

NEW MEXICO LAW ENFORCEMENT ACADEMY  
REGULAR BOARD MEETING

March 1, 2012

10:05 a.m.

Albuquerque Police Academy

5412 Second Street, N.W.

Albuquerque, New Mexico 87107

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

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1	AGENDA ITEM INDEX (CONTINUED)	1	ITEM NO. 1: CALL TO ORDER
2	ITEM PAGE	2	MR. KING: I'm going to call the meeting to
3	23 Marisa Barragan 150	3	order. I don't have my gavel so I appear to be
4	24 Algin Mendez 157	4	gavel-less. I don't have my gavel with me.
5	25 Jonathan Riedel 158	5	So good morning to everybody. We appreciate
6	26 Daniel Gomez 159	6	you all being here. We are -- there it is. Somebody
7	27 Motion to Clarify and Amend the Order of Revocation 160	7	was hiding it. Was Chief Schultz trying to get my
8		8	gavel?
9	28 Board Members as Hearing Officers, Training and Discussion 167	9	MR. SCHULTZ: We got you covered.
10	29 Scheduling of Next Board Meeting 179	10	MR. KING: Thank you, Chief. We appreciate
11	30 Adjournment 180	11	everybody being here. I think that this meeting goes
12		12	along with some of the things we're doing. Instead of
13		13	having a meeting just once a quarter, we're trying to
14		14	have meetings twice a quarter in order to catch up a
15		15	little bit. So we appreciate everybody making the
16		16	extra effort to be here.
17		17	ITEM NO. 2: ROLL CALL
18		18	MR. KING: The second item on the agenda is
19		19	the roll call. And as you know we just usually kind
20		20	of have everybody introduce themselves. And we
21		21	certainly appear to have a quorum here. But let's
22		22	start, Mr. Hubbard, down on your end of the table.
23		23	MS. LOPEZ: Monique Lopez, New Mexico Law
24		24	Enforcement Academy.
25		25	MR. HUBBARD: Good morning. I'm Bill

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<p>1 Hubbard, I'm the Acting Director of the Law 2 Enforcement Academy. 3 MR. KORN: I'm Nate Korn, I'm a citizen 4 representative to the Law Enforcement Academy. 5 MR. MYERS: Mark Myers, I'm the line officer 6 appointed to the academy board. 7 MR. SCHULTZ: Ray Shultz, chief, municipal 8 chief appointee to the board. 9 MR. BETZ: Harry Betz, chief, representing 10 the pueblos. 11 MR. KING: Attorney General Gary King. 12 MR. COON: Rob Coon, sheriff, Chaves County 13 sheriff appointee. 14 MR. GRATTON: John Gratton, citizen 15 representative of the board. 16 MR. SHILLING: Robert Shilling, New Mexico 17 State Police. 18 MR. SHANDLER: Zach Shandler, I'm not a board 19 member, I'm the board's attorney. 20 MR. HOLMES: Ernest Holmes, investigator, New 21 Mexico Law Enforcement Academy. 22 MR. KING: Thank you, Mr. Holmes. All right. 23 So we appear to have a quorum. 24 ITEM NO. 3: APPROVAL OF AGENDA 25 MR. KING: The next item on the agenda is</p>	<p>1 approval of the agenda. Hopefully everybody had a 2 chance to get the agenda ahead of time and take a look 3 at it. Are there any additions or modifications to 4 the agenda? Seeing none I'll take a motion. 5 MR. GRATTON: I move for approval. 6 MR. KING: Mr. Gratton moves. 7 MR. COON: I second. 8 MR. KING: Sheriff Coon seconded. All in 9 favor say aye. 10 (Those in favor so indicate.) 11 MR. KING: Any opposed? The agenda is 12 approved. 13 ITEM NO. 4: APPROVAL OF MINUTES, JANUARY 17, 2012 14 MR. KING: The next item is approval of the 15 minutes from January 17th, 2012. Any additions or 16 discussion to the minutes? Seeing none I'll take a 17 motion to approval the minutes. 18 MR. BETZ: I'll make the motion. 19 MR. KING: Okay. Chief Betz moves to approve 20 the minutes. 21 MR. KORN: I'll second. 22 MR. KING: We have a second from Mr. Korn. 23 All in favor signify by saying aye. 24 (Those in favor so indicate.) 25 MR. KING: Any opposed? So the minutes are</p>
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<p>1 approved. 2 ITEM NO. 5: DIRECTOR'S REPORT 3 MR. KING: The next item on the agenda is the 4 director's report. Mr. Hubbard. 5 MR. HUBBARD: Good morning, Mr. Chairman, 6 members of the board. My director's report has been 7 submitted previously and should be in front of you. 8 And I'll be especially reviewing the things that have 9 transpired with the Law Enforcement Academy in 10 particular with the board since our last meeting which 11 was held on January 17th of 2012. 12 The cert by waiver class No. 75 was held 13 January 23rd through February 10, 2012. All seven 14 participants received their certification and passed 15 the certification exam first time through. 16 One of our big projects has been the ongoing 17 House Bill 93, which was mandated by a year ago's 18 legislature. That has been launched. And we are in 19 the train the trainer phase now. The first group of 20 train the trainer went through at the academy on 21 February 20th through 24th, and 24 students were 22 certified as instructors in this crisis intervention 23 course. 24 And there is another course going on here in 25 Albuquerque this week with an additional 19 students.</p>	<p>1 So we'll have right at 40 or so, 43 instructors that 2 are able to teach this train the trainer for the 3 crisis intervention. This is in regard to crisis 4 intervention with people with mental impairments and 5 particular crisis intervention techniques for that. 6 As you are aware and as Master Instructor 7 Brian Coss walked you through the process and we all 8 went through that together to have the new Public 9 Safety Telecommunicator curriculum approved and put 10 into place, the first class on the new 11 telecommunicator program will start next Monday at the 12 academy in Santa Fe. We have 39 students. And we 13 will roll out the curriculum for the very first time 14 on that. 15 Concerning the progress that has been made 16 with the disciplinary cases, we have managed now 17 between me and my staff to have gotten through all of 18 the cases. We were looking at somewhere at 130 to 19 140 cases that were still open as far as our 20 disciplinary cases. 21 I have personally reviewed every single one 22 of the files now, I've gone through the file to see 23 what's in it, what's not in it, have made notes in the 24 file so that the files are readily accessible. 25 And that when the next director comes to take</p>

<p style="text-align: right;">Page 10</p> <p>1 my place next Monday, hopefully he won't have to 2 stumble through each file and figure out what the last 3 thing was done. It should be readily apparent as I 4 have put what I call a yellow sheet, which is a 5 chronology that is in each one of the case files that 6 shows what progress has been made on the case and what 7 is the next thing that needs to be done on the case. 8 So all of the files have had a case file review. 9 Since January 17th those numbers that are on 10 my report there -- I have sent out 29 cautionary 11 letters. Seventeen went out as Notice of Contemplated 12 Action, one Notice of Final Decision, and various and 13 sundry other things, seven default orders of 14 revocation. 15 As I got through a lot of these cases, 16 several of the cases were matters of policy violations 17 from the local agency, where the chiefs of police or 18 the municipality or employer had taken sufficient 19 disciplinary action. It was something that really 20 didn't fall under the auspices of what the board is 21 designed to discipline about. 22 So some of those were sent out as cautionary 23 letters. Others no action was taken, and it was 24 deemed that the discipline that was meted out by the 25 originating agency was sufficient in those cases.</p>	<p style="text-align: right;">Page 11</p> <p>1 Of the cases that did rise to the level of 2 something that would require board action and as a 3 Notice of Contemplated Action was drafted, what I 4 didn't want to do was to cause a whole 'nother logjam 5 by all of a sudden throwing a whole bunch of NCAs into 6 the pipeline, because that starts the clock ticking on 7 the cases. And I could see where the potential for a 8 whole 'nother type of logjam was there at the moment 9 that I wrote the NCAs, that we sent them out. 10 So what I have instructed Ms. Medrano, my 11 administrative assistant -- all of you know Monica. 12 She has been absolutely my rock to be able to get a 13 lot of this administrative work done. I could not 14 have done this without her able assistance. 15 But as the Notice of Contemplated Actions 16 have been drafted, I have instructed Ms. Medrano to 17 only throw those into the mail at the tune of about 18 five a week. So that as the recipients are getting 19 those Notices of Contemplated Action and are 20 responding to those, say, wanting an informal hearing 21 or taking it to the next step, that we're not stuck 22 with another 30 or 40 cases all of a sudden that are 23 everyone wanting -- being at the same stage. So those 24 are being sent into the pipeline to the tune of about 25 five a week.</p>
<p style="text-align: right;">Page 12</p> <p>1 I'm also pleased to let you know that of the 2 new LEA-90s that are coming in, that those are being 3 reviewed by me within three days upon receipt. And 4 decisions are being made as to -- first of all 5 notification is being sent out to the originating 6 agency that we have received those and that they are 7 being acted upon. And we are trying to, as we move 8 the backlog of the cases, also stay abreast of the 9 incoming cases. 10 I met during the legislative session with the 11 chiefs of police from around New Mexico and their 12 association. And I kindly asked them to please tell 13 all of their officers to be on their best behavior for 14 about another 60 or 90 days so I could get on top of 15 all of the backlog of cases. And from what has been 16 coming -- trickling in, apparently my plea was not 17 successful because we are still continuing to receive 18 some LEA-90s that are coming in. 19 I wanted to talk to you about the things that 20 are working. The last board meeting you put in my 21 hands the penalty guidelines and instructed me that I 22 could publish those. That in my estimation has been 23 very, very helpful in moving the cases. I know that 24 there are some defense counsel in the audience this 25 morning.</p>	<p style="text-align: right;">Page 13</p> <p>1 And this has just been the foundation for 2 opening a point of discussion of where are we. And, 3 you know, as I'm working with defense counsel, as I'm 4 working with the respondent officers, I just give them 5 a copy of the penalty guidelines and I say, okay, here 6 is what the board has instructed me are the parameters 7 of what we're talking about here. 8 So based on what the complaint is, based on 9 what the errant behavior is, you do the math, I'll do 10 the math. Let's come together at a table and see if 11 we can work something out here. I have found that 12 this has worked very well and that initial 13 negotiations are actually taking place before we ever 14 sit down at a table to have the informal hearings. 15 I also believe that this is allowing us to 16 come to successful resolutions of cases at the 17 informal hearing stage. And both sides are feeling 18 satisfied that the process is working, that the 19 punishment is fair, consistent, and just, and that I'm 20 not just pulling numbers and months of suspension and 21 stuff out of the air and trying to sell it to the 22 attorney or the respondent officer when they walk in 23 the room. They can actually see this is something 24 that has been ratified by the board, these are the 25 board's wishes in a situation like that. That appears</p>

<p style="text-align: right;">Page 14</p> <p>1 to be working.</p> <p>2       Something else I want to throw out there that</p> <p>3 you guys might want to -- excuse me. That you</p> <p>4 gentlemen might want to discuss later on in the</p> <p>5 meeting is something that kind of came up during an</p> <p>6 informal hearing. And I seized an opportunity and</p> <p>7 made a decision that you may or may not agree with.</p> <p>8 So I'm willing to take my licks this morning or hear</p> <p>9 you say for the next director that this is an</p> <p>10 appropriate way to go.</p> <p>11       Historically one of the potholes that we've</p> <p>12 had or speed bumps has been an officer who has been</p> <p>13 accused of an egregious offense, whether it's a</p> <p>14 criminal indictment or he's indicted for murder,</p> <p>15 whether he's busted for DWI, any of those things. An</p> <p>16 egregious offense.</p> <p>17       And one of the tactics in the past by my</p> <p>18 predecessors has been to kind of hold on to that file,</p> <p>19 keep it open, and sort of wait to see where the</p> <p>20 criminal case goes or where the disciplinary process</p> <p>21 goes, if it's going to -- if the officer is fighting</p> <p>22 to get his job back or something like that, if he's</p> <p>23 been dismissed from his agency.</p> <p>24       And the board has taken a beating in the past</p> <p>25 for certain of these officers to still be carrying</p>	<p style="text-align: right;">Page 15</p> <p>1 their certification. So and so has been indicted for</p> <p>2 murder, he is still a certified New Mexico peace</p> <p>3 officer, da, da, da, da, da.</p> <p>4       The opportunity presented itself in one of</p> <p>5 the cases that I had in informal hearing. And the</p> <p>6 officer has a long road ahead of him of many battles,</p> <p>7 with his employer, in the civil courts, and possibly</p> <p>8 even in the criminal courts. He still had his</p> <p>9 certification.</p> <p>10       I had the opportunity to -- with all of that</p> <p>11 pending against the officer to not settle that in an</p> <p>12 informal hearing and move that to a formal hearing and</p> <p>13 stack even more onto this. It occurred to me, though,</p> <p>14 that if I could devise a way that his certification</p> <p>15 could be removed or held in abeyance, that the officer</p> <p>16 then without the cloud of the certification issue</p> <p>17 holding over his head could go on and fight his civil</p> <p>18 battles, his criminal battles, his employer battles.</p> <p>19       And it would seem to me that, at some point</p> <p>20 in the near future after that, that the road that the</p> <p>21 respondent officer and his attorney would want to take</p> <p>22 in relation to his certification would become</p> <p>23 self-apparent.</p> <p>24       So I have allowed at least one officer to</p> <p>25 voluntarily surrender his peace officer certification</p>
<p style="text-align: right;">Page 16</p> <p>1 to be held in abeyance. And that case file is held</p> <p>2 open at that point. And the officer signs a waiver of</p> <p>3 the time limits so that basically things are called</p> <p>4 time out.</p> <p>5       He is free there to go on and fight his civil</p> <p>6 battles, his criminal battles, and such. And it would</p> <p>7 seem to me that, at some point in the future, that all</p> <p>8 parties would agree to come back to the informal</p> <p>9 hearing table; and the action that needs to be taken</p> <p>10 so far as the peace officer's certification would</p> <p>11 become self-apparent to everybody that's at the table.</p> <p>12       Whether this is right or wrong, I did it.</p> <p>13 And that would be something that I would ask you to</p> <p>14 discuss for direction for Mr. Medina as he comes on</p> <p>15 next Monday as to whether this is a preferred tactic</p> <p>16 that the director might want to -- might want to</p> <p>17 approach.</p> <p>18       What we gain by that is that we do not have</p> <p>19 an officer who is under indictment, an officer who is</p> <p>20 accused of egregious personnel policy violations going</p> <p>21 down to the next police department and getting himself</p> <p>22 hired or newspaper reports saying so and so is accused</p> <p>23 of these horrible, awful things and, by golly, he's</p> <p>24 still a certified peace officer in the State of New</p> <p>25 Mexico.</p>	<p style="text-align: right;">Page 17</p> <p>1       We don't have that happening. What we do</p> <p>2 have is a case that will -- is a case file that will</p> <p>3 stay open a little bit longer until the officer moves</p> <p>4 his personal things on farther down that road and a</p> <p>5 decision is made to come back to the table and deal</p> <p>6 with his peace officer's certification.</p> <p>7       So that is what it is. I found the defense</p> <p>8 counsel to be very receptive to this measure. And I</p> <p>9 don't think that we necessarily lose anything. But</p> <p>10 the director works at the direction of the board. And</p> <p>11 whatever the board would decide in your discussion</p> <p>12 later this morning will be what I will pass on to</p> <p>13 Mr. Medina and will be the direction that we will take</p> <p>14 these matters.</p> <p>15       There are still some issues back and forth</p> <p>16 with the director's working relationship with the</p> <p>17 Attorney General's Office. Some of these I have</p> <p>18 attached to my director's report and I sent to you</p> <p>19 in -- ahead of time.</p> <p>20       One of the things that I have sent to you is</p> <p>21 a two-line email that was dated on February 10th from</p> <p>22 our assigned prosecutor, which was a kind notification</p> <p>23 to me as to his unavailability for a week in February</p> <p>24 and for two weeks in March.</p> <p>25       My concern there is that I have -- I have no</p>

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<p>1 backup plan. And I don't have a secondary attorney 2 assigned during those times. And that kind of, on the 3 formal hearing sorts of things, draws me to a halt. 4 And I just want to be -- want the board to be aware of 5 that. 6 Then there's a curious situation that 7 develops at the last board meeting that is detailed in 8 other email exchanges between me and Prosecutor Moon 9 that are dated February 23rd. And you have copies of 10 those in front of you. 11 The AG's prosecutor now only holds the role 12 of prosecuting those cases which go to a formal 13 hearing. That is by decision of the board at our last 14 board meeting. In trying to address something before 15 it became a point of contention, I sent a potential 16 formal hearing case file over to Mr. Moon for a file 17 review. 18 I worked at a DA's office for seven and a 19 half years and I had like eight lawyers in the office. 20 And every single one of them wanted something 21 different in the case -- in the file before he deemed 22 that file ready to prosecute. Police officers are 23 used to that. We often walk in and have our cases 24 reviewed up front. 25 And what I was trying to avoid was walking in</p>	<p>1 and saying, Mr. Moon, here is this case, we're ready 2 to prosecute, the informal hearing didn't work, so 3 it's ready to go to formal hearing. And he opens the 4 case file and goes no, it's not. It needs this, this, 5 and this. 6 So of my own devices I decided to send this 7 over for an informal file review so that he could 8 respond back to me and say, okay, but it's going to 9 need these things before it's ready for the formal 10 hearing. And that actually worked. He gave me some 11 feedback on a file that I had sent over for an 12 informal review. 13 Twenty-two hours later I got the email that's 14 in front of you that is dated February 23rd at 15 2:15 p.m., which says it does not appear that the AG's 16 office is permitted to do a file review. That did not 17 set well with me. 18 And you have my response on the same date 19 that I cc'd to all of you that basically said now, why 20 is it that 22 hours ago it was fine to do an informal 21 review to tell me what you needed in the case file and 22 now it does not appear that the AG's office can do a 23 file review. I'm just trying to avoid a potential 24 problem on up ahead. 25 Mr. Moon has called my demeanor in my</p>
<p>Page 20</p> <p>1 response to him as appearing to be excessively 2 stressed. Gentlemen, I was not excessively stressed. 3 I was angry. And I think that my email to Mr. Moon 4 expresses my anger in a gentlemanly way. 5 I was just trying to get something that would 6 work and to avoid a potential problem before it 7 happened so that things would run smoothly. So what's 8 happened here is that there's an ongoing chess game 9 between the director's office and the Attorney 10 General's Office. 11 As we were moving cases to formal hearings, 12 here come the subpoenas to the director's office for 13 me to chase the hearing officer down to have the 14 subpoenas signed and to get the subpoenas served. 15 Gentlemen, I was having SID agents that are 16 stationed in -- down south part of the state living in 17 Deming receiving the subpoenas and driving to Silver 18 City to serve subpoenas for formal hearings for the 19 academy board. I was taking instructors out of the 20 classroom at the academy and sending them up to 21 Espanola to serve subpoenas and just blindly took this 22 task of getting the subpoenas out on myself to get it 23 done to just try to make this work. 24 Then I was informed that back in October the 25 board had decided and had informed the Attorney</p>	<p>Page 21</p> <p>1 General's Office that the subpoenas belonged to the 2 Attorney General's Office and that that was their 3 process. So I handed that back to Mr. Moon. 4 And that has cleared up. That has not been 5 an issue. The Attorney General's Office has taken 6 back the subpoena process of getting those issued, 7 getting them served, and getting that done. And that 8 was just one less thing off of my plate. 9 In the last week, I have received emails from 10 four members of the Attorney General's staff, from 11 Bill Moon, from Zach Shandler, from Scott Fuqua, and 12 from Mr. King. I have received phone calls from yet 13 another member of the Attorney General's staff, 14 Mr. Llana. 15 All of these emails seek to impart wisdom to 16 me which I am apparently lacking or tried to correct 17 what is perceived as errant thinking on my behalf on 18 something or to tell me to do something that the 19 writer mistakenly thinks that I have overlooked. 20 In reading those communications that are in 21 front of you, and I passed out another one which is an 22 email that I got from Mr. Fuqua yesterday, I ask you 23 to read those emails yourself and decide if the tone 24 of those emails is peer to peer, colleague to 25 colleague, professional to professional, or if the</p>

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<p>1 tone of those is more like parent to child or superior 2 to inferior.</p> <p>3 Again all of these missives from the Attorney 4 General's staff -- and yet I don't work for any of 5 them and none of them's name is on my paycheck. But 6 they're coming at me from all sides.</p> <p>7 Mr. Chairman and members of the board, 8 regardless of which side of these issues you fall on, 9 we don't even have to decide who is right and who is 10 wrong here. What's lacking is a vital ingredient for 11 the success of what the mission of the board is, 12 particularly in the disciplinary process. And that 13 ingredient is trust.</p> <p>14 There is so much game playing that is 15 apparent in these actions and these communications 16 that I have to say that the Attorney General's Office 17 has destroyed my trust. And on the other side of the 18 coin, I'm sure that the Attorney General's Office 19 doesn't apparently think I'm very bright, for I'm 20 constantly receiving unsolicited words of wisdom.</p> <p>21 And I'm not sure that once this trust is 22 destroyed that it can be regained. So we don't even 23 have to discuss or fight about who is right, who is 24 wrong, who, what, or where. There's a trust issue 25 here that is hampering the process.</p>	<p>1 The director does the bidding of the board. 2 Next Monday that director will be Luis Medina. The 3 decisions that you make here today will have very 4 little effect on me. Five o'clock tomorrow, other 5 than getting Mr. Medina braced up and teaching him the 6 process and stuff, it will impact him, Mr. Medina, 7 immensely. It will have very little to do with me. 8 This is my last board meeting as the Acting Director 9 of the Law Enforcement Academy.</p> <p>10 This hadn't been an easy four months. But I 11 give you my heartfelt thanks for receiving me into 12 this role, for the trust that the board placed in me, 13 and for allowing me the pleasure of serving this board 14 and the citizens of New Mexico in this capacity. I 15 tackled this disciplinary backlog problem headfirst. 16 And I gave you my very best effort in running the 17 academy for these four months.</p> <p>18 MR. KORN: Mr. Chairman, will the director 19 stand for questions?</p> <p>20 MR. KING: Mr. Director, questions?</p> <p>21 MR. KORN: Or comments.</p> <p>22 MR. KING: Let me just say too, I mean the 23 director indicated that he thought it would be useful 24 to discuss this issue of egregious offenses or 25 whatever. And it strikes me that that probably falls</p>
<p>1 during this item.</p> <p>2 So whatever discussion we have about what you 3 raised, Mr. Director, I think probably will be here. 4 So let's have questions for the director first. And 5 then we'll allow for some discussion of the board on 6 the issues that the director raised too, if you want 7 to. Go ahead, Mr. Korn.</p> <p>8 MR. KORN: Thank you, Chairman King. My 9 first -- I guess the first thing I want to raise is a 10 huge expression of gratitude and commendation for what 11 Acting Director Hubbard has achieved as our director 12 over the past four months.</p> <p>13 I don't know of any previous director that 14 has known that he was going to be an interim director 15 and yet made so many changes for the positive to our 16 board and to the disciplinary cases and to the makeup 17 of the board itself. I'm just blown away.</p> <p>18 Director Hubbard -- and I met with him and 19 his staff. And I know that they have dug in as he 20 said to each and every file we have had that has been 21 outstanding. Some going back years that have been 22 pending.</p> <p>23 He's put documents in them to make them 24 complete, as complete as they can. He's put file 25 chronology sheets at the front of each one. He's</p>	<p>1 evaluated the evidence and called for more. And I 2 also know that he did this while he was also the 3 director of SID and also attending legislative events 4 for a full month.</p> <p>5 So there were times that I know Director 6 Hubbard went to Santa Fe when it was dark and he went 7 home long after the sun had set just to achieve all of 8 his goals, never once forsaking the board, which was 9 the only responsibility that he did not have to 10 fulfill as vigorously as he did.</p> <p>11 MR. HUBBARD: Thank you, Mr. Korn.</p> <p>12 MR. KORN: Thank you. I also want to point 13 out or at least raise the -- drive home a point that 14 you made, because as I understand things, when you 15 instituted the new procedures that this board had 16 instituted in the January meeting a scant five weeks 17 ago, at that time, at the time that you did that, if I 18 understand your report, you had 130 cases pending, 19 some going back years. Would that be correct?</p> <p>20 MR. HUBBARD: Mr. Chairman, Mr. Korn, members 21 of the board, that is correct.</p> <p>22 MR. KORN: And then there were about ten or 23 12 cases that were added over this five weeks. So 24 that would bring it to about 140 cases?</p> <p>25 MR. HUBBARD: Yes.</p>

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1 MR. KORN: And if I read your report  
2 correctly, if the board were to act the way you're  
3 suggesting and the way the cases come before us, that  
4 would leave only 80 cases left that are pending from  
5 the 130 or 140 actually?

6 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
7 of the board, yes, sir, 80 cases.

8 MR. KORN: So that would result in an  
9 incredible number of cases having been gone. You will  
10 have accomplished 60 cases that you reviewed and  
11 disposed of in one form or another in this scant five  
12 weeks.

13 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
14 of the board, I don't want the board to freak at that  
15 either, because the decisions that I tried to make on  
16 the cases too would be decisions if that was the only  
17 case that was laying in front of me on my desk.

18 Members of the board, I did not wholesale  
19 cheap-shot your cases out. You gave me the authority  
20 to give a 20 percent reduction on any penalties on the  
21 older cases. And that did figure into some of the  
22 penalties. But I want to assure you that I worked  
23 very hard to make appropriate decisions for the case  
24 that was in front of me and not to wholesale  
25 cheap-shot your case just to move a case.

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1 did what the board had requested, you reviewed them  
2 and processed them within three days.

3 MR. HUBBARD: Correct.

4 MR. KORN: Instead of sometimes years in  
5 prior occasions when the Attorney General took the  
6 cases away?

7 MR. HUBBARD: Yes.

8 MR. KORN: I appreciate all the efforts that  
9 you've done. I think on behalf of the board I can say  
10 we're very delighted and excited to see your process  
11 working. I'm a little dismayed at what you brought up  
12 about the Attorney General's Office and letters going  
13 back and forth with Mr. Moon and apparently an email  
14 you had received from Mr. Fuqua.

15 In your email that you shared with us, you  
16 indicated that you were concerned that you were  
17 somehow being set up for failure? Would that be a  
18 correct way of putting it?

19 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
20 of the board, you know, that was a feeling I had down  
21 deep inside. And I was hoping to forestall a problem  
22 by having the informal file review so that I could fix  
23 the file so that I didn't walk in and say I believe  
24 this case is ready for a formal hearing to have the  
25 prosecutor go, oh, no, it's not.

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1 MR. KORN: And I didn't mean to imply that at  
2 all. I was totally laudatory, that you have removed  
3 the clouds over the heads of 60 officers so they can  
4 get on with their life, accept whatever punishment or  
5 penalty had been done, and you've made 60 lives better  
6 by putting them back into the work force for the most  
7 part I'm sure.

8 MR. HUBBARD: Yes, sir.

9 MR. KORN: Some questions about -- so the  
10 procedures that the board adopted in the last meeting  
11 apparently were successful for you to move cases  
12 along?

13 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
14 of the board, yes.

15 MR. KORN: And you've done all your own  
16 Notice of Contemplated Actions without involving the  
17 AG's office?

18 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
19 of the board, they bore my signature. I've been  
20 blessed with a very able staff.

21 MR. KORN: You and your staff, I should have  
22 corrected. So if I say without the cooperation or  
23 without the input of the AG's office, you were able to  
24 do your own Notice of Contemplated Actions. And as I  
25 understand it, all the new cases that came in you also

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1 And then the clock is ticking as we have this  
2 back and forth. Or as the prosecutor would have the  
3 option to just say insufficient for prosecution, case  
4 dismissed. And I was trying -- as contentious as the  
5 relationship has been, I was concerned and was trying  
6 to prevent that before it happened, if it happened.  
7 It might not have.

8 MR. KORN: But your perception was this is  
9 the way you were feeling? And it's perception we're  
10 talking about here.

11 MR. HUBBARD: Mr. Chairman, Mr. Korn, members  
12 of the board, trust is virtually nonexistent.

13 MR. KORN: Mr. Chair, I would be addressing  
14 some of the issues that Director Hubbard brought up in  
15 my agenda item No. 8, it's titled Conflict of  
16 Interest. So I have no more questions of Mr. Hubbard  
17 on this line at this time.

18 MR. KING: Thank you, Mr. Korn. Any other  
19 questions? Chief Schultz.

20 MR. SCHULTZ: Mr. Chairman, thank you very  
21 much. Mr. Hubbard, I too want to thank you for all  
22 the great work you've done. Every Thursday morning I  
23 get a briefing from Lieutenant Mike Miller, an  
24 Internal Affairs lieutenant for the Albuquerque Police  
25 Department.



<p style="text-align: right;">Page 30</p> <p>1 And I think it's fair to say that about 10 2 percent of all the officers in the State of New Mexico 3 work for the Albuquerque Police Department. So 4 Lieutenant Miller I know sends cases up to you all on 5 a very regular basis. And we actually go as an agency 6 above and beyond what the minimum requirements are 7 from the State. 8 It just so happens that at this morning's 9 briefing as -- I have one every Thursday at nine 10 o'clock. Lieutenant Miller was very specific and 11 wanted to pass along his thanks because he said, in 12 the last couple months, he has seen the cases turn 13 over much quicker than he has ever in the history of 14 working with the director's office. 15 So on behalf of him, myself, and, of course, 16 my staff, I want to thank you and your staff for 17 getting that turnaround done very quickly, because as 18 you said this is something that is very personal to 19 the officers and employees involved. They obviously 20 want to get this resolved as quickly as possible. So 21 I definitely appreciate your efforts in those areas. 22 I also wanted to very briefly talk about you 23 had mentioned the voluntary -- be able to accept a 24 voluntary temporary suspension of certification. I 25 would definitely suggest, as you brief the new</p>	<p style="text-align: right;">Page 31</p> <p>1 incoming director, that you include that. 2 I think that would be a very wise move, for 3 the director's office to have that ability. I think 4 it accomplishes a couple things. One, it helps bring 5 confidence back to the citizens of the State of New 6 Mexico. That they have less worry to -- about an 7 officer that may be having very serious issues holding 8 over their head to still be out on the streets and 9 still have that certification as being assigned to 10 them. 11 So I would definitely suggest that you follow 12 up with that, work on the new director, and it's 13 something that everybody else on the board contemplate 14 as supporting. I think it would be very beneficial. 15 It also helps takes pressure off as you said 16 the timelines. And it will allow the officer or 17 deputy the opportunity as well as their defense team 18 to concentrate on the bigger issues that they have in 19 front of them, which is obviously the criminal issues 20 or the criminal case that they're facing, those more 21 serious cases. Thank you, sir. 22 MR. HUBBARD: Mr. Chairman, Chief Schultz, 23 members of the board, thank you for your kind words. 24 I'm humbled by that. Thank you. 25 MR. KING: Sheriff Coon.</p>
<p style="text-align: right;">Page 32</p> <p>1 MR. COON: Mr. Hubbard, again I would like to 2 reiterate what Mr. Korn and Chief Schultz had to say. 3 You've cleaned up a big mess. Also they beat me to 4 the voluntary of giving up the certification for a guy 5 that's -- he's got a lot on his plate. And we, as 6 chiefs and sheriffs, get beat up by the media for 7 allowing this guy to wander the streets with his 8 certification. 9 You know, that's not the case. They just 10 sensationalize everything. But it looks a lot better 11 that we voluntarily took that way, you know, that he 12 give it up. I've thought that all along. Suspending 13 a guy's certification, don't revoke him immediately; 14 because, you know, every now and then guys are found 15 not guilty and/or things have -- they go away. 16 So I applaud that. And I firmly believe we 17 need that. We've got some good officers out there 18 that maybe have been charged with things they didn't 19 do. And to go ahead and just let them work their 20 problems out, keep that certification in abeyance or 21 suspend it until they come back, I think that's a 22 great idea. And I think this board here will support 23 that. And I'm sure Mr. Medina will have something to 24 work with. And thank you for your service, you've 25 done a great job.</p>	<p style="text-align: right;">Page 33</p> <p>1 MR. HUBBARD: Mr. Chairman, Sheriff Coon, 2 thank you so much. 3 MR. KING: Other members of the committee? 4 Mr. Shandler. 5 MR. SHANDLER: And I think the two members 6 beat me to it. But I think the language would be a 7 stipulated voluntary temporary suspension. And I 8 think you probably want to memorialize that in 9 writing. 10 And then like all stipulated orders, get it 11 to the board so there's a permanent record of the 12 board approving it. And it sounds like the board 13 would definitely agree to that. I just think that 14 would be the proper process, so it's been memorialized 15 in writing and approved by the board. 16 MR. HUBBARD: Mr. Chairman, Mr. Shandler, 17 members of the board, one of these that I kind of 18 stumbled my way through, we did draft a stipulated 19 agreement between the respondent officer and his 20 attorney and the director. 21 And the language became a little bit 22 problematic. And what we worked with is a stipulated 23 agreement that allows the certification to be held in 24 abeyance or that he's voluntarily surrendering it so 25 that there is no admission of guilt on the part of the</p>

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<p>1 officer.</p> <p>2 I mean we're agreeing to put his</p> <p>3 certification on the shelf and to waive the timelines</p> <p>4 in order to address it at a future date. And I think</p> <p>5 that the spirit of what you're saying is the direction</p> <p>6 that we've gone here. We bickered back and forth</p> <p>7 between Mr. D'Amato and myself as to some of the</p> <p>8 language that would be used there.</p> <p>9 So I appreciate the input there to take into</p> <p>10 consideration, because like I said this idea kind of</p> <p>11 came while an informal was going on and we just sort</p> <p>12 of kind of made it work. And it still needs to be</p> <p>13 sanded and smoothed and have the rough edges taken</p> <p>14 off.</p> <p>15 MR. SHANDLER: And I don't mean to</p> <p>16 micromanage the process. I'm just saying I think you</p> <p>17 should advise your successor that those should come to</p> <p>18 the board to keep with that process so there's a</p> <p>19 perfectly documented paper trail.</p> <p>20 MR. HUBBARD: Thank you, sir.</p> <p>21 MR. SHANDLER: And then the second thing is</p> <p>22 you mentioned that I sent an email to you. It wasn't</p> <p>23 about the disciplinary matters. It was about how</p> <p>24 Mr. Medina, starting I guess as early as Saturday or</p> <p>25 Monday, to just anticipate that the board might ask</p>	<p>1 you do they need to vote to approve today or are you</p> <p>2 going to wait until April.</p> <p>3 So that was my email. It didn't have</p> <p>4 anything to do with discipline. And the response he</p> <p>5 gave was that in April the board will be voting</p> <p>6 pursuant to your statutory authority about the</p> <p>7 appointment or rejection of the new director. So I</p> <p>8 just wanted to clarify that for the director.</p> <p>9 MR. KING: Chief Betz.</p> <p>10 MR. BETZ: Thank you, sir. Director Hubbard,</p> <p>11 I just want to take an opportunity to also express my</p> <p>12 deepest thanks to you for your assistance to the board</p> <p>13 and also to let you know that I will -- I know we just</p> <p>14 briefly spoke about it.</p> <p>15 But I will re-engage the new director along</p> <p>16 with deputy -- Secretary Mooney and Secretary Eden to</p> <p>17 try to create a better relationship or marriage,</p> <p>18 whatever you want to call it, between the Federal Law</p> <p>19 Enforcement Training Center, more specifically the</p> <p>20 Indian Police Academy and the state academy. And</p> <p>21 again I want to thank you very much.</p> <p>22 MR. HUBBARD: Mr. Chairman and Chief Betz,</p> <p>23 members of the board, thank you, sir.</p> <p>24 MR. KING: Any other questions, comments?</p> <p>25 I'm going to in a second, but I want to make sure all</p>
<p>Page 36</p> <p>1 the board members get an opportunity.</p> <p>2 Mr. Hubbard, I also want to join the board in</p> <p>3 congratulating you and thanking you for the work you</p> <p>4 have done. So I'm a little surprised at the most</p> <p>5 recent tirade. But notwithstanding that, I actually</p> <p>6 think you've done a great job. I agree that you are</p> <p>7 actually doing the things that you need to do to knock</p> <p>8 down the backlog that your three predecessors did not</p> <p>9 do.</p> <p>10 And so I think you've done a significantly</p> <p>11 better job than your predecessors. To the extent that</p> <p>12 there's any hurt feelings because of dealings that you</p> <p>13 had with the Attorney General's Office, I would</p> <p>14 apologize to you personally. I do want to make sure</p> <p>15 that we correct something, because you said you got</p> <p>16 emails from me too.</p> <p>17 And I don't think you ever got an email from</p> <p>18 me because I don't recall ever having sent one. And</p> <p>19 actually I'm not aware that you sent one to me,</p> <p>20 although I'm looking at your string here and notice</p> <p>21 that you sent it to one of my staff members. So I</p> <p>22 suppose that that would indicate that you sent it to</p> <p>23 me.</p> <p>24 But I certainly would encourage you and your</p> <p>25 successor, if you feel like you're not getting good</p>	<p>Page 37</p> <p>1 service out of the Attorney General's Office, to</p> <p>2 contact me directly, which I don't know that you ever</p> <p>3 tried to contact me directly. And if you did, I would</p> <p>4 apologize for that. But I don't have anything in my</p> <p>5 records that would indicate that you tried to contact</p> <p>6 me.</p> <p>7 In looking at the emails, I would encourage</p> <p>8 everybody to read the emails, because I agree with</p> <p>9 you, I think that you will see that everybody tried to</p> <p>10 be polite. And I think that there was obviously some</p> <p>11 disconnect here. And I don't know when would be the</p> <p>12 appropriate time to talk about it here.</p> <p>13 But I think that the Attorney General's</p> <p>14 Office is certainly trying to do our best to meet the</p> <p>15 direction that came from the Law Enforcement Academy</p> <p>16 board about the new procedure. And so not surprising</p> <p>17 to me that there would be a little bit of a glitch in</p> <p>18 procedure.</p> <p>19 But you'll see I'm sure in Mr. Fuqua's</p> <p>20 email -- and all of this, of course, has occurred in</p> <p>21 the last four or five days. So we haven't had a real</p> <p>22 chance to work all the way through all of this yet.</p> <p>23 And I'm sure we'll work through it with your</p> <p>24 successor.</p> <p>25 But the direction from the board that we have</p>

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<p>1 here is that the director, quote, cease sending cases 2 to the Attorney General, end quote. And so I actually 3 am prone to agree with you, that there ought to be 4 some informal process whereby we can look at these. 5 And this is the first chance we've probably 6 all had an opportunity to talk to the board. But if 7 the board doesn't have any problem with that informal 8 process, if they actually want to either change that 9 procedure or just agree that they didn't really mean 10 the procedure to be sort of that egregious whenever 11 they said that you wouldn't send files to the AG's 12 office, you know, we would be happy to work around 13 that. 14 I actually informed my staff yesterday, 15 because that's the first time this came to my 16 attention, that if you would just send us -- me a 17 little letter that said, you know, what do you think 18 about informally reviewing these files and such, even 19 though the Commission has told us not to, that we 20 would be able to raise that issue. And so I think we 21 are going to be able to raise that issue today. 22 And I guess the only other thing -- you know, 23 sometimes people misunderstand lawyers I suppose. 24 This first email is kind of short, the unavailable 25 email, that just says I'll be out these dates. From</p>	<p>1 my perspective lawyers send those kind of notices to 2 the courts all the time. Like if you know you're 3 going to have settings or something or other, you send 4 a notice of unavailability to the courts. 5 And so maybe you don't understand that 6 because you haven't done that or been a judge or 7 something or other like that. But I don't think a 8 short notice of unavailability was necessarily meant 9 to be rude. And I apologize if you took it that way. 10 But I think it's just the kind of thing that lawyers 11 do to courts so that they'll know, when they're doing 12 their settings, that the lawyer is going to be out. 13 And other than that I'm not aware of you in 14 any case then sending information back to us that says 15 when Mr. Moon is on vacation or whenever he's 16 unavailable, maybe he's doing another trial, is there 17 somebody else that you can assign to be my liaison or 18 work on the cases or something like that. 19 Mr. Fuqua is here. And I assume that if 20 Mr. Moon is not available, that Mr. Fuqua would be 21 available. Is that correct, Scott? 22 MR. FUQUA: Yeah. But this was something 23 that I would be happy to address. The short answer is 24 yes. 25 MR. KING: So if you guys want more</p>
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<p>1 information, we can do that. But those I think are 2 just sort of normal course of business operations. 3 But I think that there is some confusion maybe even in 4 our office about what it is that the board meant when 5 they adopted their process six weeks ago that said 6 that the Law Enforcement Academy Board will not send 7 cases to the Attorney General. 8 And we obviously are sort of in this spot 9 we're trying not to annoy the board. And we certainly 10 didn't intend to annoy you, Mr. Hubbard. Like I said 11 I think that some of what we talked about and a lot of 12 what you're doing actually has really helped the Law 13 Enforcement Academy staff do those things that should 14 have been done many months ago in order to work down 15 the backlog. And I really want to commend you for 16 that, because I think you've done a great job. 17 MR. HUBBARD: Thank you, Mr. King. May I 18 respond to a couple of things there. 19 MR. KING: Oh, sure. 20 MR. HUBBARD: I took it that the board would 21 not be sending cases to the Attorney General's Office 22 as meaning intake cases. That we were -- that the 23 Attorney General's Office was going to be focusing on 24 those cases that would be formal hearings. 25 And that the only cases that I would be</p>	<p>1 sending over there for an informal review or a file 2 review would be a case that is earmarked that has 3 broken down at the informal hearing process and is 4 more than likely going to go to a formal hearing. 5 And that the spirit and the intent of mine in 6 sending it over with a cover letter was, Dear 7 Mr. Moon, you know, I'm thinking that this case is 8 probably going -- this is not working at the lower 9 processes. It's probably going to go to a formal 10 hearing. 11 So I wasn't just going through my files and 12 seeing what could be sent over to the Attorney 13 General's Office. But it was only the cases that I 14 really thought were probably going to end up with a 15 formal hearing. So your staff obviously took the 16 letter of what the board had said in the previous 17 meeting. And I was going more with the spirit of what 18 was said. 19 MR. KING: Actually let's address that point 20 first. Don't you think that that's what was happening 21 before the board changed the policy? I mean that was 22 sort of what the old policy was, was that the Attorney 23 General's Office and the director would discuss those 24 files before the NCA was issued. 25 MR. HUBBARD: Well, at the -- yeah, even</p>

1 before the NCA went out at the very earliest. And  
2 that's where some of the biggest miscommunication  
3 happened and the logjams happened. And both sides --  
4 we have fixed that.

5 MR. KING: So I think it struck us that, if  
6 they changed the policy and we continued to do the  
7 things the old way, that the board might think that we  
8 were just ignoring their direction.

9 MR. HUBBARD: Point taken, sir.

10 MR. KING: Okay.

11 MR. HUBBARD: The other thing is on the  
12 notification of unavailability, as a division director  
13 and as chiefs and command staff here, when I'm going  
14 to be unavailable, not only do I apprise my staff that  
15 I'm going to be unavailable, but who they need to  
16 contact in the case of an authority. And should we  
17 have a formal hearing coming up, that would just --  
18 that would be more convenient.

19 MR. KING: Point taken on that. I mean we'll  
20 try and make sure that, when you get notices of  
21 unavailability, that you know who to contact.

22 MR. HUBBARD: Thank you, Mr. Chairman,  
23 members of the board.

24 MR. KING: Or your successor. I realize that  
25 you are leaving. I haven't had a chance to review all

1 MR. KING: Okay. The next item on the  
2 agenda, Member Korn speaking about streamlining the  
3 process of board review of misconduct cases.

4 MR. KORN: Mr. Chairman, I had put that down  
5 more as a placeholder for Chief Schultz who was out of  
6 town at the time that we had to submit our agenda  
7 items. So I think this is really something that Chief  
8 Schultz would take the forefront and present.

9 MR. KING: I'm happy to do that. Chief  
10 Schultz, you can do it from your chair there, if they  
11 can hear you on the microphone well, or you can go up  
12 front, whichever. But get close to the microphone if  
13 you're going to do it from here.

14 MR. SCHULTZ: Sure, Mr. Chairman. And I want  
15 to thank you all for giving me the opportunity to talk  
16 about something that I've been looking at and  
17 something that we do quite often at other events that  
18 I'm involved in such as the police oversight process  
19 in the City of Albuquerque with the Police Oversight  
20 Commission.

21 As we look at our agenda and we see it broken  
22 down with disciplinary matters including stipulated  
23 orders and default orders of revocation, I know  
24 historically we've gone through each one of those  
25 items one at a time.

1 of the qualifications of your successor. But it  
2 appears that an excellent person has been appointed to  
3 replace you. And I think in our next meeting we'll  
4 have a chance to review that and such. But I --

5 MR. HUBBARD: Mr. Chairman, members of the  
6 board, you'll forget me real quick once Mr. Medina  
7 gets on board. You'll be very satisfied with the  
8 choice.

9 MR. KING: Okay.

10 MR. GRATTON: Mr. Chairman, I would like to  
11 make a motion that the board place an administrative  
12 commendation for Acting Director Hubbard, thanking him  
13 for four months of fantastic service to the board.  
14 And I thank you also, sir.

15 MR. KING: We have a motion for a  
16 commendation.

17 MR. KORN: Second.

18 MR. KING: Seconded by everybody. All in  
19 favor signify by saying aye.

20 (Those in favor so indicate.)

21 MR. KING: Any opposed? Thank you,  
22 Mr. Hubbard.

23 MR. HUBBARD: Okay, sir.

24 ITEM NO. 6: STREAMLINE PROCESS OF BOARD REVIEW OF  
25 MISCONDUCT CASES

1 But having a new process in which all board  
2 members now are receiving the agenda and supporting  
3 documents well in advance of the electronic means, I  
4 don't see a reason why we could not present each one  
5 of those two blocks -- or groups in a block fashion  
6 basically as a consent agenda and approve all of those  
7 at once instead of having to go through each one  
8 individually.

9 Of course, any board member would have the  
10 opportunity as part of procedure to remove an item  
11 from the consent agenda and ask for additional  
12 information to include a brief synopsis of the event  
13 and/or to hear from the involved party, that being the  
14 officer or the deputy.

15 I think by making that simple change, that  
16 would kind of help expedite these meetings, especially  
17 some of the ones that last usually through lunch and  
18 into the evening hours, and would also help make our  
19 meetings a little bit shorter, especially for the  
20 board members that have to travel from other  
21 locations.

22 So basically I'd like to just hear from the  
23 other board members, if they think that by making that  
24 type of change, it would be something that everybody  
25 else would like to see and if anybody else has a

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<p>1 problem with it. I'm just basically looking for some 2 feedback.</p> <p>3 MR. KING: Okay. Discussion. Let me ask a 4 question real quick, because I don't know about the 5 implication. Mr. Shandler, is that something that can 6 be done without a rule change or will it require a 7 rule change or do you have a feel, do you know?</p> <p>8 MR. SHANDLER: Mr. Chairman, I don't believe 9 it would require a rule change. The only complication 10 I can think about is if someone wanted to abstain from 11 item 13 out of 15. Maybe the answer is that's not on 12 the consent calendar and handled differently or maybe, 13 if there's a sufficient quorum, that person abstains 14 from 11 through 15, all problems that can be easily 15 resolved.</p> <p>16 MR. KING: Okay. Actually I think that's 17 wise advice. I'm guessing that most of you all just 18 have to abstain whenever it's one of the members of 19 your own force or whatever. There may be other 20 reasons or whatever.</p> <p>21 But, Chief, would you be comfortable with 22 just taking the ones where somebody has to abstain 23 sort of out of the consent calendar?</p> <p>24 MR. SCHULTZ: Mr. Attorney General, I think 25 that would be fine. Or for the record, prior to the</p>	<p>1 vote on the consent agenda, that any member who would 2 have an individual problem with an individual item 3 just note that for the record but still allow us to 4 basically do a block.</p> <p>5 I mean, you know, looking at today's agenda, 6 in the first group of stipulated orders, we could take 7 care of five items at once very quickly. And the 8 second group, for the default orders of revocation, it 9 looks like we could take care of seven items very 10 quickly, which would allow us to have more time on the 11 formal hearings, which obviously are the ones that 12 really require our attention.</p> <p>13 MR. KING: Sure. And I don't normally chair 14 those. But as somebody who does lots of procedural 15 issues and such, I suppose that you could -- that 16 frankly even now you could sort of do that by motion 17 anyway. Mr. Coon, you may be doing these.</p> <p>18 But it might be that you could sort of in 19 order just call the cases by name and ask if there's 20 anybody that has anything to say on any of those 21 specifically, and then indeed have somebody make a 22 motion to just confirm them all in one motion or 23 something. We should think about that. I think it's 24 a good idea. Other discussion? Mr. Korn.</p> <p>25 MR. KORN: Mr. Chairman, I would like to go</p>
<p>Page 48</p> <p>1 on record and say this is a simple idea that will 2 continue everybody's due process and make things more 3 efficient for the board. And I think it's a wonderful 4 idea.</p> <p>5 It's simple, it will work, it will maintain 6 due process. People who want to speak can still speak 7 if they've come from different places in the state 8 that are accused officers. I'm wholeheartedly in 9 agreement with Chief Schultz.</p> <p>10 MR. KING: And that's kind of what I'm 11 thinking. Chief Schultz, maybe you said that before 12 and it sort of slipped by me. But yeah, it would be 13 worthwhile to have an opportunity at the beginning of 14 that to ask if there was anybody that came to speak on 15 one of those cases or that has any issues on those or 16 something or other and just dispose of comment on 17 those, if there's comment that should be available.</p> <p>18 Or are you recommending that these are not 19 the kind of things that would normally lead to comment 20 anyway?</p> <p>21 MR. SCHULTZ: Mr. Chairman, I believe most of 22 the time the affected employee would probably not want 23 to comment, especially in light of the fact that we've 24 got kind of the chart of sanctions or whatever 25 terminology you want to use, kind of the guidelines</p>	<p>Page 49</p> <p>1 that the director will be using.</p> <p>2 Most of that has been worked out in advance. 3 And I know there have been some cases -- we've had 4 some employees that obviously are very uncomfortable 5 about talking about the incident they were involved in 6 and probably would rather not.</p> <p>7 But I think anybody who would like to address 8 the board could address that with the chairman, saying 9 that they would like to have the opportunity to 10 address the board on their individual items and not 11 necessarily be required to. But I'll leave it up to 12 the individual person who is coming from the board or, 13 if they're represented, with their attorney.</p> <p>14 MR. KING: Any other discussion? As I said I 15 think, Sheriff Coon, when you're chairing the 16 meetings, you could probably do that. I actually 17 don't think it takes much of a change. I think it 18 just requires a difference in mind-set for how we take 19 a motion.</p> <p>20 MR. COON: Sure.</p> <p>21 MR. KING: Okay. Good idea. Thank you, 22 Chief Schultz. Anything else on that item then, item 23 No. 6? Okay.</p> <p>24 ITEM NO. 7: BACKUP PROSECUTOR 25 MR. KING: Item No. 7, back up prosecutor.</p>

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<p>1 Mr. Korn.</p> <p>2 MR. KORN: Mr. Chairman, item No. 7 and No. 8</p> <p>3 are both under my title. And I think, for the sake of</p> <p>4 moving the proceeding along, we can join them under</p> <p>5 No. 8.</p> <p>6 MR. KING: I'm not exactly sure how they're</p> <p>7 tied together, but I can see that. Go ahead,</p> <p>8 Mr. Korn. If we think that they need to be separated</p> <p>9 out, we'll separate them out.</p> <p>10 MR. KORN: Okay. Thank you. May I take the</p> <p>11 podium?</p> <p>12 MR. KING: Sure.</p> <p>13 ITEM NO. 8: CONFLICT OF INTEREST</p> <p>14 MR. KORN: Can everybody hear me?</p> <p>15 MR. KING: Go ahead.</p> <p>16 MR. KORN: Mr. Chairman and fellow members of</p> <p>17 the board, thanks for letting me address you about</p> <p>18 agenda item No. 8, which is entitled Conflict of</p> <p>19 Interest.</p> <p>20 It would behoove us before talking about that</p> <p>21 particular agenda item to observe what all of us know</p> <p>22 to be true. And that as the Law Enforcement Academy</p> <p>23 Board, our sole and singular objective is to</p> <p>24 administer the board to take care of officers within</p> <p>25 the State of New Mexico.</p>	<p>1 And in doing that we know that our objective</p> <p>2 in there is to train the officers so that they have</p> <p>3 the best training that they could possibly have. And</p> <p>4 also administer disciplinary cases so that we retain</p> <p>5 the officers that have simply made mistakes and invite</p> <p>6 the officers that shouldn't be officers to leave our</p> <p>7 law enforcement community.</p> <p>8 As we all know, 90 to 95 percent of the</p> <p>9 officers that come before us for disciplinary matters</p> <p>10 are matters of mistake, bad judgment. Most of these</p> <p>11 officers go back into the field back to their own</p> <p>12 departments. And most of them serve careers that are</p> <p>13 exemplary and they never come before the board again.</p> <p>14 Five percent of those officers are people</p> <p>15 that we sometimes scratch our head and say why were</p> <p>16 these officers ever admitted into law enforcement in</p> <p>17 the first place. And those we have a duty to discover</p> <p>18 and to remove.</p> <p>19 The key of all this is that speed is the</p> <p>20 essence of justice in this case. Due process</p> <p>21 requires, demands that we act with a sense of urgency.</p> <p>22 In this case justice delayed is justice not provided.</p> <p>23 And what we've had in the past is a series</p> <p>24 where cases have lingered and languished for months</p> <p>25 and years. And as that happens, we lose the ability</p>
<p>Page 52</p> <p>1 to provide due process to our officers, good and bad.</p> <p>2 We also have a duty, of course, to the public</p> <p>3 that expects us to police our own. We have a duty to</p> <p>4 the 5,400 other police officers in the state that</p> <p>5 never come before us and do their job right all the</p> <p>6 time. So it's with that backdrop of what our real</p> <p>7 goal is, our singular goal, one and only, is to take</p> <p>8 care of these officers that I bring up this agenda</p> <p>9 item.</p> <p>10 To put everything in perspective as far as</p> <p>11 the conflicts of interest that I've listed as this</p> <p>12 agenda item, I think it's important to go back and</p> <p>13 look at where we are; where we were for the last six</p> <p>14 months and how we got to where we are now.</p> <p>15 So if you'll permit me, I want to go back to</p> <p>16 the fall of 2011. And at that point I was appointed</p> <p>17 as a hearing officer, as a backup hearing officer for</p> <p>18 our regular one. And in my duties as a backup hearing</p> <p>19 officer, I discovered that one of the assistant</p> <p>20 attorney generals was doing a job that I labeled as</p> <p>21 incompetent.</p> <p>22 I noticed that in the first two hearings that</p> <p>23 I conducted with that man. And to test my feeling</p> <p>24 about whether I was on track or not, I contacted the</p> <p>25 other hearing officer and asked him if he had any</p>	<p>Page 53</p> <p>1 issues with the way Mr. Jackson was presenting cases.</p> <p>2 The other hearing officer is Mark Radosevich.</p> <p>3 And he said he did. And we talked about that. And I</p> <p>4 asked him why he didn't bring that to the attention of</p> <p>5 board, to which said he had. He talked to Zach</p> <p>6 Shandler, who is the attorney for the hearing officer.</p> <p>7 And he thought that was his communication to the</p> <p>8 board.</p> <p>9 After that interlude I then made an</p> <p>10 appointment as we know and as we've heard in the past</p> <p>11 with Gary King on at least three different occasions.</p> <p>12 Those appointments became more and more difficult and</p> <p>13 acrimonious as we've talked about.</p> <p>14 Ultimately Mr. King referred me to Scott</p> <p>15 Fuqua because the goal was to remove Mr. Jackson from</p> <p>16 administering to our cases prior to the time of the</p> <p>17 December meeting, when there would be four different</p> <p>18 hearings on the agenda.</p> <p>19 My conversation with Scott Fuqua was mixed</p> <p>20 reaction. First he agreed to remove Mr. Jackson. But</p> <p>21 then he denied and refused to allow Mr. Jackson to be</p> <p>22 removed prior to him handling the cases. Mr. Fuqua</p> <p>23 insisted that Jackson be allowed to handle the cases.</p> <p>24 And as you know, as we all know, that created</p> <p>25 the emergency meeting that we all attended. And the</p>

1 board, by unanimous agreement, with the sole exception  
2 being Chairman King, agreed that we needed to remove  
3 that prosecutor from doing cases for this board. And  
4 we did.

5 Now, as I'm talking, the topic here is  
6 conflict of interest. And I'm hoping you'll see where  
7 I'm getting at with these things, because what  
8 happened after that, after removing Mr. Jackson as a  
9 prosecutor, the Attorney General's Office assigned  
10 Mr. Moon as a prosecutor.

11 And the very next interlude with Mr. Moon was  
12 that he wrote emails to Director Hubbard that we've  
13 talked about in our last meeting and that we all  
14 characterize as arrogant, condescending, and certainly  
15 not a team player.

16 And that resulted based primarily on those  
17 attitudes and secondarily on the fact that by early  
18 January the Attorney General's Office has done no work  
19 on any of the cases before us. Director Hubbard or  
20 Acting Director Hubbard was pushing all the cases on  
21 his own. Based on that we had our second meeting on  
22 January 17th.

23 And at that meeting we decided that we were  
24 going to take back control of prosecuting cases back  
25 onto the board itself. And at that meeting we decided

1 somebody else.

2 No. That email was adios, I'm out of here.  
3 Whatever responsibility he might have felt towards the  
4 board was clearly absent from that email. And I  
5 appreciate Attorney General King, because when he  
6 speaks defending his office, he's Attorney General  
7 King, he's not chairman of our board King.

8 Attorney General King said no, that's the way  
9 they do it in court. Well, that may be the way they  
10 do it in court, but that's not the way you do it when  
11 you're administering to a board. That's not the way  
12 you do it when you're like in private practice. In  
13 private practice, if a business goes and hires a law  
14 firm and that guy -- one fellow from the law firm is  
15 handling your case and goes on vacation, you can be  
16 darned sure he tells you when he's going to be gone  
17 and who is going to be handling your matters.

18 But that was the first interlude. But there  
19 were more. After that as we know, we started seeing  
20 all these acrimonious emails that you've seen in the  
21 package that Director Hubbard sent. They were  
22 arrogant, they were difficult, and they started with a  
23 file review.

24 In the file review, which he kept for -- I  
25 think Director Hubbard sent it to him on

1 that we were going to streamline our own process. We  
2 were going to remove the Attorney General's Office  
3 from handling the Notice of Contemplated Action and  
4 getting involved in our cases and delaying it the way  
5 they had for years.

6 And you can see that the result of that  
7 meeting, adopting new guidelines, resulted in our  
8 being able to do an unprecedented 60 cases in a  
9 five-week period by Mr. Hubbard simply applying  
10 himself to the guidelines we gave him.

11 So today in March here we come. About a week  
12 or ten days ago, the flurry of emails started again  
13 from the AG's office to Director Hubbard. The first  
14 thing that came was I call it a vacation adios from  
15 Mr. Moon. It's like, hey, Director Hubbard sent us  
16 the email. It had two sentences. One is I'm gone for  
17 this week in February and I'm gone from this week in  
18 March.

19 That's a total of almost four weeks out of a  
20 five-week period. He didn't say sorry, he didn't say  
21 call me if I can help you, he didn't say if there's  
22 anything pending let me know and I'll make sure  
23 somebody else is assigned. And he certainly didn't  
24 say if you have any issues or problems when I'm done,  
25 I've already set this up so that you can contact

1 February 10th. And true to the lightning speed of the  
2 Attorney General's Office, he did his file review and  
3 replied February 22nd. So 12 days later he did his  
4 file review.

5 And as Director Hubbard pointed out in his  
6 email, he had a number of picayune, unnecessary,  
7 extraneous matters that he asked for. But at least he  
8 did the file review. In his defense he did the file  
9 review.

10 But then less than 24 hours later, he  
11 repudiated the file review. And the reason was that  
12 after discussion with others, because that's the key  
13 phrase in there what changed in those 22 hours?

14 Somebody came and slapped him on the head and  
15 say no, we're not doing that, we're not cooperating,  
16 because -- it was either a contemporary or it was  
17 Mr. Jackson or Mr. Shandler or Mr. Fuqua or Mr. King,  
18 somebody said we're not going to be doing that.

19 I point this out because what we're seeing  
20 here is a push. A push from the Attorney General's  
21 Office back to our board. And then finally the email  
22 that I enjoy the most perhaps is the one from Scott  
23 Fuqua, because that one -- and Mr. Hubbard said he  
24 thought that it was not peer to peer, it was parent to  
25 child. And I too read it and we all saw it.

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<p>1 I find Mr. Fuqua to be condescending, smarmy, 2 disingenuous when he misinterpreted all of the rules 3 and all the procedures that we had set up in the 4 previous meeting, misinterpreted them to his best 5 interest, and said why he wants to cooperate but he 6 couldn't. He just couldn't, because we told him he 7 couldn't cooperate with us.</p> <p>8 And then in the final thing that I found the 9 most interesting, he observed that the board had made 10 a big mistake that obviously Director Hubbard could 11 understand. And Director Hubbard and he can go to the 12 board and tell us the error of our ways and perhaps 13 dis us out of the hole that we've already put 14 ourselves in.</p> <p>15 And he sent that without obviously any 16 knowledge that Director Hubbard had already cleared 17 60 cases from our calendar of 130 cases pending. He 18 cleared more cases in that five-week period than we've 19 had cleared in the last at least two years that I've 20 been on the board and I understand longer than that.</p> <p>21 So with this background and history, we come 22 to the idea of this conflict of interest. And that's 23 primarily what I wanted to do and frame it all in 24 reference to what we've already gone through in our 25 lives over the last six months.</p>	<p>1 Because this board is so involved with 2 conflicts of interest from the Attorney General's 3 Office that I'm surprised that we only were a one-year 4 backlog. I'm surprised we weren't a five-year 5 backlog.</p> <p>6 Now, consider, we have the Attorney General 7 who is our chairman. And we have assigned to our 8 board an Assistant Attorney General who is our 9 counsel. And we have an Assistant Attorney General 10 who is the counsel to the hearing officer. And we 11 have an Assistant Attorney General who is the 12 prosecutor. And then as Mr. Hubbard pointed out, we 13 have numerous Attorney Generals that like to write to 14 him.</p> <p>15 And look at the conflicts that are inherent 16 in each of these people's modes. First we have the 17 conflict between Moon, Fuqua, and the director. It's 18 a conflict that might not be a legal conflict of 19 interest between attorneys, but it's a conflict of 20 interest of trust.</p> <p>21 And that's exactly what Director Hubbard 22 pointed out. When you have people so distrustful as 23 our attorney that they're trying to stab us in the 24 back which is the way Director Hubbard felt, and 25 actually the way I feel, it's like they're just</p>
<p>1 looking for ways to misread what we put in our 2 guidelines to try to somehow say gotcha at the end.</p> <p>3 When we need them to do a case and they say, 4 oh, no, I don't think there's enough in this case. I 5 certainly can't prosecute. Your rules are going to go 6 and this case is going to die because we didn't 7 prosecute because how could we. You didn't let us do 8 it properly.</p> <p>9 With that lack of respect and lack of 10 coordination and lack of teamwork, what do we have 11 left except an inability to function. Again if this 12 was a law firm, we would be firing that law firm if we 13 were in private practice -- I mean if it was a private 14 business.</p> <p>15 Let's look at Zach Shandler, our hearing 16 officer counsel. We've all known Zach for years. He 17 certainly is a nice gentleman. But nice gentlemen are 18 not -- look at the way we're set up, with so many 19 conflicts that how could we possibly go on. Let's 20 talk about Zach Shandler as hearing officer counsel 21 first.</p> <p>22 Consider that Zach Shandler as the hearing 23 officer counsel advises our hearing officer on matters 24 that come before him from his brother prosecutor, 25 another AG. And then after he advises the hearing</p>	<p>1 officer about what evidence his brother AG has given, 2 he then writes up the decisions for the hearing 3 officer.</p> <p>4 And then after he writes the decision that 5 the hearing officer signs, he comes before the board 6 at the time we do our closed meetings and advises us 7 in the board room. Now, you think about this.</p> <p>8 If we were an accused officer, would we feel 9 very comfortable with the fairness of the process? 10 And the answer is no. I mean would we want to be in a 11 process like that? The answer is no. And yet the 12 board has allowed this to happen for years.</p> <p>13 And not without attorneys, defense attorneys 14 objecting and pointing out that this is wrong. And, 15 you know, as I get more into things, I think as all of 16 us become more familiar with the process, we start to 17 see things maybe we didn't see yesterday.</p> <p>18 I went back in my files, because I know there 19 are numerous complaints by defense attorneys about 20 this very issue. I happened to find one, and I 21 stopped looking. I know there's others.</p> <p>22 Let me just read this to you. This is from 23 defense attorney Rudy Martin who is making comments 24 about somebody that appeared before our board sometime 25 ago. And he's raising issues to the hearing officer</p>
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<p>1 report of conflict of interest.</p> <p>2 He says "I raised the issue of conflict of</p> <p>3 interest. Mr. Shandler and Mr. Jackson are both</p> <p>4 employees of the New Mexico Attorney General's Office.</p> <p>5 They're both coworkers. Mr. Jackson is proposing that</p> <p>6 Mr. Gonzales' certification be suspended.</p> <p>7 "And his coworker, the person who wrote the</p> <p>8 decision, is favoring or supporting Mr. Jackson's</p> <p>9 position. If, in fact, the Law Enforcement Academy</p> <p>10 wants anyone to believe that there's any fairness in</p> <p>11 its hearing process, a neutral person should be placed</p> <p>12 in the position held by Mr. Shandler, as there is no</p> <p>13 fairness when you have two coemployees from the</p> <p>14 Attorney General's Office, one prosecuting and the</p> <p>15 other writing an opinion or report favoring the</p> <p>16 position offered by the coemployee. This is a gross</p> <p>17 conflict of interest."</p> <p>18 I agree. Who wouldn't. Let's talk about</p> <p>19 another conflict of interest again as a hearing</p> <p>20 officer counsel. You know, I told you that</p> <p>21 Mr. Radosevich had also seen deficiencies in the</p> <p>22 presentation of Jackson, of Assistant AG Jackson. He</p> <p>23 spoke at length to Mr. Shandler after many meetings</p> <p>24 telling him the observations he had and why he thought</p> <p>25 Jackson shouldn't be allowed to continue or else</p>	<p>1 without more work and more evidence and more witnesses</p> <p>2 and more preparation.</p> <p>3 Now, I've been on the board two years. We've</p> <p>4 all -- you know, some have been here longer than me,</p> <p>5 some less. I can tell you that never in my tenure</p> <p>6 here -- and I haven't missed any meetings. Never in</p> <p>7 my tenure here did Mr. Shandler ever present to the</p> <p>8 board that the hearing officer had great reservations</p> <p>9 about the way evidence was being presented.</p> <p>10 And wouldn't you think that this would be a</p> <p>11 prime objective, to make sure that we were covered</p> <p>12 correctly. And the answer is, well, Mr. Shandler had</p> <p>13 to kind of trade between being our counsel and being a</p> <p>14 good friend to Mr. Jackson. He obviously decided to</p> <p>15 err on the side of being the friend.</p> <p>16 And I don't fault Mr. Shandler so much as</p> <p>17 observing this, because people put in this position</p> <p>18 have a hard time making decisions that are right when</p> <p>19 they're obviously in a conflicted position to begin</p> <p>20 with.</p> <p>21 And finally, of course, we all remember what</p> <p>22 happened at the last meeting, when Mr. King was</p> <p>23 challenged as far as his ability to designate somebody</p> <p>24 else to weigh in in his stead. One of the things that</p> <p>25 Mr. King did, in trying to figure out how he could</p>
<p>1 have his designee remain, is call on Zach Shandler.</p> <p>2 After all, he is board counsel. But also</p> <p>3 works for Gary King. And so the effect of calling on</p> <p>4 Zach Shandler was one of saying the employer, AG King,</p> <p>5 calling on board counsel, as if he's Chairman King,</p> <p>6 and asking him to make a decision.</p> <p>7 Now, imagine, just imagine you were the</p> <p>8 Assistant AG being asked by your boss to pass on</p> <p>9 whether what he was doing was improper or illegal.</p> <p>10 Imagine the conflict that puts you in. And so how did</p> <p>11 he respond? Well, he didn't recuse himself. But he</p> <p>12 waffled like a -- he waffled like there was no</p> <p>13 tomorrow.</p> <p>14 What he said was my advice to the board is</p> <p>15 absent time to research the statute, you should</p> <p>16 continue your existing practice. So even though that</p> <p>17 practice was accused to be illegal, he was covering</p> <p>18 for his boss saying let's just keep on going, we've</p> <p>19 done this for years. The point is not to castigate</p> <p>20 Mr. Shandler. The point is to say we have a system</p> <p>21 that's dysfunctional.</p> <p>22 What about Gary King himself? You know, here</p> <p>23 there's no -- there's no lack of understanding what</p> <p>24 his conflicts are. You've heard me over and over</p> <p>25 challenge him that, when he speaks on behalf of his</p>	<p>1 department, defending his staff as he did today, he</p> <p>2 defended the email from Mr. Moon, which I think is</p> <p>3 inappropriate.</p> <p>4 When he defended it, he defended it as Moon's</p> <p>5 boss. We've seen him over and over defending his</p> <p>6 department as the boss of the AG's office. He's</p> <p>7 conflicted out, because what we hope he's going to be</p> <p>8 is committed only to us. So long as his employees are</p> <p>9 also our staff members, he is conflicted out.</p> <p>10 And then consider, one of the things that we</p> <p>11 do more than anything else as a board, the greatest</p> <p>12 time we spend when we come together is we handle</p> <p>13 disciplinary cases. And Mr. King, by his own</p> <p>14 admission, he can't stay here to handle the</p> <p>15 disciplinary cases because his prosecutor is</p> <p>16 prosecuting them. He would be conflicted. So he has</p> <p>17 to leave. He can't remain with us to help us carry</p> <p>18 the major burden of what we do here during our</p> <p>19 meetings.</p> <p>20 So here is where I'm at. Here is where I</p> <p>21 came in my logic of all this. I thought how can our</p> <p>22 statutes and our rules set us up into such an</p> <p>23 unworkable situation where our legal counsel is so</p> <p>24 conflicted that we can't trust them, we can't rely on</p> <p>25 them, that they give advice that's possibly counter to</p>

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<p>1 what good advice would be because they're set up that 2 way.</p> <p>3 So I went back to look at the statute and 4 rules to see why they would put the Attorney General 5 as the chairman of our board and also as our major 6 counsels. Guess what I found? What I found was the 7 Attorney General's Office as providers of services, 8 legal services is nowhere in our rules or the statute.</p> <p>9 The only time that the Attorney General's 10 Office comes up in our rules or in the statute is to 11 say that Gary King is our chair. And quite to the 12 contrary, when it comes to how we handle our 13 disciplinary cases, what it says is that the person 14 that will handle the disciplinary cases and see them 15 through to conclusion is our director. Only our 16 director is mentioned in the rules.</p> <p>17 So who do we have as a director? I'm taking 18 this as a snapshot in time. Well, we happen to have 19 Bill Hubbard, who is unique in terms of his 20 capability, his education, his poise in delivery, and 21 his knowledge. He's been a 34-year law enforcement 22 veteran. He's worked at a DA's office for seven and a 23 half years, he knows how to present cases.</p> <p>24 But he's leaving. He's leaving us. So I 25 thought who is his successor going to be, is his</p>	<p>1 successor going to be any likelihood of being able to 2 follow through as the prosecution of matters if indeed 3 the Attorney General is no longer involved in our 4 board?</p> <p>5 So I called up the secretary, Gordon Eden. 6 And I said tell me a little something about 7 Mr. Hubbard's successor. And Gordon Eden told me 8 about Luis Medina, that he is a gentleman that is in 9 the Inspector General's office of the IRS, that he's a 10 man as Inspector General who has prosecuted cases.</p> <p>11 He informed me, which I hadn't known, that 12 the Inspector General is the only one in the federal 13 system that can actually go in front of the grand 14 jury. He's gone in front of the grand jury, he's 15 prosecuted cases, he's fully equipped and 16 knowledgeable about the criminal justice system.</p> <p>17 So I asked Director Eden if he would support 18 Luis Medina being the prosecutor on the cases if 19 indeed the board felt that the Attorney General's 20 Office was conflicted out. And Gordon Eden gave a 21 vote of support and said absolutely.</p> <p>22 And I notice that Assistant Secretary Pat 23 Mooney is in our board meeting today. And if the 24 board had questions for him, I suspect that he will 25 also agree that Mr. Medina is fully capable of being</p>
<p>1 the prosecutor just the way the rules require and 2 state.</p> <p>3 So then I asked Gordon Eden, is there money 4 for appellate work from an outside counsel if indeed 5 the Attorney General's Office is removed from this 6 board for having conflict of interest. Gordon Eden 7 said there would be. He would be supporting us.</p> <p>8 So here we have it. Just to put this in a 9 nutshell, working with the Attorney General's Office 10 over the last number of years has never been smooth. 11 They've warehoused our cases, they've put our officers 12 that are accused of misdeeds in jeopardy for years and 13 years and years.</p> <p>14 And I think Chief Shilling and many others on 15 our board have voiced the idea that having this cloud 16 over an officer's head for years affects adversely 17 their family, their job, their department. It's 18 justice denied because we haven't given them swift 19 justice.</p> <p>20 And now, in the last six months, we've seen 21 acrimony, finger pointing, a place of distrust to 22 where Director Hubbard and I agree and I have a 23 feeling many on the board will agree also that the 24 AG's office under Scott Fuqua and Bill Moon are poised 25 to try to point out how wrong we are, to try to back</p>	<p>1 us into a corner; when we need their help, that they 2 won't be there.</p> <p>3 They're setting us up to fail. But maybe I'm 4 wrong. Maybe they're not setting us up to fail. But 5 that's the perception. I mean that's my perception. 6 That's Hubbard's perception. It may be the perception 7 of others on the board.</p> <p>8 And in this case perception is the only thing 9 that matters. Because we're talking about a 10 relationship with our lawyer, the attorney-client 11 privilege, the attorney-client relationship, where you 12 trust the attorney and the attorney trusts you. You 13 have a bond, you have a common bond.</p> <p>14 We don't have that with the AG's office, not 15 in the prosecution area. And then what about the 16 conflicts that are inherent in the advice we're 17 getting. We don't have a nonconflicted situation 18 either.</p> <p>19 This is distrust that can never be regained. 20 This is a situation that's bad, that can never be 21 reworked. If we were private industry, the law firm 22 of the Attorney General's Office would be out on their 23 ear so quick it would make your head spin.</p> <p>24 And that's what I'm advocating for this 25 board. I'm advocating that this board fire the</p>

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<p>1 Attorney General's Office. We can do it. And there's 2 no reason not to. And what happens if we fire the 3 AG's office? What is life going to be like after the 4 AG's office is out of our life? 5 And what I'm suggesting to you is only good 6 things for all of us, including actually good things 7 for Attorney General King. Because the first thing 8 that will happen, once we get rid of the AG's office, 9 is we take back the board and the process ourself. 10 We move our cases swiftly as Director Hubbard 11 has already shown us we can and that we suspected. 12 These meetings, from the emergency meeting to the 13 January meeting to today, where these hours are spent 14 lamenting and cajoling and worrying about how many 15 fights we're having with the AG's office will be gone. 16 We can get back to doing our work, which is really 17 what we're supposed to be doing, the work of the 18 board, taking care of the officers. 19 The fairness situation for the officers, 20 where there's a board hearing officer who actually 21 acts independent of the AG's office, improves the 22 ability for accused officers to have their cases 23 handled fairly. We're able to hire a skilled attorney 24 who really wants us to succeed and is going to help us 25 do that.</p>	<p>1 And finally for Gary King because -- I really 2 harbor no ill will towards Gary King. But for Gary 3 King I see immediate relief from these kind of 4 intercessions that can't be pleasant for him. And 5 then he can become our chairman of the board. He can 6 actually run meetings and not worry about whether he's 7 going to have to defend his office. 8 He can actually be the chairman of the Law 9 Enforcement Academy Board. He can attend the meetings 10 where we have our penalties -- our penalty discussions 11 and the remediations between the disciplinary matters. 12 He doesn't have to say I have a conflict anymore. He 13 can be a working effective leader of our group, which 14 is what the statute had already intended. 15 I have a motion. I would like to pass that 16 out. I'll read the motion. My motion is to terminate 17 all legal representation of the Law Enforcement 18 Academy Board by the Office of the Attorney General 19 effective immediately. The termination includes the 20 services the AG's office had provided as 21 administrative prosecutor, board counsel, and counsel 22 to the hearing officers. That's my motion. 23 MR. KING: Is that all, Mr. Korn? 24 MR. KORN: Yes, sir. 25 MR. KING: Okay.</p>
<p>1 MR. KORN: I would hope for a second. 2 MR. KING: Well, actually the first thing 3 I'll do is rule the motion out of order. Here is the 4 problem. You know, I've expressed some concerns to 5 the board as a member of the board about violations of 6 the Open Meetings Act. 7 And I think that it would be pretty clear 8 that for the board to take action on something like 9 this that got passed out today without any opportunity 10 for public comment or for reflection would be -- would 11 clearly violate the Open Meetings Act. 12 And so as the chair I'm going to rule that 13 that motion is out of order currently. I would be 14 more than happy to put this motion on the agenda for 15 the next meeting. 16 MR. KORN: Mr. King, this is not a motion to 17 change our rules. This is a motion that has to do 18 with the process of our board. I say that we can make 19 this motion and that I can have a second on it and 20 that we can have a vote. And I make this motion 21 without asking that it be put on the agenda for the 22 next meeting. I ask that it be seconded today. Will 23 somebody second my motion. 24 MR. MYERS: I'll second. 25 MR. KORN: And I would ask for a vote or a</p>	<p>1 discussion and a vote on this. 2 MR. KING: Well, I'll tell you what, we're 3 certainly on that item discussion. So let's keep 4 discussing. And when we get to the end of it, then 5 I'll decide whether the motion is in order or not. 6 MR. GRATTON: Mr. Chairman, Mr. Korn, if I 7 may. I have one question. I'm sorry. John Gratton 8 speaking, member of the board. 9 I know Mr. Medina is coming in as our 10 representative next Monday. And his background 11 according to Secretary Eden prepares him to do 12 prosecution. We have no authority or nothing. And 13 that just leads us to believe that if Mr. Medina 14 leaves, that the next person will be able to serve in 15 that capacity, do we? 16 MR. KORN: Well, Mr. Medina is moving all of 17 his worldly possessions from Denver to take the slot 18 as director of our board. I think that we can expect 19 that, if for some reason Mr. Medina left our board, it 20 would be up to the secretary of DPS to find somebody 21 equally qualified. 22 I think that not making a decision worrying 23 about some events that haven't happened in the future 24 is not the way that any business would work. And I 25 think that while you're correct in being cautious, I</p>

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1 don't think we should make -- fail to make moves  
 2 because we don't know what the future is going to hold  
 3 for us as far as Director Medina's longevity.  
 4 MR. KING: Chief Betz.  
 5 MR. BETZ: Mr. Chairman, board members, I  
 6 only have one question on it. And that's because it's  
 7 termed as immediate, what do we have in place. We  
 8 talk about bringing in an outside counsel. What are  
 9 the ramifications to bring them on board, to training  
 10 them up, policies, procedures.  
 11 Does this have to be an open solicitation.  
 12 We can be talking about -- I don't know. I know, from  
 13 working for the government such a long time, it could  
 14 be a very short process of a couple weeks or it could  
 15 be a six-month process. That's my concern.  
 16 MR. KORN: Thank you, Chief Betz. I have  
 17 addressed that with Secretary Eden. First of all the  
 18 process -- the major area that a board attorney would  
 19 be involved in in my opinion, as we've seen here from  
 20 our board and everybody that's been on the board for  
 21 the last several months and years, the major process  
 22 would be as an appellate lawyer.  
 23 Things that come into our board where we need  
 24 to make decisions of defense and the prosecution of  
 25 cases are something that we could -- that is our

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1 members of the board, my situation as Mr. Korn said is  
 2 rather unique in the fact that I worked at a DA's  
 3 office for seven and a half years and sat at the  
 4 prosecution table for prosecution of cases virtually  
 5 every week.  
 6 By the same token, these are administrative  
 7 hearings. Yes, there are rules of evidence. Yes,  
 8 there are court rules that are in session. These are  
 9 not insurmountable things. This is much like learning  
 10 Robert's Rules of Order to be able to conduct a public  
 11 meeting and to keep order in that.  
 12 I don't find that it's significantly  
 13 different from that. I don't see it as an  
 14 insurmountable problem. It's a training issue,  
 15 whether it's for Mr. Medina or his successor or  
 16 anything like that. These are things that people can  
 17 and will be trained to do.  
 18 But prior to me coming in as your acting  
 19 director, I had never conducted an informal hearing  
 20 and actually kind of got kind of good at it before it  
 21 was all said and done. And it wasn't a bad  
 22 experience. Your learning curve goes up considerably  
 23 early on.  
 24 It's also something that you could learn by  
 25 demonstration, if it is demonstrated to you how one of

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1 greater exposure. In the meantime there are lawyers  
 2 at DPS and other lawyers throughout the system that  
 3 Secretary Eden would be able to assign to us  
 4 immediately while we search for someone to be  
 5 committed to us only.  
 6 So Secretary Eden has already provided for  
 7 immediate access to legal services. And then in the  
 8 future we can worry about the solicitations, worry  
 9 about the interviews of the next counsel.  
 10 But again the immediate problem is taken care  
 11 of by Secretary Eden. And worrying about the future,  
 12 how are we going to put out a notice of bid, how are  
 13 we going to interview, these are things that we take  
 14 in stride at future meetings I would suggest.  
 15 MR. BETZ: Thank you.  
 16 MR. KORN: Other questions?  
 17 MR. SCHULTZ: Mr. Chairman, if I may.  
 18 MR. KING: Chief Schultz.  
 19 MR. SCHULTZ: Actually my question is for  
 20 Director Hubbard. Having been in the position for  
 21 awhile, how would you feel -- and again knowing you're  
 22 leaving, the capabilities of the director to actually  
 23 prosecute the case in front of the hearing officer on  
 24 an issue that would come as a formal hearing?  
 25 MR. HUBBARD: Mr. Chairman, Chief Schultz,

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1 these formal hearings is conducted. And the incoming  
 2 director would get to see how a formal hearing is  
 3 conducted or to read transcripts from those. It's a  
 4 training matter. Did that answer your question,  
 5 Chief?  
 6 MR. SCHULTZ: Yes.  
 7 MR. KING: Chief Schultz, any other  
 8 questions?  
 9 MR. SCHULTZ: Actually again maybe one more  
 10 question. And not for Mr. Korn but for Mr. Mooney,  
 11 obviously some reference to support from DPS for  
 12 providing assistance from legal counsel. Could I hear  
 13 from Mr. Mooney and basically his reassurance that  
 14 that is something that has been discussed with the  
 15 Secretary, and that would be services made available  
 16 at all junctures where the AG's office currently  
 17 provides those services as discussed here.  
 18 MR. MOONEY: Mr. Chairman, Chief Schultz, and  
 19 fellow board members, my name is Pat Mooney, I'm  
 20 Deputy Cabinet Secretary for the Department of Public  
 21 Safety.  
 22 Although I haven't been privy to all the  
 23 conversations that Secretary Eden has had with  
 24 Mr. Korn, my conversation last night was that DPS  
 25 obviously supports whatever initiatives the board has.

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<p>1 And we're 100 percent behind whatever decisions you 2 make and we will support whatever process you decide 3 on.</p> <p>4 Obviously we're very concerned about 5 everything that's happened over the past several 6 months. I'm new to the position. I came on board in 7 December, mid-December. And as a citizen it appeared 8 that whatever process was there was not working.</p> <p>9 And once again, to reiterate everybody else's 10 comments, we are more than happy as to what has 11 happened and Mr. -- Director Hubbard's efforts. We 12 applaud him. I can stay here for a half hour and, you 13 know, continue with the accolades. But I think we all 14 know that he did a magnificent job here in the last 15 five weeks.</p> <p>16 And once again it's something the board had 17 decided and something he did as director. So, Chief, 18 to answer your question, I think Secretary Eden is 19 ready to support whatever efforts and whatever process 20 the board puts forward.</p> <p>21 MR. SCHULTZ: Thank you, sir.</p> <p>22 MR. KING: Other questions? Sheriff Coon.</p> <p>23 MR. COON: I don't have a question. I have a 24 comment. Ever since I've been on the board, I felt 25 there -- and nothing bad about you, Mr. King or Zach</p>	<p>1 or the Attorney General's Office. It always has been 2 that conflict of interest. You know, it seems like 3 there's too many spoons stirring the pot, the soup.</p> <p>4 Zach had to clean up a lot of Mr. Jackson's 5 problems in the hearings themselves. It would be like 6 myself in my department being the chairman of the 7 hearing board of my fleet's safety accidents. And, 8 you know, they're just -- that's why you get your -- 9 maybe an outside source coming in to look at some of 10 your accidents or a line officer instead of the CEO or 11 the sheriff or the chief.</p> <p>12 That's why we try to get away from those to 13 where it doesn't look like there's any improprieties 14 or any favoritism one way or the other or any 15 malicious prosecution one way or the other.</p> <p>16 I think Mr. King does a great job running 17 this board. But I do think there is some conflict 18 here. Ever since the first day I was on the board, I 19 kind of scratched my head and I kept my mouth shut. 20 But there was some conflict of interest with the 21 amount of Attorney General staff on this -- in this 22 process.</p> <p>23 I think it would be a big relief off 24 Mr. King's shoulders, maybe I'm wrong, that all he had 25 to do was run this board and there was another</p>
<p>Page 80</p> <p>1 independent set of attorneys out there that were 2 prosecuting our stuff. I might be wrong. I might be 3 speaking out of turn.</p> <p>4 But I think that we're doing a lot of 5 bickering and fighting on this board right now. 6 That's not what we're here for. We're here to 7 adjudicate some of these cases. And the longer we 8 keep fighting each other, it's just not working.</p> <p>9 We need to resolve this issue and go on about 10 doing what we're statutorily here to do, to look after 11 the Law Enforcement Academy Board and the disciplinary 12 matters of our officers throughout the state. Thank 13 you.</p> <p>14 MR. KING: Chief Shilling, did you have 15 something?</p> <p>16 MR. SHILLING: Oh. No.</p> <p>17 MR. KING: Zach.</p> <p>18 MR. SHANDLER: Mr. Chairman, members of the 19 board, the matter of conflict of interest between the 20 prosecutor and the board counsel has been brought up 21 before. In fact, there's a pending case right now 22 that was referenced earlier about Rudy Martin who 23 represents two clients, Gabriel Gonzales and Vince 24 Crespin.</p> <p>25 And in the Vince Crespin case, this is an</p>	<p>Page 81</p> <p>1 issue that's been raised. There's a status conference 2 tomorrow. And so in the interest of not knowing which 3 way the board is going to go, I have to develop a 4 record because right now I have a board member 5 admitting there's a conflict of interest. And that 6 case may be lost. So let me try to at least develop 7 the record a little bit and the board can make policy 8 decisions.</p> <p>9 But in that case I argued on behalf of the 10 board that there's not a conflict of interest based on 11 this case from the State Supreme Court in 1982 called 12 Mountain States Telephone &amp; Telegraph Company, where 13 the Supreme Court addressed the issue of two different 14 divisions in the Attorney General's Office and having 15 two different roles. And they resolved that that was 16 not a legal conflict of interest.</p> <p>17 So there is case law supporting the concept 18 that a prosecutor can be from the Attorney General's 19 Office and the civil division or the board counsel can 20 be from the Attorney General's Office. This is a 21 common recipe in state government. It's not unique to 22 this board. There's dozens and dozens of boards that 23 are like this.</p> <p>24 Now, for more statutory information, that's 25 the statutory interpretation while those two divisions</p>

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<p>1 legally, according to the State Supreme Court, can be 2 on both sides of the issue.</p> <p>3 In terms of the conflict of interest between 4 the civil division and the chairperson, again that is 5 not unique as well to state government. The State 6 Records Commission, the Attorney General is a member 7 and the civil division represents them.</p> <p>8 And the rationale that I've always been 9 trained on as a canon of statutory construction is the 10 legislature is presumed to know, when they put an 11 elected official on the board, of the existing law. 12 And the civil division which I'm part of has been 13 representing boards and commissions in state 14 government for as long as I'm aware of.</p> <p>15 And so when the legislature puts the Attorney 16 General on this board, on the Records Commission, they 17 are presumed to know that situation will exist, that I 18 will be advising the Attorney General. And the 19 legislature has allowed that to happen.</p> <p>20 Again this is not unique in state government. 21 The State Board of Finance has a lieutenant governor 22 on it. The lieutenant governor is also on the 23 Mortgage Finance Authority. Transactions the Mortgage 24 Finance Authority does has to be approved by the Board 25 of Finance.</p>	<p>1 So the lieutenant governor always asks, well, 2 I must have a conflict of interest because I'm on both 3 boards. And the advice this office has always given 4 or that I've been trained on is that the legislature 5 is presumed to know the law. And by putting you on 6 the board as an elected official, they knew this 7 situation would come up and that they allowed it.</p> <p>8 Now, on this particular board, the Attorney 9 General only handles a limited part of the agenda, the 10 rulemaking, the certification of new officers. And I 11 imagine, if there was ever a situation where the full 12 board felt it may be in the best interests to go above 13 the law to avoid the appearance, that maybe that could 14 be discussed.</p> <p>15 Maybe it's a controversial vote about how the 16 Attorney General wants to require 36 hours of human 17 traffic training and maybe the board thinks that's too 18 much. And they don't feel like I can provide 19 independent legal advice.</p> <p>20 The way the board has set that up to deal 21 with that is that you have a two-step rulemaking 22 process, where the idea is brought in front of the 23 board. And then at a future meeting, the board votes 24 on it. So there's enough advance notice for the 25 parties to maybe to work out a substitute counsel or</p>
<p>Page 84</p> <p>1 any issues like that.</p> <p>2 And I really can't -- there hasn't been that 3 many instances where I think that there's been 4 something where I think the board has felt 5 uncomfortable during the rulemaking process in terms 6 of the role of the Attorney General and the civil 7 division.</p> <p>8 So, you know, it's really up to the board 9 what they want to do. I'm not a policymaker. But you 10 have legal authority to continue with my work here. 11 And I just needed to put that on the record.</p> <p>12 MR. KORN: May I respond? I'm sorry. If 13 you're done. Are you finished?</p> <p>14 MR. SHANDLER: I am complete, yes.</p> <p>15 MR. KING: Okay. Actually Chief Shilling.</p> <p>16 MR. SHILLING: Mr. Chairman, I appreciate the 17 historical perspective there from the board's counsel. 18 But I think Mr. Korn hit on something that, I don't 19 know, may warrant further discussion. But in dealing 20 with these matters involving certifications and the 21 process, it's all fine and good that the Supreme Court 22 said that.</p> <p>23 But it's the perception issue that we're 24 dealing with day in and day out. And I deal with it 25 daily and I'm sure Chief Schultz does as well and</p>	<p>Page 85</p> <p>1 other law enforcement administrators. Just the 2 perception of an Internal Affairs process and how it's 3 viewed by the rank-and-file out in the field 4 regardless of what a court may say or an 5 administrative rule may say.</p> <p>6 And I just -- I wanted to voice my opinion on 7 that, Mr. Chairman, that I certainly have great 8 respect for the law of the land and what the supremes 9 say on any given day. But I think fundamentally we're 10 dealing with a perception issue as well. Thank you.</p> <p>11 MR. KING: Thank you, Chief Schultz.</p> <p>12 MR. KORN: May I respond to Mr. Shandler, 13 Mr. Chairman.</p> <p>14 MR. KING: Yeah. You can go ahead and do 15 that.</p> <p>16 MR. KORN: I do want to -- Zach, what was 17 that case cite again?</p> <p>18 MR. SHANDLER: Here it is. I made a copy for 19 you.</p> <p>20 MR. KORN: I just need the cite.</p> <p>21 MR. SHANDLER: No. I made a copy for you.</p> <p>22 MR. KORN: Thank you. Mr. Shandler had 23 pointed out that the legislature is presumed to know 24 what they're doing when they established the board. 25 And I believe that's true, they did.</p>

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<p>1 They established Gary King -- well, they 2 established the Attorney General as being the chairman 3 of the board. They did not establish the Attorney 4 General's Office representing the board. That's just 5 an ad hoc manifestation that's happened. 6 I think that Chief Shilling hit the nail on 7 the head. We as a board can either ascribe to be the 8 highest we can be and remove all doubt about whether 9 there is any improprieties going on or we can take the 10 low road and keep to the status quo. 11 And the low road, we're going to be in court 12 trying to defend ourselves with officers that don't 13 think they're getting a fair break. And I think, if 14 we go back to that commitment, that only commitment 15 that we have, because, remember, the Attorney 16 General's Office, they have a lot of commitments. And 17 being on this board is one of them. And looking as if 18 they're fully employed is another one of them. 19 But our commitment is pretty singular. We 20 only care about the rights of the officers to make 21 sure they're adjudicated right, feel they're getting a 22 fair shake, and then move them on back into society of 23 law enforcement. And for the 5 percent that need to 24 be gone, to administer those quickly. 25 That's our only purpose. Why would we hang</p>	<p>1 on to a manifestation or a perception that there's 2 something wrong when we have so many other 3 alternatives that will clear up our lives, make our 4 lives easier, and make the administration go quicker. 5 Thank you. 6 MR. KING: Okay. I have some comment in 7 response to this. But I've been noted by a couple of 8 the board members that we have not had a break since 9 ten o'clock. And so I am going to call for a 10 ten-minute recess. And we'll reconvene at 12:05. 11 (Recess.) 12 MR. KING: All right. Mr. Korn, do you have 13 other things to add to your discussion? I want to 14 hear a little bit from the other side of the coin here 15 about it. 16 MR. KORN: No, Mr. King. I don't. 17 MR. KING: Okay. We'll give you a chance to 18 get back up. 19 MR. KORN: Okay. Thank you. 20 MR. KING: Sure. All right. So I want to 21 say this so that it's on the record. I mean my 22 perception of almost all of the things that Mr. Korn 23 said is that they are matters of opinion that are 24 driven by a personal animosity towards the Attorney 25 General's Office and that there's very little</p>
<p>1 statement of fact or line in that. But I think that 2 it's an important topic for discussion. 3 I think that it's sort of interesting to 4 raise a motion that was made by a defense attorney 5 that hasn't been run all the way through the courts 6 yet. And I'm sure that each and every one of you on 7 the committee has been treated fairly by defense 8 attorneys in court. And so I hope you'll consider 9 those things. 10 Now, what I would like to do is recognize 11 Scott Fuqua to talk about the law a little bit 12 relating to the board and such, to respond to some of 13 those allegations made by Mr. Korn. And I've asked 14 him to keep it to like ten minutes or something like 15 that so that we can actually decide what we're going 16 to do here and move on, because we have people that 17 are waiting. So Mr. Fuqua. 18 MR. KORN: Mr. King, if I may ask for a 19 point of order, my understanding is that this is a 20 board matter, it's an agenda item for the board, and 21 that Mr. Fuqua is extraneous to that process. 22 MR. KING: And I'm a board member and I 23 actually called on him to ask him for his discussion 24 on this issue. And we're on that item discussion. 25 Mr. Fuqua.</p>	<p>1 MR. FUQUA: Thank you, Mr. Chairman. Can 2 everybody on the board hear me? I hope you can hear 3 me. 4 I appreciate the opportunity to address the 5 board. It was unclear from the agenda exactly what 6 this issue item was going to consist of. But it 7 sounds to me, from the comments Mr. Korn has made and 8 from some of the questions coming from members of the 9 board, that it boils down to a couple of things. 10 The first is this idea of perception. And I 11 wanted to address that in the legal context. What 12 Mr. Shandler discussed is, in fact, the law. The New 13 Mexico Supreme Court has considered the question of 14 whether it is a conflict of interest, a debilitating 15 conflict of interest, for one Assistant Attorney 16 General to advise a decision-maker and another 17 Assistant Attorney General to prosecute before that 18 decision-maker. And the answer is no. 19 And as Mr. Shandler pointed out, it may place 20 him in sort of a difficult position when he goes to 21 his status conference tomorrow for a member of this 22 board to have publicly asserted that there is such a 23 conflict of interest and that that conflict of 24 interest is, in fact, so serious that the board should 25 consider replacing the Attorney General as both</p>

<p style="text-align: right;">Page 90</p> <p>1 prosecutor and board counsel.  2 That's going to be a difficult argument now  3 for Mr. Shandler to make tomorrow. And the question I  4 think that he has to grapple with is, well, so what do  5 I say to the court exactly when the court says, now,  6 wait a minute, didn't one of your board members say  7 that this was a conflict of interest and isn't that  8 exactly what the defense attorney in this case is  9 arguing?  10 And what does Mr. Shandler say. Does he say,  11 well, I think they were just talking about perception,  12 not about the law. The problem is the courts don't  13 really care about perception. The question in that  14 case is was the discipline handed down by this board  15 so infected by a conflict of interest that a district  16 court should reverse it?  17 The answer to that question from the Supreme  18 Court is pretty clearly no. The court isn't concerned  19 with what the perception of a conflict of interest  20 might be. The court is concerned with what the law  21 has to say about conflict of interest.  22 And I only make this point to reassure the  23 board that according to what the United -- I'm sorry.  24 Not the United States. But according to what the New  25 Mexico Supreme Court has said, any allegation a</p>	<p style="text-align: right;">Page 91</p> <p>1 defense attorney ever makes about this conflict of  2 interest will fail to result in a decision from a  3 district court overturning this board's decision of  4 meting out the discipline that it deems appropriate.  5 That's the law.  6 And to that extent, while I certainly  7 understand the board's concerns with perception,  8 perception is not what decides those cases. The law  9 decides those cases. And as long as we're discussing  10 perception, a couple of things I think the board might  11 want to take into consideration while it considers  12 this issue.  13 First of all whose perception exactly is it  14 that we're concerned about? Are we concerned about  15 the perception of the public at large? Are we  16 concerned about the perception of those who have been  17 accused of misconduct and whose certification is  18 somehow in jeopardy in front of the board?  19 And the reason I ask that question, the  20 reason that I think that's an important question to  21 answer is because I think it gives some guidance as to  22 what it is that this board wants to do in terms of the  23 way that it conducts itself in these disciplinary  24 matters to manage that perception and to address those  25 concerns about perception.</p>
<p style="text-align: right;">Page 92</p> <p>1 Just by way of example, if we're concerned  2 that members of the public will find it to be a  3 conflict of interest for the Attorney General to both  4 sit on this board and have members of his staff  5 prosecute and provide advice to the board, we might  6 also wonder whether or not the public has concerns  7 about a member of this board sitting as a hearing  8 officer in a case. That could raise precisely the  9 same kind of perception problems that it appears that  10 some members of the board have problems with this  11 morning.  12 By the same token, when we talk about the  13 role that anybody sitting on this board plays -- and  14 Mr. Korn has mentioned more than once that he has  15 concerns about whether the Attorney General is sitting  16 here as the Attorney General and the employer of those  17 that Mr. Korn has excoriated or whether he's sitting  18 here as the chair of this board.  19 I would point out that this is a question  20 that actually every member of the board would need to  21 answer if it were a legitimate question, because every  22 single member of this board sits here in their  23 capacity as a member of the board and their capacity  24 in whatever it is they do in their professional life.  25 And so if we're curious about whether the</p>	<p style="text-align: right;">Page 93</p> <p>1 Attorney General is sitting as the Attorney General or  2 as the chair of the board, I think we would ask is  3 Chief Schultz sitting here as the Chief of APD or is  4 he sitting here as a member of the board, is Sheriff  5 Coon sitting here as the Sheriff of Chaves County or  6 is he sitting here as a member of the board, is  7 Mr. Korn sitting here as a member of the board or is  8 he sitting here as someone that has lucrative  9 contracts with law enforcement agencies in the State  10 of New Mexico.  11 Fortunately you don't have to answer any of  12 those questions because those questions don't bear on  13 what it is that this board has to do. Statutorily the  14 Attorney General sits as the chair of the board. The  15 Office of the Attorney General sits as the chair of  16 the board. And that comes with all of the other  17 powers and obligations that the Attorney General and  18 his office bears including providing representation to  19 the State of New Mexico.  20 And in this context and in the context in  21 which our office represents other boards and  22 commissions, licensing boards and commissions in New  23 Mexico, as Mr. Shandler pointed out, we play the role  24 of prosecutor and advisor for every board that we  25 represent.</p>



<p style="text-align: right;">Page 94</p> <p>1 It has never, ever to my knowledge resulted 2 in a single decision from any court in the State of 3 New Mexico that the discipline handed down by the 4 board that we represent in that dual capacity was 5 somehow infected by a conflict of interest. 6 Much like Mr. Shandler, I'm not a 7 policymaker. And I'm not here to suggest to the board 8 one way or the other what it needs to do. I'm just 9 here and now stand for questions -- well, momentarily 10 stand for questions to explain from my perspective and 11 from my perspective as an attorney at the Attorney 12 General's Office what it is that the law requires, 13 what the law compels, and what the law would prohibit. 14 And in listening to Mr. Korn's presentation, 15 there is literally nothing in his presentation that 16 would give rise to the kind of conflict of interest 17 that would put at jeopardy this board's determination 18 in any disciplinary matter. The -- well, I don't know 19 how useful it would be for me to address some of the 20 specific examples that Mr. Korn identified. 21 MR. KING: I'm not asking you to address 22 specific examples. I asked for you to address the 23 law. 24 MR. FUQUA: That then, Mr. Chairman, is where 25 I'll stop. And I stand for questions.</p>	<p style="text-align: right;">Page 95</p> <p>1 MR. KING: Actually before you have 2 questions, like I said I would like to sort of move 3 this along today. Let me get -- I mean I think that 4 we've had pretty full discussions. You all had a 5 chance to ask questions. 6 If you have questions of Mr. Fuqua, I'm happy 7 to give you an opportunity to do that. But let's talk 8 about the motion. And let me explain to you why I 9 think that the motion has a problem here right now. 10 The motion -- yes. 11 MR. KORN: Chairman, as a point of order, if 12 Mr. Fuqua has just testified before us and he's 13 standing for questions and you want to have a 14 dissertation, shouldn't your dissertation take place 15 after the questions of Mr. Fuqua? 16 MR. KING: Mr. Korn, I'm actually the 17 chairman. And so it's sort of within my prerogative 18 to guide the discussion. And like I said I'm actually 19 trying to make this something that's a little more 20 straightforward. So thank you for your point of 21 order. 22 The motion deals with terminating 23 representation by the Attorney General's Office. I 24 think everybody will agree with that. I think 25 Mr. Korn will agree with that.</p>
<p style="text-align: right;">Page 96</p> <p>1 There is nothing on the agenda that says that 2 we are discussing today termination of representation 3 by the Attorney General's Office. As a matter of 4 fact, the issue conflict of interest doesn't even 5 indicate whose conflict of interest. 6 The issue of backup prosecutor really maybe 7 should have said discussion of hiring a new 8 prosecutor. All of those would have given the public 9 adequate notice of what the discussion was going to be 10 today. 11 So I think it's actually okay for us to 12 discuss today. But I think that it would be wildly 13 inappropriate for us to vote on a motion that has not 14 been adequately noticed on the agenda. 15 So I think that my recommendation is going to 16 be that we -- that we have had quite a discussion 17 here. That everybody is welcome to ask Mr. Fuqua 18 questions. But that once we're done with that, that 19 I'm going to move on to the next item because we will 20 have thoroughly discussed this. And it is not 21 appropriate for us to take a vote on an item that has 22 not been adequately noticed. 23 So before we go to questions of Mr. Fuqua, I 24 also want to point out -- because I asked Mr. Hubbard 25 if you all had this. Mr. Korn raised an issue about</p>	<p style="text-align: right;">Page 97</p> <p>1 the law that allows the Attorney General to designate 2 an Assistant Attorney General to sit in his stead. 3 And we sent a letter to all of you all. And so -- 4 MR. KORN: And a point of order, 5 Mr. Chairman. This is definitely not on the agenda. 6 So if you want to discuss this, you would have to add 7 this as an agenda item. 8 MR. KING: Mr. Korn, I'm actually addressing 9 a point that you raised in your initial comments here. 10 So thank you for your point of order. 11 We sent a letter -- I asked Mr. Hubbard if he 12 sent a letter to you all, because Mr. Korn did raise 13 this at the very beginning of his discussion about 14 whether there's conflict or not. And you may not have 15 had a chance to read it. 16 But I do want to point out that there is a 17 law, it is NMSA 1978 Section 8-5-5A. And it says that 18 Deputy and Assistant Attorneys General who are 19 appointed by me, quote, have the same power and 20 authority as the Attorney General subject to the 21 Attorney General's direction. 22 And so the authority that I have and had in 23 the last meeting to appoint somebody to represent me, 24 in that case Dave Peterson who is an Assistant 25 Attorney General, is contained in a different section</p>

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<p>1 of law than the section that applies generally to this 2 board and that the board I think was misled by 3 Mr. Korn in his legal advice because he wasn't aware 4 of the broader part of the law. 5 He seems to be very familiar with the rules 6 that apply to this board but not particularly familiar 7 with the other law in New Mexico, including the 8 constitutional and statutory duties of the Attorney 9 General. And so I think that that's why the 10 discussion is sort of deficient that Mr. Korn raised. 11 And that is my comment today. 12 Now, questions for Mr. Fuqua. 13 MR. KORN: Well, actually I have questions 14 for Mr. Fuqua. But I can't allow what you just said 15 to go unnoticed first. So if I may respond to yours, 16 Mr. Chairman. 17 MR. KING: Please, Mr. Korn. You have the 18 floor. 19 MR. KORN: Thank you. First I would say that 20 your comments that you're allowed to designate an 21 assistant in your place is totally inaccurate. And 22 what you've sent to the board in that letter of yours 23 is either disingenuous or uninformed. 24 The sections that you cited pertain to the 25 Department of Justice that you handle and that you</p>	<p>1 head. The sections that this board operates under is 2 a completely different section under the executive 3 department. 4 And under the executive department, we have 5 our own rules. And those rules act with the same 6 weight of law. And those rules say that, in the 7 absence of the Attorney General or the absence of the 8 chairman, there's a vice chairman. 9 And we can discuss this at a time that you 10 want to put this on the agenda. But I suggest that 11 this is another issue of conflict of interest between 12 you and the board. And I also suggest and I tell you 13 now, sir, that I think you are purposely trying to 14 deceive the board with misinformation. 15 MR. KING: Okay. 16 MR. KORN: And I also want to follow up -- 17 and by the way, if you ever have a designee other than 18 the vice chairman, I just want you to know that I will 19 be objecting to that as being an illegal act. And I 20 will prepare and argue with the board that that should 21 not be allowed. 22 MR. KING: Thank you, Mr. Korn. And just 23 fair warning, whenever that happens, we'll be prepared 24 to go to the Supreme Court with a writ. And we'll let 25 the Supreme Court decide who is right and who is not.</p>
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<p>1 MR. KORN: And that would be perfectly fine. 2 MR. KING: Yeah. I think that will be the 3 appropriate way to deal with that. Mr. Korn, do you 4 have questions for Mr. Fuqua? 5 MR. KORN: No. In the meantime -- I'm 6 commenting to your other questions. We have a motion 7 and a second on the agenda. The agenda item was 8 conflicts of interest. We discussed conflicts of 9 interest and we discussed at that point how to remedy 10 our conflicts of interest. That became the motion. 11 This is a valid motion for the board to 12 decide and vote on. And I ask for a vote when I'm 13 done talking to Mr. Fuqua. 14 Now, Mr. Fuqua, Mr. Moon referred to 15 discussions with others as the reason that he was no 16 longer going to do file reviews. Who were those 17 others? 18 MR. FUQUA: I don't know everybody that 19 Mr. Moon spoke with. But he did talk with me about 20 the request that the director had made and how that 21 would relate to the process as we understood it that 22 the board had adopted in their January meeting. 23 MR. KORN: Well, now, you say -- so you told 24 him -- you put the kibosh on him doing any more file 25 reviews.</p>	<p>1 MR. FUQUA: I'm not sure I would put it that 2 way. 3 MR. KORN: How would you put it? 4 MR. FUQUA: Well, I don't think I've ever 5 used the word kibosh in my life. 6 MR. KORN: Well, put it in your own words. 7 MR. FUQUA: What I said to him was I'm not 8 sure, Mr. Moon -- actually I call him Bill, if this is 9 something that the board anticipates that our office 10 will be doing. 11 I'm not sure it's something the board wants 12 us to do, because the way that -- in my conversations 13 with him and in my review of the flow charts that you 14 had prepared for January meeting and my review of the 15 minutes of that meeting, it appeared to me that the 16 board did not want the Attorney General's Office 17 involved until an NCA had been issued. 18 MR. KORN: So you were just trying to be 19 helpful. 20 MR. FUQUA: I was trying to do what I thought 21 this board wanted the Attorney General's Office to do. 22 MR. KORN: You were just trying to be helpful 23 to the board then in telling him that he wouldn't be 24 able to do file reviews even though he offered to do 25 it the first time. Just being a nice guy?</p>

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<p>1 MR. FUQUA: Well, I was -- what I was -- 2 again, Mr. Korn, I think --</p> <p>3 MR. KING: You know what, let's not let this 4 devolve into a back-and-forth. Normally, like in the 5 legislature, we go through the chair. And I've kind 6 of shortened that up. But let's ask a question and 7 allow it to be answered. And then we'll go back. 8 Everybody will have an opportunity to have their say. 9 I believe, Mr. Korn, do you want to sort of 10 state a question that can be answered?</p> <p>11 MR. FUQUA: I can answer the pending 12 question, Mr. Chairman.</p> <p>13 MR. KING: Okay. Go ahead.</p> <p>14 MR. FUQUA: Whether you want to characterize 15 it as helpful or not is not really the terms in which 16 I was thinking. The terms in which I was thinking 17 were what has the board required of the Attorney 18 General and what specifically has the board not 19 required of the Attorney General and are we doing what 20 the board has asked the Attorney General's Office to 21 do and not to do.</p> <p>22 MR. KORN: So did you happen to pick up the 23 phone and call Director Hubbard and ask how you could 24 be helpful to facilitate the board's desires?</p> <p>25 MR. FUQUA: I wasn't sure, Mr. Korn, that it</p>	<p>1 was incumbent on me to discuss with Mr. Hubbard his 2 opinion of the board's desires.</p> <p>3 MR. KORN: Well, you're trying to find a way 4 of accommodating the board's desires. Did you happen 5 to call our representative to ask him what the board's 6 desires were?</p> <p>7 MR. FUQUA: I don't know that that changes my 8 answer. I'm not sure, Mr. Korn, what the assumption 9 is, that it would be incumbent on our office to 10 contact the director and discuss with him his opinion 11 of what it is the board had directed the Attorney 12 General's Office to do and not to do. The directive 13 was to us.</p> <p>14 MR. KORN: You just made your own opinion as 15 to this is what the board wanted and you didn't go any 16 further beyond that.</p> <p>17 MR. FUQUA: I like I said reviewed your flow 18 chart and the minutes of the meeting and discussed 19 with Mr. Moon his perception of what occurred at that 20 meeting and his perception of what it is the board 21 seemed to be requesting. And yes, we made a judgment 22 call.</p> <p>23 MR. KORN: Actually Mr. Moon's perception was 24 to provide the file review that Mr. Hubbard had asked 25 for.</p>
<p>Page 104</p> <p>1 MR. FUQUA: Actually it wasn't, Mr. Korn. 2 MR. KORN: Well, he did provide a file 3 review.</p> <p>4 MR. FUQUA: He did provide one. But when he 5 did so, and this was part of my conversation with him, 6 he felt that in doing so he was doing something the 7 board had asked him not to do.</p> <p>8 MR. KORN: And so after discussions he wrote 9 back and said he wouldn't do any more.</p> <p>10 MR. FUQUA: Well, he wrote the email that I 11 think -- I'll let the email speak for itself. I don't 12 want to characterize it.</p> <p>13 MR. KORN: Mr. Fuqua, you've pointed out that 14 the board is composed of a bunch of people from 15 different walks of life that represent their 16 departments, which is true. But there's only one 17 member of our board that represents the department 18 that appears here as a board member and has people 19 that work for him on the board.</p> <p>20 MR. FUQUA: If I understood your question 21 correctly, Mr. Korn, there's nobody on the board that 22 works for the Attorney General.</p> <p>23 MR. KORN: No. There's people such as 24 yourself that work for the Attorney General and such 25 as our board counsel and such as our prosecutor.</p>	<p>Page 105</p> <p>1 MR. FUQUA: That's true. 2 MR. KORN: But Chief Schultz doesn't have 3 anybody working on behalf of the board, does he? 4 MR. FUQUA: No. I didn't mean to suggest 5 that he did.</p> <p>6 MR. KORN: And Sheriff Coon doesn't have 7 anybody.</p> <p>8 MR. FUQUA: No. 9 MR. KORN: So, you know, I appreciate your 10 being here. But I think you're being disingenuous. 11 You know full well that the issues of perception have 12 to do with the law enforcement community having faith 13 and confidence in the board that's here to govern 14 their practices. You understand that, don't you?</p> <p>15 MR. FUQUA: Well, this was actually the point 16 of my question, Mr. Korn, is to whose perception it is 17 that we're concerned with. And the suggestion that 18 I'm being disingenuous in providing to this board the 19 status of the law I think is out of order. 20 That's not disingenuous at all. It is an 21 accurate description of what the New Mexico Supreme 22 Court has decided. And it is an accurate description 23 of the way that that law will be applied in cases that 24 are appealed from decisions of this board. 25 MR. KORN: Now, you suggest -- you say that I</p>

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<p>1 suggested you're being disingenuous. I'm not 2 suggesting at all. I'm accusing you of being 3 disingenuous. I want you to know -- 4 MR. FUQUA: Very good. I appreciate the 5 clarification. 6 MR. KORN: Yes. I haven't had time to review 7 this case in its entirety. But where we as a board 8 deal with punitive matters having to do with law 9 enforcement certification, this board has to do with 10 directory advertising in the yellow pages, right? 11 MR. FUQUA: This is the Mountain States 12 Telephone &amp; Telegraph case? 13 MR. KORN: Well, what one are you talking 14 about? 15 MR. FUQUA: The case that Mr. Shandler 16 described -- 17 MR. KORN: That's the case I'm talking about. 18 MR. FUQUA: Yes. 19 MR. KORN: Okay. So that's the question. 20 This has to do with directory advertising, right? 21 MR. FUQUA: I believe that was an issue in 22 the case. 23 MR. KORN: And you're equating directory 24 advertising where -- oh, and by the way is there -- 25 does the Attorney General sit on the -- let's see.</p>	<p>1 The case is Mountain States Telephone &amp; Telegraph 2 Company. Does the Attorney General sit on anything 3 having to do with them? 4 MR. FUQUA: The question of whether or not 5 the Attorney General sits on the board is not an issue 6 in the conflict case that Mr. Shandler is handling on 7 appeal. 8 MR. KORN: Well, I'm just asking you a 9 question. 10 MR. FUQUA: But the question, sir, flows from 11 a flawed premise, which is that the answer to the 12 question actually matters to the legal issue that 13 needs to be determined. And it doesn't. But in the 14 spirit of fairness, no, I don't believe the Attorney 15 General does sit on that board or even if it is a 16 board. 17 MR. KORN: In fact, when you represent to the 18 board that this is the case that's going to be the 19 laws that future cases are decided on, that's 20 inappropriate. I mean unless you have a crystal ball 21 of how the Supreme Court in New Mexico or any 22 appellate courts are going to rule, you don't know how 23 they're going rule at all, do you? 24 MR. FUQUA: I'm not sure I understand the 25 thrust of that question, Mr. Korn. The New Mexico</p>
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<p>1 Supreme Court has reviewed the question of whether it 2 is a conflict of interest for two Assistant Attorneys 3 General providing different kinds of services to the 4 same entity vitiates the decision that that entity 5 makes. 6 MR. KORN: But it was a completely different 7 fact pattern. And our fact pattern might be 8 distinguished and this case may not be held as the law 9 of the land. 10 MR. FUQUA: Well, Mr. Korn, I suppose that's 11 a possibility. But I would be very surprised to see a 12 district court draw the kinds of distinctions that 13 you're trying to make between that case and what it is 14 that this board does. 15 MR. KORN: Well, actually my impression of 16 all this is that it really doesn't matter what this 17 case says or doesn't say. I'm just pointing out that 18 there's no saying that this is the law of the land or 19 that anybody is going to be following this as pertains 20 to this board. 21 But the more important part is that where 22 does this board want to stand. Does this board want 23 to stand above the clouds and in the blue and say 24 we're not going to countenance anything that looks 25 like a conflict of interest or does this board want to</p>	<p>1 say, oh, we're going to squirm down there with the 2 directory advertising and have that case say that 3 there's no conflict of interest if the rest of us feel 4 that there is obviously a conflict of interest. 5 MR. FUQUA: I think, Mr. Korn, it's apparent 6 that you don't care what that case says. In terms of 7 your question as to whether we're above the clouds or 8 below them, I think I addressed this earlier when I 9 suggest to the board that we need to be careful about 10 blending perception with legal reality. 11 Because perception is not what determines the 12 outcome of a case. It is the law that determines the 13 outcome of a case. And the case that Mr. Shandler is 14 arguing is controlled by this 1982 opinion from the 15 New Mexico Supreme Court. I'm sure defense counsel 16 will be making many of the arguments that you're 17 making here, Mr. Korn. I'm sure he already has. 18 But the fact of the matter is, I'll say it 19 one more time, the New Mexico Supreme Court has 20 reviewed the question of whether two Assistant 21 Attorneys General providing advice or services to the 22 same client in two different capacities vitiates what 23 it is that that client ultimately decides to do in 24 that particular case. And they've answered that 25 question in the negative.</p>

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1 MR. KORN: You can see, of course, can't you,  
 2 Mr. Fuqua, that all of the discussions we're having  
 3 are in conflict with each other. Our board is in  
 4 conflict with your office, your office is in conflict  
 5 with the director, the Attorney General is in conflict  
 6 with the board and with you, and that this situation  
 7 that we find ourselves in is not a healthy one for  
 8 attorney-client. Would you agree with me on that?  
 9 MR. FUQUA: I think actually we may have  
 10 reached a point where we agree. Yeah, the situation  
 11 as it exists right now is not a healthy situation. I  
 12 would suggest, though, respectfully, Mr. Korn, that  
 13 you consider your own role in that.  
 14 MR. KORN: Thank you.  
 15 MR. FUQUA: You're welcome.  
 16 MR. KORN: Well, I'm sure the board will  
 17 consider my role.  
 18 MR. FUQUA: I'm asking you to do that, sir.  
 19 MR. KORN: Thank you.  
 20 MR. FUQUA: You're very welcome.  
 21 MR. KORN: And I think -- and, you know, even  
 22 the way you talk, it gets back to that parent/child.  
 23 And although you're probably half my age, I appreciate  
 24 your trying to educate me in what you think I'm out of  
 25 order on. So I thank you for that as well.

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1 the things that this board is set up to deal with.  
 2 In Mr. Korn's motion he basically makes three  
 3 requests. One is that the AG's office no longer serve  
 4 as the administrative prosecutor for the board. When  
 5 I look at the rules that this board is responsible to  
 6 follow, it talks about contemplated actions coming  
 7 from the director. The director is the one who is to  
 8 initiate those contemplated actions. And those  
 9 actions are to go in front of the board and/or the  
 10 board's hearing officer.  
 11 So I think it would only make sense that the  
 12 director -- and Mr. Hubbard said today that he feels  
 13 he could be in his role as having served as the acting  
 14 director be the prosecutor in those cases as will his  
 15 successor.  
 16 So the first point, I agree that the AG  
 17 probably should not be the administrative prosecutor.  
 18 It be the director. The cases go to the director's  
 19 office. He puts together the case, he receives the  
 20 information from the reporting agency, and it should  
 21 be his duty and charge to prosecute that case.  
 22 The next item talks about being counsel for  
 23 the board. When I look at organizationally where this  
 24 board stands, this board does not stand under the  
 25 Attorney General's Office. This board is part of the

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1 MR. FUQUA: You're welcome.  
 2 MR. KING: Is that all, Mr. Korn?  
 3 MR. KORN: Yes, sir, it is.  
 4 MR. KING: Okay. Other questions for  
 5 Mr. Fuqua? All right. Seeing none, Mr. Fuqua, you're  
 6 excused.  
 7 MR. FUQUA: Thank you, Mr. Chairman.  
 8 MR. KING: Any other discussion? Yes, Chief  
 9 Schultz.  
 10 MR. SCHULTZ: Mr. Chairman, obviously this  
 11 afternoon we've talked about a couple different items  
 12 specifically on the agenda, items six and then seven  
 13 and eight which were combined. I think, if you look  
 14 at what we talked about this afternoon, we're talking  
 15 about improving the efficiency of this board and the  
 16 efficiency of handling disciplinary cases that come in  
 17 front of us that are forwarded by departments and  
 18 sheriffs -- police departments and sheriffs  
 19 departments from across the state.  
 20 And we have a charge which is to -- as has  
 21 already been said several times by Mr. Korn, is to  
 22 make sure that people that are unworthy of being  
 23 certified as police officers in the State of New  
 24 Mexico are not certified. And, of course, everyone  
 25 does have the right to due process. And that's one of

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1 Department of Public Safety.  
 2 So after hearing that Secretary Eden and  
 3 Deputy Secretary Mooney have said that they will  
 4 provide counsel to this board. Since this board is  
 5 actually under their section or area of government in  
 6 the State of New Mexico, again it only makes sense  
 7 that their counsel be the counsel to this board.  
 8 And, of course, the same would hold true in  
 9 item No. 3, for counsel to the board hearing officers.  
 10 That as the director he is presenting those cases for  
 11 prosecution; that counsel, his counsel should be the  
 12 men and women who work for the Department of Public  
 13 Safety as legal advisors.  
 14 So with that I do not see this motion as  
 15 being unreasonable. I see it as just being a way for  
 16 us to improve our efficiencies. That's exactly what  
 17 we're trying to achieve between the last couple  
 18 meetings. So I will be supporting the motion.  
 19 MR. KING: Thank you, Chief. And let me say  
 20 I'm actually not arguing here that this is not a  
 21 reasonable motion. As a matter of fact, I will  
 22 certainly guarantee all of you all that, when the new  
 23 director becomes the director, that we'll be happy to  
 24 sit down and talk with him about opportunities for him  
 25 to represent himself. I think that that's an

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<p>1 appropriate conversation between the Attorney 2 General's Office and the director.</p> <p>3 With regard to the representation of the 4 board, I think that there are a variety of models. 5 But pretty much all of the executive agency boards and 6 commissions get their legal representation from the 7 Attorney General's Office. So it's not so much a 8 matter of what agency you belong to or whatever.</p> <p>9 But once again I think that those are 10 fruitful discussions. I think once again one of the 11 things that Mr. Korn doesn't seem to be aware of, when 12 he was talking about the appellate practice, is it is 13 quite possible, and I think we would have to look at 14 it, as to whether or not the Constitution would 15 require the Attorney General's Office to represent the 16 State in any appellate practice.</p> <p>17 Because once somebody appeals a case and the 18 appeal is against the State, even if it's against the 19 board, then there is only one attorney's office that 20 can represent the State. And that's the Attorney 21 General's office.</p> <p>22 So I just think that frankly there ought to 23 be some good discussion about this. I think that 24 it's -- like I said I don't think that I have any 25 option to accept this motion because I think it</p>	<p>1 violates the Open Meetings Act.</p> <p>2 But besides that I don't think policy-wise 3 it's a good idea to vote on this motion today because 4 we're going to have a brand-new director three days 5 from now. And I think that it would be wise for the 6 board to allow the new director, who apparently has a 7 lot of expertise, to make some decisions about that 8 rather than the board foisting those decisions on him. 9 But that's -- you know, that I think you all would 10 have to think about.</p> <p>11 But I think that you'll have ample 12 opportunity to think about it because it's a motion 13 that's out of order. And as the chair it's my 14 obligation to not recognize a motion that's out of 15 order.</p> <p>16 MR. KORN: And, Mr. Chair, a point of order. 17 MR. KING: Go ahead, Mr. Korn.</p> <p>18 MR. KORN: We have a motion and a second. 19 And I call for a vote. And the fact that you're 20 withholding a vote is inappropriate. I also think 21 that that inappropriateness comes from a conflict. I 22 think that you're talking as the Attorney General and 23 not as the chairman of our board.</p> <p>24 I would ask you, sir, to step down from your 25 role and recuse yourself so that the vice chair can</p>
<p>Page 116</p> <p>1 handle this from here. I think, if you don't do that, 2 you give the appearance of conflict.</p> <p>3 I think that as an attorney you should be 4 concerned about the conflict. I think as the Attorney 5 General you should be above the fray. I think that 6 you should step down and let the motion be dealt with 7 by the vice chair.</p> <p>8 MR. KING: Thank you for your comments, 9 Mr. Korn. Is there any other discussion?</p> <p>10 MR. KORN: Sir, I call for a vote.</p> <p>11 MR. KING: I'm sorry, Mr. Korn. But I 12 haven't even recognized the motion so I certainly 13 can't recognize your call for a vote. The next item 14 on the agenda is item No. 9, Penalty Assessment 15 Guideline. Chief Betz.</p> <p>16 MR. KORN: Sir, I ask for a recess so that we 17 can examine this. I think you're absolutely 18 inappropriate.</p> <p>19 MR. KING: Well, the motion to recess is 20 always in order. You want to make a motion to recess?</p> <p>21 MR. KORN: I make a motion to recess.</p> <p>22 MR. KING: Is there a second?</p> <p>23 MR. SCHULTZ: Second.</p> <p>24 MR. KING: Okay. Second. All in favor of 25 recessing -- do you have a specific time you want to</p>	<p>Page 117</p> <p>1 recess for?</p> <p>2 MR. KORN: How about lunch?</p> <p>3 MR. KING: That would be possible. Motion to 4 recess for an hour and 15 minutes?</p> <p>5 MR. KORN: Thank you.</p> <p>6 MR. KING: Okay. Do I have a second? All in 7 favor say aye. (Those in favor so indicate.)</p> <p>8 MR. KING: All opposed no? I vote no. We'll 9 recess until two o'clock. (Recess from 12:45 p.m. to 2:05 p.m.)</p> <p>10 MR. KING: I'll tell you what. Let's do 11 this. Because I know that we may want to have some 12 more debate on item No. 8. And I want to make sure 13 that everybody gets a chance to say what they want to 14 say. 15 16 Chief Betz actually is the guy that has to 17 catch an airplane. And so how about if we all agree 18 to move on to item No. 9 and No. 10 real quick so he 19 can make his presentation and then come back. Is that 20 all right?</p> <p>21 ITEM NO. 9: PENALTY ASSESSMENT GUIDELINE</p> <p>22 MR. KING: We're on item No. 9, Chief Betz, 23 Penalty Assessment Guideline. You can take the podium 24 too, if you want. 25</p>

<p style="text-align: right;">Page 118</p> <p>1 MR. BETZ: Good afternoon, Mr. Chairman, 2 fellow board members. Of course, I stand just 3 recently confirmed so that gives me that fuzzy feeling 4 I guess. And I will keep this short and sweet, 5 because I'm not -- as Deputy Secretary Mooney can 6 attest, I don't usually get on a soapbox and do a lot 7 of talking. 8 What I have -- because one of the things that 9 I found out when I got on the board, and I am probably 10 the newest of the law enforcement members of the 11 board, is a thing came up about penalty assessments. 12 And what I have -- I don't even know if it would 13 require a motion today. I have drafts for each one of 14 you. 15 And it's a concept. It's no more than a 16 concept with some language in it and with a breakdown 17 over an Excel spreadsheet that I would like to give to 18 you. And hopefully maybe we can come back to the next 19 meeting because I don't want to drag this on. And 20 actually take a look at it and see if this is 21 something worthwhile for us to utilize in the future. 22 It's not very long. And with that I'll go 23 ahead and pass it out. And also, with the permission 24 of Mr. Hubbard and I've already mentioned to him and I 25 mentioned it briefly to Monica, when I get back off my</p>	<p style="text-align: right;">Page 119</p> <p>1 travel here, I'd like to get together with her and 2 actually get a little research done of where we've 3 been for the last 26 years so we have a decent set of 4 table of offenses. And that's what I am looking at 5 and only looking at on this one item. 6 It's very generic. What I would appreciate 7 from you is any comments, recommendations, trash can 8 time, whatever you so desire. I'm just trying to make 9 things easier for us, because I know it's come up 10 several times and myself sitting on the board a little 11 bit of confused where I'm going at when we're 12 assessing a penalty. And I think this would help us. 13 I know that all boards, all agencies, have 14 these. And I thought it would be something good for 15 the board to have. Does anybody have any questions on 16 that? Because I'll move on. Like I said I'm short. 17 And I'll get on to the next point. 18 MR. KING: Are there any specifics that 19 anybody wants to ask about the table? We will -- 20 actually, if you're willing to sort of hand it to us 21 now and look at it for the next meeting, I think 22 that's a good idea. 23 MR. BETZ: Yes, sir. 24 MR. KING: All right. Thanks, Chief. 25 ITEM NO. 10: PSYCHOLOGICAL EXAMS</p>
<p style="text-align: right;">Page 120</p> <p>1 MR. KING: Go ahead. 2 MR. BETZ: My second item is because I 3 received a call recently from one of the other tribal 4 chiefs. And I just sat down and I thought about it. 5 And it involves our psychological examinations. So we 6 go through our directives. 7 And it basically stipulates in the directive 8 that, you know, anybody that's going to get their 9 state certification is required to have a 10 psychological examination on record. I had a brief 11 discussion with Director Hubbard over it and found out 12 that not just the tribal chief that called me but 13 apparently this has come up before. 14 And my question is -- since they called me, 15 my question is back to the board, because a lot of you 16 have been on it there a lot longer than I have, is our 17 liability. When we find out somebody seven or eight 18 years down the road and for whatever reason -- and I 19 do know that the departments -- let me back up a 20 little bit. 21 The departments, definitely you can go for -- 22 you know, send somebody back in for fitness for duty 23 evaluation. But when the board becomes aware of it, 24 that we have a certified law enforcement officer in 25 the field that has failed a psychological exam -- and</p>	<p style="text-align: right;">Page 121</p> <p>1 when I talk about the exams too, I also know that 2 people like Pete DiVasto would probably read it 3 differently than somebody else, you know, somebody 4 that has a real good law enforcement background. 5 Because with our years of experience, I'm not 6 saying we get callous, I don't say we get narcissistic 7 in any way or shape or form. But the fact we do 8 change. And based on that, though, when we become 9 aware of it as a board or a board member, is this a 10 liability for us, is this something that we should be 11 addressing or not addressing. 12 And again this is -- I'm putting this in 13 question form, if anybody can enlighten me, because 14 when I get tribal chiefs calling me and asking me the 15 question, I would sure like to have a good answer for 16 them. Of course, the flat answer is fitness for duty. 17 But, of course, my question is being a board member, 18 where the board becomes aware of it, do we have a 19 liability to address it. 20 MR. KING: Sheriff. 21 MR. COON: Are you talking -- you want maybe 22 the board to -- as part of -- the penalty is to take a 23 psych for that officer that's done something wrong? 24 MR. BETZ: It was addressed -- Sheriff Coon, 25 it was addressed to me -- it was framed that they --</p>

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<p>1 there were some problems with the individual officer.  2 They sent the officer back for another psychological  3 exam.  4 And originally they had a psychological exam.  5 It was eight years ago. They sent him back for  6 another one and failed the exam. Sent him back for a  7 second one, failed the exam. So that comes up to the  8 question is this something that we should do, because  9 to me somehow it applies to their certification.  10 Is that something that we have to address  11 once we become aware of it. Is that something that we  12 want to address. Like I said it goes back to us as  13 individual chiefs and sheriffs in the field to address  14 it through the fitness for duty.  15 But the question is, once it's addressed to  16 us, is that something we should look at as far as  17 their certification goes. So I guess in a way should  18 we look at that, is that something that we have the  19 power to do, to say they failed it, you know, and let  20 them put the onus back on their back so to speak.  21 MR. KING: Can we -- I don't know. Can we  22 ask, Mr. Hubbard. You're the one that sees these  23 things come and go. Do you have a feel for whether  24 that's within the purview of the board?  25 MR. HUBBARD: Thank you, Mr. Chairman,</p>	<p>1 members of the board. There's a difference between  2 the certifying entity and the employer. And not only  3 have been associated as the director for your board,  4 but I'm an employer as well with the Special  5 Investigations Division.  6 And as the employer we require the  7 psychological exam even for already certified  8 officers, because in this day of litigious society,  9 you know, negligent hiring is a big, big thing.  10 Also in knowing the narrow scope that the  11 board can invoke a disciplinary matter on a respondent  12 officer, it does not appear to me -- and Mr. Shandler  13 might want to weigh in on this one as well.  14 It does not appear to me that with the rules  15 the way they are written now, that failing a fitness  16 for duty psychological examination does not appear to  17 fall into the framework of what the board can act upon  18 in my recollection of the way the rule stands at this  19 present time. Is the mike on?  20 MR. KING: Mr. Shandler, can you -- I think  21 these up here are. That one is on.  22 MR. HUBBARD: Did you hear me, though?  23 MR. KING: Yeah. I think we could hear you.  24 All right. Mr. Shandler, you may actually need your  25 mike once they get turned on. But do you have a feel</p>
<p>Page 124</p> <p>1 for whether or not the statute gives the board enough  2 authority to do decertifications because of a failed  3 psychological exam?  4 MR. SHANDLER: Mr. Chairman, I think that the  5 Statute 29-7-13 does not expressly list that as a  6 grounds for suspension or revocation. However, it  7 does provide I think in A1 that the same  8 characteristic as an applicant. And I think in the  9 applicant section you have to pass a psychological  10 exam. So I could make that argument for the board,  11 that that could be grounds for discipline, yes.  12 MR. BETZ: My understanding would be that  13 that's something we could look at?  14 MR. KING: I think that's what I'm hearing  15 actually, Chief.  16 MR. BETZ: Again like I said I just don't  17 want -- you know, if the liability fell back on us as  18 a board, I wanted to make sure we were able to be able  19 to deal with it, not have something come back at us.  20 MR. KING: I think what I'm also hearing is  21 that if an agency wanted to terminate somebody because  22 of that, that that's a decision for the agency to  23 make. But then obviously we talked about it at  24 various other stages, if you just get terminated from  25 an agency and you're still certified, then you can</p>	<p>Page 125</p> <p>1 move on to somebody else. And so we might be helping  2 a bunch of other agencies by taking action on  3 something like that.  4 MR. BETZ: Is that anything you think we  5 should send out to the field?  6 MR. KING: Mr. Hubbard.  7 MR. HUBBARD: Mr. Chairman, members of the  8 board, odd that you would be bringing this up today  9 because we do have an open file on a case where an  10 officer was having some problems in the workplace.  11 And his employer sent him for a fitness for duty  12 psychological exam, which he failed.  13 The agency relocated him within another job  14 in the municipality and then filled out an LEA-90 and  15 sent it to me, which the things we've been discussing  16 here have been very much in the forefront of my mind,  17 because does the board have the ability to act upon a  18 peace officer's certification simply for the fact of  19 failing a fitness for duty psychological exam.  20 Is that something that we want to pursue?  21 Because it's not necessarily an indicator of some bad  22 conduct on his part such as theft or DWI or bad moral  23 character or something like that. He simply failed a  24 fitness for duty exam.  25 If we go to fitness for duty psychological</p>



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<p>1 exams that are failed, are we going to go to fitness 2 for duty physical examinations that they fail and 3 decide that that's going to be a board action too. 4 So I would be very interested for the board 5 to ultimately, if not today, at some point in the 6 future to take a position on this for the direction of 7 the director, because it is a bit of a gray area right 8 now and something that is a real, true-life case file 9 on my desk right now. Thank you, sir. 10 MR. KING: So maybe we'll set some precedent 11 there, Chief, and then you'll have your answer too. 12 MR. BETZ: Okay. 13 MR. KING: I think it's an important point. 14 Any other questions for Chief Betz? Okay. Thank you, 15 Chief. 16 MR. BETZ: Thank you very much, Mr. Chairman, 17 board members. 18 MR. KING: I am once again going to try and 19 take the prerogative as the chair. But I'm willing to 20 take a decision on this. We have a bunch of people 21 that have been sitting out there waiting for us to do 22 items 12 through 16, 17 through 23. 23 My gut feeling is that those 12 through 23 24 are what the chief was talking about, ones that maybe 25 can be disposed of by a motion at least. If the</p>	<p>1 committee wants to move on to those so that some of 2 these folks can go home, I would be willing -- we've 3 had a lot of individual board comments. 4 But we can move that to the end of the agenda 5 too. But I'm kind of trying to get the feel from all 6 of you guys. Are you prepared to kind of move on and 7 do some of those things so that folks can leave? I 8 cancelled -- well, I didn't exactly cancel. But I 9 cancelled a meeting in Santa Fe this afternoon. 10 So, you know, I can hang around after this. 11 And we can continue our discussion from this morning 12 to the extent that anybody wants to continue that 13 discussion. 14 MR. COON: Mr. Chair, I make the motion we go 15 ahead and hear our disciplinary matters now. And we 16 can revert back to seven and eight. 17 MR. KING: I'm okay with that. So at this 18 point I think we'll move to item No. 12. And I am 19 going to hand the gavel over to Sheriff Coon, not 20 hearing any opposition. 21 ITEM NO. 12: SCOTT CONNER 22 MR. COON: Right now we're going to deal with 23 disciplinary matters, stipulated orders. I know there 24 are some people out here that would like to talk on 25 their behalf. So No. 12 is Scott Conner. Scott,</p>
<p>Page 128</p> <p>1 would you like to get up and say something? 2 MR. CONNER: Yes, if I may. 3 MR. HUBBARD: Mr. Vice Chairman. 4 MR. COON: Yes, sir. 5 MR. HUBBARD: If I might address the board, 6 as this matter is called and Mr. Conner is coming to 7 the podium, this is one of the matters where just as 8 recently as last Saturday I received an email 9 communication from Mr. Conner, which I then passed on 10 to the board via email. And he did -- in the next day 11 or two, it did come by certified mail. 12 So all of you should have received the letter 13 that Mr. Conner sent to me with the issue that he is 14 going to bring before you today. And I responded to 15 Mr. Conner as well and said you're on the agenda for 16 the board, bring your matters and address the board. 17 So you should have at least part of that in front of 18 you. Thank you. 19 MR. COON: Yes. Thank you, Mr. Hubbard. 20 Mr. Conner. 21 MR. CONNER: Sheriff Coon, members of the 22 board, the first thing I would like to do is just 23 thank you for taking some time to hear me today, 24 giving me this opportunity to speak before the board. 25 One thing I would like to point out, I</p>	<p>Page 129</p> <p>1 believe you have a copy of the letter that I sent 2 Mr. Hubbard. And there is an error in that letter in 3 which Mr. Jackson was identified as Mr. Ortiz due to 4 an error on my part. So I just wanted to kind of 5 bring that out. 6 I'll tell you a little bit about myself. My 7 name is Scott Conner. I started working for the 8 Roswell Police Department in July of 1997. I worked 9 at that department for a little over 13 years. I was 10 a member of the staff at the command level, the 11 administration there for over four years, worked as a 12 supervisor there for over nine years. 13 In October of 2010, I was terminated from 14 employment at the Roswell Police Department due to a 15 policy violation that has to do with associating with 16 people who are under active criminal investigation. 17 Sometime -- a short time after that I became 18 employed at the De Baca County Sheriff's Office. And 19 to this day I'm still employed there and have since 20 been promoted to the rank of sergeant. 21 At some point an LEA-90 was submitted to the 22 academy in regards to my termination from the Roswell 23 Police Department. When I applied for a position with 24 the De Baca County Sheriff's Office, the sheriff, 25 Dennis Cleaver, contacted the academy. And at that</p>

<p style="text-align: right;">Page 130</p> <p>1 time he was informed that there's no pending actions 2 against me. And as far as I knew, that was the case. 3 Approximately 11 months later, September 15th 4 of 2011, I received a certified letter from the 5 academy. Inside that letter there was a Notice of 6 Contemplated Action. In the Notice of Contemplated 7 Action, there are some instructions that require a 8 response from the officer or telecommunicator, in my 9 case the officer, to respond within seven days. 10 I did file a response within the time limit 11 outlined in 10.29.1.12. Not long after that I did 12 request to have an informal hearing with the director 13 at the time, Mr. Gregg Marcantel. On October 5, 2011, 14 I did travel to Santa Fe and meet with Mr. Marcantel 15 within the 14-day time limit mandated by 10.29.1.12. 16 During that informal there was never any discussion in 17 regards to sanctions or discipline or anything to that 18 effect in my particular case. 19 Not too long after that a day came in which a 20 Notice of Final Decision was due. According to 21 10.29.1.12C, it says "Notice, the director shall serve 22 the affected officer or telecommunicator with a 23 written Notice of Final Decision no later than 45 24 calendar days after the service of the contemplated 25 action."</p>	<p style="text-align: right;">Page 131</p> <p>1 So in my case I was served on September 15th. 2 I met my seven-day limit, I met my 14-day limit. The 3 Notice of Final Decision was due October 29th. 4 Forty-five days after that comes December 13, 2011. 5 I'm sure you all remember it well. That's the day you 6 had your emergency meeting of the New Mexico Law 7 Enforcement Academy Board. 8 This would have been 90 days past the date of 9 the service of my Notice of Contemplated Action. 10 During that emergency board meeting, I'm sure you'll 11 recall that there was a vote in which most of you 12 agreed to extend the deadline for cases that were 13 pending. Of course, this is now past double the time 14 limit in my particular case. 15 I never heard from the academy director, the 16 academy board, throughout the remainder of 2011. In 17 January of 2012, some four months after being served a 18 Notice of Contemplated Action and not hearing a word 19 from anyone, I took the initiative to then contact the 20 new director, Mr. Bill Hubbard. 21 Mr. Hubbard then agreed to meet with me. And 22 I then traveled again to Santa Fe on January 20, 2012, 23 and met with the current academy director, 24 Mr. Hubbard. As a result of that meeting I'm here 25 today.</p>
<p style="text-align: right;">Page 132</p> <p>1 Interestingly, in 29.7.13, the statute, and 2 also 10.29.1.11, it says "In accordance with the 3 provisions of the Law Enforcement Training Act, the 4 director may seek to deny, suspend, or revoke a police 5 officer's certification if after investigation and 6 consultation with the employing agency, it is 7 determined that a police officer has failed to comply 8 with the provisions of the Law Enforcement Training 9 Act," et cetera, et cetera. 10 As of yesterday, when I spoke with the 11 sheriff, the agency that I've been employed with for 12 going on five quarters now has never received any 13 notice of any action regarding my certification in the 14 board. 15 I think that it's fair to say that, if you 16 look at today's agenda, you'll see that there are 17 seven individuals here today that are on the agenda 18 for default revocations. Had I not made my seven-day 19 time limit or my 14-day time limit, that would be 20 eight people on that agenda today for default 21 revocations. 22 The board holds some 5,400 law enforcement 23 officers in the State of New Mexico accountable to 24 this timetable. The timetable is critical in that if 25 we fail to meet a deadline, we stand to lose our</p>	<p style="text-align: right;">Page 133</p> <p>1 certification. 2 I think as a representative of the law 3 enforcement community, the board is charged with being 4 an example to all law enforcement in the state. And I 5 believe that if they're going to hold all the officers 6 to that standard, that they themselves must also be 7 held to that standard. 8 We heard Mr. Hubbard today say -- earlier 9 today he said that the NCA starts the clock ticking, 10 it was a quote. You heard that earlier today. We 11 heard him talking about waivers of time limits. We 12 heard him talk about timelines. We heard Mr. Korn 13 earlier talk about speed is the essence of justice and 14 that justice delayed is not justice provided and that 15 officers in jeopardy for years is justice denied. 16 In my particular case, this has been hanging 17 over my head and my family's head for quite a long 18 time. My family and I have struggled with making 19 decisions regarding relocation and employment for 20 going on 18 months. 21 We heard the chief, Chief Schultz, talk about 22 due process. And we heard Mr. Korn talk about the 23 high standard above the clouds and the standard that 24 the board has set. 25 Any vote taken on December 13, 2011, 90 days</p>

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<p>1 after I was served a Notice of Contemplated Action 2 cannot be valid. If I miss a deadline in a criminal 3 case, if we miss our six-month rule in a felony, we 4 can't then 45 days later go to the judge and ask the 5 judge if we can have a deadline, if we can have an 6 extension. 7 We have extenuating circumstances. I 8 understand there's been problems with directors, with 9 personnel issues, with Mr. Jackson, with the AG's 10 office, and that. However, it would be unjust and 11 unfair if the board did not hold itself accountable to 12 the same standard as they hold the officers. 13 I will just say that I would like to request 14 that the board would dismiss in its entirety the NCA 15 in my case and the accompanying LEA-90. I think it's 16 the fair thing to do, I believe it's the right thing 17 to do, and I compel you, please do what's right and do 18 what's fair. And I'll stand for questions. 19 MR. COON: Anybody have any questions of 20 Mr. Conner? 21 MR. SCHULTZ: Mr. Chairman, if I may. 22 Mr. Conner, you did meet with the director on 23 October 5th of 2011? 24 MR. CONNER: That's correct. 25 MR. SCHULTZ: And you came up with an</p>	<p>1 agreement on October 5, 2011? 2 MR. CONNER: No, sir. At the meeting, the 3 informal meeting with Mr. Gregg Marcantel, the former 4 director, on October 5th, we never -- there was no 5 discussion at all of any agreement or sanctions. We 6 just talked about what happened. And I was informed 7 he would get back to me. And that was the last I 8 heard until I contacted the academy months later. 9 MR. SCHULTZ: So there was no agreement at 10 all between yourself and Mr. Marcantel? 11 MR. CONNER: No, sir. 12 MR. SCHULTZ: Thank you, sir. 13 MR. COON: Anybody else have any questions of 14 Mr. Conner? Mr. Conner, thank you for coming up 15 today. We'll be making a decision on this at the end 16 of the day. So if you would like to stick around and 17 see the outcome of it, you're more than welcome to do 18 that. 19 MR. CONNER: Thank you. I'll be around if 20 you have any more questions. 21 ITEM NO. 13: MARK WILSON 22 MR. COON: Okay. Number 13 is Mark Wilson. 23 Is Mr. Wilson here? Mr. Wilson? 24 ITEM NO. 14: GREG LYNCH 25 MR. COON: Okay. Number 14 is Greg Lynch.</p>
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<p>1 Mr. Lynch? 2 MR. LYNCH: Yes, sir. 3 MR. COON: Would you like to address the 4 board? 5 MR. LYNCH: Mr. Chairman, members of the 6 board, I really don't have much to say on this. I'm 7 here to stick around and see what the decision is. I 8 would like to keep my certification. It's in question 9 now because of a DWI matter which is -- it has been 10 taken care of and resolved through the courts and 11 legal system. 12 I'm here as a telecommunicator for Santa Fe 13 County and Santa Fe City Police and Fire Departments. 14 And I would really just like to keep my certification 15 to get a job, to have my job. Any questions? 16 MR. COON: Anybody have any questions for 17 Mr. Lynch? Mr. Lynch, did you sign a stipulated 18 order? 19 MR. LYNCH: Yes. 20 MR. COON: With who? 21 MR. LYNCH: It was mailed to me. So he 22 signed it and took it back. I don't recall the lady's 23 name that I gave it to. 24 MR. COON: What did the stipulated order say? 25 MR. LYNCH: It would be I believe suspended</p>	<p>1 for three months, a period of three months. And I had 2 to -- and then I got a letter saying that I had to 3 come to this meeting to speak on my behalf, you know, 4 if I wanted to say anything or be here for the 5 outcome. 6 MR. COON: Okay. Mr. Hubbard. 7 MR. HUBBARD: Mr. Vice Chairman, members of 8 the board, on the attachment that was mailed out prior 9 to the meeting, a synopsis of the stipulated agreement 10 with Mr. Lynch is on page 25 of 59 of the attachment 11 that was sent out, which outlines a 90-day suspension, 12 one-year probationary period, attend a complete law 13 enforcement course in ethics, eight hours of community 14 service, and alcohol screening assessment. 15 MR. LYNCH: Yes. 16 MR. GRATTON: Mr. Chairman, Mr. Lynch, have 17 you completed all those in that stipulated order? 18 MR. LYNCH: I have not. I haven't heard 19 anything as far as, you know, when to take the class, 20 the ethics stuff. Community service I can get done 21 within the 24 hours. 22 MR. GRATTON: But you have not completed any 23 of those steps yet? That's my question. 24 MR. LYNCH: No. 25 MR. GRATTON: Okay. Thank you, sir.</p>

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1 MR. COON: Mr. Hubbard.  
 2 MR. HUBBARD: Mr. Vice Chairman, Mr. Gratton,  
 3 members of the board, and that would be the normal  
 4 course of affairs, that once he agrees to the  
 5 stipulated order and until it's ratified by the board  
 6 and he is so ordered, then he would be expected to do  
 7 that within a reasonable time in the amount of his  
 8 probationary time after the fact.  
 9 MR. GRATTON: Thank you, Mr. Hubbard.  
 10 MR. COON: Any other questions for Mr. Lynch?  
 11 Thank you, Mr. Lynch.  
 12 ITEM NO. 15: RANDY SAMORA  
 13 MR. COON: Number 15 is Randy Samora. Randy  
 14 Samora? Okay.  
 15 ITEM NO. 16: CRYSTAL CASIAS  
 16 MR. COON: We'll go down to 16, Crystal  
 17 Casias. Is Crystal Casias here? Okay. Obviously  
 18 not.  
 19 ITEM NO. 17: SCOTTY HOOVER  
 20 MR. COON: We'll just keep going on. These  
 21 are defaults and revocations. Number 17, Scotty  
 22 Hoover? Is Scotty Hoover here?  
 23 ITEM NO. 18: ANDREW ORTIZ  
 24 MR. COON: Number 18, Andrew Ortiz.  
 25 MR. FUENTES: Mr. Chairman, if I may be

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1 provided to the hearing officer who made the  
 2 conclusion.  
 3 That information was developed subsequently  
 4 as a result of an unemployment benefit hearing through  
 5 Workforce Solutions, through a court case, and court  
 6 discovery, and direct examination of the ex-spouse.  
 7 The charge that Officer Ortiz went to the residence --  
 8 MR. SHANDLER: I don't want to get into the  
 9 charge because it sounds like you're now asking for a  
 10 formal hearing. And that would be the time to go into  
 11 the specifics. Is that correct?  
 12 MR. FUENTES: Yes. What I'm asking for is  
 13 the director to exercise his discretion and send this  
 14 matter back for rehearing, because none of this  
 15 evidence was in existence. It was not in our  
 16 possession. It was discovered as a result of work  
 17 done after the time of the Notice of Contemplated  
 18 Action was filed and the time expired.  
 19 That Notice of Contemplated Action was sent  
 20 July 18th. The time would have expired July 25th,  
 21 July 26th. Our information from the court case didn't  
 22 come in until July 27th, 28th. And the other  
 23 information as a result of an Attorney General  
 24 investigation didn't come to us until October.  
 25 So this information, all exculpatory, was not

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1 heard.  
 2 MR. COON: And you are who, sir?  
 3 MR. FUENTES: My name is Robert Fuentes, I'm  
 4 an attorney, and I represent Officer Ortiz.  
 5 MR. COON: Okay.  
 6 MR. FUENTES: The record -- if I may.  
 7 MR. COON: Yes, sir.  
 8 MR. FUENTES: The record is correct with  
 9 regard to the board in that the seven-day notice was  
 10 not sent. But this is a peculiar case. This case was  
 11 initiated on an informal finding initiated against  
 12 Officer Ortiz.  
 13 And that finding was made of a breaking and  
 14 entering charge. That information was largely based  
 15 upon testimony offered by Mr. Ortiz's ex-spouse. The  
 16 contemplation -- notice of --  
 17 MR. SHANDLER: I'm going to interrupt. Not  
 18 to be rude. But in the default, it's just a question,  
 19 on December 30th, did you get the Notice of Final  
 20 Decision. And if so, why didn't you ask for a formal  
 21 hearing. That's the only question.  
 22 MR. FUENTES: Because we did not have the  
 23 exculpatory evidence at that time that we presently  
 24 have now to show that there was fraudulent  
 25 testimony -- fraudulent documents and misinformation

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1 available to us to give to the officer. So if we  
 2 didn't have the information, it makes no sense, even  
 3 though we believe it, to ask for a rehearing. Now we  
 4 have the proof that will support the rehearing and  
 5 vindicate Officer Ortiz.  
 6 So I'm asking you to exercise your discretion  
 7 and send this matter back for a rehearing so we can  
 8 start the process and make the record.  
 9 MR. SHANDLER: Okay. The rehearing -- there  
 10 hasn't been a formal hearing. But I guess he's  
 11 referring to maybe the informal hearing. Okay. I  
 12 didn't mean to interrupt. But I think that's helpful  
 13 information for the board to understand where this  
 14 case stands. Thank you.  
 15 MR. FUENTES: Would you care for me to give a  
 16 rough outline of the evidence that we now have which I  
 17 believe would vindicate the officer?  
 18 MR. SHANDLER: I'm reluctant to get into a  
 19 substantive motion to dismiss. I allowed Mr. Conner  
 20 because he was making a procedural motion to dismiss  
 21 his case. But I would be reluctant to make a  
 22 substantive motion to dismiss without the director's  
 23 office having an opportunity.  
 24 MR. FUENTES: No. And that is not my intent.  
 25 My intent is only to justify the basis to send it back

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<p>1 for a rehearing. I mean you can't just willy-nilly 2 send it back. You have to have something tangible to 3 exercise your discretion. 4 And that's what I'm trying to offer you here 5 today. We're asking, because if we go back for 6 rehearing, I'm sure that with presenting the evidence 7 we have now that we did not have then, we would be 8 able to vindicate the officer. So with that 9 understanding, if I may make my presentation. 10 MR. KORN: Mr. Vice Chair. 11 MR. COON: Mr. Korn. 12 MR. KORN: Sir, can I ask you a question? 13 MR. COON: Yes, sir. 14 MR. KORN: Mr. Fuentes, your client was 15 served with a notice of final determination? 16 MR. FUENTES: A Notice of Contemplated 17 Action, yes, sir, we were served with that. 18 MR. KORN: With a Notice of Contemplated 19 Action. Did you respond to that? 20 MR. FUENTES: No, sir, because that was dated 21 July 18, 2011. At that time we did not have the 22 information we presently have. 23 MR. KORN: But my question is did you reply 24 and say you're waiting for more information? 25 MR. FUENTES: No, sir, because we did not</p>	<p>1 have any certainty that we would develop this. This 2 was information -- I'm sorry. 3 MR. KORN: So the question is basically did 4 he ever reply to the notice or did your client just 5 let that lapse? 6 MR. FUENTES: I apologize, sir. I did not 7 hear you. 8 MR. KORN: Was there any reply to the Notice 9 of Contemplated Action? 10 MR. FUENTES: No, sir. 11 MR. KORN: And then did you get a notice of 12 final determination? 13 MR. FUENTES: I am not in possession of that. 14 MR. KORN: And so -- 15 MR. COON: Mr. Hubbard. 16 MR. HUBBARD: Mr. Vice Chairman, Mr. Fuentes, 17 Mr. Korn, members of the board, our records would 18 indicate that a Notice of Final Decision did go out by 19 certified mail and was received. 20 MR. FUENTES: Very well then. I don't 21 dispute that. 22 MR. KORN: So there were two notices that 23 were sent out, both were received, and neither one was 24 responded to in any way? 25 MR. FUENTES: That is correct, sir. In</p>
<p>Page 144</p> <p>1 reviewing the regulations and admittedly being 2 somewhat unfamiliar with them, my reading led me to 3 believe that the course for redress was from the full 4 panel, because every individual hearing officer at 5 that level below the panel would be bound by the 6 timelines. 7 So it is this panel that has that authority 8 to refer it back. And if I misunderstood that, I 9 apologize. But that's why we're here today, to 10 request, in effect, a remand for hearing based upon 11 the new information. 12 MR. KORN: Mr. Vice Chair, can I address the 13 director. 14 MR. COON: Yes, sir. Mr. Korn. 15 MR. KORN: Is there any reason why he can't 16 reapply for certification? If the default order is 17 issued today by the board, can he reapply? 18 MR. HUBBARD: If I might, Mr. Vice Chairman, 19 Mr. Korn, address a couple of peripheral matters. 20 MR. COON: Yes, sir. 21 MR. HUBBARD: First of all I need to get it 22 out on the table that I know Andrew Ortiz. I consider 23 him to be a friend. The position that he held prior 24 to his termination was on my staff. And so that's out 25 there.</p>	<p>Page 145</p> <p>1 The matters that occurred in his LEA-90 case, 2 which I did not -- was not the submitting officer for 3 his LEA-90 occurred prior to my taking this position 4 as the acting director. 5 Our records would indicate that after the 6 Notice of Contemplated Action was received, that there 7 was an informal hearing. And the case file would 8 indicate that Deputy Director Najar and Mr. Matt 9 Jackson as well as Investigator Holmes who is present 10 today were present for that informal hearing. 11 And at that time, according to the notes that 12 are in the file, Mr. Ortiz -- without going into any 13 hearsay, Mr. Holmes is present and would be able to 14 reveal to the board what those three individuals 15 perceived Mr. Ortiz's position to be concerning that. 16 The fact that as his case progressed from 17 there, that additional things were learned is 18 obviously apparent. But this is in stark contrast to 19 the notes that are in the file as to the position that 20 Mr. Ortiz had at the time. 21 MR. FUENTES: And I have no issue with that, 22 because the situation at the time was virtually a she 23 said/he said without any verification. And the 24 witness is there literally, if not under oath, 25 certainly under penalty of giving truthful statements.</p>

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<p>1 It is only afterwards in a court proceeding 2 that we were able to discover that the statements made 3 to the officer by the alleged victim were false to the 4 point where the Attorney General's Office doing an 5 investigation confirmed that she had conspired to 6 falsely notarize documents and forge Mr. Ortiz's 7 signature to certain documents.</p> <p>8 And through the discovery of telephone 9 records through the court proceeding, we discovered 10 evidence to substantiate the position of Officer Ortiz 11 that he was lured to the residence by a telephone call 12 on his ex-spouse's cell phone. And we are able to 13 match that up with her call and his receipt records at 14 the time, which would place him at the scene.</p> <p>15 Now, the finding for the disciplinary action 16 rests very largely on the fact that he was at the 17 scene improperly. It was his defense at the time that 18 he was called to the scene, lured, with the pretext of 19 discussing some child support and custody matters, 20 which were the basis of the forged papers because he 21 was denying that he had ever signed those particular 22 documents.</p> <p>23 Once we discovered the forgeries and we 24 discovered the phone records, we were then able to 25 develop testimony in the court case that exculpated</p>	<p>1 Officer Ortiz. The exculpatory evidence was not 2 developed until October and November of last year.</p> <p>3 So asking or making an appeal without that 4 evidence is wasting your time and making the situation 5 worse for him, because he would have lost his appeal 6 because he had nothing to offer you. It is only now 7 that we have this evidence that we come to you.</p> <p>8 And we're asking send us back. And we're 9 prepared to go through the process. And we're 10 prepared to prove our good conduct. I couldn't find 11 it in the regulations. And I apologize if it's there 12 and I missed it.</p> <p>13 But short of coming to the entire panel and 14 asking to go back, I didn't find anything else. And 15 that's why we're here today. All we want to do is 16 just go back and have the hearing.</p> <p>17 MR. COON: Mr. Hubbard.</p> <p>18 MR. HUBBARD: Just parenthetically, Mr. Vice 19 Chairman, members of the board, Mr. Fuentes, for your 20 well-stated argument, sir. But we hear from one 21 gentleman that we didn't move quickly enough and then 22 the next person comes to the podium because we moved 23 too quickly.</p> <p>24 And from the director's standpoint, I don't 25 have a question any more than a comment. It's a real</p>
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<p>1 tough gig that we have here while we're trying to be 2 fair and be consistent and at the same time obey the 3 timelines.</p> <p>4 For all the things that we have discussed 5 here today, these two cases between Mr. Conner and 6 Mr. Ortiz are fine examples of this quandary that is a 7 part of daily existence of the academy director. 8 That's all. No extra charge.</p> <p>9 MR. FUENTES: Sir.</p> <p>10 MR. COON: Yes, sir.</p> <p>11 MR. FUENTES: The timeline is appropriate 12 when followed. In this case we assume that the 13 hearings are good faith, that people will come to us, 14 to you, or to the hearing and testify truthfully. 15 This was not the case. There was a lie, a series of 16 lies that were told that the hearing officer had no 17 way of checking.</p> <p>18 I'm not faulting the hearing officer. I'm 19 saying, given the testimony that he was presented 20 with, he came out with a conclusion. But that 21 testimony we're now able to prove was false and 22 deliberately false. So we would like to go back and 23 have that opportunity.</p> <p>24 MR. COON: You want to go back to a formal 25 hearing, right?</p>	<p>1 MR. FUENTES: If that's the procedure that 2 the panel feels is fair, yes, sir. Whatever you think 3 is fair, to send us back to that hearing level, we 4 will make that presentation.</p> <p>5 MR. COON: Okay. Anybody have any questions 6 of Mr. Fuentes or Mr. Ortiz?</p> <p>7 MR. FUENTES: Thank you for the opportunity 8 to present our case to you.</p> <p>9 MR. COON: Thank you.</p> <p>10 MR. FUENTES: Could we expect a result this 11 afternoon, shall we wait?</p> <p>12 MR. COON: I think so. You can wait and 13 we'll talk this over in closed session.</p> <p>14 MR. FUENTES: Thank you.</p> <p>15 MR. BETZ: Mr. Vice Chair, I've got to go.</p> <p>16 MR. COON: Okay. Chief Betz has to catch a 17 flight. Thank you for staying as long as you did, 18 Harry. Have a safe trip.</p> <p>19 ITEM NO. 19: MARIAELENA MAES</p> <p>20 MR. COON: Okay. Number 19 is Mariaelena 21 Maes. Mariaelena Maes, is she here?</p> <p>22 ITEM NO. 20: RANDY SILVA</p> <p>23 MR. COON: Okay. Number 20 is Randy Silva. 24 Is Randy Silva here? No Randy Silva, No. 20. 25 ITEM NO. 21: EMILY TORRES</p>

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<p>1 MR. COON: Okay. Number 21, Emily Torres. 2 Number 21, Emily Torres, is not here. 3 ITEM NO. 22: ROBERT VARGAS 4 MR. COON: Number 22, Robert Vargas. 5 Mr. Vargas, are you here? 6 ITEM NO. 23: MARISA BARRAGAN 7 MR. COON: Okay. Number 23, Marisa Barragan. 8 Ms. Barragan? Okay. That's all of the default orders 9 of revocation. Now, to No. 24, formal hearings. 10 MR. SHANDLER: Mr. Chairman, items 24 through 11 27 will be handled in closed session. 12 MR. COON: In closed session? 13 MR. SHANDLER: Yes, sir. 14 MR. COON: Thank you, sir. Okay. Anybody 15 got any questions on the board? 16 MR. KORN: Mr. Vice Chair, I would move that 17 we go into closed session as -- well, actually I ask 18 Chief Schultz to instruct us how to streamline the 19 motion today. I would ask Chief Schultz to tell us 20 how his motion contemplated dealing with these two 21 groups. 22 MR. SCHULTZ: I guess probably the -- I'm 23 sorry. Mr. Chairman, Member Korn, obviously there's 24 two items I think that we need to discuss. And I 25 think we probably need to go on the record for any</p>	<p>1 members that would need to recuse themselves. 2 At this point in time I would say we would go 3 into closed session, make our decisions, and then we 4 can come back. Instead of having to go through each 5 one of those items individually, after closed session 6 we could do two blocks, the default order of 7 revocations and the disciplinary matters as blocks. 8 And we do have two items I think that we're 9 going to discuss. For this particular one, I think we 10 need to go forward with the regular process. 11 MR. COON: Okay. Anybody else have anything? 12 For the record, on No. 12, Scott Conner, I'm going to 13 recuse myself. Scott is an old friend. And this 14 basically came out of the Chaves County Sheriff's 15 Office. I want to recuse myself on 12. 16 Does anybody else have anything they need to 17 recuse themselves on? 18 MR. SHILLING: Mr. Vice Chair, No. 18. 19 MR. COON: Mr. Ortiz. 20 MR. SHILLING: Mr. Ortiz. I believe that's 21 the only one I have, Mr. Vice Chair. 22 MR. MYERS: Mr. Chairman, I need to recuse 23 myself from 25, item 25. 24 MR. COON: Okay. 25 MR. KORN: Mr. Vice Chair, I would make the</p>
<p>Page 152</p> <p>1 motion that we go into closed session on these two 2 groups and ask for a roll call vote. 3 MR. COON: Okay. Can we have a roll call, 4 please. 5 MR. GRATTON: I'll second that motion. 6 MR. COON: Oh. I'm sorry. 7 MR. KORN: Did I step on Chief Schultz? 8 MR. SCHULTZ: Actually, Mr. Vice Chair, since 9 we're doing the formal recusal notice at this time, I 10 also have a number of cases. 11 MR. COON: Oh. I'm sorry. 12 MR. GRATTON: Sorry, Chief. 13 MR. SCHULTZ: Item 13, Wilson; item 15, 14 Samora; item 19, Maes; and item 21, Torres. 15 MR. COON: What were those once more, Chief? 16 MR. SCHULTZ: Items 13, 15, 19, and 21. 17 MR. COON: Okay. Anybody else have anything 18 they need to recuse themselves on? Okay. We have a 19 motion and a second for a recall to go into closed 20 session. 21 MS. LOPEZ: Chief Shilling. 22 MR. SHILLING: Yes. 23 MS. LOPEZ: Sheriff Coon. 24 MR. COON: Yes. 25 MS. LOPEZ: Chief Betz. Chief Schultz.</p>	<p>Page 153</p> <p>1 MR. SCHULTZ: Yes. 2 MS. LOPEZ: Mark Myers. 3 MR. MYERS: Yes. 4 MS. LOPEZ: Nate Korn. 5 MR. KORN: Yes. 6 MS. LOPEZ: John Gratton. 7 MR. GRATTON: Yes. 8 MR. COON: What I would do is ask everybody 9 here that is not on the board to please step out. I 10 don't know how long this is going to take. It won't 11 take a whole lot of time. 12 (Recess from 2:55 p.m. to 3:45 p.m.) 13 MR. COON: We're going to call this back into 14 session with the roll call, please. 15 MS. LOPEZ: Chief Shilling. 16 MR. SHILLING: Here. 17 MS. LOPEZ: Sheriff Coon. 18 MR. COON: Here. 19 MS. LOPEZ: Chief Schultz. 20 MR. SCHULTZ: Yes. 21 MR. LOPEZ: Mark Myers. 22 MR. MYERS: Yes. 23 MS. LOPEZ: Nate Korn. 24 MR. KORN: Yes. 25 MS. LOPEZ: John Gratton.</p>

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<p>1 MR. GRATTON: Yes.</p> <p>2 MR. COON: Okay. We are back in session. On</p> <p>3 the disciplinary matters, on the stipulated orders,</p> <p>4 on --</p> <p>5 MR. SHANDLER: Hang on just a second.</p> <p>6 Mr. Vice Chair, you need to attest for the record that</p> <p>7 only the matters on the agenda were discussed in the</p> <p>8 executive session. Can you so attest?</p> <p>9 MR. COON: Yes, sir, I can. Okay. On the</p> <p>10 stipulated orders, on No. 12, Scott Conner.</p> <p>11 MR. SCHULTZ: Mr. Vice Chair, I would like to</p> <p>12 ask Mr. Hubbard if he had a chance to speak with</p> <p>13 Mr. Conner and come up with an agreement on this</p> <p>14 particular case.</p> <p>15 MR. HUBBARD: Yes, sir, I did. We came to an</p> <p>16 agreement.</p> <p>17 MR. SCHULTZ: Mr. Chairman, let the record</p> <p>18 show I believe the agreement was that there had been</p> <p>19 some original discussion of a 90-day suspension. Had</p> <p>20 that occurred as it should have on October 18th, that</p> <p>21 meant that the suspension of 90 days would have ended</p> <p>22 on January 18th of 2012.</p> <p>23 So this will be one of those rare cases where</p> <p>24 the board would authorize basically credit for time</p> <p>25 served for that revocation. However, Mr. Conner is</p>	<p>1 still responsible for the one-year probationary</p> <p>2 status, which again would run from October 18th, 2011,</p> <p>3 until October 18th, 2012. And he still will be</p> <p>4 required to complete the eight hours of ethics</p> <p>5 training. And I would like to make that in the form</p> <p>6 of a motion.</p> <p>7 MR. COON: Okay. We have a motion. Do we</p> <p>8 have a second?</p> <p>9 MR. GRATTON: Second.</p> <p>10 MR. COON: All in favor say aye.</p> <p>11 (Those in favor so indicate.)</p> <p>12 MR. COON: Okay. On these others, should</p> <p>13 we -- on No. 13, Mark Wilson.</p> <p>14 MR. KORN: Mr. Vice Chair, would we be taking</p> <p>15 13 through 16 as one group?</p> <p>16 MR. COON: Yes. Thirteen through 16 is one</p> <p>17 group, which would be Mark Wilson, Greg Lynch, Randy</p> <p>18 Samora, and Crystal Casias.</p> <p>19 MR. KORN: Mr. Vice Chair, I would make a</p> <p>20 motion that we accept that as a group on the</p> <p>21 director's recommendation.</p> <p>22 MR. COON: Okay. Do I have a second?</p> <p>23 MR. MYERS: Second.</p> <p>24 MR. COON: All in favor say aye.</p> <p>25 (Those in favor so indicate.)</p>
<p>Page 156</p> <p>1 MR. COON: Okay. On the defaults of</p> <p>2 revocation.</p> <p>3 MR. KORN: Oh. And should we note for the</p> <p>4 record that Chief Schultz has recused himself on 13?</p> <p>5 MR. SCHULTZ: And 15.</p> <p>6 MR. KORN: And 15.</p> <p>7 MR. COON: Also I would like to go on the</p> <p>8 record that I recused myself No. 12, Scott Conner.</p> <p>9 Okay. On the default orders of revocation, we will --</p> <p>10 MR. SCHULTZ: Mr. Vice Chair, I make the</p> <p>11 recommendation that we take No. 18 first because that</p> <p>12 one has a discussion point and then talk about the</p> <p>13 other ones as part of a block.</p> <p>14 MR. COON: Okay. That's fine, sir.</p> <p>15 MR. SHILLING: Mr. Vice Chair, for the record</p> <p>16 I recused myself on No. 18.</p> <p>17 MR. COON: Okay. Thank you, sir. On No. 18,</p> <p>18 Andrew Ortiz.</p> <p>19 MR. SCHULTZ: Mr. Vice Chair, I would like to</p> <p>20 make the motion that we accept the director's</p> <p>21 recommendation of revocation by default. It is</p> <p>22 evident that in this case Mr. Ortiz did and was</p> <p>23 properly served on July 18, 2011, and then served a</p> <p>24 second time on December 30, 2011. The first time with</p> <p>25 the NCA, the second time with the NFD.</p>	<p>Page 157</p> <p>1 He did not respond to either one of those two</p> <p>2 requests. Therefore, the default order should stand.</p> <p>3 MR. COON: Okay. Do I have a second on that?</p> <p>4 MR. KORN: I would second it.</p> <p>5 MR. COON: All in favor say aye.</p> <p>6 (Those in favor so indicate.)</p> <p>7 MR. COON: Okay. And then 17, 19, 20, 21,</p> <p>8 22, 23 on the default orders of revocation. Do we</p> <p>9 have a motion on those?</p> <p>10 MR. MYERS: I would make a motion that we</p> <p>11 accept the recommendation of the director on those</p> <p>12 issues.</p> <p>13 MR. COON: Okay. Do I have a second?</p> <p>14 MR. SHILLING: Second.</p> <p>15 MR. COON: Okay. I have a second. All in</p> <p>16 favor say aye.</p> <p>17 (Those in favor so indicate.)</p> <p>18 MR. COON: Okay.</p> <p>19 MR. SCHULTZ: Mr. Chairman, let the record</p> <p>20 again reflect I recused myself on item No. 19 and</p> <p>21 item No. 21.</p> <p>22 MR. COON: Thank you, sir.</p> <p>23 ITEM NO. 24: ALGIN MENDEZ</p> <p>24 MR. COON: Okay. On the formal hearings, on</p> <p>25 Algin Mendez.</p>



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<p>1 MR. MYERS: I would make a motion that we 2 accept the prosecutor's recommendation for revocation. 3 MR. COON: Okay. 4 MR. SCHULTZ: Actually, Mr. Chairman, I 5 believe that the motion would be we reject the hearing 6 officer's recommendation and accept the recommendation 7 from the Attorney General's Office prosecutor of a 8 revocation. 9 MR. COON: Okay. 10 MR. MYERS: So moved. 11 MR. COON: Do I have a second on that? 12 MR. GRATTON: I'll second. 13 MR. COON: Okay. All in favor say aye. 14 (Those in favor so indicate.) 15 ITEM NO. 25: JONATHAN RIEDEL 16 MR. COON: Okay. On Jonathan Riedel. 17 Mr. Myers recused himself on that. We'll make that 18 part of the record. And do I have a motion on 19 Jonathan Riedel? 20 MR. SCHULTZ: Mr. Chairman, I make the 21 recommendation that we accept the findings of the 22 hearing officer in this case. Discipline to be 23 imposed would be a one-year revocation and a two-year 24 probation should Mr. Riedel find employment. 25 MR. COON: Okay. Do I have a second on that?</p>	<p>1 MR. SHILLING: Second. 2 MR. COON: Okay. Chief Shilling seconded. 3 All in favor say aye. 4 (Those in favor so indicate.) 5 ITEM NO. 26: DANIEL GOMEZ 6 MR. COON: Okay. On Daniel Gomez, do I have 7 a motion on Mr. Gomez? 8 MR. SCHULTZ: Mr. Chairman, I make a 9 recommendation and a motion that we accept the 10 findings of the hearing officer. Discipline to be a 11 180-day suspension and a one-year probationary hearing 12 again should Mr. Gomez find employment. 13 MR. COON: Okay. Do I have a second on that 14 motion? 15 MR. GRATTON: Second. 16 MR. COON: Mr. Gratton seconded. All in 17 favor say aye. 18 (Those in favor so indicate.) 19 MR. COON: Okay. That's the end of our 20 disciplinary action. Now we're back to old business. 21 MR. SCHULTZ: Mr. Chairman, I believe we've 22 moved back to the Attorney General's Office and we're 23 still on item No. 8. 24 MR. COON: Yes, sir. 25 MR. SHANDLER: I need to state for the record</p>
<p>Page 160</p> <p>1 that it appears that Mr. Hubbard was in closed session 2 during 24 through 26; is that correct? 3 MR. COON: Yes, sir. 4 MR. SHANDLER: That's inconsistent with the 5 position I advised the board of. 6 MR. COON: So noted. 7 MR. KING: Okay. So we're back on. And like 8 I said, don't fret. I'm going to jump back to 9 wherever we need to jump back to. But let's go ahead 10 and kind of crunch through the agenda here. 11 ITEM NO. 27: MOTION TO CLARIFY AND AMEND 12 THE ORDER OF REVOCATION 13 MR. KING: Item No. 27, Motion to Clarify and 14 Amend the Order of Revocation. I don't -- actually I 15 don't know that I know what that item is specifically 16 about. Is Mr. Hubbard here? Was that yours to 17 present? It says chairman. 18 MR. KORN: I think that was Mr. Shandler's. 19 MR. KING: Zach, do you know what that item 20 is? 21 MR. SHANDLER: I do know what that item is. 22 But I have to wait to see if the board -- what they 23 want me to say. 24 MR. KING: Well, I would like for you to 25 explain what item No. 27 is.</p>	<p>Page 161</p> <p>1 MR. SHANDLER: Okay. Mr. Chairman, item 27 2 is in your packet. In a previous meeting, the board 3 issued an order of revocation against an officer named 4 William Cunningham. Presented to you in your packet 5 are the respondent's counsel's Motion to Clarify and 6 Amend the Order of Revocation. 7 MR. KING: Maybe that's my problem. I don't 8 have a copy of the motion in my file. But if Sheriff 9 Coon has his. 10 MR. COON: I don't I don't think. 11 MR. SHANDLER: It was emailed out. But I'll 12 read it into the record. "Motion to Clarify and Amend 13 Order of Revocation. The Respondent, by and through 14 its counsel of record, Bregman &amp; Loman, respectfully 15 moves the Board to clarify the terms of its Order of 16 Revocation in this matter. For his Motion Respondent 17 states: 18 "One, The Board issued an Order of Revocation 19 in this matter, which states that Respondent's law 20 enforcement certification is 'revoked from January 17, 21 2012, to July 16, 2013,' that Respondent is under 22 'probation from January 17, 2012, to January 16, 2015' 23 and that Respondent 'must complete six CEUs in 24 addition to those CEUs required for the maintenance of 25 certification by July 1, 2013'."</p>

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<p>1 Let me pause. Does anyone have this or just 2 the people that have tablets? 3 MR. KORN: I have it. 4 MR. KING: I might be able to pull it up. 5 MR. SHANDLER: I don't want to waste people's 6 time if they have copies. 7 MR. KING: It doesn't look like it's very 8 long. Keep going. 9 MR. SHANDLER: Paragraph 2, "Pursuant to NMAC 10 10.29.1.11 and NMSA Section 29-7-13, the Board may 11 'suspend or revoke' a certification. Although not 12 defined by the statute or administrative code, the 13 plain meaning of 'suspend' is to 'interrupt; to cause 14 to cease for a time, to discontinue temporarily, but 15 with the expectation or purpose of resumption'. 16 Black's Law Dictionary, 5th edition. Similarly, 17 'revoke' is defined as to 'annul or to make void by 18 recalling or taking back; to cancel, rescind, repeal, 19 or reverse'. 20 "Three, Because suspension is a temporary 21 action and revocation is permanent, the Board's Order 22 that Respondent's certification is revoked for an 23 eighteen-month period is incongruous. 24 "Four, Furthermore, that Respondent is 25 currently on probation indicates that his</p>	<p>1 certification is currently valid, but bound by the 2 terms of his probation. The Order further states that 3 in the instance of a violation of probation, the 4 Respondent will receive an 'expedited process for 5 hearing that matter'. This leads Respondent to 6 believe that his certification is currently valid and 7 subject to an expedited hearing process should he 8 violate a Board rule. Indeed, a citizen who is not 9 certified by the Board would not be concerned with 10 violating the Board's rules. 11 "Five, Finally that Respondent is required to 12 conduct CEUs between now and July 16, 2013, also 13 indicates that his certification is currently valid 14 and that his CEU requirements must be maintained. 15 There would be no reason to maintain CEU requirement 16 for a certification that was revoked. 17 "Six, Respondent understands the Board's 18 Order to mean that the unqualified, free-and-clear 19 status of his certification is suspended until July 20 16, 2013, and that his valid certification is simply 21 subject to the conditions of probation and additional 22 CEUs. 23 "Seven, if the Board disagrees with 24 Respondent's interpretation of the Order, Respondent 25 respectfully requests that the Board issue an amended</p>
<p>Page 164</p> <p>1 order of revocation that clearly sets forth the 2 Board's rulings and status of Respondent's 3 certification. Respectfully submitted, Bregman &amp; 4 Loman." 5 MR. KING: Okay. Thanks, Zach. Is 6 Mr. Hubbard down there? 7 MR. HUBBARD: Yes, sir. 8 MR. KING: Mr. Hubbard, have you had a chance 9 to -- actually first I should ask this, is this 10 something, Zach, that I should recuse myself from too? 11 MR. SHANDLER: As a disciplinary matter, I 12 had not anticipated that you would participate. 13 MR. KING: Okay. In that case actually, 14 since I haven't taken any action on it, I'm going to 15 turn it back over to you, Sheriff Coon, because it 16 just seems to me like the kind of item that maybe fits 17 more into those kind of items. 18 MR. COON: Okay. 19 MR. SHANDLER: I need to inform the board 20 that respondent has filed an appeal in the First 21 Judicial District of this case. I am handing out a 22 draft for the board to consider. And if the board 23 doesn't want me to prepare it, that's fine. But for 24 discussion points, anticipating that the board was 25 clear in its order that it was an order of revocation</p>	<p>Page 165</p> <p>1 and that this officer is not certified, adding to the 2 fact that I called his employer yesterday -- 3 MR. KORN: Zach, can I interrupt for just a 4 second? 5 MR. SHANDLER: Okay. 6 MR. KORN: Since this is -- Mr. Vice Chair, 7 if I may. Since this is a matter of a pending legal 8 matter, I would ask that we vote to have a closed 9 meeting about pending legal matters for which we're 10 getting legal advice. 11 MR. SHANDLER: Mr. Vice Chair, you are 12 allowed to do that under the Open Meetings Act. You 13 can follow the procedure of a motion and a second and 14 a roll call. 15 MR. COON: Okay. 16 MR. KORN: I would so make a motion to close 17 the meeting. 18 MR. COON: Okay. Do we have a second? 19 MR. GRATTON: I second that motion. 20 MR. COON: Okay. Can I have a roll call, 21 please. 22 MS. LOPEZ: Chief Shilling. 23 MR. SHILLING: Yes. 24 MS. LOPEZ: Sheriff Coon. 25 MR. COON: Yes.</p>

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<p>1 MS. LOPEZ: Chief Betz. Chief Schultz.  2 MR. SCHULTZ: Yes.  3 MS. LOPEZ: Mark Myers.  4 MR. MYERS: Yes.  5 MS. LOPEZ: Nate Korn.  6 MR. KORN: Yes.  7 MS. LOPEZ: John Gratton.  8 MR. GRATTON: Yes.  9 (Recess from 4:00 p.m. to 4:15 p.m.)  10 MR. COON: Okay. We are back into open  11 session. I need a roll call, please.  12 MS. LOPEZ: Chief Shilling.  13 MR. SHILLING: Here.  14 MS. LOPEZ: Sheriff Coon.  15 MR. COON: Yes.  16 MS. LOPEZ: Chief Schultz.  17 MR. SCHULTZ: Yes.  18 MS. LOPEZ: Mark Myers.  19 MR. MYERS: Yes.  20 MS. LOPEZ: Nate Korn.  21 MR. KORN: Yes.  22 MS. LOPEZ: John Gratton.  23 MR. GRATTON: Yes.  24 MR. SHANDLER: Can you attest for the record  25 that only the matters listed in the motion were those</p>	<p>1 discussed in the closed session, Mr. Vice Chair?  2 MR. COON: Yes, sir, I can.  3 Okay. Back to the motion to clarify the  4 amended -- the amendment to the order of revocation on  5 Mr. William Cunningham. Do I have a motion?  6 MR. SCHULTZ: Mr. Chairman, I would like to  7 make the motion that the board accept the order  8 denying the Respondent's motion as provided by Zach to  9 be signed by the vice chair and sent to Mr. Bregman.  10 MR. COON: Okay. Do I have a second?  11 MR. SHILLING: Second.  12 MR. COON: All in favor say aye.  13 (Those in favor so indicate.)  14 MR. COON: All opposed. Okay.  15 ITEM NO. 28: BOARD MEMBERS AS HEARING OFFICERS,  16 TRAINING AND DISCUSSION  17 MR. KING: Okay. The next item on the agenda  18 is Board Members as Hearing Officers, Training and  19 Discussion. Mr. Korn.  20 MR. KORN: Mr. Chairman, can we -- what was  21 the final determination of Nos. 7 and 8? I had called  22 for a motion on number -- I mean I called for a vote  23 on No. 8.  24 MR. KING: Right. Let's do 28. I was going  25 to jump back to eight before we get to 29 because 29</p>
<p>Page 168</p> <p>1 won't take too long. But if you want, we can go back  2 to eight now.  3 MR. KORN: I would suggest we do, because I  4 think in light of the hour I probably will need to  5 give up 28 for another meeting.  6 MR. KING: Okay. All right. Let's go back  7 to item No. 8. Let me -- you know, all of us are  8 pooped from all of that stuff. I feel strongly about  9 the nature of this motion not being a good idea for  10 the reasons that I've stated already.  11 I am -- I'm certainly willing to promise you  12 guys that -- it's clear what the board would like to  13 do. Frankly board members come to me all the time and  14 tell me, gee, we would like to change the way we do  15 representation or whatever.  16 We have a new executive director coming in.  17 You know, we can move on with this. But I certainly  18 will be happy over the next six weeks, between now and  19 the next meeting, which I think is when it would be  20 appropriate to actually vote on this, just to have a  21 discussion with the new director, a discussion -- I'm  22 happy to hear from Public Safety that they have  23 lawyers that they think that can do this work.  24 And I think that we should have some  25 discussion with them about how that would be handed</p>	<p>Page 169</p> <p>1 off or whatever so that we don't just all throw  2 ourselves into the vortex and then say, you know,  3 let's work this out.  4 So it honestly seems to me like it would be  5 worthwhile for all of us to sit down and talk about  6 how this would be done in an orderly transfer, if we  7 want to do it. And I -- you know, even though I'm  8 very serious and strong about the procedure about how  9 we do this, maybe it's not obvious to everybody that I  10 am certainly open to discussion with regard to the  11 issue of other representation, particularly if the new  12 director, who I think is the one that's in charge of  13 when they're represented and stuff, you know, has an  14 opportunity to sit down with us and talk about what  15 would work.  16 MR. KORN: In that case, Mr. Chairman, can I  17 then again ask for a vote? And then over the course  18 of the next five weeks, we will be talking to the new  19 director about the procedures.  20 MR. KING: Well, the problem with the vote is  21 I think we all -- certainly all of us in law  22 enforcement took an oath to uphold the laws and the  23 Constitution of the State of New Mexico. And I think  24 that to vote on this particular motion would violate  25 the Open Meetings Act.</p>

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<p>1 And I think that everybody should be 2 concerned about taking votes that they know up front 3 violate one of our acts. And certainly I get a lot of 4 scrutiny for whether our office is enforcing the Open 5 Meetings Act or not. And so it would be a hard thing 6 for me to do.</p> <p>7 It might be -- this has just kind of popped 8 into my mind. But, you know, if we want to get a 9 sense of the committee as to where they want to go or 10 something like that and not take it as an action of 11 the board, which to tell the truth I'm still not 12 exactly clear that the board has authority to make 13 these particular decisions.</p> <p>14 I think that some of these decisions really 15 reside more in the director's office as opposed to the 16 board members' office. I think that we have in the 17 past, as I think about it, had the board, you know, 18 just basically say this is our -- this is our feeling 19 that we would like to express to the executive 20 director, that we want him to pursue this action.</p> <p>21 Do you know what I mean? So it's not an 22 action of the board, which is what violates the Open 23 Meetings Act, it's sort of a we're giving direction to 24 the executive director to pursue an action, you know, 25 to look into this and report back to us or something.</p>	<p>1 Chief.</p> <p>2 MR. SCHULTZ: Chairman, if I may, I've kind 3 of got two-part question. One is if Mr. Korn would be 4 willing to withdraw his motion that's on the table and 5 if the chair would be willing to accept a second 6 motion to put this item on the next agenda as a formal 7 item to be voted on.</p> <p>8 MR. KING: That was my recommendation to tell 9 the truth. I just -- I don't think that this is not 10 an item that shouldn't be voted on or whatever. But I 11 think that it needs to be properly noticed so that 12 frankly, interestingly enough, whatever action the 13 board takes will be a valid and legal action as 14 opposed to one in -- we've all talked about this 15 before.</p> <p>16 But if you violate the Open Meetings Act -- 17 so you all can decide whether you want to take the 18 risk of violating the Open Meetings Act. But if you 19 do violate the Open Meetings Act, the action is void 20 from its inception. It is like it never occurred.</p> <p>21 MR. KORN: Mr. Chair, can you explain what 22 the distinguishment is between your thoughts that this 23 violates the Open Meetings Act where the vote we took 24 in No. 6 does not? 25 MR. KING: I would have to go back and</p>
<p>1 remember what vote we took in No. 6. Hang on a 2 second.</p> <p>3 MR. KORN: They're both simply procedures 4 that the board is enacting. I see nothing to 5 distinguish one from the other.</p> <p>6 MR. KING: I guess that that's my problem. I 7 don't perceive this particular motion as one that is a 8 mere procedure. It's actually -- it is a motion to -- 9 and frankly, even if it was procedure, there is 10 nothing in items 7 or 8 that indicate that the board 11 is going to take a motion on replacing its counsel.</p> <p>12 I mean none of these things are sufficient to 13 give information on that. I mean like I said for some 14 reason I'm not remembering what we voted on in No. 6.</p> <p>15 MR. KORN: Maybe I can offer this as a 16 compromise.</p> <p>17 MR. KING: Okay.</p> <p>18 MR. KORN: Even though I don't agree, I would 19 make a motion that the board allow me to expand the 20 agenda item No. 6, streamlining the process, so that I 21 can make an agenda item to in our timeline ask the 22 director to prosecute all formal hearings by his 23 office.</p> <p>24 MR. SHANDLER: Let me interrupt and try 25 another compromise. This backup prosecutor, it's up</p>	<p>1 to Mr. Hubbard and his successor, if he wants to -- 2 that's clearly on the agenda. So I think the board 3 could vote for a backup prosecutor.</p> <p>4 And then it's up to the director, the backup 5 prosecutor, and the Attorney General's Office to 6 divide up that work. And if there's some type of 7 adult decision where the backup becomes the main, then 8 I think that part can be done today and we don't have 9 to come back again.</p> <p>10 The part about the civil division, there 11 is -- if you want to start that process as well, we 12 can start it administratively, you can memorialize it 13 at your April meeting. And that I do need some 14 direction on, because I do have some cases. And so if 15 the board does want to do that transition, I can't be 16 left kind of hanging. I want some clear direction.</p> <p>17 So in sum I think you can do the backup 18 prosecutor and start that ball rolling. And then in 19 terms of the civil division one, you might have to 20 memorialize that at the next meeting. But it sounds 21 like the principals are willing to have those 22 discussions and have an orderly transition.</p> <p>23 MR. KORN: When you say civil division, do 24 you mean the administrative prosecutor? 25 MR. SHANDLER: No. I'm sorry. That's me.</p>

<p style="text-align: right;">Page 174</p> <p>1 MR. KING: Yeah. A lot of people might not 2 know the internal workings of the AG's office. The 3 litigation division is the division that supervises 4 the administrative prosecutors. The civil division is 5 the division that supervises the board counsel for all 6 the different boards and commissions. 7 MR. KORN: Okay. Then I mean speaking just 8 for myself, that seems like a fine compromise. And 9 one other issue that I think the board needs to 10 address, and this is in conversation with Director 11 Hubbard. 12 I again would like to -- again under the item 13 No. 6, streamlining the process, I would like to open 14 that up for an agenda item and ask that the board 15 consider as an agenda item expanding our timeline, our 16 deadlines again, for the prosecution of cases while we 17 have that transition between Director Hubbard and 18 Director Medina. 19 MR. KING: Can I ask a question on that. I 20 mean if it's sort of those self-imposed deadlines 21 where we said that the director would review cases in 22 three days or whatever, I don't have a problem with 23 that. If it's extending the deadlines for cases that 24 are in the pipeline already, you all will know that I 25 think that that's not a good idea.</p>	<p style="text-align: right;">Page 175</p> <p>1 MR. KORN: Yes. But we -- you know, we feel 2 that that's in the interest of justice just what we 3 have to ask for the board to approve. So this is 4 something that we're going to try not to do as I 5 understand the director's imprimatur. But it's 6 something that I think we need to have on the record 7 in advance so that we don't do it after the case is 8 expired. 9 MR. KING: Okay. Well, let's do them a piece 10 at a time. I mean that may fit under the streamlining 11 process, although I don't know if people would 12 consider that streamlining the process. But it's a 13 process. 14 So let's kind of do them one at a time. I 15 actually -- I'm certainly willing to go along with 16 like I said Zach's recommendation, which is kind of 17 what I thought we were going to be discussing today. 18 Once again actually, if we had all of this a 19 few days before the board meeting, it would be easier 20 to understand what it is that we're going to be 21 discussing. But if the motion is to recommend that 22 the board also be able to use as administrative 23 prosecutors lawyers from Public Safety, is that my 24 understanding? 25 MR. KORN: No, no. It would be that the</p>
<p style="text-align: right;">Page 176</p> <p>1 director -- 2 MR. KING: Just that the director do it. 3 MR. KORN: Director as prosecutor. 4 MR. KING: I actually think he's probably got 5 the authority to do that anyway. But if you want to 6 do that and formalize it, I think that that would be 7 fine. 8 MR. KORN: Yes. 9 MR. KING: Okay. So let's do that one first 10 then. 11 MR. KORN: Okay. 12 MR. KING: So the motion would be that the 13 director serve as backup prosecutor or additional -- 14 if you want to call them additional prosecutor? I 15 don't even necessarily think we've got to call them 16 backup. I think that he's got enough authority to do 17 that if he wants to anyway. 18 MR. KORN: So what we're doing -- and we can 19 put this into a motion. What we're doing is giving 20 the director authority to decide whether he's going to 21 prosecute the case or somebody from another office. 22 And so the motion would be that all the cases 23 for the formal process would be prosecuted by the 24 director as a backup prosecutor with the understanding 25 that backup would be the same as primary.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. KING: I'm okay with that. I think he 2 probably has that authority already. I don't know if 3 anybody has had a chance to think about that. 4 MR. KORN: I'm okay with that if it meets 5 with the board. 6 MR. MYERS: I'll second it. 7 MR. KING: All right. We can probably do 8 that in a voice vote. All in favor say aye. 9 (Those in favor so indicate.) 10 MR. KING: Any opposed? Okay. So now a 11 second item would be under item No. 6 to consider an 12 additional idea which would be to extend timelines. 13 And do you have specific numbers for us? 14 MR. KORN: I think the director has asked for 15 60 days additional for cases in the pipeline in 16 between the notice of -- I'm sorry. In between the 17 Notice of Contemplated Action and the notice of final 18 termination. 19 MR. KING: Okay. 20 MR. KORN: So that could be cases that would 21 fall within there now. 22 MR. KING: Yes. Mr. Hubbard, is that those 23 17 cases you've talked about, where there's been NCAs 24 issued, do you know? 25 MR. HUBBARD: It's at least that number, sir.</p>

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<p>1 MR. KING: Okay. But that's essentially what 2 we're talking about? 3 MR. HUBBARD: Yes, sir. 4 MR. KING: All right. Any other discussion 5 on that motion? I think we can all understand that 6 one. That one probably needs -- well, it doesn't need 7 a voice vote because I'm the only one that's going to 8 vote no. All in favor say aye. 9 (Those in favor so indicate.) 10 MR. KING: All opposed no. I'm going to show 11 the chairman voting no. Okay. 12 MR. KORN: Thank you. 13 MR. KING: Is that it? 14 MR. KORN: So then should we ask that No. 7 15 be -- I'm sorry. Number 8 be put as a formal item on 16 the next agenda? 17 MR. KING: Yes. Actually you can always do 18 that. But what I would do is flesh out the item that 19 you want. If you want to introduce a motion that says 20 that you think that the Law Enforcement Academy Board 21 ought to request or search out or whatever, you know, 22 other board counsel or whatever, then I think you 23 ought to put that in a motion and you ought to notice 24 it and it should be on. 25 But I don't think you need a motion for that</p>	<p>1 here, because I think you can just do that. But let's 2 make sure that it's sufficient notice so that people 3 understand what the question is. 4 MR. KORN: Okay. And just for the record, I 5 do respectfully disagree. But in the interest of 6 moving everything along, I think we're all in 7 agreement. 8 MR. KING: Good. 9 MR. KORN: Thank you. 10 MR. KING: Me too. I'm not real comfortable 11 with everything we're doing here right now. But I 12 think everybody is pooped. 13 MR. KORN: Yes. Thank you, Mr. Chairman. 14 MR. KING: Okay. So that's everything on 15 item No. 8. Okay. 16 ITEM NO. 29: SCHEDULING OF NEXT BOARD MEETING 17 MR. KING: I suppose that just leaves us with 18 item No. 29, scheduling of the next board meeting. 19 Mr. Hubbard. 20 MR. HUBBARD: Mr. Chairman, members of the 21 board, we have a scheduled meeting for Tuesday, April 22 17, 2012, in Las Cruces at the Dona Ana County 23 Government Building. 24 MR. KING: Okay. I think probably everybody 25 has that on their calendar already.</p>
<p>Page 180</p> <p>1 MR. SHANDLER: Mr. Chairman. 2 MR. KING: Mr. Shandler. 3 MR. SHANDLER: I just want to say for the 4 record, right now I have five current appeals. I'm 5 going to be working with DPS to transfer those over. 6 And then the three orders from today, do you want me 7 to do the three orders from today or should I give 8 that to Monica to do? I mean I need some instruction. 9 MR. KORN: Is this something that can be 10 discussed with the director after the meeting? 11 MR. SHANDLER: Okay. I will seek that 12 direction from the director. And let me just say, 13 thank you for the opportunity to serve you for seven 14 years. Thank you. 15 MR. KORN: And I thank you, Zach, personally 16 and on behalf of my section of the board for your 17 service. 18 MR. KING: Well, unless I decide to do 19 something with him, he'll be here at the next meeting 20 too. But frankly we may be able to solve all of those 21 things between now and the next meeting. 22 MR. KORN: Thank you. 23 ITEM NO. 30: ADJOURNMENT 24 MR. KING: All right. Any other business to 25 come before the board?</p>	<p>Page 181</p> <p>1 MR. COON: Mr. Chairman, I make a motion we 2 adjourn. 3 MR. GRATTON: Second. 4 MR. KING: Okay. We have a motion to adjourn 5 that's been seconded. All in favor say aye. 6 (Those in favor so indicate.) 7 MR. KING: All opposed no? No. Okay. We're 8 adjourned. 9 (At 4:30 p.m. the meeting was concluded.)</p>

## 1 REPORTER'S CERTIFICATE

2  
3 I, JAN A. WILLIAMS, New Mexico CCR #14, DO  
4 HEREBY CERTIFY that on March 1, 2012, the proceedings  
5 in the above captioned matter were taken before me,  
6 that I did report in stenographic shorthand the  
7 proceedings set forth herein, and the foregoing pages  
8 are a true and correct transcription to the best of my  
9 ability.

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 these proceedings.  
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