

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NEW MEXICO LAW ENFORCEMENT ACADEMY
REGULAR BOARD MEETING AND PUBLIC HEARING

Thursday, September 25, 2008
9:03 a.m.

1000 West College Avenue
Thomas B. McDonald Student Memorial Center
Silver City, New Mexico 88061

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

1 A P P E A R A N C E S

2

3

4 B O A R D M E M B E R S

5 Gary King, Attorney General

6 James R. Coon

 Robert D. Force

7 Arsenio Jones

 Val Panteah, Sr.

8 Bernardo M. Perez

9

10

 A L S O P R E S E N T

11

 Nan Erdman

12 Ernest Holmes

 Matthew Jackson

13 Arthur Ortiz

 Zachary Shandler

14 Suzanne Vigil

15

16

17

18

19

20

21

22

23

24

25

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

	PAGE	
2		
3		Item
3	5	1 Call to Order
4	5	2 Roll
5	6	3 Approval of Agenda
6	7	4 Approval of Minutes
7	7	5 Director's Report
8	13	6 Public Comments
9	13	7 Reserve Committee Report
10	22	8 Domestic Violence Legislation
11	37	9 SFST Oversight Committee Report
12	39	10 Changes to Student Handbook
13	45	11 Police Officer Requirement Rule Regarding High School Diploma
14		
15	73	12 Renewal of Open Meetings Act Rule
16	75	13 Ratification of Certifications for Law Enforcement Officers
17	75	14 Ratification of Certifications for Public Safety Telecommunicators
18		
19	77	15 Paul Armijo
20	79	16 William Breeding
21	81	17 Eric Jameson
22	82	18 Norman Lee
23	84	19 Richard Luna
24	86	20 Randy Phillips
25	87	21 Ryan Tsosie

22	Earlene Winnett	88
3		
23	Michael Arbogast	92
4		
24	Patrick Cadena	95
5		
25	Bob Gilbert	98
6		
26	Joey Gomez	119
7		
27	Gary Graves	120
8		
28	Kenneth Groves	135
9		
29	Levi Irwin	189
10		
30	Andrew McClay	193
11		
31	Andrew Roberto	196
12		
32	Nathaniel Romeo	193
13		
33	Andrew Scribner	198
14		
34	Michael Trujillo	204
15		
35	Bruce Volzer	208
16		
36	Joshua W. David	212
17		
37	Michael Sandoval	156
18		
38	Jesus Guerra	165
19		
39	Gilbert Lobato	214
20		
40	Scheduling of Next Meeting	233
21		
41	Adjournment	236
22		

23
24
25

1 ITEM #1: CALL TO ORDER

2 MR. KING: I'm going to go ahead and call the

3 meeting to order. Thanks to all of you for being here for

4 our fall meeting of the New Mexico Law Enforcement Academy
5 Board. It's -- we want to thank the university here,
6 Western New Mexico University, for hosting us. This is a
7 nice facility.

8 Art said he's working on getting the temperature
9 adjusted. They probably weren't expecting it to still be
10 summer. It's beautiful weather to be in Silver City.

11 ITEM #2: ROLL

12 MR. KING: First item on the agenda is roll call,
13 and I think we will probably do it like we normally do.
14 I'll just start down here at the end of the table and have
15 people introduce themselves. Art, do you want to start?

16 MR. ORTIZ: Arthur Ortiz, director of the Law
17 Enforcement Academy.

18 MS. VIGIL: I am Suzanne. I'm Mr. Ortiz's
19 secretary from the Law Enforcement Academy.

20 MR. FORCE: I'm Robert Force, citizen at large
21 representative.

22 MR. JONES: Arsenio Jones, line officer
23 representative.

24 MR. COON: Rob Coon, sheriff's representative,
25 Chaves County.

6

1 MR. PANTEAH: Morning. Chief Val Panteah,
2 representative for tribal law enforcement.

3 MR. PEREZ: Matt Perez, citizen at large.

4 MR. SHANDLER: Zack Shandler, Board counsel.

5 MR. JACKSON: Matthew Jackson, attorney.

6 MS. ERDMAN: I'm Nan Erdman. I'm the prosecuting
7 attorney.

8 MR. HOLMES: I'm Ernest Holmes, the investigator
9 for the New Mexico Law Enforcement Academy.

10 MR. KING: Good. And I'm Gary King. I'm the
11 chairman. So we have a quorum, correct, Mr. Ortiz?

12 MR. ORTIZ: Yes.

13 ITEM #3: APPROVAL OF AGENDA

14 MR. KING: We'll proceed with the -- with our
15 items. Item No. 3 on the agenda is approval of the
16 agenda. Is there anybody who has any additions or
17 corrections to the agenda? Yes, sir.

18 MR. ORTIZ: There is a change to the agenda.
19 Item No. 22, Earlene Winnett; it was a default by
20 revocation. It is now being changed to a stipulated
21 order.

22 MR. KING: Okay.

23 MR. ORTIZ: And that's the only change.

24 MR. KING: Anybody else? Okay. With that change
25 I'll take a motion to approve the agenda as revised.

7

1 MR. COON: I make a motion.

2 MR. FORCE: Second.

3 MR. KING: I have a motion. Second by Robert.

4 All in favor say aye.

5 THE BOARD: Aye.

6 MR. KING: Any opposed? (No response.) Okay.

7 ITEM #4: APPROVAL OF MINUTES

8 MR. KING: Next item on the agenda is approval of
9 the minutes, the June 19th minutes from Red River. They
10 are in your packet. I believe everybody's had a chance to
11 review those. Any additions or corrections to the
12 minutes? Okay. Seeing none, I'll take a motion to
13 approve the minutes.

14 MR. PEREZ: Move to approve the minutes.

15 MR. KING: Motion by Matt.

16 MR. JONES: Second.

17 MR. KING: All in favor signify by saying aye.

18 THE BOARD: Aye.

19 MR. KING: All opposed? (No response.) Okay.

20 The minutes have been approved.

21 ITEM #5: DIRECTOR'S REPORT

22 MR. KING: The next item on the agenda is the
23 Director's report. Mr. Ortiz.

24 MR. ORTIZ: Yes, sir. Good morning,
25 Mr. Chairman, Board members, ladies and gentlemen in the

8

1 audience. I would like to begin by offering our
2 condolences to Chief Ray Schultz, Lieutenant Parkins'
3 family, and the Albuquerque Police Department regarding
4 the tragic accidental death of Lieutenant Todd Parkins
5 yesterday.

6 MR. KING: Could we, Art -- because I actually

7 had intended to do that. I want to certainly on behalf of
8 the committee express our condolences. We're sorry that
9 Chief Schultz can't be with us. Can we just take about a
10 moment of silence for Lieutenant Parkins and his family.

11 (There was a pause in the proceedings.)

12 MR. KING: Thank you. Go ahead.

13 MR. ORTIZ: Yes. I would also like to
14 acknowledge Director Steven Chavez of Western New Mexico
15 University for hosting us here today and thank him for the
16 meeting.

17 Mr. Chairman, Board members, the Director's
18 report is in Tab 5 in your binder, which describes some of
19 the activities at the Academy that have transpired since
20 the June 19th meeting in Red River. As you can see, the
21 report is lengthy, so I will highlight some of the items.

22 We're making excellent progress on the misconduct
23 cases. After today's 24 cases are resolved -- hopefully
24 they'll be resolved and closed -- we will have 41 open
25 pending cases. Of those 41, one is a 2002 case, which has

9

1 been brought back to the Board, which will be hopefully
2 resolving by December.

3 We have three 2006 open cases out of 44 reported
4 that year. We have ten 2007 open cases out of 85. And
5 currently we have 27 open cases for 2008 out of 59 that
6 are reported.

7 So I think we are making good progress in

8 catching up with current cases. I foresee after December
9 going into the new year that we'll only have 2008 cases
10 withstanding.

11 We did have six meetings that were scheduled for
12 formal hearings. However, five of them have been
13 resolved; and we are only expecting one. And I thank some
14 of the Board members who were willing to assist us with
15 those formal hearings.

16 That's why we haven't contacted you because a lot
17 of them have been resolved. We do have one scheduled for
18 October 28th, which Mr. Force will be hearing.

19 We are in the process of taking action on eleven
20 officers that are certified as police instructors. The
21 Board has taken disciplinary action on seven of these
22 officers. And I'll be sending letters out to pull their
23 instructor certification for some violations.

24 The inservice training online is being developed
25 in conjunction with Santa Fe Community College. The

10

1 program should be available to test by November 1st. The
2 cost for the tuition will be \$37 per credit hour. And
3 there are 37 and a half contact hours, which will equal to
4 three credit hours for a total of \$111 to take this course
5 online.

6 If you have any questions at any time, just go
7 ahead.

8 Okay. On September 4th, a group of the sheriffs

9 and chiefs attended a meeting at the Law Enforcement
10 Academy to discuss the curriculum and the length of the
11 Academy, which is currently at 20 weeks. Many ideas were
12 exchanged, and we'll continue to review suggestions for
13 improvements to the Academy.

14 And we're studying on which courses we might be
15 able to have the applicants do a preadmission course
16 before going into the Academy either online or by CD, so
17 we can maybe cut the Academy down to 16 weeks. So we're
18 continuing to explore that.

19 We are currently reviewing the curriculum to
20 establish subjects that are taught at the Academy. And
21 once these topics are identified, we can begin to enter
22 into a dialogue with the agencies around the state to
23 determine the feasibility and logistics of this project.

24 Our next class graduates November 26, and we
25 won't be starting the next class until April. So during

11

1 that time we will be able to transition approximately
2 65 percent of the current lecture-based curriculum into
3 scenario-based learning and facilitation with an overall
4 goal of approximately 80 percent of all blocks of
5 instruction being taught using this methodology by a Basic
6 Class 178.

7 Also this month Board members Bernardo Perez,
8 Robert Force, Investigator Ernest Holmes, and I attended
9 the Managing Police Discipline seminar in San Antonio,

10 Texas. It was very informative and beneficial regarding
11 officer misconduct matters. Also this weekend Board
12 members Mr. Panteah and Arsenio Jones will be attending
13 this in Las Vegas.

14 Also at the Academy we obtained a temporary
15 employee to work as a receptionist. She's Meliza Romero.
16 She's made a huge contribution assisting the girls with
17 some of the duties.

18 Going on to the Advanced Training Bureau, as you
19 see in Tab 5, there's many items there; and I'm just going
20 to highlight some of them. One being the court security
21 certification curriculum. It has been finalized, and
22 funding has been secured through Homeland Security to
23 conduct retraining sessions.

24 The pilot session will be October 21st in Grants,
25 with the first 40-hour course being held in Roswell hosted

12

1 by Sheriff Robbie Coon on October 27th through the 31st.

2 MR. COON: That's been changed I think like to
3 November 2nd through the 6th. The next Monday, I
4 believe.

5 MR. ORTIZ: November 2nd.

6 MR. COON: I believe. Whatever that Monday is
7 after that.

8 MR. ORTIZ: And then we also have follow-up
9 classes November and December for Taos and Santa Fe.

10 On the critical incident report, we had PST 105

11 graduated 37 dispatchers on August 22nd. On the Basic
12 side, the Basic police officer training class No. 176,
13 which started July 13, they'll graduate on November 26.
14 It began with 53 cadets, and currently there are 48 cadets
15 remaining.

16 Cert by waiver No. 64 started July 21st, went for
17 the three weeks, and graduated 22. Another change. We
18 had to cancel cert by waiver class No. 65 because of low
19 enrollment; however, we've gotten some enrollment.

20 There's a few officers that were going to lose
21 their commission due to the 12-month rule. So we have
22 scheduled a cert by waiver class to begin on October 20th
23 to November 7th. And we have 18 students that will be
24 attending that class.

25 Okay. And that will do it. Any questions?

13

1 MR. KING: Questions for the Director? Okay.

2 Thank you, Mr. Ortiz.

3 ITEM #6: PUBLIC COMMENTS

4 MR. KING: The next item on the agenda is public
5 comments. And I don't know. Do we have a sign-up sheet
6 or --

7 MS. VIGIL: Yes, sir. But there's no one on that
8 list.

9 MR. KING: Okay, nobody on that list. I don't
10 see anybody out there that I didn't recognize as being
11 from law enforcement. We're a long ways from anywhere, I

12 guess. Although I anticipated we might have some folks
13 come over from Las Cruces today.

14 I didn't really mean a long ways from anywhere
15 from Silver City. But it is a drive down here.

16 All right. Seeing none, we'll move forward to
17 Item No. 7, Old Business, the Reserve Committee Report.

18 ITEM #7: RESERVE COMMITTEE REPORT

19 MR. FORCE: Members of the Board, on the
20 regularly scheduled meeting on March 27th, the Board had
21 made a motion to place a committee together in order to
22 review issues regarding reserves. And so we impaneled the
23 reserve committee.

24 We've had two meetings. One was in June. The
25 minutes are in your attachment. And -- on June 11. And

14

1 then the second meeting that we had we just held this last
2 week, September -- I've forgotten the date.

3 MS. VIGIL: 18th.

4 MR. FORCE: -- 18th. And, anyway, in this
5 meeting -- in the first meeting that we had, we basically
6 discussed a lot of issues. Primarily what the issue that
7 we focused on was making a determination of what is the
8 process for a reserve officer to go through a
9 certification.

10 Currently today there is no process that is
11 involved for A reserve officer to seek or go through a law
12 enforcement certification. And so that's the first thing

13 that we tackled.

14 What has been given to you -- and I believe it's
15 in the black folder. It was an attachment to you. There
16 is a copy of the minutes of the meeting. And along with
17 that, there is a recommendation for an officer transition
18 training program to look at the NMAC, New Mexico
19 Administrative Code, place in Part 11, which currently is
20 vacant, and establish transition standards so that reserve
21 officers in New Mexico can work toward an accreditation --
22 or a certification.

23 One of the things that we have been trying
24 very -- or keep very focused on is not establishing a
25 requirement for New Mexico Reserves to go through

15

1 certification, but the ability and the avenue for those
2 individuals who would like to seek certification to do
3 so.

4 The reserve committee -- Mr. Shandler was at the
5 last reserve committee assisting me in understanding what
6 some legal implications may be in dealing with such an
7 enactment. But we worked through all the way from the
8 very beginning of Part 11, the first subparagraph, all the
9 way down through the end.

10 This Part 11 emulates and is a -- from the
11 template of Part 7, which is the law enforcement
12 certification standards, what the standards are for
13 certification, the physical fitness, going through the

14 psychological, all the way through.

15 However, these articles have been modified for
16 practicality what would be appropriate to a reserve. So I
17 don't know if any of you all have had any chance to look
18 at this. But it's a pretty intensive document that lays
19 forth what the standards are.

20 The bottom line is the reserve committee in
21 tandem felt that it was appropriate; that whatever
22 standards the law enforcement officer attains, which
23 currently is 800 hours of training, that that would also
24 need to be the same identical standard for a reserve to
25 obtain certification.

16

1 So this certification process would not be
2 necessarily an academy that would begin on day one as our
3 Law Enforcement Academy begins, but it would be a
4 progressive academy, that as reserve officers accumulate
5 the mandated blocks as they are recorded and verified by
6 the academy, that at the conclusion of that reserve
7 officer's training, they could then apply for
8 certification and upon proofing can be given
9 certification.

10 There is also a grandfathering clause in there
11 for proofing of past and prior training that would have to
12 be presented to the director's office. And upon his
13 approval, that training could be -- with proper
14 documentation could be given credit toward past training.

15 So a pretty intensive document.

16 I stand for any questions.

17 MR. COON: Is this anything -- did you all look

18 at the mounted patrol, what they do? Is it anything

19 close, or is it more -- there's got to be more than the

20 mounted patrol if it's 800 hours.

21 MR. FORCE: Yeah. Randy Erwin with New Mexico

22 Mounted Patrol is on the committee. We've had quite a bit

23 of discussion and comparison to what they give currently

24 in their academy versus what would be required here.

25 There is actually very little difference. The

17

1 problem is today as probably with the mounted patrol,

2 there is no certification that an officer goes through the

3 Mounted Patrol Academy, there's no process today right now

4 without this NMAC that the Law Enforcement Academy even

5 recognizes that training.

6 So with this NMAC change, now the New Mexico

7 Mounted Patrol would be able to apply as a satellite

8 academy to the Academy -- to the NMLEA, and upon proofing

9 of all the credentialing could then put on the same

10 academy pretty much what we're doing today in order to get

11 officers certified.

12 So to answer your question directly, there's not

13 much of a difference at all between what New Mexico

14 Mounted Patrol currently does today versus what they would

15 have to do in order to comply.

16 MR. KING: Other questions?

17 MR. STEVE CHAVEZ: Is there a requirement for
18 reserve officers to be certified or is there going to be
19 one?

20 MR. FORCE: No. Currently there is not a
21 standard or a law that says they have to be certified.
22 The problem is -- the reason we tackle -- we are trying to
23 tackle this issue is because there is not a process --
24 it's not even addressed in the statute -- as to what
25 certification process would even be acknowledged or agreed

18

1 upon.

2 So the establishment in Part 11 gives the ability
3 for reserves to go through a law enforcement
4 certification, which would be identical in its concept and
5 impact as a regular -- as a regular certified police
6 officer.

7 MR. STEVE CHAVEZ: So do you think the Board
8 might be looking to move in that direction to require
9 certification or?

10 MR. FORCE: That's a good question. We in the
11 committee have discussed what goes on the plate next for
12 the committee, which we would be looking at a progressive
13 staging for reserve training, I guess for a better word.
14 We haven't even gotten there, but that's been the dialogue
15 and somewhat of the debate that's going on within the
16 committee as to being very careful that whatever we put in

17 the NMAC does not make a mandated requirement of agencies
18 of who can and cannot be a reserve. Necessarily as what
19 is a training standard and what is a certification
20 standard.

21 MR. GIBSON: Sheriff Gibson, Torrance County.
22 Mr. Force, you're talking about the grandfathering in of
23 training. Would also OJT be involved in a grandfathering
24 process, would there be credit given for the reserves that
25 have been active with the department for quite a while?

19

1 Would that be an option to look at also, grandfather some
2 of the trainings from the certification?

3 MR. FORCE: It's a very good question, because --
4 I've been listening to Mr. Najjar that also sits on the
5 committee. He would want to take that on a case-by-case
6 basis of application.

7 There are some of the blocks or modules that are
8 in the basic core elements of requirements that would
9 necessitate hands-on training.

10 But to -- in fact we directly dealt with that
11 issue about FTO or field training -- acknowledgement of
12 training. And the problem there is really not a quote,
13 unquote standard; but there is within the reg proposal an
14 ability for a certified instructor with the certified
15 curriculum to sign that off.

16 And in past and prior training and acknowledgment
17 that would come from the sheriff, that that individual had

18 met these elements of training. And some of that could be
19 viewed as FTO or ride-along training.

20 MR. NESS: My name is Dick Ness. I admire you
21 for taking this on. As you're probably well aware, we've
22 been at this for 25 years. And I don't see it changing,
23 you know, without -- obviously you're going to have to
24 change some state statutes, especially involving a
25 sheriff, who has the legal obligation to appoint a

20

1 deputy. And it doesn't say anything about certification.

2 MR. FORCE: That's right.

3 MR. NESS: And there's some other issues. Some
4 of the statutes say fully employed salaried, how you would
5 handle that. All I can say is good luck.

6 MR. FORCE: Thank you. Just as to address
7 Mr. Ness, we have researched a lot of the various state
8 statutes, which some have changed over -- actually, within
9 the last five years. But we've been trying I guess to
10 work through those various statutes.

11 And, again, our -- I guess our position has been
12 not to establish who can and cannot be reserve necessarily
13 as much as what is the ability of an individual reserve
14 going through a certification process. So we've been
15 trying to skirt that issue.

16 And -- because I personally don't think it's
17 within our authority to tell a sheriff who can and cannot
18 be commissioned.

19 MR. NESS: How about online, taking courses

20 online?

21 MR. ORTIZ: Yes, that's what we're studying right

22 now for the biennium training. So it's a possibility.

23 But there is according to State Statute 29-7-6 with

24 qualifications for certification, under B, a person

25 employed as a commissioned officer has 12 months before he

21

1 has to become certified.

2 So the sheriff does have the right to appoint

3 these deputies. Then when you go look at the state

4 statute, within 12 months they now have to become

5 certified.

6 MR. NESS: Well, at one time I believe, Gary, I

7 think Attorney General Jeff Bingaman worked on this. And

8 his opinion at that time was the sheriff falls under a

9 constitutional office. And for you to challenge that, he

10 was thinking somehow you'd have to change it even with an

11 election because that is a constitutional office.

12 All the rest of us are basically appointed except

13 for -- and I know that Jeff brought that up. And it was a

14 hurdle. And I would almost imagine Mr. King would verify

15 that, that is a hurdle.

16 MR. FORCE: Mr. Chairman, I would upon close of

17 our discussion I'd ask that this Part 11 be moved in for

18 approval as on the first reading. Would that be right,

19 Zack?

20 MR. SHANDLER: Mr. Chairman and Mr. Force, I
21 think the committee has prepared a proposed rule for rule
22 making. And so if the full quorum is ready to go forward,
23 I think the appropriate motion we're looking for is to
24 schedule a rule-making hearing for an upcoming meeting,
25 maybe the December meeting, on this topic.

22

1 MR. KING: Is that your motion, Mr. Force?

2 MR. FORCE: Yes, sir. That would be it.

3 MR. KING: So we have a motion on the floor to
4 take this proposed rule that would be in NMAC Part 11 and
5 schedule a rule-making hearing potentially as early as our
6 next meeting. And I guess that will be -- the scheduling
7 will be up to the --

8 MR. ORTIZ: December the 9th is what we're
9 looking at.

10 MR. KING: Yeah. And then if we adopt that
11 motion, I assume then we'll publish the rules so that
12 people can read them, et cetera. All of that will come as
13 part of that.

14 MR. SHANDLER: Yes, sir.

15 MR. KING: So that's the motion, to set this for
16 a rule-making hearing for December. Is there a second?

17 MR. COON: Second.

18 MR. KING: All in favor say aye.

19 THE BOARD: Aye.

20 MR. KING: Any opposed? Show us all voting in

21 favor. And we'll add that on. Thank you.

22 Mr. Force, that's good work. And I agree with

23 Mr. Ness that it's a big bite. So we'll work on that.

24 ITEM #8: DOMESTIC VIOLENCE LEGISLATION

25 MR. KING: All right. The next item on the

23

1 agenda is review of domestic violence legislation I assume

2 that's going to be proposed.

3 Sharon Pino from Governor Richardson's office is

4 here. And, Sharon, we appreciate you coming to the

5 meeting today. You can use the podium if you want or we

6 can make room for you up here at the table, if you'd like.

7 MS. PINO: Thank you so much.

8 MR. KING: Thank you for being here.

9 MS. PINO: I actually have, Mr. Chair, some --

10 just got some draft copies of the bill that was in your

11 packet for members of the Board. The discussion draft.

12 So thank you, Mr. Chair and Members of the Board,

13 for inviting me here today to talk to you a little bit

14 about some of the Governor's proposed legislative

15 initiatives that we'll be proceeding with during the next

16 legislative session.

17 The one primarily I think that the Board would be

18 most interested was the one that was included in your

19 packet and being distributed now having to do with law

20 enforcement certification under 29-7-6 and also the

21 suspension or revocation of certification under 29-7-13.

22 Specifically what's being proposed other than
23 some clean-up language that was added in by counsel
24 service changing "he" to "the applicant," the substance of
25 it comes on page 2, line 8 where specifically we would

24

1 like to insert or add to the list of offenses for which an
2 officer who has either entered a plea of nole contendere
3 or been convicted or pled guilty to any felony charge
4 within a three-year period immediately proceeding
5 application, or to any federal or state or local ordinance
6 relating to aggravated assault, theft, driving while
7 intoxicated, controlled substance.

8 And then again the addition would be adding in
9 the crime of domestic violence to those list of offenses.

10 The other portion would be making that same
11 change on page 4 of the draft legislation, line 6. Again,
12 adding in domestic violence to those list of offenses for
13 which an officer may have their certification either
14 suspended or revoked.

15 The reasoning behind this is not only -- and also
16 was included in your packet some of the federal
17 legislation relating to the Gun Control Act, wherein if
18 you're convicted of a misdemeanor crime of domestic
19 violence, which involved the use of force or a threat of
20 use of force against a specifically enumerated party, that
21 being mostly the intimate partner relationship or a person
22 for which you may be a guardian, like in situations where

23 somebody has assumed care over their elderly parent.

24 Those offenses, if you are convicted, under
25 federal law you would no longer be able to own or possess

25

1 a firearm. And, therefore, of course that would certainly
2 interfere with your duty to perform -- to perform your
3 duties as a law enforcement officer.

4 However, the legislation that we're proposing
5 extends a little bit beyond that because we're not only
6 including offenses for which there was the use of force or
7 threat of use of force. That would include all crimes of
8 domestic violence.

9 So we're looking at those offenses under the
10 Crimes Against Household Members Act would also prohibit
11 you from obtaining certification as a law enforcement
12 officer if you've had that conviction within three years
13 of your application.

14 Or, again, if you already have obtained
15 certification, you would be in a position with that would
16 either be suspended or revoked. Of course, the Governor's
17 office feels very strongly that we hold our law
18 enforcement especially here in New Mexico to a higher
19 standard.

20 And certainly when we're talking about if DWI or
21 other crimes are going to interfere with your ability,
22 clearly domestic violence is also one of those serious
23 offenses in which law enforcement a great deal of the

24 crimes that they respond to are domestic violence

25 offenses.

26

1 So with that I would stand for any questions.

2 MR. KING: Questions for Ms. Pino? Interesting

3 concept, so. Yes.

4 MR. FORCE: Mr. Chairman, I have a question. So

5 what you're proposing on the legislative change is for

6 application, is that correct, to include domestic violence

7 as a disclaimer of -- or I guess -- I don't know what it's

8 called.

9 MR. ORTIZ: One of the crimes?

10 MR. FORCE: Yes.

11 MS. PINO: Yes.

12 MR. FORCE: But in your legislation there is

13 nothing in there about once an officer becomes an officer,

14 once certification has occurred, is grounds for

15 revocation; is that correct?

16 MS. PINO: Actually, that is in there. That is

17 starting on page 3 where we address the changes to

18 29-7-13, which again discusses the refusal, suspension, or

19 revocation of certification. And that change would be on

20 page 4, line 6. So adding that also into the list of

21 offenses.

22 MR. FORCE: Thank you.

23 MR. KING: Any questions from out there? All of

24 you guys who are sheriffs and heads of agencies will want

25 to be aware of this. I don't know that we've discussed it

27

1 in our task force, but it seems like a good idea. So,

2 okay.

3 Anything else you want to address to the

4 committee?

5 MS. PINO: Yes, I would. I'd like to discuss

6 with the committee some of the other proposed legislative

7 initiatives that the Governor will be proceeding with in

8 the next session.

9 I know you don't have copies, and I apologize for

10 that. But we're working on getting all of our discussion

11 drafts completed through legislative counsel. But at

12 least I can discuss with you some of the substance of what

13 the proposals will be.

14 The first of which would be to create a new

15 offense of criminal damage or deprivation of property

16 against a household member under the Crimes Against

17 Household Members Act. Currently, there is a gap in the

18 law.

19 And that's under case law, which is State v.

20 Powels, where the court found that if you are charged with

21 criminal damage to property, since New Mexico is a

22 community property state, if this is your spouse's

23 property, you would not essentially be held criminally

24 responsible for that.

25 And that's a huge gap in the law because that is

1 one of the tactics of power and control used in domestic
2 violence situations. Specifically, I had one officer who
3 showed me photos in a case he had investigated where it
4 looked like a bulldozer had gone through this house and
5 destroyed almost everything in it except for the items
6 that belonged to the perpetrator.

7 He made sure that his glass case containing all
8 his little model cars and everything was intact. So that,
9 again, clearly demonstrates that this was a tactic that he
10 was using to show the victim "I can destroy everything you
11 have."

12 And essentially in that case officers have to
13 make that try to fit within some other offense, like
14 assault against a household member. Really what it fits
15 squarely in is criminal damage to property.

16 And, again, if it rises above a certain amount,
17 you're looking at a felony offense because it's risen
18 above that thousand dollar marker.

19 Also what we're dealing with in domestic violence
20 situations that's been reported by many service providers
21 is the deprivation of property. "I am going to disable
22 your car or hide the car so that you can't go to work or
23 you can't go meet with friends or family members." And
24 this is often a tactic that's used in domestic violence
25 relationships.

1 Now, in crafting this proposed legislation, we
2 didn't want to make that particular part rise to the
3 felony level offense for several reasons, because most
4 often what we're seeing is the deprivation of the
5 vehicles. That's automatically going to be above a
6 thousand dollars. So we don't want people the very first
7 time that they are charged with these offenses for it to
8 rise to that level.

9 So that's why there's -- we've made some
10 provisions so that the deprivation of property, even
11 though it may rise above a thousand dollars, the property
12 that's being deprived, that would not automatically be a
13 felony offense. So that is one of the initiatives that we
14 will be putting forward.

15 The other is to revise the current stalking law
16 to better track actions and technology used by
17 perpetrators against stalking victims.

18 I think -- and especially law enforcement, this
19 is most difficult for them because the way our current
20 statute is written on stalking, it's so difficult to fit
21 in a lot of the behaviors and the tactics that's being
22 used by stalking perpetrators.

23 For instance, tracking people through GPS
24 devices, use of the internet to threaten and harass.
25 Those types of what is referred as cyber stalking. Those

1 don't fit or you have to essentially establish multiple

2 acts of harassment in order to make it.

3 So for an officer who's trying to deal with the
4 situation at 2:00 and 3:00 in the morning interpreting and
5 going back statute to statute, we want to, of course,
6 make -- give law enforcement better tools to better
7 address the types of activities that perpetrators are
8 using in these offenses.

9 And so what we've done is taken the model code
10 for states on stalking statutes and we've defined the
11 pattern of conduct as meaning two or more acts including
12 but not limited to acts in which the alleged stalker
13 directly, indirectly, or through third parties by any
14 action, method, device, or means follows, monitors,
15 observes, surveils, threatens, or communicates to or about
16 a person or interferes with the person's property.

17 That gives officers a very useful tool to address
18 these stalking offenses. And I think it would be a
19 great -- a change to our current stalking statute and make
20 it a lot more useful, not only for law enforcement but
21 also for prosecutors.

22 Prosecutors have a great deal of difficulty in
23 going in -- because under the current stalking statute,
24 what we have is stalking consists of a person knowingly
25 who pursues this pattern of conduct. That's difficult for

1 prosecutors.

2 So what we've done is, again, we've changed that

3 language to a person who knows or should know. You should
4 know if the type of conduct that you're pursuing is going
5 to, again, put another person in reasonable fear for their
6 safety.

7 And so I think, again, those additions to or
8 changes to the stalking statute will give law enforcement
9 and prosecutors a better tool to address these types of
10 offenses.

11 The last one which I would like to discuss with
12 the Board, Mr. Chair, is a bill that we are putting
13 forward to promote the financial independence for victims
14 of domestic violence and sexual assault. And this would
15 be creating a new act.

16 And essentially what it does is it will prohibit
17 employers from discriminating against victims of domestic
18 violence, sexual assault, or stalking who are either
19 going -- taking time off of work to go obtain orders of
20 protection or to participate in criminal proceedings.

21 Right now, again, we have provisions which allow
22 people time off for jury duty or for certain offenses; but
23 when we're dealing at the misdemeanor level, which most
24 domestic violence offenses are falling, we have
25 situations. And in domestic violence and sexual assault

1 cases and stalking cases, it's not unusual for you to go
2 to court and there's a continuance.

3 And then the victim shows up again. And then

4 there's no discovery. And there's another continuance.
5 And it's multiple times where they are having to take time
6 off of work.

7 You would think most employers would be very
8 sympathetic to that, but unfortunately we've heard of
9 situations where in fact victims are ending up losing
10 their job just for trying to participate in the criminal
11 proceedings and have people held accountable.

12 We don't want to do that. What we want to do is
13 create a situation which promotes victims being able to
14 maintain their employment, obtain financial independence,
15 which is very important for a victim to ever leave a
16 violent relationship.

17 We want to promote that. So we want victims to
18 be able to take that time off, reasonable time off without
19 being discriminated against or discharged from their
20 employment.

21 So I would stand for questions, Mr. Chair, on any
22 of those initiatives.

23 MR. FORCE: Mr. Chairman. Ms. Pino, thank you
24 for coming in and briefing us. The question I have for
25 you, last year -- let me preface my question. Last year

33

1 there was -- the state legislature enacted a law,
2 Protection of Child Safety. Frankly, at least as a Board
3 member, it kind of came around and hit us behind the
4 head. So I do applaud you in coming forward and letting

5 us know what's going on.

6 Unlike -- that Protection of Child Safety Act, it
7 required four hours of law enforcement officers to go
8 through training every two years that personally -- I
9 mean, I've sat through the class. I think it's absolutely
10 ridiculous that that class even be held. And it takes a
11 lot of time and it's man-hours for a basic, simplistic
12 approach as to what an officer should do.

13 With that being said, are there any bills that
14 you know of that would have any impact on law enforcement
15 training that had -- that's involved in those bills as a
16 requirement?

17 MS. PINO: Mr. Chair and Mr. Force, no, I'm not
18 aware of any. One -- and I don't believe that that was a
19 Governor's bill -- I'm not sure -- that particular bill
20 that passed last session. I'm not aware of any Governor's
21 bills that would currently impact the training for law
22 enforcement.

23 The commission -- the domestic violence
24 leadership commission did consider a bill which would --
25 because right now it's required that officers have

34

1 domestic violence training, but it's not specified the
2 amount of hours.

3 But the commission chose rather than picking a
4 number, like four or eight, that we would work actually
5 with the Academy Board.

6 And we've had discussions with Director Ortiz and
7 with Mark Shae discussing and opening up that line of
8 communication about what curriculum could we put in place
9 for the domestic violence training rather than coming in
10 and saying, "You're mandated four hours" or eight hours.
11 So, we're proceeding that way rather than through
12 legislation.

13 MR. FORCE: Thanks. I appreciate that. And the
14 other thing I would urge you is to get with the chiefs and
15 the sheriffs associations, both of them, to try to work
16 with them as well. Because the Academy has a great
17 viewpoint of what the training standards currently are.

18 But when it comes down to practical basis for
19 inservice training, it's extremely taxing for many of the
20 sheriffs and the chiefs to have to take officers off the
21 field and then compose training that becomes a legislative
22 requirement.

23 And you end up missing the spirit that the
24 training is for because you're just having officers go
25 through training because it's required, and it's not -- it

35

1 meets no available end.

2 MS. PINO: Mr. Chair and Mr. Force, again, that's
3 the reason or the rationale that the commission chose not
4 to proceed with that legislation is that we would like to
5 put more effort into structuring meaningful training
6 rather than putting in amounts.

7 MR. FORCE: Thank you.

8 MR. KING: Okay. Any other questions?

9 Well, Ms. Pino, I -- she's been working with our
10 domestic violence task force too. And I think the only
11 other thing that we're working on that you didn't talk
12 about is just we're still working to make changes that
13 will help our law comply with the National Violence
14 Against Women Act.

15 MS. PINO: Yes.

16 MR. KING: So there will be some changes. I
17 don't know that if any of those affect law enforcement a
18 lot. We continue to have long discussions about what the
19 standard of proof should be for issuing protective orders,
20 temporary protective orders and permanent protective
21 orders, but I think we're going to end up leaving that
22 alone again this year.

23 MS. PINO: I think so. But the final bill,
24 Mr. Chair, which is needed in order to come into federal
25 compliance, which would be -- I believe that's the AG's

36

1 Office is putting that forward -- would be the HIV
2 testing, the one that addresses HIV testing. And so we
3 still need that to come into federal compliance.

4 But some of the other changes that the task force
5 has been looking at with regard to the Family Violence
6 Protection Act is just, again, going in -- and it's been a
7 while since it was enacted -- and just bringing it in to

8 address a lot of situations and problems that
9 commissioners and judges have been seeing throughout the
10 state.

11 MR. KING: All right. Thank you.

12 MS. PINO: Thank you so much.

13 MR. KING: Appreciate you being here with us.

14 Just -- it's not exactly on the agenda, but it
15 caused me to think of a couple things that I ought to
16 point out about our office that are going on that affect
17 similar issues.

18 We -- the human trafficking bill that we passed
19 last year called for training of law enforcement officers
20 to identify victims of human trafficking. And that -- the
21 law became effective on July the 1st.

22 The legislature gave us some money, about a
23 hundred-thousand dollars; and we've been conducting some
24 training sessions already for law enforcement. Maria
25 Sanchez-Gagne in my office has been doing that. But we're

37

1 going to continue to have some general training sessions.

2 But I don't know if she's talking to you about --

3 MR. ORTIZ: She's been to the Academy.

4 MR. KING: We're working on preparing a block
5 where we can do that training at the Academy.

6 MR. ORTIZ: She talked to the cadets classes this
7 year. Thank you.

8 MR. KING: So we're doing that trainingwise.

9 And then this is sort I think a preview. I don't
10 think the press release is going out until today, but our
11 office did get another federal grant for the ICAC, for the
12 Internet Crimes Against Children.

13 And that grant is primarily going to be for us to
14 do training and provide equipment to other law enforcement
15 agencies. So it won't be money that we're spending in our
16 office on personnel and such. It's money for training and
17 equipment that will go to other police agencies around the
18 state that have or want to develop their own Internet
19 Crimes Against Children Unit.

20 And I think that that announcement is going to go
21 out today, actually. And that's around \$400,000. So it's
22 a sizable grant.

23 ITEM #9: SFST OVERSIGHT COMMITTEE REPORT

24 MR. KING: The next item on the agenda is SFST
25 Oversight Committee Report. Robert, you've been busy.

38

1 MR. FORCE: You guys, I learned early on; and I
2 just -- you know, you're not supposed to volunteer for
3 anything or mention anything because you end up getting
4 it.

5 We had a meeting with the SFST Oversight
6 Committee on September 12. And the minutes of the meeting
7 are available to the Board members here. In summary, just
8 to highlight just a couple things. One of the items that
9 we discussed in the Oversight Committee was a new case law

10 that just came down from the New Mexico Court of Appeals
11 and its impact.

12 And it's New Mexico vs. Miriam Aleman. In
13 summary, the Aleman case was a case in which drug
14 recognition experts were permitted to testify as to the
15 12-step protocol of the drug recognition expert program.

16 The committee discussed the impacts and what
17 we're somewhat seeing already in New Mexico with many of
18 the district attorneys gathering a DRE, a drug recognition
19 expert, putting him on the stand and establishing the
20 horizontal gaze nystagmus as a baseline standard so that
21 way the officer can come in and then testify to it as the
22 arresting officer.

23 I guess the real issue there that we tried to
24 again to be attentive to was with the DWI SFST standards,
25 there's a real -- it becomes a more prevailing need in

39

1 order for officers to maintain their proficiency in DWI --
2 in the DWI training and SFST standards.

3 So there is -- we just kind of discussed that.
4 The other thing that we also reviewed was we are in the
5 process of reviewing and assisting the Academy in
6 reviewing all instructors and instructor applications
7 along with any curriculum submissions.

8 We had one that we reviewed and gave a denial on
9 as a committee, recommended to the Academy Board -- or to
10 the Law Enforcement Academy. And then we also went

11 through the instructor list of New Mexico that we have in
12 the database, reported that back to the Academy.

13 And we're currently in the process now of merging
14 our data together so that way we have a uniform database
15 of what is reported to the National Highway Traffic Safety
16 Administration, the State Department of Transportation, as
17 well as the Academy. But there's one instructor listing.

18 So with that I would stand for any questions.

19 MR. KING: Questions? Do you have any action
20 items you need us to --

21 MR. FORCE: No, sir.

22 MR. KING: Okay. All right. Seeing no
23 questions, thank you, Robert, for that report.

24 ITEM #10: CHANGES TO STUDENT HANDBOOK

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

40

1 No. 10, Changes to Student Handbook.

2 MR. ORTIZ: Good morning, Mr. Chairman, Board
3 Members. You'll see the attachment is quite lengthy, but
4 we went over the student handbook and per the rules if
5 there's any changes we need to present it to the Board to
6 get approval.

7 And I'll -- I don't know if you've had time to
8 look through the book, but I'll just highlight some of the
9 areas that were changed. Go to page 15 on alcoholic
10 beverages.

11 We're adding in language there where before it

12 said, "Alcoholic beverages are prohibited on the grounds,
13 parking areas and the entire Academy Complex," we're
14 adding in there now: "Students will not have consumed ANY
15 alcoholic beverages 16 hours prior to entering the Academy
16 Complex. Reporting to the Academy Complex while under the
17 influence to even the slightest degree," any student --
18 whoops. That's the part that's added in there.

19 And "...will be immediately released from
20 training. Reasonable suspicion guidelines will be
21 utilized in determining if the person is under the
22 influence."

23 We had an incident where it was a night out.
24 Every once in a while they would be allowed a night out.
25 Someone went to a local restaurant, consumed a couple of

41

1 beers. A citizen saw it and called the Academy.

2 When they came, they were questioned. They know
3 they are not supposed to consume any alcoholic beverages;
4 however, the class leader at that time told them --
5 instead of giving them the correct answer that it's in the
6 rules they are not to consume, he said, "You're grown
7 adults. You make your own choice."

8 Well, they made the wrong choice, and they
9 consumed some alcoholic beverages. They were confronted
10 about it. They admitted they had one beer. Therefore,
11 we're changing the rules that to the slightest degree they
12 will be released.

13 We were going to release them; and they said,
14 well, based on what the class leader told them, he didn't
15 tell them they couldn't. So there was some discussion on
16 that. So that's one of the changes in there.

17 MR. KING: Before you go on, do you know how that
18 compares to the standard for airline pilots? I know that
19 they won't let pilots drink alcohol so many hours before
20 they fly or whatever.

21 MR. ORTIZ: We put it to 16 hours when they come
22 in on Sunday evenings. We don't want anybody arriving at
23 the Academy that's consumed any alcoholic beverages. And
24 we've changed the nightouts also.

25 And it's no longer going to be something they can

42

1 expect. It's something they are going to have to earn and
2 then with my approval they'll get a night out. That's
3 some of the changes.

4 MR. KING: Okay.

5 MR. ORTIZ: And that's on page 15.

6 On page 18, professional conduct. You'll see the
7 bottom of the page. It's highlighted there about the
8 violations. We added in some language. And if you have
9 any questions on any of this.

10 Page 23 is on medication. "Any student who is
11 prescribed a class III narcotic pain killer, will not be
12 allowed to participate in skills training at any level."

13 We do have some that are prescribed due to some

14 of the injuries, and so they are not going to be allowed
15 firearms training or driving if they are prescribed
16 medication.

17 And then on page 27, the bottom, the privileges
18 and night out, that was stricken out completely. And it
19 will be up to the bureau chief and the deputy director,
20 myself to see if we're going to allow a night out.

21 With that, I just ask for you to review it to
22 approve these changes.

23 MR. KING: Questions for Mr. Ortiz? Any
24 questions.

25 MR. PEREZ: On the medication -- where was the

43

1 thing about the prescribed medication?

2 MR. ORTIZ: Page 23. 12.4, Medication.

3 MR. FORCE: Narcotic pain killer?

4 MR. ORTIZ: Yes.

5 MR. PEREZ: All right. Thank you.

6 MR. COON: Art, on the alcohol at the Academy
7 itself, would the SFST and the wet lab and all that, do
8 they do that clear on --

9 MR. ORTIZ: Yes, but we have some volunteers that
10 come in and consume the alcohol. And they are tested.
11 But none of the students --

12 MR. COON: Well, I know. But it says no alcohol
13 will be brought into the Academy, period. I think that's
14 what it says. Should you put an exception in there,

15 "except for training exercises" or something like that?

16 MR. ORTIZ: Yes. That's a good point.

17 MR. FORCE: "Except for authorized training

18 purposes."

19 MR. ORTIZ: Okay.

20 MR. FORCE: What page would that be on?

21 MR. ORTIZ: Page 15. 8.12.

22 Just something else to bring to your attention.

23 On page 11, one thing we added in there was Agency

24 Communication. That each cadet will complete a student

25 weekly progress report and report that back to their

44

1 agency.

2 And I don't know if they are communicating that

3 with you. I hope they are.

4 MR. KING: Back to the question that we had

5 regarding alcohol and the grounds. That's actually

6 current language in there that says alcohol is not

7 permitted on the grounds.

8 MR. ORTIZ: Correct. We store that in the

9 vault. We have our own little bar there in the vault for

10 the training purposes.

11 MR. KING: So you're already doing that

12 currently. I don't know if we need to change it or not.

13 We could, I suppose, but. The language you're adding

14 doesn't really address that, so.

15 I prefer not to add any other language here other

16 than what you've recommended to us, if you're doing it
17 already, unless you want to come back to us at some point
18 later on and recommend it. Is that okay with you guys?

19 I mean, that's current language. We could -- I'm
20 a little leery about adding language on the fly unless we
21 think about it. If you want, we could add language there
22 that says, "except for training purposes" or something in
23 that language that's in the first sentence that's there
24 already. But you're doing it already.

25 The student handbook only applies to students?

45

1 MR. ORTIZ: Yes, sir.

2 MR. KING: Does it apply to you too or?

3 MR. ORTIZ: To the students.

4 MR. KING: Okay. I don't think you need to make
5 any change, so. Other questions regarding the handbook?

6 Did you have any more?

7 MR. FORCE: No, sir, but I'll make a motion to
8 approve the handbook.

9 MR. KING: Okay. I have a motion to approve the
10 changes that have been submitted by the Director. Is
11 there a second?

12 MR. JONES: Second.

13 MR. KING: All in favor signify by saying aye.

14 THE BOARD: Aye.

15 MR. KING: Any opposed? (No response.) The
16 changes are adopted.

17 ITEM #11: POLICE OFFICER REQUIREMENT RULE

18 REGARDING HIGH SCHOOL DIPLOMA

19 MR. KING: Next item on the agenda, No. 11,

20 Police Officer Requirement Rule Regarding High School

21 Diploma. Director Ortiz.

22 MR. ORTIZ: Yes, Mr. Chairman, Board Members,

23 under Tab 11, couple pages back, you'll see under 29-7-6,

24 Qualification for certification, it has it in the state

25 statute; and then it also has it in the NMAC under

46

1 10.29.1.10, Qualification for admission to the academy.

2 There's Subsection A(2), holds a high school

3 diploma or the equivalent, is what is stated. And we

4 currently have an individual who we allowed into the

5 Academy with a high school diploma from Mexico.

6 He made an agreement to obtain his GED. In

7 discussing this with Deputy Director Najjar, he said this

8 issue has come up before but a decision has never been

9 made by the Board whether we will accept an international

10 high school diploma.

11 Therefore, I'm coming to the Board -- and Zack

12 has done the research. You'll see there's a letter in

13 there from Zack. I do not oppose it. I've worked with

14 some of the police officers from Mexico, and they are very

15 competent and well educated. And I have no problem with

16 the Academy accepting that.

17 I just want some guidance from the Board, some

18 clarification so we do not have any issues arise to accept
19 a high school diploma from other countries. And Zack has
20 a letter in there, if you had an opportunity to review
21 it.

22 And also the cadet I'm speaking about, his
23 academics, he's doing very well. His test scores are in
24 the 90's. Of course on his survival Spanish he got a 100
25 percent. And on the others he's done a fine job.

47

1 And Sheriff Rene Rivera is here also. I don't
2 know if you'd like to say anything about it.

3 MR. KING: Sheriff.

4 MR. RIVERA: Yes, sir. I'm the sheriff of
5 Valencia County, Rene Rivera. This individual came in to
6 us. We hired this individual. We trained him for
7 approximately five months before he went through the
8 Academy. He is a very bright individual, very smart,
9 street smart.

10 Actually, I was very surprised that his English
11 and his writing in English and stuff, his grammar was
12 actually very good. Anyways, once he went through the
13 Academy, he produced some documentation where he had gone
14 to -- with the law enforcement, U.S. Government. And he
15 was a certified guard for Central New Mexico.

16 With that said, Central New Mexico said they'll
17 take him through their academy with the high school
18 diploma that he had. Also, in order to get into the U.S.

19 Government, you have to have a high school diploma, which
20 was also accepted through the Government as he went
21 through Iraq and all that good stuff.

22 With that said, I would like to say that -- you
23 know, I would like to go with Art -- Director Art Ortiz
24 and see if we can go ahead and allow him to finish the
25 Academy. Thank you.

48

1 MR. KING: Certainly. Any questions?

2 MR. FORCE: Sheriff.

3 MR. RIVERA: Yes, sir.

4 MR. FORCE: Do you take exception with him taking
5 a GED after -- during the process?

6 MR. RIVERA: Well, the only problem that I have
7 is that after speaking to him and stuff and telling him
8 everything that we were trying to do, I feel that we would
9 be discriminating against this individual, being that he
10 is a -- like I said, a very smart person.

11 I believe his grades at the Academy are above
12 average. And I feel that that would be discrimination.
13 And that's the only -- the only reason that, you know,
14 I'm -- you know, the Academy doesn't stipulate that it has
15 to be an American high school diploma.

16 And with him getting his GED, it's another thing
17 is very hard, being that he's at the Academy full-time;
18 and he's at home only on the weekends. It would be very
19 hard for him to get the GED.

20 Another thing that was brought up to me by a
21 college professor was that to take that diploma to -- I
22 guess we have some individuals that can go through the
23 diploma and break it down to where they'll state if the
24 diploma's equivalent to an American high school diploma.

25 MR. FORCE: Okay. Thank you.

49

1 Mr. Chairman? I guess just for discussion
2 purposes, I mean, I find it somewhat concerning that we
3 don't have stated in the rule a United States high school
4 diploma.

5 Not wanting to walk into the issues, Sheriff, of
6 discrimination but, I mean, this standard of saying a high
7 school diploma, we're now saying, well, if you come from
8 Zambia, or if you come from somewhere in Russia, or if you
9 come from somewhere in South America, what we're saying is
10 their equivalency of high school education is the same as
11 the United States, which we know that's not true. And the
12 standards that we have in the United States are very
13 established criteria educational training -- or
14 educational standards.

15 On the other end of it, I mean, if we have
16 somebody who's very intelligent or whatever and they have
17 a high school education from whatever county, they
18 shouldn't have a problem going through a GED, which is an
19 equivalency diploma.

20 So I guess my support would be for inserting into

21 the rule United States -- just like California does, a
22 United States high school diploma or a GED. And I don't
23 see it really that portion being discriminatory at all. I
24 mean, what we're saying is that there is a training
25 standard, an educational standard we all have to be at the

50

1 same level of.

2 Although I know there are problems with that, but
3 the bottom line is I think we ought to have a standard.

4 MR. KING: Other questions or comments from the
5 Board?

6 MR. PEREZ: I disagree. I lived in South America
7 and in Mexico. My sons attended school in Mexico. And
8 when they came out, they were superior to the American
9 school system. I think the presumption that the American
10 system is one of top in the country is false.

11 And I think part of the proof is that most of our
12 engineers now are coming from India, directly from India.
13 And they are superior to the American education system.

14 We had a case in -- when I was assigned to
15 Mexico, an FBI employee who attended Mexicano's
16 El Tecnologico de Monterrey, which is a good university, a
17 very good university. And then he was -- he applied to
18 become an agent, and that was disregarded.

19 He was told he had to get an American degree,
20 where we found that we had accepted people from France,
21 the Sorbonne, and from English schools. And those were

22 very acceptable without having gone through the test.

23 So I think we're going to get into accreditation

24 matters, and I think that that's way beyond our depth. I

25 think if a person produces a proof of a high school

51

1 education, I think that that is sufficient.

2 Otherwise we're going to get into diplomatic

3 problems. And talk about discrimination; this is how

4 discrimination comes about. It's not because you're from

5 a certain county. It's because you lack this certain

6 qualification here, and I think that's a disguise.

7 MR. PANTEAH: I'm just kind of thinking about for

8 the purposes of employment, you know, I know for our

9 agents in our organization that it just states a high

10 school diploma or its equivalency.

11 So as far as training compared to employment, you

12 know, I think we're kind of maybe perhaps getting into

13 that area, too. I mean, I'm not too sure on that either.

14 MR. KING: Other comments? I've got some too,

15 but I'm going to let all you guys go first.

16 Sheriff?

17 MR. GIBSON: Sheriff Gibson, Torrance County.

18 Chairman and Board, I agree with the Director and with

19 Sheriff Rivera. I think, you know, the wording is

20 basically it says high school diploma. I don't think we

21 need to split hairs about it at this point.

22 But I agree with Mr. Perez that, you know, there

23 is schooling around the world that is far superior to
24 ours. And I think if we start sitting here trying to, you
25 know, disseminate through, I don't think it's fair to the

52

1 Academy, I don't think it's fair to the sheriffs and the
2 chiefs who are trying to get good officers on the street.

3 And I think that the preassessments that are done
4 at the Academy are going to show if this individual is
5 going to be able to participate or not. And I think, you
6 know, clearly they'll be able to call back and say, "We
7 need to do something at this point."

8 But I think the wording -- I think we're fine. I
9 think it shows that you've got to have an educational base
10 and you have to have an educational base to complete our
11 academy, so.

12 MR. NESS: Dick Ness. I agree. And I have a
13 niece that was trained in Mexico from Mexico, who is a
14 dentist. And she came across, married my nephew, and took
15 the dental exam in California and passed it and is now a
16 dentist.

17 When we accept people like they are talking
18 about, exceptional, he or she still has to pass the state
19 exam. And if you're deficient, they are going to find it
20 out there. So, you know, I'm like Matt and the sheriff; I
21 don't see a problem, you know, if you pass that exam.

22 You know, it might be somebody who would want to
23 come into this country and challenge the whole program.

24 Say, "I want to take the exam." And we do have a higher
25 education where you can challenge courses. So, I don't

53

1 see a problem with what's going on, and I agree with Art.

2 MR. KING: Other comments or questions?

3 MR. FORCE: I'd just like to respond. I don't
4 disagree with anything that Mr. Perez brings up or any of
5 the other comments. I don't disagree with that. In fact,
6 I personally have knowledge as well that there is some
7 educational high school outside of this country that are
8 better than the United States educational system.

9 My concern is why are we putting the burden
10 upon -- why are we putting the burden upon the Academy in
11 order to accept individuals who may be coming from
12 countries that don't -- that have much lower educational
13 systems than we have; and then finding that out midway
14 after we've already exerted a lot of time and effort in
15 the processing, only to find out that the individual
16 doesn't have the aptitude for the educational skills.

17 What is being recommended or at least -- sorry.
18 What is -- what California has, which I like, is a United
19 States high school diploma or GED. And if those
20 individuals coming from outside the country are at a
21 better aptitude of training and education, they shouldn't
22 have any problem at all passing the GED.

23 I don't understand why it's so burdensome to have
24 an individual go through a GED that says, "Hey, we just

25 want to make sure that you have the equivalency of a

54

1 United States high school diploma." I don't know why
2 that's such a burden, because we're in the United States;
3 and that's our standard.

4 So, you know, I don't disagree with Mr. Perez on
5 the issue of there are other countries that have better
6 education. I totally, totally agree. I don't have a
7 problem with that. All I'm saying is I think there needs
8 to be a standard, and we hold that standard as a United
9 States high school diploma or a GED, so.

10 MR. KING: Yes.

11 MR. CHAVEZ: Steve Chavez. Art, maybe you can
12 help me with this. Doesn't the psychological evaluation
13 have a portion where aptitudes or reading comprehension is
14 test --

15 MR. ORTIZ: Yes, they go through all that.

16 MR. CHAVEZ: That's sort of a stop gap measure as
17 well to try to identify the people --

18 MR. ORTIZ: Yes.

19 MR. CHAVEZ: -- who may have the aptitude to be
20 successful.

21 MR. ORTIZ: Correct.

22 MR. CHAVEZ: So that's something else to consider
23 is that there's another measure there within the
24 application process.

25 MR. KING: Okay. Anybody else? I have a

1 comment, maybe more of a clarification. Zack would I'm
2 sure say the same thing. You know, the discussion is a
3 good one. And I think probably the issue that Mr. Force
4 has raised is that a diploma from a high school in another
5 country might have some variation to it, some significant
6 variation to it.

7 I suspect that there are high schools in other
8 countries that are outperforming or that require more
9 performance to get them than there are here. And I
10 suspect there are lots that are less too.

11 So the good news is I think that the statute --
12 and this is a statute that sets this out. So there's no
13 authority for our Board to change the language that's in
14 the statute right now anyway. The legislature would have
15 to change the language.

16 So if anybody wanted to encourage the legislature
17 that they should adopt the California standard, which is a
18 high school diploma from a United States high school, they
19 could do that. But until the legislature does that, I
20 think the legislature's kind of left it up to the agencies
21 to decide what's meant by a high school diploma.

22 I'm not aware -- I assume there are no court
23 cases, Zack, that talk about what high school diploma
24 means or --

25 MR. SHANDLER: I did not find any.

1 MR. KING: None that we're aware of. But I think
2 that there's actually also plenty of authority within that
3 second clause that says "or the equivalent." In
4 California it says "or a GED." Here our law says "or the
5 equivalent." So in that case I assume it is up to the
6 body to decide what's been presented to them is equivalent
7 to a high school diploma.

8 So you can even read U.S. into that first clause,
9 if you want to. But I think you could analyze the high
10 school diploma from Mexico and say, "Yeah, you have to
11 have essentially the same requirements to graduate from a
12 high school in Mexico as you do in the U.S.; so therefore
13 it's equivalent to a U.S. high school diploma."

14 That kind of solves the issue of if somebody
15 comes from, say -- and I actually don't know what the
16 school system is like in Zambia. But suppose somebody
17 comes with a diploma from Zambia, then if you're analyzing
18 those under the second clause where it says "or the
19 equivalent," then you could make some determination as to
20 whether you thought that was equivalent to a U.S. high
21 school diploma or not.

22 So there is some interpretation there for you to
23 do, I suppose. But I don't see anything in that law that
24 would prohibit you from determining that a diploma from
25 Mexico is equivalent to a high school diploma.

1 For instance, I mean, what would happen if

2 somebody came -- and I suspect this could happen
3 occasionally, if somebody had a college degree from some
4 other country and they came and said they wanted to join
5 the police agency? You wouldn't want them to have to take
6 the GED, from my perspective at least. That would be sort
7 of silly.

8 So actually requiring -- the educational
9 requirement to be a U.S. high school diploma or a GED does
10 strike me as being a little too narrow because you might
11 have people that clearly have qualifications that are
12 better than that.

13 So I guess my own opinion as a former legislator
14 is that this language is okay, and -- but that it gives
15 you guys plenty of authority to decide that a diploma from
16 a high school in Mexico is equivalent to a U.S. high
17 school diploma, if you wanted to do that.

18 MR. ORTIZ: And I don't have any intention on
19 trying to change the state statute. I was thinking we
20 could change the NMAC with the Board.

21 MR. COON: I think, Sheriff Rivera, yours is kind
22 of a unique situation because he was in the Academy, then
23 you all found out that he --

24 MR. ORTIZ: No, sir. This came before, through
25 the application process, whether to accept him. I didn't

1 want to deny him, so I allowed him -- we could bring this
2 matter before the Board and get some clarification.

3 I proposed an agreement with him that while he's
4 in the Academy that he obtain his GED, and he did sign
5 it. Senator Michael Sanchez was contacted, I guess
6 possibly by the sheriff or somebody in Valencia County
7 contacted the governor's office. And they contacted me.

8 And they said, "Well, if he signed an agreement
9 to obtain his GED, let him abide by his agreement." And I
10 said, "I'm fine with that. We'll be going to a Board
11 meeting in Silver City and hopefully a decision will be
12 made on the NMAC to allow these foreign high school
13 diplomas to be accepted or to the equivalent."

14 MR. COON: Well, I'm not sure how a GED works,
15 but don't you just go down there and take the test one
16 day.

17 MR. ORTIZ: Yes.

18 MR. COON: I mean, it's not like --

19 MR. ORTIZ: We provided some material from Santa
20 Fe Community College and from Central New Mexico with the
21 schedules. And with his skills, I think he could just go
22 down and take the GED.

23 MR. COON: When you hire that person that first
24 day and you're doing his background and you notice,
25 whoops, you've got a Mexico or you have none, let's get

1 your GED. You've got that time line. It's not like they
2 are going to be in the Academy tomorrow.

3 MR. ORTIZ: Right.

4 MR. COON: You've got sometimes three months, six
5 months, up to a year for that person to get that GED.
6 It's kind of like the physical fitness part. That's
7 something -- you hire a guy today, you don't expect him to
8 maybe pass all of his -- the tests they give him in Santa
9 Fe.

10 I think you could give him plenty of time to be a
11 condition of employment with my department that you have a
12 valid New Mexico -- or a United States diploma or a GED.

13 MR. PEREZ: I think you're talking around it.
14 Again, we have the legislation. I think we're adding
15 something extra then. If this man agreed in this case, he
16 signed it, okay. But then are you going to set precedent
17 and say everybody else has to sign the agreement? You're
18 making new law, and that's not right.

19 Again, I say that if you want to be technical, in
20 Mexico they do not have any high schools. That's an
21 American term. They have primaria. They have secundaria.
22 And they have coliseo, which is a prep school, two years
23 of prep school, which would be equivalent to our high
24 school.

25 So if you start getting into terminology like

60

1 "high school," nobody in the world has high school except
2 the U.S.A. So then you disqualify everybody. It says
3 "equivalent," and that's what counts.

4 MR. FORCE: Mr. Chairman. Matt, let me ask you I

5 guess to get more of an even ground between our
6 positions. I think it sounds to me like Mr. Ortiz is
7 looking for direction from the Board on how to interpret
8 this term "high school diploma or the equivalent."

9 I don't know that we necessarily need to make a
10 rule change, as much as come into an agreement as an
11 administrative direction for Mr. Ortiz and how that's
12 interpreted. I personally don't have a problem with an
13 individual if he doesn't have a United States high school
14 diploma.

15 If the individual came in and showed proofing of
16 that educational curriculum that he was delivered or she
17 was delivered and then the Academy would equate that to a
18 high school education, to me that's the issue, is what is
19 quote, unquote an equivalent.

20 Is an equivalent -- what is that? What does it
21 mean? And to me, you know, if the individual can come
22 forward and say "Here is my educational curriculum that I
23 received" in whatever county it might be and the Academy
24 then takes that and equates it to the high school
25 education of that that we give here in America, I think

61

1 that would be the good basis for whether they would accept
2 it or not as quote, unquote an equivalency.

3 MR. PEREZ: I would think that the Director,
4 that's his prerogative. That's why we have him there. If
5 you bring it to a Board, you're going to get a lot of

6 different opinions. Let him decide. He's been appointed
7 to that position because of his background and his
8 experience. And I think that he can determine that by
9 himself.

10 MR. ORTIZ: Well, my understanding is that this
11 has been brought to the Board in the past, but no
12 decision. So I was just hoping to come and get some
13 clarification. And it looks like it's not going to --

14 MR. PEREZ: You should just do it. That's why we
15 hired you.

16 MR. KING: Sheriff.

17 MR. RIVERA: Again, Sheriff Rivera. The concerns
18 that I have is that there were two other agencies, one
19 being the U.S. Government, and the other one being the
20 state corrections, who accepted the -- his high school
21 diploma at the time.

22 Another concern that I have is that while we were
23 speaking with Director Ortiz in regards to his high school
24 diploma, we got a notification from the Academy that this
25 individual was accepted at the Academy, at which point he

62

1 went to the Academy.

2 And one day Director Ortiz and myself are having
3 a conversation. And I advised him that such deputy was at
4 the Academy; that, you know, thank you for accepting him
5 and stuff. And at that point he advised me, "You know
6 what? We were talking about this. He was never

7 accepted."

8 I asked him, "Well, I got the documentation
9 showing that he was accepted. So, I mean, what's going on
10 now?"

11 He goes, "Well, the thing is that the individual
12 that did the acceptance letter didn't know what was going
13 on." And then at that point that's when we -- he came up
14 and said, "You know, the only thing -- the only way I'm
15 going to be able to accept him is if he signs a letter to
16 go and get his GED. If he doesn't sign it, then he's
17 going to have to get out."

18 Well, I didn't want this officer to get out. I
19 said, "Well, go ahead and speak to the deputy and see what
20 he wants to do." At which time he -- you know, he didn't
21 want to leave the Academy either. So he went ahead and
22 signed the documentation.

23 So those -- those things are things that concern
24 me. And at this point, you know, I believe like Director
25 Ortiz was saying, you know, he is -- he's doing better

63

1 than some of our guys that went to school here in the U.S.
2 So with that said, I just appreciate your help. Thank
3 you.

4 MR. KING: Any other comments? Director Ortiz, I
5 don't know if we've helped a lot. Once again, you're
6 welcome to call on our office for advice. But, I mean, I
7 don't -- I don't read either the law or the rule to say

8 that -- that you have to have a GED if you don't have a
9 high school diploma.

10 It says you have to have the equivalent. And
11 that's where I think your discretion lies. I think it's
12 been up to the Academy to decide whether what's been
13 presented to you is equivalent to a high school diploma.

14 In this case I think you're right; if there's an
15 agreement that he's going to do that, you know, it strikes
16 me that everybody ought to just comply with the
17 agreement. But if you said to somebody, "You have to have
18 a GED," and they decided they wanted to take it to court
19 and say, "I think the law is broader; you don't have to
20 have a GED," it would be an interesting case.

21 Once again, maybe in your discretion when it says
22 "equivalent" to say, "In our case the only thing we think
23 is equivalent is a GED," I'm not saying that you can't
24 limit it to a GED, but I'm saying the law doesn't require
25 you to limit it to a GED.

64

1 If you did limit it and somebody tested that,
2 then I think that would be the interesting question. If
3 they could come and present -- say they had a college
4 degree and said, I've got a college degree from Sorbonne,"
5 you know, that's at least equivalent to a U.S. high school
6 diploma -- "You can't make me take the GED," it would be
7 an interesting case, as to what your discretion is when it
8 says "or the equivalent."

9 Am I wrong, Zack?

10 MR. SHANDLER: No, you're not wrong at all. But
11 just to summarize it sounds like if the Board hasn't taken
12 an official position under the discussion, there is -- the
13 Director has authority on a case-by-case basis to
14 interpret the statute; is that your understanding?
15 Because I want to make sure you feel like you --

16 MR. ORTIZ: In meeting with Deputy Director
17 Mr. Najar in the past, he said this has come to the Board
18 before. So he was saying, "Well, let's see if we can get
19 the Board to get some clarification and make a decision on
20 this so that there's not all these different
21 interpretations so we would have something concrete to go
22 by."

23 And that's what I was just asking, to see if we
24 could obtain that. If not, I'll review them on a
25 case-by-case basis. If they are able to meet the

65

1 admission standards and pass the test, then we'll accept
2 them.

3 MR. KING: I think if the Board wanted to say
4 that it's got to be a GED, we would have to do a rule
5 making and change the rule. Am I right?

6 MR. SHANDLER: I think that's a very solid
7 reasoning there.

8 MR. KING: If we just took a vote today and said
9 we think it ought to be a GED, I don't think that would

10 have any binding effect either.

11 MR. FORCE: Mr. Chairman?

12 MR. KING: You would have to do it through a
13 ruling.

14 MR. FORCE: Maybe I'm wrong here, but why could
15 we not as a Board make a motion as to what the
16 interpretation of equivalency is to give Mr. Ortiz
17 direction and support when he does make those decisions.
18 Something that says something to the effect that
19 equivalency -- what we're asking Mr. Ortiz to look at is
20 on an equivalency is a proofing of curriculum or seeking
21 of a GED. I don't understand why that would be improper.

22 MR. SHANDLER: Mr. Chairman, Mr. Force. I think
23 the stronger position is always to memorialize it as a
24 rule, both because that has the legal authority of a
25 statute and, second, when there's turnover on the Board --

66

1 Board interpretations announced at a meeting tend to
2 dissipate over time and people can't remember how, what
3 was the origin of this long-standing position.

4 So, yes, you could do that. And boards have done
5 that. But the stronger position -- especially if there's
6 been some debate about an issue is to memorialize it in a
7 ruling. But I am aware that, you know, having him do it
8 by a case-by-case basis, there's always downsides to
9 that. People can say that's too much discretion.

10 MR. FORCE: Right.

11 MR. SHANDLER: It appears that the individual
12 case that you've heard today, there may still be some
13 dispute between the parties about what the fair result
14 would be. But from what I hear from the Director, you
15 have a signed agreement. It sounds like you're planning
16 to stand by that agreement?

17 MR. ORTIZ: Yes.

18 MR. KING: But a motion's in order. I'm not
19 saying that you can't make a motion if you want to.
20 You're welcome to.

21 MR. FORCE: Well, I don't know if it would -- I
22 don't know if that would actually meet the end result of
23 what we're trying to do here. It just concerns me that
24 it's vague. And I understand the position the Director's
25 in.

67

1 And we talk about discrimination. That issue
2 gets brought up with us not making a decision on it, holds
3 the Director even more open to that issue of
4 discrimination that I think as a Board we ought to be
5 trying to protect him.

6 So I guess I would make a motion that in order to
7 support the Director's interpretation of equivalency that
8 proofing of a high school education should be equivalent
9 to the United States high school educational curriculum or
10 the completion of a GED.

11 MR. PEREZ: Too vague.

12 MR. KING: Yeah, I was going to say could you
13 read me that motion back?

14 MR. FORCE: It says -- the rule says holds a high
15 school diploma or equivalent. And I think that's where
16 the problem is hung up at, is what is an equivalent. If
17 the individual doesn't have a high school diploma, what's
18 an equivalent.

19 I mean, the equivalent would be proofing as what
20 Mr. Perez said. If an individual comes and says, "Hey,
21 I've got this training in whatever country," then at that
22 point he may not have a diploma. He may just have a
23 certificate.

24 Well, that certificate should be proofed with the
25 curriculum of that education and contrasting to a United

68

1 States educational diploma. So my motion would be to
2 clarify the word equivalent for the Director would be a
3 proofing of the educational curriculum or the completion
4 of the GED by the applicant. One of the two.

5 MR. KING: Okay. I think I'm starting to
6 understand that. Let me -- if you'll give me a little
7 discretion of the Chair. Let's sort of break that into
8 two ideas. One is the idea that when it says "high school
9 diploma," that that means a high school diploma from a
10 United States high school. Yes? That's part of your
11 motion.

12 MR. FORCE: Yes.

13 MR. KING: And then the second part of the motion
14 would be that -- that equivalent be -- and I need to use
15 the word "define," but essentially define to mean either a
16 GED, a United States GED, or sufficient proof to the
17 director that the education he received in another country
18 was equivalent to what you would have to have to receive
19 the United States high school diploma.

20 MR. FORCE: Correct.

21 MR. KING: Essentially, we're giving them two
22 options for equivalent and defining high school diploma as
23 a U.S. high school diploma.

24 MR. FORCE: Right.

25 MR. KING: Does everybody understand that? Is

69

1 that clear enough? It's really -- since it's not a rule,
2 it will sort of be the feeling of the committee,
3 Mr. Ortiz. Is there a second?

4 MR. JONES: I'll second.

5 MR. KING: We have a second. Brave man. So any
6 questions on the motion? Any discussion on the motion?
7 Do we need a voice vote, or do you want a show of hands
8 or? Let's try it by show of hands. It might be easier.
9 All in favor raise your hand.

10 (At this time, Mr. Jones, Mr. Coon, and Mr. Force
11 raised their hands.)

12 MR. KING: All opposed?

13 (At this time, Mr. Panteah, Mr. King, and

14 Mr. Perez raised their hands.)

15 MR. KING: Okay. By a vote of three in the
16 affirmative and three in the negative, the motion fails.

17 So we're back on discussion.

18 It's actually not a bad idea, but I think we
19 ought to do it by the rule if we're going to do it.

20 Mr. Ortiz, have we helped you?

21 MR. ORTIZ: Case-by-case basis.

22 MR. KING: Your discretion. You know, clearly
23 it's an important issue. It's one that we -- and so.

24 MR. ORTIZ: Yes.

25 MR. KING: I guess my thought for staff is that

70

1 maybe we should take this up as part of a ruling or that
2 we should examine our rule and see if we could draft a
3 rule that includes some of those concepts.

4 MR. SHANDLER: Mr. Force, this would be your
5 opportunity to make motion for a second rule hearing at
6 that December meeting. Usually, we'd like to have the
7 language in advance; but I think -- so it's just a
8 sentence that the Attorney General, yourself have pretty
9 much sketched out.

10 If you want to do that, you could do that right
11 now. Or if you wanted to mull it over. You don't have to
12 do that.

13 MR. FORCE: Well, my last motion failed. I'll do
14 that. Just joking. I'll go ahead and make that same

15 motion that I just brought up.

16 MR. KING: I'll help you draft the rule. So
17 there's a motion on the table to add to our rule-hearing
18 meeting in December a rule that would -- since we don't
19 have the language in front of us, but we'll publish the
20 language. But it essentially would be what I outlined
21 there to change the rule, which is the -- what's the rule
22 number?

23 MR. ORTIZ: 10.29.1.10.

24 MR. KING: Okay.

25 MS. VIGIL: What is the title?

71

1 MR. ORTIZ: Qualification for admissions.

2 MR. KING: So we'll add that to our rule-making
3 hearing, which is pretty straight forward. We can publish
4 the rule and get comment. And I think that would be a
5 better way to do it. So that's the motion. Is there a
6 second?

7 MR. COON: I'll second.

8 MR. KING: We have a second. All in favor for
9 that motion, raise your hand.

10 (At this time, Mr. Force, Mr. Jones, Mr. King,
11 Mr. Coon, Mr. Panteah raised their hands.)

12 MR. KING: All opposed?

13 (At this time, Mr. Perez raised his hand.)

14 MR. KING: Mr. Perez is opposed. So that motion
15 passes.

16 MR. PEREZ: What motion was that that just
17 passed?

18 MR. KING: The motion as to add a rule -- and
19 we'll get the draft rule out to everybody, but. We'll
20 draft the exact sentence. But the sentence would change
21 our NMAC so that it says as requirement -- it's like
22 Requirement No. 3; is that right?

23 Requirement No. 3 would change it so that it
24 would say "a high school diploma from a United States high
25 school or the equivalent." And then it would add another

72

1 sentence that says "equivalent means a GED or sufficient
2 proof given to the director to show that the education
3 received was equivalent to a U.S. high school diploma."

4 MR. PEREZ: Unless I missed something, I thought
5 we just voted that down. We had a tie.

6 MR. KING: We voted that down as a recommendation
7 from the committee, which I don't really care for it to be
8 a recommendation from the committee. But the press there
9 is to put it on a consideration for the rule. So when the
10 rule comes before us, then we'll have a vote on whether to
11 change the rule or not. Actually, there'll be more
12 members of the commission when we do.

13 I'm not opposed to the concept, but personally
14 just to explain my vote, because mine is the one that's
15 changed. I'm not opposed to the concept but if we're
16 going to do it, I think we need to put it in a rule. I

17 don't think we should just say this is our feeling.

18 MR. PEREZ: I just understood that we voted it
19 down, and then we're going to do it again anyway.

20 MR. KING: Yes.

21 MR. PEREZ: That's what it seems to me we're
22 going to do.

23 MR. KING: We're going to do it with the right
24 procedure though. That's my opinion.

25 MR. PEREZ: Okay.

73

1 MR. KING: Since we won that last motion, it's
2 the opinion that carried the day.

3 MR. PEREZ: I understand.

4 MR. KING: All right. Any other discussion on
5 this? Then we will -- I mean, if we adopt the rule
6 change, then that will give you specific direction on what
7 you can do. If we don't adopt the rule change, then
8 you'll have that discretion that you've got currently.

9 MR. ORTIZ: Thank you, sir.

10 ITEM #12: RENEWAL OF OPEN MEETINGS ACT RULE

11 MR. KING: All right. Next item on the agenda
12 then is the Renewal of the Open Meetings Act Rule, which
13 we have to do every year. And I assume Zack's going to
14 present that, but do we have a copy of the resolution in
15 our books?

16 MR. SHANDLER: The resolution is actually
17 memorialized by rule. We're one of the groups that do

18 that. Since there's no changes, there's no changes in the
19 rule, it's just annual requirement is mentioned. So the
20 Attorney General's Office is looking for a motion to renew
21 the Open Meetings Act Resolution as provided in your rule.

22 MR. KING: And as I recall from being a chairman
23 of another commission, do we have to have an individual
24 voice vote on this or do you carry?

25 MR. SHANDLER: Let's do that.

74

1 MR. KING: Usually on the open meetings
2 resolution you have to have a voice vote, so. All right.
3 So do I hear that motion from one of the members of the
4 commission?

5 MR. FORCE: I'll motion that.

6 MR. KING: Okay. This is the motion to readopt
7 our open meetings rule.

8 MR. COON: I'll second.

9 MR. KING: The motion been made. Second. Is
10 there any discussion? (No response.) Okay. In this
11 case, we're going to ask for consecutive yes votes.

12 Commissioner Force?

13 MR. FORCE: Yes.

14 MR. KING: Well, votes anyway. I shouldn't say
15 "yes votes." Commissioner Jones?

16 MR. JONES: Yes.

17 MR. KING: Commissioner Coon?

18 MR. COON: Yes.

19 MR. KING: Commissioner Panteah?
20 MR. PANTEAH: Yes.
21 MR. KING: And Commissioner --
22 MR. PEREZ: Yes.
23 MR. KING: -- Perez? Chairman votes yes. So the
24 Open Meetings Resolution has been adopted.

25

75

1 ITEM #13: RATIFICATION OF CERTIFICATIONS

2 FOR LAW ENFORCEMENT OFFICERS

3 Item No. 13, Ratification of Certifications For

4 Law Enforcement Officers. Mr. Director.

5 MR. ORTIZ: Mr. Chairman, Board Members, the

6 Director has verified that the listed police officers

7 beginning with Certification No. 08-0031-P to 08-0199-P

8 and 06-0150-P, 04-0004-P, 02-0028-P, 98-0256-P, 94-0425-P,

9 84-0028-P and 84-0144-P have all met the standards and

10 requirements for law enforcement certification. And we

11 request that the Board ratify their certification.

12 MR. KING: Okay. I'll take a motion for

13 adoption.

14 MR. COON: I'll make a motion for adoption.

15 MR. KING: There's a motion. Is there a second?

16 MR. PANTEAH: I'll second.

17 MR. KING: All in favor signify by saying aye.

18 THE BOARD: Aye.

19 MR. KING: Any opposed? (No response.) Those

20 certifications are ratified.

21 ITEM #14: RATIFICATION OF CERTIFICATIONS
22 FOR PUBLIC SAFETY TELECOMMUNICATORS

23 MR. KING: Item No. 14, Ratification of
24 Certifications for Public Safety Telecommunicators.
25 Director Ortiz.

76

1 MR. ORTIZ: Mr. Chairman, Board Members, the
2 Director has verified that the list of dispatchers
3 beginning with Certification No. 08-0070-PST through
4 08-0107-PST have all met the standards and requirements
5 for certifications and we request that the Board ratify
6 their certification.

7 MR. KING: Okay. Take a motion for ratification.

8 MR. PEREZ: So moved.

9 MR. PANTEAH: Second.

10 MR. KING: It's been moved and seconded. All in
11 favor signify by saying aye.

12 THE BOARD: Aye.

13 MR. KING: Any opposed? (No response.) All
14 right. Those ratifications are also -- those
15 certifications are ratified. Okay.

16 We are going to go into the next item on the
17 agenda, which is disciplinary matters. That's the point
18 at which I will excuse and recuse myself because of the
19 nature of the fact that the Attorney General's Office is
20 also the prosecutor.

21 I recommend -- because we've actually --
22 everybody's been in their chairs for a while and have done
23 a good job of it -- usually it doesn't take us this long
24 to get through that part of the business agenda -- that we
25 recess for 10 minutes. And we will reconvene, and

77

1 Commissioner Perez will chair the meeting.

2 We're in recess for 10 minutes.

3 (Off the record from 10:43 until 11:03 a.m.)

4 MR. PEREZ: If we could come to order, please.

5 The time is now 11:03, and we're back on the record,
6 continuing our fall meeting at the Harvard on the Gila
7 here in Silver City. And we are now going to the
8 disciplinary phase.

9 The Attorney General has recused himself because
10 he might possibly have to hear some of these matters
11 later. So this is the open part, which we will -- Zack,
12 who will the --

13 MS. ERDMAN: Nan Erdman. I'm the prosecuting
14 attorney.

15 MR. PEREZ: These are enumerated, and she will go
16 through them and explain it. And we will hear from any of
17 the people involved who are here and will be free to
18 speak. And we will be able to question them. And then we
19 will have a closed session into which we'll go into our
20 deliberations.

21 So if you would proceed, Ms. Erdman.

22 ITEM #15: PAUL ARMIJO

23 MS. ERDMAN: Thank you, Mr. Chairman. The first
24 matters, number 15 through 21, that I'm going to be
25 covering are -- were requesting default orders of

78

1 revocation or suspension. The first is Paul Armijo.

2 Paul Armijo was accused of taking five
3 bullet-proof vests from the Village of Colombia {sic}
4 Police Department, trading them to some members of the
5 Mexican police department to get an Avalanche back for an
6 owner.

7 Mr. Armijo admits to taking the bullet-proof
8 vests. He claims that the owner of the Avalanche was
9 going to pay him back for the bullet-proof vests. That
10 never happened. Also Mr. -- the owner of the Avalanche is
11 now in jail on drug trafficking charges.

12 Mr. Armijo was given an opportunity to present
13 himself at a hearing on two different occasions. And on
14 both occasions, Mr. Armijo did not attend. He asked for
15 additional time to obtain counsel, but we've continued
16 this matter for a number of months to give him an
17 opportunity to get counsel.

18 Every time he requested a continuance, it was
19 either granted or he was given an opportunity to present
20 his information. And so he never responded. We went
21 forward with the formal hearing without his presence and
22 gave him 30 days to respond, and he did not. So we

23 request his revocation by default.

24 MR. HOLMES: I might add to that generally. The
25 28th he pled guilty to a misdemeanor of embezzlement.

79

1 MS. ERDMAN: He did plead guilty to one count.

2 MR. PEREZ: Mr. Holmes, could you speak up a
3 little bit, please.

4 MR. HOLMES: Mr. Armijo, on January 28th, 2008,
5 pled guilty to one misdemeanor count of embezzlement. And
6 he was placed on a 364-day unsupervised probation and was
7 ordered to pay a hundred dollars restitution to the
8 Village of Colombia {sic}.

9 MR. PEREZ: So he was convicted?

10 MS. ERDMAN: Yes, he was.

11 MR. PEREZ: For the record, he was the chief of
12 Columbus, not Colombia, which is a little farther south.

13 MS. ERDMAN: I'm sorry.

14 MR. PEREZ: Next.

15 ITEM #16: WILLIAM BREEDING

16 MS. ERDMAN: Next is Officer William Breeding.

17 Is he present? He was terminated from the Truth or
18 Consequences Police Department. He's accused of having
19 sexual intercourse without consent. The victim was
20 someone that he had a relationship with prior to this
21 incident.

22 He had responded as a police officer when she was
23 reported as having taken an overdose of prescription

24 tranquilizers. He invited her -- he later invited her to
25 a New Year's Eve party, and then the complainant contends

80

1 that she told him to stop making sexual advances. And he
2 did not and would not stop despite her repeated requests
3 for him to stop.

4 She didn't file a police report because she was
5 afraid that the respondent being a police officer would
6 retaliate against her. She did report the incident to his
7 supervisor. The respondent contends that the sexual act
8 was consensual.

9 And the district attorney in that district did
10 not file charges against him because the complainant's
11 mental history and questioned ability about her competence
12 as a witness.

13 In a separate incident in April of 2008, the
14 respondent was charged with domestic violence against his
15 son. The respondent claims that his son threatened to
16 strike him and the respondent reacted by striking the
17 first blow.

18 An ambulance had to respond to the scene, and his
19 son was treated medically for a swollen nose. The
20 respondent signed for his notice of contemplated action.
21 He requested an informal hearing but failed to appear at
22 the informal hearing.

23 A notice of final decision was issued on
24 July 16th and respondent failed to respond. Therefore,

25 the Board requests revocation by default.

81

1 MR. PEREZ: I have a question on this. It
2 appears that this might have been a rape, and yet because
3 the district attorney thought that because the witness was
4 lacking in some mental abilities that --

5 MS. ERDMAN: -- the district attorney decided not
6 to prosecute.

7 MR. PEREZ: So nothing happens? Can the State
8 pick this up? Is this not a state offense also?

9 MS. ERDMAN: No, you're absolutely right. This
10 would be a state offense also.

11 MR. HOLMES: There was also -- she made the same
12 -- similar allegations on some other person and described
13 the incident almost identical to this one. So I think
14 when the district attorney became aware of that....

15 MR. PEREZ: It seems to me that rape is rape,
16 regardless of whether the person has -- many prostitutes
17 get raped and it's still rape.

18 MS. ERDMAN: I think the problem with the
19 district attorney's perspective in this case is you have
20 to have proof. You have to have evidence. And a mere
21 accusation isn't sufficient.

22 MR. PEREZ: Okay. Next.

23 ITEM #17: ERIC JAMESON

24 MS. ERDMAN: Next is Eric Jameson. He's resigned
25 from the Roswell Police Department. While off duty,

1 Mr. Jameson was arrested and charged with aggravated
2 driving while intoxicated. The incident involved an
3 accident which he failed to report to his department.

4 He hit a directional trailer in a construction
5 zone. The crash was witnessed by a deputy county sheriff
6 from Eddy County who saw the respondent hit the trailer
7 and leave the scene of the accident.

8 The respondent refused to perform a field
9 sobriety test. He later refused a breathalyzer test and
10 did admit to his superiors that he had been drinking at a
11 friend's house prior to the accident.

12 The NCA was sent to the address that he's
13 reported to the Academy as being his current address.
14 That NCA went unclaimed. A notice of final decision was
15 issued on July 16th. That was also unclaimed.

16 But it is the respondent's responsibility to keep
17 current addresses with the Board. Therefore, the Board
18 requests revocation by default.

19 MR. PEREZ: Is Mr. Jameson here? Next.

20 ITEM #18: NORMAN LEE

21 MS. ERDMAN: Next is Officer Norman Lee. Officer
22 Lee has been terminated from the Navajo Law Enforcement
23 Department. He was at an event at Shiprock, New Mexico in
24 June of 2006 where police were dispatched.

25 Upon investigation of the incident, the

1 investigators learned that a female had been seriously
2 battered; that someone had thrown her into the pavement,
3 held her head down, and struck -- her head struck the
4 pavement, causing a large bump on her head.

5 Several of the witnesses tried to intervene. And
6 the accused, who's the respondent, threatened to arrest
7 him and push him against a vehicle. Several witnesses
8 testified that the -- that that person who did this was
9 the respondent Norman Lee.

10 The police officer that was investigating the
11 incident believed that the victim was afraid to say
12 anything that would confirm that Mr. Lee in fact committed
13 the battery. He did admit to drinking and became very
14 argumentive and verbally confrontational with the
15 officer.

16 Domestic violence and disorderly conduct charges
17 have been filed at this point. We don't know the outcome
18 of those charges. This is one of those cases, Mr. Perez,
19 that you asked about earlier, if we wait until conviction
20 or not.

21 This is one of those cases where we felt there
22 was sufficient evidence to move forward now without
23 waiting for the conclusion of the criminal case.

24 MR. PEREZ: The Board only needs a preponderance
25 of evidence. We do not require --

1 MS. ERDMAN: That's right. And in this instance,

2 the respondent was served with an NCA by certified mail.
3 He didn't respond in writing. A notice of final decision
4 was issued in February. Somehow in February the letters
5 crossed in the mail. The respondent did file a written
6 response.

7 The director contacted the respondent and came to
8 an agreement for a stipulated order. But the respondent
9 never signed the order and failed to turn the stipulated
10 order in as he agreed with Director Ortiz.

11 He asked for an informal hearing. One was
12 scheduled for him. One was provided for him, and he
13 failed to appear. Therefore, a second notice of final
14 decision was written and issued and the respondent failed
15 to file a response. So we ask for default by -- a
16 revocation by default.

17 MR. PEREZ: Is Mr. Norman Lee here? Next.

18 ITEM #19: RICHARD LUNA

19 MS. ERDMAN: The next is Officer Richard Luna.

20 It's my understanding that he's been terminated from the
21 Alamogordo Police Department. In June of last year, he
22 asked someone to go out to dinner, for drinks with him.

23 The person that he went with claims that she was
24 on probation. She was prohibited from consuming alcohol,
25 possessing alcohol, or even being in a restaurant or bar

1 that served alcohol. She claims that she informed him
2 about this and that he said she would be okay with him.

3 He escorted her to the bar. And she felt
4 uncomfortable about it later that she reported it to his
5 department. During an Internal Affairs investigation,
6 they affirmed the complaint as alleged by the -- his
7 companion who was on probation. No charges were -- no
8 formal charges were filed, however.

9 Then in a second incident earlier that year,
10 actually, the respondent had been assigned to investigate
11 a fraud case involving checks. He didn't complete the
12 investigation. The checks were found in his locker. He
13 had never turned them into the evidence room.

14 And the suspect, who is clearly identified from
15 the face of the checks, no formal charges were ever filed
16 against him and no action was taken against him, which is
17 also a violation of the state statutes.

18 His termination from the Alamogordo Police
19 Department was upheld at the formal hearing in December of
20 2007. Respondent was served with an NCA and requested an
21 informal hearing. He rescheduled the initial informal
22 hearing. A second one was set for him on May 15th of this
23 year, and he failed to appear.

24 After two notice of final decisions have been
25 issued to the respondent, one in February, one in July,

86

1 and he's failed to respond to either notice of final
2 decision, therefore, we request revocation by default.

3 Is Mr. Luna here?

4 ITEM #20: RANDY PHILLIPS

5 MS. ERDMAN: The next matter is Randy Phillips.

6 It's my understanding that he has resigned from the

7 Artesia Police Department. Mr. Phillips made a traffic

8 stop. And in doing so, got out of his vehicle without

9 engaging -- putting the car in park. He left it in drive,

10 got out of his vehicle. The police vehicle rolled forward

11 into the pickup truck that he had stopped.

12 He talked to the person that he had hit, and she

13 came to the understanding that he was going to report this

14 back to his department and take care of the damage to her

15 truck, although she could see that there was more damage

16 to the police vehicle.

17 He left the scene. He didn't make an accident

18 report. He didn't report it to his department. She went

19 into the department just to just check on the status of

20 things and later learned that her complaint was being

21 looked into as a hit-and-run.

22 And she knew it wasn't a hit-and-run because she

23 knew it was a police officer that had hit her and damaged

24 her vehicle. The respondent was served with a notice of

25 contemplated action. It was signed for by the

87

1 respondent.

2 He didn't respond in any way. A notice of final

3 decision was issued and received by the respondent. And

4 the respondent has not requested any hearings or responded

5 in writing in any way regarding this matter. Therefore,
6 we request revocation by default.

7 MR. PEREZ: Is Mr. Randy Phillips here? No.

8 ITEM #21: RYAN TSOSIE

9 MS. ERDMAN: The next item is Ryan Tsosie.

10 Officer Tsosie is accused of making a traffic stop and
11 confiscating several weapons from a vehicle that was being
12 driven by a juvenile, who's also believed to be a Mexican
13 National. And he evidently took three weapons from that
14 person.

15 Respondent later gave two weapons to some of his
16 coworkers that he said that they were his weapons that he
17 was giving to them for their personal use. However, the
18 chief of police, who allowed a grace period of one week
19 for officers to turn in any evidence, realized that he
20 confiscated evidence and hadn't turned it in and began an
21 investigation.

22 There were two .22 caliber pistols that were
23 given to his coworker. And another that he confiscated
24 was a .22 caliber rifle that was sawed off, was never
25 found. Both the NCA and the NFD were sent to what's been

88

1 reported as Officer Tsosie's current address. And neither
2 were claimed. Therefore, we're requesting revocation by
3 default.

4 MR. PEREZ: Is Mr. Ryan Tsosie here? No.

5 ITEM #22: EARLENE WINNETT

6 MS. ERDMAN: The next matter, item -- Item 22 is
7 on the agenda as a revocation by default. That's been
8 changed. Since the agenda came out, we've reached a
9 stipulated order with Officer Winnett.

10 And the information on your misconduct report
11 that you have in your packet, instead of -- under
12 director's recommendation is now 60 days instead of 90
13 days.

14 Ms. Winnett claims that her husband walked into
15 the residence after she had been throwing some of his
16 items, including his police uniform, in the trash. She
17 claims she was upset because she was being evicted from
18 their home. And she contends that they were constantly
19 arguing, sometimes resulting in physical altercations.

20 She had filed for divorce and was packing her
21 belongings. He contends that he kept trying to discuss
22 their marital problems and was just grabbing her around
23 the shoulders and following her around the house.

24 The allegation is that she reacted by punching
25 him in the face, resulting in severe left-side facial

89

1 injuries, which had to be treated at a medical facility.
2 She denies that she punched him that hard. But he did
3 receive treatment.

4 He also got a protective order issued against
5 her. Charges were filed. She received a conditional
6 discharge, and she completed the terms of the probation.

7 The charges were later dismissed.

8 The respondent does not agree with all the
9 accusations against her. She claims that her husband
10 struck her and that she was reacting to him, although
11 investigative reports show that she did admit to
12 committing physical violence against her husband.

13 They both claim that they worked things out, and
14 they want to stay together, and they want to both stay
15 employed. She wants to continue to work as a police
16 officer. And I think both parties agreed at the informal
17 hearing that the incident wasn't as serious as it was
18 reported in the police reports.

19 We are recommending a 60-day suspension with
20 one-year probation, ethics training, and anger management
21 counseling.

22 MR. PEREZ: Is Earlene Winnett here? No.

23 MR. ORTIZ: I'll just add, her husband was a
24 police officer; but he was not certified at the time. And
25 he has moved to Colorado where he's employed with the

90

1 Durango Police Department. And she's looking to go up
2 there as well.

3 MR. PEREZ: This conditional discharge.

4 MR. ORTIZ: She's already completed that. It was
5 some counseling that the court had her attend. And she
6 sent me a letter that she's completed that.

7 MR. PEREZ: Was that a misdemeanor?

8 MR. ORTIZ: Well, the district attorney ended up
9 dismissing it. And that's what the attorney wanted as was
10 part of the agreement in this is that it was outright
11 dismissed.

12 MR. PEREZ: Because if the new law --

13 MR. ORTIZ: Right. It was dismissed.

14 MR. PEREZ: If there had been a conviction, that
15 would be reason for removal. But that was dismissed.

16 MR. ORTIZ: Yes. And she tells me that -- she
17 said that he punched himself, and she told me you can
18 contact his three previous wives and ask them. So
19 apparently he has some bad history with females. But she
20 denies ever striking him.

21 MR. PEREZ: He struck himself so severely that --

22 MR. ORTIZ: That's what she's claiming. We do
23 have photographs showing his left eye as swollen shut.

24 MR. PEREZ: Inflicted by himself?

25 MR. ORTIZ: That's what she says.

91

1 MR. HOLMES: To clarify that, conditional
2 discharge means that there were sanctions imposed on her
3 by the court. And if she completed whatever sanctions
4 were imposed, then she got the conditional discharge,
5 which does not -- which does not debilitate her from
6 carrying a weapon because it's a conditional discharge.

7 MS. ERDMAN: And it carries the legal effect of a
8 dismissal.

9 MR. PEREZ: Could you -- legally, is that

10 considered a conviction or not?

11 MR. SHANDLER: It is not considered a conviction

12 or a plea of guilty. But there is case law that says you

13 can still go after someone's certification even if they

14 have a conditional discharge.

15 MR. PEREZ: She allegedly said that she never

16 punched him. Did he claim that she struck him?

17 MR. ORTIZ: Yes. And that's written on the

18 protective order. Also when I spoke with him on the phone

19 and he's still saying -- and also she was pregnant with

20 twins and she lost the twins. She was four months

21 pregnant at this time.

22 MR. PEREZ: Somebody is lying.

23 MR. ORTIZ: I think both of them are lying, sir.

24 Both of them are lying.

25 MR. PEREZ: If we have lying, we cannot tolerate

92

1 lying.

2 MR. ORTIZ: I wanted to take action when I heard

3 he was a police officer, but then he was not certified.

4 So we can't do anything on him. On her, I agree that we

5 should take action and suspend her certification. She's

6 going to be moving to Colorado.

7 MR. PEREZ: Any other questions? Next.

8 ITEM #23: MICHAEL ARBOGAST

9 MS. ERDMAN: The next is Michael Arbogast. He

10 came before you at the meeting that was held in

11 Albuquerque. I think that was in March.

12 MR. ORTIZ: Red River.

13 MS. ERDMAN: Well, in March he came before you --

14 his case came up before you as a default. Then in June he

15 appeared at the Red River meeting and asked for that

16 default to be taken away and for him to be granted

17 permission to start the process again.

18 That process was begun again. He attended an

19 informal hearing. Mr. Arbogast is accused of filing

20 divorce papers that were signed by him without his wife's

21 knowledge; that he signed her name and got that name

22 notarized.

23 And in fact the notary was an APD employee who

24 admits that she signed -- she notarized the divorce papers

25 without witnessing both signatures. His ex-wife claims

93

1 that she never saw those divorce papers; that she never

2 agreed to those divorce papers; and that she never signed

3 them.

4 And in fact that divorce that was initially filed

5 in court was thrown out by the domestic relations judge,

6 and they were required to start the entire divorce process

7 over again. Since that time, they've completed the

8 divorce; but there are other allegations in the initial

9 divorce proceeding that he was not honest about his income

10 and his assets.

11 In another separate incident, he was accused of
12 not reporting damage to his police vehicle. There was --
13 there's a question about that incident because there was a
14 period of time when it was in one of the lots. And
15 there's a question about when the actual damage occurred.

16 At this time, the director has made an agreement
17 to suspend Mr. Arbogast's certification for six months,
18 with one-year probation, ethics training, and eight hours
19 of community service. And I don't think Mr. Arbogast is
20 here.

21 MR. PEREZ: Is Mr. Arbogast here?

22 MR. ORTIZ: He did call, sir, and apologized. He
23 did want to come and speak before the Board, but his
24 mother's taken ill and he's not able to attend. And he
25 said just tell the Board he apologizes for his conduct and

94

1 hopes the Board will accept.

2 MR. PEREZ: He did come to the informal hearing
3 with you?

4 MR. ORTIZ: Yes, he did. Later after the Red
5 River meeting, we scheduled it. And Mr. Jackson, myself,
6 and Mr. Holmes met with him.

7 MR. PEREZ: And what's your finding?

8 MR. ORTIZ: He was deceptive; that he lied; that
9 he forged it, is my opinion. And I believe Mr. Jackson
10 and Mr. Holmes agree.

11 MR. PEREZ: Do you, Mr. Holmes?

12 MR. HOLMES: Yes.

13 MR. PEREZ: The evidence indicates --

14 MR. HOLMES: The signatures appear to be that it
15 was forged.

16 MR. PEREZ: There would be no purpose for anybody
17 else to forge her name on these. No other interested
18 party?

19 MR. HOLMES: No. I think the fact that she was
20 never present when -- when she went before the -- when
21 those papers were notarized, you know, preponderance of
22 the evidence indicate, point in that direction.

23 MR. COON: Is he still denying that? Is he still
24 denying the fact that he --

25 MR. ORTIZ: He was, and we had quite an

95

1 interesting discussion there because we could get the
2 documents and hold it up and it was pretty clear. I'm not
3 a handwriting expert. There were three of us. But we
4 could clearly see that it was not her signature; that
5 somebody tried to forge her signature.

6 MR. PEREZ: And it's your feeling that he lied?

7 MR. ORTIZ: I was surprised after he left that he
8 even accepted it. It was a pretty heated discussion. He
9 was denying it. And then when I gave him this, all of a
10 sudden he had a change of heart. He accepted it.

11 He thought he could pull one over on us, and he
12 wasn't able to. So he accepted the six months.

13 MR. PEREZ: Your recommendation is for six months
14 rather than firing?

15 MR. ORTIZ: He did lose his job. He resigned in
16 lieu of termination.

17 MR. PEREZ: So this is for -- the suspension is
18 for the commit of this --

19 MR. ORTIZ: Yes.

20 MR. PEREZ: Any other questions or observations?
21 Next.

22 MS. ERDMAN: The next is Officer Bob Gilbert.
23 Officer Gilbert was riding -- I'm sorry. I skipped one.

24 ITEM #24: PATRICK CADENA

25 MS. ERDMAN: The next one is Patrick Cadena. He

96

1 was terminated from the APD department. He signed up to
2 work a special overtime grant and submitted 17 overtime
3 slips for 59 and a half hours. A criminal investigation
4 revealed that he could only confirm that he worked 34 of
5 those hours.

6 Working with his attorney, the director was later
7 able to confirm that he could confirm all but 17 of the
8 hours. The respondent did pay restitution for 17 hours to
9 APD for his unaccounted time, which was \$484.

10 He was formally charged but went into a
11 preprosecution diversion program, was discharged from the
12 program six months early, which generally means that he
13 was very compliant. You get discharged early if you've

14 met all of your obligations.

15 The criminal case has been dismissed. And in his
16 defense, his supervisor even contends that he did not have
17 any intent to deceive. There has been a problem with the
18 process for putting in for this overtime, getting the
19 overtime, claiming the overtime, and working the
20 overtime. That's been a problem with the department for
21 years.

22 His supervisor sincerely believes that it's not a
23 matter of him trying to deceive the department; that he
24 was just not organized or accurate in keeping up with his
25 paperwork. And he did make restitution.

97

1 The director is recommending a 30-day suspension
2 and an ethics training class. Is Mr. Cadena here? Are
3 there any questions?

4 MR. ORTIZ: He is still employed with APD. They
5 terminated him, but he was reinstated through a hearing
6 process.

7 MR. FORCE: Mr. Chairman, I've got a question.

8 Mr. Ortiz, why was there a 30-day -- can you
9 explain to me why you recommended a 30-day suspension on
10 this instead of 60 as you have --

11 MR. ORTIZ: And I apologize. This informal
12 hearing I think was conducted at least last year, May in
13 2007. So my memory is a little on this one. But they
14 asked that we hold off until his hearing with APD went.

15 And then APD took him back. So then we came to that
16 agreement with his attorney.

17 Mr. Holmes, you recollect anything else?

18 MR. HOLMES: Well, one of the things that I think
19 is unique about this case is when they came out with that
20 program, I think there was under -- some moneys that were
21 allocated from federal funds. It was a grant.

22 And what happened is the officer would sign their
23 name for a whole month, but sometimes they were unable to
24 work that day. So they would work on another day, on a
25 different date. But they were going by the schedule that

98

1 was there, which was not accurate.

2 So that's where the confusion was. And that's
3 what -- and the supervisor himself told us, "This is very
4 confusing. There was no way that this guy had any intent
5 of committing and trying to defraud the department from
6 this money."

7 And they at first they said he was 30-some -- how
8 many? And then they found 17 citations {sic} later on
9 when they further investigated. And I think it's just
10 lousy bookkeeping on the part of the officer.

11 MR. ORTIZ: There were some errors on his part,
12 and we thought 30 days was accurate and appropriate.

13 MR. FORCE: Okay.

14 MS. ERDMAN: I think it's more of the nature of a
15 bookkeeping, record-keeping error than any intent to

16 deceive.

17 MR. FORCE: So we don't have an overactive
18 deception then.

19 MS. ERDMAN: I don't think we do, no.

20 MR. FORCE: Okay.

21 MR. PEREZ: Next.

22 ITEM #25: BOB GILBERT

23 MS. ERDMAN: Next is Bob Gilbert. Officer
24 Gilbert was riding his all-terrain vehicle with his two
25 sons. His wife was near them riding a horse. When a

99

1 driver came who was -- Mr. Gilbert claims was intoxicated,
2 struck the horse causing the horse and Mr. Gilbert's wife
3 to fall onto the vehicle.

4 The respondent reacted angrily. There's some
5 dispute about what his actions were. But even respondent
6 admits that he took violent action against the driver of
7 the vehicle. He claims that he was afraid that his wife
8 was either seriously injured or dead.

9 And there's some testimony by his son -- or not
10 testimony, but evidence by his son that he punched the
11 driver while the driver was still in the car. The driver
12 offered the respondent \$200 for the accident, which he
13 accepted.

14 The respondent said he took the money because the
15 driver was an illegal alien, who was going to be deported
16 by border patrol. And the respondent did fail a polygraph

17 regarding the incident and was terminated from his
18 employment with DPS and the Motor Transport Division.

19 MR. PEREZ: Is that not a bribe that he
20 accepted?

21 MR. ORTIZ: Mr. Gilbert is here.

22 MS. ERDMAN: Legally, I don't think that -- it
23 depends on what the \$200 was being offered for. And it's
24 my understanding that it was being offered to compensate
25 him for the damage to his wife and the horse, not in

100

1 exchange for not prosecuting the charges.

2 MR. PEREZ: Mr. Gilbert, are you here?

3 MR. GILBERT: Yes, sir.

4 MR. PEREZ: Would you like to speak?

5 MR. GILBERT: Yes, sir.

6 Bob Gilbert. Appreciate you all hearing me out.

7 I came out here. I wouldn't show my face if I had
8 anything to hide. I'm here to let you know that the \$200
9 was given to me. I didn't accept it until the officers
10 got there on scene because I didn't want to be accused of
11 taking a bribe or stealing from him or something like
12 that.

13 So I didn't accept that money until the officers
14 got there on scene. And they gave it to me in his
15 possession. And he was going to give me more money for
16 the vet. The vet was 500-and-some dollars. And that's
17 why that was going to occur, because we had to get a vet

18 out there because the horse was all cut up.

19 The horse and my wife went through the windshield
20 of the vehicle. It wasn't just a fall. It was pretty
21 traumatic. It was a terrible experience.

22 MR. PEREZ: He gave you the money after you
23 struck him?

24 MR. GILBERT: No. He gave me the money like four
25 hours later. I called -- I had my wife call the police

101

1 after the incident took place and everything. What
2 happened was I was headed southbound. He was headed
3 northbound on Mesa Grande.

4 He got off the road gradually, really slow. And
5 I thought he was going to approach the mailbox. There was
6 a mailbox there. So I thought he was going to check his
7 mailbox, make a right-hand turn.

8 As he was making that turn -- I believe because
9 he had his turn signal on -- got off the shoulder. And I
10 figured, well, he was going really slow. Maybe he's just
11 going to check the mail. Because there was a home out
12 there, a mobile home.

13 And he failed to stop. And he came right at us.
14 He accelerated his vehicle, came right at us. I had my
15 two boys. I jerked them out of the way. He missed me and
16 my two boys about three inches.

17 She had nowhere to go because it was a big
18 mesquite bush on the other side. So he clipped them. And

19 the horse -- it was just like all in slow motion. I just
20 seen them both having to race into the windshield.
21 The horse's head went in through the windshield.
22 Her arms and parts got -- went through the windshield.
23 And then they went sliding off. My next reaction was -- I
24 don't know how I got off the ATV. I jumped out, jerked
25 him out. Apparently, I struck him. I kicked him.

102

1 MR. PEREZ: You say apparently. You --

2 MR. GILBERT: I did -- well, it happened quick.
3 I don't even know how I jumped off. I had my youngest son
4 in front of me. My older son in the back of me. I don't
5 even know how I jumped off, because the next thing I
6 realized the ATV and my kids were like maybe a block
7 away.

8 And then I saw the fear in his eyes -- because I
9 was afraid myself. And when he was down on the ground, I
10 held him down. And then I released him once I saw my wife
11 get up and chase the horse. And I released him.

12 And then when he got up, he was all like, "Por
13 que estas en -- por que estas en la calle, por que estas"
14 -- he started yelling at me in Spanish. "Why are you on
15 the wrong -- why are you on the road?"

16 And I was all like, "I'm not on the road." And I
17 grabbed him and I cursed at him. I said, "Mother fucker,
18 this ain't the road. Look." I grabbed him by the shirt,
19 and I showed him where all the blood was. And where the

20 incident took place, it was way off the road.

21 And from that point he told me, "Con permiso. I
22 apologize. I'm sorry for what took place." And I went to
23 the front, and that's when I smelled the presence of
24 alcohol coming from his person. His pupils, I thought he
25 was afraid because they were so huge, but he was under the

103

1 influence of some other drug, I believe.

2 And so he ended up talking. We secured the
3 horse. We're trying to control the bleeding. And the
4 ambulance took approximately about three hours. We called
5 for aid. We called the police department. They rerouted
6 the call to Albuquerque. And then they routed it to Santa
7 Teresa or somewhere.

8 And then they route it to Cruces. So they didn't
9 even know where Mesa Grande Street was at based on the
10 south call that we used, because we called the cops.
11 Because we were the victims right there.

12 And it all ended up turning around to where it
13 looked like I was the bad guy because I assaulted him or
14 whatever. I didn't get charged with anything. When the
15 ambulance got there, he didn't ask for any aid, anything
16 like that.

17 I'm a pretty big guy. I could tell you I'm a
18 strong person. I've -- I didn't quick his ass. When my
19 sergeant called me that night, he asked me, "Did you kick
20 his ass and steal \$250 from him?"

21 I mentioned to him, "No, I didn't, sir." So from
22 that point on, I didn't do it. So I thought they were
23 going to come in, take my equipment, gun, everything until
24 the investigation could be over.

25 MR. PEREZ: Slow down a little bit. Go ahead.

104

1 Continue.

2 MR. GILBERT: So at that point, when I said no,
3 did I kick his ass and steal \$250, that's where I knew --
4 like I told my wife, I go, "You know what? I'm probably
5 going to be terminated for this now." She goes why? I
6 was all, "Because I just -- my lieutenant told me that
7 don't bite the hand that feeds you."

8 Because I filed an equal pay with the
9 department. And three months prior to that, I ended up
10 winning my retroaction. And then they brought me up
11 from -- I was making \$15 -- to \$20 an hour. And I felt
12 that that he was coming down on me for making fun of me
13 for doing that and winning.

14 And my lieutenant told me, "Don't be biting the
15 hand that feeds you, Gilbert." So I thought that was a
16 threat. And I'll admit to where I was at fault is when I
17 took the test, and they asked me, "Gilbert, did you hit
18 the guy?" They switched it. "Did you strike the guy?"

19 And I said no. I was all like, no, because I
20 felt like did you kick his ass, did you hit him? They
21 were going to use it and just twist it to where I get like

22 the bad guy.

23 And my wife was also an officer at the time, and
24 she was chasing an individual and she ended up losing her
25 job because she jumped the fence, broke her meniscus, her

105

1 ACL. And she lost her job. So then I got to that panic
2 mode where I was all like if I lose mine too, how are we
3 going to support our kids and --

4 MR. PEREZ: Did you lie?

5 MR. GILBERT: Yes, sir. I -- I didn't lie, but
6 -- well, yeah, it was -- it was a lie in a way because of
7 the fact that when they asked me "Did you kick his ass and
8 steal \$250," I said no because I didn't do that, sir.

9 I restrained the guy. I pulled him out. I
10 struck him. Yes. I was being vocal with him. But I
11 didn't use more force than what was necessary.

12 MR. PEREZ: Were you armed?

13 MR. GILBERT: He was deported the next day.

14 MR. PEREZ: Were you armed?

15 MR. GILBERT: No, sir. I was off duty.

16 MR. PEREZ: Did you identify yourself as an
17 officer?

18 MR. GILBERT: No, sir. I never identified myself
19 as an officer. And when I realized that he was an
20 illegal -- because he had in a bank account, he had
21 everything in a Wells Fargo. He showed me his card. He
22 said he knew a veterinarian because he trained racehorses

23 in Sunland Park.

24 We spoke for hours out there because of the fact
25 that LCPD and they never got to the scene. And, yeah, we

106

1 stayed there. We got bit by moillotes, everything, all
2 that night because it happened probably around 6:00 or
3 something. And we were there until around 9:00,
4 10 o'clock.

5 MR. PEREZ: Can you translate that word for her?

6 MR. GILBERT: Moillotes, mosquitos. We were
7 getting bit all over. All I got to say is I wish this
8 never would have occurred. And that's my position as an
9 officer.

10 MR. PEREZ: That was a very -- I can understand
11 that it was a very emotional situation, given your life
12 apparently threatened, that of your wife and children. We
13 have to consider that. Anything else you would like to
14 say?

15 MR. GILBERT: I just got -- picked up a desk at
16 sheriff's department here in Las Cruces. And I passed the
17 polygraph. I told them the situation. I told them, check
18 if I lied or anything.

19 MR. PEREZ: The polygraph on this matter?

20 MR. GILBERT: Yeah, because I told them, "Do me a
21 polygraph," because the polygraph I took over there, my
22 Lieutenant Brian Credeur told me to go over there in Class
23 A uniform, look sharp, and go do your polygraph.

24 Well, when I got to the Academy, Lieutenant
25 Libicer, sir, which is doing the investigation, told me,

107

1 "What the hell are you doing in a -- what are you doing in
2 your Class A uniforms?"

3 And I was all like, "Well, I was told the day
4 prior" -- because he went on a ride-a-long with me, "make
5 sure I go in my Class A's."

6 He goes, "I specifically told him that you go in
7 your civilian clothes."

8 And I was all like, "Oh, really?" I was all like
9 -- so that just boiled me because it -- it humbled me
10 because they had me down dress and take off my clothes and
11 go sit in there with a bunch of people that were beating
12 their wives, stealing. And I felt like I was in that
13 category.

14 And I went in all emotional for the test and
15 everything. And I was like, "Couldn't that have been a
16 factor?" And I told him that. I go, "But, yeah, there
17 was a scuffle. I did jerk him out. I did take him to the
18 ground. I did curse at him. I told him, 'Mother fucker,
19 what are you thinking?'"

20 And I -- I was -- it was a fight/flight syndrome.
21 And I was just more protecting my kids and my family at
22 that time. And I felt like it was an initial threat
23 because why would he have had his turn signal on and then
24 accelerated into us. It didn't make sense. So it was

25 just more of a reaction. It was -- I wish it never took

108

1 place.

2 MR. PEREZ: I understand. Any questions from the
3 Board?

4 MR. FORCE: What have you got -- what have you
5 learned out of this?

6 MR. GILBERT: I learned not to -- if they ask you
7 a direct question, just answer it. Don't be afraid of
8 what the consequences are going to be, because I've always
9 been like that. I have -- my sons are well disciplined.
10 Three times state champions. Honor classes. I have them
11 to the highest level, because I put myself there too.

12 MR. FORCE: So did you --

13 MR. GILBERT: And what I've learned from it was
14 no matter what the circumstance is, if that incident like
15 that took place now, I would be just telling you what it
16 is. And, yeah, I did hit him. And kicking ass or hit him
17 it's still the same thing.

18 And I went from kicking ass like I would have
19 sent him to the hospital or he would have been six feet
20 under, but I didn't see it that way. I saw it as I just
21 restrained him. I held and controlled the situation. I
22 didn't do any severe damage to him or anything.

23 He got deported the following day, which I didn't
24 even know he was illegal until I got back to the scene and
25 LCPD got me a little upset because they failed to do field

1 sobriety tests on him. All they did was give him a ticket
2 for fictitious plates, no insurance, and deported him. So
3 they just TOT'd it to BP to fail to do all the paperwork.

4 MR. FORCE: So, bottom line --

5 MR. GILBERT: Bottom line is that --

6 MR. FORCE: -- did you lie?

7 MR. GILBERT: Well, yeah, when they asked me --

8 MR. FORCE: Don't play word semantics.

9 MR. GILBERT: No.

10 MR. FORCE: Did you lie?

11 MR. GILBERT: I did for failing to lose my
12 position as well because --

13 MR. FORCE: So what you did, just from what I'm
14 hearing --

15 MR. GILBERT: It was wrong.

16 MR. FORCE: You know, maybe there was an issue of
17 anger management; maybe the guy deserved to get pounded.
18 I don't know. But the bottom line is that incident of the
19 beating got compounded by your lying; would you agree?

20 MR. GILBERT: Yes, sir.

21 MR. FORCE: And had you let the chips fall where
22 they were, it probably would have been a different
23 outcome. Agree?

24 MR. GILBERT: Yes, sir.

25 MR. FORCE: So what did you learn here?

1 MR. GILBERT: To say it the way it is and not try
2 to cover anything up.

3 MR. FORCE: So I hope what you learned here is
4 don't lie.

5 MR. GILBERT: Yes, sir.

6 MR. FORCE: Agree?

7 MR. GILBERT: I agree.

8 MR. COON: I got a question here. It says here,
9 "Respondent denies that he 'beat the shit out of him' like
10 the investigators and officers are reporting." What
11 investigators and officers reported that you did that?

12 MR. GILBERT: Sergeant Tim Labier and Libicer.

13 MR. COON: But they weren't there. And you
14 all -- for three hours you all are buddies again now.

15 MR. GILBERT: Yes, sir.

16 MR. COON: How did they come to the conclusion?
17 Was this guy dripping blood all over the place?

18 MR. GILBERT: No, sir. It was my wife and my
19 horse that was dripping blood everywhere. He gets
20 deported, right? They put him in border patrol. He tells
21 border patrol -- that's how that came out. He tells
22 border patrol, "They stole \$250 from me and they kicked my
23 ass."

24 That's what he told border patrol to hope that he
25 would be able to keep immunity here in the United States

1 so he could stay with his family. He had a family here.

2 And he told me, "I have a family." And he was trying to
3 get me to not call the police.

4 Do you see what he was trying to do? He was
5 trying to get me to not call the police. I didn't realize
6 that he was an illegal, though. And I wanted him to pay
7 and go to jail. I wanted him to get convicted for DUI and
8 assaulting a family and everything else. And it didn't
9 happen. It all went....

10 MR. PEREZ: Anything else?

11 MR. ORTIZ: In speaking with Chief Segotta on
12 this issue for the termination, they understood the
13 circumstances. And they all said "I might have reacted in
14 the same manner." I think a lot of us would. He said he
15 had the opportunity and he lied. That's why he was
16 terminated.

17 He was a good officer, but they said when he lied
18 that was the reason for the termination.

19 MR. COON: You say you have an application now
20 with Dona Ana County SO?

21 MR. GILBERT: Yes. I already passed everything,
22 the written test, the psychological. They already give me
23 a letter. They are just hoping I can get started. They
24 called me last week and last month. They are holding the
25 position for me.

112

1 They said, "Gilbert, you could" -- he was my
2 sergeant -- that's the sheriff now -- for five years. And

3 he knows who I am and what I'm about. And I believe I've
4 given you letters and....

5 MR. ORTIZ: Yes. And I commend his 14-year-old
6 son who came up there and told us the truth when asked.
7 And he said, "Yes, my dad did strike him."

8 MR. PEREZ: You took the polygraph?

9 MR. GILBERT: Yes, sir.

10 MR. PEREZ: Did you fail it?

11 MR. GILBERT: No, sir.

12 MR. PEREZ: The polygraph passed. Secondly, why
13 did you take the polygraph? Were you asked or were you
14 instructed to?

15 MR. GILBERT: I was asked to.

16 MR. PEREZ: By whom?

17 MR. GILBERT: By the State -- by Lieutenant
18 Credeur. Lieutenant Credeur. Because they didn't have
19 anybody. There was no-- he didn't file any charges on me,
20 the person that struck us. So there was nothing. It was
21 just hearsay.

22 So the State had to come up with the
23 determination like did this really happen or not because
24 it's all just hearsay because they could never find the
25 victim. And I never got charged with it. I didn't get a

113

1 citation. I didn't get arrested. There was no accuser.

2 I wasn't really accused of anything other than
3 the allegation that I stole \$250 and I kicked his ass.

4 MR. PEREZ: Is the lieutenant who asked you to
5 take the polygraph from what agency?

6 MR. GILBERT: Yes, sir. From DPS, State Police.

7 MR. PEREZ: Where did that happen? Down in Las
8 Cruces or up here?

9 MR. GILBERT: In Santa Fe.

10 MR. COON: You said you passed it though.

11 MR. GILBERT: No, I failed that one. I passed
12 the one I just took with --

13 MR. PEREZ: But when you came to take the first
14 test, you were reprimanded for coming in uniform?

15 MR. GILBERT: Yes. I was just -- I was told in
16 like -- I was just discouraged. They got upset with me.
17 They were all like, "Why are you in uniform? I told your
18 lieutenant." And prior to me going that day, lieutenant
19 did a ride-a-long with me and told me, "Gilbert, make sure
20 you go in your Class A's. Look sharp."

21 MR. PEREZ: So you were complying with
22 instructions, and then you get conflicting instructions.
23 Did that emotionally upset you?

24 MR. GILBERT: Yes, sir.

25 MR. PEREZ: And then you took the polygraph?

114

1 MR. GILBERT: And I took the polygraph.

2 MR. PEREZ: And you failed it.

3 MR. GILBERT: And I failed it.

4 MR. PEREZ: To me that's extremely unfair. That

5 is improper. Do you feel that you took that test freely
6 or were you -- did you feel compelled to take that? Be
7 honest in your answer.

8 MR. GILBERT: I had to take it because I asked
9 my -- what do they call us -- like a lodge. I asked them
10 because I wanted some kind of counsel or some kind of
11 advice on how to go about this.

12 MR. PEREZ: Why did you take it?

13 MR. GILBERT: And he told me to take it. He
14 goes, "Take it because you're under investigation and you
15 don't want to show -- give them any more room" --

16 MR. PEREZ: I'm asking you why you took it? Not
17 what he said.

18 MR. GILBERT: I took it to prove that --

19 MR. PEREZ: To prove you were innocent?

20 MR. GILBERT: I did what was necessary, but I
21 didn't kick the guy's ass.

22 MR. COON: He was compelled to take it through an
23 AI investigation or --

24 MR. GILBERT: Or get fired.

25 MR. PEREZ: But a polygraph has to be voluntary?

115

1 MR. ORTIZ: No.

2 MR. PEREZ: Here they can compel it?

3 MS. ERDMAN: Yes.

4 MR. GILBERT: I had a letter written up because I
5 asked that -- the guy who took my polygraph, I go, "You

6 know what? This is the situation that took place. I did
7 jerk the guy out. And this is why I lost my job with
8 them. And I'm looking for the employment with you all and
9 ask me any questions. Shoot away."

10 And I passed everything with flying colors. And
11 I believe I sent you all the results and everything.

12 MR. PEREZ: Any other questions?

13 MR. FORCE: I've got one more. The
14 recommendation is a 60-day suspension, one-year probation,
15 ethics, and anger management. That's what's being
16 recommended for our consideration. I want to ask: Do you
17 think that's right, and do you think it's just?

18 MR. GILBERT: No, sir. I would -- well, I kind
19 of punished myself. I haven't gone back to law
20 enforcement in over a year and about eight months now.
21 And that was just me doing it to myself because I felt
22 like -- I don't know.

23 Like I just felt like I didn't need to be there
24 because I gave them 10 years hard work, exceeds needs,
25 never been written up, never had complaints with the

116

1 public. Nobody in law enforcement went to bat for me.

2 MR. FORCE: Well, you need to understand --

3 MR. GILBERT: And I expected my lieutenant, my
4 sergeant, or somebody to stand by my side and say, "You
5 know what, Gilbert? You're this person and this is the
6 way it's going to be."

7 And I failed because I should have waited until I
8 was a captain or something above that to try to make
9 change for equal pay and all these other things.

10 MR. FORCE: You need to understand whatever the
11 Board's action that we take, we don't typically look at
12 retro suspension, so however long you've been out since
13 this happened.

14 MR. GILBERT: Yes, sir.

15 MR. FORCE: What we look at is if the
16 recommendation is 60 days, and if that's what the Board
17 acts upon, it's 60 days forward.

18 MR. GILBERT: Yes, sir. And what I would be
19 asking for the Board and why I'm here is if they can
20 lessen that to 30 days. I'm a Dona Ana high school coach
21 as well. And my contract there will end November 8th.
22 And if I could just fall right into the Academy, I can
23 complete my accomplishment with my agreement that I made
24 with the school.

25 And then once I'm done with the coaching, I can

117

1 get back into law enforcement. And that would be sometime
2 around November 8th. That way I can fall in with the
3 holidays and get things situated back with my family life.

4 MR. PEREZ: Any other questions? Thank you, sir.

5 May I ask a point of information. The polygraph
6 use you said is compelled. An officer can be compelled to
7 take a polygraph when?

8 MR. COON: When he's under IA investigation.

9 MR. PEREZ: You can be compelled.

10 MS. ERDMAN: You can be compelled or be informed
11 that you can be terminated for refusing.

12 MR. PEREZ: For refusing. This is state law?

13 MS. ERDMAN: It's --

14 MR. PEREZ: Or is this practice --

15 MR. COON: It's federal.

16 MR. ORTIZ: Agency's policy.

17 MR. PEREZ: I understand --

18 MS. ERDMAN: Right. Well, no. There's case law
19 that supports this. It's both state and federal. And the
20 primary case that everyone refers to is Garrity. And
21 Garrity is a federal case that says -- and you can't --
22 that the rights of a police officer are this, and you
23 can't take away those rights.

24 So each state is free to give the officer greater
25 rights, but that that standard of they can be required to

118

1 compel, they can be required to take a lie detector test.

2 They can be required to cooperate with an investigation.

3 MR. PEREZ: Right. That, I understand.

4 MS. ERDMAN: And then generally those statements
5 and those -- whatever information is gained during that
6 process cannot be used in a criminal prosecution against
7 them.

8 MR. PEREZ: I have a different understanding of

9 that. I headed the FBI polygraphing. And a polygraph is
10 a tool which shows only emotional reactions, physical --
11 what do they call them -- physiological reactions. It
12 does not detect the truth.

13 And to compel a person -- it can be used in
14 screening, preemployment screening. And during one's
15 career, you can be subjected to it periodically. But,
16 again, it's a tool that cannot be relied upon to make an
17 administrative and adverse administrative action against a
18 person the fact that they failed a polygraph.

19 MR. COON: The difference is you can't use it to
20 prosecute a person for a crime, but you can use it for
21 preemployment. You can use it for Garrity. To where
22 you're compelled. You're not going to go to jail over it,
23 but you could lose your job over it.

24 MR. PEREZ: Any further discussion? Next.

25

119

1 ITEM #26: JOEY GOMEZ

2 MS. ERDMAN: Next is Officer Joey Gomez. This
3 case came before the Board at the Red River meeting. And
4 I think -- and you rejected the recommended 90-day
5 suspension, one-year probation, and complete alcohol
6 screening program, recommended treatment, and of course an
7 ethics.

8 That recommendation was rejected by the Board.

9 We said we would come back with some more information.

10 What we learned at that meeting was that the Board did not
11 understand that the respondent was working as an
12 undercover narcotics officer at the time.

13 He was not in a marked unit. He was in an
14 unmarked unit. And he was working as an undercover
15 narcotics agent. And his contention is that he was
16 drinking at the time and driving as part of his job trying
17 to fit in during the investigation.

18 He's resigned from DPS. And the Director still
19 recommends a 90-day suspension, a one-year probation,
20 complete alcohol screening program, and recommended
21 treatment, and an ethics class.

22 MR. PEREZ: Is Officer Joey Gomez here? Any
23 questions?

24 MR. ORTIZ: That recommendation is consistent
25 with another narcotics officer that had similar

120

1 circumstances. And that's what the Board imposed.

2 MR. PEREZ: Thank you. It's now 12 noon. We're
3 on Tab 27, and we have Tab 39. Do I hear any
4 recommendation to take a very short lunch break? I know
5 many of us are far from home and we have to get on the
6 road, but we have to tend to this business correctly.

7 If we plow through, I think we are going to go
8 about 3 o'clock without lunch. Would you like to take
9 a -- there's a cafeteria --

10 MR. ORTIZ: There's a cafeteria downstairs, and

11 there's a little snack center right across the hall.

12 MR. PEREZ: Does everyone want to take like a
13 15-minute break or do you want to just continue right
14 through? What's your feeling?

15 MR. COON: I'd like to take just a break, period,
16 whether we eat on it or not. I'd like to take a break.

17 MR. PEREZ: Let's take a 15-minute break. 12:15
18 please be back.

19 (Off the record from 12:00 until 12:27 p.m.)

20 MR. PEREZ: We're back in session. And if you
21 would continue, ma'am.

22 ITEM #27: GARY GRAVES

23 MS. ERDMAN: Yes, thank you. The next is Officer
24 Gary Graves. He was a De Baca County sheriff, was later
25 with the Angel Fire Police Department. As De Baca County

121

1 sheriff, there was a recall petition that he challenged.
2 And Judge Joe Parker issued an order finding that probable
3 cause existed for the recall.

4 And after that Sheriff Graves resigned as
5 sheriff. He then went to work for the Angel Fire Police
6 Department and was terminated in 2007. And I do not know
7 the facts behind the termination.

8 The recall was based on several incidents. One
9 was for Sheriff Graves deputizing nonresidents to act as
10 temporary officers. The problem is that they were
11 helicopter pilots, and they were flying the helicopters

12 looking for border activity, but also shot out of the
13 helicopter at coyotes. And firing a weapon from a
14 helicopter is against the state law.

15 He also is accused of giving \$50 to a Mexican
16 National. And we decided not to prosecute this charge
17 because what happened is he seized \$2,000 from her. She
18 had a small child and was being released. And he gave her
19 \$50 of that 2,000 to help care for her child.

20 So really he's being accused of letting her keep
21 \$50 of her own money to take care of her own child. We
22 decided not to prosecute on that charge. He is, however,
23 being accused of treating inmates with excessive force,
24 duct-taping inmates that were out of control and using
25 pepper spray on inmates and -- including inmates that had

122

1 previously been duct-taped.

2 He agreed to sign a stipulated order for a 90-day
3 suspension of his license, one-year probation, and ethics
4 training. And I don't think Sheriff Graves is here.

5 MR. PEREZ: On this shooting coyotes, are those
6 animal coyotes or people coyotes?

7 MS. ERDMAN: Animal.

8 MR. COON: Looking at a map, I don't see real
9 borders around De Baca County.

10 MS. ERDMAN: And that's probably my mistake.
11 They might have been looking for other illegal activity,
12 not border.

13 MR. COON: Gary Graves worked for me for a long
14 time. And he missed Cuba. He went from De Baca -- he
15 went from Chaves County to Mountainair to Estancia to
16 De Baca to Cuba to Angel Fire in five years.

17 MR. PEREZ: Is this what they call a gypsy cop?

18 MR. COON: Well, I'll just keep my comments to
19 myself.

20 MR. PEREZ: You had him as -- you were his
21 superior?

22 MR. COON: Yes.

23 MR. PEREZ: So I think we would like to hear what
24 you have to say.

25 MR. COON: Gary went on sick leave --

123

1 MR. SHANDLER: Actually, let's keep it to the
2 four corners --

3 MR. ORTIZ: And I think in this matter also, if
4 you're going to have to recuse yourself, we're not going
5 to have a quorum to even vote on this case at this time.

6 MR. COON: Okay. Gotcha.

7 MR. PEREZ: And to return to the facts at hand
8 here, the seizure of the \$2,000 --

9 MS. ERDMAN: There's no accusation that the
10 seizure was improper. The accusation was it was improper
11 for him to let the woman keep \$50 of that 2,000.

12 MR. FORCE: Mr. Chairman, we ought to move
13 forward because I don't -- Sheriff Coon, are you going to

14 have to recuse yourself on this matter; do you think?

15 MR. COON: I had nothing to do with any of this,
16 obviously. I know his history from years back. Five
17 years back.

18 MR. ORTIZ: If he doesn't have to recuse himself,
19 then we can proceed. But if one of you do have to recuse
20 yourself on one of these individuals, we will not have a
21 quorum so then we should just skip over it. I would
22 imagine.

23 MR. PEREZ: My question again: This \$2,000, was
24 that taken from the person, or was it -- did he steal it?

25 MS. ERDMAN: No.

124

1 MR. PEREZ: Put it into evidence?

2 MS. ERDMAN: Right. He did everything proper
3 with the money except allowing the woman to keep \$50.

4 MR. PEREZ: But it's not that he took the 2,000
5 for himself.

6 MS. ERDMAN: No. There's no accusation that that
7 was improper or improperly handled in any way. And that's
8 why I said that I would not prosecute on the issue of him
9 allowing the woman to keep \$50.

10 MR. PEREZ: Okay.

11 MR. FORCE: Can I ask, Mr. Chairman?

12 MR. PEREZ: Yes.

13 MR. FORCE: Director Ortiz, I notice in here you
14 have a 90-day suspension, one-year probation, and ethics

15 training.

16 MR. ORTIZ: Yes. He had requested a formal
17 hearing. He was one of the ones that was set up for a
18 formal hearing. And there was quite a delay. Then he
19 finally called back just wanting to make this go away. He
20 said he would accept the 90-day.

21 MR. FORCE: Okay.

22 MR. PEREZ: But he did not offer to surrender his
23 commission?

24 MR. ORTIZ: No. That relinquishment was brought
25 forth to him. He refused to do that.

125

1 MR. PEREZ: He wants to keep it.

2 MR. ORTIZ: Right. He's not going to work in law
3 enforcement. He's working in the movies now. But he said
4 it was a matter of principle. He did not want to
5 relinquish it, so he said he would accept the 90-day.

6 MR. PEREZ: Then he might want to use it again in
7 the future.

8 MR. ORTIZ: Possibly.

9 MR. FORCE: Is that consistent with prior
10 recommendations on issues of abuse of force?

11 MR. ORTIZ: No. I think it's a little low on the
12 inmates. But in order to resolve this, like I said, he
13 was asking for a formal hearing and --

14 MS. ERDMAN: Well, except that we really -- we
15 didn't do the formal hearing. So at this point what

16 evidence we have to support that evidence -- to support
17 that charge is minimal.

18 There was a probable cause finding for recall
19 and -- when he was sheriff. But there was no specific
20 findings of fact about any of those particular
21 accusations. Just the general complaints against him were
22 enough to allow a recall to go forward.

23 So we haven't put on any evidence about whether
24 or not -- we haven't heard -- you know, he contends that
25 it was -- the only time he did that were when people were

126

1 out of control, in sort of a psychotic, mentally ill sort
2 of way. And that he didn't have the facilities to
3 restrain them in any other way.

4 And, of course, so he -- there would be evidence
5 on that restraint issue and the use of force issue. There
6 would be evidence on both sides. And I think at this
7 point, we don't really know what happened. We didn't have
8 a formal hearing. There hasn't been a full presentation
9 of evidence.

10 MR. FORCE: Right. But the issue before the
11 Board are the allegations of misconduct with the
12 recommendation from the Director. I guess the question
13 for you, Ms. Erdman, would be in the event that the Board
14 rejects this recommendation, does the Attorney General's
15 Office feel that there is sufficient evidence to pursue
16 the matter into a hearing or is there a compromise of the

17 case's integrity based on the delay of the event.

18 MS. ERDMAN: I think I would still continue to
19 move forward. I doubt that the end result would be any
20 different. And part of that is because as you said
21 there's been a delay.

22 When we originally set this for hearing, I was
23 able to contact two correctional officers that claim that
24 they worked there while this was occurring and they were
25 willing to testify.

127

1 He also claimed that he had other correctional
2 officers that were no longer there that were willing to
3 come and testify. So do I feel as though I could put on
4 evidence, yes. And I wouldn't move forward if I didn't
5 think that we could.

6 But I also recognize that I don't know what his
7 side of the case is at this point. We didn't get far
8 enough down that road for me to see the other side of the
9 evidence. I feel as though -- you know, I attended the
10 informal hearing. I've talked with him several times. I
11 stand behind Director Ortiz's recommendation.

12 I think it's the best solution under the
13 circumstances given the problems with the case. For
14 example, the four helicopter pilots, I cannot find them.
15 We don't know where they are. We don't know where they
16 are from. He's going to deny that they fired out of the
17 helicopter.

18 MR. FORCE: Just for the clarity of the record:
19 This is an August 31st, 2002; is that right? Is it 2002?
20 There's a typo in the record.

21 MS. ERDMAN: No. The hearing -- actually, I
22 looked at that. Judge Parker's order on the recall was
23 issued August 31, 2005.

24 MR. FORCE: 2005, okay. So the incident was
25 prior to the 2005, but that was when Judge Parker --

128

1 MS. ERDMAN: The incident was actually much
2 earlier.

3 MR. PEREZ: The matter of the inmates where they
4 were secured with the duct tape and utilizing OC spray,
5 were the inmates duct-taped when they were sprayed? Or is
6 that they tied them up at one time and then sprayed them
7 in another -- or later?

8 MS. ERDMAN: It's my understanding that on at
9 least one occasion an inmate was sprayed while he was
10 duct-taped.

11 MR. PEREZ: These are civil rights violations.

12 MS. ERDMAN: That was evidence that was presented
13 at the recall hearing.

14 MR. PEREZ: Did he appear at a hearing?

15 MR. ORTIZ: An informal? Yes, he did.

16 MR. PEREZ: Did you ask him about that, if he did
17 that.

18 MS. ERDMAN: Yes, we did.

19 MR. ORTIZ: Yes.

20 MS. ERDMAN: And he denies that those two
21 incidents happened at the same time. He admits having to
22 duct-taped people. And his answer is that when -- his
23 jail was very overcrowded and that he didn't have the
24 facility to deal with people who were mentally ill.

25 And that when some inmates were mentally ill and

129

1 got completely out of control, because of the lack of
2 resources, his explanation is that the only means of
3 restraint that they had was duct tape. He denies that
4 they pepper sprayed anyone that was duct-taped.

5 MR. PEREZ: That's my question.

6 MS. ERDMAN: He denies that. So that's why I say
7 that the evidence at this point because it's so old,
8 memories are going to be hazy. That's going to come down
9 to a she said/he said.

10 MR. PEREZ: Again we don't need -- we don't need
11 beyond a reasonable doubt on this Board. We need a
12 preponderance of evidence.

13 MS. ERDMAN: Uh-huh.

14 MR. PEREZ: That's all we need to remove their
15 commission.

16 MS. ERDMAN: That's right.

17 MR. PEREZ: Any other questions?

18 MR. NESS: I have a comment if you don't mind.

19 MR. PEREZ: Yes, sir.

20 MR. NESS: I and another law enforcement officer,
21 we did the investigation on Mr. Graves as the sheriff in
22 Ft. Sumner. We spent a week there. We wrote about a
23 20-page report on him. That's how the recall got
24 started. So there is evidence that we interviewed
25 everybody we could, including other law enforcement

130

1 agencies.

2 It was probably a lot that is not mentioned here,
3 and I don't know what you can go on. But as a law
4 enforcement officer in this state for many, many years, I
5 recommend that he never be a law enforcement officer again
6 in this state.

7 MR. PEREZ: Could we get a copy of that?

8 MR. NESS: That is public record.

9 MR. HOLMES: We have a report here, but it's real
10 thick.

11 MR. ORTIZ: His was about like that (indicating).

12 MR. HOLMES: He's right. There's other
13 allegations like speeding, traveling at an excessive --

14 MR. NESS: -- ex-wife --

15 MR. HOLMES: -- and things like that.

16 MR. NESS: He was not allowed to bring his gun.

17 MR. HOLMES: We have a whole box here.

18 MR. PEREZ: Mr. Ness, you did that report for
19 whom? Under what basis?

20 MR. NESS: Jim Burleson and I, we -- I was the

21 head of the sheriffs and police association when the
22 county commission asked us to come in and do a report on
23 him. And when the recall came up, it was Judge Parker --
24 isn't that his name?

25 MS. ERDMAN: Joe Parker.

131

1 MR. NESS: He was under the impression that a
2 recall would take his certification also. It's probably
3 not in writing, but I know that was his opinion.

4 MR. PEREZ: But it didn't happen.

5 MR. NESS: No.

6 MR. FORCE: Mr. Ness, do you know if any of
7 the -- your report findings were ever forwarded to the FBI
8 office color of law where the FBI in any way has reviewed
9 the matter?

10 MR. NESS: We were not aware of the taping. Our
11 concern was his ability to be a law enforcement officer,
12 so we involved Risk Management and several other --
13 especially their insurance companies, that -- what this
14 guy was doing. He was bared from the courthouse.

15 I find this remarkable that he said that there
16 was no room in the jail because he wasn't even allowed in
17 the jail. They took it away from him. So I don't know
18 what he's talking about, but.

19 I stand by my opinion. And in our report we
20 recommended that. We also said that he had some deep
21 psychological problems.

22 MR. FORCE: Thank you.

23 MR. ORTIZ: And the first sanctions imposed were
24 higher, and he rejected them and requested a formal
25 hearing. And we were starting to proceed with that when

132

1 we got some calls and stuff from him, and he was willing
2 to settle it.

3 MR. PEREZ: So he was plea bargaining?

4 MR. ORTIZ: Yes.

5 MR. PEREZ: Any other comments or questions?

6 MR. FORCE: Mr. Chairman. I didn't mean to keep
7 pushing this issue. Ms. Erdman, is there -- I just need
8 to hear it formally from you. Do you believe that the
9 Attorney General's Office has a case to forward toward a
10 hearing in the event that we reject this.

11 MS. ERDMAN: I'll stand by the answer that I gave
12 before. I think it's likely that based on the evidence
13 that I would have to present that it would be old, that
14 memories would be faint; that we would still probably end
15 up with a similar result.

16 I have evidence. I could move forward. Would
17 the result be a result in an increase in discipline? I
18 don't -- I don't think so.

19 MR. FORCE: Okay. Thank you.

20 MR. PEREZ: Point of order. I asked that the
21 sheriff here to comment. Zack, if you would address
22 this. But, of course, in a court of law, you have to stay

23 right with the issue of the charge at the present time.

24 But we are not a court of law. We are a hearing board.

25 Why are we precluded from hearing about a former

133

1 supervisor's dealings with this person? Why can we not

2 hear that information?

3 MR. SHANDLER: Mr. Chair, because I'm trying to

4 protect his voting status from any allegations of

5 impropriety or prejudice. And so the cleanest way to do

6 that is just to have the Board focus on the -- what's in

7 front of them.

8 And that way Mr. Graves can't say that past

9 interactions with the sheriff of any -- played any role or

10 was anywhere in the record.

11 MS. ERDMAN: I'd like to address that question,

12 too, if I may.

13 MR. PEREZ: Yes.

14 MS. ERDMAN: The issue also is protecting Sheriff

15 Graves' rights. He's entitled to due process. And before

16 we can discipline him on a matter, he's entitled to know

17 what the accusations are against him and what evidence is

18 going to be presented against him.

19 So if we introduce essentially new evidence today

20 but he's not on notice, it's going to become a considered

21 factor in front of the Board, then that essentially is a

22 violation of his due process rights to notice and an

23 opportunity to be heard.

24 So if we're going to take into consideration
25 anything that Sheriff Coon would have to say, then as a

134

1 prosecutor, I would think that we would have to give
2 Officer Graves notice that -- that this was going -- those
3 charges were going to be considered as well -- or those
4 accusations were going to be considered as well.

5 MR. PEREZ: Well, I disagree. I think that we
6 are considering these charges that are before us, but this
7 man has a history and yet we're procluded from hearing
8 that because there's a possibility that he may not like
9 it. I don't understand the reasoning.

10 Again, I'm not a lawyer. And I don't like the
11 fact that lawyer rules get put over a commission, which is
12 not -- we are not a judicial body. We are a commission
13 representing the people of New Mexico to hear all the
14 evidence regarding a person, not evidence -- I don't mean
15 evidence as in a court of law -- all the information.

16 And yet we keep getting bound by legal
17 considerations that apply to a court of law. This is not
18 a court of law. This is a commission.

19 MS. ERDMAN: But I don't think they are just
20 legal consideration for a court of law. They are his
21 constitutional rights that I think would jeopardize the
22 Board to violate.

23 MR. PEREZ: Okay. Anybody else have anything to
24 say? Do you have any more on that matter?

25 MS. ERDMAN: No. That's all I have.

135

1 MR. PEREZ: Next please.

2 ITEM #28: KENNETH GROVES

3 MS. ERDMAN: Next is Kenneth Groves. Kenneth

4 Groves was -- is with the Torrance County Sheriff's

5 Department. Currently he is active. And the incident

6 happened while he was with the Moriarty Police

7 Department. He resigned from that position as a result of

8 this incident.

9 MR. GIBSON: Excuse me. Chair?

10 MR. PEREZ: Yes, sir.

11 MR. GIBSON: That is incorrect.

12 MS. ERDMAN: Is that?

13 MR. GIBSON: Yes, ma'am.

14 MS. ERDMAN: I'm sorry. I have my dates --

15 MR. FORCE: Nan, if you could hold on for a

16 second. If you could identify yourself for the record.

17 MR. GIBSON: Sheriff Clarence Gibson, Torrance

18 County.

19 MS. ERDMAN: Let me try this again. Officer

20 Groves responded to an incident in which the Moriarty

21 Police Department had responded to as well. It was a

22 local -- a fight at a local bar between two men.

23 The officers investigated; took the names of the

24 people in the area; took the names of the people involved;

25 did a preliminary investigation; and determined not to

1 take any action.

2 While they were finishing their investigation,
3 Officer Groves pulled into the scene and intentionally
4 bumped a pedestrian standing in the parking lot with his
5 police vehicle. I mean, there is a video recording of the
6 incident. Apparently, the victim did not have serious
7 injuries and did not request medical treatment.

8 During his informal hearing, Officer Groves
9 expressed remorse for his incident, accepted
10 responsibility for the incident, and apologized. The
11 Torrance County Sheriff speaks highly of the respondent
12 and his service to the community.

13 The Director recommends a 21-day suspension with
14 one-year probation, ethics training, and an opportunity
15 for Mr. Groves to address the Academy cadet class. And is
16 Mr. Groves here.

17 MR. GROVES: Yes, ma'am. I'm here.

18 MR. PEREZ: Would you like to speak, sir?

19 MR. GROVES: May I, sir?

20 MR. PEREZ: Please.

21 MR. GROVES: Mr. Chairman, Director Ortiz,
22 Members of the Board, and ladies. Actually, I'm actually
23 a sergeant over at the patrol division of the Torrance
24 County Sheriff's Department. Needless to say I stand
25 before you humbled and meek today. After 19 years of law

1 enforcement, this is the first time I've had to stand
2 before a Board such as you.

3 If I may shed some light. I know we as law
4 enforcement officers usually respond to incidents. We
5 hear two different sides of the story. It's up to us to
6 make the determination on who's telling the truth.

7 One thing that Sheriff Gibson and Undersheriff
8 White have pounded into us is integrity, pride, and honor
9 in our department. That's more important to me than
10 anything. And that's why I come before you today and
11 hopefully shed some light, not to justify the actions, as
12 far as did they occur. They occurred. Maybe to shed some
13 light on why my response was the way it was.

14 On the afternoon of June 21st, we responded as
15 the accusations say to a fight in progress in front of
16 Blackie's bar. I was approximately four miles south of
17 the city limits of Moriarty. I did not hear Moriarty
18 officers go en route. We're on the same radio frequency.

19 I immediately activated my emergency equipment
20 and started towards that location. I heard one officer
21 check en route. I did not know his location. And a
22 matter of fact, I arrived on scene and was not aware that
23 Moriarty PD was on scene.

24 As I pulled into the parking lot of Blackie's Bar
25 and Grill, I noticed two gentlemen standing at the -- one

1 was at the left-side of the vehicle; another individual

2 was standing at the back of the vehicle. It was a
3 convertible, I believe, green-colored Chrysler.

4 I'd had prior dealings with the individual
5 standing at the back of the vehicle numerous times while I
6 was employed with Moriarty Police Department. And I've
7 had to fight that subject several times. Had several
8 people walking around the scene.

9 Had two juvenile females sitting on a curb in
10 front of the entrance store to the package liquor. As I
11 stated before, I did not know Moriarty PD was on the
12 scene. As I pulled into the parking lot, I did touch,
13 bump, hit, whatever you want to call it, a subject with
14 the left-front pushbar of my patrol vehicle.

15 It startled the individual as much as it startled
16 me. I knew at that point by his reaction that I touched
17 him, and I knew that. Due to the prior dealings, this
18 gentleman is always intoxicated, usually hyped up on
19 narcotics every time we come in contact with him.

20 I stepped out of my patrol vehicle. I asked that
21 individual in a firm, loud voice to come to the back of my
22 patrol car near the right rear wheel. He complied with my
23 request. I checked him for weapons, handcuffed him, and
24 secured him in the right rear position of my patrol
25 vehicle.

1 At that time, I went up to the other individual
2 without the shirt, asked him what was going on prior to my

3 arrival. He pointed to a gentleman that was propped up on
4 a vehicle at the northwest corner of the building. Said,
5 "Me and this gentleman kind of got into an altercation."

6 And about that time I looked around, and I saw
7 two Moriarty PD units. I immediately walked over to one
8 of the officers, asked him what was going on. He set
9 there and told me that he didn't think that Mr. Bramlet
10 had anything to do with this, the subject that I had taken
11 into custody.

12 I immediately left him, went back to the
13 right-rear seat position of my patrol vehicle, got
14 Mr. Bramlet out, immediately unhandcuffed him. We had
15 probably a 5-, 10-minute conversation. Me and Mr. Bramlet
16 go way back.

17 I've been with Moriarty Police Department since
18 September of 2002, and a lot of times I was the only
19 officer that could calm Mr. Bramlet down. In his violent
20 rages inside his residence, he would personally ask for
21 me.

22 Talked with Mr. Bramlet in length, in detail,
23 explained to him he always seemed to be where the trouble
24 was. This needed to stop because we had dealt with him
25 probably seven, eight times in the prior week to two weeks

140

1 prior to this incident.

2 He was actually arrested in one of the
3 restaurant -- local restaurant eating establishments there

4 in Moriarty for causing a scene and being disorderly and
5 so on. At that point in time, I escorted Mr. Bramlet up
6 to the car.

7 I allowed him to get back into the convertible
8 car that I pulled up behind; walked over to the Moriarty
9 officer; looked at him. And as all police officers do,
10 made a statement -- that I've replayed in my mind several
11 times and wish I could take back, but I can't.

12 I said, "I know it was Billy. I know you guys
13 are tired of dealing with him. I should have ran over
14 him." I was trying to deescalate my deal because I knew I
15 had touched him, hit him, struck him, however you want to
16 describe the incident.

17 Basically after that, returned to my patrol car
18 and cleared the scene, because the Moriarty officers
19 advised me they actually had it taken care of and no
20 arrests or anything were going to be made. And that was
21 basically the incident.

22 I was contacted two and a half weeks later after
23 the incident occurred by Sheriff Gibson and told that a
24 videotape of this incident was forward to the district
25 attorney's office for possible prosecution.

141

1 And that was forwarded to Clint Wellborn's
2 office. And I believe it eventually ended up at the
3 Attorney General's office for their review. That's when I
4 was contacted by Mr. Ortiz. So that's how I came to know

5 about it.

6 MR. FORCE: Mr. Chairman?

7 MR. PEREZ: Yes, sir.

8 MR. FORCE: Sergeant Groves, in the misconduct
9 report, this is how it states: It says, "About the time
10 that the officers were finishing the investigation, the
11 Respondent arrived at the scene and intentionally bumped a
12 pedestrian (victim)...."

13 And you stated -- is there an issue that you
14 intentionally hit him because it might -- the way you
15 painted it, it was like, "Well, I didn't know I hit him
16 and then I realized I hit him." Is there an intention
17 there or not?

18 MR. GROVES: Sir, to answer your question, no.
19 The allegation, which I have never seen -- or I don't know
20 who made the allegation, who actually filed the complaint,
21 but that's the way that was written, I guess given to the
22 LEA or to the district attorney's office. I don't know.
23 I've never seen those documents.

24 I'm not going to sit here and deliberate the mere
25 fact that my vehicle came in contact with him.

142

1 Intentionally -- to answer your question -- no, sir.

2 MR. FORCE: So when your vehicle bumper hit the
3 victim, it was -- you're saying it was a surprise? You
4 were surprised?

5 MR. GROVES: I was just as surprised as he was.

6 And I knew that I had touched him with the pushbar of my
7 vehicle by his reaction. It's one of those reactions when
8 you get out and you go, "Oh, sh--." You know, one of
9 those.

10 MR. FORCE: So your action of handcuffing the
11 victim immediately after you -- your bumper touched him,
12 was that based on prior incidences of his violent
13 behavior?

14 MR. GROVES: That was based on the information
15 that I had received over the radio that we had two males
16 possibly fighting in the parking lot. As I stated, the
17 way my car was positioned, I didn't know Moriarty PD was
18 on scene.

19 I didn't know they were even there. I thought I
20 was by myself. So knowing Mr. Bramlet's past history in
21 dealing with him, sir, yes, sir. I asked him in a loud,
22 firm voice, "Billy, come back to the back of my car." And
23 he complied with my request immediately, because I have a
24 pretty good rapport with this individual.

25 He immediately complied with all my requests, as

143

1 he always does. I explained to him I needed to put him in
2 here until I could figure out what was going on. That's
3 when I approached the other male without the shirt on that
4 I actually had been given the description of standing by
5 my left door of the convertible green vehicle.

6 That's when I made contact with Mr. Duprane -- or

7 Mr. Dushay, excuse me, and just happened to look to my
8 right and saw the two Moriarty Police Department units and
9 went, "Oh. I didn't even know they were here."

10 MR. FORCE: Looking back, what lessons have you
11 gotten out of this whole escapade?

12 MR. GROVES: Sir, I've been involved in several
13 situations. I've always been one to tell the truth. If I
14 mess up, if I screwed up, I'll admit to it and say, "Yes,
15 sir, I did that." I like to learn from my mistakes.

16 I think when I pull into the parking lot on the
17 next fight -- if I get that opportunity to do that
18 again -- a little bit slower, a little bit more cautious,
19 even a little bit more aware of my surroundings.

20 I don't believe there's an issue of not telling
21 the truth or anything like that. I don't want that to be
22 because that's more important to me than the job or
23 anything else is the fact that I always tell the truth.

24 I was brought up that way. And I've instilled
25 that into my children as well. It's been the hardest

144

1 deal, the whole incident. I have an 11-year-old son. And
2 he just thinks that the sun rises and sets with me.

3 And I've been very honest with him about this
4 whole incident. It's been very difficult. Matter of
5 fact, when I had my informal hearing with Mr. Ortiz, I got
6 pretty emotional about that because what he thinks does
7 mean a lot. And what you guys think mean a lot too. And

8 to say I'm disappointed in myself for having to stand in
9 front of you today is an understatement.

10 MR. PEREZ: When you arrived on scene, did you
11 think that Billy was one of the fighters?

12 MR. GROVES: Yes, sir, I did. I've dealt with
13 him so much over the past five, six years, sir. He's
14 always involved in every situation normally when we
15 respond to a fight in progress over around his residence.

16 I have personally picked him up in my personal
17 vehicle and given him rides. He always goes to the
18 package liquor store and starts getting tanked up.

19 MR. PEREZ: Thank you. Any other questions?

20 MR. SHANDLER: Could I ask a question?

21 MR. PEREZ: Yes.

22 MR. SHANDLER: So what's your response,
23 Mr. Ortiz? What did he do wrong?

24 MR. ORTIZ: We have the video there also. He
25 bumped him with the vehicle and then the statement that he

145

1 made that "I know you guys are tired of dealing with
2 Billy. I should have run him over."

3 I looked at the video in the meeting with him. I
4 felt that he was joking after I learned of his demeanor
5 and the person he is. Moriarty submitted it to us. I
6 felt that being a supervisor we should take some action
7 because what he did was wrong.

8 However, you see I lowered it to a 21-day. And I

9 think it would be very beneficial to the Academy students
10 to hear from Mr. Groves. I think he would have an impact
11 on them for wrongdoing. And that's why I've given him as
12 one of the sanctions as addressing the cadet class.

13 MR. SHANDLER: So what's going to happen if the
14 Board accepts this, I guess I could ask the sheriff, is he
15 going to be on desk duty for the next 21 days or at leave
16 or doing court security?

17 MR. ORTIZ: Yes. Yes. That's up to the
18 sheriff. We've discussed that he would have to remain
19 inside the office or court security but could not work out
20 in uniform carrying a gun and a badge.

21 MR. SHANDLER: Is that your understanding,
22 Sheriff?

23 MR. GIBSON: Sheriff Gibson with Torrance County.
24 Sir, I cannot put Sergeant Groves on court security, but
25 he is going to stay with our department. Court security,

146

1 as you guys have seen in the news, is very dangerous now.
2 I have to have armed guards in my courts. There will be a
3 job for him regardless.

4 And if I could I'd like to say just a couple
5 things to the Board if I may.

6 MR. PEREZ: Would you come forward, please.

7 MR. GROVES: May I be excused?

8 MR. PEREZ: Yes.

9 MR. GIBSON: I want to clarify, Chairman, Board.

10 I keep hearing that this fight was over, the sense that it
11 was over. It was far from over. When my sergeant arrived
12 on scene -- and the Moriarty Police Department video will
13 clearly state -- the only action Moriarty Police
14 Department had taken is receiving driver's licenses from
15 two of the subjects.

16 There was no talking, no investigation, nothing
17 had occurred until my sergeant arrived, secured the scene,
18 made sure that officers or civilians were no longer in
19 danger. So this investigation was not complete.

20 During the duration of the video, which I shared
21 with Mr. Ortiz, the action that you see my sergeant take
22 is appropriate police action. Mr. Bramlet's flaring his
23 arms and stuff when he pulls in, and there are no cops
24 present.

25 The first officer that arrived on scene got

147

1 licenses, went back to his car, and stayed there. He did
2 not come back on scene until almost the completion of this
3 incident. So I really want to clarify that fact that this
4 was not over. This was just in the beginning. And I just
5 want to make that clear.

6 MR. FORCE: Mr. Chairman. Sheriff, the
7 recommendation is 21 days of suspension, one-year
8 probation, ethics training, and address the Academy cadet
9 class to educate the cadets about misconduct. What is
10 your thoughts, feelings about that recommendation? Do you

11 have --

12 MR. GIBSON: I do not like it, sir. I like the
13 educational process. I think Sergeant Groves is a
14 wonderful instructor. He can teach. You know, with this
15 incident we learn something every time.

16 I think that 21 days is too much. I think he
17 deployed police vehicle tactics. I think he got too
18 close. He bumped the gentleman. He never denied that. I
19 started to take action. Once Mr. Ortiz notified me, AG,
20 everyone is involved, I'm thinking why am I going to
21 hammer my guy when other entities are already involved.

22 I think the one-year probation is too much.
23 Ethics, we all need ethics. I have no issues with that.
24 And I think teaching our academy, absolutely. Walk in
25 there and tell them, you know, when you guys pull into a

148

1 parking lot, be aware. Know your surroundings. Be
2 careful. We don't want to hurt our citizens that we
3 protect everyday.

4 I think 21 days is too harsh. Absolutely do. I
5 don't think there should be a suspension of a
6 certification. I don't think a probation would be
7 significant. But I think sharing his experience in
8 educating other law enforcement, absolutely.

9 And on that note -- I put it into me -- I've got
10 12 deputies, including my undersheriff and myself. You
11 know, if I lose him, I don't just lose an officer for a

12 while. I lose part of my department that is very critical
13 to my department.

14 So I don't want to lose a man. If I felt that it
15 was an intentional, that he wasn't trying to decompress,
16 which we do with my fellow law enforcement everyday, I can
17 tell -- I told Director Ortiz several times, I pulled and
18 deployed my R15, took the safety off, depressed the
19 trigger, was ready to do my job, and then walked up to the
20 undersheriff after the individual surrendered and said,
21 "Well, I was about to put two in his chest. You know, I
22 was pulling the slack out of the trigger."

23 I'm decompressing. I'm not trying to say I'm
24 going to kill this guy. And, you know, we've all been in
25 that position. We try to do that with our family, with

149

1 our brothers. And you would hope that your brothers would
2 support that decision and not try to hang you for it.

3 And I really feel that's what the incident was
4 here. Sergeant Groves is a great deputy. I need him
5 there.

6 MR. COON: Was the video shot from a Moriarty
7 work camera?

8 MR. GILBERT: Yes, sir. And I do have the video
9 in the vehicle in PowerPoint if you all would like to see
10 it. I don't have an issue with that.

11 MR. ORTIZ: It's loaded on the laptop.

12 MR. COON: I have a real quick question. If he's

13 shooting video at you, you still couldn't see his car?

14 MR. GROVES: No, sir. The way that the parking
15 lot had vehicles in it, sir, they were pulled way back up
16 to the north and west of the entrance of the package
17 liquor. And I actually came in from the east and was
18 quite a bit east of their location.

19 My main focus wasn't through that area when I
20 arrived in the parking lot. I could see that a shirtless
21 subject that I was given information over the radio was
22 standing by the door of the vehicle. So I had a pretty
23 good idea. But that's where my issue was right at that
24 time.

25 MR. COON: I'd like to see the video.

150

1 MR. ORTIZ: I don't know if you want to watch it
2 in closed session or now.

3 MR. PEREZ: We can take a look at that during the
4 closed session.

5 MR. SHANDLER: Why not do it in the open
6 session. That way if you have questions.

7 MR. NESS: Mr. Chairman, can I add something?

8 MR. PEREZ: Go ahead, Mr. Ness.

9 MR. NESS: First of all, I know this individual.
10 I stand by him 100 percent. I had a conversation with our
11 district attorney yesterday. And he told me to reiterate
12 to you people that in his opinion he's seen the video;
13 he's seen the reports.

14 This was an accident, nothing more and nothing
15 less. And he wanted you people to know that. And, again,
16 we stand behind this young man. It's one of the things --
17 I have some problems with being videotaped. I'd hate to
18 think every time I answered a call I got a videotape from
19 another officer is beyond me. That's my opinion. Thank
20 you.

21 MR. PEREZ: Thank you, Mr. Ness.

22 (At this time, the video was played and the
23 following proceedings were had while the video played:)

24 MR. GROVES: Mr. Chairman, may I approach the
25 podium in case you have any questions?

151

1 MR. PEREZ: Yes, sir. Did you want to comment?

2 MR. GROVES: I haven't seen the video, sir.

3 MR. PEREZ: Oh, okay.

4 MR. GIBSON: I've seen the video about a hundred
5 times. I can comment if you'd like. The scenario you're
6 seeing right now is the Moriarty police officer was out of
7 his jurisdiction at the Moriarty airport. Once the
8 incident took place, now he's driving to Moriarty on
9 Martinez Road. It comes from east of the City of Moriarty
10 right now. The intersection that he's approaching now is
11 going to be Martinez Road and Highway 41, State Road 41.

12 MR. FORCE: This is a Moriarty PD unit, so the
13 Moriarty police department handed the tape over to your
14 office?

15 MR. GIBSON: No. They turned it into the DA's
16 office. I was notified two weeks later of the incident,
17 and then it went to the AG from there.

18 MR. ORTIZ: The Moriarty Police Department filed
19 the misconduct and forwarded it to us.

20 MR. GIBSON: Now they are turning on
21 New Mexico 333, or Old Highway 66, off of State Road 41.
22 He'll be pulling into Blackie's within a few seconds, so.

23 MS. ERDMAN: I have copies of the reports that
24 were turned in by the Moriarty police officers that were
25 involved. I can read them if you'd like.

152

1 MR. GIBSON: You'll see the first unit that's on
2 scene right there. He had just retrieved the license and
3 he is walking back. And if you want me to stop,
4 Mr. Chairman, let me know. The white T-shirt is
5 Mr. Bramlet. The two female juveniles are by the van.
6 There's another female in the van.

7 Now that's a second row of parking.

8 MR. ORTIZ: His car will come from the left side
9 of the screen where he makes contact with him in the back
10 where he buckles his knee. There it is.

11 MR. GROVES: That's when I asked him to come to
12 the back of the car.

13 MR. GIBSON: That's one of the Moriarty police
14 officers. And this is actually his dash cam.

15 MR. GROVES: That's me walking into the front.

16 That's the subject.

17 MR. WHITE: I'm Sheriff White. I just want to
18 make the statement that the voice you hear is not of
19 Sergeant Groves. It's of a Moriarty police officer.

20 MR. PEREZ: Thank you.

21 MR. FORCE: Mr. Chairman, is there any other
22 reason that we need to or go through because I think the
23 incident here is striking the pedestrian.

24 MS. ERDMAN: Also his statement.

25 MR. PEREZ: He said he's going to take him out of

153

1 the car. I want to see that.

2 MR. FORCE: Thank you. Yeah, you're right.

3 MR. ORTIZ: When he does the statement, it looks
4 like he's doing it in a joking manner, putting his hand on
5 the officer's back.

6 MR. GROVES: May I ask you a question, sir? Is
7 this the original video you were sent?

8 MR. ORTIZ: Yes.

9 MR. GIBSON: No. This is the video that I gave
10 Director Ortiz. The original one was edited.

11 MR. ORTIZ: I have two of them in the file.

12 MR. GROVES: There's Mr. Bramlet.

13 If I may. You can see the investigation still
14 ongoing. I mean, we were at the very beginning when all
15 the incident occurred, so.

16 MR. ORTIZ: Now he's going to make that

17 statement. He'll approach the officer here on the right.

18 MR. GROVES: Right. Officer Kaplan walks up.

19 That's why you see me walking back.

20 MR. GIBSON: Now, that's Officer Casaus with
21 Moriarty Police Department. He's just now coming back
22 into the scenario, so. Right here is the statement.

23 MR. PANTEAH: I was asking if there was anything
24 on the left side of the patrol car that has the dash cam,
25 whether there's other vehicles parked or is there a

154

1 building.

2 (At this time, the video concluded.)

3 MR. GIBSON: If I could, I can draw you just a
4 quick diagram of the Blackie's parking lot.

5 MR. PANTEAH: I'd like to see it.

6 MR. GIBSON: This is actually Blackie's.
7 Highway 66 on top here. When the officer pulled in and
8 parked his unit here, you have a row of cars that parks in
9 the front. You have a secondary row that parks here, and
10 then the final row here. That's where your parking at
11 Blackie's is.

12 The sergeant, he basically approached from this
13 direction. And as you've seen in the video, prior to the
14 sergeant coming in, you see a silver car pulling out of
15 that parking area. So that would tell me just from
16 watching the video that we had a pretty busy day that
17 evening.

18 Blackie's is one of our -- I guess one of our
19 best establishments in Moriarty. It's a very nice
20 restaurant. They have a very nice bar there and package
21 liquor. So if you have all the front parking spots
22 loaded, which you saw in the video, they were having a
23 busy day.

24 They have Tuesday pool tournaments, Wednesday
25 karaoke, Thursday they have a special. And then Friday

155

1 and Saturday, of course, it's an establishment they are
2 all wanting to frequent.

3 MR. PEREZ: Thank you very much. We appreciate
4 having a lot of information like this. Again, we take
5 into consideration that we are all law enforcement here.
6 And two of us are former law enforcement officers.

7 And one thing that people don't understand from
8 TV is that officers have emotions and your heart gets
9 pounding when you go into unknown situations. So that has
10 to be factored in.

11 Deliberate abuse and things like that are
12 different; but then again you have to -- you have to try
13 to look at what the officer is seeing from his point of
14 view and what -- how he was thinking at the time. And
15 that's how we approach these things.

16 Any further questions or statements to be made?
17 Thank you very much. Next.

18 MR. SHANDLER: Can I make a recommendation? I

19 see that when an officer is here that's some of your most
20 productive time. So I'm curious if there's other officers
21 here, maybe we can skip to those to make sure that they
22 have a fair opportunity to present their --

23 MR. PEREZ: Good point. Yes. Are there any
24 other officers here who would -- do you want to speak?
25 Both of you? Your name first, sir.

156

1 MR. SANDOVAL: My name is Michael Sandoval.

2 MR. ORTIZ: We'll go with Michael Sandoval next.

3 MR. PEREZ: What number is he?

4 MR. ORTIZ: He's 37.

5 ITEM # 37: MICHAEL SANDOVAL

6 MR. SHANDLER: Let's start out with the
7 prosecutor laying out the case and then Officer Sandoval
8 will have an opportunity --

9 MR. PEREZ: If you'll sit there and wait.
10 Michael Sandoval.

11 MS. ERDMAN: I just need to find the file.
12 Officer Sandoval is accused of forging his supervisor's
13 name on a form that is required to be filled out at the
14 jail. It's my understanding that Michael Sandoval checked
15 someone into the jail and then put the initials of his
16 supervisor where his supervisor was supposed to initial.

17 When questioned about it, the respondent did not
18 tell his supervisor the truth. He later admitted that he
19 had forged his sergeant's signature on the criminal

20 complaint, and administrative investigation affirmed the
21 allegation. He was suspended for his -- from his
22 department for 160 hours. He's currently with APD.

23 And you're active; is that correct?

24 MR. SANDOVAL: Yes, ma'am.

25 MS. ERDMAN: Thank you. And during the informal

157

1 hearing, the respondent accepted responsibility for his
2 actions, apologized, and was remorseful. He also
3 explained that this was a common practice followed by most
4 of the officers, that their supervisors had given them
5 permission to put their initials when they sign someone
6 into jail.

7 But that -- and then they would call and confirm
8 it over the phone -- or call and confirm it over the phone
9 and then put their supervisor's initial after they made
10 that phone call. But in this particular incident, it was
11 a different supervisor who did not follow that same
12 procedure.

13 The respondent also says that he's changed his
14 practice and reads the criminal complaint verbatim to his
15 supervisor, and he writes that he's going to do telephonic
16 approval. The Director's recommendation is a 14-day
17 suspension, six-months probation, ethics training, and
18 eight hours of community service.

19 MR. SHANDLER: Let me anticipate a question. Did
20 you say that he lied to his supervisor about the event

21 later on? Or did I mishear you?

22 MS. ERDMAN: The information that I have is that
23 when he was first questioned about this, he denies that he
24 had written his supervisor's initials.

25 MR. PEREZ: And then later admitted.

158

1 MS. ERDMAN: And then later admitted. And it's
2 my understanding that those two events were in fairly
3 close proximity. At first he said, "No, I didn't." And
4 then very shortly thereafter he says, "Well, I really did,
5 but here's why. This is what we normally do. And when
6 this other supervisor asked me about it, I got nervous and
7 scared." And then he did come forward.

8 MR. PEREZ: But he came forward.

9 MR. ORTIZ: This is consistent with John Armijo,
10 an APD officer at the Las Vegas board meeting. Similar
11 situation where he was questioned by a supervisor
12 regarding speeding, did not tell the truth, and then later
13 came forward with the truth.

14 So just to remain consistent, I offered the
15 14-day with the same sanctions.

16 MR. PEREZ: We put a lot of emphasis against
17 lying. But, of course, being humans -- and if you say,
18 you catch somebody, "Is that your wife?" Normal reaction
19 is "yes" and it might not be. That's a human reaction.

20 But then when you have some time to think about
21 it, then if you still continue it, that's when we start

22 getting into the problems. So there is -- we understand

23 this. Would you please take the stand.

24 MR. SANDOVAL: Members of Board, my name is

25 Michael Sandoval. First of all, I want to thank you guys,

159

1 everybody here, for giving me the opportunity to come here

2 and speak on my behalf. First of all, I did. I lied to

3 the supervisor. I made a horrible mistake. I did

4 something that is not me. That is not how I raised my

5 family. And that is not how I act.

6 There's nothing that any of you guys could say or

7 anyone could say that would diminish that, the way I feel

8 about myself. And I apologize for that. I apologize

9 again and again to my law enforcement community and my

10 supervisors and my coworkers.

11 There is -- everything she said is true. There

12 are some other circumstances that were involved in this.

13 Of course, I'm a lateral officer. I lateraled to APD from

14 Alb- -- or, I'm sorry, from Los Lunas Police Department.

15 That was my first day with my first day riding

16 alone in my vehicle that this happened. We didn't have

17 enough vehicles, so when I got out training I did ride

18 with somebody.

19 MR. PEREZ: If you could just slow down a little

20 bit.

21 MR. SANDOVAL: I'm sorry.

22 When I got out of training, of course, I got my

23 spot in the Foothills Area, of the area command. I didn't
24 have a vehicle as of yet. I rode with somebody for about
25 two and a half to three weeks. That's when my sergeant

160

1 says, "Hey, guys, you guys are all experienced officers.
2 I do not have to read your criminal complaints. I trust
3 you guys. All of you have been officers for a number of
4 years. Just put down telephonically approved."

5 And that's how I made all of my arrests. Me and
6 the other officers, we'd arrest somebody, we'd take them
7 to jail. We'd put -- we don't sign his name. We put
8 telephonic approved. Pretty close. But that's what I
9 did.

10 That day in question, my first day with my unit,
11 I did respond to a domestic violence, where I arrested the
12 man. I took him to jail. And instead of calling a
13 supervisor, who was -- my supervisor took off. It was
14 another supervisor -- I put down telephonic approved.

15 And I put his name down. And when he called me
16 on it, he called me into his office and says, "Hey, who
17 approved your criminal complaint?" I lied to him. I
18 panicked. "Oh, my gosh, the first day here." I panicked.
19 I did; I lied to him.

20 I said, "You know what? I thought my partner
21 called you and asked you." Of course, he didn't. And he
22 threw the flag right away. He told me, "No. You know
23 what? It doesn't sound like the story. Don't lie to me.

24 Don't make me call your partner up, whoever he is, and
25 verify this."

161

1 And I told him during the same meeting, "You know
2 what? I'm sorry. I made a mistake. I'm sorry I did
3 that." Of course, then we went to IA. I told IA the
4 exact same story. I didn't lie to IA at all. I told them
5 I did lie to him.

6 Untruthfulness in our department -- of course, we
7 really, really -- APD or any law enforcement agency
8 really, really values truthfulness. I made a mistake.
9 I'm still dealing with this mistake. And that happened in
10 November of last year.

11 MR. PEREZ: Anything more?

12 MR. SANDOVAL: No.

13 MR. COON: Have you already done your 160-hours
14 suspension?

15 MR. SANDOVAL: Yes, sir. It was 120. They
16 suspended some of it.

17 MS. ERDMAN: It was 160 with 40 in abeyance.

18 MR. SANDOVAL: So that was -- I want to say I
19 served that back in February.

20 MR. PEREZ: What did they come out in days? How
21 long?

22 MR. SANDOVAL: It was three weeks, sir.

23 MR. PEREZ: You were suspended?

24 MR. SANDOVAL: Suspended. Three weeks.

25 MR. PEREZ: No pay?

162

1 MR. SANDOVAL: No pay.

2 MR. COON: Mr. Sandoval, when I was a patrolman
3 with the State Police, now I've got a son that's a
4 patrolman, a policeman, and it was instilled with us with
5 the State Police through Chief Denko and Chief Vigil and
6 the list goes on, you know, if you do something wrong,
7 take it like a man. You lie to me, I'll fire you.

8 And I've instilled that into my son. I don't
9 care what the punishment is going to be, you can take
10 that; but you can't be labeled a liar for the rest of your
11 life. And that's the rule we live by at my household.

12 And I always tell my kids growing up, I know the
13 truth. I'm just going to see if you lied to me. If
14 you've lied to me, now tell me the truth. And they do.
15 But, you know, that one-time lying kind of brands you
16 right there.

17 You would have probably got a reprimand when in
18 fact if you had told him the truth, that one little lie
19 cost you three weeks of your pay, maybe another 14 here.

20 MR. SANDOVAL: Yes, sir. And, again, there's
21 nothing that I can say because I'm eating myself up on
22 this. That's not the way I raised my family. That is not
23 the way I conduct business at all. I value truthfulness.
24 Over every thing else, I value it.

25 And what made me do that, I couldn't tell you. I

1 wish I had an excuse. I don't. I lied to them. And I
2 feel terrible about it.

3 MR. PEREZ: Anything else?

4 MR. SANDOVAL: No, sir.

5 MR. HOLMES: I might add something here. That --
6 it's an unfortunate incident that occurred, but probably
7 that would never have been discovered other than the
8 prisoner he took into custody kept calling the victim, and
9 nobody knew that the guy was in jail.

10 That's how he was found out that when they
11 started checking that the guy had been in jail, and that
12 the sergeant, he had signed that. But it was a busy
13 night, a busy day. And they were really busy, and he just
14 decided he was going to put the -- initial that report
15 instead of the sergeant, so.

16 But he was very -- came forward and was very
17 truthful about it when he was interviewed in the informal
18 hearing.

19 MR. FORCE: Mr. Chairman. Officer Sandoval,
20 what -- whatever the Board takes, whatever action, whether
21 we approve of the Director's recommendation or not, one of
22 the things I find very enlightening to the cadets and to
23 new officers in the field is to hear from officers such as
24 yourself that stand up to the plate, admit their
25 wrongdoing, and then are able to pass on a baton of legacy

1 to the other younger officers of the cautionaries that
2 should be advised; that the certification of the New
3 Mexico police officer is very fragile. I don't think many
4 officers understand that.

5 One of the things I would recommend whatever
6 results happen here is to offer yourself to the APD
7 Academy, to go in and talk to them, talk to cadets about
8 the disciplinary process, what goes on there. I don't
9 think many of them are aware of that.

10 MR. SANDOVAL: I would be gladly -- if Mr. Ortiz
11 invites me up there, I would gladly give a class and share
12 my experiences. Of course, there are some other stuff he
13 did during our stipulated agreement. It was eight hours
14 community service and some ethics class.

15 And I've already did the eight hours community
16 service. And I'm looking forward to the ethics class.
17 And I would look forward to sharing my experience, my
18 misgivings, to the Academy class, show them, "Hey,
19 something, a small lie; whether me talking to you and
20 thirty seconds later I admit it to you, it doesn't matter.
21 These are the consequences that happen when you lie."

22 MR. PEREZ: Thank you, sir. Next.

23 MS. ERDMAN: Did we have someone else?

24 MR. PEREZ: Your name, please.

25 MR. GUERRA: My name is Jesus Guerra.

2 MR. ORTIZ: And this is an appeal on his
3 revocation from 2005. And it's going to be Tab No. 38,
4 next one over.

5 MR. PEREZ: If you would sit down, please, sir,
6 for a moment.

7 MR. GUERRA: Yes, sir.

8 MS. ERDMAN: And I don't really have anything to
9 present on this matter. The prosecution of Mr. Guerra
10 happened long before I was with the Attorney General's
11 Office. I think Director Ortiz has provided you with the
12 information. Mr. Guerra is making his own appeal. And
13 the prosecution is not taking a position at this time.

14 MR. ORTIZ: Have you had a chance to review the
15 report?

16 MR. PEREZ: Yes, I have.

17 MR. COON: Yeah, I read them.

18 MR. SHANDLER: I don't want to get too much into
19 the report. Let's talk about the process because it
20 sounds like the board in 2005 issued an order of default.
21 And now 36 months later there's a request to reopen -- to
22 start the process up.

23 So what do you know, Mr. Ortiz, about that order
24 and what address was sent to, and why now 36 months later
25 is there a question to kind of reopen the case.

1 MR. ORTIZ: It was a revocation by default. He
2 did not respond back in 2005 when it was brought to the

3 board. I have the order of revocation by the board. We
4 received a call from Mr. Guerra seeking to get back into
5 law enforcement.

6 He said he wasn't even aware of the action taken
7 back in 2005. And he wanted the opportunity to come
8 before the Board to see if he could be reactivated from
9 the Board. I told him -- he sent a letter requesting to
10 be placed on the agenda, which I granted to let him come
11 before you and state his case.

12 MR. PEREZ: We know what we have done, so I
13 suggest we hear him and then discuss the matter.

14 MR. SHANDLER: Just one more thought. Do you
15 know what address you sent the January '05 final order
16 to?

17 MS. VIGIL: Did we bring his file?

18 MR. ORTIZ: Yes, his file is in there. I wasn't
19 there at the time, but we can look through the file
20 there. I'm sure that they -- Mr. Holmes and the previous
21 director tried to contact him at the right address.

22 MR. HOLMES: It was sent on December 10th, 2004
23 and then November 2nd, 2004 and November 24th, 2004.

24 MR. SHANDLER: What address were those sent to?

25 MR. HOLMES: They were sent to 4939 El Camino

1 Rael?

2 MR. GUERRA: Yes, sir.

3 MR. HOLMES: And then to South Pearl #2. Two of

4 them to El Camino Rael, okay? And the other one went to
5 the other address.

6 MR. SHANDLER: Does your file indicate where you
7 got those addresses from?

8 MR. HOLMES: Normally -- I have to look in here.
9 But normally we follow the same procedure we follow all
10 the time, driver's license check and all this kind of
11 thing.

12 MR. SHANDLER: How did you get an address out of
13 state? Was there an out-of-state address? No? They were
14 both from the same -- both in New Mexico. One's in
15 Deming. One is in Las Cruces.

16 So those are the facts from the Board's side.
17 Let's hear from the respondent why these letters didn't
18 get to you.

19 MR. GUERRA: Again, my name is Jesus Guerra.

20 MR. PEREZ: Please speak up, sir.

21 MR. GUERRA: I'd like to thank the Board for
22 allowing me to be placed on the agenda today. As far as
23 the letters, the address at 4939 El Camino Rael was an
24 address I didn't really live there. I was staying there
25 with a girlfriend of mine at the time, a girl that I dated

168

1 for about three years.

2 I was staying with her temporarily. When I got
3 my license, we were talking about maybe me moving in with
4 her. So I went ahead and used that address. I ended up

5 not moving in with her.

6 I didn't even know that my certification had been
7 revoked until I called a few months ago to find out the
8 status. So if the mail was sent there, I had no way of
9 getting it. She never forwarded anything to me.

10 And the address on Pearl Street in Deming, I left
11 Deming right after an incident that I was involved in.
12 From one day to the next, I just left. And, again, I
13 didn't leave any forwarding address there with the post
14 office. So if something was sent there, again, I did not
15 receive it.

16 And the mistake that I made was using the 4939
17 address on my driver's license when I actually never moved
18 into that location. And I should have changed my license
19 immediately when I didn't move there.

20 MR. FORCE: Mr. Chairman?

21 MR. PEREZ: Continue. Do you have something more
22 to say?

23 MR. GUERRA: I'm not sure how deep you guys want
24 me to get into. There was a -- the reason --

25 MR. SHANDLER: Right now I just want to focus on

169

1 process. I don't want to talk about substance.

2 MR. PEREZ: Anything more on that, about where
3 you were located.

4 MR. GUERRA: No, sir.

5 MR. FORCE: Mr. Holmes, did any of the notices,

6 whether it was a notice of contemplated action, notice of
7 hearing, final decision, did any of those in your records
8 return back undelivered?

9 MR. HOLMES: Well, we're trying to get this thing
10 here going back to this report. And here's a report that
11 I myself signed and then I sent to -- to the sheriff, I
12 believe. "New Mexico Law Enforcement Academy has
13 attempted to deliver by certified mail some legal
14 documents to one Jesus Guerra of 4939 El Camino Rael in
15 Las Cruces, New Mexico. The certified mail had been
16 returned, and we are requesting that an officer from your
17 department check to see if Jesus Guerra still resides at
18 that address. If he does not, please find out if he left
19 a forwarding address."

20 And then "Thank you for your assistance." And
21 then I have a response here from sheriff -- Deputy Sheriff
22 Reyes responded to 4939 El Camino Rael. He advised that
23 he was unable to locate that address. He advised that it
24 seems to be a bad address.

25 We did run a motor vehicle license check, which

170

1 shows that address, 4939 El Camino Rael, Las Cruces, New
2 Mexico. So we did do -- order a driver's license check.

3 And that was as far as we had to go as far as the
4 board -- advisement for the board at that time.

5 MS. ERDMAN: Also in -- on March 4th of 2005, a
6 letter sent to 4939 El Camino Rael, in this envelope is

7 the letter notifying Mr. Guerra of his order of default
8 revocation. And it says, "This mail is being returned
9 because there is no such street number."

10 MR. SHANDLER: Let me ask Mr. Ortiz. Aren't
11 there annual certification requirements? And do we have
12 record of what -- or I could ask you, sir, since 2000, are
13 you still act- -- I think I'm not saying my question, but
14 I think you know what I'm saying. No you don't?

15 Don't you have to remain on training?

16 MR. ORTIZ: Well, by state statute they have to
17 change their driver's licenses within ten days.

18 MR. SHANDLER: Well, I'm not focused on that.
19 I'm focused on --

20 MR. ORTIZ: As far as the training on the
21 registry, they have to know -- there is some language in
22 there that they have to keep the Academy advised of their
23 current address.

24 MR. COON: I think what he's asking is: Do you
25 have to keep your training -- get your 40 hours for every

171

1 year -- or biennium training.

2 MR. ORTIZ: Biennium training, yes.

3 MR. COON: Is that what you said?

4 MR. SHANDLER: That is. And have you been doing
5 that training?

6 MR. GUERRA: No, sir. Part of the reason I'm
7 asking for my -- for the revocation to be not necessarily

8 reinstated as actively certified, but -- so that I have
9 the opportunity to if I get hired with another agency to
10 go through the police academy again.

11 MR. ORTIZ: Because he's been out of service for
12 eight years, so he would be required to go to the full
13 basic.

14 MR. FORCE: Zack, help me understand this. The
15 question before the Board -- is the question here before
16 the Board to allow Mr. Guerra to go back through the
17 hearing process, or is it to consider the disciplinary
18 matter itself as an amended from the original action of
19 revocation.

20 MR. SHANDLER: The request here is to -- I can't
21 think of the right verb, but the Board has done it
22 before -- to take back the revocation by default, which
23 the party has now made himself present, and to restart the
24 notice of contemplated action process.

25 Generally, I advise you to do that because the

172

1 Board has lost in court, as judges have zero sympathy for
2 boards and commissions when they do default and then the
3 person shows up that they want to participate in the
4 discipline.

5 The tougher question this time is I don't think
6 we've ever had one three years out. So that's why I'm
7 trying to listen to more facts. And probably something
8 we'll have to discuss in the executive session.

9 MR. COON: If you've been gone five years and
10 your certificate -- your certification has been pulled,
11 can you reapply for the Academy, go through the 20-week
12 Academy and get another certification? Or does that first
13 certification being pulled means you're done the rest of
14 your life?

15 MR. ORTIZ: They are issued that one
16 certification for a lifetime, is my recollection. Being
17 that he has that certification and being that the board
18 revoked it, the board would have to make a decision on
19 that revocation to allow him either to maintain the
20 revocation or to allow him into the basic academy or just
21 start the process all over --

22 MR. COON: It's kind of like a driver's license.
23 You can be revoked with your driver's license for three
24 years, but then you can apply for a new one. It's not a
25 life ban.

173

1 What I'm asking is if he went back -- went to
2 some other police department as an uncertified and went
3 through the Academy again, would he be certified after
4 attending the Academy for 20-weeks?

5 MR. FORCE: Under the rules, once the board takes
6 a revocation, it's a lifetime revocation. At this point,
7 up to -- and Mr. Zack, correct me if I'm wrong. It's my
8 understanding up to this point that Mr. Guerra reappears
9 at this point, there is a -- he is revoked, his

10 certification is revoked; and he would not have the
11 ability to go back through the Academy.

12 However, I think what the question is that I'm
13 hearing from Mr. Guerra is whether we would reopen the
14 matter, first.

15 And, second, then have a consideration I guess
16 somewhere down the line as to whether there would be an
17 agreement that he could attend the cert by waiver or go
18 through the full academy, which I think under the regs he
19 has to go through the full academy because of the time
20 lapse.

21 Does that give direction? Would you agree with
22 that, Zack?

23 MR. SHANDLER: Mr. Chairman, Mr. Force, I haven't
24 done all the research about whether -- if someone is
25 revoked, whether it's that number that's revoked or that

174

1 that's a person and whether that person after five years
2 could reapply under a new number would have to show
3 rehabilitation.

4 So I'd have to research the issue more. When
5 does the APD Academy start? Is that the Academy you're
6 looking to attend?

7 MR. GUERRA: Las Cruces.

8 MR. SHANDLER: When does that start?

9 MR. GUERRA: Actually, I believe in January. And
10 I don't think I'll be able to get into that one, so I'd

11 have to look into Dona Ana County's next Academy or look
12 forward to the Las Cruces Police, their following
13 academy.

14 MR. SHANDLER: So there's a couple academies that
15 will happen after December 7th?

16 MR. GUERRA: Yes, sir.

17 MR. PEREZ: Basically then I understand you're
18 asking us to undo what we did before?

19 MR. GUERRA: Yes, sir.

20 MR. PEREZ: But you did not comply before, and
21 you defaulted. You did not come forward to answer, to
22 face the charges. We then took legal action -- not legal
23 action, but our administrative action; closed the door.
24 Now you want us to open the door. For what reason?

25 MR. GUERRA: Well, sir, I realize that it was my

175

1 fault that because of the address, but I didn't know that
2 my certification was being revoked.

3 MR. PEREZ: I would think that's rather important
4 to you. You should know that everyday. And if it's that
5 important to you, you would follow up. Normally, I think
6 that's the responsible thing to do. And what's -- how are
7 you different that if we do this for you, then why can't
8 every other officer that we have gone through this process
9 come and say, "Oh, I changed my mind. I want you to do it
10 all over again."

11 Why should we do this for you? Explain where you

12 were all that time. Why was that break? Why didn't you
13 follow up?

14 MR. GUERRA: Well, sir, when I left law
15 enforcement, which was actually back in 2000, it was due
16 to an incident that I was involved in, a domestic violence
17 incident. And in my mind I had pretty much given up all
18 hope, and I just thought that that was the end of any
19 possibility of ever being a police officer again.

20 And as hard as I try to put that behind me and
21 just accept that, I went back to college. I got a
22 degree. I worked in that field for a little while. But
23 I've just always been -- it's still inside of me wanting
24 to be a police officer. I can't, you know, get that out
25 of me.

176

1 And I guess I'm just doing everything I possibly
2 can until I know I can't go any farther and at least know
3 that I gave it my best shot. And I don't think I'm any
4 different than any of the other officers that may have
5 done this or I don't think I'm special. But I at least
6 felt that I should try.

7 MR. PEREZ: Any other questions? Mr. Holmes.

8 MR. HOLMES: Yes. It's come up before, as a
9 matter of fact. An officer had been revoked. Then based
10 on the advice of Zack, our attorney here -- Mr. Arbogast,
11 I believe is the name. And then he was given the
12 opportunity for the same reason he claimed I think he

13 never received the mail, that restart the whole process

14 again, which we did.

15 But at that point in time I asked the Board and

16 they asserted that as far as the revocation was voided at

17 that time, because I was concerned about him had already

18 been revoked and now he's -- and I asked the Board that

19 question. And yes. In other words, the certification was

20 reactivated.

21 And this man I think is asking the same thing,

22 except that his time is a lot more than the other person.

23 But I don't know if the time frame would make any

24 difference, but I think he's asking the same thing as what

25 the other person asked.

177

1 And if he would have gotten the mail and all

2 that, I think there would be no question about it. But

3 he's claiming he didn't receive the mail even though we

4 followed all the procedures.

5 MR. PEREZ: My question I think is rather

6 simple. It's a matter of logic, not anything else, that

7 if I default on my income tax and I say, "Well, you sent

8 me a letter, income tax people, but I moved," obligation

9 is on me. I'm not forgiven. I will go to prison for

10 that.

11 Saying, "Well, you didn't find me. You didn't

12 catch me. That's not me." And especially if you're a

13 police officer, we have responsibility that goes out. And

14 I think that goes to the character of a police officer.

15 We're not passive. I say "we." I was. But it's an

16 active job.

17 You don't wait to hear if somebody get hurts --

18 to get hurt. You're a police officer. That's an active

19 job. And I doubt -- I think there's something missing in

20 your character as to be a police officer to let something

21 like that happen and then three years later say, "Oh, I

22 changed my mind. I have a burning desire to be a police

23 officer."

24 Well, if I was a police department, I don't know

25 if I would have a burning desire to hire you with that in

178

1 your background. And you don't seem to be able to explain

2 why you didn't follow up. It's your responsibility to let

3 us know where you were.

4 You knew something was cooking. We were working

5 on it, and yet we have to run a fugitive investigation to

6 find you. And you say, "Well, I didn't know." Your

7 obligation is to find out.

8 So I don't know whether you'd want to continue

9 with this because that is my thinking. And you're going

10 to have to convince a police department to hire you, to

11 say, "Why do we want to hire you? What do you bring to

12 this department?" Do you see my point?

13 MR. GUERRA: Yes, sir.

14 MR. FORCE: One quick question. Mr. Guerra, were

15 you aware that the Academy Board was reviewing your
16 certification?

17 MR. GUERRA: No, sir.

18 MR. FORCE: So you had no idea that a misconduct
19 report had been filed; the Academy Board was reviewing
20 this matter? You had no idea, is that what you're telling
21 me?

22 MR. GUERRA: Yes, sir, I had no idea. The
23 incident that I was involved in occurred in I believe it
24 was May of 2000. Everything was ultimately dismissed.
25 And it wasn't -- my certification was revoked in 2005. So

179

1 five years later, it wasn't even in my mind that something
2 like that could be happening.

3 That's why when I called a few months ago and I
4 was told it was revoked, I was shocked. I didn't know.
5 And five years later I couldn't understand why it was
6 revoked five years after an incident.

7 MR. COON: Well, did you assume it was revoked
8 after this incident happened?

9 MR. GUERRA: No, sir.

10 MR. COON: What did you think was going to happen
11 after the hot water you got in with your department and
12 the domestic violence and it was adjudicated or whatever,
13 what do you think happens after that?

14 MR. GUERRA: I had just heard from other
15 officers -- I don't recall any type of formal training on

16 the procedures. But I had just heard that the
17 certification remained active for -- I heard different
18 years, five years, seven years. Now I know it's eight.

19 But I just assumed that it just remained active
20 up until that time expired, and that was it. That was
21 ignorance on my part. I honestly didn't know the
22 procedures.

23 MR. COON: Mr. Guerra, it's ignorance on your
24 part on that. The fact that you didn't change your
25 driver's license -- or you did change your driver's

180

1 license and didn't rechange it, obviously you moved off
2 Pearl Street and didn't forward anything.

3 MR. GUERRA: Correct.

4 MR. COON: All roads lead back to you.

5 MR. GUERRA: Yes, sir.

6 MR. COON: You're the one who dropped the ball on
7 this 100 percent.

8 MS. ERDMAN: Can I just state a couple of
9 things?

10 MR. FORCE: Let me say this rather quick.
11 Regardless of whether there was a revocation, Mr. Guerra,
12 you left law enforcement, according to record -- and I
13 need to know if this is your understanding. According to
14 the record, you resigned your office from the Deming
15 Police Department on May 15th of 2000; is that correct?

16 MR. GUERRA: Yes, sir.

17 MR. FORCE: So from May -- from May 15th, 2000
18 until today -- now we're in September 2008 -- at this
19 point, you would still -- reentering into law enforcement,
20 you would still have to go back through the Academy.
21 Agree?

22 MR. GUERRA: Yes, sir. Yes, sir.

23 MR. FORCE: And all you're asking is a
24 consideration that you -- that the revocation would not
25 hamper your application into an Academy.

181

1 MR. GUERRA: Correct. It's my understanding that
2 with my certification being revoked that I have no chance
3 to get into any Academy or -- I mean, you know, I'm done
4 with law enforcement.

5 MR. FORCE: Okay.

6 MR. ORTIZ: I would think that he would need to
7 be held accountable now that he has responded for the
8 incident that did occur.

9 MR. PEREZ: It's not resolved.

10 MR. ORTIZ: Yes, because it was a revocation by
11 default. Now that he's coming forward, let him present
12 his evidence, then he would still have to face the
13 sanctions imposed by the Board.

14 MR. PEREZ: I disagree. If he didn't answer, we
15 made a decision, a determination, which we can't keep the
16 thing pending. So I think he has to live with that.

17 MR. ORTIZ: I agree, Mr. Perez. And we have the

18 documents with their addresses. And we've made every
19 attempt to contact him, just like we did with
20 Mr. Arbogast.

21 MR. PEREZ: We're getting more and more of these
22 saying, "Oh, I want King's X now. I didn't feel good." I
23 think the obligation is on the officer, and they know
24 that. For us to be chasing them around and begging them
25 and trying to -- I think we're -- that's not a good sign.

182

1 MR. ORTIZ: Based on --

2 MR. PEREZ: This cost the State a lot of money
3 for all of us to be here. A lot of money to be here. And
4 this -- we can't be wasting the State's -- we have an
5 obligation to the State, to the people of New Mexico. To
6 make a decision and then to go undo it just because
7 somebody wants to, I disagree.

8 MR. ORTIZ: I do have a question, Mr. Holmes.
9 Those letters that were sent to him, were those in 2000 or
10 in 2005? Why was there a five-year delay from the time of
11 the incident until the time the Academy was taking action?
12 I think that's unexcusable for five years to go by.

13 And I know Mr. Holmes wasn't there in 2000. It's
14 not a fault of his. But that is something we're trying to
15 turn around and get these things done within six months.

16 MS. ERDMAN: That's what I wanted to say
17 earlier. I just wanted to be clear about the dates. And
18 then I have -- I have actually one more question for you.

19 You resigned from the Deming Police Department?

20 MR. GUERRA: Yes, ma'am.

21 MS. ERDMAN: For what reason?

22 MR. GUERRA: Because of the domestic violence
23 charge that I received.

24 MS. ERDMAN: Did your department start
25 disciplinary proceedings?

183

1 MR. GUERRA: No, ma'am. I believe I resigned
2 within a few days of the incident, maybe two days. I
3 assumed that I would probably be terminated, but I
4 resigned.

5 MR. PEREZ: Were you charged criminally?

6 MR. GUERRA: Yes, sir.

7 MR. PEREZ: Did you go to court?

8 MR. GUERRA: Yes, sir.

9 MR. PEREZ: Were you convicted?

10 MR. GUERRA: No, sir.

11 MR. PEREZ: What was the finding?

12 MR. GUERRA: It was dismissed.

13 MR. PEREZ: It was dismissed?

14 MR. GUERRA: Yes.

15 MR. FORCE: Mr. Chairman. Ms. Erdman, if this
16 matter was to go back through the process of a hearing --
17 this may put you on the spot -- I think we're talking
18 about an incident that's probably somewhere around eight
19 years old.

20 And what is the viability of the State in order
21 to bring witnesses, evidence, and information in in order
22 to effectively attend to the certification of Mr. Guerra
23 at this point?

24 MS. ERDMAN: Well, this file wasn't before me. I
25 mean, as I'm sitting here, I'm looking at this file today

184

1 for the first time.

2 So without having an opportunity to contact the
3 witnesses and those people involved, all I can say is
4 generally my experience is that in a case that's this old,
5 it's very difficult to get people to come forward, and
6 particularly in domestic violence situations, which is
7 difficult to get people to come forward in the first
8 place.

9 Once they've moved on and put it behind them for
10 this period of time, getting someone to testify can -- you
11 could even serve them with a subpoena, and they could come
12 and just refuse to speak or refuse to cooperate at all for
13 fear of -- even if they are not in fear of the
14 perpetrator, just for fear of reviving all of those bad
15 memories and post-traumatic stress disorder.

16 There's a whole lot of factors that go into a
17 victim testifying in domestic violence cases. And it's
18 under the best of circumstances difficult. And so
19 without -- for this particular case at this point in time,
20 I can't tell you at all without having tried to contact

21 these people, perhaps the police officers involved.

22 There's others ways to go about it besides
23 talking to the victim. And I think, Mr. Guerra, you admit
24 to committing the domestic violence; is that right?

25 MR. GUERRA: There was -- I do admit to

185

1 committing a battery against my girlfriend at the time.

2 MS. ERDMAN: And --

3 MR. GUERRA: I do dispute, however, some of the
4 sequence of events that were in the narrative that's in
5 the police report.

6 MS. ERDMAN: What can you tell us about the
7 severity of the injuries?

8 MR. SHANDLER: I don't want to go there.

9 MS. ERDMAN: Okay.

10 MR. FORCE: Ms. Guerra, is the lady that was
11 involved in this, is she -- do you know if she's still
12 even here in the state of New Mexico?

13 MR. GUERRA: No, sir. The last time I spoke to
14 her was maybe in 2001, so I have no idea where she would
15 be.

16 MR. FORCE: Well, just for I guess my view,
17 Mr. Guerra, my concern is in reopening the matter, whether
18 or not there is even a practical basis of bringing the
19 evidence and information not only on the State's behalf,
20 but also on your behalf in order to reopen this matter and
21 hear it because it's so old.

22 And so we're kind of up -- to me, Zack, would you
23 agree, we're kind of -- we're kind of between two hard
24 rocks. In the one form trying to give you the opportunity
25 to go back and reopen the matter. And, secondly, on the

186

1 other issue, it's viability and practicality in actually
2 having the matter heard because the evidence and
3 information is so old already, so.

4 MR. PEREZ: Any further questions?

5 MR. ORTIZ: I just want to know, when it was
6 dismissed, did you admit to the battery and it was
7 dismissed?

8 MR. GUERRA: No, sir.

9 MR. ORTIZ: You contested it then?

10 MR. GUERRA: Yes, sir.

11 MR. ORTIZ: And you're admitting now that it
12 occurred?

13 MR. GUERRA: I would have pled not guilty to
14 the -- I was being charged with aggravated battery. I
15 admit that there was a battery, but not aggravated. The
16 way I was being charged.

17 MR. COON: So what was dismissed, the aggravated
18 battery?

19 MR. GUERRA: Everything was dismissed.

20 MR. COON: If you're admitting to the battery?

21 MR. GUERRA: No. I'm admitting it today.

22 MR. COON: Okay. Gotcha.

23 MR. PEREZ: Any further remarks, sir?

24 MR. GUERRA: Well, since I'm here, I'd just like

25 to take advantage of the opportunity to just make a

187

1 comment. I currently work at a place in Las Cruces called

2 La Casa. It's a domestic violence shelter where we offer

3 programs for victims and perpetrators.

4 I work in the men's program where I do intakes.

5 I do a lot of two-hour interviews. I assess them, if they

6 are appropriate for the program. And, of course, they are

7 required to complete a 52-week domestic violence batteries

8 intervention program.

9 Looking back at my experience in the police

10 academy, I feel that I wasn't trained properly to not only

11 to deal with domestic violence calls as an officer

12 responding to domestic violence, but also as somebody that

13 could potentially be involved in a situation, as far as

14 being able to control my emotions.

15 I don't know what the curriculum is now in the

16 Academy. Whether I'm approved or denied, I'd be willing

17 to go to the Las Cruces Police Academy or Dona Ana County

18 and talk about my experiences, especially with domestic

19 violence and as somebody said most officers, especially

20 right out of the Academy, don't realize how fragile that

21 certification is and how easy it is to lose that.

22 And, unfortunately, I think a lot of cadets

23 coming out on -- just for fresh onto the streets, sort of

24 have this mentality that they are above the law; that they
25 can get away with stuff because they are law enforcement.

188

1 And, you know, through the years and experience,
2 I've learned a lot. And I know that as a police officer,
3 you're actually held to a higher standard. You're below
4 the law. You set the example.

5 You follow every law to the T. If you're
6 enforcing the laws, you have to lead by example. And I
7 think working in this domestic violence program, not
8 only -- it's taught me a lot about myself and the general
9 dynamics of domestic violence, how issues in a person's
10 past can sort of come out.

11 And I think police officers in general have sort
12 of power and control issues that I think we --

13 MR. PEREZ: Sir, I don't mean to interrupt you,
14 but you're getting off the point. Please summarize.

15 MR. GUERRA: Just to summarize, I'm just asking
16 the Board to consider my certification. And if I'm given
17 the opportunity to even go through the process again, I
18 think I would be able to show that I'm a different person
19 from when that happened.

20 MR. PEREZ: Thank you. Any further questions,
21 remarks? Thank you, sir.

22 MR. GUERRA: Thank you.

23 MR. PEREZ: Next item.

24 MS. ERDMAN: I think the next is Andrew McClay.

1 ITEM #29: LEVI IRWIN

2 MR. ORTIZ: I think we need 29, Levi Irwin.

3 MR. PEREZ: Yes.

4 MR. ORTIZ: To save some time, No. 29, 30, and

5 32, they are all kind of the same situation.

6 MS. ERDMAN: Right. So --

7 MR. ORTIZ: You can do one synopsis.

8 MS. ERDMAN: He's currently active with Game and

9 Fish Department. In January of this year Game and Fish

10 received information that a bobcat had been killed while

11 feeding on deer -- a deer carcass.

12 After an investigation, respondent Mr. Irwin

13 admitted to shooting from inside his vehicle and killing

14 the bobcat. His explanation was that he believed that the

15 bobcat was a predator like a coyote, and he didn't think

16 it was illegal to shoot a bobcat.

17 However, there are Trappers and Fur Dealers Act

18 violations that as a Game and Fish officer he should have

19 been aware of making it illegal to shoot and kill a

20 bobcat. He was formally charged. He was ordered to house

21 arrest for 10 days.

22 MR. PEREZ: So he was convicted then?

23 MR. ORTIZ: Yeah.

24 MS. ERDMAN: Yes.

25 MR. PEREZ: Is that a felony?

1 MS. ERDMAN: He pled guilty and no contest plea
2 in Colfax to two charges of the Trappers and Fur Dealers
3 Act violations, resulting in a \$500 fine on each count.
4 So that's two; and 354 days unsupervised suspension --
5 unsupervised probation. I'm sorry.

6 And I'm not sure if that rises to the level of a
7 felony or not. I don't think that it does.

8 MR. COON: There's no felonies in the Game
9 Department.

10 MS. ERDMAN: And that's what I thought.

11 MR. PEREZ: As Mr. Ortiz pointed out, it's the
12 same story; but there were other people sitting in the
13 vehicle or?

14 MS. ERDMAN: And Officer Irwin admits to being
15 the shooter. He accepted responsibility for his actions.
16 He says he's learned something from this, and he was
17 remorseful. The Director is recommending a six-month
18 suspension, one-year probation, ethics training, and eight
19 hours of community service.

20 MR. COON: Was this done on duty? Were they all
21 three working that day or were they on days off?

22 MS. ERDMAN: They were off duty.

23 MR. ORTIZ: Off duty.

24 MR. FORCE: Mr. Chairman.

25 MR. ORTIZ: He's no longer employed with the Game

1 and Fish also. He kept his job, but he resigned with Game
2 and Fish just recently. He's seeking employment with the
3 Clayton Police Department at this time.

4 MR. PEREZ: Yes, Mr. Force.

5 MR. FORCE: Mr. Irwin is?

6 MR. ORTIZ: Yes. That just started this week.

7 MR. FORCE: And do you have a six-month
8 suspension of recommended action with one-year probation,
9 ethics training, and eight hours of community service.

10 And this is for an individual, a Game and Fish officer,
11 who -- I don't know, was he charged with shooting from a
12 motor vehicle?

13 MR. ORTIZ: Yes.

14 MR. FORCE: Is that part of the charge?

15 MR. ORTIZ: Yes.

16 MR. FORCE: And then shooting a protected
17 species, being a bobcat. That he himself would be the
18 individual who should have been enforcing those specific
19 laws.

20 MR. ORTIZ: Correct.

21 MR. FORCE: And we're only looking at a six-month
22 suspension?

23 MR. ORTIZ: My first offer was a year suspension.
24 I thought he was going to punch me across the table. He
25 got so upset he pretty much left, requested a formal

1 hearing, and recontacted us wanting to negotiate it. And

2 that's what we did. We came up with he would accept a
3 six-month deal.

4 MR. PEREZ: You said he had a display of anger
5 with you?

6 MR. ORTIZ: Yes, when I said the year, when I
7 offered him a year suspension.

8 MR. FORCE: He got convicted, Art. I mean, he's
9 convicted of the primary law that he should be enforcing.

10 MR. ORTIZ: I understand. And I know Game and
11 Fish is very hard on the citizens out there when they
12 violate the game laws. We all know that. That's why I
13 was coming down hard on him.

14 MR. FORCE: But that was the most you can get on
15 an agreement with him?

16 MR. ORTIZ: That's the most I could get to avoid
17 going to a formal hearing.

18 MS. ERDMAN: Just to clarify. Formally he was
19 not charged with shooting from a motor vehicle. Formally
20 he was charged with an unlawful killing of a fur bearer, a
21 bobcat, and unlawful possession of a fur bearer, a bobcat.

22 And then his judgment and sentence was guilty
23 plea, no contest to both counts. And there were no
24 additional charges added. So from my review of the file,
25 there's not a charge about shooting from a motor vehicle.

1 And those two -- and definitely they list the two
2 violations of the Trappers and Fur Dealers Act violations

3 as misdemeanors.

4 ITEM #30: ANDREW MCCLAY

5 ITEM #32: NATHANIEL ROMEO

6 MR. PEREZ: Anything else? Is that enough for
7 the three? We don't have to go through each individually.

8 MS. ERDMAN: Well, I want to say that the other
9 two individuals, one is Andrew McClay, and the other --
10 let's see. Hold on. -- Nathaniel Romeo, they were in the
11 vehicle when this occurred. There are circumstances that
12 the district attorney declined to press charges with
13 either of them.

14 Officer McClay is a new recruit and claims that
15 he thought, you know, he was doing what his supervisor
16 told him to do. And he was a rookie. And the charges
17 against him were brought by the district attorney's office
18 but later dismissed. And he did not report the shooting
19 to the Game and Fish Department.

20 So the Director's recommendation on McClay and
21 the other, Nathaniel Romeo, is a 30-day suspension,
22 one-year probation, ethics training, and eight hours of
23 community service.

24 MR. PEREZ: Okay. Next. No. 31.

25 MR. FORCE: Mr. Chairman. I hate to do this.

194

1 Can I go back real quick on the prior matter?

2 Ms. Erdman, how did those cases come to the
3 attention -- were they filed with officer misconduct from

4 Game and Fish, I take it, from the department?

5 MS. ERDMAN: Right.

6 MR. FORCE: How did they come to the attention of
7 Game and Fish? Do you know how the incident rose to them
8 finding out, whoa, these three guys were involved in a --

9 MR. HOLMES: It was reported by a motorist
10 passing by observed three individuals and observed the
11 bobcat. And so he reported it. And, of course, these
12 guys were not in Game and Fish uniform. And they gave a
13 description of the vehicle of the truck.

14 Later on the truck was spotted, and they
15 identified them as the Game and Fish officers. They still
16 had the bobcat. So that's how it came about. And Game
17 and Fish got involved, and they did the investigation and
18 submitted a report of misconduct.

19 MR. FORCE: Was there anything in the file that
20 you recall where the officers went forward to their
21 supervisor, went to the local office, and made a
22 self-report.

23 MR. HOLMES: No, because it wasn't long after
24 that they were -- but when they started the investigation,
25 they determined these two guys should have -- Game and

195

1 Fish is a department that's very well trained. These guys
2 go through training. We checked their training records,
3 and these guys go through all kinds of training.

4 They never reported the incident to a supervisor

5 what this guy had done. So and they were in -- they could
6 have stopped it, but they didn't. So those were the
7 reasons that they were charged with that.

8 But here again, these guys were young, new
9 officers. And their excuse was, "We didn't know it was
10 illegal." And going back to the right away why they
11 didn't charge them for shooting from the vehicle. That
12 was discussed, but for some reason they didn't.

13 MR. FORCE: Thank you. Sorry.

14 MS. ERDMAN: It's my understanding that the
15 investigation began the same day as the -- as the
16 shooting.

17 MR. ORTIZ: Yes.

18 MS. ERDMAN: So I don't know whether they had an
19 opportunity to report -- whether their passengers had an
20 opportunity to report before they were discovered. It
21 seems to me from reading the report that they did not.

22 Well, but there was some time between the
23 shooting, but when the officers first arrived at the deer
24 carcass, the blood from the deer was still fresh. And
25 they were able to track the truck.

196

1 MR. PEREZ: The deer.

2 MR. MARTINEZ: The bobcat was feeding on a deer.

3 MR. PEREZ: Party of the third party. Pardon
4 me. I think that's enough for this. Can we go on to the
5 next one?

6 ITEM #31: ANDREW ROBERTO

7 MS. ERDMAN: The next one is Andrew Roberto.
8 He's active still with APD. He has been active since
9 1996. In September, his wife who's also a police officer
10 reported that she had been the victim of domestic violence
11 at the hands of her husband.

12 A criminal investigation was open and a felony
13 case was started against Officer Andrew Roberto. The
14 district attorney's office chose not to prosecute the
15 case. And it says in your misconduct report that Officer
16 Dayna Brock did witness a domestic incident between Dawne
17 and Andrew but did not report it; but she also didn't
18 witness any violence.

19 And when asked as a police officer she thought
20 she should have reported what she saw, she said no because
21 she didn't witness violence. What she witnessed was a
22 domestic fight that was verbal at that point.

23 She does admit that Dawne told her later that
24 there had been physical violence. And Dawne, the wife,
25 also reported to two other of her supervising officers

197

1 that there had been physical violence committed by Andrew
2 Roberto, that she had been pushed into a wall and that he
3 left bruises on her in two separate incidences.

4 The incident was the subject of an Internal
5 Affairs investigation with APD. Officer Roberto received
6 160-hours suspension, 120 to be served, 40 to be held in

7 abeyance, along with domestic violence counseling.

8 In December of 2007, the respondent and his wife
9 met with the Director. The wife said that her husband,
10 the respondent Andrew Roberto, had served three tours in
11 Iraq; that nothing like this ever happened before he went
12 to Iraq; and when he returned he was a different person
13 and had not been provided with counseling.

14 She advised the Director that after that
15 incident, Officer Roberto did receive counseling and that
16 between 2005 and December of 2007, almost two and a half
17 years, no further incidents took place; that he had sought
18 the counseling that he needed; and that she thought it was
19 all related to stress from acting in the Vietnam War
20 {sic}; that between 1996 from when he first began working
21 as a police officer until 2005 she'd never experienced any
22 incidents like this.

23 The Director recommends 60-day suspension,
24 one-year probation, ethics training, anger management
25 screening, a domestic violence training course, and eight

198

1 hours of community service. Are there any questions?

2 MR. PEREZ: But there were no formal charges,
3 felony or misdemeanor, of domestic abuse?

4 MS. ERDMAN: The district attorney declined. It
5 was reported to the district attorney's office, and the
6 district attorney declined to prosecute.

7 MR. PEREZ: So there were no charges.

8 MS. ERDMAN: Right.

9 MR. PEREZ: Any questions? Next item.

10 ITEM #33: ANDREW SCRIBNER

11 MS. ERDMAN: So I think the next one is Andrew

12 Scribner, and this is another domestic violence case.

13 Officer Scribner was terminated from the Las Cruces Police

14 Department in March of this year. He was taken into

15 custody by the Las Cruces Police Department for domestic

16 violence charges.

17 His wife reported at the time that he had woken

18 her up and they got into a physical argument with him

19 yelling and pushing her down onto the bed, holding his

20 hands around her throat causing redness in her throat

21 area. He prevented her from using the phone. He punched

22 out a light socket in the hallway.

23 The criminal charges in this case it's my

24 understanding have not been resolved. They are still

25 pending.

199

1 While she was attempting to call the police, she

2 closed and locked the door. He actually splintered

3 through a door to get to the doorknob. He took the

4 telephone away from her twice. He finally left the room,

5 and she was able to call the police and ask for

6 assistance.

7 It's my understanding that the Director has

8 spoken with both the respondent and the victim. The

9 parties agreed that they should get a divorce. The victim
10 now says that other than this incident, she hasn't known
11 Mr. Scribner to be violent. That he was looking into his
12 drinking problem.

13 She claims that the police reports were not
14 accurate; that he hadn't been drinking all day; but he
15 hadn't hit her or choked her. She said that he was
16 scared -- he was drunk and he scared her, but that she did
17 not want him arrested. Just that he was keeping her
18 awake, watching TV with the volume on loud. She sent him
19 a text message. He got angry and came into the room, and
20 they had a brief struggle.

21 And this case like a lot of others shows the
22 problem with prosecuting domestic violence cases in that
23 the victim seldom keeps the same story from the time of
24 the initial incident and what she reports to the police.

25 And then what happens down the road when it's

200

1 time for her to testify, they often are either scared and
2 retract their statement or are remorseful and retract
3 their statement, they are trying to get back together and
4 retract their statement.

5 In this case these two have clearly separated and
6 moved on. And I won't speculate as to the reason for her
7 retraction, just to point it out to you that it makes
8 prosecution in these kinds of cases very difficult.

9 MR. COON: In other words, they figure out he's

10 losing his job, we're losing our income. That's the
11 majority of it right there. Because he makes her feel
12 guilty by saying, "You're costing me my job. There goes
13 our house and car, and the kids are going to be taken
14 away." So she retracts.

15 MS. ERDMAN: These two have divorced. I don't
16 know what the motivation for her retraction is, but
17 there's a substantial different story that she's giving at
18 the informal hearing than what she originally told police,
19 who saw red marks on her neck.

20 So the Director is recommending a six-month
21 suspension, one-year probation, ethics training, anger
22 management counseling, alcohol screening and assessment,
23 and eight hours of community service. And the respondent
24 has agreed to those terms.

25 MR. COON: But this is still in litigation?

201

1 MS. ERDMAN: It has not been adjudicated.

2 MR. COON: Well, it would change the whole thing
3 if he's found guilty? Well --

4 MS. ERDMAN: And if he's found guilty of a
5 domestic violence charge, then he falls under the law
6 where we would have to take this step of moving forward to
7 revocation. But I think in the meantime, this is still an
8 action that we can take.

9 I think that at this point we have evidence
10 beyond a reasonable doubt -- preponderance in that we can

11 take disciplinary action now. He understands that if he's

12 found guilty of domestic violence, he'll have --

13 MR. COON: But would that get into a double

14 jeopardy type standard if we punish him now under this and

15 then the other? We can't go after him twice?

16 MR. PEREZ: We're administrative.

17 MS. ERDMAN: Right. If he is convicted, we

18 cannot allow him to carry a weapon. It's not as much then

19 a disciplinary measure as we have to revoke because you

20 are in violation of this federal law. And he's not being

21 subject -- double jeopardy only really comes into play

22 when there's a criminal prosecution.

23 Generally, for civil and administrative

24 prosecutions, double jeopardy doesn't apply generally. Of

25 course, there's always exceptions.

202

1 MR. HOLMES: I don't think it's likely the

2 district attorney will file because she would be a hostile

3 witness and she could change her mind. And normally they

4 just won't file it.

5 MR. PEREZ: We're talking here about Andrew

6 Scribner, Mr. Ortiz. You stepped out for just a moment.

7 On this second page it says, "...but he was confused

8 because he could not recall any physical confrontation."

9 Did you speak with this man?

10 MR. ORTIZ: Yes. I don't buy it. Selective

11 memory.

12 MR. PEREZ: It's close to lying.

13 MR. ORTIZ: Yes.

14 MR. FORCE: Are you comfortable with the
15 recommendation?

16 MR. PEREZ: Why not terminate?

17 MR. FORCE: Revoke, you mean?

18 MR. PEREZ: Revoke.

19 MS. ERDMAN: I would say that I think termination
20 would be difficult. With the burden of proof on -- even
21 though it's only a preponderance of the evidence, with the
22 burden of proof on the prosecution and a retracting
23 witness, there is very little to go on.

24 MR. PEREZ: If there's a lack of candor here on
25 his part, he said he could not recall. If an officer

203

1 cannot recall any physical confrontation, that's pretty
2 serious.

3 MR. ORTIZ: I have a lot of difficulties with her
4 also. She wasn't very credible as well. Again, both of
5 them.

6 MR. PEREZ: But he's the commissioned person.
7 And if he can't recall -- if an officer cannot recall
8 whether they hit somebody or not, that seems to me that
9 goes to the elements of the job, fitness for duty. He
10 could hit somebody else and not remember it. If it's an
11 amnesia problem.

12 MR. ORTIZ: This was one of those where we had to

13 do some bargaining to get him to accept it. And I did
14 feel based on the victim, the female, she would not be a
15 very good witness.

16 MS. ERDMAN: I also think in the context of other
17 domestic violence cases, those have been 90 days; I've
18 seen 30 days; I've seen 60 days. This is 180 days.

19 MR. PEREZ: And you see the way this new law that
20 just came in, this misdemeanor charge, guilty of
21 misdemeanor, the courts are going that way. They are
22 becoming more sensitive to this, not just felony charges.

23 Okay. Any other comments, questions? But you
24 felt there was lack of candor?

25 MR. ORTIZ: Yes.

204

1 MR. PEREZ: Next item.

2 ITEM #34: MICHAEL TRUJILLO

3 MS. ERDMAN: Next item is Michael Trujillo.

4 Michael Trujillo is accused of removing \$6,112 from an
5 evidence vault in Espanola. He's currently active with
6 Rio Arriba County Sheriff's Office. Is that still
7 accurate?

8 MR. ORTIZ: No. He has retired from law
9 enforcement.

10 MS. ERDMAN: Okay.

11 MR. ORTIZ: And also just to let the Board know,
12 he did want to appear in person to address the Board;
13 however, he was not able to. He just obtained a new job

14 and said it would be risky in coming. And the sheriff was
15 going to come, but then the sheriff wasn't able to come.

16 But in these packets are a letter from the
17 sheriff and his secretary, just that he wanted the Board
18 to have. I'm sorry, Nan. Go ahead.

19 MS. ERDMAN: No, that's what I wanted to know. I
20 didn't think that was still accurate. That's what's
21 reported on the postprofile, but I thought that it had
22 changed.

23 Officer Trujillo was in charge of the evidence
24 vault. And he was part of checking in this amount of
25 currency, over \$6,000 in currency. In 2001 he was in

205

1 charge of the evidence locker over a period of years until
2 2003 when -- well, in 2004 the box containing evidence in
3 a case was opened and the currency was missing.

4 He was ordered to submit to a polygraph. He
5 failed to appear. But he was not criminally prosecuted,
6 is my understanding, for lack of evidence. And part of
7 the problem is the evidence vault in Espanola was having a
8 lot of problems at the time, as were some other
9 departments.

10 The chain of evidence is very hard to follow.
11 And even though the box had been unsealed and its most --
12 the most likely suspect was Michael Trujillo, really
13 there's no solid direct evidence that he's the one that
14 broke open the box and unsealed the box.

15 However, in another incident in 2002 which is
16 some -- after the first incident occurred but before it
17 was discovered, he seized \$614 from a suspect's home
18 during a search warrant. He didn't account for the money
19 at all. It wasn't entered into evidence. And the people
20 that he searched knew that he had taken the money.

21 A criminal investigation began in 2005 when the
22 suspect requested that his property be returned. Shortly
23 after the investigation began, the cash was returned to
24 the suspect and the suspect identified Officer Trujillo as
25 the person who returned the money to him and requested a

206

1 backdated receipt. And respondent was on administrative
2 leave at the time.

3 In November of 2007, there was an informal
4 hearing for the incidents listed in the NCA. The director
5 recommended a five-year revocation. And a formal hearing
6 was scheduled for May 7 of 2008. The respondent withdrew
7 from the formal hearing, advising that he would
8 voluntarily relinquish his police certification.

9 Since then he's been reluctant to sign a
10 relinquishment but did agree to sign a two-year suspension
11 of his certification with three years probation and an
12 ethics training class.

13 And, again, I think this is another case where
14 they didn't prosecute the missing \$6,000 originally
15 because the evidence there is very tenuous. I don't think

16 we can necessarily show a direct link between the missing
17 money and Officer Trujillo.

18 MR. PEREZ: But he mysteriously showed up with an
19 envelope and gave it back to the respondent.

20 MS. ERDMAN: That's a different incident. The
21 first incident involved \$6,000 missing from the evidence
22 locker. Mr. Trujillo was in charge of that locker and he
23 was also involved peripherally in the incident where he
24 was -- the money was taken.

25 So he knew there was money. He knew it was in

207

1 the box. He's in charge of the evidence room. That's
2 most of the evidence that we have for that first charge.
3 The second claim is much stronger. There's a lower amount
4 of money involved.

5 But back in 2002 -- well, back in 2005. So this
6 is still three years ago. And this is someone that we
7 have to track down. This is -- we'd have to first be able
8 to track this person down. Second, be able to make sure
9 that they would be willing to testify and still have a
10 clear memory of the respondent.

11 So in 2005 there was solid evidence that he had
12 taken the cash from a suspect's home, didn't turn it into
13 the evidence vault at all. When an investigation started
14 around the missing money, he returned the money to the
15 owner years later; but that was in 2005.

16 Now it's 2008, and I recommend that the Board

17 accept the two-year suspension and three-year probation
18 because the result if we went to a formal hearing might
19 not be as good.

20 MR. PEREZ: Thank you. Next.

21 MR. COON: Will he go to the ethics training
22 since he's no longer with the -- in law enforcement.

23 MS. ERDMAN: In order to have his certification
24 reinstated. If he doesn't go to the ethics training, then
25 his certification doesn't get reinstated.

208

1 MR. ORTIZ: He's retired and says he does not
2 plan to come back to law enforcement, but he wants to keep
3 that option available later on down the road.

4 MR. COON: Well, he has 16 years on it. Is he on
5 military time? \$6,000 worth.

6 ITEM #35: BRUCE VOLZER

7 MS. ERDMAN: Are you ready for the next one?
8 Officer Bruce Volzer. He is accused of threatening and
9 intimidating a colleague who was also a police officer and
10 was preparing to testify in a personnel hearing against a
11 fellow police officer.

12 All three of these men were members of the West
13 Side narcotics team. And the incident involved a sting
14 operation in which some heroin was confiscated. And some
15 of the officers wanted -- are claiming that they wanted to
16 play a joke on the K-9 officer who wasn't at the scene.

17 That after they had cleared the scene, after they

18 were done, they hid the heroin back in the car, called the
19 K-9 officer to come out without telling him that they
20 cleared the scene, that they found the heroin, to see if
21 the K-9 officer could find the heroin.

22 Officer Carlos Gallegos, who was part of that
23 arrest, called the K-9 officer and said, "Don't go. They
24 are playing a joke on you," or "They are trying to set you
25 up. Don't go. Don't be involved in this."

209

1 The K-9 officer didn't go. He was initially
2 disciplined, but Carlos Gallegos stood up for him and said
3 he would be willing to testify about the officers who
4 wanted to play this joke on him.

5 An investigation occurred. Eventually
6 accusations against Officer Gamboa, who is also a member
7 of the narcotics team, went to a personnel disciplinary
8 hearing. The night before that hearing, when Officer
9 Gallegos was preparing his testimony, he gets a text
10 message, an anonymous text message, saying, "Good luck
11 tomorrow, rat."

12 He didn't know who it came from. He reported it
13 to his supervisor. He had trouble sleeping that night.
14 He had trouble preparing. He felt intimidated and
15 threatened. He knew it was probably from someone on the
16 narcotics team.

17 He reported it at the hearing the next morning.
18 And Officer Volzer eventually came forward when he

19 realized they were going to do a search on -- for the
20 telephone records from Carlos Gallegos's phone, he
21 admitted to having sent the message.

22 He also claims though that he didn't send it to
23 be intimidating and threatening; that it was nothing more
24 than a practical joke.

25 I can tell you that I've spoken with Officer

210

1 Gallegos, and he felt threatened and felt threatened after
2 the incident as well. He still did testify. The
3 officer that the hearing was being held on did not lose
4 his job. He was reinstated.

5 But many members of the APD department of the
6 West Side narcotics were disciplined for their
7 participation in the practical joke. We scheduled a
8 hearing. We were ready to move forward.

9 Actually, at the hearing the respondent's
10 attorney said we really don't want to bring up this
11 incident again. It caused a real sore spot in the West
12 Side narcotics team and the narcotics division of APD
13 generally. I know that the victim felt the same way.

14 So we discussed settlement. We agreed on an
15 80-day suspension with one-year probation, ethics
16 training, eight hours of community service, and a letter
17 of apology to the victim.

18 And before I agreed to consider this, I made sure
19 that this disciplinary action was okay with the victim,

20 with the man who had been threatened. His response was
21 that he thought that it was fair.

22 He thought it was sufficient time and that he
23 didn't want to have to have all these other officers come
24 and testify against another officer. He didn't want to go
25 through that. He didn't want to put the other officers

211

1 through that.

2 He wanted to have this incident over so that all
3 involved could put it in the past. And he agreed to what
4 we've agreed to in a stipulated order.

5 MR. PEREZ: I think this is extremely disruptive
6 to police work. I don't know how it could get much worse
7 for them. And then for him to lie and say it's a
8 practical joke. That's not a joke. That's a lie.

9 And he's really gutted that operation. A
10 criminal couldn't do it better. He's removed the element
11 of trust among them. I think this is very, very serious.
12 I think this is worth firing. If this doesn't show moral
13 turpitude, this is what you call moral turpitude.

14 MS. ERDMAN: Well, but under -- under the
15 statutes we can only discipline crimes of moral turpitude
16 when there's been a formal charge. This was sent to the
17 district attorney's office, and the district attorney
18 declined to prosecute.

19 MR. PEREZ: I'm not talking about prosecution.
20 I'm talking about the preponderance of evidence, his

21 fitness for duty.

22 MS. ERDMAN: So we can go under moral character.

23 But the moral turpitude issue requires a finding of

24 guilty. Moral character does not.

25 MR. PEREZ: Moral character involves lying.

212

1 Okay. Any questions? Next.

2 ITEM #36: JOSHUA W. DAVID

3 MS. ERDMAN: Next is Officer Joshua David. He is

4 also a Game and Fish officer. He was terminated but has

5 since been rehired. Is that correct? And he's on

6 one-year probation with Game and Fish.

7 MR. ORTIZ: Yes.

8 MS. ERDMAN: When he was a newly hired employee,

9 still under new employee probationary status, he was

10 charged with improperly completing an application to the

11 Arizona Game and Fish Department for a javelina hunting

12 permit.

13 He claims that he obtained the license in 2008,

14 but at the time he had a home in Arizona but was working

15 with the Game and Fish Department in New Mexico; that he

16 was in the process of moving. And the respondent himself

17 is not the one who filled out his application.

18 It was his father who filled out the application,

19 put down the respondent's Arizona address as his actual

20 address, and they both then got resident hunting license

21 for javelina.

22 The respondent was charged with fraud as a
23 result. An investigation revealed that he had filed
24 Arizona residence taxes through April of 2007. This
25 incident occurred in November of 2007 and that he was

213

1 filing incomes taxes through 2007. But there's no
2 evidence to show that he didn't still have a residence in
3 2007 in Arizona.

4 The respondent was very apologetic and
5 embarrassed about the incident at the informal hearing.
6 And his supervisor believes that it was just simply a
7 misunderstanding. He thought since he owned a home in
8 Arizona that enabled him to obtain an Arizona residence
9 permit even though he was working in New Mexico. And he
10 didn't intend to commit any fraud.

11 His supervisor wrote a letter that's very
12 supportive. And they had to terminate him only because
13 this happened while he was on probationary status. And
14 because they like his work and him, they've hired him back
15 and want him to stay.

16 The Director recommends -- and I agree -- that
17 there be a stipulated order of caution and that the
18 respondent address the cadet class to assist the Director
19 in teaching about this kind of misconduct.

20 MR. ORTIZ: He was in the Academy at the time of
21 the application as well. And I remember him as being one
22 of the good cadets, one of the leaders.

23 MR. PEREZ: Any questions? Next. Michael

24 Sandoval.

25 MR. MARTINEZ: We've done him.

214

1 ITEM #39: GILBERT LOBATO

2 MS. ERDMAN: The next is Gilbert Lobato. All I

3 can say -- because I have a conflict in this case. I

4 worked for the firm that represented him early in defense

5 of this matter. So all I can say -- if you have questions

6 you'll have to direct them to Art -- is that Mr. Lobato

7 has voluntarily agreed to relinquish his certification.

8 And all other questions have to be directed to

9 Mr. Ortiz.

10 MR. PEREZ: Could you just give us the facts?

11 MS. ERDMAN: I'm afraid that I cannot.

12 MR. PEREZ: We have them here. We read them.

13 MR. ORTIZ: They are summarized in the synopsis.

14 MR. PEREZ: Okay. Fair enough. I remember

15 this. Any questions about this. Voluntary

16 relinquishment. Any questions? Next item.

17 MR. SHANDLER: At this point, please scan the

18 items. Are there any that you need to recuse yourself

19 from so we can have that on the record.

20 MR. JONES: Eric Jameson.

21 MR. SHANDLER: It's been our practice since that

22 is a default you don't have to recuse yourself on that

23 one. Any other ones? Seeing none, then if the Chair

24 could have a motion to go into executive session.

25 MR. PEREZ: Do I hear such a motion that we go

215

1 into executive session?

2 MR. COON: I make that motion, but I'd like to
3 ask one thing. We have some people out here waiting for
4 their fate here. Can we do theirs first, bring them back
5 in, and let them go and then finish? Or is that possible?

6 MR. SHANDLER: That is possible.

7 MR. COON: I hate to see these people sit out
8 here while we go through this whole process. Maybe we can
9 get them on the road early.

10 MR. PEREZ: We can do them in the order in which
11 they appeared. Who appears first? Bob Gilbert. Then who
12 was next? Kenneth Groves. And then Mr. Sandoval. And
13 then Guerra. And we'll do them -- we will do those first
14 in our deliberations, and then we'll -- we can pause and
15 bring them in and tell them our findings?

16 MR. SHANDLER: I'll report for the mechanics we
17 can do this.

18 MR. PEREZ: So if everybody would please --

19 MR. SHANDLER: Do the motion for the record.

20 MR. PEREZ: Do I hear a motion to go into
21 executive session?

22 MR. JONES: I motion.

23 MR. COON: I'll second.

24 MR. PEREZ: All in favor?

25 MR. SHANDLER: Suzanne needs to read the roll.

216

1 MS. VIGIL: Donald Gallegos. Chief Schultz.

2 Sergeant Jones.

3 MR. JONES: Yes.

4 MS. VIGIL: Chief Segotta. Mr. Force.

5 MR. FORCE: Yes.

6 MS. VIGIL: Mr. Perez.

7 MR. PEREZ: Yes.

8 MS. VIGIL: Chief Panteah.

9 MR. PANTEAH: Yes.

10 MS. VIGIL: Sheriff Coon.

11 MR. COON: Yes.

12 MR. PEREZ: Okay. We will now go into executive

13 session. We'll take a five-minute break and go into

14 executive session.

15 (Off the record from 2:48 until 3:04 p.m.)

16 MR. SHANDLER: Okay. Mr. Chairman, we're back on

17 the record. What I need for someone is to make a motion

18 to go into open session.

19 MR. COON: I'll make a motion to go into open

20 session.

21 MR. PEREZ: Do I hear a second.

22 MR. JONES: Second.

23 MR. SHANDLER: What I'd like is for Suzanne to do

24 a roll call, just the people that are here.

25 MS. VIGIL: Arsenio Jones.

1 MR. JONES: Here.

2 MS. VIGIL: Robert Force.

3 MR. FORCE: Here.

4 MS. VIGIL: Mr. Perez.

5 MR. PEREZ: Here.

6 MS. VIGIL: Chief Panteah.

7 MR. PANTEAH: Here.

8 MS. VIGIL: Sheriff Coon.

9 MR. COON: Here.

10 MR. SHANDLER: And I just need the Chairman to
11 confirm that only the matters on the agenda were discussed
12 in the closed session. Can you confirm that?

13 MR. PEREZ: Only those matters....

14 MR. SHANDLER: You can just say "yes."

15 MR. PEREZ: Yes. Late in the day. Yes.

16 MR. SHANDLER: Let's go to Item No. 25,
17 Mr. Gilbert. The proposal is 60 days with a variety of
18 other items. The Board can adopt that or they can reject
19 that with some instructions to the parties. Does a Board
20 member want to make a motion on Mr. Gilbert.

21 MR. FORCE: I make a motion that we reject the
22 Director's recommendation, with the recommendation that
23 the disciplinary matter would be a 14-day suspension,
24 along with a one-year probation, ethics training, and
25 anger management, along with the requirement that the

1 respondent attend an Academy cadet class to educate cadets

2 about misconduct.

3 MR. GILBERT: Yes, sir.

4 MR. SHANDLER: So hold on. That's the motion.

5 MR. PEREZ: Do I hear a second?

6 MR JONES: I second.

7 MR. PANTEAH: Second.

8 MR. PEREZ: All those in favor say aye.

9 THE BOARD: Aye.

10 MR. PEREZ: All those opposed? (No response.)

11 Motion carries.

12 MR. SHANDLER: When the Board then goes back into

13 executive session, the parties will have a chance if they

14 want to iron out that agreement today or if they can't

15 reach those terms, then I guess we'll see the matter at

16 the next meeting.

17 MR. ORTIZ: That's acceptable by me, the Board's

18 recommendation.

19 MR. SHANDLER: Do you want to state for the

20 record is that acceptable?

21 MR. GILBERT: Yes, that's acceptable.

22 MR. SHANDLER: Okay. The next item is 28.

23 Kenneth Groves. The proposal is a 21-day suspension with

24 a variety of other items. Again, the Board can accept

25 that or reject it with some instructions.

1 MR. FORCE: Mr. Chairman.

2 MR. PEREZ: Go ahead.

3 MR. FORCE: I would recommend -- I'll motion to
4 reject the Director's recommendation with an advisement to
5 go toward a -- issue a letter of caution to Sergeant
6 Groves.

7 MR. PEREZ: Was that the entire --

8 MR. FORCE: That's the motion.

9 MR. PEREZ: Do I hear a second?

10 MR. COON: I'll second.

11 MR. PEREZ: All those in favor of the motion say
12 aye.

13 THE BOARD: Aye.

14 MR. PEREZ: All those opposed? (No response.)

15 Motion carries.

16 MR. COON: There's also on that the one-year
17 probation, ethics training, and address the Academy class
18 along with the cautionary letter.

19 MR. FORCE: Do we need to remotion that?

20 MR. PEREZ: If we could rephrase the motion,
21 please.

22 MR. FORCE: I'm sorry. I'll rephrase it as to
23 reject the Director's recommendation and then to issue a
24 letter of caution, along with -- along with a one-year
25 probation, ethics training, and address the Academy cadet

220

1 class to educate the cadets about misconduct.

2 MR. PEREZ: Director Ortiz?

3 MR. ORTIZ: Yes, sir, that's acceptable.

4 MR. PEREZ: Mr. Groves?

5 MR. GROVES: Yes, sir, that is very acceptable.

6 Thank you for your time and your consideration.

7 MR. COON: Can I say something real quick? You

8 know, the video tells no lies. That's why they are so

9 important to us out in the field. I had visions of this

10 guy flying up on the top of your hood when I read this.

11 After looking at that video, there's just no

12 denying what happened. And the voice that was along with

13 it. So another one for the video camera.

14 MR. GROVES: Thank you, Sheriff.

15 MR. SHANDLER: Just to do mechanics. So

16 Mr. Force did kind of a corrected motion. If you could

17 get a second and a vote on that corrected motion.

18 MR. PEREZ: Do I hear a --

19 MR. JONES: I second.

20 MR. PEREZ: Hear the motion first and then a

21 second?

22 MR. SHANDLER: You have the motion from Mr. Force

23 on the record. Officer Jones just seconded.

24 MR. PEREZ: All those in favor?

25 THE BOARD: Aye.

221

1 MR. PEREZ: All those opposed? (No response.)

2 Motion carries.

3 MR. GROVES: Thank you, Gentlemen.

4 MR. SHANDLER: The next item is 37, Michael
5 Sandoval. The proposed stipulated order is 14 days with a
6 variety of other items.

7 I'll note for the record that you just lowered
8 Mr. Gilbert for a similar type of event of lying to a
9 supervisor and then correcting the record. 14 days. So
10 you could make an argument that 14 days is consistent.

11 So the question before you is the Michael
12 Sandoval, do you accept or reject the stipulated
13 agreement?

14 MR. FORCE: Mr. Chairman, I would move to make a
15 motion to accept the Director's recommendation for a
16 14-day suspension, six-month probation, ethics training,
17 and eight hours of community service.

18 MR. PEREZ: Do I hear a second?

19 MR. COON: Second.

20 MR. PEREZ: All those in favor?

21 THE BOARD: Aye.

22 MR. PEREZ: All those opposed? (No response.)

23 Motion carries.

24 MR. SHANDLER: Okay. The next one is 38, Jesus
25 Guerra. That's an appeal of revocation of certification.

222

1 The Board could either vote to accept his appeal or deny
2 it.

3 MR. FORCE: Mr. Chairman, I would motion to deny
4 the appeal request from Mr. Guerra.

5 MR. PEREZ: Do I hear a second?

6 MR. COON: Second.

7 MR. PEREZ: All those in favor?

8 THE BOARD: Aye.

9 MR. PEREZ: All those opposed? (No response.)

10 Motion carries. We will now --

11 MR. SHANDLER: Okay. Now I need a motion to go

12 back into closed session.

13 MR. COON: I'll make a motion to go back into

14 closed session.

15 MR. PEREZ: Do I hear a second?

16 MR. JONES: I second.

17 MR. SHANDLER: Roll call vote again.

18 MS. VIGIL: With everyone or just present?

19 MR. SHANDLER: Present.

20 MS. VIGIL: Sergeant Jones.

21 MR. JONES: Here.

22 MS. VIGIL: Mr. Force.

23 MR. FORCE: Here.

24 MS. VIGIL: Mr. Perez.

25 MR. PEREZ: Here.

223

1 MS. VIGIL: Chief Panteah.

2 MR. PANTEAH: Here.

3 MS. VIGIL: Sheriff Coon.

4 MR. COON: Here.

5 MR. SHANDLER: We're back in closed session.

6 (Off the record from 3:10 until 3:25 p.m.)

7 MR. SHANDLER: We're now back in open session.

8 MR. PEREZ: Do I hear a motion that we return to

9 open session?

10 MR. COON: I'll make a motion we return to open

11 session.

12 MR. PEREZ: Do I hear a second?

13 MR. JONES: I'll second it.

14 MR. PEREZ: Roll call.

15 MS. VIGIL: Sergeant Jones.

16 MR. JONES: Here.

17 MS. VIGIL: Mr. Force.

18 MR. FORCE: Here.

19 MS. VIGIL: Mr. Perez.

20 MR. PEREZ: Yes.

21 MS. VIGIL: Chief Panteah.

22 MR. PANTEAH: Here.

23 MS. VIGIL: Sheriff Coon.

24 MR. COON: Yes.

25 MR. SHANDLER: And if the Chair could just

224

1 confirm that the only matters discussed in this closed

2 session were those listed on the agenda. Can you confirm

3 that?

4 MR. PEREZ: Yes.

5 MR. SHANDLER: Mr. Chairman, we'll start with

6 Item 15 through 22 -- sorry, 15 through 21. And I'll read

7 them into the record: Paul Armijo, William Breeding, Eric
8 Jameson, Norman Lee, Richard Luna, Randy Phillips, Ryan
9 Tsosie. All those were defaults, orders of revocation.

10 So if you want to make a combined motion, you can
11 do that for the record now.

12 MR. PEREZ: Do I hear a combined motion to
13 accept?

14 MR. FORCE: I'll make such a motion to accept
15 revocation by default.

16 MR. PEREZ: Do I hear a second?

17 MR. COON: Second.

18 MR. PEREZ: All in favor?

19 THE BOARD: Aye.

20 MR. PEREZ: All opposed? (No response.) Motion
21 carries.

22 MR. SHANDLER: Mr. Chairman, No. 22, Earlene
23 Winnett. The proposed stipulated order is 60 days with a
24 variety of items. You can either accept or reject.

25 MR. FORCE: Mr. Chairman, I move to accept the

225

1 Director's recommendation.

2 MR. PEREZ: For a 90-day suspension, one-year
3 probation, ethics training, and anger management? Do I
4 hear a second?

5 MR. ORTIZ: I'm sorry. I think that we made a
6 correction. It was going to be 60 days, is what her
7 attorney agreed.

8 MR. PEREZ: 60-day suspension. Do I hear a

9 second?

10 MR. JONES: Second.

11 MR. PANTEAH: Second.

12 MR. PEREZ: All those in favor?

13 THE BOARD: Aye.

14 MR. PEREZ: All those opposed? (No response.)

15 Motion carries.

16 MR. SHANDLER: Mr. Chairman, Item No. 23, Michael

17 Arbogast, the stipulated order is six-month suspension,

18 one-year probation, ethics training, and eight hours of

19 community service. Do you accept or reject?

20 MR. PEREZ: Do I hear a motion to accept?

21 MR. COON: I make a motion we accept.

22 MR. PANTEAH: Second.

23 MR. PEREZ: All those in favor say aye.

24 THE BOARD: Aye.

25 MR. PEREZ: All those opposed? (No response.)

226

1 Motion carries.

2 MR. SHANDLER: Mr. Chairman, Item No. 24 is

3 Patrick Cadena. Proposed stipulated agreement is a 30-day

4 suspension and ethics training. Do you accept --

5 MR. PEREZ: Do I hear a motion to accept?

6 MR. JONES: Motion to accept.

7 MR. COON: Second.

8 MR. PEREZ: All those in favor.

9 THE BOARD: Aye.

10 MR. PEREZ: All those opposed? (No response.)

11 Motion carries.

12 MR. SHANDLER: For the record, No. 25, Bob

13 Gilbert was handled in a previous open session.

14 Mr. Chairman, Item 26, Joey Gomez. The proposed

15 stipulated order was a 90-day suspension, one-year

16 probation, and ethics training.

17 MR. COON: I'll make a motion to accept.

18 MR. JONES: I'll second.

19 MR. PEREZ: All those in favor?

20 THE BOARD: Aye.

21 MR. PEREZ: All those opposed? (No response.)

22 Motion carries.

23 MR. FORCE: Mr. Chairman, on that last motion, I

24 have that it was 90-day suspension, one-year probation,

25 complete an alcohol screening program, complete any

227

1 recommended treatment, and complete a course in ethics.

2 Is that right, Zack?

3 MR. PEREZ: That was the Director's

4 recommendation, and we moved to accept it.

5 MR. SHANDLER: Okay. I'm sorry. I -- let's get

6 that accurate. Item 26, Joey Gomez, for the record -- the

7 Board did approve a stipulated agreement. For the record,

8 it's a 90-day suspension, one-year probation, complete

9 alcohol screening program, and complete any recommended

10 treatment, and complete a course in ethics.

11 MR. PEREZ: That was accepted. Next item.

12 MR. SHANDLER: No. 27 is Gary Graves.

13 MR. FORCE: Mr. Chairman, I would move that we
14 reject the Director's recommendation and advise toward a
15 three-year suspension.

16 MR. PEREZ: Just a three-year suspension? And a
17 one-year probation, and ethics training?

18 MR. FORCE: Yes, I'm sorry. Yeah, three-year
19 suspension, one-year probation, and ethics training.

20 MR. COON: Second.

21 MR. PEREZ: Moved and seconded. All those in
22 favor?

23 THE BOARD: Aye.

24 MR. PEREZ: All those opposed? (No response.)

25 Motion carries.

228

1 MR. SHANDLER: Mr. Chairman, Item 28, Kenneth
2 Groves was handled in an earlier open session.

3 Mr. Chairman, Item No. 29, Levi Irwin, Item
4 No. 30, Andrew McClay, Item No. 32, Nathaniel Romeo.

5 MR. FORCE: Mr. Chairman, I would move that --
6 motion that we would reject the Director's recommendation
7 and move toward a one-year suspension, one-year probation,
8 ethics training, and address the Academy cadet class to
9 educate the cadets about misconduct.

10 MR. PEREZ: I've had a motion. Do I hear a

11 second?

12 MR. JONES: I would second.

13 MR. PEREZ: All those in favor?

14 THE BOARD: Aye.

15 MR. PEREZ: All those opposed? (No response.)

16 Motion carries.

17 MR. ORTIZ: You're asking Levi to go and address

18 the cadet class? I'm afraid that would do more harm than

19 it would good with his demeanor. He still feels he did

20 nothing wrong. Like I said, when I offered him that

21 one-year, he got a little hostile with me.

22 And I don't think it would be good for him --

23 yes, he doesn't have what Mr. Groves has to address the

24 class. I think he would do more harm to us.

25 MR. PEREZ: Do we want to rephrase that motion?

229

1 MR. FORCE: I would like to amend the motion for

2 a one-year suspension, one-year probation, and ethics

3 training.

4 MR. PEREZ: Been so moved. Do I hear a second?

5 MR. COON: Second.

6 MR. JONES: Second.

7 MR. PEREZ: All those in favor?

8 THE BOARD: Aye.

9 MR. PEREZ: All those opposed? (No response.)

10 Motion carries.

11 MR. SHANDLER: For the record, Mr. Ortiz, all

12 they are doing today is rejecting it, and they are giving
13 you some aspirational guidelines. You do have some
14 discretion.

15 MR. PEREZ: It's up to you. These are our
16 recommendations to you so then you can formulate it.

17 MR. ORTIZ: Okay.

18 MR. PEREZ: We're not binding you into it. We
19 are rejecting it, and that's our recommendation.

20 MR. SHANDLER: Mr. Chairman, the next item on the
21 agenda is 31, Andrew Roberto. The proposed stipulated
22 agreement is a 60-day suspension, one-year probation,
23 ethics training, anger management screening, attend a
24 domestic violence training course, and eight hours of
25 community service.

230

1 MR. FORCE: Mr. Chairman, I move that we would
2 accept the Director's recommendation as stated.

3 MR. PEREZ: Do I hear a second.

4 MR. JONES: Second.

5 MR. PEREZ: All those in favor.

6 THE BOARD: Aye.

7 MR. PEREZ: All those opposed. (No response.)

8 Motion carries.

9 MR. SHANDLER: Mr. Chairman, the next item on the
10 agenda is 32, but that was handled in a previous motion.

11 The next item on the agenda is 33, Andrew
12 Scribner. The proposed stipulated order is a six-month

13 suspension, one-year probation, ethics training, anger
14 management counseling, alcohol screening and assessment,
15 and eight hours of community service.

16 MR. COON: Mr. Chairman, I move that we accept
17 this.

18 MR. PANTEAH: I'll second.

19 MR. PEREZ: All those in favor?

20 THE BOARD: Aye.

21 MR. PEREZ: All those opposed? (No response.)

22 Motion carries.

23 MR. SHANDLER: Mr. Chairman, the next item on the
24 agenda is 34, Michael F. Trujillo. The proposed
25 stipulated order is a two-year suspension, three-year

231

1 probation, and ethics training.

2 MR. JONES: Mr. Chair, I make a motion to accept.

3 MR. PEREZ: I hear your motion. Do I hear a
4 second.

5 MR. FORCE: Second.

6 MR. PEREZ: All those in favor?

7 THE BOARD: Aye.

8 MR. PEREZ: All those opposed? (No response.)

9 Motion carries.

10 MR. SHANDLER: Mr. Chairman, Item 35, Bruce
11 Volzer. The proposed stipulated order is an 80-day
12 suspension, one-year probation, ethics training, eight
13 hours of community service, and a letter of apology to the

14 victim.

15 MR. FORCE: Mr. Chairman, I move that we accept
16 the Director's recommendation as stated.

17 MR. JONES: I second.

18 MR. PEREZ: Been moved and seconded. All in
19 favor?

20 THE BOARD: Aye.

21 MR. PEREZ: All opposed? (No response.) Motion
22 carries.

23 MR. SHANDLER: Mr. Chairman, Item 36, Joshua W.
24 David, the proposed stipulated order, a letter of caution
25 be sent by the Director.

232

1 MR. COON: Mr. Chairman, I motion we accept the
2 Director's recommendation.

3 MR. PANTEAH: I'll second.

4 MR. SHANDLER: Let me just check with the
5 Director. Did you also want -- he says respondent is
6 willing to address the cadet class. Do you want to make
7 that as part of the motion?

8 MR. ORTIZ: Yes.

9 MR. SHANDLER: Sheriff, would you --

10 MR. COON: I will -- yes.

11 MR. SHANDLER: And the second, do you agree to
12 the modified motion?

13 MR. PANTEAH: Yes.

14 MR. PEREZ: So the motion is a stipulated order

15 of caution be approved, the respondent is willing to
16 address the cadet class at the Academy to assist the
17 Director with preventing misconduct? Do I hear a second?

18 MR. SHANDLER: You have a second on that
19 already.

20 MR. PEREZ: All in favor.

21 THE BOARD: Aye.

22 MR. PEREZ: All opposed? (No response.) Motion
23 carries.

24 MR. SHANDLER: Item 37 and Item 38 have been
25 addressed in a prior open session. Item 39, Gilbert

233

1 Lobato, is a voluntary relinquishment.

2 MR. FORCE: Mr. Chairman, I move to accept the
3 voluntary relinquishment.

4 MR. JONES: I second.

5 MR. PEREZ: Moved and seconded. All those in
6 favor?

7 THE BOARD: Aye.

8 MR. PEREZ: All those opposed? (No response.)
9 Motion carries.

10 MR. SHANDLER: That concludes the disciplinary
11 matters.

12 ITEM #40: SCHEDULING OF NEXT MEETING

13 MR. PEREZ: The next item on the agenda is Item
14 No. 40, scheduling of the next New Mexico Law Enforcement
15 Academy Board meeting.

16 MR. ORTIZ: Yes. Mr. Chairman, Board Members, in
17 December the 10th through the 12th, we're having the
18 Policing in the 21st Century conference being held in
19 Albuquerque.

20 We believe that it would be a good place to have
21 it would be either Albuquerque or Los Lunas on December
22 the 9th, which is a Tuesday. That way those people that
23 are attending the meeting can stay over for the
24 conference.

25 MR. PEREZ: Which state conference?

234

1 MR. ORTIZ: Policing in the 21st Century. It's a
2 large gathering. So we'll go for that Tuesday the 9th.
3 We're looking at either Albuquerque or Los Lunas for the
4 location.

5 MR. COON: I'd like to make a motion we do it in
6 Albuquerque simply for the motels. If we're going to be
7 there anyway, we can get -- not having to go from Los
8 Lunas to Albuquerque.

9 MR. ORTIZ: Okay.

10 MR. PEREZ: Do I hear a second?

11 MR. JONES: Second.

12 MR. PEREZ: All those in favor?

13 THE BOARD: Aye.

14 MR. PEREZ: All those opposed? (No response.)
15 So the meeting will be in Albuquerque on December 9th.

16 MR. FORCE: December 9th, is that going to give

17 us enough time to draft the regs that need to come back to
18 get them reviewed?

19 MS. VIGIL: In order to meet the mandatory 30
20 days, we're going to have to make sure that we submit it
21 to records and archives no later than October 16th in
22 order -- because it will post on the 30th. The next
23 schedule would be to submit it October 31st, but it won't
24 post until November 14th. So that won't give us the
25 mandatory 30-day requirement.

235

1 So we're going to have to make sure we get this
2 submitted no later than October 16th to get it posted and
3 comply with the 30-day mandated requirement.

4 MR. FORCE: So what we're looking at the
5 reserve --

6 MS. VIGIL: We're looking at the reserve rule and
7 then the high school diploma rule. We're going to need
8 both of those. I would say I would need them no later
9 than October 12th.

10 That's still to give me time to turn it into
11 records and archives to make sure that we're appropriately
12 submitting it and we don't need any changes. And that
13 will give Art Bransford, our analyst, opportunity also to
14 review it as well.

15 MR. PEREZ: Will we have a work session before
16 that December 9th meeting?

17 MR. ORTIZ: If you'd like to.

18 MR. PEREZ: I'm just asking.

19 MR. FORCE: That's where I was going because the
20 Part 11 that we spoke of earlier today, that went out on
21 the e-mail that you printed out for us. We could probably
22 e-mail that to all the board members, but we would need
23 you all to actually review it, make any last-minute
24 changes before we do publication.

25 The other item, though, would be more difficult I

236

1 think without a work session.

2 MS. VIGIL: Mr. Shandler, am I correct in saying
3 if we go forward with the public hearing, if they have any
4 amendments or adjustments they want to make to the rule
5 they can do that at the meeting. And when we print the
6 actual rule, then it will go finalized. But at the public
7 hearing they still have the opportunity to make any
8 changes. Correct?

9 MR. SHANDLER: I agree both with what you're
10 saying. We can do this.

11 MS. VIGIL: Okay.

12 MR. FORCE: Okay. Great.

13 MR. PEREZ: So, again, my question, will we have
14 a workshop the day before or not? Will that be required?

15 MR. ORTIZ: Yes, if you'd like we can schedule
16 one. I think we should on that Monday. Monday the 8th.

17 MR. PEREZ: Okay.

18 MR. ORTIZ: We can have it in the afternoon.

19 MR. PEREZ: You will let us know then?

20 MR. ORTIZ: Yes.

21 ITEM #41: ADJOURNMENT

22 MR. PEREZ: Do I hear any further business? Do I
23 have a -- hear a motion to close this session?

24 MR. COON: Mr. Chairman, I would like to make a
25 motion to close this session.

237

1 MR. JONES: Second.

2 MR. PEREZ: All those in favor?

3 THE BOARD: Aye.

4 MR. PEREZ: All those opposed? Session is closed
5 at 3:47 p.m.

6 (The meeting adjourned at this time.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20
21
22
23
24
25

238

1

2 C E R T I F I C A T E

3

4 I, Tanya M. Nims, a Certified Court Reporter, do
5 hereby certify that the Proceedings of the above-entitled
6 hearing were reported by me stenographically on September
7 30, 2008, and that the within transcript is a true and
8 accurate transcription of my shorthand notes.

9 I further certify that I am neither an attorney
10 nor counsel for, nor related to or employed by any of the
11 parties to the hearing, and that I am not a relative or
12 employee or any attorney or counsel employed by the
13 parties hereto, or financially interested in the hearing.

14
15
16
17
18

19 TANYA M. NIMS, RPR, NMCCR
20 NM Certified Court Reporter #168

21 License Expires: December 31, 2008

22

23

24

25