

NEW MEXICO LAW ENFORCEMENT ACADEMY
EMERGENCY BOARD MEETING

December 13, 2011
2:30 p.m.
Albuquerque Police Academy
5412 Second Street
Albuquerque, New Mexico 87102

REPORTED BY: Jan A. Williams, RPR, NM CCR 14

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Professional Court Reporting Service

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Albuquerque, New Mexico 87102

(2893K) JAW

1 APPEARANCES

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4 BOARD MEMBERS
5 Gary K. King, Attorney General
6 Ray Schultz
7 James R. Coon
8 Harry Betz
9 Robert Shilling
10 Mark Myers
11 Nate Korn
12 John Gratton

13 ALSO PRESENT

14 Bill Hubbard
15 Zachary Shandler
16 Matthew E. Jackson
17 Ernest Holmes
18 Monique Lopez
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1 ITEM NO. 1: CALL TO ORDER

2 MR. KING: All right. I am going to call to
3 order this emergency meeting of the Law Enforcement
4 Academy Board. This is going to be just a little bit
5 out of the ordinary because, before we even approve
6 the agenda or anything, I am going to turn the floor
7 over to Sheriff Coon for a couple of minutes for an
8 issue that's probably more important than anything
9 else we're dealing with here.

10 MR. COON: Okay. For you all that didn't
11 know, last Sunday Sheriff Rod Coffman, my neighbor to
12 the east and down south of Lea County, took his own
13 life. And Rod was a good person, he had a warm smile.
14 He was just a good, good person there to help any
15 officer down in Southeastern New Mexico and throughout
16 the state.

17 He was a good friend, he was a good sheriff,
18 and just a good person. And I would just like to
19 acknowledge Rod's dedication. He retired from the
20 sheriff's office and ran -- Rod was only 49 years old
21 but had nearly 30 years of law enforcement experience.

22 So I would just like for you all to keep in
23 mind, that we lost just one heck of a good sheriff
24 down in Lea County. Why? We're still asking that
25 question. Only him and God know. But we're going to

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1 miss him a whole lot down in our part of the country
2 and I think the whole state is going to miss him. So
3 thank you.

4 MR. KING: With the approval from the board,
5 I'm going to call for a moment's silence for the
6 sheriff, please. Thank you all very much.

7 I'm sure that you'll pass along the
8 condolences of the board to his family. Thank you
9 very much.

10 All right. That being said we have a couple
11 of items on the agenda today. I am going to take a
12 little bit of the chairman's prerogative and lay out a
13 few what I think are probably important ground rules
14 so that everybody remembers what it is that we're
15 doing here.

16 First off I'd like to point out, because of
17 the way that the meeting was called, that it actually
18 wasn't clear to me. Today is the first time that I
19 I've seen the agenda for the meeting. And so I gather
20 that this meeting was called by a majority of the
21 board, since the statute allows for calling of a
22 meeting either by the chairman or by the board.

23 I have not been able to get information, and
24 I think it's important public information, on the
25 members of the board that called for the meeting. And

1 so can I just get a show of hands for the members of
2 the board that called the meeting. Okay. Thanks a
3 lot. Thank you all very much. So we've disposed of
4 that issue.

5 This meeting was noticed as an emergency
6 meeting under Rule 10.29.1.9(B)(3), circumstances
7 which demand immediate action. And so there are a
8 couple of rules that apply to that. I thought I wrote
9 down the rule numbers here. But that means that this
10 meeting is limited only to the items on the agenda.
11 And I think that there's sufficient items on the
12 agenda to cover that.

13 I had some concerns and I expressed them.
14 And I noticed that the Journal Editorial Board who
15 quite often chides me for compliance with the sunshine
16 laws thought that compliance with the sunshine laws
17 might not be important for this meeting.

18 But I will note that it appeared to me that
19 there were conversations that occurred just based on
20 comments that Chief Schultz gave to the press that
21 there may have been discussions about this issue
22 amongst a number of board members. I don't know
23 whether any of them were quorums of the board.

24 But I have some concern about rolling quorum
25 issues. And so we may, as we go through today, make

1 sure that there weren't any rolling quorums issues
2 that we have to deal with.

3 I'm also aware that my staff observed
4 Mr. Ortiz leaving a meeting on December 8th in which
5 he said he was meeting with a number of members of the
6 board. And so we may have a chance to get into that
7 and discuss whether any of that violated the Open
8 Meetings Act. But I think that those are important
9 points.

10 And here is why I think they're important
11 points, is because actions that are taken by the board
12 that violate the Open Meetings Act are void actions.
13 And so I want to make sure that if we take any actions
14 today, that we don't have that issue to deal with. So
15 let's -- we might have some time to discuss those a
16 little bit today to make sure that we did that
17 correctly.

18 The other thing that I'm a little bit
19 concerned about is that there could be some discussion
20 about cases today. And I want to remind the board
21 that we should not discuss pending cases by name so as
22 to make sure that we don't generate any issues where
23 it appears that cases have been discussed out of
24 order.

25 There may be some cases that are past that we

1 can discuss by name. And so as the chairman I'll try
2 and be cognizant of that and make sure that if we get
3 into discussion of specific cases, that we try not to
4 do that. But I'll just admonish all of you that
5 that's important.

6 Normally we might be able to do something
7 like that in a closed part of the session. But it's
8 my understanding, in the way that this meeting was
9 called and the fact that we didn't notice any issues
10 for a closed meeting, that it would not be appropriate
11 to go into closed session under any processes here.

12 And I'm sure that one of the things that we
13 are all very concerned about in the board is to make
14 sure that all of the officers who have had accusations
15 raised against them get all of the due process rights
16 that are available to them through the Law Enforcement
17 Academy Board. So let's all be careful of that.

18 MR. KORN: Mr. Chairman.

19 MR. KING: Yes.

20 MR. KORN: Could I ask a question.

21 MR. KING: You know, let me get through all
22 the ground rules and then we'll do that.

23 Okay. The second part of the Chair's
24 prerogative that I'm going to take is that a number of
25 these issues have been discussed in the press. I have

1 refrained from doing so. And so I just want to make
2 sure so that we have a level playing field. I have a
3 couple of initial comments to make from the chair just
4 to do that.

5 It seemed to me like in the discussion in the
6 press, there was some implication that the Attorney
7 General's Office is the agency with authority to grant
8 or revoke certifications of police officers. I think
9 everybody on the board understands that that's not
10 true.

11 But I would like to make sure that everybody
12 understands that each player has their role to play
13 here, that the board, ourselves, are hearing officers
14 or serve in the role of hearing officers in the kinds
15 of cases that we're talking about, which makes the
16 board very much like a judge. And certainly we can
17 delegate that authority to hearing officers. And so
18 that's the judge function.

19 The director, and I think we have the
20 director here, has the function of investigating and
21 preparing actions and bringing them before the board.
22 And I noticed -- and I hadn't seen this prior to the
23 meeting, but I think it looks good -- that somebody
24 prepared a flow chart of how all this works. And so I
25 think that that's really going to help us with regard

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1 to that.
2 The purpose of the AGO's office in this is to
3 be the lawyer for the director. And so my civil
4 division has a lawyer who represents the director in
5 these agency actions. And I gather that we're going
6 to have some discussion about the quality of that
7 representation, for which I'm happy to have
8 discussions.
9 I noted that in the newspaper that Mr. Ortiz
10 was quoted as saying that his pleas to the Attorney
11 General's Office for assistance were unanswered. And
12 I gather that we'll get into that some. But I want to
13 say up front that that statement is patently false.
14 When I became the Attorney General, there was
15 a significant backlog. I don't know, are there -- who
16 was on the board that was here when I became the
17 Attorney General? Do we have anybody left? Chief
18 Schultz, you've been here for longer than anybody I
19 think.
20 So maybe some folks are not remembering that
21 far back. But frankly when I became the Attorney
22 General, I recall initiating a conversation with
23 Mr. Ortiz that there was a big backlog and that we
24 should do something to take care of that.
25 Actually there's a pretty good success story

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1 to be told there. In March of 2007, there were 90
2 open cases. Over half of those cases came from the
3 previous four years of hearings. As of June of 2009,
4 which I will point out to you is a time period about a
5 year after Mr. Jackson began representing the state's
6 interest, there were 33 open cases.
7 So we had worked the backlog down to
8 33 cases. And actually -- and I have data for the
9 board here, if you need backup data -- we worked that
10 down to as low as 26 open cases.
11 Presently there are approximately I think
12 actually about 100 open cases. I know the newspaper
13 reported 60. But I think that it depends on how you
14 define open cases I suppose.
15 I feel like there are several reasons for the
16 fact that there are more open cases. One is -- and
17 this board, very many of the members on this board
18 have been involved in this -- we've worked hard in the
19 last few years to make sure that all the police chiefs
20 are doing a better job of reporting the disciplinary
21 actions to the board.
22 And so the number of cases reported to the
23 board has increased significantly over the last four
24 years. And I think that that's a good thing.
25 And there was some discussion in the press

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1 about whether or not, you know, either our office or
2 the board for that matter is allowing bad police
3 officers to be out there on the street. And I will
4 say that it's a lot better to bring those bad officers
5 to light and do something about it than it is to allow
6 them to stay in the dark. And I think this board has
7 done some great work with regard to that.
8 I think that it's more likely that officers
9 receive penalties from these actions and so they're
10 more likely to hire lawyers to represent them. And I
11 will say that of the cases that are open now, over
12 75 percent of them are current year cases and not the
13 cases that are three or four years old as they were
14 whenever we started this four years ago.
15 I think I have had -- and I didn't see if
16 Mr. Ortiz is here. But I think -- there he is. That
17 we did have a number of discussions over the course of
18 time while I was the chairman and he was the director
19 to talk about working down the backlog.
20 And I think there's a success story to be
21 told there. And so I'm scratching my head as not
22 understanding exactly what the issue is there. But I
23 guess that we'll get into it.
24 I will say that if you look at the numbers,
25 the backlog really started increasing in around

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1 December of 2010 into 2011. And, Mr. Ortiz, you left
2 I believe about that time.
3 And as I recall there was actually a period
4 of time where there was no director. And then we had
5 an acting director. And then we had Mr. Marcantel,
6 who was appointed as the director, who I think really
7 had the intention of doing a good job but was wearing
8 three hats as I recall. And then Mr. Marcantel moved
9 on to something where I wish him a great deal of luck
10 and hope he does well as the director of corrections.
11 And so we find ourselves now with a new
12 director. And I will I think, when we get to the
13 point of discussion, that it will be good to talk
14 about, you know, what difficulties it's caused having
15 instability in the director's office for the last
16 year. But I hope that that's one of the things that
17 will change for the better.
18 I think that this meeting more than anything
19 has -- is a result of an issue that was raised with me
20 by Member Nate Korn. You will see on the agenda the
21 item that I think he probably designed which is called
22 ineffective prosecution by the Attorney General's
23 Office.
24 And will tell you up front that I think that
25 that allegation is unsupportable and based on a

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1 personal animosity that Mr. Korn has towards my staff
2 attorney. I think that it escalated when he as a
3 hearing officer encouraged me to replace Mr. Jackson.
4 And when I basically pointed out to him that
5 it's not the job of the hearing officer to determine
6 what lawyers represent the parties, that it's the job
7 of the parties to make that determination, that he
8 informed me that if I did not make a change that was
9 acceptable to him, that he would be calling this
10 meeting.
11 So here is from my perspective how we have
12 come to be here. So I hope that we'll have some
13 opportunity to talk about motivations for why these
14 allegations may have been raised.
15 I also am concerned, because I don't know
16 whether he told all the rest of you all when he was
17 gathering your votes for this meeting, but I had
18 informed Mr. Korn that one of the things I agreed with
19 him on is that because of the way the cases are being
20 brought now, where we have a lot more criminal defense
21 lawyers that are representing the officers in their
22 decertification hearings, is that it would be useful
23 to have lawyers from the AG's office who have more
24 prosecutorial experience.
25 And so I informed him that we're going to be

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1 assigning an attorney from our office who has more
2 background as a prosecutor to do these cases, upon
3 which he informed me that he would like to have
4 approval authority over who we appointed to do this.
5 And I informed him that it would be
6 inappropriate for a hearing officer to request
7 approval authority over the lawyers that represent the
8 state.
9 And as a matter of fact, I passed along a
10 little story about, in the Ninth Circuit in
11 California, we've had this issue raised. We had a
12 federal district court judge who tried to force our
13 office to hire a certain attorney to represent us.
14 And we had to take that issue to the Ninth
15 Circuit Court of Appeals, federal Court of Appeals,
16 but won that case, where they determined that the
17 party, that the Attorney General of the State of New
18 Mexico, has the authority to choose the attorneys that
19 will represent them. And I think that that continues
20 to be an important issue here.
21 There was one other comment that I thought
22 was interesting. And I think that you all will agree
23 with me here that, in the editorial in the Journal,
24 which by the way -- I don't know if there's somebody
25 from the Journal here.

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1 But it strikes me as interesting that the
2 Journal would editorialize on this issue prior to this
3 meeting when, you know, it would have an opportunity
4 to hear both sides of the issue. But I suppose that
5 that's a decision that their editorial board makes.
6 But one of the things that they mentioned in
7 their editorial was that this was like a driver's
8 license, that they seemed to imply that due process
9 wasn't important and that we should just move along
10 with these, that these officers who have had these
11 allegations brought against them should just be
12 decertified right away just because they must be bad
13 actors.
14 And I don't think that any of us on this
15 board feel that way. I think that we all feel like
16 everyone who has allegations brought against them is
17 entitled to a full fair hearing.
18 And that's what we're going to talk about
19 today, is how to assure that they get a full and fair
20 hearing and how we can move those along quickly and
21 how we can make sure that those people who deserve
22 punishment garner punishment and those people who
23 don't will not garner punishment.
24 But I think, if nothing else, that the courts
25 have ruled that professional licenses are different

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1 from something like a driver's license, that they
2 are somebody's lifeblood and life being, and that you
3 cannot revoke those kinds of licenses without
4 appropriate due process.
5 And I will say this about everybody.
6 Whatever the other motivations I think there are, I
7 think that everybody here believes and agrees that
8 this is a serious matter and that certifications
9 should not be revoked from law enforcement officers
10 because it revokes their ability to make a living
11 except under appropriate circumstances.
12 I have a few other bits of data, but I think
13 that they can -- that I can raise those when we get to
14 the discussion about the quality of the
15 representation. But I have some facts to talk about
16 that will fit into our little flow chart that we have
17 here. And so I think with that to set the stage --
18 MR. SHILLING: Mr. Chairman, a point of
19 order.
20 MR. KING: Yes, Chief.
21 MR. SHILLING: I think for the record we
22 missed roll call. You might want to do roll call.
23 MR. KING: An excellent point. Thank you,
24 Chief. So let's indeed get to the agenda.
25 ITEM NO. 2: ROLL CALL

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1 MR. KING: Actually normally we just do that
 2 by having everybody introduce themselves as they go
 3 down the row.
 4 So let's start down there on that end and
 5 we'll have everybody introduce themselves and the
 6 secretary will note the members that are here. I
 7 think everybody is here to tell the truth.
 8 MS. LOPEZ: Monique Lopez, admin assistant
 9 for the Law Enforcement Academy.
 10 MR. HUBBARD: My name is Bill Hubbard, I'm
 11 the acting director of the Law Enforcement Academy.
 12 MR. MYERS: Mark Myers, I'm the line officer
 13 representative for the board.
 14 MR. SCHULTZ: Ray Schultz, Chief of the
 15 Albuquerque Police Department, chiefs representative.
 16 MR. SHILLING: Robert Shilling, Chief of the
 17 New Mexico State Police.
 18 MR. GRATTON: John Gratton, citizen
 19 representative.
 20 MR. COON: Rob Coon, Sheriff of Chaves
 21 County, I'm the sheriffs representative.
 22 MR. KORN: My name is Nate Korn, I'm a
 23 civilian representative.
 24 MR. BETZ: My name is Harry Betz, Chief of
 25 Police Santa Ana, I'm the tribal representative.

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1 MR. SHANDLER: My name is Zach Shandler, I
 2 work at the Attorney General's Office in the Civil
 3 Division, and I'm assigned as the board's attorney.
 4 MR. HOLMES: My name is Ernest Holmes, I'm
 5 the investigator for the New Mexico Law Enforcement
 6 Academy.
 7 MR. JACKSON: My name is Matthew Jackson, I'm
 8 Assistant Attorney General and the prosecutor for this
 9 board.
 10 MR. KING: Okay. And I'm Gary King, I'm the
 11 Attorney General and by statute am the chairman of the
 12 board. So like I said it appears that we're all here.
 13 ITEM NO. 3: APPROVAL OF AGENDA
 14 MR. KING: Approval of the agenda, like I
 15 said it appears that that's sort of been done already.
 16 But are there -- I don't think we can actually have
 17 additions to the agenda since this is an emergency
 18 meeting. But are there any comments on the agenda?
 19 Okay. None appearing, I'll take a motion to approve
 20 the agenda.
 21 MR. BETZ: I make the motion.
 22 MR. GRATTON: Second.
 23 MR. KING: I have a motion and second. All
 24 in favor say aye.
 25 (Those in favor so indicate.)

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1 ITEM NO. 4: INEFFECTIVE PROSECUTION BY
 2 ATTORNEY GENERAL'S OFFICE
 3 MR. KING: Okay. The next item on the agenda
 4 is ineffective prosecution by the Attorney General's
 5 office. Mr. Korn.
 6 MR. KORN: Thank you, Chairman. If it would
 7 please the chairman, may I speak from the podium so
 8 that I can be better heard.
 9 MR. KING: Sure.
 10 MR. KORN: Thank you, Mr. King. I'd like to
 11 thank the board for coming to the emergency meeting.
 12 And in regard to that, I know many of you traveled
 13 from far parts of the state. And I appreciate your
 14 giving this matter such urgent concern.
 15 There are two things that I wanted to talk
 16 about at the outset. One is what the meeting is not
 17 about and the other what it is about. It's not my
 18 purpose first and foremost to be slamming Mr. King or
 19 embarrassing him in any way.
 20 Mr. King has been a family friend of my wife
 21 and I for almost two decades. My wife and I have
 22 supported him in every campaign he's ever run in. The
 23 purpose of my bringing this motion is not to do any
 24 harm to Mr. King.
 25 My purpose in bringing this is because I

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1 perceive an urgent matter that we as responsible
 2 members of a board have to take into account. The way
 3 I look at things, we have an inept prosecutor by the
 4 Attorney General's Office that is marshalling cases in
 5 front of our board.
 6 Our board, if you -- as I look at you, are
 7 some of the most august people that are in law
 8 enforcement in our state. In addition to that, we
 9 have a member from the community of Hobbs who is a
 10 doctor from -- from a law enforcement academy in
 11 Hobbs.
 12 And I look upon you and I say I'm honored to
 13 be among you. But I also say that the information
 14 that we receive from the prosecutors of the Attorney
 15 General are only as good as they are. And so even
 16 though you have all this knowledge and even though you
 17 have maybe 200 years of aggregate knowledge in law
 18 enforcement, what you're hearing is information that
 19 pursues through the prosecutor who is basically a
 20 brand-new beginning lawyer without as far as I can
 21 tell trial experience, without prosecutorial
 22 experience, and without supervision.
 23 And the effects of that over time -- and I
 24 think Mr. Ortiz is here. I'm assuming he's going to
 25 speak to this matter. The effect of all of this is

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1 that, as the prosecutor prosecutes cases from such a
2 small realm of knowledge, that what we have left is a
3 big problem. We have a problem in understanding what
4 the cases are all about and we have cases that have
5 languished and deteriorated and sat forever waiting
6 for them to be prosecuted.
7 Now, Mr. King complimented me. I don't know
8 that he realized he was complimenting me. But it was
9 I that had prepared that flow sheet, because that flow
10 sheet is somewhat of my distillation of what the
11 statute represents as far as the way we prosecute
12 cases.
13 From the time it gets into the pipeline until
14 a case is finally adjudicated can be as long as
15 two-thirds of a year. If you add up all those
16 timelines, you'll find they come basically to I think
17 270 or 280 days. However, those cases don't even
18 begin to run until they get into the pipeline.
19 That dotted line you see at the top, that's
20 the pipeline. What I think you're going to hear from
21 members of the board themselves is that Mr. Jackson
22 has basically warehoused cases. I've asked him how
23 many cases we've had come to us this year. It's about
24 110.
25 Currently there are about 91 cases still

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1 pending. Of those 91 cases, approximately two-thirds
2 of them have been sitting on Mr. Jackson's desk since
3 the time they came in this year and before that.
4 And the problem is that, until Mr. Jackson
5 releases them to enter the pipeline, that 270 days
6 hasn't even begun to run. The other problem is the
7 cases he's prosecuted have so much information lacking
8 that we can't make proper decisions.
9 Let me talk about what we represent as a
10 board. We all know because we've heard it many times
11 said that the Law Enforcement Academy Board is one of
12 the busiest boards in the state, as well it should be,
13 because we carry the greatest weight of the state.
14 We carry the certifications of law
15 enforcement officers on our shoulders. It's up to us
16 to certify them to be the highest standards. It's
17 what the public expects of us. It's the
18 responsibility we took when we agreed to be board
19 members.
20 This weight as Mr. King pointed out is one of
21 great due process, because as we know as a board, the
22 majority of people that appear before us, the majority
23 of officers, are good officers that made mistakes.
24 And those mistakes are mistakes that ultimately will
25 return them to service.

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1 They'll go back to their departments in most
2 instances, we'll never see them again, they'll have
3 full careers, they'll retire, and they'll protect the
4 service -- they'll protect the citizens that they
5 promised to serve. Included in that group is a group
6 of officers that have no business being officers.
7 Those people need to be found out and removed
8 from our law enforcement community. Unfortunately
9 these people don't wear signs that say I'm the good
10 officer that made a mistake and I'm the bad officer
11 that needs to be gone. And that's why due process
12 requires that we move quickly.
13 You know, when a good officer comes through
14 our academy, he has a cloud hanging over his head that
15 isn't released until he's found -- until he gets the
16 misconduct and the board assigns a penalty. And for
17 that period of time, for that period of time that
18 Mr. Jackson has warehoused cases until it gets into
19 our pipeline, that person wears a badge of
20 distinction.
21 Not a good badge. It's a badge that he has
22 to carry. Meanwhile the officers that we should get
23 rid of, those people are able to leave their
24 departments and go on to other departments still
25 carrying their certifications, still able to work as

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1 law enforcement officers.
2 Given the fact that our board is so
3 important, given the fact that we carry such weight,
4 one would think that the prosecutor that the Attorney
5 General would assign to us would be experienced,
6 skilled, knowledgeable, and know about trial work.
7 But one would be wrong.
8 Mr. Jackson came to us as a lawyer fresh out
9 of law school. It's my belief that Mr. Jackson has no
10 trial experience. It's my belief that he's never
11 tried a case -- in a criminal case. It's my belief
12 that he's never worked as an assistant DA. And I base
13 that on my visions of him and the way I watch him
14 prosecute cases.
15 The reason Mr. Jackson became somebody that I
16 was watching is when I was preparing for the June 2011
17 meeting. There was a case in there -- the board
18 meeting for June 2011. There was a case on there that
19 was so bereft of information that it caused me alarm.
20 It was a case from of an Albuquerque police
21 officer that entered a Circle K off-duty. And in that
22 time he had an altercation with a customer who was
23 also in the Circle K. Thereafter, that officer, when
24 he was on duty, arrested the same customer for --
25 stopped the same customer for a traffic infraction.

1 When that case came to us, it was basically
2 the officer against the civilian. The two parties
3 were arguing with each other about what happened.
4 However, there was a third person that would have made
5 our review as a board more clear-cut.

6 That person was the clerk. And all this
7 argument took place in front of the clerk. However,
8 the clerk wasn't called. So by not calling the clerk,
9 all we had was the officer as opposed to the civilian.

10 When the board came -- when the board came to
11 review that case, we made the decision that there was
12 not enough evidence to find that that officer had
13 committed any infraction. It doesn't mean he didn't
14 commit an infraction, I'm certainly not here to say he
15 did. The point is that we had no evidence because
16 Mr. Jackson didn't bring the one outside party that
17 would have solved the issue of who is -- who is at
18 fault.

19 What Mr. Jackson did do is he brought the
20 Albuquerque IRO, the independent review officer. The
21 IRO is somebody that's hired by the City of
22 Albuquerque to basically take officer complaints.
23 Mr. Jackson miscategorized him as a member of APD,
24 which he wasn't.

25 And for some reason known only to Mr. Jackson

1 he thought that the IRO would shed some light on the
2 matter. But the IRO had no personal knowledge of the
3 events, he had no investigatory knowledge of the
4 events, he was not involved in any way. And yet
5 Mr. Jackson took the two parties and a person that had
6 nothing to do with it.

7 So I thought at that time that it was odd.
8 And I volunteered at that meeting to be involved as a
9 hearing officer. The reason I got involved as a
10 hearing officer is I thought I could give some benefit
11 to the board from my experience. And I'd like to tell
12 the board what my experience is.

13 Many of you know that I'm a lawyer. I hate
14 to admit that I was admitted to practice in New York
15 in 1974. It's the 1974 part I hate to admit. I'm
16 proud of New York. So I practiced for 37 years.
17 After I got admitted to New York, I was later admitted
18 by having taken the bar exam to Connecticut. Then I
19 sat for the bar exam in New Mexico. I'm a lawyer in
20 three states.

21 For the first six to seven years of my
22 experience, I prosecuted cases as an assistant DA. I
23 was -- started from the bottom. I prosecuted traffic
24 cases, worked my way up to speeding cases, worked
25 myself up to DWI cases.

1 Later I started doing felonies. I was
2 involved in murders, in robberies. Prosecuting them I
3 should say, not committing them. And ultimately I
4 investigated and prosecuted organized crime. So I
5 have a background I thought that might lend itself to
6 our hearing as a hearing officer.

7 What I found was an abysmal lack of
8 preparation, an abysmal lack of knowledge of the rules
9 of the evidence, an abysmal lack of communication with
10 his witnesses; enough that made his prosecution on the
11 board seem almost laughable.

12 Now, the reason I'm bringing this up, the
13 reason I'm so deep into the fact that there's
14 incompetence here is because of what we do. I handled
15 three cases. The cases I handled as a hearing officer
16 went back one, two, and three years. These were cases
17 that were all on Mr. Jackson's plate and never brought
18 to the forefront.

19 My very first case was a case where the
20 witness failed to show up. Mr. Jackson's witness. It
21 was just Mr. Jackson, me, and the responding officer.
22 In that case I asked Mr. Jackson where his witness was
23 and he said he didn't know. I asked Mr. Jackson on
24 the record if he ever called this witness. And he had
25 not.

1 I asked, well, how did you prepare for the
2 case if you didn't call your witness. And Mr. Jackson
3 said he didn't have the telephone number. I asked him
4 if he knew what agency the witness worked for. Oh,
5 yes, the Albuquerque Police Department. Well, do you
6 think you could have found the telephone number I
7 asked. And he said maybe I could have. But the point
8 is that he didn't even try to contact his witness and
9 indeed the witness didn't show up.

10 Luckily for Mr. Jackson the responding
11 officer's attorney didn't show up and he asked for an
12 adjournment. If his attorney had shown up, the
13 attorney could have asked for a dismissal because,
14 after all, the case was called for hearing, the
15 witness wasn't there. Would we have had to dismiss
16 that case because Mr. Jackson hadn't communicated?
17 And I think the answer is probably yes.

18 When this case was rescheduled, Mr. Jackson's
19 witness did show up. But incredibly again it was
20 clear that Mr. Jackson had no communication with him.
21 Mr. Jackson failed to establish the identity of the
22 driver. The accused officer was accused of driving
23 DWI. One of the basic elements of DWI is to prove
24 that he's been driving.

25 And I'm well familiar with the fact that, in

1 a criminal trial, the evidence requires beyond a
2 reasonable doubt. In our cases they simply involve
3 preponderance of the evidence. But preponderance of
4 the evidence does not mean conjecture or speculation.
5 And that's exactly what Mr. Jackson left the case
6 with.

7 When Mr. Jackson became aware that he hadn't
8 identified the officer as being the driver, he decided
9 he would then invite that officer to the stand to
10 testify against himself. And he did that. And the
11 officer took the stand and immediately refused to
12 testify on the grounds that it might incriminate him.

13 As a result there was no evidence on the
14 man's driving. So my point is here you have
15 noncommunication and then you have communication
16 that's nonexistent and no driving was produced.

17 The reason this is so important obviously is
18 it's simply one case of many. Of the three cases that
19 I had, two of them went on -- two of them were fired
20 from their departments and went on to work in other
21 departments. One of them resigned and went on to work
22 in another department.

23 The second case I had as a hearing officer
24 with Mr. Jackson was the case that was in the
25 newspaper. That was the case of Mr. Smoker. In that

1 case the witness -- I'm sorry. In that case the
2 accused officer went back into society -- went back
3 after being fired from the Santa Fe Police Department
4 and went to work for the department of Cuba. He
5 worked there for several years until he was able to
6 retire with his full pension.

7 During that time the case was on
8 Mr. Jackson's desk. At the hearing Mr. Jackson failed
9 to interview his witness. His one and only witness
10 that testified about defensive tactics that were
11 employed by Mr. Smoker when he struck a handcuffed
12 suspect, the one and only witness that Mr. Jackson had
13 testified that that was a defensive strike that was
14 properly applied as described by the City of Santa Fe
15 Police Department.

16 That was the only evidence that Mr. Jackson
17 produced. When that case was decided by the board,
18 the board admonished Mr. Jackson and said to
19 Mr. Jackson that he has to do a better job in
20 presenting evidence before us.

21 The third case that I handled as a hearing
22 officer had to do with a police officer that was fired
23 from the City of Santa Fe. In that case Mr. Jackson
24 produced three witnesses. Two I'm very certain were
25 never talked to beforehand. The third possibly was,

1 possibly not.

2 At any rate the problem that we have in this
3 case is the defense attorney claimed that he was
4 called to jury service and he asked for a delay. Now,
5 all of us know that when defense attorneys on one side
6 or the other ask for a reasonable delay, it's only
7 courteous to provide it.

8 But the delay he asked for was almost two
9 months. And Mr. Jackson agreed to a two-month delay.
10 Well, we're the Law Enforcement Academy Board and he's
11 our prosecutor. And a two-month delay means that the
12 entire academy that would have decided that case would
13 have been adjourned by an entire three months, because
14 we only meet every three months. So Mr. Jackson was
15 part and parcel to a continuation that should never
16 have taken place.

17 As hearing officer I decided that that was
18 excessive and unreasonable and I did not agree to the
19 delay. And later it was determined by me doing
20 investigation that the entire panel was dismissed.
21 There was no need for any adjournment whatsoever.

22 In between this time, it's true, I brought my
23 concerns to Attorney General Gary King. This is not a
24 personal vendetta. And reducing it to the idea that
25 it might be a personal vendetta does a disservice to

1 me and to the board, Mr. King.

2 Nevertheless, I talked to you in September
3 and I explained my concerns. I explained my concerns
4 in detail. You at that time told me that you would
5 look into it and have something done. A week later
6 you and I spoke. And you advised me that Mr. Jackson
7 would be replaced.

8 Then nothing happened. Nothing happened for
9 weeks. Nothing happened for months. In November,
10 when the next set of cases were presented for public
11 hearings, I started calling your office again. I
12 called your office multiple times as you know. I
13 called you on your personal cell phone and I called
14 your office. It was a total of 23 times.

15 I had no callbacks. I announced the purpose
16 of my calls. Nothing happened. Finally I made a
17 personal meeting with you and you were kind enough to
18 meet with me. At that time I explained that the
19 decision or the point of order had become very urgent,
20 because I did not see how we as a board could continue
21 to let Mr. Jackson prosecute for us when we knew the
22 problems that he was doing.

23 You and I met as you recall. It was a
24 difficult meeting. I don't think we have to go into
25 it. But as a result of that meeting, you said that

1 there was a new prosecutor. And you identified Scott
2 Fuqua as the man who would determine who the new
3 prosecutor was and when he would be appointed. And
4 you invited me to call Scott Fuqua, which I did. Now,
5 I hope I'm pronouncing your name right, Scott.

6 MR. FUQUA: I gave up a long time ago.

7 MR. KORN: Okay. I contacted Scott Fuqua who
8 is the supervisor of Matt Jackson. In fact, he runs
9 the entire department. I called him multiple times
10 and he was kind enough to call me back.

11 Mr. Fuqua announced to me that there was a
12 new prosecutor that was going to be coming on board
13 the board and that his name was Bill Moon. And
14 Mr. Moon was described as being a gentleman who had
15 multiple years of experience, who is a trained
16 prosecutor, who was a man that wanted to move cases.

17 And I explained to Mr. Fuqua that this
18 gentleman seemed like a perfect match for our board.
19 Somebody experienced, well-qualified, somebody that
20 could do a good job.

21 The only problem was that I felt as if
22 Mr. Fuqua was pushing back, because Mr. Fuqua said no,
23 no, he would not give Bill Moon the cases for
24 December, the cases that concerned me the most. He
25 wasn't going to put Mr. Moon on until after Matt

1 Jackson finished the cases in December.

2 That was a long conversation, because I asked
3 Mr. Fuqua, why would you make that decision when you
4 know the concerns in the first place for having him
5 replaced for his inadequacy as a prosecutor. And
6 Mr. Fuqua told me that it was his decision and his
7 alone to make.

8 I asked him why Bill Moon couldn't be
9 substituted earlier. And Mr. Fuqua told me that
10 Mr. Moon was doing a hearing or a trial or something.
11 He wasn't really sure, but he wasn't going to be
12 coming.

13 And then when I finally in exasperation said
14 why don't you just switch Mr. Moon and Mr. Jackson's
15 responsibilities so that the board would have the
16 opportunity to have Mr. Moon, Mr. Fuqua told me, as
17 I've told you many times, Mr. Fuqua said, as I've told
18 you several times already, it's my decision and mine
19 alone to make.

20 I feel as if Mr. Fuqua is playing games with
21 the board. I asked Mr. Fuqua what kind of supervision
22 he gave to Mr. Jackson. And his answer was that he
23 felt that, when people were hired and went through
24 that vetting process, they were supervised enough and
25 were already professional enough to do the cases. So

1 here we are.

2 I announced to Mr. Fuqua that I didn't want
3 to ask the board for an emergency meeting because I
4 didn't want to embarrass the AG's office. And
5 Mr. Fuqua said bring the emergency meeting, nothing
6 about it will embarrass the AG's office. So here we
7 are.

8 Now, Mr. King may try to minimize my role by
9 saying that this is a personal matter. But that's
10 untrue. Mr. King might say that a judge doesn't get
11 to pick his prosecutor. That is true. But a board
12 does. A board does get to pick its prosecutor,
13 because if it's an ineffective prosecutor, we should
14 not be saddled as a board with somebody who can't do
15 their job.

16 So I've asked this emergency meeting for two
17 reasons. One, I'm asking the board to suspend our
18 cases rather than let them go to Mr. Jackson, rather
19 than let ineffective prosecution perpetuate. I feel
20 that now that we know it, we have a responsibility to
21 act on it.

22 And secondly, I'm very, very concerned about
23 the volume of cases that are pending. I noticed that
24 on our pending cases, there's people that -- well,
25 there's one person in particular that was convicted of

1 a felony -- of a federal crime. In fact, I think he's
2 serving federal jail time. And I believe that he's
3 still licensed as a law enforcement officer in the
4 State of New Mexico.

5 In June Mr. Jackson came to the board and
6 said should we continue to prosecute cases that have
7 criminal matters. And the board spoke in no uncertain
8 terms, yes, the criminal matters are criminal matters.
9 The board matters are board matters. We have the
10 responsibility to decertify those people that
11 shouldn't be involved in our board. Having given that
12 mandate, Mr. Jackson did as far as I can tell nothing
13 to act on it.

14 So I'm concerned about who is on those lists
15 of outstanding cases. I'm concerned about the
16 timeliness of those cases. I'm concerned about things
17 that aren't in our pipeline even yet. And I believe
18 that this emergency meeting should resolve that
19 Mr. Jackson is not going to be the one to prosecute
20 for us, that the cases that are outstanding are cases
21 that we're going to go back and make sure are right.
22 If we need to, we're going to extend as a board the
23 timelines in our rules so that no case is dismissed
24 out of turn.

25 I'm not here to start a fight with the

1 Attorney General's Office. I'm here to get resolution
2 as a group. Mr. King serves on our board. He is our
3 chairman. He's man with whom I have great respect.
4 My goal is to bring us together; to identify the
5 problem, bring us together so that we can solve it
6 together.

7 It's true, I set up the agenda. After the
8 public comment is items that we can move ahead with.
9 In the items to move ahead with are motions that I
10 would like to make, if the board will agree with me
11 that these cases should be suspended so that
12 Mr. Jackson doesn't touch them anymore. And I would
13 make motions to bring other means to bear so that we
14 can keep moving ahead as a board.

15 And what I would like to do is long after
16 Nate Korn and the rest of our board members are long
17 forgotten, that we create a board that the public can
18 be proud of, that we can have law enforcement officers
19 that are the best in the state, that we can stand up
20 among anybody and say we have the best, and that our
21 rules are going to start being enacted now. Thank you
22 for listening.

23 MR. KING: Actually don't leave. Yeah. No.
24 I'm sorry. No -- generally, in these kind of
25 committee hearings, we don't have applause. But

1 thanks for your comment.

2 Actually, Mr. Korn, I assume you're willing
3 to stand for questions.

4 MR. KORN: Yes, sir, I would.

5 MR. KING: Okay. Questions of the board?
6 Okay. I have a few.

7 Let me -- in some of these, there may be some
8 comments built into some of these as in the nature of
9 the questions. But I note that the first thing that
10 you did was put all of the onus of the delay in the
11 60 cases that are sitting on Mr. Jackson.

12 Mr. Korn, have you done any analysis of those
13 number of cases to determine -- because I notice that
14 the first thing you have here is "LEA receives
15 information about officer and reviews." Okay. Have
16 you done any -- you said that you've gone out and done
17 investigation on your own, which I want -- you know, I
18 think your heart is in the right place.

19 But I have some difficulty with hearing
20 officers doing investigations outside of the hearing
21 room and what problems that may cause. But did you do
22 any investigation into the nature of the reviews that
23 were performed by the Law Enforcement Academy staff
24 before those files were transferred to the Attorney
25 General's Office?

1 MR. KORN: Mr. King, I'm a little uncertain
2 what you're asking. Are you asking if I did
3 investigation of cases outside of a hearing?

4 MR. KING: No. What I'm saying is that you
5 said that there's a backlog of 60 cases and that
6 Mr. Jackson is warehousing those cases I think was the
7 term you used; is that right?

8 MR. KORN: Mr. King, I think you're confusing
9 my position as a hearing officer with my position as a
10 board member. As a board member, of course, just like
11 any board member would have the right to talk to the
12 administrative staff of the Law Enforcement Academy
13 Board and find out where are we on cases.

14 And that's exactly what I did. It has
15 nothing to do with me being a hearing officer. And
16 what I found out, if you'll refer to the flow chart
17 that I made, yes, it's true, when the Law Enforcement
18 Academy Board receives the LEA-90, which is the
19 document that comes from independent agencies, the
20 board director reviews that.

21 The board director reviews it with Mr. Holmes
22 who makes sure it's sufficient. Once a determination
23 of sufficiency is raised, what's been the practice so
24 far -- and this should be a subject of our
25 conversation as a board continues.

1 The practice so far is to turn it over to the
2 Attorney General's Office in the person of
3 Mr. Jackson. Those cases have been turned over. I
4 think there's going to be other people that will talk
5 better than I that compiled those cases.

6 But to my understanding just this year alone,
7 out of the 91 remaining cases, 92 of them are sitting
8 on Mr. Jackson's desk. I'm sorry. Sixty-two of them
9 are sitting on Mr. Jackson's desk.

10 MR. KING: And I'm not trying to make this a
11 quiz because our analysis is that 44 of those case
12 files were sent to the Attorney General's Office
13 without any review by the Law Enforcement Academy
14 staff other than just to open them up and see, yeah,
15 they're a case or whatever, and send them on.

16 Would that cause you concern, if you knew
17 that the Law Enforcement Academy staff wasn't doing
18 any preliminary investigation or review of those files
19 before they sent them to the Attorney General's
20 Office?

21 MR. KORN: So if the question is would it
22 cause me concern to know he's sitting on 44 cases that
23 hadn't been reviewed instead of 62 cases? You know, I
24 would say that Mr. Jackson's responsibility is a team
25 player. Whoever becomes our prosecutor is a team

1 player, is in this with the group of us.
 2 I don't really think that we should say, oh,
 3 it's the director's responsibility to look these cases
 4 over before he sends them to Mr. Jackson. Looking
 5 them over is a perfunctory matter. Sending them over
 6 to Mr. Jackson is where the rubber hits the road for
 7 creating the Notice of Contemplated Action. I think
 8 Mr. Jackson should have been working on all those
 9 cases.

10 MR. KING: So here is the first bone of
 11 contention for the board just so you'll know. I mean
 12 it is not the position of the Attorney General's
 13 Office that there is no function for the Law
 14 Enforcement Academy staff to perform other than
 15 putting the folders in an envelope and sending them
 16 over to the AG's office.

17 As a matter of fact, I think your statement
 18 is wrong when you said that it's not within the
 19 purview of the director. And suppose that we'll have
 20 some opportunity. These -- some of my lawyers have a
 21 little more expertise than I do on that. So maybe,
 22 during the public comment period, they'll be able to
 23 talk about it.

24 But that actually is -- if you're going to
 25 solve a problem, this is my -- this is my issue, is

1 that you actually have to recognize where the problem
 2 resides. And it's been very simple for you to say
 3 that the problem all resides with one person. And I'm
 4 going to get into that a little bit more.

5 But the truth is there are a lot of different
 6 people in this process that have parts of this that
 7 they have to carry out. And I don't even know -- and
 8 I gather like I said Mr. Ortiz may speak some.

9 So, Mr. Ortiz, you might be -- it might be
 10 worthwhile for you to be thinking about, when you're
 11 giving your comments, whether or not you agree that
 12 the director has no function in this, but it's all the
 13 Attorney General's Office, because I think that the
 14 statutes are fairly clear that the authority to revoke
 15 certifications resides with the director, not with the
 16 Attorney General's Office.

17 The Attorney General's Office provides the
 18 legal representation. So we have a legal
 19 representation issue. But I think we could read back
 20 the comment. But I think your comment was that the
 21 director has no purpose to serve in this, and I don't
 22 agree with it.

23 MR. KORN: Well, first of all, Mr. King, I'm
 24 unsure whether you're talking to us now as the
 25 chairman of our Law Enforcement Academy Board or

1 whether you're defending the actions of Mr. Jackson
 2 as his boss.

3 MR. KING: Well, I'm -- I'm just -- I'm
 4 asking you questions about your understanding of the
 5 process. Since you're raising the issue that somehow
 6 or another that all of the problems in the process are
 7 caused by one person, I think that it's important for
 8 the board to understand where other problems might
 9 lie. So that was the purpose of that first question.

10 MR. KORN: So are you saying that, of the
 11 62 cases that are on Mr. Jackson's desk for the year,
 12 he has no responsibility to administer them? I mean I
 13 don't see how you can minimize -- whatever you want to
 14 take out for Mr. Jackson's responsibility, you're
 15 still left with a whole bunch of cases that he hasn't
 16 done anything with. Surely you're not -- you're not
 17 excusing this.

18 MR. KING: Well, let's get to that next,
 19 because you have through anecdotal evidence talked
 20 about three cases that you're aware of that
 21 Mr. Jackson has done. And we may get into sort of
 22 whose -- you know, whose opinion is the better opinion
 23 there.

24 But my understanding and my documents would
 25 show that Mr. Jackson has done about 200 cases, files

1 that he's handled in the board, and that all but 25 of
 2 those have resulted in some sort of action against the
 3 police officer. So whenever you said that he had no
 4 experience, frankly he has a significant amount of
 5 experience, three years' worth of experience, in
 6 prosecuting just these kind of cases.

7 MR. KORN: Mr. Jackson has learned from
 8 Mr. Jackson. An inexperienced, unqualified lawyer is
 9 doing the same thing over and over. That doesn't make
 10 him experienced. If you're ineffective and inept at
 11 the beginning and you're learning how to continue that
 12 job, then at the end you're inexperienced and inept,
 13 Mr. King.

14 MR. KING: And how, Mr. Korn, would you --
 15 would you think that you would determine whether a
 16 lawyer was inept? Would it be that they lose all of
 17 their cases?

18 MR. KORN: No. I think that the way you
 19 determine if a lawyer is satisfactory or not is you
 20 have somebody like Mr. Fuqua take the position of
 21 authority that he supposedly has over him.

22 I would say that he should supervise him, be
 23 in there in the room, watch him do cases, ask him to
 24 see what his case file is. So far, from my
 25 understanding with Mr. Fuqua and as you said anecdotal

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1 evidence talking with others, there's been none of
2 that.

3 MR. KING: And I do recall in our
4 conversations that I volunteered to have two lawyers
5 sit in the room. And that you basically said, as long
6 as Mr. Jackson was one of them, that you would not
7 find that to be acceptable. Was I wrong on that?

8 MR. KORN: Can you give me the background of
9 that.

10 MR. KING: I think, when you complained about
11 Mr. Jackson, I actually volunteered to do just what
12 you said, to have you and Mr. Fuqua or one of the
13 other lawyers in the agency sit in on a couple of
14 those trials and first chair it. And as I recall you
15 said that that was not acceptable to you, that as long
16 as Mr. Jackson was in the room, that you perceived
17 that that would be inappropriate.

18 MR. KORN: That would have been in response
19 to my answer that he was lazy and ineffective. I also
20 disclosed to you that we sat down with Mr. Jackson as
21 a group. That would be Director Gregg Marcantel,
22 myself, Zach Shandler, and Mark Myers as I recall.

23 And we all sat down with him and said, hey,
24 you have to call your witnesses ahead of time, to
25 which he said what if they're working swing or

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1 graveyard, to which I said, well, you can call them at
2 nine o'clock at night, to which he said I don't work
3 after five.

4 So from this I get the feeling that this is
5 not the man we want prosecuting cases. And I think I
6 described that with you too. So yes, so long as
7 Mr. Jackson is involved, I don't see him as somebody
8 that we should keep on.

9 I have to tell you, Mr. King, although I am a
10 lawyer, for the last 30 years I've been involved in
11 private industry. In private industry we're a little
12 different than government. If a guy is working out,
13 great. We encourage him, we bring him up.

14 If a guy is demonstrating that he has no
15 drive to be doing his job, we move him out.
16 Mr. Jackson is somebody that needs to be moved out.
17 He may have another place in your office. But I'm
18 telling you, sir, I do not feel that the Law
19 Enforcement Academy Board is that place. And that's
20 what I told you in the office.

21 MR. KING: So you think that the 200 cases
22 that he's done prior to the three that you had
23 experience with him in would indicate that he doesn't
24 have the drive to do these cases?

25 MR. KORN: I'm telling you that if we were to

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1 take those cases one by one and scrutinize the
2 evidence in the prosecutions that he's done, I have a
3 feeling that we would find two-thirds of them are
4 lacking in evidence.

5 And I would also point out to you, because
6 you do have trial experience, people in the outside,
7 the jurors, the hearing officers, the judges, have no
8 idea what goes into a case before it comes to trial.
9 But the prosecutor does.

10 And that prosecutor goes through a weaning
11 process. And he decides what's important and what's
12 not, what he's going to put in and what's not. If a
13 man has no experience in deciding that, then what you
14 get out is trash. And I would say that we would be
15 able -- if we were to examine those cases from what he
16 had originally to what he presented, I bet you we
17 would have deep problems with that.

18 And I don't even know why we're having this
19 discussion. I mean the point of this discussion is
20 not so much to defend Mr. Jackson. It's to segue into
21 Mr. Moon.

22 And the problem with segueing into Mr. Moon
23 is that Scott Fuqua is pushing back and saying no, I'm
24 not going to do it. I'm Scott Fuqua and I'm not going
25 to give you who you want. Even though I admit he's

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1 better, even though I admit he's replacing Jackson,
2 he's not going to come in for your five cases.

3 And let me tell you, sir, those five cases in
4 December represents a third of all the cases that
5 Jackson has done for the entire year. So they're a
6 significant quantity. All we're doing is pushing back
7 and forth about why can't we get an appropriate
8 prosecutor that you admit is going to be coming in.

9 MR. KING: But you're expressing today that
10 it's your determination, before you ever even get into
11 court, that he -- that he would not do a good job with
12 those cases. And that's why you want the board to set
13 those cases off. Is that essentially your position?

14 MR. KORN: Let's back up. Let's back up and
15 look at what we really want to do, if I may, if you'll
16 allow me to beg that question. If you agree and I
17 agree and Scott agrees that the best man to do the job
18 going forward is Bill Moon, then why are we even
19 having this argument?

20 Why don't you just take the December cases
21 and let Bill Moon do them. Why are we arguing about
22 whether he's ineffective or not when you've already
23 conceded and you've moved him along?

24 MR. KING: No. Actually I think that's where
25 you're misstating either my or Mr. Fuqua's intention.

1 I'll let him have a chance to say that. I don't think
2 that I ever said that I thought that one lawyer was
3 better than another or not.

4 As a matter of fact, I think that, on every
5 occasion where you told me that you thought
6 Mr. Jackson was not a capable attorney, I told you
7 that I didn't agree with you; that I have had an
8 opportunity to watch him and that I think that he is a
9 good quality attorney and that I think that you don't
10 agree with some of the tactics that he's used in
11 hearings. And I think that you're entitled to not
12 agree with those tactics he has used in the hearings.

13 But here is -- as long as we're on that
14 point, let's talk to the board about that. If you
15 have a lawyer that's been working on and preparing
16 cases, does it make any sense to take him off of those
17 cases a week before the case just because you have
18 some fear, which I think is unfounded, that those
19 cases will not be presented appropriately.

20 I think that the issue here is moving these
21 cases along effectively. And the reason they're not
22 moving along effectively right now is that Mr. Korn is
23 going to ask the board to not move those cases.

24 But I think that there is -- that there is a
25 clear record here to show that Mr. Jackson has been

1 successful in bringing a number of these cases. We'll
2 talk about one or two of the anecdotal ones a little
3 more specifically here.

4 But frankly it is true that the decision of
5 what attorneys to assign to represent the state's
6 interest in a particular case probably reside in the
7 Attorney General. Do you agree with that?

8 MR. KORN: I'll answer that. Let me back up
9 for just a minute. When you say that you've seen by
10 personal knowledge the effectiveness of Mr. Jackson,
11 you've never seen to the best of my knowledge a single
12 case at the Law Enforcement Academy Board hearing,
13 have you?

14 MR. KING: As a matter of fact, one of the
15 interesting things, and I think you're aware of this,
16 is that it would be a conflict of interest for me to
17 sit on the board whenever one of my lawyers is
18 presenting a case. And so I have not sat here on the
19 board to listen to cases. I have sat in the back of
20 the room and watched, yeah.

21 MR. KORN: Well, let me back up here.
22 Mr. King, first of all I don't concede that it's a
23 conflict of interest at all. It's in the statute that
24 you are our chairman. It doesn't say you back out
25 when one of your people do a case.

1 But I'm asking you, to the best of my
2 knowledge, you've never, ever watched Mr. Jackson
3 prosecute a case in open hearing, have you?

4 MR. KING: Not in front of a hearing officer,
5 not in front of you. But I've seen him do other
6 cases, yeah. I've interviewed him, I've worked with
7 him, I know Mr. Jackson.

8 MR. KORN: Jackson has never -- you've never
9 seen Jackson prosecute a case so you have no idea how
10 he does. And I would make the same challenge to
11 Mr. Fuqua. Have you ever seen Mr. Jackson prosecute a
12 case, Mr. Fuqua?

13 MR. FUQUA: I have actually, yes.

14 MR. KORN: A hearing officer at the Law
15 Enforcement Academy?

16 MR. FUQUA: A Law Enforcement Academy Board
17 hearing, yes.

18 MR. KORN: Okay. So Mr. Fuqua has. So now
19 your question to me was do you have the right to
20 assign an attorney to our Law Enforcement Academy
21 Board. Was that your question?

22 MR. KING: Uh-huh.

23 MR. KORN: You have the right to assign
24 whoever you want as the Attorney General. The board
25 at the same token has the right to accept or reject.

1 I firmly feel that the board is empowered to pick
2 whoever they want to. And if the board doesn't think
3 that Mr. Jackson is doing a qualified job, then they
4 can make that determination.

5 I am not the only hearing officer that's ever
6 heard Mr. Jackson. I believe Mr. Coon has. I believe
7 there's another hearing officer here that also has. I
8 know it would be way simple to personify it as me
9 versus Jackson. But it's not that simple, Mr. King.

10 MR. KING: You know, this may be a good point
11 to at least raise the issue that I disagree with you
12 yet on whether or not the board even has the authority
13 to determine who is going to represent them. I think
14 that it's a misunderstanding on your part of who the
15 client is.

16 But my understanding -- and once again,
17 Mr. Ortiz, I'm going to ask you to address that too
18 because you've had to deal with this -- is whether or
19 not the client is the director or the client is the
20 board. And so if you think about that, I'll have you
21 address that too whenever you talk.

22 And you may -- I don't know who you're going
23 to agree with. My perspective is that the board is
24 like the judge. The board defers their authority to a
25 hearing officer to hear a case, to hear all the facts

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1 and such, and then make a determination and bring that
2 to the board.
3 But the board is the final determiner of
4 whether a certification is removed or not. Does
5 everybody agree with me on that? The board has the
6 decertification authority.
7 The director brings the cases before the
8 board. They prepare the files. And they do that with
9 the representation of the Attorney General's Office
10 who does that. But the statutes are clear and the
11 regulations are clear that the director brings the
12 cases. And they use the Attorney General's Office to
13 do that.
14 So my perspective is that the director has
15 the authority to determine whether they should be
16 represented by the Attorney General's Office or not.
17 And the new director, after he listens to this
18 discussion today, will have some opportunity to decide
19 probably whether he thinks that the Attorney General's
20 Office should continue to represent them.
21 But having the board determine whether a
22 lawyer can appear in front of them or not is indeed
23 tantamount to having a judge decide whether or not a
24 lawyer can appear in front of their agency.
25 MR. KORN: You keep putting me back as the

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1 hearing officer. I'm a board member. And I put the
2 board as a company board. The board has a chairman of
3 the board. That's you. And we have a company
4 president. And that's whoever the director is.
5 We direct the director what to do. The
6 director is just an arm of the board. Of course, the
7 board decides whether we have an ineffective
8 prosecutor or not. We would be bereft of our
9 responsibility if we let happen something that we knew
10 was bad.
11 MR. KING: Well, I think that that's where
12 everybody will see that that is one of the bones of
13 contention here, is that -- is that I think that it's
14 important, if you're presenting in front of the board,
15 that you understand what everybody's statutory and
16 regulatory functions are. So we may get to that.
17 Let's talk about one of your anecdotal cases,
18 the Smoker case. That's over so we can talk about
19 that one.
20 MR. KORN: Sure. Everything I talked about
21 is a matter of public hearings and public record. So
22 in my opinion we can talk about everything.
23 MR. KING: So what you told the board was
24 that only one witness was presented in the Smoker
25 case.

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1 MR. KORN: There were two witnesses. What I
2 said that only one witness testified in regard to
3 defensive tactics.
4 MR. KING: And it's my understanding that the
5 video of Mr. Smoker assaulting the person was also
6 submitted as evidence in that case; is that correct?
7 MR. KORN: That's correct, sir.
8 MR. KING: And you had an opportunity to
9 review that video and that evidence?
10 MR. KORN: Many times.
11 MR. KING: And the way I read the regulation,
12 it says that you have the authority as the hearing
13 officer to make a determination once you've reviewed
14 that video as to whether or not excessive force was
15 used or not.
16 MR. KORN: Are you asking a question?
17 MR. KING: No. Do you agree with me?
18 MR. KORN: Well --
19 MR. KING: Have you read the regulation?
20 MR. KORN: Oh, I read the regulation, yes.
21 The only way a hearing officer can make a
22 determination is if he's presented with evidence that
23 allows him to understand what he's -- what the case is
24 about.
25 When we're talking about a case that is

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1 charged with excessive force, a layperson such as
2 myself and in many instances board members that may
3 have no defensive tactic experience would need
4 somebody to describe, A, if there's defensive tactics
5 employed that are legitimate and correct; B, whether
6 they have been taught those defensive tactics
7 techniques by their department; and C, whether they
8 were employed properly. Mr. Jackson provided no
9 support about that.
10 I note that in the newspaper with APD there
11 were the two gentlemen that were charged with
12 assaulting a man by kicking him in the head. The very
13 first thing that Deputy Chief Paiz did as noted in the
14 paper was she called the academy to find out exactly
15 those things. Were there definitive tactics that were
16 taught that were in concert with that, was this part
17 of our SOP to allow that, and was this properly
18 employed, because this is the standard of the
19 industry. Everybody knows that.
20 By Mr. Jackson presenting nothing except for
21 one witness that testified that they were appropriate
22 use of force in the department and that it was by the
23 SOP that he learned it, he presented no evidence from
24 which a hearing officer could draw a conclusion
25 otherwise.

1 MR. KING: You decided that.
 2 MR. KORN: I did decide that.
 3 MR. KING: But you reviewed -- you reviewed
 4 the video. Did you think from reviewing the video
 5 that -- I mean did it seem to you like it was
 6 excessive force?
 7 MR. KORN: I decided the video based on
 8 evidence that was before me. And based on the lack of
 9 evidence before me, I decided that as a hearing
 10 officer my hands were tied. Based on what I was
 11 presented, I said that I had no information other than
 12 what the officer testified to. And what he testified
 13 to was that it was appropriate procedures.
 14 MR. KING: After viewing the video, you
 15 decided to recommend no sanction for that.
 16 MR. KORN: I did indeed. And then, when it
 17 went into the board, people with greater knowledge
 18 than I as to definitive tactics had another opinion.
 19 Not necessarily about the strikes that the one witness
 20 talked about. But about some of the other actions
 21 that the witness stood on the background and had no
 22 opinion on.
 23 So yes, as a board we were able to make a
 24 decision. But as a hearing officer, I was not. I'm a
 25 layperson. I'm a lawyer, I'm a businessman, but I'm

1 not a police officer.
 2 MR. KING: So maybe that's a problem with the
 3 training that we give our hearing officers.
 4 MR. KORN: Yes, you're right. This could all
 5 be my problem. You're absolutely right. It's not
 6 Mr. Jackson's fault for not producing evidence. It's
 7 the hearing officer's fault for not making proper
 8 decisions without evidence. Is that what you're
 9 saying, Mr. King?
 10 MR. KING: I'm saying that you had evidence
 11 before you and you made a determination based on that
 12 evidence.
 13 MR. KORN: Sir, you're sitting up there as a
 14 board member. But you're acting like the employer of
 15 Mr. Jackson. And I think it does a disservice to the
 16 board.
 17 MR. KING: Actually just a couple of minutes
 18 ago, you said that you thought that all of us should
 19 be on the board; even if one of my lawyers was
 20 appearing in front of us, that I probably should sit
 21 on the board, which actually I don't agree with that
 22 either.
 23 But no. I'm just asking you some questions
 24 about -- that get to the issue of whether or not your
 25 analysis of Mr. Jackson's capability is a good

1 analysis.
 2 MR. KORN: Are you turning the inquiry from
 3 Mr. Jackson in your office to me?
 4 MR. KING: I just -- actually I want the
 5 board to hear your answers to these questions. And
 6 then they'll make their determination.
 7 MR. KORN: But are you pushing against me or
 8 are you sitting as a board member that's trying to
 9 resolve a serious issue?
 10 MR. KING: I am very much trying to resolve a
 11 serious issue.
 12 MR. KORN: Because it sure seems like you're
 13 being a defensive employer instead of an active board
 14 member. And I say that with all due respect. You're
 15 the Attorney General of the state.
 16 MR. KING: I understand that. I'm being an
 17 active board member. But you sort of forgot to tell
 18 everybody, when you talked about the evidence that he
 19 presented, that he actually presented the video of the
 20 event; and that that video is sufficient frankly for
 21 anybody on this board to have determined that
 22 excessive force was used; but that you, rather than
 23 making that determination, which you could have done
 24 as a hearing officer, decided to essentially sanction
 25 Mr. Jackson because you felt like he didn't provide

1 evidence that you wanted him to provide.
 2 MR. KORN: Sir, at the end of that hearing,
 3 after it went to the board for determination, the
 4 board members that were there including Mr. Gratton
 5 and myself, we're civilians. We don't know.
 6 But the board members that were there that
 7 have better knowledge about defensive tactics in
 8 public hearing, in public board meeting, chastised
 9 Mr. Jackson for not presenting the right evidence. So
 10 the entire board heard it. The entire board looked at
 11 the video. And the entire board chastised
 12 Mr. Jackson. Where are you going with this?
 13 MR. KING: Where I'm going is that every
 14 attorney, when they present a case, has to tactically
 15 decide what evidence they think is sufficient to put
 16 on the case. And this not being a criminal case but
 17 being a civil hearing relating to certification is
 18 that it might be that he determined that that was
 19 sufficient evidence to make a determination.
 20 MR. KORN: Are you not indignant that that
 21 sat around for three years until Mr. Jackson decided
 22 to prosecute it?
 23 MR. KING: Actually we're going to talk -- we
 24 can talk about it now, if you want to. I have a lot
 25 of reasons here for why that case sat around for three

1 years. And I don't think that they're all a result of
2 Mr. Jackson. Let's look at the Smoker case. I have
3 some information here on it.

4 The Smoker case stems from a November 2007
5 incident captured by a security video where a Santa Fe
6 police officer assaulted a juvenile who was
7 handcuffed. That's kind of the general. The draft
8 NCA was sent to the Attorney General's Office by the
9 director on February 26, 2009. So the Attorney
10 General's Office actually had this in our hands to
11 deal with --

12 MR. KORN: Two and a half years.

13 MR. KING: -- two and a half years.

14 MR. KORN: Only two and a half years.

15 MR. KING: Right. But what I am saying
16 basically is that that was held in the director's
17 office, not in the Attorney General's Office.

18 MR. KORN: No, sir. Your facts are wrong.
19 It did happen in the middle -- in 2007, that's true.
20 But Santa Fe did not report that until 2009. It sat
21 in the director's office about a week, if I remember
22 my chronology correctly.

23 MR. KING: Okay. So you're saying -- so now
24 you've actually said that -- you have actually studied
25 this case a little bit. You said it sat in the Santa

1 Fe office for two years, that they didn't report it
2 for two years.

3 MR. KORN: It sat in the Santa Fe Police
4 Department before they reported it.

5 MR. KING: All right. So then what I have
6 here, and I suppose that we can document this, is that
7 it was sent to our office for review on March 9, 2009,
8 and that the approved NCA was returned on March 10,
9 2009. That's a one-day turnaround. Does that seem
10 like too much to you?

11 MR. KORN: Sir, are you reading from the case
12 chronology?

13 MR. KING: I'm reading from a bit of a case
14 chronology that I asked about because I thought -- I
15 note that the Smoker case was listed in several of
16 these. And so --

17 MR. KORN: Excuse me. Let me just get my
18 chronology.

19 MR. KING: Okay. Good.

20 MR. KORN: I'm sorry. Tell me again your
21 timeline.

22 MR. KING: Okay. I'm showing that the draft
23 NCA was sent from the director's office to the
24 Attorney General's Office February 26th, 2009.

25 MR. KORN: That could possibly be correct. I

1 don't have that.

2 MR. KING: And that Mr. Ortiz sent a request
3 asking for a review on March 9, 2009, and that the
4 approved NCAs for -- there were actually several
5 officers involved in this incident, were returned on
6 March 10 of 2009.

7 MR. KORN: What I have in the case chronology
8 that was exhibits at the hearing is that on March 18
9 the NCA was filed and served on the accused officer.

10 MR. KING: So essentially those things all
11 occurred pretty much in the timelines that they're
12 supposed to occur in, correct?

13 MR. KORN: A couple of months. I would say
14 that would be appropriate.

15 MR. KING: Now, it's also my understanding
16 that the -- that this then initially got sent to a
17 hearing officer who was -- the first hearing officer
18 potentially was our member, Mr. Coon. Is that right?

19 MR. COON: Yes, sir.

20 MR. KING: And then apparently Mr. Coon had
21 to recuse himself. You recused yourself in that case?

22 MR. COON: Yes, I did.

23 MR. KING: After some period of time, a month
24 or two or something.

25 MR. COON: I think I had done Mr. Rael. And

1 then this one came up so I recused myself.

2 MR. KING: And so then it got assigned to
3 Arsenio Jones as the hearing officer. Is Mr. Jones
4 here?

5 MR. COON: He's no longer on the board.

6 MR. KING: He's not on the board. Okay. The
7 hearing was set for January 22nd, 2010. A joint
8 request to reschedule was filed so parties could try
9 and work out a discovery dispute that was going on.
10 So there was a discovery dispute, correct?

11 MR. KORN: The discovery dispute is the heart
12 of the matter. And the discovery dispute went on as
13 far as I can tell for two years. The discovery
14 dispute should never have been a dispute. If there
15 was a more experienced trial attorney, that discovery
16 dispute would have been over in about two days.

17 Instead what happened is they went back and
18 forth, wrung their hands, tried to figure out what to
19 do. They knew no -- they knew nothing about how to
20 resolve that discovery dispute, which was a discovery
21 request far in excess of anything that the accused
22 attorney's -- accused officer's attorney was entitled
23 to. This was -- this was a blatant error I believe on
24 the part of Mr. Jackson.

25 MR. KING: Well, here is where we get to that

1 sticky due process question. I doubt that Mr. Yohalem
2 would agree with you on that, the attorney for the --

3 MR. KORN: Mr. Yohalem was the best attorney
4 in this matter. Mr. Yohalem was able to stall this
5 matter for two years while Mr. Smoker finished his --
6 finished his matriculation at Cuba and then got his --
7 got his retirement.

8 So all he was trying to do from what I can
9 tell is stall. And all Mr. Jackson did was respond to
10 him, not realizing how to get it off of stall.

11 MR. KING: So do you think that Mr. Jackson
12 was responsible for the fact that there were four
13 different hearing officers on this case, was that his
14 responsibility?

15 MR. KORN: The hearing officer issue is a --
16 is a -- is a wild card, sir. The hearing officer
17 issue happened very quickly. It was the stalling for
18 the time before the documents. That's the main issue.
19 And that's what I believe Mr. Jackson failed at.

20 MR. KING: Well, that's your position. So
21 after --

22 MR. KORN: Well, it's my position. It's
23 also -- this is one of the first matters that I dealt
24 with with Mr. Ortiz. And he can talk at great length
25 about how your attorneys did such a poor job on

1 standing up for the rights of the director that this
2 thing stalled for two years.

3 MR. KING: Can you tell me whose
4 responsibility it was to appoint the hearing officers?
5 Was it Mr. Ortiz's responsibility?

6 MR. KORN: You're asking me?

7 MR. KING: Yeah.

8 MR. KORN: Is that part of this -- is that
9 really part of this inquiry? I mean do we really --

10 MR. KING: It's my question.

11 MR. KORN: Well, I know it's your question.
12 But it's obfuscation. I mean what we -- don't we
13 really want to sit here and resolve how to get
14 Mr. Moon trying the cases, how we get all this backlog
15 of cases into Mr. Moon's hands so he can resolve them
16 quickly.

17 Isn't that what we should really be instead
18 of our banter back and forth. I mean this has no
19 purpose, this is historical. Let's move forward and
20 look to the for -- to the future.

21 MR. KING: Well, the purpose is that you're
22 making an allegation. And here I am acting as the
23 boss of an attorney. You're making an allegation
24 against an attorney that he's ineffective.

25 MR. KORN: Okay.

1 MR. KING: So I think that everybody here
2 needs to understand why it is that you're saying that
3 he's ineffective. And you basically have just said
4 here you blamed all of delay in this Smoker case on
5 him in what you were saying. And now, when I asked
6 you about all these other things that caused a delay
7 in the case, you go those aren't important.

8 MR. KORN: You know, Mr. King, the reason I'm
9 here, the reason I asked the board to come for the
10 emergency hearing is to move Mr. Jackson along and put
11 Mr. Moon in there. This isn't about me. It's really
12 not about you. It's only about getting Mr. Moon to a
13 position where he can prosecute our cases effectively.

14 And all I'm saying to you, sir, is why are we
15 even having this discussion about Jackson and the old
16 cases. Why don't we just go ahead and say we're not
17 going to have Jackson do the December cases. We're
18 going to give that to Mr. Moon.

19 So long as there's a cloud over it, let's not
20 have that cloud. Let's move along. Let's look at our
21 public that really has to have confidence in us rather
22 than have this cloud of Mr. Jackson. Why defend him?
23 You've already moved him along. Let's move on.

24 MR. KING: Well, actually I do think that
25 there's a point here. One is that -- I mean you're

1 the one that chose the agenda item.

2 MR. KORN: Yes, I did.

3 MR. KING: If the agenda item had been how
4 can we deal with the backlog, then I would have a
5 different set of questions probably, although I intend
6 to get to that. But I do think that that -- that that
7 should be the issue, is how we deal with the backlog.

8 But I actually don't think that it's
9 appropriate for you to basically claim just so that
10 you can get what you want that a lawyer who has
11 appeared in front of you is not a capable attorney,
12 because I know that he is. People in my office know
13 that he is.

14 I think, after people listen to a little of
15 this interplay, they will understand sort of the basis
16 of your complaints about Mr. Jackson. And they do
17 sound very personal to me. I mean they don't -- if
18 you look at it in terms of is a lawyer entitled to
19 make tactical decisions and present cases and you in
20 your determination have decided that you don't like
21 the way that he presented the cases and so then you
22 come to me and tell me you want me to take him off of
23 the cases, there are -- there are several steps in
24 there that I think are inappropriate.

25 And I think that it's worthwhile for us to

1 bring those to the fore here today. And that's the
2 purpose of my questions. And if my questions make you
3 uncomfortable, I apologize for that.

4 MR. KORN: Well, your questions are --
5 instead of dealing with the problem, you're getting
6 into an interplay with me. My points were that
7 Mr. Jackson didn't prepare his witnesses, Mr. Jackson
8 didn't prepare his cases, Mr. Jackson did this not
9 only to me as a hearing officer, but to the other
10 hearing officers, to Mr. Ortiz, to Mr. Coon.

11 I'm not an isolated case. And for you to sit
12 here and argue with me about whether or not the
13 minutiae of these cases is something that you can
14 defend Mr. Jackson on is ridiculous. You know, we
15 should be moving along and saying, okay, you've
16 replaced him. Let's get the new guy in.

17 But instead I'm not only getting pushback
18 from Mr. Fuqua, I'm also getting pushback from you.
19 And you're trying to characterize me personally as
20 having some sort of misplaced antagonism towards
21 Mr. Jackson that's clouding the issues. And I, sir,
22 think that that might be something that you and
23 Mr. Jackson agree with. But I'm not so sure that the
24 board is agreeing with you.

25 MR. KING: Well, I think this interaction

1 might inform them of that a little bit. We'll see.

2 MR. KORN: Mr. Coon -- Sheriff Coon had a
3 question.

4 MR. KING: Sheriff Coon. I've been asking a
5 lot of questions.

6 MR. COON: Mr. King, I think what we have
7 here, and I'm pretty sure it's a unanimous, that the
8 board just has a vote of no confidence in Mr. Jackson.
9 I mean we can paint it, we can put lipstick on a pig,
10 whatever you want to do. The deal is we as a
11 governing body don't have faith or confidence in
12 Mr. Jackson's ability.

13 And we can just cut to the chase. And what
14 we're asking is just to replace Mr. Jackson. Mr. Korn
15 has came up, you know, with a simple solution. Just
16 replace him. I mean we can beat this to death all
17 night long until tomorrow. But I think if you took a
18 vote with this board right now, we just don't have the
19 confidence in Mr. Jackson's pros --

20 MR. KING: Yeah, I understand that,
21 Commissioner Coon. And it strikes me that your
22 conversation would indicate that you all have had that
23 discussion prior to the meeting and you know how you
24 want to vote already.

25 MR. COON: No. I have not talked to one

1 person in this room. Not one.

2 MR. KING: Let's make sure that that's true.

3 MR. COON: I mean I think we've all seen it
4 firsthand, myself as a hearing officer and what goes
5 on in our meetings that are called every quarter. I
6 have not talked to one person on this board about
7 this.

8 But it comes to a point where you just want
9 to pull your hair out when you leave the academy board
10 meetings, that not only do we want to prosecute the
11 bad guys, the bad cops, but you can't leave good guys,
12 good cops that might have made that little mistake or
13 maybe didn't make any mistake at all with this
14 tremendous cloud over their head.

15 And that affects their family life, that
16 affects their personal life, and that affects their
17 careers and their supervisors or their bosses that
18 hire them. You know, if there's a bad apple there,
19 let's get them out. But if there's somebody
20 salvageable or somebody that maybe didn't do what
21 they've been alleged to do, let's clear them and go on
22 about it.

23 We're sitting here on cases that are so old.
24 It's embarrassing to bring these guys up and say I'm
25 sorry, you know, we find you not guilty of charge,

1 hope that cloud goes away from over your head. You
2 know, that's what -- that's what causes divorces,
3 that's what causes illness, and sometimes a lot worse
4 than that.

5 So just saying I think our board as a whole,
6 we just have a vote of no confidence in Mr. Jackson.
7 That's very simple. We could -- we could beat this to
8 death with statistics and folders full of cases. But
9 the bottom line is we're a board and -- that you're
10 the chairman of. We would sure like to have a change
11 in prosecution. That's all we're asking. And we
12 would like it done as soon as possible.

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

14 MR. KING: Chief Schultz.

15 MR. SCHULTZ: Obviously I've been on the
16 board a long time, probably the longest one that's up
17 here. And when I first came on the board in 2005, we
18 were hearing and dealing with cases from the 1990s.

19 So we gave very clear direction to the
20 director that we wanted these things to move quicker,
21 we wanted people to be held accountable for their
22 actions, and we actually as a board developed a
23 matrix. And because of that matrix being in place,
24 the director was able to go in and resolve most of the
25 cases.

1 What's happened is attorneys who represent
2 the officers involved in these cases will always
3 follow the path of least resistance. So the cases
4 were being dealt with. And the numbers went down as
5 you said earlier to just a handful of cases, 30 or so.

6 MR. KING: And do you recall that Mr. Jackson
7 was the one that was doing those cases during that
8 time period?

9 MR. SCHULTZ: Because most of the cases were
10 being resolved at the director level. We only have on
11 average two to three cases that go to a formal
12 hearing. And as you said yourself, as Mr. Korn said,
13 five out of 15 cases this year. What's happened is,
14 when the case goes to a formal hearing, the attorneys
15 realize that's to the advantage of the officer that
16 they represent. And that's why the number of cases
17 have started to increase.

18 The case that goes to a formal hearing should
19 be the easiest case to deal with because the
20 department has already done the Internal Affairs
21 investigation. The entire case is packaged together.

22 There's even a table of contents that tells
23 you how the case came together, there's copies of the
24 reports, there's pictures, videotapes, there's
25 statements. It's all provided. It's easy to follow

1 that process.

2 And because the cases are being put together,
3 if this was clear direction to the director, a lot of
4 those cases were being resolved and the officers are
5 being held accountable. But now they're saying, you
6 know what, if I deal with the director, looking at
7 this matrix, this officer is going to lose his or her
8 certifications for a certain amount of time, let's go
9 back and take our chances in the hearing. It's the
10 same thing that we all see in court all the time.
11 Let's overload the system.

12 And what -- I think what Mr. Korn is saying,
13 what the board is saying, okay, let's get back to
14 good, strong, positive cases that's going to take a
15 prosecutor that's going to take that IA case, he's
16 going to be prepping his witnesses, he's going to be
17 subpoenaing all his witnesses.

18 He is going to get that Internal Affairs case
19 presented as part of the entire case review file to be
20 reviewed by the hearing officer. You have to
21 remember, by the time the cases get here, 90 percent
22 of the cases the department has already taken action.

23 And the level that we use is just a
24 preponderance of evidence. It's not beyond a
25 reasonable doubt. So these cases should move quickly.

1 And they can move quickly. But it takes the right
2 person to be there, to show up.

3 And what you'll see is the caseload will go
4 back down, because the attorney is going to say, you
5 know what, I just want to deal with the director and
6 get this over with.

7 MR. KING: Well, I think you've put your
8 finger on the other thing. And I guess, you know,
9 this has been kind a long soliloquy. But I mean
10 you've said it yourself, is that it requires some
11 useful action by the director as well.

12 And one of the points that we haven't really
13 discussed here too much today, although I raised it,
14 is the fact that we have had four and a half directors
15 this year. And, you know, I'm hopeful -- I don't know
16 that -- how long Mr. Hubbard is going to be staying.

17 And so I think that there are lots of things
18 that need to be done to move these cases along. I
19 think that it is patently unfair to put them all on
20 one lawyer in the AG's office.

21 I think that there are issues with the
22 director, I think that there are issues with the staff
23 for the Law Enforcement Academy Board, I think that
24 there are issues, notwithstanding what you said,
25 Chief, about the quality of the packages that are

1 coming out of the agencies.

2 And so I am happy, if you all want to move
3 along, to recommend that we actually and appropriately
4 schedule a meeting, you know, develop a plan whereby
5 the board will move forward to analyze all of those
6 problems and come up with an idea to deal with each
7 and every one of those problems.

8 And you all have already heard that I agree
9 that we -- that we do need somebody who is a criminal
10 prosecutor because of the way that these cases are
11 doing and that we have an attorney assigned to start
12 taking over those cases.

13 But frankly it's my analysis that it would --
14 it would delay things further to have -- to assign a
15 different attorney to take over the cases in the
16 December docket on short notice. It's easy for
17 Mr. Korn say, oh, well, you know, the two attorneys
18 could just flip-flop their cases.

19 You know, go talk to the attorneys that are
20 doing cases that you guys have brought the evidence on
21 and figure out whether or not you want your district
22 attorneys to swap out the prosecutor that they've got,
23 you know, the week before the trial and how you think
24 you'll do on the trials in those cases. I mean I
25 think that there are --

1 MR. KORN: Sir, that was a conversation in
 2 November.
 3 MR. KING: -- that need to be made with
 4 regard to that. But I think, Chief Schultz, that
 5 you -- that you have put your finger on a couple of
 6 the problems. And frankly if the board -- I know that
 7 it's going to be snowy in getting out of here. And if
 8 you all want to move on, I'm happy to move on. Chief.
 9 MR. SHILLING: Just real quick, sir, to recap
 10 what he said, I think we generally would understand
 11 that switching the case files in the middle of
 12 December and expecting those to be successfully
 13 prosecuted is probably not prudent.
 14 But Mr. Korn did mention the board would
 15 consider suspending those cases and moving them into
 16 the next calendar year for hearing to give the new guy
 17 a chance to catch up. And I just wanted to be sure we
 18 were clear.
 19 MR. KORN: Thank you, Chief Shilling. That's
 20 what I was suggesting.
 21 MR. KING: You know, Mr. Korn, I think that
 22 I'm actually at the end of my questions. So thank you
 23 very much.
 24 MR. KORN: Thank you, Mr. Chairman.
 25 MR. KING: The next item on the agenda is --

1 MR. JACKSON: Excuse me, Mr. Chair. May I
 2 address the board.
 3 MR. KING: You know, I was just going to go
 4 to public comment. But I think that it's fair for
 5 Mr. Jackson to have an opportunity. Do you guys agree
 6 with that? Mr. Jackson, I'm willing to give you an
 7 opportunity to do that since you're the one everybody
 8 has been talking about.
 9 MR. JACKSON: Mr. Chair and members of the
 10 board, I would like to respond to some of the things
 11 that Mr. Korn has said to clarify some of the issues
 12 on particular cases. I will not be speaking on the
 13 merits of pending cases.
 14 It is true that I am an inexperienced
 15 attorney, that this was my first role coming out of
 16 law school. But there are some -- well, while there
 17 are some mistakes that are borne of that inexperience,
 18 I believe that I have learned from them. And it has
 19 been a growing process.
 20 I would point to the fact that the docket has
 21 been managed prior to this year, the caseload reduced
 22 drastically. Now, I would also note that there was
 23 some sterner guidance given beginning in September of
 24 2010. The board decided that it was going to take a
 25 more aggressive stance towards dishonesty.

1 And that's the board's decision. But in the
 2 face of stiffer punishments, there will be more formal
 3 hearings. That is another reason, and I think
 4 probably a stronger reason, that there is an increase
 5 in formal hearings.
 6 I would disagree with Mr. Korn's assessment
 7 of the governing law for this board. I would also
 8 disagree with his self-acclaimed expertise of
 9 evidentiary principles.
 10 The board is charged with the discipline of
 11 certifications by statute. The board has delegated
 12 that by rule to the director. And the rule says that
 13 the director may seek to deny, suspend, or revoke a
 14 certification.
 15 It also says that the parties to the hearing
 16 may have representatives. And that representative
 17 language is the closest that the rule comes to
 18 appointing a role for the prosecutor. The process by
 19 rule is heavily focused on the director.
 20 And I had hoped that during my tenure as a
 21 prosecutor, when I was working with then Director
 22 Ortiz, that it was a productive relationship. I
 23 thought that we did clear a lot of cases. There were
 24 certainly some tensions. But I thought that they were
 25 productive tensions.

1 I haven't had really anybody to deal with at
 2 the academy in 2011. The position was entirely vacant
 3 for a month. There was an acting director who had
 4 other duties. Then there was a director appointed,
 5 except that that director was actually appointed a
 6 deputy secretary. And what had been a full-time job
 7 for Director Ortiz was only a third of this man's
 8 responsibilities.
 9 And then, while he was still the deputy
 10 secretary and still ostensibly overseeing the academy
 11 and the disciplinary process as part of that, he was
 12 pulled into a transition into his current role as the
 13 corrections secretary, where again I do wish him well.
 14 Now there's another acting director. This
 15 instability in what is by rule the essential actor in
 16 the disciplinary process has been a significant factor
 17 in contributing to the swelling caseload.
 18 I would also note that neither the board --
 19 the board's organic act, the statute, nor the rules
 20 that the board has provided give any guidance on how
 21 long the director should wait before issuing a notice
 22 of contemplated action to start the disciplinary
 23 process.
 24 There's no statute of limitations. For many
 25 of our other boards and commissions that work under

1 the Uniform Licensing Act, there is a two-year statute
2 of limitations. The legislature did not see fit to
3 put one in the Law Enforcement Training Act. And the
4 board, despite its protestations that it wants to move
5 this thing along quickly, has not seen fit to put one
6 in the rule.

7 Now, we've known that this transition was
8 coming for some time. My initial hope was that I
9 would help to ease the new director into the process
10 and then hand this off to another prosecutor after the
11 retirement of Director Ortiz. I never had anybody to
12 hand the process off to. And so here we are.

13 Because this transition was being planned, I
14 chose to put a lower priority on cases for which no
15 Notice of Contemplated Action had been issued by the
16 director. This is because there's no clock running.
17 Once the notice goes out, the clock starts running.

18 And then the transition becomes more complicated.

19 So that's the goal -- that's the view that I
20 have taken as part of this transition process. But I
21 did also want to speak to some of these particular
22 cases.

23 The June 11th -- the case that was heard at
24 the June 2011 meeting that gave Mr. Korn pause is a
25 case of Alfred Walck. And while Mr. Walck's case was

1 dismissed, it is public record that that's who it was.

2 Now, I have the testimony of the complaining
3 witness. And I think that the record reveals, and I
4 think the hearing officer felt and I think the board
5 also felt, that this gentleman had some serious
6 credibility problems. But his testimony was what I
7 had apart from the summary report of the IRO. And I
8 called the IRO, Mr. Deaton, just to talk about the
9 process of developing that report.

10 Now, it is true that there was a 7-11 clerk.
11 Now, the 7-11 clerk didn't witness the alleged
12 incident that gave rise to the act because that was,
13 of course, the abuse of power on the subsequent stop.
14 But the witness' credibility could have been boosted
15 if we had had the 7-11 clerk.

16 I don't even have the 7-11 clerk's name. And
17 I think it's instructive to look to the record on
18 this, because Mr. Walck's attorney, Brian Thomas,
19 called the investigator for the academy to the stand.
20 And I want to read in pertinent part his testimony.

21 "Question: Are you familiar with the
22 investigation of Officer Walck?

23 "Answer: Somewhat.

24 "Question: Were you personally involved in
25 the investigation of Mr. Walck?

1 "Answer: I was not involved in the
2 investigation.

3 "Question: Who was involved in the
4 investigation?

5 "Answer: The Albuquerque Police Department
6 as far as I know, as far as I can remember.

7 "Question: Did the academy conduct any
8 investigation?

9 "Answer: Not on that case. The only thing
10 that was done from the academy was serve the
11 subpoenas.

12 "Question: And so do you know whether -- or
13 did you speak to any potential witnesses in connection
14 with the case?

15 "Answer: I don't recall. I've got so many
16 cases going on, I don't recall on this one talking to
17 any witnesses."

18 Now, the rule also provides that the director
19 may seek to discipline an officer's certification
20 after investigation and consultation with the
21 employing agency. There was no investigation by the
22 academy in this case. Regardless of what the facts
23 were proved, that by itself might be reversible error.

24 Without jeopardizing pending matters, I would
25 note that that is the only time that Mr. Holmes has

1 testified during my tenure as prosecutor. And I did
2 not call him.

3 I want to speak not on the merits but on one
4 of the cases that Mr. Korn heard, a case that was
5 initially set for July. It was known going into the
6 hearing, and this is in the record, that it was at
7 most a 50 percent chance that the respondent's counsel
8 would show up. He had some health issues.

9 Now, I'm not going to say I know this because
10 I don't. But I believe that had my witness been
11 there, Mr. Korn would have proceeded with the hearing,
12 denying the respondent his opportunity to counsel, a
13 fundamental due process right.

14 I would also state for the record that, prior
15 to the subsequent setting of that hearing, I did speak
16 to the witness, although Mr. Korn has somehow averred
17 knowledge that I did not. And I remember speaking to
18 that witness with particularity because I had a lot of
19 trouble getting this witness to call me back. It took
20 a call from Director Marcantel to one of the deputy
21 chiefs at the APD.

22 Now, this case is essentially a metro court
23 DWI. Now I know that there are a lot of cases in
24 metro court that fall by the wayside because the
25 officer doesn't show up. That's not a comment on the

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1 prosecutor.

2 I would also note on the Smoker matter, and

3 we can talk about this at some length because it is

4 closed, I acceded to two requests for a continuance to

5 try and resolve the discovery dispute. Now, Mr. Korn

6 has said that an experienced attorney would have

7 resolved that in a day. Well, it's not quite that

8 simple.

9 The rule provides a limited provision for

10 discovery. It says that "Discovery shall be limited

11 to interrogatories, requests for production, and

12 requests for admission." Now, it was requests for

13 production that were at issue here. The rule also

14 explicitly proscribes prehearing motions.

15 So what's the mechanism to resolve the

16 dispute? I think that it's proper for the parties to

17 work in good faith to see if there's a production that

18 could be made that would satisfy the respondent's

19 counsel and make him feel comfortable that his client

20 was getting a fair hearing.

21 Now, we weren't able to come to that

22 agreement. And the discovery dispute eventually went

23 before the board in December of 2010. But there's no

24 mechanism other than at the hearing to hash that out.

25 So you have I suppose multiple settings of the

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1 hearing. And if the hearing had been set, then

2 perhaps that could have been resolved by a hearing

3 officer in some sort of interlocutory fashion. But it

4 wasn't set.

5 I don't set the hearings. And after the

6 December 2010 meeting, because I think that this

7 record -- this hearing officer issue that's a wild

8 card according to Mr. Korn, I think it does bear

9 further examination.

10 There was a Notice of Hearing and Scheduling

11 Order signed by our other hearing officer,

12 Mr. Radosevich, in January of this year. Now,

13 Mr. Radosevich could not preside over the -- over this

14 hearing because he had been a prior adverse party to

15 Mr. Smoker in some other litigation. So his recusal

16 was proper.

17 Unfortunately, because of the transition,

18 there was not a quorum of the board to appoint a new

19 hearing officer. And no hearing officer was appointed

20 until June of this year. That is six months of delay

21 that is ascribable solely to the lack of quorum on the

22 board.

23 Once a hearing officer was appointed, the

24 case did proceed to hearing in short order. I chose a

25 fairly abbreviated presentation, particularly as

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1 Mr. Smoker was no longer represented by counsel and

2 that he admitted the incident and that he stipulated

3 to the video.

4 And again while there may not have been

5 expert testimony, I invite again the members of the

6 board to look at that video again. I invite the

7 members of the public that are here to look at that

8 video, which is available. And I invite the media who

9 broadcast the video when it was fresh to look at it

10 again.

11 And think about whether you would need expert

12 testimony to determine whether that was appropriate.

13 I maintain that it would be analogous to a medical

14 malpractice case, where you called an expert to say,

15 you know what, it's wrong that the doctor cut off that

16 leg. It wasn't that leg that was the problem.

17 There are some systemic issues that I don't

18 think are issues to which blame attaches but I think

19 that the board should be aware of as it moves forward

20 with a new prosecutor. One of those is what

21 investigation takes place and where does it take

22 place.

23 Now, Director Ortiz, when he was on the

24 board, fought hard with the police -- the police

25 chiefs association and the sheriffs association to

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1 negotiate a rule to increase the reporting. It put

2 some obligation on the agency heads to report their

3 misconduct. And as a result misconduct reports have

4 more than doubled, which is great. As previously

5 stated, it means that this stuff is coming to light.

6 Now, it's not clear what the agency's

7 obligation is in reporting that misconduct. Is it

8 just enough to say I've got a misconduct, here is the

9 guy, or do they need to provide the full reports that

10 they've got.

11 We have some variation here even within one

12 department. The Albuquerque police, for example,

13 sometimes they provide quite a bit of data. However,

14 frequently they also just provide the LEA-90

15 misconduct report and the administrative decision.

16 That's not enough to go on.

17 Now, as the administrative prosecutor I don't

18 have any investigative resources. I'm not supposed to

19 be the first pass. That's charged by rule to the

20 director, again a position in which there hasn't been

21 any stability this year.

22 But compounding that investigative quandary

23 is that the legislature did not see fit to give the

24 board documentary subpoena power. So that raises a

25 question that you guys are going to have to wrestle

1 with as to how the investigator can obtain the
2 documents needed to prosecute a case properly and
3 fully without that subpoena power.

4 I don't have a good answer for you there.
5 But I can tell you that I have prosecuted every case
6 that I have prosecuted to the best of my ability with
7 the facts that I had available to me. Thank you.

8 MR. KING: Thank you, Mr. Jackson.

9 MR. COON: Can I ask him a question.

10 MR. KING: Questions for Mr. Jackson.

11 MR. COON: Mr. Jackson, you said that there
12 wasn't a quorum of the board on the Smoker to get a
13 hearing officer.

14 MR. JACKSON: That's correct, Sheriff Coon.

15 MR. COON: I don't know what you're talking
16 about. I've been on this board for like three years.
17 We have never not had a board meeting where there
18 wasn't a quorum.

19 MR. JACKSON: Well, and that's -- I think
20 that's accurate. But I would also note that there was
21 no spring meeting this year.

22 MR. COON: Okay.

23 MR. KING: Okay. Other questions? Thank
24 you, Mr. Jackson.

25 ITEM NO. 5: PUBLIC COMMENT

1 MR. KING: All right. The next item on the
2 agenda is, and this was sort of part of that item I
3 suppose, public comment. I have a couple of people
4 that have signed up already and there may be others.
5 But the first one I have on my list is Lise Sevigny.

6 MS. SEVIGNY: Hi. Thanks for pronouncing my
7 name correctly. That doesn't happen very often.

8 MR. KING: You might want to spell it for the
9 reporter, though.

10 MS. SEVIGNY: I will, I'll give that to you.
11 Like you said my name is Lise Sevigny. And I'm
12 actually here in place of my fiance. His name is
13 Damon Lewis. He is in the hospital right now.

14 He had to have a heart ablation and
15 catheterization this morning. And there were
16 complications so he's there a little longer than we
17 expected. I'm basically here to personalize what
18 happens to somebody when -- with all of these delays.
19 That's part of why he's in the hospital, is due to the
20 stress.

21 I want to back up a little bit, though,
22 because I do want to thank the board and everybody
23 that's associated with the board for everything that
24 you do. I also thank the law enforcement officers in
25 the state because they work hard.

1 Basically Damon is 44 years old. He's a
2 Registered Nurse. He works in a trauma intensive care
3 unit, he has for years. He is working towards a
4 degree, an advanced nurse practice degree, that's
5 actually very competitive to get into. And he's also
6 served in the military for over six years.

7 Some of his awards included he was the honor
8 graduate for his Ranger class. And he also was given
9 a commendation for complete honesty by the Second
10 Ranger Battalion when he was in the Army.

11 I'm here to tell you what happened in April
12 of 2007. There was a police officer from Los Lunas at
13 the time, he now works for APD. He arrested Damon in
14 our driveway for aggravated fleeing. Damon never saw
15 a police officer or a police officer behind him.

16 There was an off-duty police officer that was
17 a witness who is also an APD officer. And that police
18 officer, once he was found three years later after
19 this incident, denied everything that was in the
20 criminal complaint by the first former Los Lunas
21 police officer.

22 This officer that I'm talking about has been
23 before the board in September of 2008. He was
24 reprimanded for untruthfulness. And this officer in
25 the criminal complaint against Damon said that he

1 was -- that the off-duty police officer witnessed --
2 had seen him pursuing this truck, which was supposedly
3 Damon, and also that there were children in the area
4 that could have been in danger from this.

5 Well, there were no children we found out
6 three years later once this officer was found. And he
7 looked at the criminal complaint. And he denied what
8 was in there. He said there were no children, he
9 never made that statement. There was never a police
10 officer behind the truck that he saw and he had never
11 made such a statement.

12 And basically what I'm trying to get to is we
13 worked with Director Ortiz. And he was very helpful.
14 But we couldn't do anything because we didn't have the
15 witness. Finally we were given the witness name and
16 were able to get information from him. Like I said he
17 denied everything.

18 And Director Ortiz was able to forward this
19 case to the AG's office. This was November of 2010.
20 So now it's been 13 months. So Director Ortiz, since
21 he was leaving, said if we had any questions or to see
22 how the case was progressing, he said to contact
23 Mr. Holmes.

24 Well, Inspector Holmes -- and he's been
25 very -- you know, very good to deal with. And he

1 contacted the AG's office this past summer to see how
2 things were progressing. Well, as of now I don't
3 think this case has even been looked at. I don't know
4 if there's an actual statute of limitations, but I
5 believe it's five years. That five years is up in
6 April. It's four months from now.

7 You know, we're not asking you to take this
8 officer's certification away. We're not even asking
9 you to prosecute him. We're just asking you to take a
10 look at this case and make some sort of determination
11 as to whether or not what this officer did was just or
12 not. And, you know, we've been to several meetings,
13 you know, and have kind of gotten -- you might have
14 seen us.

15 I've seen also what these delays do to the
16 officers. There are officers out there that may or
17 may not have done anything or, if they did, it was
18 some sort of odd situation that they just ended up in.
19 And these officers are waiting for months, if not
20 years, to be seen and heard.

21 And like you all are saying, it's hard on
22 them. It makes them look bad. And it's stressful, it
23 causes divorces, it causes, you know, all these health
24 problems. We -- you know, it's just the stress of it.
25 So we're just -- I just would like to implore you to

1 please work together.

2 You know, you may not all agree on things.
3 But you're here to service the law enforcement
4 officers of the state and the people of the state.
5 And we really appreciate, you know, if you could -- I
6 don't know what's going to make it better. It sounds
7 like there's too much work to go around.

8 So maybe there needs to be a little bit more
9 help. I don't know, you know, these are your -- these
10 are the things that -- you know, why this board is put
11 together. So again I do appreciate your being here
12 and your trying to work this out, because it is very
13 important.

14 MR. KING: Excellent point, Ms. Sevigny. And
15 I agree with you. So I think we'll all take a look at
16 that.

17 The next item -- or the next person that I
18 have signed up here is Andres Valdez. Mr. Valdez.
19 Mr. Valdez, I'll remind you, we usually limit public
20 comment to like ten minutes. So when we get to the
21 ten minutes, I'll let you know. I don't know what you
22 have to say.

23 MR. VALDEZ: You say I have 20 minutes. I
24 guess I must have heard wrong. My name is Andres
25 Valdez, I am the executive director of Vecinos United.

1 Vecinos United has been around a long, long, long
2 time, 20 years. We have looked at cases.

3 We have gone through I guess you might say in
4 short hell and high water over police accountability.
5 We are strictly concerned -- I think we have proven
6 our genuine concern for police accountability.

7 I might add that one of the reasons why I'm
8 running for U.S. Senate is because not only do we have
9 problems, deep problems in Albuquerque and in New
10 Mexico, but also throughout the nation.

11 It appears very much as though we have a
12 rampant problem of lack of human and civil rights in
13 this whole country. And we're going to need some
14 national legislation as well as local legislation to
15 start to resolve some of these problems.

16 Vecinos United has always accused law
17 enforcement of having a system that permits rogue cops
18 to roam around the state with impunity. And that it
19 has officers working for various police departments
20 that we question their integrity, that we question
21 whether or not they should be police officers.

22 And we knew that somebody in the state had
23 authority to decertify officers, but we never thought
24 it was the police academy itself. It in the sense
25 seems from the outside looking in as though it's

1 another case of the fox-watching-the-chicken-coop
2 syndrome; that is, law enforcement watching law
3 enforcement.

4 You know, looking around the room, I ask
5 myself, you know, I see -- I see several signs that
6 say citizen representative. Well, you know, with all
7 due respect, we don't even know who you folks are.

8 You know, Vecinos United has been around
9 20 years. Don't you think we ought to know who you
10 are? John Gratton. Who's the other guy, is he up
11 there, that represents citizens? Oh, Nate Korn. I've
12 heard of you. But in the distance, in the far remote
13 distances of our communities.

14 We have big problems. You know, in following
15 many issues, we always questioned why Tom Lujan, who
16 shot and killed Francisco Pancho Ortega in Santa Fe,
17 was allowed to come into work for the Bernalillo
18 County Sheriff's Department. And as far as I know, he
19 still works there.

20 You know, we have the assailants of Andres
21 Arellanes. Andres Arellanes was interestingly enough
22 accused of choking police horses. Now, they work for
23 the Corales Police Department, if I'm correct.

24 We have the human waste disposal that still
25 works for the police department. And then we have --

1 we have a police chief that was found liable of
2 framing -- or excuse me, found liable of violating Sam
3 Costales' civil rights that sits right on your board.
4 You know, we question how partial or how impartial I
5 should say this board is.

6 Should it be made up maybe of independent
7 people that possibly would not come up or being
8 accused of violating citizens' rights. You know,
9 should there be like real genuine citizen
10 representations such as the civil rights groups that
11 fight against the police shootings. And Vecinos
12 United has fought against police shootings for years
13 and police beatings.

14 You know, we question, you know, is there any
15 justice, you know. I mean, well, we've known there is
16 a lack of justice. It's interestingly -- it's
17 interesting to us. I think we have finally come to
18 the crux of at least why rogue officers are allowed to
19 roam all the over the state.

20 And it's interesting to us, you know, the
21 chief mentioned a backlog of what, I guess ten years.
22 I guess you'll be hearing cases in 2000 that were
23 cases in -- you know, that were heard in the 1990s.
24 That's unacceptable.

25 I don't know, you know, what your whole

1 process is. But right now I would like to at least
2 ask the Attorney General to meet with us and catch us
3 up on, you know, how do you guys operate. You know,
4 what are your rules and regulations, why are you guys
5 backlogged for ten years or however many years you're
6 backlogged, you know.

7 You know, the fact that this is going on is
8 just unacceptable. We -- Vecinos United actually
9 should have some representation in making some
10 decisions about officers, whether or not they should
11 be certified. I mean you really need some more
12 genuine representation.

13 You know, no offense to Mr. Korn and
14 Mr. Gratton. You know, maybe you folks should try to
15 establish some sort of a rapport with us. You know,
16 and talk to us, let us know what's going on, if you
17 truly represent the citizens.

18 I have to really I guess seriously accuse you
19 folks that you don't really represent citizens,
20 because I mean it's clear, we've never heard of you.
21 Nevertheless, I'm glad I'm here today, I'm glad -- I
22 hope that we can have a meeting.

23 You know, one thing I'd like to say about the
24 Attorney General, that he's always been open to us.
25 You know, he's always been willing to sit down with us

1 and talk about any problem in the community that we
2 ask him to talk to us about. So I expect that we're
3 going to have the same rapport over this issue. And
4 thank you so much.

5 MR. KING: Thank you, Mr. Valdez. Sheriff
6 Coon.

7 MR. COON: Mr. Valdez, you -- I think you've
8 kind of insulted this board, number one. Well, not I
9 think. You have insulted this board. Just because
10 your group didn't know this thing existed, it's been
11 around a long time. All you've got to do is get a
12 MICI black book or get the rules that the legislature
13 puts out.

14 We've been around a long time. I hadn't
15 been -- none of us have been on this board forever.
16 But just because you all didn't know it was here
17 doesn't mean it hasn't been here for a long, long
18 time.

19 And we have provided a service. We have
20 policed the police. Just because you don't like the
21 outcome sometimes. Sorry. But that's -- we have done
22 our best to do this. There's a lot of experience on
23 this board. We've got an attorney and a doctor on
24 this board.

25 Just because your organization didn't know

1 who they are or know who we are, shame on you. We've
2 been around a long, long time. So don't come up here
3 and tell us how bad we are because you all don't know
4 us. We're here.

5 MR. VALDEZ: Sir, Mr. James Coon, sheriffs
6 representative. That's interesting. You know, we've
7 been around 20 years and we don't know who you are.
8 And you're saying shame on us for not knowing who you
9 are.

10 MR. COON: We've been around a lot longer
11 than you.

12 MR. VALDEZ: I think that's --

13 MR. KING: Actually I think you've had a
14 chance to answer the question, I think you've had a
15 chance to ask it.

16 MR. COON: Thank you.

17 MR. KING: Let me add something, Mr. Valdez,
18 that you should be aware of, is that I think that most
19 of the members of the board are appointed by the
20 governor.

21 And so I think that, if you all want to have
22 representation on the board, it would be a good idea
23 for you to, you know, contact the governor, although I
24 suspect that -- I don't know whether the governor has
25 been willing to meet with you all or not. But I'm

1 certainly more than happy to as you know to meet with
 2 you and talk to you about the process.
 3 MR. VALDEZ: Great. Thank you so much. I
 4 appreciate that. And I didn't mean to insult anybody
 5 here. I just know there is a problem. And we want
 6 participation into helping to solve the problem.
 7 We've been around 20 years. And I'm glad to know you
 8 folks.
 9 MR. KING: Thank you, Mr. Valdez. We
 10 appreciate your comment. And I appreciate your
 11 brevity. All right. That's the only two people I
 12 have on my list.
 13 MR. VALE: I signed up back there. Martin,
 14 Martin Vale.
 15 MR. KING: Do we have a different sheet? It
 16 doesn't make any difference. I'm willing to let you
 17 speak. We try and do these to make it organized. But
 18 you've been here for the meeting. Just come up and
 19 introduce yourself. Actually I notice on here it says
 20 five minutes on the sheet you guys signed up on. So I
 21 gave you a little bit of extra time.
 22 MR. VALE: Hi. My name is Martin Vale of VIP
 23 New Mexico. I do a lot of work with Channel 27 and
 24 the community. And, you know, a little bit about what
 25 he just said, about how, you know, you guys been here

1 for a long time and we should know who you are.
 2 You know, I watched the news today. And it
 3 was very a brief segment, they didn't say where the
 4 meeting was. I had to call the news and they had to
 5 call me back. I had to call them again to find out
 6 where it was.
 7 Like this room should be packed right now
 8 with concerned citizens, you know what I mean. All
 9 these cases that are backlogged. What about all the
 10 cases that, you know, if you didn't get past -- what
 11 are they called.
 12 Like I have had some issues with the cops
 13 where I was arrested for no reason. I've been beaten
 14 up, maced, my shoulder dislocated. And I went to the
 15 people that supposedly investigated and they don't
 16 want to hear it, you know what I mean.
 17 I had a cop tell me he was going to punch me
 18 in my f'ing face like ten times. I'm like are you
 19 serious. I'm with the media, you know, I'm going to
 20 have your job. I'm going to go to the people, I'm
 21 going to tell them what happened.
 22 He's like, oh, go ahead, I got a belt tape
 23 recorder. So I went through hell and high water to
 24 get that tape. And he didn't even turn it on until
 25 after we were at the jail. So the whole time over

1 there he was yelling at me, threatening me, while I'm
 2 cuffed, my shoulder is dislocated.
 3 I'm like, yo, take me to the hospital. He
 4 never did. And then they finally did when I got to
 5 the jail, they took me to the hospital. And then my
 6 case was dropped, you know what I mean. I lost my
 7 job, you know.
 8 So if there's a background check on me, this
 9 stuff is going to come up, you know what I mean. Like
 10 this is ridiculous. And then I'm calling the city,
 11 I'm like, yo, I need my ambulance bills paid. This
 12 happened twice. Two ambulance bills. I need them
 13 paid.
 14 You know, I wouldn't even be here right now
 15 if they would have said, you know what, we are wrong.
 16 You know, we didn't train our officers properly. He
 17 shouldn't have told you he was going to punch you in
 18 your f'ing face, he shouldn't have dislocated your
 19 shoulder.
 20 And then he was driving erratically. I'm
 21 like, yo, can you slow down because I'm not buckled.
 22 And he slammed on the brake, causing my face to hit
 23 the glass, took off, did it again. You know, he
 24 stopped, he talked to some chicks, hey, what's up,
 25 baby, you know, taking this jerk to jail. He took me

1 to jail, you know what I mean.
 2 And then I talked to the people that -- the
 3 police that are supposed to investigate it. Never did
 4 hear nothing back. That happened twice. And, you
 5 know, the cops -- you know, there's a lot of good
 6 cops. And it's unfair for them -- for the few bad
 7 ones to tarnish all of them, you know. And we are in
 8 the desert. We're in the dirty desert. And we have
 9 bad cops.
 10 You know, Albuquerque is the land of manana.
 11 And like what he said, oh, there's no time limit so I
 12 chose to put that off another time. Like who is he to
 13 choose what he does. Doesn't he have a boss to report
 14 to or something like that, you know what I mean.
 15 And, you know, he came and was yelling and
 16 talking about all kinds of dates. Like how does he
 17 remember so many dates when he puts everything off for
 18 another time, you know. And I'm sorry that I'm
 19 emotional. But I mean I've had abuse by the cops, you
 20 know.
 21 And I like you guys. You know, I don't know
 22 what's going on. You know, you got the downtown hit
 23 squad at night picking up chicks and abusing men, you
 24 know, causing people to fight back, getting beat up,
 25 you know what I mean. Like however many cases you

1 guys have that are unsolved, you've got two more
2 because I have filed, you know. And I've never heard
3 nothing back.

4 And, you know, that's it, you know what I
5 mean. And at the same time, I'm here for all the
6 citizens -- I'm here for New Mexico, you know what I
7 mean. I've got better things to do than to be here
8 with you guys, you know.

9 And I'm here because you guys don't promote
10 it properly. Like where is the TV cameras, where is
11 Channel 16, how come we're not at the Vincent Griego
12 Center, you know what mean, how come this ain't filmed
13 for the public to see, you know what I mean.

14 This is like a hidden back room board
15 meeting. And you guys don't want the public here.
16 You've just got a few media people. You know, I don't
17 know who these people are, cops and, you know, people
18 that work for you, you know what I mean.

19 This room should be packed with concerned
20 citizens, because they're out there. But they don't
21 know what's going on, you know what I mean. But I'm
22 here with my Mac trying to put this stuff on the
23 Internet, you know what I mean.

24 But I come here when you guys retire and you
25 guys are giving out plaques and awards and honoring

1 cops for doing good deeds and honoring citizens for
2 doing good deeds. I've put that on the Internet too,
3 you know what I mean.

4 But I don't understand how you guys can abuse
5 people. And then, when this stuff goes through your
6 system, like nothing gets back to the people, you know
7 what I mean. All I was worried about is I lost my job
8 with public access. I was a volunteer.

9 I lost my volunteer position because the cops
10 knew who I was. I was on the Albuquerque Police
11 Watch, I was filming him. And the cop told me, you
12 know, I'm going to call your job and you're going to
13 get fired. Go ahead. And sure enough I did get
14 fired.

15 I've been on there for three years. But I
16 still do my stuff, I still put it on TV for no reason,
17 you know what I mean. And then I go to court and the
18 cops don't show up and my case gets dropped. But I
19 still lost my job. I was convicted by my job because
20 the cops, you know, they went beyond their way to call
21 and get me fired, you know what I mean.

22 But then, you know, when I go to the Internal
23 Affairs, nothing gets handled. So that's it.
24 Hopefully we can talk later and find out my cases
25 because, you know, I really feel that Albuquerque --

1 they owe me money.

2 I've been sent to collections for ambulance
3 bills. Like seriously, if a cop dislocates your
4 shoulder, you know, like he ought to take me to the
5 hospital. Why can't he just drive me to the hospital,
6 why do they got to call a damned ambulance and charge
7 you another arm and a leg, you know what I mean.

8 Or I can't call my mom or my chick and be
9 like, hey, this cop dislocated my shoulder, can you
10 pick me up so I don't have to pay this hospital bill.
11 But other cops can come and get their wives and chicks
12 out, you know what I mean.

13 Like you guys just have to be fair and worry
14 about everyone, because we're all in this together,
15 we're all in the same car, we're trying to, you know,
16 make this a better community. You know, now I'm
17 trying to work with the homeless people. I can't
18 believe the way that this city treats the homeless
19 people, you know.

20 I talk to them and they're like, oh, yeah, we
21 have a bus, we drive up and down Central. Are you
22 kidding me. There's homeless people all over the
23 city, in Rio Rancho. They should have buses all over
24 this town picking them up, because people are dying
25 it's so cold outside, you know what I mean.

1 But I mean that's it. And, you know, I
2 really want to find out what's going on with my
3 Internal Affairs investigation, because, you know, if
4 that stuff is closed, that ain't happening, you know,
5 because, if anything, APD owes me \$10, because I came
6 and I found that tape and I bought it. And that tape
7 wasn't even turned on. The guy just had it on when he
8 was --

9 MR. SHANDLER: I'm going to interrupt for a
10 second, not because I'm cold-hearted. But it may lead
11 to a complaint and may come in front of the board. So
12 no disrespect. But they can't hear the facts in
13 advance of a case.

14 I also suggest that maybe at five minutes to
15 five we take a bathroom break, we come back at five,
16 and have a two-part resolution that I want to sell the
17 board to. So that gives around ten more minutes of
18 public comment, a bathroom break, and then I have two
19 proposals for the board.

20 MR. KING: That sounds reasonable. Thank
21 you, Mr. Shandler. I think he's got a good point.
22 Actually it's Mr. Vale, correct?

23 MR. VALE: Well, that's my name. I'm not
24 telling you my real name because I might get shot. I
25 was talking to him. And he said that I can work up

1 with him and help the police. I'm like, man, I
 2 already --
 3 MR. SHANDLER: Okay. So when I interrupted
 4 and was mean before, I apologized. Now I'm going to
 5 have to interrupt again. I have asked you to stop.
 6 We can't have you prejudice the board on a case.
 7 MR. VALE: I'm not being prejudiced.
 8 MR. KING: Enough interaction. All I was
 9 going to say to you is, just for the record, to make
 10 it clear that as far as I know, that staff sent
 11 notification of this meeting to every press outlet in
 12 New Mexico.
 13 MR. VALE: Well, as far as I know, I even
 14 called 311 and they didn't know. They called the
 15 Albuquerque Police Department press lady and she
 16 didn't know. And then finally someone on the other
 17 line, an APD officer, said, oh, this is my name, APD
 18 Officer blah, blah, blah, are you talking about this
 19 meeting. I said yes, sir.
 20 That's how I found out. 311 didn't know,
 21 because when this stuff is on the news and someone
 22 wants to know what's going on, they call 311. And
 23 they should be able to tell them where it is, because
 24 the news is like, oh, there's a meeting at 2:30.
 25 MR. KING: That's an excellent point. All

1 right. Thank you.
 2 MR. ORTIZ: I'd like to speak.
 3 MR. KING: No. That's fine. We're done. As
 4 far as I know, Mr. Ortiz, your name is on the list
 5 too.
 6 MR. ORTIZ: Thank you, sir. I'm not going to
 7 belabor the point, just briefly. First of all I just
 8 want to thank everybody. It's good to be back here.
 9 And, no, Bill Hubbard, I'm not taking the job back. I
 10 know you'll do an excellent job. He's the right man
 11 for the job.
 12 I just want to say, looking at all this, I'm
 13 not up here to throw blame or anything. But let's get
 14 some resolution to it. Mr. King, what I think we need
 15 to do, at one time we did -- I did have a problem with
 16 an attorney in your office. I met with you, you made
 17 a change, that was great, I thank you for your
 18 support.
 19 Now what I see is -- like I said we all work
 20 very hard together to get the agencies reporting and
 21 the cases are going to go up. What you need is
 22 somebody like Mr. Hubbard. I know he'll do a good job
 23 in the director's office. But that is a full-time
 24 job.
 25 And the message we want to send is we don't

1 want to see how many officers we're going to
 2 decertify. I think -- you know, I see that in papers
 3 and stuff. That's not our job. Our job is to serve
 4 the citizens and it's to educate those officers, that
 5 they're -- this is a profession.
 6 And this board and the citizens will not
 7 tolerate that type of misconduct. If they do get
 8 involved in that misconduct, we have to aggressively
 9 work at it together to get a resolution, to let the
 10 other officers see -- one of the things that really
 11 bothered me is I had 108 cases backlogged.
 12 I met with this one guy, I sent him a letter.
 13 He says three years ago, he said, I was shocked to get
 14 this letter. I thought this case was done. Why is
 15 this coming now. And that really hit me to get
 16 aggressive, work with your office, and move forward.
 17 Mr. King, what I'm asking you to do now is to
 18 maybe not just have one attorney, but have two
 19 attorneys. Because what I was doing -- and my
 20 predecessor, Mr. Lyon, they were having -- and it was
 21 under Patricia Madrid. But the AG's office was
 22 preparing the NCAs.
 23 Well, when I got there and I got educated by
 24 Mr. Lyon and Mr. Holmes, if you -- I know you're
 25 probably short-handed. But I don't find that an

1 excuse. I took it upon myself to prepare the NCAs
 2 with Mr. Holmes. We would prepare them, we would send
 3 them out, and we were doing everything to help your
 4 office expedite these things.
 5 And I'm just asking you now I think as a way
 6 to resolve this is maybe have two attorneys. This is
 7 very important. You're the top law enforcement
 8 officer in the State of New Mexico. And I still to
 9 this day agree this should be one of your top
 10 priorities.
 11 And when you -- nothing against Mr. Jackson.
 12 But he's fresh out of law school. I think you should
 13 have your top prosecutor in your office dealing with
 14 these cases to send that strong message to law
 15 enforcement officers that we are not going to tolerate
 16 this.
 17 You get in trouble, you're going to get the
 18 sanctions imposed by the board. If you lose your gun
 19 and your badge, then so be it. But to move on quick.
 20 And I'm not going to belabor it. I just thank you.
 21 And I know you guys will get it taken care of. And I
 22 stand for any questions.
 23 MR. KING: Any questions?
 24 MR. KORN: I have a question.
 25 MR. KING: Mr. Korn.

1 MR. KORN: Mr. Ortiz, did you have an
 2 opportunity to work with Mr. Jackson during your
 3 tenure?
 4 MR. ORTIZ: Yes, I did.
 5 MR. KORN: Could you tell the board how you
 6 found him as far as prosecuting cases on your behalf.
 7 MR. ORTIZ: Well, we've had our bumps in the
 8 road. One of the things like I said is one of the
 9 problems I ran into was preparing the NCAs and then
 10 sending them to Mr. Jackson to review. Some of them
 11 were sitting there too long.
 12 Then in an email I told Mr. Jackson I'm going
 13 to give you five days. Mr. Holmes would prepare these
 14 and get the meat and the potatoes out of the reports
 15 that the agencies would send, and he would condense it
 16 into a brief synopsis.
 17 And so it would take Mr. Jackson five to ten
 18 minutes to read that and see if we could proceed.
 19 There was many times when Mr. Jackson never got back.
 20 And I said, I'm sorry, we're not going to wait. It's
 21 a simple DWI, it's a simple case, we're going to move
 22 forward.
 23 So I would send it out. And you would see in
 24 the meetings, and it's on the record, that Mr. Jackson
 25 recused himself from presenting the cases because he

1 had no involvement. The reason he had no involvement
 2 is because he did not read the NCA and approve it.
 3 But I wasn't going to let it sit there. It's
 4 not fair to the officers. So I moved it forward and
 5 Mr. Holmes presented the case himself.
 6 MR. KORN: Mr. Ortiz, how many cases did you
 7 wind up doing NCAs for yourself because Mr. Jackson
 8 wouldn't do them?
 9 MR. ORTIZ: We did them all. I did -- I
 10 inherited 108 eight cases. And we did 499. So I
 11 believe there was 391 cases that I worked in that
 12 office. When I left, I left with 50 open cases. And
 13 17 of those were going to a formal hearing.
 14 And in -- and I was glad to see the board
 15 getting tougher, because before it was retroactive
 16 suspensions. Now we're doing actual time. And I saw
 17 the board wanting to get tougher. And I agree, they
 18 started rejecting some of my recommendations.
 19 But, Mr. King, to be honest the reason I was
 20 recommending sometimes a little bit lower was to
 21 resolve it in a stipulated order, because if it went
 22 to a formal hearing, it was stagnant for up to three
 23 years.
 24 And I agree with you 100 percent. You see
 25 that video of Smoker. It's a plain, simple case.

1 Everything is on video. Any common person can look at
 2 it and say that is not right. So for that case to
 3 take so long is ridiculous.
 4 And I agree with you 100 percent. I agree
 5 with the due process. But most of the officers that I
 6 dealt with, they wanted to see these things done
 7 quick. And let them get on.
 8 MR. KING: And are you familiar, do you know
 9 how many NCAs the staff has done this year?
 10 MR. ORTIZ: Not this year. When I left in
 11 December, I was doing them all. I did 391, or I've
 12 got to say Mr. Holmes did 391. He would do them, I
 13 would look them over, and then I would email them or
 14 get them to Mr. Jackson for his approval.
 15 And for awhile he was doing fine approving
 16 them. Then I don't know what happened, he said you
 17 tasked him with other duties in his office so he
 18 didn't -- wasn't able to commit it full time.
 19 And what I ask you today is you've got to at
 20 least commit one person full time, if not two. And
 21 you need to keep the caseload down and send that
 22 strong message to the officers. And our goal is to
 23 reduce the misconduct and keep the public trust.
 24 MR. JACKSON: If I may.
 25 MR. KING: Sure.

1 MR. JACKSON: I did want to address one of
 2 the things to clarify some of the numbers that you
 3 asked about and also to clarify a point that Mr. Ortiz
 4 made.
 5 One is that, since his retirement -- and he
 6 was preparing for approval by our office on factual
 7 basis issues and usage of the forms. He was preparing
 8 the NCAs, he was preparing the NFDs based off the
 9 NCAs, and I think we did make some progress that way.
 10 And again those are responsibilities that are assigned
 11 by rule to the director.
 12 Now, in 2011 the responsibility for the
 13 initial drafting and review devolved onto me. So I
 14 was aware of that. And I did draft some NCAs and I
 15 drafted all of the NCAs for this year. In addition,
 16 the responsibility for drafting the Notice of Final
 17 Decision also devolved onto me.
 18 Unfortunately nobody told me that. That was
 19 something that was just left in the air. And so
 20 there's this thing that's the responsibility of the
 21 director by rule and it's not being done.
 22 Now, there are roughly 20 cases, maybe a
 23 couple more, between 20 and 25, in which Director
 24 Ortiz issued an NCA without approval of the Attorney
 25 General's Office. These actually comprise three

1 categories.

2 MR. KING: Matt, hang on a second. I don't

3 know that we -- we might get into this when we talk

4 about alternatives for future prosecution or whatever.

5 But as far as public comment, I think that that's a

6 little more detailed than we need. Let me go back to

7 the board members and see, are there other board

8 questions?

9 MR. KORN: Yes, I have another question.

10 MR. KING: Yes.

11 MR. KORN: So, Mr. Ortiz, if you could just

12 clarify, you started to say that the reason that you

13 started making stipulated orders that were below the

14 level of what the board would approve was for a

15 particular reason. And then you said, if you let it

16 go to a formal hearing, it would sit forever.

17 MR. ORTIZ: That's correct.

18 MR. KORN: Could you please expand on that

19 for the board.

20 MR. ORTIZ: Yes. Like in the Smoker case,

21 the defense attorney -- it was an outlandish request

22 for 99 files and records. And I invited him to come

23 down. I thought it was ridiculous.

24 And I do think there is one way to resolve

25 it. And one thing that I see, that there's a lot of

1 fear in the AG's office is we don't want to go to

2 district court and appeal this. Well, why not? Why

3 not?

4 I think there's one case in the four years

5 that I was there that the guy threatened to appeal the

6 board's decision and take it to district court. Well,

7 he did. And guess what. The board -- the judge

8 upheld it for the board.

9 I think we need to be firm. And if they

10 threaten that they're going to appeal it, let them.

11 That's what the district courts are there for. But

12 this one of Smoker's, you know, back and forth for

13 over two years, fighting for the discovery.

14 Tell him no. Our decision is made. You're

15 not getting these records. We're proceeding. If you

16 don't like it, you have the right and the due process

17 to appeal it to district court and let a district

18 judge decide. Why your office played this ping-pong

19 match for two years I don't know.

20 MR. KING: Well, let me ask you this,

21 Mr. Ortiz. I mean maybe I'm missing something here

22 that you've got. But who sets the hearings? It's not

23 the AG's office, is it?

24 MR. ORTIZ: Yes, it is. Zack Shandler sets

25 the -- once I get a request for a formal hearing, what

1 I do is I would contact Zack. I would send him an

2 email. And then Mr. Holmes would prepare a red file.

3 And everything was turned over. And at that point the

4 director's office is out of it.

5 I went above and beyond my call by serving

6 subpoenas for the AG's office. Mr. Holmes said that's

7 not our job. And I said, Mr. Holmes, if we don't get

8 these subpoenas served, nothing is going to get done.

9 On the one with Mr. Walck, I'm sorry,

10 Mr. Jackson, but you erred. I'm the one who drove

11 down from Santa Fe to Albuquerque and I met with the

12 IRO officer.

13 MR. KING: You know what --

14 MR. ORTIZ: Okay. I apologize. But I met

15 with that IRO officer. And I provided him the

16 information to contact that IRO officer. So my office

17 was doing your job, serving subpoenas, contacting

18 witnesses, providing Mr. Jackson with those telephone

19 numbers.

20 MR. KING: Well --

21 MR. ORTIZ: See, I just wanted to clarify.

22 He made the statement that there was no investigation

23 done in the director's office and there was. I came

24 to Albuquerque and met with the IRO officer.

25 MR. KING: It's an interesting point of view

1 as to who is going to do the staff work on those

2 things. I mean you're saying that it's not the Law

3 Enforcement Academy staff's job to do that, but it's

4 the AG's job.

5 And I think that our position has indeed been

6 that it is the staff's job to do those kinds of

7 things. And so the reason I even mention that at all

8 is because, as we're talking about what needs to be

9 done, it might be that the board needs to make it very

10 clear whose job it is to serve subpoenas and all that

11 other kind of stuff.

12 Frankly I think, just jumping ahead a little

13 bit, that we need to all go to the legislature or if

14 we can do this by rule to make it very clear what

15 authority -- it's actually the board that issues

16 subpoenas, correct?

17 MR. ORTIZ: Yes.

18 MR. KING: So -- you know, and right now it's

19 my understanding that the board can issue subpoenas

20 but that they can't -- that those subpoenas cannot

21 include the production of documents.

22 MR. ORTIZ: Right.

23 MR. KING: Correct?

24 MR. ORTIZ: Yes, sir.

25 MR. KING: And so frankly, as we talk about

1 what we need to do, we need to make sure that the
2 board has sufficient authority so that the Attorney
3 General's Office has the tools that they need, so that
4 the Law Enforcement Academy Board staff has the tools
5 that they need to compel attendance at the meetings.
6 Would you agree with that?

7 MR. ORTIZ: Yes, sir.

8 MR. KING: Okay. I think those are all good
9 points.

10 MR. ORTIZ: Okay.

11 MR. KING: Now, did you think about my
12 question about who it is that's got the authority to
13 determine who represents the director?

14 MR. ORTIZ: Well, it's my understanding that
15 the attorney is assigned to the director's office for
16 the prosecution to attend informal hearings and see
17 the whole process through.

18 I hate to say, Mr. King, and I'm just being
19 honest, but your office would drop the ball many times
20 on that, where your attorney would not appear for the
21 informal hearing. And that's why Mr. Holmes and
22 myself would get it done and move it through. All
23 those numbers -- well, I don't want to go into the
24 blame game. I'm sorry. I apologize.

25 MR. KING: No. As a matter of fact, I think

1 that probably what you've done is open the door for us
2 to look at that a little bit. So we'll be taking a
3 look at that.

4 MR. ORTIZ: Yes, sir. Thank you.

5 MR. KING: Thank you, Mr. Ortiz. Any other
6 questions from the board?

7 MR. ORTIZ: I wish you all the best. Thank
8 you.

9 MR. KING: All right.

10 MR. KORN: Mr. King.

11 MR. KING: Yes.

12 MR. KING: I think there's two other
13 witnesses that have come. Mr. Lyon is here and
14 Mr. Radosevich is both here as witnesses to -- they
15 want to testify to the board.

16 MR. KING: I honestly don't have them on my
17 public comment list and I didn't even see that they
18 went out and talked to the press and all those things.
19 I'm still going to call a bathroom break.

20 But if they want to, when we come back, we
21 can do that, or if they want to be involved -- if you
22 want to involve them in the discussion of alternatives
23 for current and future prosecution, you can.

24 But my understanding was that the feeling of
25 the board was bathroom break and then let's talk about

1 resolution. Is that right?

2 MR. KORN: That's fine. I just want to make
3 sure that we're --

4 MR. KING: No. We'll give -- we'll give
5 you -- if guys want to talk -- you didn't sign up.
6 But if you want to talk, we'll try and make that
7 available to you. Ten-minute break.

8 (Break.)

9 MR. KING: We're back in session. Maybe I
10 read this wrong. I'll ask this again. And it will be
11 up to the board. It's my feeling that the board -- I
12 don't have anybody else officially signed up for
13 public comment. I am willing to open up the time for
14 a little bit more, if you want.

15 The next item on the agenda is alternatives
16 for current and future prosecution. I may give folks
17 some opportunity to have input on particular ideas
18 that we have. But my feeling is the board wants to
19 move on to ideas for how to fix this problem. Is that
20 right?

21 MR. KORN: Mr. Chairman.

22 MR. KING: Yes, Mr. Korn.

23 MR. KORN: I believe that there are at least
24 two other members of the public that have come for
25 public comment. I don't know where the list was or

1 why they didn't sign up. But they're here, they want
2 to testify. I for one think they should be allowed to
3 speak.

4 MR. SCHULTZ: And, Mr. Chairman, actually on
5 my way out during the break, I did see a list back
6 there next to the door. And I think there were about
7 nine people who had signed up.

8 MR. KING: You know, that wasn't the public
9 comment side, that was the "we're attending" side. I
10 have the public comment side. And I looked and
11 there's nobody else signed up on that. But it's up to
12 the board. If you guys want to go on with public
13 comment, I'm happy to do that.

14 MR. KORN: They came for public comment.
15 They didn't sign the right list.

16 MR. KING: Okay.

17 MR. KORN: I don't think we should stand on
18 ceremony.

19 MR. KING: Is that what the board wants to
20 do?

21 MR. COON: Mr. Chairman, I make a motion we
22 let some more public comment in.

23 MR. KING: Okay.

24 MR. GRATTON: I'll second that, Mr. Chairman.

25 MR. KING: All right. If I don't see any

1 opposition, we'll just move on. So we're back on that
2 item on the agenda, public comment. So since I don't
3 have a list, I'll just have to say raise your hand I
4 guess. Who is next? Mr. Radosevich.

5 MR. RADOSEVICH: Thank you, Mr. Chairman,
6 members of the board. My name is Mark Radosevich.
7 I've had the good fortune or the opportunity for the
8 past year and a half to serve as a hearing officer on
9 a variety of cases.

10 The first one and probably that had some
11 direction in the way I do things goes to Sheriff Coon,
12 because I had to sit and listen to him and watch him
13 conduct a hearing. So if it's not done correctly, I
14 would ask you to refer to Sheriff James Coon with
15 regard to that.

16 MR. COON: Throw me under the bus.

17 MR. RADOSEVICH: But seriously this has -- it
18 has been a -- it's been a learning and exhilarating
19 experience. It's a process, it's a work in progress.

20 And I certainly recognize that the director
21 and the board are charged with a very awesome
22 responsibility, to ensure that our professional
23 licenses, both as police officers and
24 telecommunicators, reflect the public trust.

25 And I recognize the expectations of the

1 public changes. The oath the officers take is rather
2 sacred to most. And there are a very small percentage
3 of the officers that violate that trust and ultimately
4 come before this board for some type of sanction.

5 But it's been my experience in my career that
6 most, most of the officers that are involved in a
7 disciplinary process are going to be subject to a
8 relatively minor sanction, meaning that their
9 professional license will be -- will not be revoked.

10 So I think that I've tried to keep in mind
11 that I want to move hearings forward relatively
12 quickly, because most of these guys and women need to
13 get back to work. We don't need to penalize them,
14 their family, and the department for an extended
15 period. That discipline should be contemporaneous
16 with whatever act brings them before the board.

17 Now, I want to -- my comments I think need to
18 be prefaced with the fact that my background is
19 primarily from law enforcement and from a criminal
20 background. So I may see things a little bit
21 differently than maybe the defense bar or individuals
22 involved in civil practice.

23 But I would like to see as far as the process
24 goes, and I think we're moving in this direction, is
25 that we have an accurate, detailed investigative

1 report that serves as a substantial basis for the
2 complaint. And I think the chiefs association, the
3 sheriffs and chiefs association, others have worked
4 really hard to get this reporting process in line.
5 And we're seeing some of those results now I think.

6 But we've got to get a timely setting for
7 these hearings, whatever they are. We've got to get
8 that -- it has to be timely. That we've got to
9 identify -- how do I say this right. We need to
10 get -- we need to identify the proper people, the
11 witnesses, and the evidence that is actually going to
12 be presented at these hearings. And certainly notice
13 needs to be given, they have to be prepared to present
14 that testimony.

15 The cases need to be held as scheduled. And
16 I've got to compliment the board in giving me that
17 direction on no more continuances. Once it's set,
18 we're moving these things forward. And I think that's
19 made my job a whole lot easier.

20 I'm more accustomed to a more organized
21 aggressive presentation by the state when it comes to
22 the prosecution, including witnesses that have some
23 firsthand knowledge or information regarding the
24 offenses. That agency investigation complemented by
25 the academy's investigation I think is exceedingly

1 important to what we're doing.

2 Now, I recognize these proceedings differ
3 from a criminal trial. But I do believe that the bar
4 is higher, and it should be higher. We're dealing
5 with an individual's professional license, their
6 career.

7 So I recognize the civil standard is just a
8 preponderance of the evidence. But I think for these
9 professional licenses, it's incumbent upon me to delve
10 a little bit deeper, to give you the information you
11 need to make the decision on that particular license.
12 And I think that's important.

13 Now, there is a backlog of cases. I don't
14 know how many. I don't know the reason. But I do
15 suspect that it has something to do with the rule,
16 because I've worked closely with Zack to make time
17 available literally each week to conduct hearings.

18 But they seem to come in spurts. Rather than
19 one hearing a week, we have like four or five
20 scheduled this week as opposed to one per week. And
21 that may be a function of the rule and the timing that
22 I think we need to take a look at.

23 Now, I've come across a couple instances that
24 I think the board needs to consider how they should be
25 dealt with. Occasionally the board has sanctioned

1 officers and they're on probation, yet we get a second
2 or subsequent violation that -- I think that there
3 needs to be some expedited process so that we can deal
4 with these limited but serious cases when they come up
5 like that.

6 And I will say, in this year and a half that
7 I've been doing these hearings, I've had the
8 opportunity to spend a lot of time with staff. I
9 think everyone from the academy has been extremely
10 helpful and courteous to me to facilitate these
11 hearings, to make things happen. It's been
12 tremendous, I couldn't ask for anything more.

13 Mr. Chairman, your staff from the Attorney
14 General's Office, while they may not agree with my
15 decisions or the way I want to do things, they've been
16 professional, they've been receptive to my suggestions
17 on how things should go. I think with time everybody
18 kind of moves together and we kind of follow that
19 path. But I do have to express my appreciation for
20 that.

21 Now, I think we all look at things through
22 our own window based on our own experience and the way
23 we see things. I see a real need to get the hearings
24 to be a little more structured, a little more
25 aggressive in the presentation of their evidence, and

1 the timing is critical.

2 I think there is a need for some rule changes
3 to facilitate some of this. And it's not going to
4 happen overnight. But I think it's necessary. I
5 think, if we just look around the room and take a look
6 at the media, there are issues that the public is
7 concerned with. And this board is charged with
8 dealing with those.

9 To the extent that you'll allow me, I want to
10 be part of the solution and working on those changes
11 in the rules, changes in the way things are done. The
12 guidance that I need from the staff attorneys on how
13 the reports should be prepared, the format that you
14 want, and the content and the evidence that I'm
15 expected to get or to listen to is critical.

16 And there may be a difference of opinion
17 between what I think is necessary and sometimes what
18 might be presented. And I would ask you just to think
19 about a couple of these.

20 I don't think it appropriate that I submit a
21 report to you that is simply based on an unverified
22 synopsis or an agency report attached to an LEA-90 and
23 the respondent's testimony against himself. I think
24 there's probably more to a prosecution on someone's
25 professional license than that.

1 I know there are times when maybe that's all
2 there is. And we'll work -- we'll do with it as we
3 can. But there's another situation that is not -- has
4 not been addressed formally. And I use this
5 opportunity only to mention it.

6 I think the public looks at this board, that
7 when an individual's license is revoked or more
8 appropriately suspended for any period of time, when
9 that individual returns to work, that he or she
10 currently meets the standards set by this board. That
11 you take an individual that has had a long-term
12 suspension -- and this would be a good time.

13 Someone has been on administrative leave for
14 six or eight months, gets a lengthy suspension, comes
15 back to work in June. I'd have to ask you, when
16 they've gone to a new department, have I done my job
17 and made the recommendations to you to make sure that
18 their biennium training is current or is that new
19 chief that's hiring them, saying this is Mark's
20 recommendation, the board approved it, no idea on the
21 training.

22 I have yet to make a recommendation to you
23 that involves an instructor's certificate where
24 people's licenses are suspended, yet their
25 instructor's certificates are still valid and they're

1 using them. Guidance in that area is appropriate.

2 Individuals in the area of DWI, where they
3 were not convicted but their license had been
4 suspended, I'm not getting evidence to show or to let
5 you know this individual's license is now suspended
6 for two years, yet we're giving him his license back.

7 The minimum requirements for initial
8 certification requires a driver's license. These are
9 things that I am not gathering in the hearings. And I
10 am not giving them to you in my reports. And I think
11 that that may be something that I need some guidance
12 on in the future, because I do want to give you the
13 information you need in order to render an effective
14 decision. Thank you Mr. Chairman, members of the
15 board.

16 MR. KING: Hang on a second. Questions.

17 MR. KORN: I have a question.

18 MR. KING: Mr. Korn.

19 MR. KORN: Mr. Radosevich, please --

20 MR. RADOSEVICH: I have -- time on the range.

21 MR. KORN: That's why I stood over there,
22 because I tend to be very quiet. When you indicated
23 that you're more accustomed to an aggressive organized
24 presentation -- well, let me back up. You've been a
25 hearing officer for a year and a half?

1 MR. RADOSEVICH: About a year and a half,
 2 sir.
 3 MR. KORN: During that year and a half,
 4 Mr. Jackson has been the sole prosecutor before you?
 5 MR. RADOSEVICH: Yes.
 6 MR. KORN: So when you say you're more
 7 accustomed to an aggressive organized presentation,
 8 are you talking about the presentations of
 9 Mr. Jackson?
 10 MR. RADOSEVICH: What I'm talking about is --
 11 what I'm talking about is my experience in the
 12 courtroom, primarily criminal. That a very structured
 13 aggressive presentation, that either the evidence is
 14 completely presented or basically the defendant, if
 15 you will, is found not guilty or released.
 16 What I have done in the hearings that I have
 17 conducted, when I didn't think the evidence was fully
 18 presented, I have taken a fair amount of time asking
 19 questions of the respondent or the witnesses that
 20 might be there, which would be foreign to what I've
 21 seen in a criminal court.
 22 MR. KORN: So what you're saying is when you
 23 say more accustomed to an aggressive organized
 24 presentation, does Mr. Jackson give you an aggressive
 25 organized presentation?

1 MR. RADOSEVICH: If I were -- if I were
 2 structuring a hearing or I was presenting it, I would
 3 probably do it in a little different fashion.
 4 However, I do think that his presentations have been
 5 consistent from the very first hearing that I
 6 observed, from what I have seen.
 7 I'm just accustomed to something a little
 8 different. But it's in a different arena. I would
 9 like to see -- if I were in charge, I would like to
 10 see that move more towards the criminal style.
 11 MR. KORN: There was one hearing that you
 12 presided over last Friday by Mr. Jackson?
 13 MR. RADOSEVICH: Yes.
 14 MR. KORN: That was one of the five
 15 criminal -- one of the five matters that I said were
 16 up for December. And you were the hearing officer
 17 last Friday?
 18 MR. RADOSEVICH: Yes.
 19 MR. KORN: Did Mr. Jackson present any
 20 witnesses?
 21 MR. RADOSEVICH: The only witness that was
 22 there was the respondent himself.
 23 MR. KING: Let me -- before you go further on
 24 that, I mean I gather that that's something that will
 25 come in front of the board -- I gather that that's

1 something that will come in front of the board at some
 2 point in time?
 3 MR. RADOSEVICH: Yes.
 4 MR. KING: It's not clear to me that we
 5 should continue discussing the individual.
 6 MR. KORN: Oh, it's only that one question,
 7 whether or not there were any witnesses that
 8 Mr. Jackson presented at the hearing. The answer is
 9 no, he didn't present any witnesses.
 10 MR. KING: That's sufficient I think. You
 11 don't have to go further.
 12 MR. KORN: That's all I have for
 13 Mr. Radosevich. Thank you.
 14 MR. KING: Other questions for
 15 Mr. Radosevich? Okay.
 16 MR. RADOSEVICH: Thank you, Mr. Chairman.
 17 MR. KING: Go ahead.
 18 MR. LYON: Good evening.
 19 MR. KING: Go ahead. Introduce yourself.
 20 MR. LYON: Tom Lyon, former director of the
 21 New Mexico Law Enforcement Academy. I was appointed
 22 in August of 2003, retired in August of 2006. I think
 23 the only two members on the board back then was Chief
 24 Ray Schultz and Zachary Shandler as the attorney for
 25 the board.

1 All I wanted to do is I saw this in the paper
 2 the other day. I said they're still having a backlog
 3 problem. When I got there, we had 180 to 200 reports
 4 that we were backlogged on. I remember telling myself
 5 what did I get myself into. And I started looking at
 6 the stuff.
 7 First went to the Attorney General's Office.
 8 And the one thing they told me back then was, oh, this
 9 guy will never be in law enforcement again, don't
 10 worry about that case. This guy will never be in law
 11 enforcement again.
 12 MR. KING: That was prior to my service.
 13 MR. LYON: Yes, it was. Oh, yes, it was,
 14 sir. Back then. And I thought so, Matt, we still
 15 need to close this case. I started going through the
 16 database and looking at how many officers are still
 17 working that we had pending discipline on.
 18 And we started handling them. But I must
 19 admit, the Attorney General's Office back then, very,
 20 very slow. And I was learning. So after a couple
 21 months, I said we're not getting anything out. You'd
 22 take them over and it seemed like it was sat on.
 23 Chief Schultz, what he said earlier, back in
 24 about 2005, things started really rolling good. But
 25 what I found out what worked good for us was starting

1 to look at this, take into consideration what type of
2 disciplinary action did the agency take on this
3 person, whether I can go retroactive, or as the case
4 with some agencies, they just wanted us to be the ones
5 to be the bad guy and they wouldn't take any action.

6 And if no action was taken, then, okay, you
7 know what, I will put the hammer down and I will take
8 some action. But it was up to me. I read every case
9 along with Mr. Holmes. I don't know of one case he
10 didn't investigate. I was very fortunate to have him
11 on the staff.

12 But we went into what we call stipulated
13 orders of agreement. And I could deal with the
14 officers on that manner. And when it comes into
15 continuations, of course, what I have to do is get a
16 continuation from him, because I couldn't get this
17 thing done until I went to the board and made the
18 recommendation to the board and the board to approve
19 it.

20 So we would get our continuations. But we
21 could handle a lot of cases that way and get these
22 continuations. Most -- the majority of these cases
23 were handled by stipulated orders of agreement. Not
24 many went to a hearing.

25 I shouldn't say not many. But there were

1 those that went to the hearing. But when they did,
2 then it was out of my hands. And we let the attorney
3 handle it that was the attorney at that time.

4 I just encourage these stipulated orders of
5 agreement, if they're appropriate. I will admit we
6 had some people -- I had cases ten years old that were
7 never acted on.

8 In large part I'm going to say the director
9 at that time -- before me and at that time and the
10 Attorney General's Office said, well, they'll never be
11 in law enforcement again, don't worry about it. We
12 did close those cases. I wanted to leave it better
13 for my -- whoever followed me, which is Art Ortiz. I
14 know he wants to leave it better for the next guy.

15 And when I saw this backlog again, I just
16 thought about, man, poor Bill Hubbard. You know, I
17 hope that I can help in some manner to say how can we
18 make this, you know, go along. And these stipulated
19 orders of agreement are very easy for the director to
20 do.

21 Take it to the attorney and say, you know,
22 this is what I'm going to do, this is what I have
23 worked out, can you draw up the Notice of Final
24 Decision that's acceptable on this informal
25 resolution. I'm just trying to get with this board

1 and encourage that. I think that will work good when
2 revocation is not necessary.

3 What did happen to me, I had some people that
4 had action taken on them, the case was two years old,
5 exposing themselves to secretaries. I talked to the
6 guy. Why did you do that. You know, they kept
7 telling me, you know, show it to me, show it to me. I
8 just couldn't take it no more so I did.

9 Well, here it is two years later. I got the
10 case pretty late. And as a matter of fact, it wasn't
11 even during my time, it was one I inherited. He's
12 hired by another agency, got promoted to sergeant.
13 Yeah. Should he be there?

14 And my thought was, if this guy gets some
15 lady, arrests them, has them in the back seat, and
16 that lady offers him something, does he have the
17 ability to say no when he said I couldn't take no more
18 from those secretaries. And my job is to ensure
19 public safety.

20 Well, I think these things -- you know, as
21 far as public safety, I get into that thing. They
22 need to move them along. And it was an honor to be
23 director. I have utmost respect for the King family
24 and for you, Mr. Attorney General.

25 I would like to say one more thing. And I

1 talk about precedents or perception. I'm in here,
2 sitting over here. And what I've done all my life
3 that's made me successful in the criminal justice
4 system, working at the penitentiary after the riot,
5 dealing with criminals that know how to manipulate,
6 you have to have a good demeanor. Good demeanor,
7 professional demeanor. That's what will make us
8 successful.

9 I'm just over here -- well, I have no idea.
10 I've never met you, sir, before, Mr. Korn. But you're
11 up here it seems like trying to get a thing. I've
12 seen your demeanor. 100 percent to the positive.

13 But as I'm here and I'm just looking over
14 here, and I know he's not here no more, that -- what
15 was his name, Zucoff? How do you say the -- Fuqua.
16 You're there and all it was was smiles. Like this is
17 a joke.

18 MR. KORN: By me?

19 MR. LYON: No. By him.

20 MR. KORN: By Mr. Fuqua.

21 MR. LYON: And I could -- I could see that.

22 And I just want to make one thing -- perception.
23 Let's be -- how do we say it, the perception really
24 kind of hit me with a bad spot.

25 And the reason I bring that up, I was -- as

1 director one of my bureau chiefs went out to Otero
2 County and said that Tom Lyon is nothing but a
3 political hack. That sheriff talked to me and said,
4 you know what, if that person is going to talk about
5 you like that, how is that person going to treat
6 cadets.

7 Well, if this person is going to laugh at
8 this, how is he going to go with these proceedings.
9 And I just bring that up, that perception, the camera
10 is always on us. And we've got to be professional. I
11 leave it with that. Thank you.

12 MR. KING: Thank you, Mr. Lyon. Not exactly
13 an explanation, but Mr. Fuqua's wife just had a baby
14 ten days ago. And he might be lacking a certain
15 amount of sleep. But you know what, I'll pass that
16 along to him, because I think it's a valid point, that
17 we all should be cautious of what our demeanor is.

18 MR. LYON: Thank you, sir.

19 MR. KING: I didn't ask for questions. Any
20 questions? We're ready to move forward? I think
21 actually both of those presentations were excellent to
22 get us started on the discussion of what it is that we
23 can do. Having said that, at least my understanding
24 was that Mr. Shandler had some sort of recommendation
25 about language.

1 But I'm happy to first off recognize any of
2 the members of the committee. If you have comments or
3 statements or whatever or if you want to -- if you
4 think it will move us forward to have Mr. Shandler
5 present what it is that he had in mind, I'm okay with
6 that too.

7 MR. KORN: Just so I understand where we are
8 in the program, are you asking for more comments on
9 agenda item -- whatever agenda item we're on now,
10 which is public comments?

11 MR. KING: Oh, no. I'm sorry. I assume that
12 we're done with public comments. So I should make
13 that very clear.

14 MR. KORN: So have we moved on to the next
15 agenda item?

16 ITEM NO. 6: ALTERNATIVES FOR CURRENT AND FUTURE
17 PROSECUTION

18 MR. KING: We're moving on to item No. 6,
19 alternatives for current and future prosecution. And,
20 Mr. Korn, I have your name next to this. But like I
21 said, I'm asking the question. It sounded like
22 Mr. Shandler had some ideas. But if you want to -- if
23 you want to go first, Mr. Korn, go ahead.

24 MR. KORN: Well, I respect Mr. Shandler's
25 ideas. But it was my agenda item. I would like to go

1 first, yes.

2 MR. KING: Oh. Well, basically I said that
3 any of the committee members that wanted to go first
4 had priority.

5 MR. KORN: Thank you. If I may,
6 Mr. Chairman, can I approach the podium.

7 MR. KING: Please.

8 MR. KORN: If I may, Mr. Chairman, members of
9 the board, agenda item six is alternatives for current
10 and future prosecution. And I've taken the liberty,
11 since I made the agenda items, to perhaps get a frame
12 of conversation. And I identified the four items that
13 I thought would be germane to the conversation.

14 So obviously the very first question so that
15 the board, when it votes in the next agenda item can
16 be well informed, would be to Mr. King. And the
17 question is just real direct.

18 Would Mr. King, as the head of the Attorney
19 General's Office, assign Bill Moon to take over the
20 cases if the board has no faith in the prosecution of
21 Mr. Jackson for the rest of the December cases?

22 MR. KING: And the answer is probably pretty
23 much the same answer as I gave you before, which is I
24 think that it's inappropriate for the board to direct
25 what lawyers are assigned from the Attorney General's

1 Office.

2 I think that it's appropriate for the
3 executive director in an attorney-client privileged
4 way to sit down and talk with -- either with me as the
5 Attorney General or with any of the attorneys that are
6 assigned to represent him and request those kind of
7 things. I think that we have said publicly that I am
8 going to assign Mr. Moon to do cases.

9 I think that it is within the purview of the
10 Attorney General and the executive director to make a
11 determination as to who gets assigned to any
12 particular case and that it would be inappropriate for
13 a judge or a hearing officer or the board who sits as
14 hearing officer to direct that a specific attorney be
15 appointed to a case.

16 MR. KORN: Well, the board serves as hearing
17 officer. But the board also sits as the determination
18 of what the academy program would be and also in terms
19 of the way the prosecutions will be. So the board
20 employs the director. And the director is our member
21 of our board. He's the secretary of our board. So
22 the board and the director are synonymous when it
23 comes to the prosecution of the cases.

24 So without beating around the bush, sir, I'm
25 simply asking you, whether it comes from Mr. Hubbard,

1 who is the acting director, or his successor, if he's
2 not appointed permanently, or me as a board member,
3 I'm simply asking you, sir, all we're asking is if the
4 board determines a lack of faith in Mr. Jackson, will
5 you assign Bill Moon the four cases that he now has
6 remaining?

7 MR. KING: If the board makes a
8 recommendation that they'd like to have a different
9 attorney, then the Attorney General's Office will take
10 that under due consideration and we will make an
11 appropriate decision.

12 MR. KORN: Okay. And I'm sorry because I --
13 I have to apologize. I'm just not a politician and I
14 don't know how to -- I mean in my world you ask a
15 direct question, you get a direct answer.

16 Without beating around the bush, will you
17 just appoint Mr. Moon. I mean you've got him going
18 there anyway. It's four hearings. If the board votes
19 no confidence, will you just say yes, sir, please.

20 MR. KING: Actually what I'm telling you is
21 that it's inappropriate to have this discussion about
22 where the board would direct the Attorney General as
23 to what attorney, any specific attorney they would
24 assign to do a case. And so you can ask the question
25 if you like. I have my own ethical obligations as the

1 Attorney General.

2 MR. SCHULTZ: Mr. King, if I may. I'll make
3 a motion we table item No. 6 and we move to item
4 No. 7.

5 MR. KORN: I would second that.

6 MR. GRATTON: I will second that.

7 MR. KORN: That's a great idea.

8 MR. KING: All right. There has been a
9 motion to move from item No. 6 to item No. 7, board
10 actions regarding upcoming hearings, affected cases,
11 et cetera. All in favor say aye.

12 (Those in favor so indicate.)

13 MR. KING: All opposed no. I'm going to show
14 a no. So far up until this point, we've actually had
15 some fairly good discussion on what needs to be done
16 and such. I will renew my concern about discussions
17 that might have violated the Open Meetings Act,
18 because this obviously is something that's been
19 discussed amongst various board members not including
20 the chairman.

21 MR. KORN: Is the chairman making an
22 accusation against board members?

23 MR. KING: I said I raised a concern about
24 whether or not there are discussions that might have
25 occurred that might violate the Open Meetings Act.

1 MR. KORN: What is your -- what is your
2 concern?

3 MR. KING: Well, it appears that there has
4 been enough discussion amongst the board members to
5 create these documents and the fact that there was a
6 quick motion after -- after the first question that
7 said, you know, will I guarantee you that I'll assign
8 a certain lawyer to prosecute a particular case.

9 And so there certainly is circumstantial
10 evidence to indicate that there have been sufficient
11 discussions to decide that there won't be any
12 opportunity for me or for anybody from my staff to
13 talk about other alternatives that are useful.

14 MR. KORN: Sir, I think the motion came from
15 Chief Schultz. And I don't know -- I can't speak for
16 him. But I think he felt as I felt, that you were
17 dancing more than Baryshnikov was dancing around the
18 whole issue.

19 So rather than belabor it, he -- he
20 apparently knew what the next agenda item was. I
21 prepared all these things without board involvement.
22 I thought it would speed the review of this along.

23 Nobody prior to my passing them out now knows
24 the things that are on these documents. And I --
25 frankly I resent the fact that you're accusing me of

1 going outside the Open Meetings Act. I resent that.
2 It's untrue.

3 MR. KING: Well, I'm just noting my concern
4 for the record, Mr. Korn.

5 MR. KORN: Thank you, sir.

6 MR. SHILLING: Mr. Chairman.

7 MR. KING: Yes, Chief.

8 MR. SHILLING: For the record I would like to
9 go on record saying that I've never had any
10 discussions with anyone about these agenda items. And
11 so, you know, the floating of the Open Meetings Act
12 concern there, I'm going to go on record and say I
13 didn't violate the Open Meetings Act concerning these
14 agenda items.

15 MR. KING: Good. You know what, and I'm
16 actually not at a point where I'm going to ask each
17 and every one of you to tell me what all of your
18 discussions were with Mr. Korn or with Mr. Ortiz or
19 any other folks that might be here.

20 But I just -- frankly in this case I just
21 want to let you know, because if you take an action
22 that violates the Open Meetings Act, it's void from
23 its inception. So I'm just encouraging you all to
24 understand that we have -- we've been here for three
25 hours, at which point we've had a lot of opportunity

1 which I've made available for discussion from
2 everybody that Mr. Korn wanted to have discussion.

3 And now we're moving on to items which are --
4 you know, it's up to the discretion of the board to do
5 that if you want to. I'm merely pointing out the --
6 that the appearance is it's something that strikes me
7 as a little hinky. So if everybody is comfortable
8 with that, then I'm ready to move forward.

9 ITEM NO. 7: BOARD ACTIONS REGARDING UPCOMING
10 HEARINGS, AFFECTED CASES, PINO, RELATED MATTERS

11 MR. KING: So the next item on the agenda is
12 board actions regarding upcoming hearings, affected
13 cases, et cetera. And, Mr. Korn, that's your item as
14 well. So please proceed.

15 MR. KORN: Thank you, Mr. King. The first
16 item I thought in this agenda items would be for the
17 board to decide whether they may agree with me that
18 Mr. Jackson should be relieved from future
19 prosecutions for the remaining cases he has in
20 December.

21 So for that I would start this off by making
22 a motion to suspend all hearings in December that are
23 going to be prosecuted by Mr. Jackson.

24 MR. KING: Okay. I have a motion. Is there
25 a second? I actually think that that's probably

1 within the purview of the board to decide.

2 MR. COON: I'll second.

3 MR. KING: Okay. Second by Sheriff Coon.
4 Any discussion? Seeing none, the secretary will call
5 the roll.

6 MS. LOPEZ: Attorney General Gary King.

7 MR. KING: I think usually the chair goes
8 last.

9 MS. LOPEZ: Chief Robert Shilling.

10 MR. SHILLING: Yes.

11 MS. LOPEZ: Sheriff Coon.

12 MR. COON: Yes.

13 MS. LOPEZ: Chief Betz.

14 MR. BETZ: Yes.

15 MS. LOPEZ: Chief Schultz.

16 MR. SCHULTZ: Yes.

17 MS. LOPEZ: Mark Myers.

18 MR. MYERS: Yes.

19 MS. LOPEZ: Nate Korn.

20 MR. KORN: Yes.

21 MS. LOPEZ: John Gratton.

22 MR. GRATTON: Yes.

23 MS. LOPEZ: Attorney General King.

24 MR. KING: No. So I show by a vote of six in
25 the affirmative and one in the negative that the

1 motion to suspend hearings in December being
2 prosecuted by Matt Jackson passes. Am I right, six?
3 Seven? Sorry, I missed a vote. That was item No. 1.
4 Mr. Korn.

5 MR. KORN: Sir, having resolved that, then
6 items No. 2 and 3 go to the heart of the matter, which
7 is if Gary King will assign Bill Moon to prosecute
8 Jackson's cases, when will he begin on that? And so I
9 would pose that to you.

10 MR. KING: Let me -- here is one where I
11 may -- you know, you guys have taken the action. So I
12 can probably be a little more effusive about what
13 we'll do. Obviously I'll assign another attorney to
14 do this right away.

15 The attorney who has been sitting here in the
16 room -- actually I don't see him around right now.
17 Mr. Moon has been sitting and watching this hearing so
18 that he can be up to speed as quickly as possible. So
19 it is most likely that I will appoint Mr. Moon.

20 I believe that it probably is within my
21 purview, I'm not sure whether all of you agree with
22 this or not, that if I have another attorney who is
23 available and has the same general qualifications as
24 Mr. Moon, that I don't understand why the board would
25 want to direct that I appoint a specific attorney when

1 there may be other attorneys -- actually, as a matter
2 of fact, I think several of you said that you thought
3 I ought to appoint my best prosecutor.

4 Actually I guess Mr. Ortiz said that. So I
5 would like to reserve the opportunity to look in my
6 prosecutor corp and see who I think would be the
7 appropriate attorney to do this.

8 And I continue -- I will express once again
9 my concern that it is not appropriate and might very
10 well cause reversible error for the board to direct
11 what attorney by name is going to prosecute this case
12 or any of these cases.

13 MR. KORN: Mr. King, I think out of respect
14 to you, Mr. Ortiz didn't express all of the things
15 that he was going to say, because everybody has a
16 great deal of respect for you. But there have been a
17 succession of attorneys from the Attorney General's
18 Office who have not met the standards that I think
19 other people have expected them, including, of course,
20 myself.

21 When we heard the name Bill Moon, and I spoke
22 to him and learned of his background and his zeal to
23 prosecute cases, without ever having met the man
24 because if he's been in this room, I certainly didn't
25 meet him, I feel as if he's someone who we should

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1 seriously consider. So I would encourage you to make
2 Mr. Moon available so that his matriculation into our
3 board can be steadfast and regular.
4 MR. KING: Well, and actually I think it
5 would be appropriate for all of you to recommend that
6 he would be a good attorney. I just don't think that
7 it's appropriate for you to demand that I tell you
8 that he's going to be the attorney.
9 MR. GRATTON: Mr. AG, is it appropriate then
10 that we make a motion that we recommend that Mr. Moon
11 or someone with his qualities would be appointed to
12 take over.
13 MR. KING: Absolutely.
14 MR. GRATTON: If that's okay, I will make
15 that motion. Is that okay, Mr. Korn?
16 MR. KORN: Yes, thank you. I would second
17 Mr. Gratton's motion.
18 MR. KING: Okay. We have a motion and a
19 second that the committee would recommend to the
20 Attorney General's Office that they assign Bill Moon
21 or an attorney that's equally qualified to prepare
22 these cases. I'm not sure that won't take a voice --
23 or that we can't do that one on a voice vote. All in
24 favor say aye.
25 (Those in favor so indicate.)

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1 MR. KING: Any opposed. Okay. That one
2 passes unanimously. Okay. Mr. Korn.
3 MR. KORN: Thank you, sir. So the next item
4 is item No. 4, having already decided that the
5 hearings in December will not be done by Mr. Jackson,
6 that raises a question whether the succeeding attorney
7 will have enough time to get prepared.
8 Because some of these cases have a time frame
9 that had to be relatively quick to meet our rules, I'm
10 concerned about the time rules. Not only on those
11 four cases, but also on all the cases that have been
12 identified. And we haven't heard -- we haven't heard
13 from Mr. Holmes who has prepared along with Monica
14 Medrano all of the cases that are backlogged.
15 But concerns about cases that are backlogged,
16 I have concerns about the four cases, whether we'll
17 meet our deadlines. And I think in the interest of
18 justice, there is no hearing that we should lose, that
19 falls because of timelines because of all the issues
20 we have raised today. So my motion would be to extend
21 those times.
22 And one of the times in particular is a case
23 that I've had a process of handling. That's a case
24 that may go back to the board, and that's Mr. Pino
25 that I put down there. And in regard to Mr. Pino, as

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1 a hearing officer, I decided that case four days after
2 30 days.
3 I did that because I was reviewing the
4 evidence ad nauseam to make sure -- to see if I could
5 find a notice of identification. So even in that one
6 I would ask the board to amend its rules to allow
7 that. There's no error that goes to Mr. Pino since it
8 will still be decided in our January hearing.
9 So the motion would be one in regard to
10 extending Mr. Pino's time for the hearing officer's
11 resolution, extending the time for every hearing that
12 Mr. Jackson is currently doing, and also extending the
13 hearing on every matter that is before the board, both
14 for the prosecution and the defense in the interest of
15 fairness, so that we have a time to examine every case
16 to avoid it from being lapsed.
17 MR. SHANDLER: I'm going to interrupt.
18 MR. KING: Let me -- can I --
19 MR. SHANDLER: This is important.
20 MR. KING: We have a lot of questions. And
21 I'm going to -- first I'm going to ask Mr. Shandler if
22 we've got authority to do that.
23 MR. SHANDLER: You don't have authority to do
24 that.
25 MR. KORN: Yes, we do.

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1 MR. SHANDLER: No. You're wrong on the law
2 on that. Okay. Specifically --
3 MR. KING: Can you get close to a microphone,
4 Zack, because I think everybody on the committee needs
5 to hear that.
6 MR. SHANDLER: When someone requests a
7 hearing, they have a certain deadline under the rule
8 to get access to a hearing. And you'll find in your
9 packet I have prepared a sheet anticipating this might
10 happen, laying out the timelines and the deadlines.
11 So I'd like you to look at this ten-point
12 sheet here. We can work through resolution. But
13 let's make sure that you don't lose cases here.
14 So hearings under board rule, which is
15 equivalent to a law, "shall be conducted within 90
16 calendar days of the date of the filing of the request
17 for hearing." If the officer wants to waive that,
18 that's -- they can.
19 But the board can't tell the officer, no,
20 we're extending your time, you're not going to get
21 your 90 days. And if the board goes ahead and does
22 that, and you're free to reject my advice, I'm telling
23 you, you will lose that case in court.
24 Any judge will say you violated this person's
25 right to have a timely hearing. So I think you have

1 to start with that principle there.
 2 On the chart here, you'll see the four cases
 3 that are currently scheduled for December. Okay. The
 4 board has made the motion to provide the process that
 5 those would be I guess cancelled for the time being.
 6 So we go to item No. 3.
 7 I've laid out the request for hearing dates
 8 in the 90-day period. The one that immediately
 9 catches my attention is the first one there,
 10 Rodriguez. He has to have a hearing before Sunday,
 11 January 8, which is going to fall on the Friday before
 12 the 6th.
 13 Hearing Officer Radosevich has calendared --
 14 is ready to calendar that for you. So in terms of
 15 Rodriguez, you can go ahead and still schedule a
 16 hearing in front of -- on January 6th. Hopefully
 17 that's sufficient time for this new prosecutor to come
 18 on and do that case. That will still meet the 90-day
 19 deadline. That won't be an appealable issue.
 20 The other cases, you'll see the other dates
 21 where the 90 days extends. Mr. Radosevich and I -- I
 22 can schedule those before those late January and
 23 February dates. These hearings won't get to you at
 24 the January meeting but could likely get to you at the
 25 springtime meeting.

1 And that's my point in bullet No. 4, that
 2 there are some ramifications. Even moving some of
 3 these hearings to January means that some of them
 4 won't be on the January meeting agenda. And also once
 5 a hearing is complete, under board rules which is
 6 equivalent to a law, the officer is entitled to a
 7 hearing within 90 days. That's jurisdictional. You
 8 can't extend that or you lose that case. There's case
 9 law on that.
 10 So if the director requests a continuance
 11 based on the instruction today in the above hearings
 12 and the Rodriguez hearing is held on January 6th,
 13 Rodriguez is entitled to a board decision, a board
 14 meeting no later than April 5th.
 15 So there's kind of two things to think about.
 16 One, meeting those deadlines. And also it impacts the
 17 scheduling of your springtime meeting. It can't be
 18 past I think that April date.
 19 Now, I toyed in No. 6 about moving the
 20 January meeting back to the 30th, which would allow
 21 Mr. Radosevich time to maybe here all these hearings,
 22 because he's capable of doing two a day on Fridays,
 23 and allow him to do his hearing officer's report,
 24 allow the parties ten days to objections.
 25 So I had suggested moving the January meeting

1 back to the 30th. But that's run into a snag, because
 2 the meeting on the 17th is scheduled for a public
 3 rulemaking. And that's already been noticed.
 4 And I don't have permission from Ryan who I
 5 think is the one presenting, it's the telecommunicator
 6 rule that he's been working on and presenting. So I
 7 don't have permission from him to say can you move
 8 that hearing. I don't think we have enough time to
 9 notice the public hearing and moving it to the 30th.
 10 We might have two days to do that, but I'm not sure.
 11 MR. KING: Let me ask something real quick,
 12 Zack, because I don't know if you've thought about
 13 this or the board has. But can we just have two
 14 meetings in January? We're having a meeting in
 15 December that was only scheduled three days ago.
 16 MR. KORN: If I can interject, Mr. Chairman,
 17 because Mr. Shandler took my spot. Mr. Shandler is
 18 saying that we can't make adjustments to the rules.
 19 And he's wrong.
 20 And while I appreciate that he's the attorney
 21 assigned by the Attorney General to our board, I don't
 22 appreciate his advice. And I think he's incorrect.
 23 Rather I would point Mr. Shandler to the rule itself.
 24 The rule says in two places that the board has the
 25 right to change the times.

1 In one place it says "Extensions of time
 2 shall be granted at the discretion of the hearing
 3 officer or the board," and that's talking in terms of
 4 times reflecting the proceedings for denial.
 5 And in another space it says "In regard to
 6 the regulations," and this is in our rules equivalent
 7 to law, subsection F, that says "the board may alter
 8 and amend these regulations from time to time as it
 9 deems necessary."
 10 Our timelines are part of these regulations.
 11 We can amend them from time to time as we deem
 12 necessary. And it goes on to say "Alteration or
 13 amendment of these regulations may be accomplished by
 14 a majority vote of the board."
 15 So we can easily vote and not have to go
 16 through these dense manipulations that Mr. Shandler
 17 has done, we don't have to do two meetings. What we
 18 really need to do is sit back, give ourselves a little
 19 time to analyze where we are, figure out -- give
 20 Mr. Holmes and Ms. Medrano time to figure out what
 21 cases are in jeopardy, and at that informed time which
 22 would be at our January meeting, we can then
 23 understand where our cases lie, what's in jeopardy,
 24 and then make decisions from there.
 25 I go back to my original motion where I say

1 the board should extend time on all the matters so
2 that we don't risk losing any cases and so we can see
3 in a plenary way what's available. And while that's
4 going on, hopefully you'll be assigning Mr. Moon who
5 can get his arms around the cases and report to us in
6 the January meeting, unless he sets up times before
7 that.

8 MR. KING: We're on that item of the agenda
9 and actually on that item on the motion, discussion of
10 the motion. I recognized Mr. Shandler. Mr. Shandler
11 discussed the motion. I actually didn't recognize
12 you, but I didn't stop you.

13 MR. KORN: I'm sorry. You're correct.

14 MR. KING: So you're welcome to discuss the
15 motion as well. We're still on that item, discussion
16 of the motion. Anybody else have any questions with
17 regard to the motion?

18 I'll weigh in this far. Mr. Shandler, as
19 Mr. Lyon said, has been representing this board for
20 many years and is pretty knowledgeable about
21 administrative law. I don't know that Member Korn in
22 his resume that he gave us talked very much about
23 administrative law.

24 I have grave concerns about his statement
25 that the board has enough authority to willy-nilly

1 extend time limits in cases that are set and in
2 process already. I think that it probably is true
3 that, if we wanted to change time limits to apply to
4 new cases coming in the pipeline, to make them 120
5 days instead of 90 days or something, that we have
6 enough authority to do that.

7 You all will have to decide how much risk you
8 want to take on these cases. But I have found
9 Mr. Shandler's advice to be pretty capable advice on
10 issues of administrative law.

11 MR. SHILLING: Mr. Chairman.

12 MR. KING: Yes.

13 MR. SHILLING: Can I ask you a question,
14 because you said -- we deal with NMAC all the time as
15 well, about the amending of it and it requiring public
16 meetings and stuff. But I was unaware of the language
17 contained right in our NMAC rule that allows for that.

18 So on one hand you say we could conceivably
19 day forward change the rules right here, but anything
20 that's currently in the pipeline we would be at
21 jeopardy, which I kind of understand because those
22 came in the pipeline under that rule that's in
23 existence today.

24 But at the same time, I'm compelled by
25 Mr. Korn's argument that -- and your argument that if

1 we can change them for day forward cases, why can't we
2 change them given the -- is there any -- is there any
3 clause anywhere for emergent circumstances?

4 MR. KING: My gut -- yeah. Chief, my gut
5 feeling is that it's that due process thing again.
6 But, you know, I'm happy, I -- I actually have a bunch
7 of lawyers here. And if I'm wrong, they can correct
8 me if I'm wrong.

9 MR. LAMA: Mr. Chairman.

10 MR. KING: This is my chief deputy, Al Lama.

11 MR. LAMA: There is New Mexico case law that
12 talks about process as related to rulemaking. The
13 board cannot waive a rule. It has to go through a
14 rulemaking process if they're going to change a rule.

15 So I have serious concerns about adopting a
16 provision in a rule that allows for the board to
17 consider rule changes, because that still requires you
18 under New Mexico law to go through a notice and public
19 comment period before you change the rule.

20 So this is established case law. The case
21 involving a licensing board dates back to the late
22 1970s. If you ask any lawyer who is familiar with
23 administrative practice, they will advise you that
24 that is not consistent with your responsibilities
25 relative to your rulemaking authority.

1 So I concur with Mr. Shandler's assessment,
2 that even if you have some authority to change the
3 rules, that process has to go through notice and
4 opportunity to be heard by the public for a rule
5 change.

6 MR. KORN: And if I may be heard.

7 MR. KING: Please.

8 MR. KORN: I appreciate Mr. Lama's point of
9 view, I appreciate Mr. Shandler's point of view. I'm
10 the only one with the rules, reading directly from the
11 rules. I mean the point is they can say what they
12 want. They're part of the Attorney General's Office.
13 This is obviously a hot-button issue.

14 But we're in this position because of the
15 Attorney General's Office. And I don't put any stock
16 in what they're saying. It says right here,
17 "alternation or amendment of the regulations by a
18 majority vote of the board." It doesn't say
19 prospectively. It doesn't say for cases future in the
20 pipeline or in the pipeline.

21 We can do what we want in the interest of
22 justice. And this is a situation that calls for bold
23 action. And I think that while we figure out what's
24 going on, we should alter our rules to see what cases
25 are affected and make sure that we don't lose any

1 cases because they have attritioned out because cases
2 have been in the pipeline too long without regulation.

3 MR. SHILLING: Mr. Chairman, I think we
4 already have his motion.

5 MR. KING: Oh, yeah, we're on discussion of
6 the motion. So if there aren't any other questions, I
7 have one more bit of discussion on the motion.

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

9 MR KING: Chief Schultz.

10 MR. SCHULTZ: Just going back, looking at the
11 rule, 10.29.1.13, Mr. Shandler talked about subsection
12 J, subsection L. It's very clear, it's one sentence,
13 it says "Extensions of time shall be granted at the
14 discretion of hearing officer or the board."

15 The way I read that the board does have the
16 authority. It's the same section that was commented
17 or referred to by Mr. Shandler. It doesn't get much
18 clearer than that.

19 MR. KING: You know, we've given our advice.
20 This is my philosophy about advice of lawyers to their
21 clients. It's that if the client wants to ignore the
22 advice of their lawyer, they're welcome to do that.
23 They do it at their own peril.

24 So, you know, I think we'll end up taking a
25 vote on this. Here is what I think. A, I don't think

1 it's worth taking the risk; B, I believe, especially
2 if Mr. Radosevich is willing to do the hearings, that
3 it would not be outside of the capability of the
4 Attorney General's Office to -- in order to meet what
5 you all have directed to get one of our lawyers up to
6 speed where they could do this case by January 6th.

7 That's three weeks. It probably means
8 somebody would have to work through the holidays. But
9 we can do that.

10 MR. KORN: In responding to that, I
11 appreciate that. And I think that's a team effort
12 that Mr. King has suggested. I think that's a great
13 idea. But on the downside, in case it doesn't happen,
14 and for all the other cases involved, I think we
15 should make the motion and try not to exceed any of
16 the timelines but have that as a safety valve in case
17 we do.

18 MR. KING: Any other discussion? I have a
19 motion. Do I have a second? Secretary, do I have a
20 second?

21 MR. MYERS: I'll second.

22 MR. KING: Okay. We might have had a second
23 already. Okay. I think that this one might be
24 important to do a roll call on. Secretary, call the
25 roll.

1 MS. LOPEZ: Nate Korn.

2 MR. KORN: Yes.

3 MS. LOPEZ: John Gratton.

4 MR. GRATTON: Yes.

5 MS. LOPEZ: Mark Myers.

6 MR. MYERS: Yes.

7 MS. LOPEZ: Chief Schultz.

8 MR. SCHULTZ: Yes.

9 MS. LOPEZ: Chief Betz.

10 MR. BETZ: Yes.

11 MS. LOPEZ: Sheriff Coon.

12 MR. COON: Yes.

13 MS. LOPEZ: Chief Shilling.

14 MR. SHILLING: Yes.

15 MS. LOPEZ: Attorney General King.

16 MR. KING: No. All right. By a vote of
17 seven in the affirmative, one in the negative --
18 actually I'm not sure that I know exactly what the
19 language of that motion was. So, Mr. Korn, you'll
20 have to let the secretary know.

21 But essentially the motion was to extend the
22 time periods on these cases by did you say how much?
23 Thirty days? As long as we want to?

24 MR. KORN: I think -- Mr. Gratton.

25 MR. GRATTON: I don't believe you stipulated

1 to an extension of time, Mr. Korn, that I recall.

2 MR. KORN: I would think 45 days would be the
3 first hook so that we could have the January meeting
4 and see what kind of shape we're in.

5 MR. KING: You know what, actually I'm going
6 to -- I'll do this on a voice vote. I'll take a
7 motion to reconsider so that we can add that 45 days
8 into it. I'm not sure that we did that.

9 MR. GRATTON: I so move to amend the motion
10 to add the 45 days --

11 MR. KING: Well, let's -- this will just be a
12 motion to reconsider.

13 MR. GRATTON: Okay.

14 MR. KING: A motion to reconsider --

15 MR. GRATTON: So moved.

16 MR. KING: -- the action we just took. Is
17 there a second?

18 MR. COON: I'll second.

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

20 (Those in favor so indicate.)

21 MR. KING: I'm not trying to do anything
22 funny here. Okay. We're back -- we're back on that
23 issue. Let's go back and state the motion a little
24 more carefully. That was my fault. So the motion
25 would be to extend the time periods on just these

1 cases?
 2 MR. KORN: No. My motion is to extend the
 3 time period on all the cases that are currently before
 4 the Law Enforcement Academy Board, to include the four
 5 cases that would be held in December, to include
 6 Mr. Pino, and to extend it for 45 days beyond what it
 7 currently is.
 8 MR. SHANDLER: But to try to follow the
 9 regulatory requirements.
 10 MR. KORN: Yes. But to try to follow the
 11 original regulatory requirements.
 12 MR. KING: Okay.
 13 MR. GRATTON: I second.
 14 MR. KING: We've got that motion written down
 15 and seconded. Okay. You know what, I'm just -- all
 16 in favor say aye.
 17 (Those in favor so indicate.)
 18 MR. KING: All opposed. No. I'm still no.
 19 Okay. So the same group of votes.
 20 MR. JACKSON: Excuse me, Mr. Chairman. I do
 21 have one question on the practical effect of the
 22 motion.
 23 MR. KING: Well, we're sort of past it. But
 24 go ahead.
 25 MR. JACKSON: This is -- I'm not sure that

1 this was captured. But a hearing officer's was
 2 report -- a hearing officer's report for Pino was
 3 issued. As Mr. Korn said, it was four days late.
 4 Now, the time for objection on that is currently
 5 running. Is that time also extended or is the
 6 deadline for objection on that still December 16th?
 7 MR. KORN: In my opinion the timeline for
 8 everything would be extended. So it would be extended
 9 by the -- for four days.
 10 MR. KING: Forty-five days.
 11 MR. KORN: Well, four days on the response.
 12 MR. JACKSON: Okay. Understood. Thank you.
 13 MR. KING: All right.
 14 MR. GRATTON: Mr. Chair, members of the
 15 board, I need to depart. I've got to go to Carlsbad
 16 for an interview.
 17 MR. KING: We still have a quorum.
 18 MR. GRATTON: Thank you.
 19 MR. KING: Sorry to go this long. Thank you.
 20 MR. GRATTON: Thank you all. Sorry.
 21 MR. KING: Okay. The next item on the
 22 agenda. Or I mean actually we're still on agenda item
 23 No. 7. It looks like Mr. Korn still has motions.
 24 MR. KORN: I'd like to thank Mr. Gratton for
 25 coming all the way up from Hobbs to attend.

1 Items five, six, and seven are just agenda
 2 items. We -- you know, in light of the late hour, we
 3 could postpone this until January or we can go through
 4 it now since we're all here. Does the board have a
 5 feeling?
 6 MR. KING: The feeling of the board? This
 7 has been -- this was an emergency meeting. So if this
 8 is something that will wait until our next regular
 9 meeting, that doesn't seem to be a bad idea to me.
 10 But I'm happy to keep going if you guys want to keep
 11 going.
 12 MR. COON: Like Mr. Gratton I'm going to go
 13 south. I don't know what the roads are going to look
 14 like.
 15 MR. KING: He at least told me he's going to
 16 go down to Carrizozo first and cut across. I've got
 17 to go through the canyon here one way or the other.
 18 So yeah. It sound like, Mr. Korn, you're
 19 willing to defer this to the next meeting.
 20 MR. KORN: Yes. Yes, sir. I'm willing to --
 21 let me just make sure. Yes, sir. I'm willing to
 22 defer these. I'll make them agenda items for the next
 23 hearing.
 24 MR. KING: Okay. Anybody else on item No. 7,
 25 board actions regarding upcoming hearings, et cetera,

1 et cetera?
 2 MR. SHANDLER: Mr. Chairman.
 3 MR. KING: Mr. Shandler.
 4 MR. SHANDLER: I would propose this to the
 5 board, that the chairman appoint a task force composed
 6 of people like the director or a designee, Mr. Ortiz
 7 with his expertise, a board member, Mr. Radosevich, an
 8 AG representative or designee, to study these issues.
 9 I've been here a long time. Gregory Peck
 10 could walk up to that podium. He's not going to solve
 11 the problems. They're structural problems. And let
 12 me explain what I think the task force should look at.
 13 I'm going to use this flow chart that Mr. Korn
 14 provided.
 15 I think the task force should look at the
 16 role of the director and the staff and the AG prior to
 17 the, quote, unquote, pipeline, what their duties are.
 18 That's one.
 19 Number two, I think the task force should
 20 look at timelines. Should there be hard timelines
 21 from intake to the time that the director has to make
 22 some type of written decision.
 23 Number three, I think that they should look
 24 at removal of some of the steps. This board has
 25 approximately 80 prosecutions or intakes a year. They

1 have a step where there's an NCA that goes out, then
2 an informal hearing, then an NFD, and then a statement
3 of issues between the parties, and then the hearing.
4 So that's five touches between the director and his
5 prosecutor or the prosecutor.

6 My math is 80 times five, that's 400 touches
7 for those cases. So you have to understand there is a
8 structural load which leads to that. I think that's
9 too many touches. And I think the task force should
10 look at maybe consolidating some of those steps.

11 I think the task force, number four, should
12 look at prehearing discovery. As Mr. Jackson pointed
13 out, it's limited in the rules right now. And that
14 may lead to some of the backlog. Maybe the hearing
15 officer should be allowed more prehearing discovery.

16 Number five, the current rule allows the
17 board -- the hearing officer does not have to follow
18 the Rules of Evidence in the hearing. Maybe that's
19 something that needs to be looked at based on the
20 hearing officer's request today that they want some
21 more formality.

22 Number six, maybe an expedited process when
23 someone is a second offender. Maybe a show cause
24 provision if someone violates their probation.

25 So I think those six things is what that task

1 force should look at. I think, based on the mood in
2 the room, I'm sure we could get a group together and
3 give you a report by the January meeting and maybe
4 even sketch out possible rule changes to move forward
5 to the spring meeting.

6 I do think that everyone has to come to that
7 task force willing to give a little bit. Some cases
8 will have to be settled for lesser sentences because
9 witnesses are impaired or deadlines are about to run.

10 I think there are some cases that may be
11 lost, because if you're going to impose deadlines, the
12 deadlines may not be met. The parties also have to
13 give a little bit because they realize maybe the
14 evidence is weak and the prosecutor is just not going
15 to bring a weak case.

16 I think that everyone has to give a little
17 bit. Some of the cases may require more witnesses
18 than are traditionally called at administrative
19 hearings. And if those witnesses can't be called,
20 maybe the cases need to be settled in a lesser
21 sanction.

22 And I think the parties also have to give a
23 little bit that some cases may be okay to proceed even
24 if you have one or two witnesses that are relying on
25 hearsay, because hearsay is allowed in administrative

1 proceedings.

2 So Mr. Chairman, forgive me for being so
3 bold, but it's a late hour. I recommend as the staff
4 attorney that the chairman appoint a task force,
5 whatever composition you want, based on those general
6 goals that can be expanded or limited to make a report
7 to the January meeting to the board about how to
8 improve the systemic issues with this important board
9 that has such a high volume of cases.

10 MR. KING: You know, I think I probably have
11 enough authority to do that because it's not any
12 official action. But I'm not going to put anybody on
13 the spot right here today, although we certainly had
14 some real expertise here who spoke to us or not,
15 either on the board or particularly specifically
16 involved in cases right now.

17 And so to the extent that some of you all
18 might be interested in doing that, we'll contact you.
19 And unless there's objection from the board, we'll
20 send a letter out to everybody on the board and let
21 you know who is on the task force and who accepted.

22 But we are late at night. And I don't want
23 to put anybody on the spot right now by appointing
24 here. But it seems to me like that's a good
25 recommendation. If that's good with you guys, maybe

1 we'll have something -- we'll make that an agenda item
2 at our regular meeting. And we'll get this report
3 from the task force and we'll have time to discuss it.

4 All right. Any further business to come
5 before the board? Sheriff Coon.

6 MR. COON: Mr. Chairman, and I'm sure you all
7 are all aware, and this is probably is not the right
8 time. But we all got letters or emails from Jerrilyn
9 Story from Capitan. And she wrote me one yesterday.
10 And I don't know if I'm the only one that got this.

11 And I replied to her today -- or yesterday
12 that I was coming up here to this meeting and I would
13 try to pass this along. You know, I know we're not
14 the Internal Affairs business. But I would like the
15 board to maybe look at -- or the LEA look at it.

16 There is some -- and Capitan is such a small
17 little community. And I think the Lincoln County
18 Sheriff should stay out of this, but maybe get an
19 agency in that vicinity to look into these
20 allegations.

21 And again I know we're not in the IA
22 business. But when you come from a little tiny town
23 and the citizens think they've been wronged, somebody
24 needs to look into it. And, you know, worst-case
25 scenario I would send my guy over there to look into

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1 it or somebody. But it needs to be from an agency
2 around there.
3 But I need to give this -- I just want to let
4 this lady know that I did bring this up. And
5 everybody has got her emails.
6 MR. KING: Okay. Yeah, I think it may have
7 come to the AG's office too.
8 MR. COON: Oh, yeah. She sent it to
9 everybody. But I would like for us to maybe talk
10 to --
11 MR. KING: I think we're probably processing
12 it already. I don't know that we can take direct
13 action on it. But we're working on it.
14 MR. COON: Well, you know, I would like to
15 give her some kind of information that we're looking
16 into it and it's -- her request is not going to go
17 swept under the rug or whatever. But we will at least
18 look into it.
19 MR. KING: Well, we've got the director here
20 too. Director, why don't you talk to us about it.
21 MR. HUBBARD: Well, and possibly,
22 Mr. Chairman, in my capacity as the director of
23 special investigations, and my agents would have
24 statewide jurisdiction. And we could get with the
25 State Police criminal -- we could meet him informally

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1 about that.
2 MR. KING: All right. Thank you, Sheriff
3 Coon. Chief Schultz.
4 MR. SCHULTZ: Mr. Chairman, I believe item
5 No. 6 as proposed on the agenda by Member Korn has
6 been tabled, that it at least be withdrawn before we
7 close the meeting.
8 MR. KING: Did we table it or did we just
9 move to move on?
10 MR. KORN: You moved forward. You moved on
11 to No. 7. We tabled it.
12 MR. KING: Well, when we adjourn, it will
13 just -- it will die for lack of action.
14 MR. SCHULTZ: All right.
15 MR. KING: By the way, let me just say, I
16 didn't -- I think he got introduced to you guys
17 previously. But I've brought on board in our office
18 Dave Peterson who was the chairman of the House
19 Judiciary Committee for a number of years and who has
20 30 some years of criminal legal experience who will
21 quite likely, when I'm not able to attend board
22 meetings, will attend on my behalf, although we'll --
23 that's kind of up to me too.
24 But most of you know Dave I think. So just
25 to let you know he's been sitting here watching all

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1 this too.
2 ITEM NO. 8: ADJOURNMENT
3 MR. KING: All right. I'll take a motion to
4 adjourn.
5 MR. COON: Mr. Chairman, I make a motion to
6 adjourn.
7 MR. BETZ: I'll second.
8 MR. KING: All those in favor say aye.
9 (Those in favor so indicate.)
10 MR. KING: Any opposed. We're adjourned.
11 (At 6:15 p.m. the hearing was adjourned.)
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1
2 REPORTER'S CERTIFICATE
3 I, JAN A. WILLIAMS, New Mexico CCR #14, DO
4 HEREBY CERTIFY that on December 13, 2011, the
5 proceedings in the above captioned matter were taken
6 before me, that I did report in stenographic shorthand
7 the proceedings set forth herein, and the foregoing
8 pages are a true and correct transcription to the best
9 of my ability.
10 I FURTHER CERTIFY that I am neither employed
11 by nor related to nor contracted with (unless excepted
12 by the rules) any of the parties or attorneys in this
13 case, and that I have no interest whatsoever in the
14 final disposition of this case in any court.
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(2893K) JAW

1 RECEIPT
2 DATE: December 13, 2011
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4 WITNESS NAME: Emergency Hearing
5 CASE CAPTION: DPS
6 *****
7 ATTORNEY: DPS/LOPEZ
8 DOCUMENT: Transcript / Exhibits / Disks / Other _____
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