion we go

23 into executive session.

24 MR. GALLEGOS: Moved by Sheriff Coon. Do I hear

25 a second?

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1 MR. JONES: Second.

2 MR. GALLEGOS: Seconded by Sergeant Jones. This

3 is a roll call vote.

4 MS. CROKER: Donald Gallegos.

5 MR. GALLEGOS: Yes.

6 MS. CROKER: Chief Segotta.

7 MR. SEGOTTA: Yes.

8 MS. CROKER: Sheriff Coon.

9 MR. COON: Yes.

10 MS. CROKER: Kevin Mariano.

11 MR. MARIANO: Yes.

12 MS. CROKER: Chief Schultz.

13 MR. SCHULTZ: Yes.

14 MS. CROKER: Sergeant Jones.

15 MR. JONES: Yes.

16 MS. CROKER: Robert Force.

17 MR. FORCE: Yes.

18 MS. CROKER: Matt Perez.

19 MR. PEREZ: A question. Do we have any other

20 items on this agenda or we just want to go into session on

21 this thing now?

22 MR. GALLEGOS: No, that's --

23 MS. CROKER: All we have is the deliberations.

24 MR. PEREZ: Okay. Thank you. Yes. I'm sorry.

25 MR. GALLEGOS: Okay. All right. We do have a

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1 majority, and we will go into executive session.

2 (Executive session held from 11:46 a.m. until

3 1:02 p.m.)

4 (At this time, Mr. Schultz and Mr. Mariano are

5 not present.)

6 MR. GALLEGOS: I call this to order. At this

7 time I'll entertain a motion to go back into regular

8 session.

9 MR. COON: Mr. Chairman, I make a motion we go

10 back into regular session.

11 MR. JONES: I'll second.

12 MR. GALLEGOS: Moved by Sheriff Coon. Seconded

13 by Sergeant Jones. This is a roll call vote. Monique or

14 Art.

15 MR. ORTIZ: Donald Gallegos.

16 MR. GALLEGOS: Yes.

17 MR. ORTIZ: Faron Segotta.

18 MR. SEGOTTA: Yes.

19 MR. ORTIZ: Sheriff James Coon.

20 MR. COON: Yes.

21 MR. ORTIZ: Chief Kevin Mariano.

22 MR. PEREZ: He left.

23 MR. ORTIZ: Chief Raymond Schultz. He had to  
24 leave. Sergeant Arsenio Jones.

25 MR. JONES: Yes.

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1 MR. ORTIZ: And Robert Force.

2 MR. FORCE: Yes.

3 MR. ORTIZ: And Matt Perez.

4 MR. PEREZ: Yes.

5 MR. GALLEGOS: We have a majority. We are back  
6 in regular session.

7 MR. SHANDLER: I just need you to attest that  
8 only the matters listed on the agenda were those discussed  
9 in the executive session.

10 MR. GALLEGOS: I so attest.

11 MR. SHANDLER: Okay.

12 MR. GALLEGOS: Okay. Let's go onto -- let's see  
13 if I can do these in kind of a -- Items 12 and 13, with  
14 respect to those two, I'll entertain a motion regarding  
15 those two items, to accept or to reject or....

16 MR. FORCE: Mr. Chairman, Items 12 and 13 I'd  
17 make a motion to accept.

18 MR. GALLEGOS: Okay. Do I hear a second?

19 MR. COON: Second.

20 MR. GALLEGOS: Seconded by Sheriff Coon. All  
21 those in favor say aye.

22 THE BOARD: Aye.

23 MR. GALLEGOS: Any opposition say nay. {No  
24 response.} We're set with those. The next is Item 14.  
25 And I'll note for the record that -- well, I won't.

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1 Chief Schultz is gone, so. Let's see. Well, I'll just  
2 take that one for now. I'll entertain a motion for  
3 Item 14.

4 MR. FORCE: Mr. Chairman, I'd make a motion to  
5 reject.

6 MR. GALLEGOS: Okay. It's been moved by  
7 Mr. Force to reject. Do I hear a second?

8 MR. SEGOTTA: Second.

9 MR. GALLEGOS: Seconded by Chief Segotta. Is  
10 there any discussion on the motion? Seeing none, all  
11 those in favor please vote by saying aye.

12 THE BOARD: Aye.

13 MR. GALLEGOS: Any opposition say nay. {No  
14 response.} The motion passes. We have rejected the  
15 recommendations on Item 14.

16 The next two items I'll note for the record,  
17 Item 15 and 16, Chief Segotta will be abstaining from  
18 those -- and, actually, with Items 15, 16, and 17.

19 And with that I'll entertain a motion regarding  
20 Items 15, 16, or 17.

21 MR. FORCE: Mr. Chairman, I motion to accept.

22 MR. GALLEGOS: It's been moved to accept  
23 Items 15, 16, and 17. Do I hear a second?



24 MR. JONES: Second.

25 MR. GALLEGOS: Seconded by Sergeant Jones. Is

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1 there any discussion on the motion? Seeing none, all

2 those in favor say aye.

3 THE BOARD {except for Mr. Segotta}: Aye.

4 MR. GALLEGOS: Any opposition say nay. {No

5 response.} Okay. The ayes have it. The motion carries.

6 Items 15, 16, and 17 have been accepted. And, again, I'll

7 note for the record that Chief Segotta has abstained from

8 voting on those said items.

9 The next item is No. 18, Robert Valenzuela. I'll

10 entertain a motion on that.

11 MR. FORCE: Mr. Chairman, I'd motion to reject

12 with a more severe sanction with the possibility of

13 academy classes.

14 MR. GALLEGOS: Is there a second on the motion?

15 MR. COON: I'll second.

16 MR. JONES: I'll second.

17 MR. GALLEGOS: Moved by Mr. Force, seconded by

18 Sheriff Coon that the board reject Item 18, Robert

19 Valenzuela, and recommend more severe sanctions to include

20 academy classes.

21 Any discussion on the motion? Seeing none, we'll

22 call for a vote. All those in favor say --

23 MR. ORTIZ: He is present. Do you have a

24 recommendation as far as -- you're rejecting the 90-day

25 suspension. He is present, and he may be willing to

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1 accept your recommendations at this time.

2 If you're wishing to increase his suspension time

3 or --

4 MR. FORCE: The concern that we had with the  
5 board is first and primarily, Mr. Valenzuela, you had just  
6 graduated from the academy prior to committing this act.  
7 Number 2 is the level of blood alcohol concentration in  
8 which you had at the time of the incident is an extremely  
9 alarming issue.

10 And thirdly was the issue of I believe of  
11 questioning of whether or not you were driving that  
12 evening or not. So one of the things you might want to  
13 look at is either reattending some of the academy blocks  
14 and definitely expanding the length of suspension period.

15 MR. ORTIZ: Okay. And also there was something  
16 that maybe Chief Vega wants to address. There were some  
17 mitigating circumstances. I know it was a high BAC, but  
18 there are some mitigating circumstances and personal  
19 issues that he didn't bring up. And I don't know if he  
20 wants to bring it up or the chief wishes to do so.

21 I'm not trying to make any excuses for his  
22 actions or his behavior, but just so the board would  
23 understand why we did kind of reach the 90 days.

24 MR. GALLEGOS: Well, we did go through this  
25 already. So I'm going to leave it up to the board if you

1 want to hear those at this time. Just to --

2 MR. FORCE: I would like to hear from the chief.

3 MR. GALLEGOS: Anybody object to -- all right.

4 Go ahead, Chief.

5 MR. VEGA: Thank you, Mr. Chairman, Board. I  
6 know that the BAC of .27 is concerning and the fact that  
7 he was dishonest at the time of the incident. Prior to,  
8 with all due respect to Mr. Valenzuela, he was on patrol  
9 the same week that he had the incident.

10 He took a lunch break at approximately  
11 10:00 p.m., drove his patrol car to his residence. Again,  
12 I'm not setting this up for an excuse. He did what he  
13 did. But just to add a little history to this.

14 He went to his residence where his girlfriend  
15 was -- who lives with him, walked in the house noticed  
16 that she wasn't in the living room, in the kitchen area,  
17 went to their bedroom, where his ex-girlfriend was fully  
18 engaged in a sexual act with another law enforcement  
19 fellow -- friend.

20 He reported it immediately to me. And I was able  
21 to come out and send him home. I'm thankful that  
22 Mr. Valenzuela handled that situation like he did where we  
23 didn't have a fatality incident at his residence.

24 He was extremely torn up about it. He was  
25 disarmed. He was sent home. At that point, I knew that I

1 had a critical incident, a mental incident with him. And  
2 I was trying to figure out the best way to handle it.  
3 I spoke with his mom, who then took charge of  
4 him; tried to help him settle his emotional condition at  
5 the time. We tried to get him some immediate counseling,  
6 which at that time the mayor rejected and told --  
7 basically told me that that was his problem, he had to  
8 deal with it.

9 So the best thing I could do was go to the church  
10 that he goes to and ask the priest to help out with him,  
11 which apparently they had a session the day after the  
12 incident.

13 Unfortunately, he made some wrong choices and  
14 then he went and was -- went and got drunk, and he had a  
15 vehicle accident. During the internal affairs he took  
16 full responsibility. I never found that he was lying.

17 I did read on the report what he told the deputy  
18 sheriff. But at the time that the internal affairs was  
19 going on, I asked the deputy, "Who are these names? Who  
20 is he saying was on the bike?"

21 And he said, "You know, really he wasn't even  
22 making sense but we had to ask those questions." So I  
23 said, "Well, are we going to -- how are we going to handle  
24 this in the court process." He said, "Well, I'm going to  
25 put what he told me, but quite honestly he wasn't making

2 During the IA, he was honest with me. He got  
3 through that problem at home. She moved out. He  
4 continued his career. He did take some rough hits as an  
5 employee. He was suspended. There was a significant  
6 amount of personnel action that he got.

7 Since then -- and this is far from most. I've  
8 stood behind him in this process. And he has to this day  
9 and to my knowledge -- I've watched him -- he has not  
10 touched a drink of alcohol. He has continued his  
11 counseling. He has continued his church. He has  
12 continued his career.

13 And from the date of incident, he's done good  
14 work. He's done good police reports. And he's probably  
15 working one of the toughest areas in the state of  
16 New Mexico, which is in Columbus. That's the border of  
17 Palomas and where we're having all the incidents. And he  
18 stands strong with that obligation in law enforcement.

19 We did have an informal hearing with Mr. Ortiz.  
20 And Mr. Ortiz gave him a good counseling session. And I  
21 think that Mr. Valenzuela deserves -- deserves a chance.  
22 There's a lot of situations that aren't a public record or  
23 that aren't for public disclosure.

24 And one of the things that I want to insist upon  
25 is that when we identify that there's a problem that we do

1 something about it. I did the best I could with him. But  
2 far most important Robert did it on his own and for

3 himself because he wanted to salvage his career as much as  
4 he could.

5 Meeting with the director, 90-day suspension,  
6 continuing his counseling, continuing his faithfulness to  
7 his career. He did do some alcohol screening, which has  
8 been forwarded to the director's office, to Mr. Ortiz.

9 He also -- in the discussion with the stipulated  
10 order, Mr. Ortiz recommended community service, an ethics  
11 class -- and I forget the other; there was three or four  
12 deals -- that Mr. Valenzuela has taken upon himself to do  
13 and complete.

14 He's serious about his career. He's serious  
15 about maintaining his status. And as a police chief, if  
16 this young man elected not to protect his career, not to  
17 do what was right for him, for his career, he would have  
18 been gone a long time ago.

19 But since after the incident, Robert has cleaned  
20 up his act. Robert has been strong. Robert has been  
21 committed, and he continues to be committed. It's kind of  
22 hard to go for a longer sanction. We don't have very many  
23 takers to go in that area of New Mexico.

24 Robert is and Robert's committed. And so I would  
25 ask that the board consider the 90 days, which we're

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1 prepared for. I would ask that if he needs to go to more  
2 classes, he's got 90 days to attend classes. I'll support  
3 that.

4 I think that we should look at more salvaging  
5 somebody that's going to do our community well and going  
6 to -- and he's cleaned up his act quite a bit. I think  
7 he's -- I think he's paid his dues, and he's continuing to  
8 pay them. And if it takes classes in the next 90 days, I  
9 think that's great.

10 But, Gentlemen, I cannot afford to lose one more  
11 body. As it is, we're in straits. The other night he was  
12 in an incident with the port of entry where the Mexican  
13 military come, gang members out of Palomas come.

14 This man -- this young man took the front line  
15 and stood strong. So he's doing good. He's doing a great  
16 job, and I just hope that you guys can consider the fact  
17 that he's already done what he was asked to do by  
18 Mr. Ortiz.

19 And he's prepared to take a 90-day suspension.  
20 And I'll continue him on administrative status, making  
21 sure that he attends whatever class is necessary through  
22 Las Cruces Police Department or Dona Ana County Sheriff's  
23 Office or the New Mexico Law Enforcement Academy.  
24 Whatever it takes we need to salvage. We're shorthanded  
25 out there. Thank you.

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1 MR. COON: I've got a question.

2 MR. VEGA: Yes, sir.

3 MR. COON: I didn't even notice this. Obviously,  
4 Columbus is in Luna County. This happened in Mesilla -- I

5 mean, in Dona Ana County. Where did it happen out in  
6 Dona Ana County?

7 MR. VEGA: Just south of Mesilla Park on  
8 Highway 28.

9 MR. COON: And if you do the -- if we do the 90  
10 days or whatever we come out to, is he going to have a  
11 job, a paycheck for those 90 days? Is the City of  
12 Columbus -- the Village of Columbus going to find a place  
13 for him to work?

14 MR. VEGA: Sheriff, as of the plan as of today,  
15 if he has his 90 days, he will be decommissioned; and  
16 he'll be on administrative status taking care of Stone  
17 Garden in the Department of Justice grant.

18 So we've pretty much got that set up for him to  
19 include the classes, whatever training --

20 MR. COON: But he'll still continue to draw a  
21 salary?

22 MR. VEGA: That's correct.

23 MR. COON: Okay.

24 MR. VEGA: I mean, beyond 90 days, it's a  
25 different thing. And we're just going on the agreement,

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1 stipulated order that we got at the informal hearing. And  
2 what's also important to brief you guys on -- and I know  
3 it's a different matter -- but that specific DWI was  
4 dismissed by the district court on appeal, so.

5 MR. FORCE: Mr. Valenzuela?



6 MR. VALENZUELA: Yes, sir.

7 MR. FORCE: Are you familiar with the DWI impact  
8 panel?

9 MR. VALENZUELA: No, sir, I'm not.

10 MR. FORCE: There's a lady down in the Las Cruces  
11 area, Joy Schumer. She runs a DWI impact panel. Do you  
12 know anything about it? It's a panel of people that you  
13 walk in front of and basically they tell you their story  
14 about what happened in their personal lives dealing with  
15 DWI and the impact it's had upon their life.

16 It's a pretty grueling emotional process, and it  
17 takes about between two to two and a half hours to go  
18 through. Is that something you'd be willing to do?

19 MR. VALENZUELA: Yes, sir.

20 MR. FORCE: Would you be willing to undergo the  
21 DWI training block again?

22 MR. VALENZUELA: Yes, sir.

23 MR. FORCE: What about a class in crash  
24 investigation?

25 MR. VALENZUELA: Yes, sir.

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1 MR. FORCE: Would you be willing to speak to  
2 cadets about your experience and giving them a warning as  
3 to don't follow the steps that you've trod upon?

4 MR. VALENZUELA: Yes, sir.

5 MR. FORCE: So.

6 MR. GALLEGOS: Are there any other questions for

7 Mr. Valenzuela or for Chief Vega? No? All right. Thank  
8 you. We're still on the discussion on the motion, so at  
9 this time, Mr. Force, are you wanting to amend your motion  
10 or does the motion stand as is and we take a vote on it?

11 MR. FORCE: I would just for discussion -- I  
12 mean, I personally would ask that we would -- that we  
13 would disapprove this motion, because I'd like to  
14 reintroduce a motion that encompasses the current  
15 sanctions along with the other ones in which I've spoken  
16 of.

17 MR. GALLEGOS: I think the best way then is since  
18 it's your motion you can withdraw it, and then you can  
19 make another motion.

20 MR. FORCE: Okay. I'd like to --

21 MR. GALLEGOS: I mean, that doesn't take anyone's  
22 consent. You can just withdraw your motion since you're  
23 the one who made it.

24 MR. FORCE: So I'll withdraw the motion. And  
25 then I'll reintroduce a second motion to accept the

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1 director's recommendation along with Mr. Valenzuela  
2 attending a DWI impact panel in the Las Cruces area, DWI,  
3 SFST training through the academy, a crash investigation  
4 block as designated by the Las Cruces Police Academy  
5 staff; and also conducting a cadet presentation on ethics  
6 and lessons learned in his case.

7 MR. VEGA: Mr. Force, he's already completed

8 that. And we'll get that order scheduled, and he'll get

9 his training.

10 MR. GALLEGOS: We still have a motion pending,

11 so.

12 MR. VEGA: Oh.

13 MR. GALLEGOS: Does everybody understand the

14 motion? Do I hear a second?

15 MR. SEGOTTA: Second.

16 MR. GALLEGOS: Seconded by Chief Segotta. Is

17 there any discussion on the new motion? Seeing none,

18 we'll call the question. All those in favor say aye.

19 THE BOARD: Aye.

20 MR. GALLEGOS: Any opposition say nay. {No

21 response.} Okay. Motion passes. You understood the --

22 Mr. Valenzuela, you understood the recommendations?

23 MR. VALENZUELA: Yes, sir.

24 MR. GALLEGOS: All right. Thank you.

25 MR. SHANDLER: Please don't leave. They have to

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1 modify the written document. So don't run away.

2 MR. VALENZUELA: Yes, sir.

3 MR. VEGA: Thank you, Mr. Chairman, Board.

4 MR. GALLEGOS: The next group is revocations by

5 default. And I'm going to entertain these on the block

6 also with a couple of notes. Item 19, Ronald Chavez,

7 Chief Segotta will abstain from that one. Item 20 is

8 Julio Ledezma. Item 21, Michael Tafoya. Chief Segotta

9 will abstain from that one. And Item 22 is Brian Vigil.

10 So with that I will entertain a motion to approve  
11 those.

12 MR. FORCE: So moved.

13 MR. GALLEGOS: Moved by Mr. Force.

14 MR. COON: Second.

15 MR. GALLEGOS: Seconded by Sheriff Coon. We'll  
16 backtrack. That may not work.

17 MR. SEGOTTA: What I was going to say,  
18 Mr. Chairman, is that you can call the question; but I  
19 will abstain from 19 and 21. And I will affirm on 20  
20 and 22. Can I do that? Make it easy?

21 MR. GALLEGOS: I don't see any problem, as long  
22 as we're clear for the record on that. And I'll try not  
23 to step into that mud puddle again. Let's make it clear  
24 that we're going to ask for a vote as a group.

25 Chief Segotta has noted that he will vote in the

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1 affirmative on Items 20 and 22, but will abstain on items  
2 19 and 21. Okay.

3 With that, is there any other discussion on the  
4 motion? Seeing none, all those in favor say aye.

5 THE BOARD: Aye.

6 MR. GALLEGOS: Any opposition say nay? {No  
7 response.} Okay. That passes. Onto the next one, which  
8 is the appeal on revocation of certification. No. 23 is  
9 William P. Breeding. At this point, I'll entertain a

10 motion on that to accept or reject.

11 MR. FORCE: Mr. Chairman, I make a motion to  
12 reject.

13 MR. GALLEGOS: Is there a second for that?

14 MR. SEGOTTA: Second.

15 MR. GALLEGOS: Moved by Mr. Force. Seconded by  
16 Chief Segotta to reject. Is there any discussion on the  
17 motions -- on the motion?

18 MR. SHANDLER: The reason for that is one year  
19 passed, and it's on the record that the gentleman received  
20 the documents. So it wasn't like he didn't receive them.

21 MR. FORCE: And I would like to state to  
22 Mr. Breeding that the concern that I think the board had  
23 was that we didn't see a compelling reason to reconsider.  
24 But it does not prohibit you from taking a look at either  
25 reapplying or meeting with the director and seeing what

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1 you can do in the future.

2 MR. BREEDING: Reapplying in another department?

3 MR. FORCE: No. Reapplying with Mr. Ortiz, at  
4 looking at an application. At this point -- and I think  
5 if I'm right on the rules, we'd have to actually approve  
6 that application process, but.

7 MR. GALLEGOS: Is there any other discussion on  
8 the motion?

9 MR. ORTIZ: Just for my clarification. If he  
10 does reapply, would he still not have to be held

11 accountable for those actions in this matter, as far as  
12 suspension times or ethics training or whatever other  
13 sanctions the board would impose?

14 MR. SHANDLER: Mr. Chairman. When someone  
15 applies and you find that there's grounds to deny the  
16 admission, you can deny admission, issue an NCA, and go  
17 through the formal process.

18 MR. GALLEGOS: Okay. Any other discussion? All  
19 right. The motion is to reject. All those in favor say  
20 aye.

21 THE BOARD: Aye.

22 MR. GALLEGOS: Any opposition say nay. {No  
23 response.} Okay. The motion to reject has passed. The  
24 next item is 24, Elroy Zunie. At this time I'll entertain  
25 a motion to reject or to accept.

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1 MR. FORCE: Mr. Chairman, I'll make a motion to  
2 reject.

3 MR. GALLEGOS: And do I hear a second?

4 MR. COON: Second.

5 MR. GALLEGOS: That is seconded by Sheriff Coon.  
6 For the record, I will also note that Chief Segotta will  
7 abstain from this one. Is there any discussion on the  
8 motion?

9 MR. COON: Mr. Chairman, I think if Mr. Zunie is  
10 really serious about getting into law enforcement, there  
11 is a way he can apply, go back through the academy again.

12 That's a long ways around it, but that's the only way you  
13 can make it back in law enforcement is go through the  
14 academy again.

15 MR. ZUNIE: I understand. I understand.

16 MR. COON: With the recommendation of Mr. Ortiz  
17 or the higher-ups.

18 MR. ZUNIE: I understand, sir.

19 MR. FORCE: What I was going to do, Mr. Chairman,  
20 is make a second motion after this in regards to the  
21 ability for Mr. Zunie to reapply to the academy.

22 MR. GALLEGOS: And the reason for that is there  
23 was some conflict in language on the order. There was a  
24 section that said he couldn't; and then a section that  
25 said he could. So just to make that clear.

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1 Any other discussion on the motion?

2 Mr. Zunie, I think the sheriff is correct. It's  
3 probably maybe a little longer, but we believe it's the  
4 cleanest, easiest way to get back in.

5 MR. ZUNIE: I understand.

6 MR. GALLEGOS: It's hard for the board to  
7 overlook the fact when somebody willingly, knowingly,  
8 voluntarily relinquished certification for us to just come  
9 back and say okay. Not that it may not happen, but at  
10 least on this particular case, we didn't feel it met  
11 that -- any of the criteria.

12 MR. ORTIZ: Just for clarification. That would

13 mean cert by waiver would be acceptable. He would apply  
14 for cert by waiver, correct? And take the three-week  
15 course to get reinstated?

16 MR. GALLEGOS: Yes.

17 MR. ZUNIE: Okay.

18 MR. GALLEGOS: Any other discussion on the  
19 motion? Seeing none, I will -- all those in favor say  
20 aye.

21 THE BOARD {except for Mr. Segotta}: Aye.

22 MR. GALLEGOS: Any opposition say nay. {No  
23 response.} Okay. There is another motion -- the motion  
24 passes.

25 There is another motion, I believe, Mr. Force.

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1 MR. FORCE: I would like to make a motion to  
2 allow Mr. Zunie to make a reapplication to the academy, to  
3 Mr. Ortiz's office, whether it be through going through  
4 the basic academy or through cert by waiver, under the  
5 condition that Mr. Zunie does meet all the qualifications  
6 as the academy does require.

7 MR. GALLEGOS: Is there a second to the motion?

8 All right. There has been a motion to allow him  
9 to reapply. I called for a second. I do not hear a  
10 second at this point.

11 MR. COON: I'll second that motion.

12 MR. GALLEGOS: Sheriff Coon does second the  
13 motion. Is there any discussion on the motion? Is there



14 any concerns since we took awhile to get a second?

15 MR. COON: I was waiting for somebody else to  
16 make a second.

17 MR. GALLEGOS: All right. With that, I'll call  
18 the -- we'll go ahead and go to vote, call the question.  
19 All those in favor say aye.

20 THE BOARD {except for Mr. Perez}: Aye.

21 MR. GALLEGOS: Any opposition say nay.

22 MR. PEREZ: Opposed.

23 MR. GALLEGOS: We have one opposition.

24 Mr. Perez, for the record. The motion does pass. Okay.

25 Let's see. We have our next one, which is No. 25, the

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1 formal hearing, Sean McGarry. And I'll entertain a motion  
2 on that.

3 MR. FORCE: Mr. Chairman, I make a motion for an  
4 issuance of a letter of caution to Mr. McGarry.

5 MR. GALLEGOS: Mr. Force has moved to issue a  
6 letter of caution. Is there a second to that?

7 MR. SEGOTTA: Second.

8 MR. GALLEGOS: And Chief Segotta has seconded.  
9 Is there any discussion on that motion?

10 Art, is there any -- do we need any clarification  
11 or anything?

12 MR. ORTIZ: No, sir.

13 MR. SHANDLER: I understand the reasoning is  
14 that -- well, there were two allegations. One was was it

15 a conviction of a crime, and then also whether the DD-214  
16 was submitted. So my understanding is that the board  
17 believes that the military -- the special court martial  
18 was not a conviction of a crime.

19 I also understand that the board believes that  
20 the second DD-214 wasn't provided to the board. And  
21 that's grounds for the letter of caution.

22 MR. FORCE: That's correct.

23 MR. GALLEGOS: All right. Is there any other  
24 discussion on the motion? Okay. All those in favor of  
25 the motion say aye.

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1 THE BOARD {except for Mr. Perez}: Aye.

2 MR. GALLEGOS: Any opposition say nay.

3 MR. PEREZ: Opposed.

4 MR. GALLEGOS: We have one opposed for the  
5 record. That's Mr. Perez. The motion does pass.

6 Number 26, David Rael. I'll entertain a motion  
7 on that.

8 MR. FORCE: Mr. Chairman, I'd make a motion to  
9 dismiss.

10 MR. GALLEGOS: Okay. Do I hear a second?

11 MR. SEGOTTA: Second.

12 MR. GALLEGOS: Seconded by Chief Segotta to  
13 dismiss. What would it be called, the hearing officer's  
14 report, recommendation, or?

15 MR. SHANDLER: If you wanted to be technical, it

16 would be rejecting the hearing officer's report and an  
17 order of dismissal.

18 MR. GALLEGOS: Make sure we get it right. Okay.  
19 Everybody understand that?

20 MR. SHANDLER: Let me try that again. Let me try  
21 that again. Because it's really you're accepting the  
22 facts of the hearing officer's report --

23 MR. GALLEGOS: Yes.

24 MR. SHANDLER: -- but you're rejecting the  
25 proposed recommendations.

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1 MR. COON: Thank you.

2 MR. GALLEGOS: We got that, right? I'm not going  
3 to repeat it then. Is there any discussion on the  
4 motion?

5 MR. FORCE: Mr. Chairman, just for the record, I  
6 think one of the major concerns that we had in the  
7 deliberation were the actions of Officer Rael and also we  
8 viewed the video and did not believe that this warranted  
9 the action -- any action against his certification.

10 There may have been policy issues that may have  
11 been affected, but we did not see a rise to the level of  
12 misconduct or a criminal matter.

13 MR. GALLEGOS: Okay. All right. Any other  
14 discussion? All those in favor of the motion say aye.

15 THE BOARD: Aye.

16 MR. GALLEGOS: Any opposition say nay. {No

17 response.} Okay. Motion passes. That takes us now --  
18 and I don't know if, Zack, we need to cover a couple of  
19 those points, I guess, just that were brought up on 8 and  
20 11, if that can be done.

21 MR. SHANDLER: I guess the board had some legal  
22 questions on previous items.

23 MR. GALLEGOS: Yeah, and I had made -- we had a  
24 discussion. One thing that came out was -- and this may  
25 be for another meeting or not, but I think we ought to at

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1 least complete the record -- is whether the referral to  
2 the academy constitutes a public record for the purposes  
3 of IPRA.

4 And, you know, the feeling obviously was it  
5 doesn't become a public record unless formal action is  
6 taken, which is I believe the NCA. And we weren't sure  
7 about that. We wanted a little more definition on that.

8 Especially Chief Schultz I think that felt it  
9 would be particularly instructive to him as the process  
10 goes along. We did vote to move this issue along to the  
11 next step in the rule-making process, though.

12 MR. SHANDLER: Mr. Chairman, I'd have to look  
13 again at your statute, because some statutes provide that  
14 type of protection. And I'd have to look at the Public  
15 Records Act as well. So that's something I'll have to  
16 research for you.

17 MR. GALLEGOS: And that's fine. We just wanted

18 to give you a heads-up because that will come up I'm

19 pretty sure at the public hearing.

20 And then the other one dealt with Item 11, which  
21 was discussion of a 4/10 work week. There was a question  
22 as to whether the board even has any kind of authority to  
23 recommend or to implement a 4/10 work week.

24 There's two different opinions on that. So maybe  
25 you can look into that also and give the board an idea at

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1 the next meeting.

2 MR. SHANDLER: Mr. Chairman. My supervisor  
3 Al Lama said that he would be willing to chair a  
4 subcommittee -- I don't know if that was discussed -- to  
5 try to really figure out how it would work in practical  
6 terms.

7 And so that might be something that he may want  
8 to contact a board member or someone at DPS and try to  
9 bring back some recommendations at the next board meeting.

10 MR. FORCE: Mr. Chairman. Mr. Shandler, I guess  
11 the concern -- we didn't really even get into the issue of  
12 Item No. 11 on a 4/10. Because the question that we had  
13 was whether or not this issue of work scheduling for the  
14 cadet -- for the academy cadets, whether that actually  
15 falls under the purview of this board.

16 Because the question is do we make policy, but  
17 this seems more like an operational issue and whether we  
18 would be overstretching our bounds as a board to involve

19 ourselves in operational concerns.

20 MR. SHANDLER: Mr. Chairman. The statute does  
21 say you control policy. The advantage of this  
22 subcommittee is to figure out whether -- how it would  
23 blend into operations.

24 For example, if you can set the schedule for  
25 cadets, does that necessarily mean their instructors or,

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1 you know, people supervising them have to be there at the  
2 same time. So that might be a case where operations and  
3 policy may blend together.

4 So I think until the details are figured out,  
5 it's hard to figure out that line yet.

6 MR. GALLEGOS: We just wanted to make sure you  
7 guys were aware of that. I mean, it's not in any kind of  
8 a formal process right now, so.

9 MR. COON: Mr. Chairman. I'd like to go on the  
10 record saying that this was not set up to make it easier  
11 on the LEA staff that they get four days off -- I mean,  
12 work four days and then off three days.

13 It's to help the guys out in the field, the  
14 sheriffs, and the chiefs. I don't think it's going to  
15 affect their work schedules. Just that we're requesting  
16 it for ourselves, not for them, to have a shorter work  
17 week.

18 MR. GALLEGOS: Very good. Thank you, Sheriff.

19 All right. Anything else on that?

20 MR. FORCE: Mr. Chairman, if I can. I mean, this  
21 is just a technical thing because I don't like to delay  
22 things. Because I see the bureaucracy that nothing ends  
23 up happening.

24 So I guess my question is we tabled this item in  
25 order for Zack to be present to give us an opinion as to

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1 whether or not we have the purview directly under the  
2 statute to discuss this matter and even rule on it.  
3 That's why we tabled it.

4 MR. GALLEGOS: Yes.

5 MR. FORCE: So I guess what I'm hearing from Zack  
6 it's preferable that we table this item later in order  
7 that a 4/10 schedule or whatever might be able to be meted  
8 out and brought before us. Is that right, Zack?

9 MR. SHANDLER: Yes. Mr. Chairman. I advise it  
10 stay on the table. And I think Mr. Lama acting as  
11 AG King's designee is going to try to put together some  
12 type of subcommittee to figure out whether some of the  
13 propositions are accurate.

14 And then once we have those, I think it will be  
15 easier to tell whether it's a policy curriculum thing or  
16 whether it's an operational thing.

17 MR. FORCE: Do we need to make a motion to table  
18 it into the next meeting?

19 MR. GALLEGOS: I think there's a couple of ways.  
20 You could have it tabled; and it would be a temporary

21 table, which means it does come back. I have to look back  
22 and see, really between Mr. Ortiz and the chair control  
23 the items on the agenda.

24 It could continue to be an item on the agenda,  
25 you know, placed on the next agenda. And if it's

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1 something you don't want to discuss then, you could always  
2 move to amend the agenda by taking it off at that time.  
3 So there's two ways I think that come to mind that can be  
4 done.

5 MR. FORCE: Okay.

6 MR. GALLEGOS: That temporary table, but it's  
7 going to depend on somebody to bring it up at the next  
8 meeting because I don't know that it automatically may get  
9 on the agenda. It may or it may not.

10 The other thing is to instruct or have Mr. Ortiz  
11 make sure that it becomes an agenda item at the next  
12 meeting.

13 MR. FORCE: Mr. Chairman. I would like it to  
14 stay on the agenda for the next meeting so it doesn't get  
15 lost in the process. And, I mean, listening to the chiefs  
16 and sheriffs, this is an issue that needs to be dealt with  
17 and not delayed.

18 MR. GALLEGOS: Okay.

19 MR. ORTIZ: Just to let you know, the next  
20 academy class will start in April.

21 MR. GALLEGOS: So we'll do it that way then,



22 Art. Just make sure it's an agenda item at the next  
23 meeting. Okay. Item 27, scheduling of the next meeting.  
24 MR. ORTIZ: We do have one other item, now that  
25 Mr. Shandler is here. The Magdalena marshal, just kind of

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1 update you on that.

2 MR. SHANDLER: Mr. Chairman. Several years ago  
3 this board had disciplinary action against Larry Cearley.

4 MR. GALLEGOS: Yes.

5 MR. SHANDLER: And there's been a bit of public  
6 inquiry about his status or for his certification and the  
7 Brady Bill implications. And our office has got that  
8 file. We're researching it actively, and in January we  
9 hope to send a letter to Mr. Ortiz writing advice of  
10 Mr. Cearley's status.

11 MR. GALLEGOS: Okay. Any questions or anything  
12 from the board? No. Okay. Thanks, Zack.

13 ITEM #27: SCHEDULING OF NEXT MEETING

14 MR. GALLEGOS: Scheduling of the next meeting.

15 MR. ORTIZ: The schedule will be held -- the next  
16 meeting will be in March. And we'll hold it in Santa Fe.  
17 We'll let you know the location and the date. It would  
18 probably be the latter part of March. If there are any  
19 conflicts, we'll be in touch.

20 At this time I just want to thank Donald Gallegos  
21 for chairing this and being a board member for the last  
22 four years. We want to thank you.

23 MR. GALLEGOS: Thank you.

24 MR. COON: May I just say one thing before we  
25 leave? When we were coming back in Red River, whenever we

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1 came back from Red River, whatever it was, myself and  
2 Arsenio were on our way in; and we ran upon a three-car  
3 1045 major accident.

4 And I told Arsenio, "Well, it looks like we're  
5 going to have to get out and direct traffic. But lo and  
6 behold, Chief Segotta and Chief Schultz had beat us to it  
7 and were out there directing traffic around this major,  
8 major scene.

9 And it just made me feel good to see eight stars  
10 out there directing traffic around.

11 MR. SEGOTTA: We didn't know what we were doing.

12 MR. COON: It was a mess, but they were making an  
13 effort.

14 MR. SEGOTTA: When the real cops got there, they  
15 got it under control.

16 MR. COON: They did a great job. And me and  
17 Arsenio just sat back and watched. They did a good job.

18 MR. ORTIZ: Hopefully, that won't reoccur on the  
19 way back to Santa Fe.

20 MR. GALLEGOS: Thank you all for the pat on the  
21 back for both of our chiefs.

22 I'll just say this before we go because this is  
23 my last meeting. It's been an honor to serve with each

24 and every one of you and also to work in a capacity with  
25 the fine men and women who make up our law enforcement out

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1 there.

2 And I'm talking about everyone, from our patrol  
3 officers through administration, to our support staff.  
4 And this is very key to our spouses, our best friends, our  
5 significant others, our partners, whatever you want to  
6 call them, to allow us to do this job because it is one  
7 heck of a sacrifice. I recognize it.

8 And every day I'll continue to recognize it.  
9 It's been the most rewarding thing in my career to serve  
10 as district attorney, but also to be a part of this  
11 board. I want to thank each and every one of you for your  
12 patience, for your understanding, for listening to me when  
13 I had some questions that later on when I read the minutes  
14 and asked myself what the heck was I asking all that  
15 about.

16 And I want you all if you're able to express my  
17 appreciation to the members in your staff for what they  
18 are doing for not only for our communities, our state, and  
19 our great country, but also for the individuals out there  
20 sometimes who can't speak for themselves.

21 I particularly want to wish all of you a very,  
22 very merry Christmas and know that we're only going to  
23 have a safe one because it's you folks, the ones who are  
24 going to be out on patrol when it's snowy or not snowy,

25 when everybody else is enjoying the fine company of their

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1 friends and families and some of you are out there making

2 sure that we can have a good, safe, and happy Christmas.

3 For those of you who have managed to step into

4 doo-doo like I have on occasion, I've been very, very --

5 well, it's been heartening, the ones that come forward and

6 say, "You know what? I messed up and I want to make

7 better and I want to do good for my community."

8 I know that New Mexico has a proud tradition of

9 law enforcement and that you understand why this board

10 sometimes make -- continues to make darn sure that we live

11 up to the highest standards.

12 With that, I just want to ask -- or I will let

13 you know that my family and I will always pray for you.

14 We'll always hold you in our thoughts and prayers and

15 continue to ask God's blessings upon you and all your

16 families as you do this important work.

17 ITEM #28: ADJOURNMENT

18 MR. GALLEGOS: With that, I'll entertain a motion

19 to adjourn.

20 MR. COON: I'll make a motion we adjourn.

21 MR. JONES: Second.

22 MR. GALLEGOS: It's been moved and seconded. And

23 all those in favor say aye.

24 THE BOARD: Aye.

25 MR. GALLEGOS: Any opposition say nay. {No

1 response.} Thank you.

2 (The hearing adjourned at 1:44 p.m.)

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1           C E R T I F I C A T E

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3           I, Tanya M. Nims, a Certified Court Reporter, do  
4 hereby certify that the Proceedings of the above-entitled  
5 hearing were reported by me stenographically on  
6 December 8, 2009, and that the within transcript is a true  
7 and accurate transcription of my shorthand notes.

8           I further certify that I am neither an attorney  
9 nor counsel for, nor related to or employed by any of the  
10 parties to the hearing, and that I am not a relative or  
11 employee or any attorney or counsel employed by the  
12 parties hereto, or financially interested in the hearing.

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