

NEW MEXICO LAW ENFORCEMENT ACADEMY

BOARD MEETING

December 8, 2014

1:05 p.m.

Volume 1

Albuquerque Police Academy

5412 2nd Street, N.W.

Albuquerque, New Mexico 87107

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

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4 **BOARD MEMBERS**

5 Gary King, Chairman

6 James R. Coon, Vice Chairman

7 Nate Korn

8 Jaime Quezada

9 Chris McCall

10 Pete Kassetas

11

12 **ALSO PRESENT**

13 Jack F. Jones

14 Rick Word

15 Monique Lopez

16 Monica Medrano

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20 Attached:

21 Exhibit Nos. 1 through 5 - Ratification of Certifications for Law Enforcement Officers

22 Exhibit Nos. 1 through 3 - Ratification of Certifications for Public Safety Telecommunicators

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1 **ITEM NO. 1: CALL TO ORDER**

2 **MR. KING:** So I am going to call the meeting

3 to order. This is our first attempt at bifurcating

4 the Law Enforcement Academy Board meetings. I

5 actually think that it's going to work well for

6 everybody. So thank you all for being here today.

7 The way that we're doing this sort of

8 precludes everybody that's involved in certification

9 hearings from having to sit here for long periods of

10 time waiting for something to happen. And we can be a

11 little more efficient in dealing with this part of our

12 Board meeting. So thank you all for being here today.

13 **ITEM NO. 2: ROLL CALL**

14 **MR. KING:** The first item on the agenda is

15 roll call. We'll just have everybody introduce

16 themselves. And even though it's not just the Board,

17 I'll start with Monica and I'll let everyone introduce

18 themselves.

19 **MS. MEDRANO:** My name is Monica Medrano with

20 the Law Enforcement Academy.

21 **MR. JONES:** Jack Jones, Director of the Law

22 Enforcement Academy.

23 **MR. McCALL:** Chris McCall, Hobbs Police

24 Department, representing the municipal chiefs.

25 **MR. QUEZADA:** Sergeant Jaime Quezada, Las

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<p>1 Cruces Police Department, representing the line 2 officers.</p> <p>3 MR. KASSETAS: Pete Kassetas, State Police, 4 representing State Police.</p> <p>5 MR. KING: Gary King, Attorney General.</p> <p>6 MR. KORN: My name is Nate Korn, I'm 7 representing the citizens. I'm one of the two citizen 8 representatives.</p> <p>9 MR. COON: Sheriff Rob Coon, I am from Chavez 10 County, Roswell, and I represent the sheriffs.</p> <p>11 MS. LOPEZ: Monique Lopez, New Mexico Law 12 Enforcement Academy.</p> <p>13 MR. KING: Good. So we have a quorum.</p> <p>14 ITEM NO. 3: APPROVAL OF AGENDA</p> <p>15 MR. KING: The next item on the agenda is 16 approval of the agenda. Are there any additions or 17 corrections to the agenda that we have for today? 18 Seeing none, I'll take a motion to approve the agenda.</p> <p>19 MR. McCALL: I'll make the motion.</p> <p>20 MR. COON: Second.</p> <p>21 MR. KING: All in favor say aye. 22 (Those in favor so indicate.)</p> <p>23 MR. KING: All opposed. All right. The 24 agenda is approved.</p> <p>25 ITEM NO. 4: APPROVAL OF MEETING MINUTES</p>	<p>1 (September 3, 2014)</p> <p>2 MR. KING: The next item is approval of the 3 meeting minutes from September 3rd, which got sent out 4 to us ahead of time. And I don't know if they're 5 attached to this, but I know we had them sent out 6 previously. Any additions or corrections to the 7 minutes from the September 3rd meeting?</p> <p>8 MR. KORN: I make a motion that we approve 9 the minutes.</p> <p>10 MR. KASSETAS: Second.</p> <p>11 MR. KING: All in favor say aye. 12 (Those in favor so indicate.)</p> <p>13 MR. KING: Any opposed. So the minutes are 14 approved.</p> <p>15 ITEM NO. 5: DIRECTOR'S REPORT</p> <p>16 MR. KING: The next item on the agenda is the 17 Director's report. Director Jones.</p> <p>18 MR. JONES: Dr. King, Members of the Board, 19 it's an honor to be here today. 20 The New Mexico Law Enforcement Academy would 21 like to first of all introduce a new member of the Law 22 Enforcement Academy. His name is Joaquin Nielsen. 23 Mr. Joaquin Nielsen comes to us from New 24 Mexico State University where he got a degree in 25 criminal justice. He worked five years at the county</p>
<p>Page 8</p> <p>1 corrections in Santa Fe County, has 1.5 years as a 2 special agent for Tax and Rev, and ten years with the 3 Department of Transportation.</p> <p>4 So we're very, very fortunate to have him on 5 board. He's working as our ops manager inside the 6 office. So he can help us with maintaining all the 7 paperwork that comes in and keep it separated so we 8 can move forward.</p> <p>9 MR. KASSETAS: Welcome.</p> <p>10 MR. JONES: The following information is a 11 description of some of the activities that have taken 12 place at the Law Enforcement Academy since the last 13 Board meeting.</p> <p>14 The San Juan County Criminal Justice Training 15 Authority with Sergeant Dale Bode, the Southeastern 16 New Mexico Law Enforcement Academy, and the New Mexico 17 Law Enforcement Academy all had a telecommunicator 18 class that we graduated.</p> <p>19 We're very, very fortunate in that Ms. Keri 20 Schrock, who is here from the San Juan County 21 Communications Authority, had her first class, 22 Class 001, on September 26th, the graduation date. So 23 now there are three academies that are doing public 24 service telecommunicator certifications.</p> <p>25 As we look across the state, we understand</p>	<p>Page 9</p> <p>1 that there are about 180 people that need dispatcher 2 certification. So we're trying to make that. I don't 3 think we'll ever catch up with that, sir, but that's 4 where we're headed.</p> <p>5 The Southeastern New Mexico Law Enforcement 6 Academy, the Dona Ana County Sheriff's Academy, the 7 Albuquerque Police Department Academy, and the New 8 Mexico Law Enforcement Academy will each graduate a 9 basic academy the week of December 8th.</p> <p>10 The Southeastern New Mexico Law Enforcement 11 Academy will graduate their class on December 9th, the 12 Dona Ana County Sheriff's Academy on December 18th, 13 the Albuquerque Police Department Academy on 14 December 19th, and the Law Enforcement Academy Class 15 189 will graduate on December 19th.</p> <p>16 You can see the summary of advanced training 17 that we've done within the last several months at the 18 Law Enforcement Academy. There have been 199 students 19 that attended the above training for a total of 5,652 20 hours since the last time the Board has met.</p> <p>21 The 20th Policing in the 21st Century 22 conference was December 2nd through the 4th in 23 Albuquerque co-sponsored by the Training and 24 Recruiting Division in the Advanced Training Bureau. 25 There were 180 people that attended.</p>

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<p>1 Instructor Elliott Guttmann gave an 2 outstanding presentation for four hours. And he 3 talked about the basic academy, he talked about the 4 Hobbs Academy, and he talked about the 5 telecommunications academy. 6 Training provided by the Advanced Training 7 Bureau is listed. 8 The Law Enforcement Academy has been again 9 inundated with unusual amounts of inspection of public 10 records requests. The New Mexico Law Enforcement 11 Academy received several requests. And it has taken 12 several hours for the small staff to gather and send 13 IPRA requests out to the DPS staff so they can send it 14 to the requesters. 15 These requests are asking for officer 16 training, personnel files, and any misconducts. This 17 sometimes requires the staff to go into the archives, 18 and it takes a long time for us to do that. 19 Again there is a list of several agencies 20 that the New Mexico Law Enforcement Academy would like 21 to thank. We could not do the dynamic training we're 22 doing at the academy without the assistance of these 23 police departments. 24 And also, in recognition of that, I'd like to 25 recognize and give special thanks to Major Dina Romero</p>	<p>1 and Officer Kurtis Ward of the New Mexico State 2 Police. They organized and assisted with the 3 instruction of the largest Driving While 4 Intoxicated/Standard Field Sobriety Testing class in 5 the history of the New Mexico Law Enforcement Academy. 6 This class was conducted November 17th 7 through the 19th, 2014, at the Law Enforcement 8 Academy. This was accomplished using 25 DWI/SFST 9 instructors from all over the State of New Mexico 10 representing nine different law enforcement agencies 11 and 58 cadets from Class 189 from 19 different 12 agencies, with 35 volunteers from the Albuquerque and 13 Santa Fe area. 14 Sir, that concludes the Director's report. 15 Are there any questions? 16 MR. KING: Thank you, Mr. Jones. Any 17 questions for Director Jones? Seeing none, thank you. 18 MR. JONES: Thank you, sir. 19 ITEM NO. 6: PUBLIC COMMENT 20 MR. KING: So the next item on the agenda is 21 public comment. And I believe that we have at least 22 one person who signed up here. And we'll see if 23 there's anybody else. Mr. Mechels. 24 MR. MECHELS: Good afternoon, Mr. Chair, 25 Members of the Board. First, let me be clear. I'm</p>
<p>Page 12</p> <p>1 Chris Mechels, retired, Los Alamos. I have attended a 2 number of these meetings so you probably are familiar 3 with me. 4 This public comment has nothing to do with 5 the agenda items that I have on later today. I just 6 want to be clear about that. 7 MR. KING: Okay. 8 MR. MECHELS: The reason for commenting today 9 is, as many of you are probably aware, we had another 10 police shooting recently in Santa Fe a couple days 11 ago. It involved punching a lot of holes in a van off 12 Alameda. 13 And I don't think the details, which are 14 still not very clear as to whether the driver was 15 armed or not -- that's not available. But I think 16 what is troubling is that -- the shooting at the van 17 itself is troubling. 18 Apparently there were about ten bullet holes 19 put into this van, a bunch of them from the side and a 20 couple from the rear, by a couple different officers. 21 This, of course, endangered the public. 22 When you've got a guy going down the road, 23 what happens if you get lucky and kill him. The 24 trajectory of the van seems pretty unclear at that 25 point. And the fact that they didn't stop him, he</p>	<p>Page 13</p> <p>1 finally stopped and was pulled over later on. 2 So it seems very unclear of the wisdom in 3 shooting at that guy. I mean he wasn't stopped by the 4 bullets, he was stopped. The bullets simply -- in my 5 opinion and the opinion of a number of the public that 6 are currently upset about police shootings, the 7 shooting simply contributed to endangering the public. 8 Consistent with that we have one of the -- 9 one of the prominent items in the recent DOJ 10 settlement agreement in Albuquerque, which I'm sure 11 that many of you are aware of, one of the prominent 12 items in that agreement is the prohibition against 13 shooting at moving vehicles or shooting from moving 14 vehicles. And it's a very strong prohibition. 15 So again in our incident -- with uniform 16 policies across the state, I would suggest that 17 perhaps we wouldn't have had that van being shot at in 18 Santa Fe, because their policies and their training 19 wouldn't have allowed it. Hopefully the standards of 20 the DOJ will become at some point widespread in the 21 state. 22 I mean hopefully it will help to set a new 23 standard of police behavior, because certainly it 24 would be of some convenience for those who are 25 questioning this in a tort suit, for example, to be</p>

1 able to look to that prohibition in that DOJ
2 settlement as establishing the standard which
3 unfortunately the rest of the state is not following
4 in our police forces. And I know this from personal
5 investigations of the policies.

6 And there are some -- there are some agencies
7 that are following those standards. Some that come to
8 mind are -- Albuquerque pretty much follows the
9 standards. Las Cruces has such language in their
10 policies. Los Alamos has that very language in their
11 policies of that prohibition. Even the Santa Fe
12 Sheriff has such a provision in their use-of-force
13 policies.

14 But when I look at other policies, the State
15 Police, though he may not agree with me, Mr. --

16 MR. KASSETAS: And I don't.

17 MR. MECHELS: Okay. Anyway we may disagree
18 with the language. We probably would. But we've
19 never really discussed it. I would love to discuss
20 it.

21 I believe there are policies all over the
22 state. And I've looked at some of these policies.
23 The Santa Fe Police policy does not prohibit shooting
24 of vehicles in such cases. I don't see that the State
25 Police policy prohibits shooting at vehicles in such

1 across the state, why aren't you? I can find no other
2 agency in the state that has that responsibility.

3 And it certainly seems to me that someone
4 must or this mayhem and confusion will continue. So
5 that's my concern today. Thank you for your time.

6 MR. KING: Thank you, Mr. Mechels. All
7 right. Anybody else? That's the only person I have
8 signed up. Thank you for your point.

9 ITEM NO. 7: ADDITION TO FALLEN OFFICER MEMORIAL WALL
10 ANTHONY HAASE - RIO RANCHO POLICE DEPARTMENT

11 MR. KING: The next item on the agenda is
12 item No. 7, addition of fallen officer memorial wall,
13 Anthony Haase. Please go ahead.

14 MR. JONES: Dr. King, Members of the Board,
15 it's my distinct pleasure and honor to ask
16 Chief Michael Geier from the Rio Rancho Police
17 Department to come forward and present this to the
18 Board.

19 MR. KING: Chief Geier, please go ahead.

20 MR. GEIER: Good afternoon, Mr. Chairman,
21 Members of the New Mexico Law Enforcement Academy
22 Board. I'm Michael Geier, Chief of the Rio Rancho
23 Police Department.

24 It is my honor and privilege that I come
25 before you this afternoon and humbly request and ask

1 situations.

2 So, you see, the potential for mischief and
3 mayhem is enormous when we've got police agencies all
4 across the state running different policies with
5 different opinions about the law.

6 And I'm going to suggest to you -- I'm going
7 to suggest to you -- and this has come up before,
8 before this Board, going back to last February, when
9 we brought the Jeanette Anaya incident to the
10 attention of this Board. And this question was raised
11 about the policies of the State Police at that time.

12 What is the role of the Law Enforcement
13 Academy Board as a standard-setting organization? As
14 far as I'm aware of in this state, they're the only
15 standard-setting-organization in the state. You're
16 chaired by the Attorney General who is the chief law
17 enforcement officer of the state. I hope I have that
18 right.

19 And so the question is, if this Board chaired
20 by the Attorney General and chartered as a standards
21 organization -- and I know your emphasis is mostly on
22 the standards in training, and we have some issues
23 about that.

24 But if this Board is not setting standards
25 and helping to establish consistent legal standards

1 that the New Mexico Law Enforcement Academy Board
2 accept the nomination from the Director of the
3 academy, the men and women of the Rio Rancho Police
4 Department, and most importantly the family of Officer
5 Anthony Haase to be placed on the New Mexico Law
6 Enforcement Memorial Wall in Santa Fe, New Mexico.

7 Officer Anthony Haase gave his life while
8 serving the citizens of the Rio Rancho Police
9 Department and the City of Rio Rancho and the State of
10 New Mexico. He was responding to a call on
11 October 26th, 2014, when he was involved in a
12 single-vehicle crash.

13 On behalf of the family of Anthony Haase and
14 the members of the Rio Rancho Police Department, I
15 wish to thank you for your consideration to honor
16 Officer Haase.

17 MR. KING: Thank you, Chief. Questions or
18 comments from the Board?

19 MR. KASSETAS: I would like to make a
20 comment, Mr. Chairman. Chief, I commend you and your
21 staff for the leadership you've shown during this
22 incident. The State Police are glad to partner with
23 you and assist you through that.

24 And if it's time for a motion, I'd like to
25 make a motion to accept the request to place Officer

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<p>1 Haase on the memorial wall at the Law Enforcement 2 Academy. 3 MR. KORN: Second. 4 MR. COON: Second. 5 MR. McCALL: Second. 6 MR. QUEZADA: Second. 7 MR. KING: I have a motion and it's been 8 seconded by everybody on the Board. It's very 9 important. Thank you, Chief, for bringing this to us, 10 and Mr. Jones. All in favor say aye. 11 (Those in favor so indicate.) 12 MR. KING: Any opposed. The motion is 13 carried. And we'll add Officer Anthony Haase's name 14 to the wall. Thank you, Chief, for doing that. 15 And I think we have some other things coming 16 up. Anything we can do to help the family, please let 17 us know. 18 MR. GEIER: I appreciate that. Thank you. 19 ITEM NO. 8: RATIFICATION OF CERTIFICATIONS FOR LAW 20 ENFORCEMENT OFFICERS 21 MR. KING: All right. The next item on the 22 agenda is ratification of certifications for law 23 enforcement officers. I think we have them in our 24 packet here. Director Jones, please. 25 MR. JONES: Yes, sir. If you will turn to</p>	<p>1 tab 8. They're in there by exhibits. And what I'd 2 like to do is list the ratification of certifications. 3 The cert by waiver challenge is Exhibit 1; San Juan 4 Academy Class No. 33, Exhibit 2; Southeastern New 5 Mexico Law Enforcement Academy cert by waiver No. 16 6 is Exhibit 3; and cert by waiver No. 83, Exhibit 4, 7 from the Law Enforcement Academy. 8 And there are a couple of individual ones in 9 there from Western New Mexico University, No. 59; 10 Southeastern New Mexico University, No. 32; and 11 Southeastern New Mexico University Academy, No. 15. 12 Those are contained in Exhibit 5. 13 So what I'd like is for each of you to look 14 at each one of the exhibits. For example, Exhibit 1 15 is not in chronological order. But those are all the 16 individuals that came in and took the cert by waiver 17 class. 18 Exhibit 2 is San Juan County, Exhibit 3 is 19 Southeastern New Mexico Law Enforcement Academy, 20 Exhibit 4 is the Law Enforcement Academy, and 21 Exhibit 5 are the individuals. 22 MR. KING: Okay. Let's do it this way then 23 just so it will make it easier for the record too, 24 let's just do them by exhibit. You guys want to make 25 a motion on Exhibit No. 1.</p>
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<p>1 MR. McCALL: Motion to approve Exhibit 1. 2 MR. KING: I have a motion to approve the 3 certification of everybody in Exhibit 1. That starts 4 with 14-0222-P. And it's not in numerical order. But 5 the last one on that list is 14-0238-P. Everybody 6 understand that? I have a motion. 7 MR. QUEZADA: I would second that. 8 MR. KING: All in favor say aye. 9 (Those in favor so indicate.) 10 MR. KING: All opposed. So we'll show that 11 we approved the certification of all those officers on 12 Exhibit 1. Let's move to Exhibit 2. I show Exhibit 2 13 as starting with 14-0226-P. 14 MR. JONES: They are in sequential order. 15 MR. KING: And it goes to 14-0236-P. That's 16 Exhibit No. 2. I'll take a motion. 17 MR. QUEZADA: I'd like to make a motion to 18 accept Exhibit No. 2. 19 MR. KASSETAS: Second. 20 MR. KING: We have a motion and a second to 21 approve the certifications of all those officers on 22 Exhibit No. 2. All in favor say aye. 23 (Those in favor so indicate.) 24 MR. KING: Any opposed. All right. So those 25 certifications are complete. Exhibit No. 3, I show</p>	<p>1 that as beginning with 14-0239-P. Those appear to be 2 in order as well ending at 14-0250-P. I'll take a 3 motion on Exhibit No. 3. 4 MR. KORN: So moved. 5 MR. KING: We have a motion to accept the 6 certifications for the officers on Exhibit No. 3. 7 MR. QUEZADA: Second. 8 MR. KING: All in favor signify by saying 9 aye. 10 (Those in favor so indicate.) 11 MR. KING: Any opposed. So we pass the 12 certifications on Exhibit No. 3. And then we have 13 Exhibit No. 4. 14 MR. JONES: They are not in sequential order, 15 sir. 16 MR. KING: Right. 17 MR. JONES: And that's the cert by waiver New 18 Mexico Law Enforcement Academy No. 83. 19 MR. KING: Just on our sheet, Exhibit No. 4 20 starts with 14-0257-P. They're not necessarily all in 21 order. But the last one on that list is 14-0270-P. 22 I'll accept a motion for Exhibit No. 4. 23 MR. QUEZADA: I'll make that motion, sir. 24 MR. KING: We have a motion to approve all of 25 the officers on Exhibit No. 4.</p>

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<p>1 MR. KASSETAS: Second. 2 MR. KING: All in favor say aye. 3 (Those in favor so indicate.) 4 MR. KING: Any opposed. So we have approved 5 the certifications for all those officers on 6 Exhibit No. 4. 7 And then finally we have Exhibit No. 5 which 8 are the ones from different academies. Any questions 9 or comments on that, Mr. Jones? 10 MR. JONES: That's just the nature of the 11 beast, sir. One of them wasn't able to take the test 12 the first time at Western New Mexico University. And 13 he was able to take it later, and we issued the 14 certification. 15 MR. KING: So that's why these come to us a 16 little bit differently. But Exhibit No. 5, there are 17 four names on that, 14-0256-P, 14-0271-P, 14-0272-P, 18 and 14-0273-P. That's Exhibit No. 5. I'll take a 19 motion. 20 MR. McCALL: Motion to approve. 21 MR. QUEZADA: I'll second it. 22 MR. KING: I have a motion to approve and a 23 second. All in favor say aye. 24 (Those in favor so indicate.) 25 MR. KING: Any opposed. So we have approved</p>	<p>1 the certifications of those officers listed on Exhibit 2 No. 5. So that completes the ratification for 3 certifications for law enforcement officers. 4 ITEM NO. 9: RATIFICATION OF CERTIFICATIONS FOR 5 TELECOMMUNICATORS 6 MR. KING: The next item on the agenda is 7 ratification of certifications for telecommunicators. 8 Mr. Jones. 9 MR. JONES: Yes, sir. San Juan County 10 Communications Authority is Exhibit No. 1, sir. PST 11 Class 127 is in sequential order for Exhibit No. 2. 12 And it is two pages, sir. And then Southeastern New 13 Mexico University, Class No. 4, Exhibit No. 3. They 14 are in sequential order also. 15 MR. KING: Okay. Let's do that one the same 16 way, let's just do them by exhibit. Exhibit No. 1 is 17 from San Juan Class No. 1. We're pleased with that. 18 MR. JONES: Yes, sir, we are. We're very 19 happy with that one. 20 MR. KING: Beginning with 14-0074-PST down to 21 14-0079-PST. I'll take a motion on Exhibit 1. 22 MR. KORN: I'll so move. 23 MR. KING: We have a motion to approve. 24 MR. KASSETAS: Second. 25 MR. KING: Seconded. All in favor signify by</p>
<p>1 saying aye. 2 (Those in favor so indicate.) 3 MR. KING: Any opposed. So we have approved 4 the telecommunicators on Exhibit No. 1 certification. 5 Exhibit No. 2 is from the training academy. 6 It begins with 14-0080-PST, and they appear to be 7 mostly sequential. I think are they sequential. 8 MR. JONES: Yes, sir, to page 2. There's a 9 second page. 10 MR. KING: And they end with 14-0115-PST. 11 That's Exhibit No. 2. Any questions? I'll take a 12 motion. 13 MR. COON: So moved. 14 MR. KING: I have a motion to approve. 15 MR. QUEZADA: Second. 16 MR. KING: And a second. All in favor say 17 aye. 18 (Those in favor so indicate.) 19 MR. KING: Any opposed. So we have approved 20 the certifications for Exhibit No. 2. 21 Now, Exhibit No. 3, from 14-0116-PST through 22 14-0127-PST. I'll take a motion. 23 MR. McCALL: Motion to approve. 24 MR. KING: I have a motion to approve. 25 MR. KORN: Second.</p>	<p>1 MR. KING: Seconded. All in favor say aye. 2 (Those in favor so indicate.) 3 MR. KING: Any opposed. So we have approved 4 all if those telecommunicators on Exhibit No. 3. 5 MR. JONES: Members of the Board, Dr. King, 6 thank you very much. 7 MR. KING: Thank you, Mr. Jones. 8 ITEM NO. 10: TO EXAMINE AND POSSIBLY REVISE THE 9 BOARD'S PENALTY GUIDELINES. EXAMINATION TO INCLUDE 10 WHETHER TO REDUCE THE BOARD'S ASSESSED PENALTY UNDER 11 CERTAIN CIRCUMSTANCES BASED ON A SUSPENSION IMPOSED BY 12 THE RESPONDENT'S AGENCY 13 MR. KING: All right. The next item on the 14 agenda is item No. 10, to review the Board's penalty 15 guidelines. Chief Kassetas, that's your item. Are 16 you going to go up there? 17 MR. KASSETAS: I'll just sit here, if it's 18 okay. 19 I'm going to pass out a packet. If you go to 20 the very, very last page, there are sentencing 21 guidelines that you might want to reference when I 22 talk about this. 23 Mr. Chair, Members of the Board, I really 24 somewhat struggle with some of the way we administer 25 the penalties through the penalty guidelines. And I</p>
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1 would like to open up a discussion about what the
2 actual goal and mission would be as far as what we're
3 doing as a board that sanctions officer conduct.

4 MR. MECHELS: Can I get a copy of that
5 document.

6 MR. KASSETAS: You betcha. Here you go.
7 Come on up.

8 With that said, the chiefs and sheriffs of
9 the various departments that conduct Internal Affairs
10 investigations commonly take action on their
11 employees. And then they send in an LEA-90, which
12 obviously comes before the Board.

13 So ultimately what happens is an officer may
14 be suspended for two weeks, and then the Board
15 sanctions four months for dereliction of duty, for
16 instance. And then the chief and sheriff are left
17 with having to place that employee on paid
18 administrative duties because the Board suspended
19 their certification. And I think that's
20 counterproductive to the agency and to the citizens
21 that those departments serve.

22 So I would like to discuss possibly being
23 able through the Law Enforcement Academy, in the
24 informal hearings, in the adjutant judge system, that
25 we take into account the punishment that was leveled

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1 And some of the problems are that obviously
2 different jurisdictions and different agencies have
3 different leaders. And they give completely different
4 penalties for the same offense. That would be number
5 one. And number two would be that the distinction
6 between suspending an officer with pay versus without
7 pay is probably something that the Board ought to be
8 taking a look at.

9 If I understand you correctly, your proposal
10 is to give, in effect, time served if the agency had a
11 suspending officer without pay.

12 MR. KASSETAS: Yes, exactly. I understand
13 that there is a differentiation between one chief
14 versus, for instance, a sheriff and how they deal with
15 misconduct. And I think that is the prerogative and
16 the responsibility of the chief or sheriff first and
17 foremost.

18 And the Board can look at it from the
19 perspective that, if the sheriff or chief took the
20 proper action, certainly they could add on time; which
21 I think would send the message to the leaders of the
22 law enforcement agencies out there. You've suspended
23 someone for a day that normally they would have lost
24 two weeks' worth of work or even their job.

25 So I get it that I think the system is set up

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1 by said chief or sheriff as essentially time served I
2 guess I would use.

3 And if the Board at the time or the Director
4 or AJ thinks that that punishment meets the criteria,
5 then they're able to continue to submit the LEA-90.
6 And the Board would hold the findings. That way it
7 would go on the officer's record, if anybody follows
8 me.

9 What we're doing now is a chief may suspend
10 an officer for two weeks without pay, which definitely
11 hurts. And it's definitely done to change conduct and
12 punish. But then they come before the Board and we
13 take their certification for four months.

14 What is that chief to do only to put them on
15 desk duty, collecting a salary while manning the
16 phones while everybody else is answering calls for
17 service. That's the first issue I have. And that
18 dovetails right into how we deal with DWIs, which we
19 can discuss after the first one. So that's really my
20 point of wanting to discuss this.

21 MR. KING: Okay. Comments. Mr. Korn.

22 MR. KORN: Mr. Chairman, Chief Kassetas, I
23 think that the proposal is really a good one. The
24 Board has over my knowledge over the past decade or so
25 kind of revisited this.

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1 to allow chiefs and sheriffs to make those decisions
2 based on their agency and how they operate. But
3 again, through the LEA-90 process, it would allow the
4 Board to memorialize that discipline taken so it's on
5 the officer's record.

6 In my opinion one of the things that law
7 enforcement suffers from in New Mexico and maybe
8 systemically throughout the country is officers being
9 able to leave agencies to go to others and that record
10 not truly following them because of the different
11 protections in place or perceived protections.

12 I think that the Law Enforcement Academy or
13 law enforcement process, academy process, should track
14 that officer misconduct for agencies to reference when
15 they're making decisions to hire or not. And that's
16 not always done.

17 I think this would give a better incentive
18 for chiefs and sheriffs to send in an LEA-90. And in
19 the back of their mind, I'm sure they're thinking,
20 well, if I send in an LEA-90 and I've suspended this
21 officer for a week, the Board is going to sanction him
22 for four months. What's the point?

23 You know, I would rather have dealt with it
24 on the front end. And we may be prohibiting them
25 sending in other LEA-90s to document that misconduct

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1 that we would like to see, if that makes any sense.

2 MR. KING: Mr. Korn.

3 MR. KORN: So if I understand, are you
4 proposing that we maintain our standards so there's a
5 standard throughout the state, and then let the
6 individual agency heads apply whatever standard they
7 do and just subtract it from whatever we would be
8 using as penalty?

9 MR. KASSETAS: I would go so far as to say
10 that I agree with taking into consideration the
11 sanction leveled by that department head. But looking
12 at how we structure the penalty guidelines, you know,
13 theft or lying, four months to revocation gives a
14 range. I'm thinking this is four months suspension to
15 revocation, correct?

16 MR. KORN: Correct.

17 MR. KASSETAS: Well, in my mind -- and I'm
18 not trying to apply my standards as State Police Chief
19 to anybody. But theft or lying speaks to the core of
20 what we do as far as law enforcement and on the ethics
21 we uphold.

22 So if I had a proven case in front of me of
23 theft or lying, I would terminate that individual.
24 And to send the LEA-90 to the Board to only have them
25 suspend him for four months would be awkward at some

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1 departments, then doesn't that create huge disparities
2 throughout the state, where an officer in a smaller
3 department would get two days off, where in a larger
4 department he would get two weeks off.

5 MR. KASSETAS: It's something that I know the
6 Board struggled with in the past and we'll continue to
7 struggle with in the future. That's why I say that
8 the guidelines in place may play a role in how we deal
9 with conduct.

10 I can tell you from my perspective, in the
11 seat I'm in now, if I have to suspend someone for over
12 30 days, I'm really questioning why they're even
13 employed with my agency. That's a large, heavy
14 suspension.

15 So I would agree that there are entities out
16 there that would rather just have the LEA Board deal
17 with the misconduct. And they send us the LEA-90,
18 thinking let the LEA deal with it instead of us.

19 And I'm not sure exactly if there are any
20 examples of that. But I don't know because we don't
21 really sometimes have that information in front of us
22 as the Board. I want to know, when that conduct case
23 comes before us, what that chief or sheriff did.

24 So I think what I would want to do, to wrap
25 this up or to kind of put a point on it, is would it

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1 point. But I know we need that range.

2 I think most of these fit within it. So I
3 suppose I could concede that we leave the ranges in
4 place but look at giving time served and being able to
5 adjust. For conduct unbecoming, for instance, and we
6 have two months and a chief chooses to suspend for a
7 week, I don't know if I would still want to give the
8 remainder of the time served and give that individual
9 what I perceive as a vacation paid to sit in the
10 office while everybody else works.

11 I think a suspension is meaningful to a field
12 officer. They're not all rich out there and not
13 getting a lot of money. When you take someone's pay
14 for a week, they feel it. And I think the Board
15 should take that into account.

16 MR. KING: Questions?

17 MR. KORN: So if there's one agency that
18 would say conduct unbecoming would be a week and then
19 another agency that would say it's a month, isn't the
20 only standardization of any of this the Law
21 Enforcement Academy Board that says it's a minimum of
22 two months to revocation with a mitigating
23 circumstance?

24 I mean if we're just going to let individual
25 agencies do it with different chiefs of different

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1 be acceptable to instruct the LEA and the adjutant
2 judge system or the investigator to ensure that they
3 provide the information to the Board of what the
4 outcome was as far as discipline for that particular
5 agency.

6 As a board we can discuss in closed session
7 what level of action we're going to take. That's a
8 little bit different than the way we do business now,
9 because we really don't take it into account.

10 MR. KORN: I agree with Chief Kassetas. I
11 guess the only question I would have is if an agency
12 suspends somebody with pay versus without pay, because
13 without pay it wouldn't seem to be the same sort of
14 limitation.

15 MR. KASSETAS: I've never heard anybody
16 suspending someone with pay in an agency. There are
17 some other chiefs here. But I've never really heard
18 of that action. Suspended with pay doesn't equate. I
19 don't understand that.

20 MR. KORN: I think we've seen it quite a bit.

21 MR. COON: Mr. Chairman.

22 MR. KING: Sheriff.

23 MR. COON: You know, the majority or a lot of
24 these cases, the DWIs, aggravated DWIs, the thefts,
25 most of those guys have been terminated from their

1 department already when they see us. I would say way
2 over 50 percent.

3 I think it would be important -- and I've
4 always felt it was kind of a double jeopardy here a
5 little bit. But it would go a long way on us deciding
6 what to do with the individual officer.

7 If we knew his hometown chief had already
8 suspended him or took some kind of action, maybe we
9 can adjust down a little bit from that. What it's
10 going to cause is some of these smaller departments
11 not sending in LEA-90s at all.

12 But if we take into consideration that he got
13 two weeks or a week off without pay when he comes in
14 front of us, we can maybe deduct it. He's probably
15 already been hit economically pretty hard.

16 MR. KING: Other comments? I have some
17 myself.

18 MR. QUEZADA: I had a question. What would
19 the possibility be of -- or I guess the opinion of
20 everybody if we had a set standard that, as a chief or
21 a sheriff, you had a range in an area that you can --
22 I mean that also the Board would look at.

23 I mean a range that, if they're going to be
24 disciplined by their department, it also falls in the
25 same range that the Board would discipline them. And

1 today. But it seems like it might make sense to
2 basically say we're going to require that to be part
3 of the information that the Board has on these actions
4 or whatever.

5 Otherwise the guidelines are just guidelines.
6 I mean the Board my understanding is looks at each
7 individual case and says this is what we're going to
8 do in this case.

9 MR. KORN: And, Chairman, I wonder whether
10 it's not so much an action item as it is the Board as
11 a process considering this when we go and devise our
12 penalties when we're in closed session. And I think
13 that's what the chief is getting at. We should
14 publish these and have kind of a standard as we
15 proceed.

16 MR. KASSETAS: Mr. Chair, and further, you
17 know, when we look at this, there needs to be maybe a
18 committee assigned to discuss penalty guidelines to
19 make a bigger presentation to the Board.

20 I look at domestic violence as from two to
21 six months suspension and the DWI penalties as three
22 to six months. But I think we should really relook at
23 that. And it's important we're policing our own
24 profession.

25 And if an officer has a DWI and they're

1 the chief or the sheriff has the prerogative in that
2 range area.

3 So once the LEA-90 comes up to our level and
4 we review it, if we're comfortable with what the chief
5 used or the sheriff as far as the discipline, we can
6 just accept it at that; or if we believe it should be
7 more, it's still within that range and that chief
8 knows. Is that reasonable?

9 MR. KING: I mean actually here is a question
10 I have. And I don't know, maybe you guys know. Is
11 that not taken into consideration now? You know, this
12 is not the part of the meeting that I sit in on.

13 But I mean whenever we make a determination
14 on a revocation of a certification, is that
15 information not available to the Board as far as what
16 the previous penalty was from the agency? I would
17 assume that that's part of the package.

18 MR. KORN: I think it's available. But I
19 think as a board we haven't really taken that into
20 consideration in our guidelines. I think that's why
21 Chief Kassetas' idea is really fair towards the
22 respondent and without impacting anything that the
23 public wouldn't be comfortable with.

24 MR. KING: I'm trying to think. I don't
25 think we're going to be able to take action on this

1 currently employed, that should come at a very stiff
2 penalty. And a domestic violence charge also, whether
3 it's sustained internally or externally. There should
4 be more teeth on those issues.

5 The LEA Board should be dealing with in my
6 opinion those egregious misconduct issues head on.
7 And those two come to mind as two we might want to
8 revamp and maybe others on the penalty guidelines.

9 MR. KING: Any other comments? Chief.

10 MR. McCALL: You know, I agree that we need
11 to be able to look at the totality of the situations
12 and what's gone on as an approach and to take that
13 into consideration when we're issuing our penalties.

14 Really as a chief I look at this as two
15 different things. I'm going to do what I have to do
16 at my level as far as suspension or discipline within
17 the department. And then what that officer is dealing
18 with with the New Mexico Law Enforcement Academy Board
19 is separate from what I do.

20 I would appreciate, you know, from my
21 perspective what discipline I hand out being taken
22 into consideration. But I agree with Chief Kassetas.
23 Some of these items we definitely need to look at as
24 far as where that penalty sits currently and where we
25 would like to take it to really make it a statement as

1 to how we're policing our own.
 2 MR. KING: Other comments? I have a comment,
 3 but I want to make sure you guys get yours out.
 4 Mr. Korn.

5 MR. KORN: I guess I want to thank Chief
 6 Kassetas for bringing this up. It's the first time
 7 we've really examined it as a board. And I think it's
 8 a good thing for us to do for fairness.

9 MR. KING: So here is my question. It kind
 10 of goes along with what Mr. Mechels said too. I mean
 11 people make some assumptions about what authority we
 12 have as a board. But it strikes me that this raises
 13 that question too, you know. So it may be an issue
 14 for the Legislature.

15 If we revoke or suspend an officer's
 16 certification, say, for two months, does the Board
 17 have any authority to direct the agency that they
 18 should suspend their pay during that period too or
 19 not?

20 I mean I get the feeling, and I think that
 21 this is probably true, that maybe that's not true,
 22 that all we really have authority over is the
 23 certification process. You know, if somebody is
 24 decertified or their certification is suspended --
 25 let's just stick with a suspension -- that it's up to

1 because there's a lot of different moving parts and
 2 different factors.

3 But at the end of the day, we need to protect
 4 the integrity of our profession. And that starts with
 5 the Law Enforcement Academy and the certification
 6 process and continues with us, not only concentrating
 7 on the punishment, but the documentation of that
 8 negative action those officers are doing.

9 So when they move from agency to agency to
 10 agency -- and I can tell you countless officers the
 11 State Police have fired and yet another agency scoops
 12 them up and thinks this is great, we don't have to
 13 train him, he's certified, and six months later you're
 14 paying for a lawsuit because it wasn't documented
 15 through the LEA and/or he didn't care and we can't
 16 share half that information with you because of X, Y,
 17 and Z, HR rules.

18 So I really think this process would want to
 19 really take a hard look at the major issues, the
 20 violations that officers are making, DWI and DV, and
 21 suspending for significant amounts of time or
 22 revoking; and documenting that misconduct, whether
 23 it's a week's suspension by an agency or a revocation
 24 so it follows that officer.

25 I think that's what's important and that's

1 the agency to decide whether they're going to pay them
 2 during that time period. Chief, I mean is that right?

3 MR. KASSETAS: Mr. Chairman, that is exactly
 4 true. If the Board chooses to take action against
 5 someone's certification, which it has every right
 6 through statutory powers to do, that agency then has
 7 to deal with what the Board did.

8 They either say that officer, because they
 9 were suspended for a year, as the chief I'm not going
 10 keep you on the books, you're hereby terminated, which
 11 is odd because you would think they would have
 12 terminated him in the first place, or the penalties
 13 are a two-month suspension; and that chief or sheriff
 14 has to essentially have that person sit in the office
 15 and do office work, which is not punishment.

16 There's a stigma with it when the other
 17 officers on the squad or unit look at that person and
 18 say, gee, I wish you could be out here fighting crime
 19 with us, but you're sitting on your backside because
 20 you got in trouble, don't do it again, there's some
 21 internal pressure there.

22 But I really think that the chiefs and
 23 sheriffs need to make those decisions. That's their
 24 job. I would hate for a legislative move to yet again
 25 come in and say you shall, you shall, you shall,

1 what we should be doing at this level of interaction
 2 with someone's career. That's my two cents.

3 MR. KING: But this overall issue of what
 4 authority we have to implement some sort of
 5 across-the-board policies on all of our law
 6 enforcement agencies is really an interesting issue.
 7 I'm not sure that we actually have that authority.

8 It seems like, if we wanted things to be
 9 potentially more uniform around the state, I don't
 10 know that we have the authority to say, if you have an
 11 officer who has been convicted of a DWI, you have to
 12 suspend them for two weeks without pay. I don't think
 13 that we have the authority to do that.

14 MR. KORN: I don't think that's what Chief
 15 Kassetas is saying.

16 MR. KING: No. I know that's not what he's
 17 asking for. But frankly, if you're talking about a
 18 disparity in penalties for officers, you know,
 19 throughout the state, it seems to me like a lot of
 20 disparity is in the difference in policy between all
 21 the agencies.

22 Some agencies have several hundred officers,
 23 some agencies have three officers. And so it might
 24 not make any sense to have a policy that applies to
 25 all of them.

1 MR. KASSETAS: Mr. Chair, there are a lot of
2 different factors that I looked at. And I think Chris
3 can comment as a chief or Sheriff Coon. But I look at
4 the history of the officer up to that point.

5 It may be that at my agency we commonly
6 suspend for three days, for instance, on a particular
7 incident. But because this person has an Internal
8 Affairs history, I may double that or triple it.

9 So it's difficult I think to mandate a lot of
10 this stuff that should be done by people that are
11 hired or elected to run their agencies. So I'll leave
12 it at that.

13 MR. KING: As far as I understand, the real
14 recommendation today is just that we make it clear
15 that the Board will take into consideration penalties
16 that have already been issued by the agency whenever
17 we look at certification processes.

18 MR. KORN: Yes.

19 MR. KING: But it is a broader conversation.

20 MR. KORN: And, Mr. Chairman, drawing on
21 that, the chief has suggested a subcommittee. Is that
22 what you wanted to do here?

23 MR. KASSETAS: Mr. Chair, I think the penalty
24 guidelines should be explored. We have some new
25 members coming on after the first of the year I

1 sheriff took in the reporting process?

2 MR. KING: Let me maybe paraphrase that.

3 We did raise that issue here as to whether or
4 not we should recommend as a matter of policy that
5 information on previous disciplinary actions that are
6 taken by the agency be included in the packet that
7 comes to the Board whenever you're considering the
8 certification or action on the certification of an
9 officer. Is that essentially what you want?

10 MR. KASSETAS: Yes.

11 MR. KING: And that's just our recommendation
12 to you, Mr. Jones.

13 MR. JONES: Yes, sir.

14 MR. KING: As you prepare those packets, to
15 try to get that information. I want to say this too,
16 we had some discussion about whether or not agencies
17 would submit LEA-90s or whatever.

18 I mean we a number of years ago adopted a
19 policy that said that every quarter that every head of
20 an agency has to submit to us a statement as to what
21 disciplinary actions have been taken during that
22 quarter or not so that they can't just sort of hide
23 that from the Board and not report that to the Board.

24 So I'm assuming that that still occurs, that
25 we still get a quarterly statement from everybody. If

1 believe. So I don't know the mechanics behind it.

2 But maybe we wait for those individuals to be
3 appointed and selected, and then we move forward with
4 a chair to get a committee to relook at this. It's a
5 good thing. I just think we need to crack it open
6 again and take another look at it. So how that's done
7 through this process I don't know.

8 MR. KING: Comments? All right. Sometimes I
9 as the chair exhibit the feel of the Board. I think
10 you're right, Chief. I think, since we're on the
11 record, that it should just be our recommendation to
12 the next board who will be meeting -- I don't know
13 what the next meeting will be in 2015. March?

14 MR. KASSETAS: March.

15 MR. KING: I think that we at least pass
16 along our recommendation to the new board that they
17 appoint a subcommittee to review the penalty
18 guidelines based on this discussion. They can read
19 our discussion in the minutes. So I'm certainly
20 getting a feel from the Board that everybody thinks
21 that this is a worthwhile effort to pursue.

22 MR. KASSETAS: Mr. Chair, is it also
23 appropriate to instruct LEA Director Jones and his
24 group and the adjutant judge to ensure that they
25 include, when available, the action that that chief or

1 we're not, then we should decide what we need to do on
2 that.

3 MR. JONES: Mr. Chair, this is the first I've
4 heard about it. We're not receiving quarterly
5 statements except for the registry. And we'll go back
6 and look at that.

7 MR. KING: Do you guys remember that?

8 MR. COON: Not since I've been here.

9 MR. KING: There was a lot of criticism when
10 we did it. So I will check into that as the Attorney
11 General and see what the requirement is, and then I'll
12 have somebody get back to you.

13 MR. COON: Mr. Chair, another thing. Our
14 LEA-90 is a little outdated I think. We need to add a
15 couple things in.

16 Number one -- and maybe this is on down here
17 in a minute. There's no place for the department head
18 to sign off. And we could also put in there has this
19 officer or telecommunicator been suspended or however
20 we want to word it for this infraction. They would
21 have to put it all together on the LEA-90.

22 And then like I said make sure that the head
23 of that department, the chief or sheriff, sign off on
24 that instead of the investigating officer, because
25 some chiefs didn't even know that was sent out because

1 the investigating officer sent it out.
 2 MR. KASSETAS: Mr. Chair, Sheriff Coon, if I
 3 may, I can tell you that that's actively being pursued
 4 by the current LEA staff and the Acting Deputy
 5 Secretary to revamp the LEA-90 and even how it's
 6 submitted.

7 In 2014 we shouldn't rely on a fax machine,
 8 it should be digitally scanned and submitted and/or
 9 filled out online. So we're really working to clean
 10 that up and add the information that can be added and
 11 find a better conduit to get that to the Director's
 12 office and ensure that it's done in a timely fashion.

13 MR. COON: Chief Kassetas, it says on the
 14 bottom page 1 of 2. I never have seen page 2 on the
 15 bottom, I keep looking for page 2.

16 MR. KASSETAS: It's the fax cover sheet, sir.
 17 It's old school.

18 MR. COON: Well, it gives this much for the
 19 narrative. And then you're thinking, well, maybe page
 20 2 is the rest of the narrative, and there's no page 2.

21 MR. KASSETAS: I assure you that's being
 22 done.

23 MR. KING: Well, on that here would be my
 24 recommendation. That we add to the agenda for the
 25 next meeting on policy issues a discussion of -- and I

1 think that in three months there should be the
 2 opportunity for the Director to submit a draft of
 3 proposed new rules for the LEA-90. You guys can do
 4 that in three months I think.

5 MR. JONES: Yes, sir.

6 MR. KING: Let's put that on the agenda for
 7 the next meeting at least for discussion. I mean as
 8 far as adoption of that, the next board will have to
 9 decide whether they want to adopt changes or not.

10 But I think it's a real good idea to submit a
 11 modernized version of the LEA-90. And if you're
 12 working on it already, let's just add it to the next
 13 agenda.

14 MR. JONES: Yes, sir.

15 MR. KING: All right. Chief, anything else
 16 on that?

17 MR. KASSETAS: No.

18 MR. KING: All right. Thank you. Like I
 19 said I don't think that there's an action item on
 20 that. But I think it's a good discussion. And I'll
 21 certainly recommend to my successor that the next
 22 board appoint a subcommittee.

23 ITEM NO. 11: TO EXAMINE THE BOARD'S PROCESS OF
 24 PERMITTING RESPONDENTS TO ADDRESS THE BOARD AFTER AN
 25 INFORMAL HEARING AND TO RESTRICT OR ELIMINATE WHO MAY

1 SPEAK ON THEIR BEHALF AND UNDER WHAT CIRCUMSTANCES

2 MR. KING: All right. The next item on the
 3 agenda is item No. 11, examine the Board's process of
 4 permitting respondents to address the Board after an
 5 informal hearing and to restrict or eliminate who may
 6 speak on their behalf and under what circumstances.
 7 Mr. Korn.

8 MR. KORN: Mr. Chair, Members of the Board,
 9 this agenda item came about because of recent events
 10 over the past year or two that I've noticed as a Board
 11 Member.

12 Historically, I think going back to maybe a
 13 decade or longer, the Board has always invited the
 14 respondent after an informal hearing to address the
 15 Board. And the Board has always been interested in
 16 what they say, both because of the tone and the tenor
 17 as well as the substance of what they're saying.

18 But over the last year or so, I've noticed,
 19 and I think we've all noticed on the Board, that
 20 frequently defense attorneys will come in without
 21 their respondent and speak on behalf of the
 22 respondent.

23 And then that communication became more of an
 24 argument. It was neither filled with substance nor
 25 obviously the tenor or tone of the respondent they

1 were representing.

2 And since this is happening more and more
 3 often, sometimes repeatedly by the same one or two
 4 defense attorneys, it prompted this agenda item;
 5 because I think as a board we are interested in
 6 hearing from respondents.

7 And we may be interested in hearing from
 8 spouses or family members. And we may be interested
 9 in hearing from defense attorneys on their behalf.
 10 But I don't think that we should entertain our time to
 11 listen to defense attorneys without the presence of
 12 the respondent.

13 And I know, when I raised this last time,
 14 Chief Kassetas made the point that maybe we shouldn't
 15 even be entertaining spouses or defense attorneys,
 16 that this is really a moment for the respondent simply
 17 to address the Board.

18 So what I was hoping to do was have
 19 communication from the Board about what their feelings
 20 are about this. And then as a process to decide as a
 21 board who is going to address us at the misconduct
 22 hearings that we will be having as soon as tomorrow.

23 MR. COON: Mr. Chairman.

24 MR. KING: Sheriff Coon.

25 MR. COON: I fully agree with Mr. Korn. We

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1 have a few attorneys, and we all know who they are,
2 that want to come up here and argue the case without
3 their client present. And we're just hearing the
4 mumbo jumbo he's throwing out to us, not the true
5 feelings of whatever happened to the guy or gal.

6 And as far as spouses go, you know, none of
7 them are going to get up and say anything bad about
8 the guy because that's their livelihood. So I think
9 we waste a lot of time. And I'm not being dismissive
10 about spouses.

11 It's just that really that's never made a big
12 difference in our decision, the wife or spouse getting
13 up and telling us how destitute they're going to be
14 when this happens. So I fully agree with Mr. Korn.

15 If you're here and have your lawyer with you,
16 that's one thing maybe, maybe to guide you along a
17 little bit; but not get up and take the whole meeting
18 over like it was a trial.

19 If the guy doesn't have enough energy or
20 moxie to come up and address this Board, unless he's
21 having surgery or in the hospital -- and then we can
22 postpone that to another day. But don't just send
23 your attorney up to give us the legal mumbo jumbo that
24 he wants us to hear.

25 MR. KING: Other comments? We all have to

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1 hired and took the oath and is standing before this
2 Board and not the attorney. No offense to attorneys,
3 I work for one.

4 Not the attorney, not the spouse. And I get
5 it. There's always a story behind it. But the
6 reality is I as a Board Member want to hear the facts
7 and the issue.

8 And those are usually brought before us
9 either through the work of the Director or the formal
10 Hearing Officer. So it's pretty well in the packet we
11 know. It's not the time to relive the entire process
12 and go back to square one.

13 I have been impressed by people that have
14 stood at one of those podiums and taken full
15 responsibility to what they've done and talked about
16 some of those issues that are very embarrassing; some
17 of it is very embarrassing.

18 And others just stand there and look at their
19 attorney. I don't want to hear from the attorney.
20 He's not out there doing what we do.

21 So my two cents is to cut it all out and just
22 that person can speak for a prescribed amount of time
23 and be done with it. That's my wish.

24 MR. KORN: Mr. Chair, Chief Kassetas, I agree
25 with Chief Kassetas because really the due process has

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1 sit through these.

2 MR. McCALL: I was just wondering from
3 counsel if there's anything related to due process at
4 this juncture?

5 MR. WORD: Mr. Chairman, Members of the
6 Board, I understand it has been the tradition to allow
7 it. I think the counsel could waive it for the
8 limited purposes of this hearing. I think they
9 understand that the Board wants to hear from the
10 officer themselves.

11 But that is potentially an issue certainly.
12 It could be asserted by counsel. So I can look into
13 that further and give some deeper thought to that and
14 respond to the Board, if you would like.

15 MR. KASSETAS: Mr. Chair, the way I
16 understand it, though, is that the process has taken
17 place, correct? The said officer or deputy has met
18 with the adjutant judge or went through an informal
19 hearing and now is standing before the Board, before
20 we go into closed session, to give one last pleading
21 of their case, which I don't fully understand if we've
22 already vetted it through every prescribed way to do
23 it.

24 And if we're going to allow that as a board,
25 I understand it. But it's that employee that was

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1 already taken place. We don't have to listen to
2 respondents come up and address us at all. I mean
3 we've given them this opportunity as a board, we have
4 done that historically.

5 And I think it's good. I think it's good
6 that, after a respondent talks in the informal hearing
7 with the Director or the administrative judge, that
8 they can then see the whole Board and tell their plea,
9 if they wish, or their story, those salient points
10 that might impress us.

11 But really we don't have to listen to them,
12 we don't have to offer them an opportunity for that.
13 So I don't see where restricting it only to the
14 respondent has any issue whatsoever with due process.

15 And the more I listen to Chief Kassetas, I
16 kind of tend to agree with him and with Sheriff Coon.
17 The heartstrings of listening to a spouse or a family
18 member is deep. But really that shouldn't affect our
19 process at all so why are we doing that.

20 So I think family members should be a
21 definite no, we don't want to hear them. And then I
22 think listening to attorneys at that juncture with the
23 respondent is probably no; without a respondent is
24 definitely a no. So those are my suggestions.

25 MR. KING: Other comments?

1 MR. QUEZADA: Mr. Chair, I have a question.
2 What are we going to think about the agency that the
3 officer is working for that might have sent up the
4 LEA-90 and whether they want to talk on his behalf,
5 good or bad? Are we going to give them time to also
6 speak? We have had officers bring their supervisors.

7 MR. COON: I've never heard of one get up and
8 hammer the guy more. And what happened at my first
9 board meeting was that the guy sends his guy up. And
10 he gets up and defends everything. Everything he
11 wrote that the guy did, that the chief wrote, he
12 defended the guy for everything he did. And I thought
13 that was kind of strange.

14 And it's happened since then. I think maybe
15 a department head or somebody like that should be able
16 to get up and speak for a second or two but not
17 dominate the whole hearing. Or maybe just sit out in
18 the audience and be there for support.

19 MR. KASSETAS: Mr. Chair.

20 MR. KING: Chief Kassetas.

21 MR. KASSETAS: Any chief or sheriff that
22 attends the meeting, it's about whether they're able
23 to get up and counter what's being told. At that
24 point again we go back to square one, it's already
25 been done.

1 and we find out. That message needs to be sent too.
2 Be careful when you come before the Board and spew out
3 your version, which is possibly not the case. It
4 could result in a second level of action.

5 MR. KING: So here is what I think. I
6 actually agree with Mr. Korn. I think that there's a
7 due process part of this that all takes place. And in
8 that part where there's due process, that the officer
9 is entitled to representation by a lawyer. And they
10 can do that.

11 It's my understanding that this part that
12 we're talking about is indeed just a policy issue,
13 where the Board has said, when we're done with the
14 hearing, before we take action, we're willing to allow
15 the officer, you know, an opportunity to speak, sort
16 of almost like a public comment, or some time to
17 speak.

18 I would rely on counsel to counsel the Board
19 on what's required for due process; that after that,
20 that it's certainly within the purview of the Board to
21 say we will allow an officer to speak to say whatever
22 you think you have to say.

23 But we're not going to allow surrogates,
24 we're not going to allow family members, we're not
25 going to allow a lawyer or certainly not allow a

1 We'll talk about it on the next item. But I
2 really like how we've extended an offer to the agency
3 heads or representatives to be there during the
4 informal process. And that's something we'll talk
5 about in the next item.

6 But it helps the Director and that office
7 make a better decision when they're going through the
8 process, because sometimes obviously it's one-sided.
9 When the Director or AJ, adjutant judge, meets with
10 the employee, they have the ability to say whatever we
11 want. And then it creates a lot more work to
12 basically validate that.

13 It's a different ballgame when that agency is
14 in the same room. I'm sure that defense counsel for
15 the officers don't like it. But it's only fair. And
16 I think that's where that happens, at that point.

17 Here it's just a second or third bite at the
18 apple. And it's almost hindering the process in my
19 opinion. I would rather again just request that, if
20 we do this, that the said accused or targeted LEA-90
21 officer get a certain amount of prescribed time and
22 that's it.

23 And we've seen where people have gotten up
24 and it's resulted in another LEA-90 at the podium,
25 where they talk and they lie blatantly to the Board

1 lawyer in the absence of the officer being here
2 themselves.

3 I mean I think that you could, as a matter of
4 policy, say we're not going to allow any of that, you
5 know, once we're at the end of the hearing, the due
6 process part. And then it would be up to the counsel
7 for the officers to decide whether they want to let
8 them get up and say something and potentially cause
9 themselves a second disciplinary action. I mean I
10 agree with that too.

11 But I don't have any problem with basically
12 saying this is an opportunity for the officer to say
13 something to the Board because we're willing to listen
14 to what you have to say. We are an administrative
15 body. So I think you can do that.

16 But basically you can say we're not going to
17 allow surrogates. If you want to be here and say
18 something, you can be here and say something; if you
19 don't, that's your option. But that it's not part of
20 that sort of due process part of the hearing. That's
21 the point that I'm making.

22 MR. KORN: Yes. So, Mr. Chairman, I would
23 say that this is really a board process. But I think,
24 just to immortalize these discussions and make sure
25 that we have buy-in from all the Board Members, if I

1 may, I would put it in the form of a motion.
2 That we will accept the representation of a
3 respondent to appear before us after an informal, but
4 nobody else except the respondent can speak on his or
5 her behalf.

6 MR. KING: I'm trying to decide whether we
7 need a motion on that, but I think we do. So we have
8 a motion on the floor from Mr. Korn that it be the
9 policy of the Board to allow respondents to address
10 the Board after the informal hearing and to restrict
11 that to only comments from the respondent, no
12 surrogates. I'm using the word surrogates.

13 MR. KORN: Better said by you. I agree with
14 what you say.

15 MR. KASSETAS: Second.

16 MR. KING: All in favor say aye.
17 (Those in favor so indicate.)

18 MR. KING: Any opposed. I think that that
19 will make it clear.

20 MR. KORN: Thank you.

21 MR. KING: And we should get that information
22 out to the respondents to let them know.

23 MR. COON: So are we going by this in
24 tomorrow's hearing?

25 MR. KING: You all will sort of have to

1 decide that I think. But I think that, since this is
2 something that's just sort of something that the Board
3 allows -- like I said, it's sort of an administrative
4 thing -- that it's okay to say, you know, we decided
5 at our Board meeting yesterday that we're not going to
6 allow anybody except for respondents to speak.

7 But you'll have to -- like I said, I'm not
8 going to be here. So you all will have to take that
9 up. But I would think that whoever is chairing --
10 it's a little bit the prerogative of the chair to
11 basically say this is what we've decided.

12 MR. KASSETAS: Mr. Chair, it was a point of
13 discussion at the last meeting. And some of the
14 attorneys complained, well, we're here in Ruidoso. We
15 said, okay, we'll get it and put them on notice. And
16 we've talked about it today and I say we carry it
17 through to tomorrow.

18 MR. KORN: And it's an agenda item. So
19 anybody who would have an interest should be well
20 informed about it.

21 MR. KING: Okay. I think you're within your
22 rights to tell them that we adopted a policy yesterday
23 and that this is an opportunity that was extended to
24 respondents and not to surrogates. So we made it very
25 clear.

1 So it will be up to the chairman, whoever is
2 chairing the meeting, to decide how they want to work
3 that out. But like I said the secret there is this
4 issue of due process, I mean if you try and shortcut
5 the due process.

6 But my feeling in all of this is that this is
7 something that occurs after an informal hearing, where
8 the agency is present and the person is present and
9 they're entitled to representation. But it sounds
10 like this is something that's akin to like sentencing,
11 where a judge would let the defendant in a sentencing
12 say do you have anything that you want to say that
13 might impact my decision.

14 MR. KORN: Right.

15 MR. KING: So we've taken an action on that.
16 So we'll move on to the next item.

17 ITEM NO. 12: REPORT BY HEARING COMMITTEE ON
18 ESTABLISHING ADMINISTRATIVE JUDGE TO ADJUDICATE ALL
19 PENALTY MATTERS FROM RECEIPT OF LEA-90 THROUGH AND
20 INCLUDING THE NOTICE OF FINAL DETERMINATION. BOARD TO
21 CONSIDER AND EVALUATE THE PROCESS FOR RATIFICATION

22 MR. KING: Item No. 12, report by hearing
23 committee on establishing administrative judge to
24 adjudicate all penalty matters from receipt of LEA-90
25 through and including the Notice of Final

1 Determination. Board to consider and evaluate the
2 process for ratification. Chief Kassetas.

3 MR. KASSETAS: Sir, I'll introduce this one
4 agenda item and then work with the other committee
5 members to discuss where we're at with this process.

6 But the committee was put together. And it
7 was determined that an adjutant judge would hear the
8 informal cases, which was David Linthicum, who is here
9 today in the crowd here, to provide this service. And
10 with that said we have a breakdown of the
11 administrative judge process that I will reference.

12 Sir, would you like to rush up here and have
13 a copy.

14 So if you look at that, it talks about the
15 administrative judge process, the three goals,
16 methods, systems. I'll give you a second to peruse
17 this. The committee feels that this process is moving
18 along quite well. Nate, would you like to comment?

19 MR. KORN: Sure. Do you want me to comment
20 now?

21 MR. KASSETAS: Sure. On the first part of
22 it. I haven't handed out the rest.

23 MR. KORN: If I may then, I think, as Chief
24 Kassetas pointed out, that members of the committee
25 would be the chief, myself, Sheriff Coon, and Pat

1 Barncastle. And the goal was to work under the
2 auspices of the Director, but also to make the process
3 a more efficient process so that we could take cases
4 when they came and actually administer them within a
5 period of weeks.

6 And the way it's been historically, at least
7 for a decade -- and Sheriff Coon has been here longer
8 than me. But I'm sure he can validate the fact that
9 years ago there were 250 to 300 cases backlogged. We
10 only get about 120 cases a year. So we had, in
11 effect, a three-year backlog as recently as 2011.

12 And from 2011 to present, we've been able to
13 whittle those down. But still, because the Director
14 personally is involved in training, administering to
15 seven different academies, doing personnel matters,
16 and a myriad of other things, his ability to really
17 stay directly on top of these is limited by his time.

18 So by having the administrative judge work
19 under the auspices of the Director, we're able to
20 actually effect a goal of getting these cases into the
21 system and out of the system, at least in the informal
22 process, in a period of literally weeks.

23 And Dave Linthicum has been a person who has
24 been able to administer them, process them, afford due
25 process, and for the first time ever, which was one of

1 MR. KING: I guess I have some comment. And
2 once again this is something that I don't know if we
3 can take action on it today, but I don't know if we
4 need action on it.

5 I'm guessing that the Executive Director has
6 enough authority to appoint somebody to exercise some
7 of this authority that we have. That's one. And we
8 are going to take a break after this discussion. I
9 probably should have done it before.

10 You know, we certainly in the past have sort
11 of relegated some authority to the Board to do these
12 informal things, like you said, to make reports, to
13 listen to comments, and all of that.

14 I don't think that the Board themselves can
15 abrogate their responsibility to take action on each
16 individual certification. But as far as the
17 administrative processes of how we do it, once again
18 as long as the process is done in such a way so that
19 it protects due process rights.

20 I don't know that we have to take action on
21 this or if it's sort of something where we can say,
22 gee, we think this can be a good process. But the
23 process up to that point seems to be in the purview of
24 the Executive Director and the Law Enforcement Academy
25 and the Department of Public Safety, not the purview

1 the chief's ideas, actually get a member of the
2 agencies involved; and actually have an informal
3 hearing with the agency, the respondent, any witnesses
4 or attorneys that might want to represent and actually
5 hear it, give due process, and then write up a report
6 all in a period of weeks.

7 MR. KING: Comments or questions?

8 MR. KASSETAS: I think the rest of the Board
9 knows of the process, knows of the committee meeting,
10 and knows that we have enacted this so we have some
11 data to look at and to go by. The Director I
12 believe -- and some disagree with me.

13 But I know the internal workings of the Law
14 Enforcement Academy well. It is a huge machine with a
15 lot of moving parts that Director Jones has to deal
16 with.

17 And I think that this level of support
18 provides for him to continue to do the job of the
19 Director but ensure that these cases move through the
20 system efficiently. And that's important. Do the
21 members have any questions about the process or any I
22 suppose issues with it?

23 MR. KING: Questions from the Board or
24 comments?

25 MR. COON: No, sir.

1 of the Board. The Board responsibility is to vote on
2 each one of these certification actions.

3 MR. KORN: But I think as a board we have a
4 responsibility to see that the case is pursued in a
5 format that -- I should say with speed that's fair.
6 Not only for the respondent, but also for their
7 agencies and also for the public at large.

8 I mean they have a right to know that we're
9 really policing our own. And you can't really police
10 your own when you're two years backlogged in your
11 cases. And witness memories fade and importances
12 leaves.

13 And maybe penalties that should be
14 attributed, maybe important penalties like suspensions
15 or even revocations, are postponed so long and the
16 officer stays on the street.

17 So I think key to what our committee said
18 was, to make it fair to everybody, the public, the
19 respondent, and the agency, there has to be speed.
20 And I think it is the Board's responsibility to
21 examine how the process works.

22 That's why three years ago or 2011, when we
23 took the bull by the horns and said we were going to
24 make it speed up, the Board had responsibility to do
25 that. We can't just say we're going to abrogate our

1 responsibility and then whatever comes to the Board
2 every month or every hearing by the Director is going
3 to be all we're going to get. I think we have a right
4 and a duty to make sure that we're making the system
5 as efficient as we can.

6 And so what we're doing, in effect, is
7 saying, okay, we're going to recommend and massage a
8 policy where we can improve things. And I think
9 that's what the committee did.

10 But I do agree with you, I don't know that we
11 have to vote on it so much as we need to agree on a
12 process. And I would leave it to the chairman
13 whether -- well, it's actually Chief Kassetas' motion.

14 But I would leave it to the Chairman and
15 Chief Kassetas, should we just agree as a board that
16 this is our process or should we take a vote to say
17 we're ratifying something the committee already set up
18 or both?

19 MR. KING: I guess here is my question. I'm
20 looking at this a little closer. I think everything
21 up to the point of the Notice of Contemplated Action
22 I'm not very worried about. I don't know what
23 formal -- I'm trying to think of the right word for
24 this.

25 Whenever the Notice of Contemplated Action is

1 listening. Comments from anybody out there with
2 regard to the process? Yes, Mr. Mechels, go ahead.

3 MR. MECHELS: This is an area that I haven't
4 read into as much as others. I'm really questioning
5 what -- two questions really. What's your current
6 process that you're hoping to improve would be
7 question one.

8 And the second question would be, coming out
9 of my experience, have you done a best practices.
10 You're not the only standards organization in the
11 world, you're one of about 50 that I'm aware of.

12 Have you looked around to see how your sister
13 or brother agencies across the country are dealing
14 with this issue, because they certainly haven't. So I
15 would say have you looked at best practices.

16 My experience has been that typically we're
17 pretty parochial and that we benefit from being much
18 less so and looking around at other states to see what
19 they're doing. And could you explain the existing
20 process a little bit so you can see what you're trying
21 to improve here.

22 MR. KORN: Mr. Chairman, I appreciate
23 comments from the audience. But until Mr. Mechels is
24 a Member of the Board, I don't think the Board is
25 responsible for actually answering his questions. I

1 a document that requires in some way authority from
2 the Board to do or whether it's really -- I guess that
3 those normally come out of the Director anyway. So
4 we're not delegating an authority that's our authority
5 with regard to the Notice of Contemplated Action if
6 that's something that normally comes out of the
7 Director.

8 MR. KORN: Exactly. It comes out of the
9 Director. And the administrative judge is part of it.

10 MR. KING: So when it becomes interesting
11 then is when the respondent requests a hearing, then
12 the question is, okay, what's our obligation with
13 regard to the hearing.

14 MR. KORN: Well, but then it's just working
15 through a process. It works through the process with
16 the administrative judge and it works the normal way.
17 It just comes to us faster. I think that's really the
18 essence of what we're doing.

19 And this is simply, you know, memorializing
20 mostly for the Board what our process is to see if
21 there's any tweaks that the Board has in mind. I
22 don't think the Board has reservations. So it's
23 mostly to bring to the attention of the Board so we
24 know where we're at.

25 MR. KING: Comments? You all are out there

1 think this is really a Board discussion.

2 MR. KING: No. But I'm the Chair, I mean I
3 asked for it. And so I appreciate it. Actually I was
4 going to ask Mr. Jones just because it is -- I mean
5 it's probably good. What do you guys go through now
6 to do the Notices of Contemplated Action, is that
7 something that you have to approve every time?

8 MR. JONES: Yes, sir. What happens, when we
9 receive an LEA-90 from an agency, we look at the
10 LEA-90. We look to see if there's any other
11 investigation that needs to be completed. And what we
12 do is we'll send the respondent a notice that there's
13 a contemplated action coming. And he has a right to
14 have an informal hearing.

15 He will send a letter back to us within a
16 timeline that says that he wants to have an informal
17 hearing. And we try to get it within that two weeks,
18 we try to expedite it so it happens within that two
19 weeks unless there's something that is extremely
20 complicated.

21 With some agencies, when they send an LEA-90,
22 they want us to do the investigation, they want us to
23 do the report on it and take action. This does really
24 expedite the situation we have for the agencies and
25 the individuals, it helps clear it up.

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1 Now I've got an administrative judge that can
2 come in and look at this. And he dedicates his time
3 to ensure that this happens within the timelines that
4 are required by the Board and within the NMAC.

5 And I think this is a great process. The
6 only issue I have is that the number one goal is to
7 expedite this misconduct to enable officers and
8 departments to have resolution within two to three
9 weeks of filing the LEA-90.

10 It's not going to happen because the Board
11 only meets once a quarter. We can't ratify that
12 unless the Board comes in and says, okay, we say yes,
13 that you're going to get 30 days or 90 days from the
14 Board for whatever it is, lying, DWI, or something
15 like that. This is a process that needs to be done
16 and changed, just like the LEA-90 itself needs to be
17 done, sir.

18 MR. KING: But when you say we have an
19 informal hearing, I mean is that something you do or
20 do you delegate that authority out to somebody else to
21 do that, the informal hearing?

22 MR. JONES: Sir, I can do that. But we've
23 looked at the administrative judge doing this so it
24 takes some of that off our plate. It takes a lot of
25 time to do this. And we're short-staffed at the

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1 wrong about that?

2 MR. JONES: No, sir. You're correct.

3 MR. KING: Okay. So I mean we can recommend
4 or not recommend. But the question is do you guys
5 have enough authority to go out and create a position
6 and have an administrative judge that does all of
7 that.

8 MR. JONES: Sir, the committee and the Law
9 Enforcement Academy, we've looked at it. And yes, we
10 do have the authority to go out there and do that.

11 MR. KING: That's what I think.

12 MR. JONES: Yes, sir.

13 MR. KING: And that's without doing research.
14 You know, I'm kind of curious if you have an idea what
15 other states are doing? Because the bigger states
16 must have a lot more of these actions than we do.

17 I mean, if you look at, say, Texas, I mean I
18 don't know how many certifications or decertifications
19 they have, there must be a bunch. So they must have
20 like a big process. But some of that strikes me as a
21 budget issue.

22 MR. JONES: If I can, Dr. King. Texas has a
23 whole separate system team that looks at adjudicating
24 misconducts. They don't have the academy do it, they
25 have another agency that does it completely. North

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1 academy, we don't have a lot of funds just like
2 everybody else.

3 We're trying to get things done and get this
4 done quicker, cleaner, and make it a clean break for
5 the officer when he goes back to his agency. So he
6 has some idea and the agency has some idea of what's
7 going to happen to him.

8 MR. KING: But this is my point. I see the
9 Secretary out there. I mean it's a budget issue. I
10 think, if you want to hire an administrative judge to
11 do these things, I don't know. I mean we can do a
12 little research to see whether you have the authority
13 to do that.

14 But I mean I don't see any reason why you
15 couldn't delegate the authority from the Director to
16 an administrative judge to crunch through all the
17 process. I mean I don't even think that that's
18 something that the Board necessarily should stick our
19 fingers in.

20 But that's the question. Up to the point
21 that there's a Notice of Contemplated Action issued, I
22 don't know that the Board has anything to do with that
23 or say about that or whatever. The Notice of
24 Contemplated Action is something that comes from the
25 academy staff basically or from the academy. Am I

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1 Carolina does the same thing.

2 I don't know about many other states. Those
3 are just some individual states that I know that have
4 called and asked what we do. But they have a whole
5 separate organization that does nothing but look at
6 misconducts.

7 MR. KING: Because we don't have any budget,
8 we don't have the authority to create a position of
9 administrative judge. That would have to be done by
10 the agency, if I'm correct about that.

11 MR. KASSETAS: It's true and it's been done.
12 So within DPS we recognize that -- I'm speaking on
13 behalf of Deputy Secretary Weaver and Secretary
14 Fouratt, who can get up and talk, if he would like.

15 But we know we have a process issue, we have
16 a time management issue, and we have a lot of demands
17 on LEA. So we're making the commitment from the
18 Department of Public Safety to pay for and support an
19 adjutant judge system that works with the Director to
20 continue to push these cases forward in a timely
21 fashion.

22 I know Nate had referenced two years. We've
23 cleaned that up a lot. But I remember back to some
24 directors prior to Director Jones, and it was a
25 problem. And the Law Enforcement Academy did take a

1 lot of undue attention because the cases were
2 backlogged. We don't want to go back that way. So we
3 want to make sure we're moving forward.

4 So at the end of the day, Mr. Chair and Board
5 Members, we formed the committee and we've enabled the
6 process to move forward. Tomorrow we'll have another
7 idea as we look at conduct cases and see what's before
8 us.

9 But I believe the process should stay as long
10 as DPS can support it to the budget, which I think we
11 can, and we continue to move forward.

12 MR. KING: I mean we normally meet once a
13 quarter. But we decided, when we were trying to
14 expedite this, that we would meet every month or every
15 six weeks or something, which we did, to take down the
16 backlog. And that's something I don't think that we
17 can delegate.

18 I mean once again it's our job to consider
19 every certification action and probably to have a set
20 of rules so that people know that they have some due
21 process, they know what their due process rights are,
22 that they have an opportunity to ask for a hearing;
23 they have an opportunity I guess, if they don't like
24 the informal hearing, to ask for a formal hearing, and
25 then that gets scheduled.

1 MR. KASSETAS: This board meeting allows us
2 to talk about it, this allows us to present it to the
3 Board and to the public and the members attending.

4 MR. KING: I mean to me it seems like a good
5 process. But it seems like this is up to the point
6 that's not within the purview of the Board, that the
7 due process part starts with the request for a formal
8 hearing and the hearing process. Before that I think
9 it's administrative.

10 MR. WORD: Mr. Chair, Members, that's how I
11 see it. It's a two-stage process. The informal
12 hearing hopefully obviates the need for as many formal
13 hearings.

14 I think that is the route for respondents to
15 explore the recommended sanction to the Board. And if
16 they don't like that, then they can have a full due
17 process by requesting a formal hearing.

18 MR. KING: Good. So thank you, Chief, for
19 the report.

20 That being said, before we move on to the
21 next item, I am going to declare a ten-minute break.
22 (Recess.)

23 MR. KING: Okay. We're back in session. I
24 have a four o'clock appointment that I have to make.
25 And so I'm going to try and push this so that we all

1 That I don't think we can shortcut. I mean
2 we can set the time guidelines or whatever. When I
3 say shortcut, I just mean that there has to be a due
4 process that's available.

5 MR. KORN: We can be more respectful for the
6 timelines.

7 MR. KING: Well, yeah. I mean my guess is
8 that due process is served by speeding up the process
9 by and large. It's that whole justice delayed is
10 justice denied thing. Two years was a problem.

11 I want to commend Board Member Korn because
12 he's been pressing for a long time to get that process
13 done so that there is more due process, so that people
14 don't get punished and then two years later they get
15 punished again.

16 I don't think that there's actually a double
17 jeopardy issue there because one is administrative and
18 the other is a little bit different. But it seems
19 inherently unfair to have two punishments that were
20 separated so widely. And I think that's all this
21 discussion is really about.

22 So from my perspective I don't think that we
23 have to take any action because I think all of this
24 administrative judge process is within the purview of
25 the department.

1 get done by 3:45. But if I don't, I'm going to turn
2 it over to the Vice Chair, Mr. Coon. So let's try and
3 move forward expeditiously. I think that we can do
4 this.

5 ITEM NO. 13: NMLEA PHYSICAL FITNESS STANDARDS: A
6 REPORT TO THE BOARD TO SHARE THE RESULTS OF THE PT
7 COMMITTEE AND ITS EXPERT PANEL

8 MR. KING: Item No. 13 on the agenda is New
9 Mexico Law Enforcement Academy physical fitness
10 standards, report to the Board by Member Korn.
11 Mr. Korn.

12 MR. KORN: Mr. Chair and Members of the
13 Board, at our last meeting, we talked about
14 establishing new fitness standards. And along with
15 that we also had a Board committee that was
16 established to put together an expert panel to see if
17 we would evaluate those standards that we were
18 adopting and analyze them over the next year to see
19 what we could find in terms of injuries or success of
20 the candidates we were getting into our academies.

21 So I just want to give a quick report about
22 what happened.

23 First, we established a Board subcommittee.
24 The Board subcommittee was myself, Chief Kassetas, and
25 Chief McCall. Then the Board subcommittee established

1 an expert panel. On the panel was Chief Phil Smith,
2 the chief of police of Roswell; there was Sergeant
3 Candice Montoya, the sergeant out of San Juan County;
4 and also Mr. J.D. Maes, who is an exercise
5 physiologist right here from the Albuquerque Police
6 Department.

7 And the panel and the Board subcommittee met
8 in late September to talk about is there a way to
9 monitor injuries and attribute them back to the new
10 standards we had adopted, was there a way to monitor
11 the cadets to see if they were physically fit in the
12 way that we would hope they would be.

13 And I should have said also included in that
14 panel discussion was Director Jones. And Director
15 Jones was illustrative in kind of bringing to the
16 committee's attention about the way agencies and
17 academies around the state operate in a way
18 independently of each other.

19 So that the way that Albuquerque Police
20 operates is not necessarily the way of that, say, Los
21 Lunas Police would operate. And from this discussion
22 we came to the conclusion actually that there was no
23 real way to monitor these results in any fashion that
24 could be made for the state as a whole.

25 And I think to summarize basically it

1 became -- there was no way to test injuries to find
2 out whether they were from cadets who were less
3 physically fit or cadets who had just slipped on a mat
4 or hit a pebble when they were running.

5 So ultimately it became the conclusion that
6 there was no real good the panel could develop in
7 terms of analyzing how the cadets were doing, how the
8 physical fitness standards were set up, and whether or
9 not we should change it.

10 And so I think, at the end of our committee
11 meeting, we resolved that we didn't have to have any
12 more panel discussions. Did I basically get that
13 right, Chiefs?

14 MR. KASSETAS: Yes. I think so.

15 MR. McCALL: Yes.

16 MR. KORN: So the net result then is the
17 panel was disbanded. And at the end of this year, the
18 Board will revisit the fitness standards to see if
19 there's any notions of whether we should change it or
20 not. So that's my report.

21 MR. KING: Thank you, Mr. Korn. Comments,
22 questions of the committee? Okay. Seeing none, we'll
23 move on to the next item.

24 ITEM NO. 14: MISCONDUCT CASES: BOARD REVIEW OF
25 MISCONDUCT CASES, TRACKING AND MANAGEMENT

1 MR. KING: The next item is misconduct cases,
2 Board review of misconduct cases, tracking and
3 management. Mr. Korn.

4 MR. KORN: Mr. Chairman, Members of the
5 Board, I just wanted to point out that we do an
6 analysis of the cases that are brought before the
7 Board by the Director's office. As usual the
8 Director's office was responsive and the job they are
9 doing is excellent.

10 The number of cases that the Director himself
11 or Director and his staff were involved with in
12 September, I would note there were 56 cases; in
13 December we're down to 49 cases. And of the 49 cases,
14 12 cases will be presented tomorrow. So that's the
15 potential of 37 cases left in the Director's queue.

16 As for the administrative judge, there are
17 approximately 20 to 25 cases there. Those are all
18 cases that are less than a month old. And those are
19 all proceeding nicely through the queue.

20 So I think, for the first time in all the
21 time I've been on the board, and maybe Sheriff Coon
22 who has been here longer than me can confirm, we've
23 never seen this few cases as a backlog or actually as
24 a lack of backlog I should say. And I think it's a
25 credit to the Director and to the administrative judge

1 for pushing these cases along. Do you agree?

2 MR. COON: I concur.

3 MR. KING: Questions for Mr. Korn on that?
4 Let me say that I appreciate that. I know that Nate
5 has been pressing since he's been on the Board to work
6 on ways to bring the backlog down and as a way to be
7 much more fair to respondents that are being heard
8 here.

9 And so I also appreciate the work, Mr. Jones,
10 that you all are doing to try and work down the
11 backlog.

12 And I guess I have to say this much at least.
13 There was this discussion about cases being two or
14 three years old. There were one or two cases that
15 were that old. But other than that certainly most of
16 the cases were like six months old instead of one
17 month old. So we've really made a significant
18 improvement over that time period.

19 MR. KORN: And, Mr. Chairman, if I can point
20 out, a lot of this is a credit to your office and to
21 you; because we have actually I think the A team of AG
22 lawyers to be assigned to our Board. Rick Word, of
23 course, is still here.

24 Rick attends every formal hearing, he
25 provides advice that is timely and very rapid. Prior

1 to him or in addition to him was Mark Reynolds, who
2 will be missed. As a prosecutor we have Walter Hart,
3 who does an excellent job; he's always well prepared,
4 he tries very hard, and he's a credit to your office
5 and your staff.

6 MR. KING: I'll pass that along. Sheriff
7 Coon.

8 MR. COON: Mr. Chair, also, back in the old
9 days, when these were going two or three years or even
10 a year, that's a long time for that to be over
11 somebody's head. That affects their work product and
12 it affects their family life.

13 And it's a service to them that we're getting
14 these out a lot quicker. When you're out working the
15 streets knowing that you've got something over your
16 head for that long, that really plays with your mind.

17 MR. KING: I agree. Thank you, Sheriff Coon.
18 And certainly the Board members have been willing like
19 I said to hold extra meetings and such to knock that
20 down. So I appreciate everybody's willingness to be
21 doing this. And I think that having a report every
22 meeting as to the progress we're making is good. So
23 thank you for that.

24 ITEM NO. 15: INDIVIDUAL BOARD MEMBER COMMENTS

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

1 is item No. 15, individual Board member comments.

2 Any comments? Mr. Korn.

3 MR. KORN: I do have a comment. I just
4 wanted to point out that this is a time for Board
5 transition. And actually there are a lot of Board
6 transitions now. And I just want to mention them and
7 recognize them for the record.

8 First is Harry Betz who is the Chief of Santa
9 Ana. His term limit is over. He served with the
10 Board for four years. He arguably was one of the most
11 experienced and most tenured of any of our staff
12 members.

13 I think he had, and correct me if I'm wrong,
14 over 45 years of law enforcement experience. And he
15 served in various jurisdictions, both federal and
16 state, both undercover and as an officer. He gave
17 good service. We miss him.

18 I also mentioned Mark Reynolds is from the
19 Attorney General's Office and one of the smartest
20 lawyers I've ever known. And he gave excellent advice
21 during the course of his time.

22 Finally I know that it is your last meeting,
23 Mr. Chairman. I want to observe that I have never
24 seen an Attorney General who has been as committed to
25 this Board as you have been. It's always been the

1 Board that the Attorney General would never attend.

2 And unless you're out of state, I've noticed
3 that you always attend. And I think the entire Board
4 recognizes that. And I thank you for your consistent
5 and caring service.

6 MR. KING: Thank you. I appreciate that.
7 And I want to recognize the service of the Board
8 members who are going off too, particularly Chief
9 Betz, who I think was here when I got here.

10 MR. KORN: Finally there is one last one.
11 He's the gentleman to my left. And Rob Coon, the
12 Sheriff of Chaves County, has served on this Board
13 longer than any Board Member, any member that I have
14 known that has served on this Board. Is it nine
15 years?

16 MR. COON: Seven.

17 MR. KORN: Seven. In seven years he's been
18 involved in remarkable changes. I don't think you
19 have ever missed a meeting, never missed a meeting in
20 seven years, and have always provided good advice,
21 good counsel, and always has that last word to say
22 that's just the perfect summing up of events that I
23 always think, gee, I wish I could have said it just
24 like that. So I think that Rob and you and all the
25 other people, I thank you for your service.

1 MR. COON: Thank you.

2 MR. KING: Thank you. All right. Any other
3 comments?

4 MR. JONES: Yes, sir. Dr. King, I apologize.

5 Since you've got to leave and we didn't want
6 you to go, sir, the Law Enforcement Academy would like
7 to present something to you.

8 To Dr. Gary King, Attorney General, Chairman
9 of the New Mexico Law Enforcement Academy Board,
10 January 1st, 2007, to December 31st, 2014. That's a
11 long time, sir. Thank you very much for your service.

12 In recognition and appreciation of your
13 exception leadership, knowledge, and unwavering
14 dedication to the State of New Mexico law enforcement,
15 we would like to give this to you on behalf of the New
16 Mexico Law Enforcement Academy Board.

17 (Applause.)

18 MR. JONES: Your leadership has been
19 phenomenal and we appreciate that.

20 MR. KING: Thank you. I appreciate that. I
21 will treasure this. I will put it on my wall.

22 So I will just say that I think that we have
23 done a lot of important things in the years that we've
24 been here and frankly I think that there are a lot of
25 important issues coming up.

1 And so for those of you who continue on the
2 Board, maybe I'll come watch every once in awhile. I
3 may have recommendations to make to the Legislature
4 about how to make this Board more effective as time
5 goes on.

6 So I appreciate your service and I have
7 enjoyed my time here.

8 ITEM NO. 16: CREDENTIALS CHALLENGE FOR BOARD MEMBER
9 PATRICK BARNCASTLE

10 MR. KING: All right. That being said, let's
11 indeed move forward. And, Mr. Mechels, you've got the
12 next three items on the agenda. Let's try and be
13 expeditious in your presentation so that we have time
14 to have questions and all those kinds of things. I
15 would very much like to make sure I'm here for all
16 three of them.

17 So I'm going to turn the floor over to you.
18 The first item is item No. 16, credentials challenge
19 for Board Member Patrick Barncastle. Do you have
20 handouts or are you just working from notes?

21 MR. MECHELS: Thank you, Mr. Chair. I just
22 brought this along to point out to the members that
23 may be interested that my -- what I'm dealing with is
24 all in this packet that was handed out. So if you're
25 interested, you can find them there.

1 First on the agenda, and I would definitely
2 appreciate comments on this and I'm ready to be
3 instructed, is a credentials challenge to
4 Mr. Barncastle. When I was educating myself on the
5 function of the Board which I had never heard of until
6 about a year ago, I only got involved after trying to
7 follow the thread of the Jeanette Anaya shooting in
8 Santa Fe.

9 And what I found, of course, when I looked at
10 the statutes was there is some specific language in
11 the statutes that define the makeup of the Board, the
12 Members of the Board, and their appointments. The one
13 I am addressing specifically today -- and this is
14 drawing upon NMAC 29.7.3(c), which says at all times
15 the Board shall be represented by, and so forth and so
16 on, one State Police officer, one District Attorney,
17 one certified police chief, et cetera.

18 We have a certified police chief, we have a
19 member of the State Police, but Mr. Barncastle is not
20 a District Attorney. I looked back through history,
21 because I was aware from the minutes, that there had
22 been some issues over the proxy from the District
23 Attorney.

24 And there was no language anywhere that
25 supports having a proxy for -- I'm sorry. For the

1 Attorney General. There's no provision anywhere for a
2 proxy on the part of the District Attorney. And
3 looking back through the records, I can find no
4 instance where they tried -- where a proxy was
5 attempted. The District Attorney was either present
6 or was just not attending the meeting.

7 This brought a question in my mind. Since
8 the statute seemed so clear, I initially brought this
9 up with Mr. Barncastle and said, you know, what don't
10 I understand here. And he just wouldn't answer the
11 question outside of the fact that he had been
12 appointed.

13 But again the statute seems to say that
14 Mr. Barncastle's appointment was ill-advised, because
15 it doesn't comply with the law.

16 So my request here was for the Board to
17 simply say, Mr. Barncastle, your appointment was
18 incorrect, we'll look for another member who complies
19 with the law, whose appointment complies with the law.
20 Am I missing something here? I stand to be
21 instructed. If not, why is he on the Board?

22 MR. KING: That's your presentation?

23 MR. MECHELS: That's my question.

24 MR. KING: Thank you, Mr. Mechels. Actually
25 I have some comment to make on that. But questions or

1 comments from the Board for Mr. Mechels on this issue?

2 MR. COON: I have a comment.

3 MR. KING: Sheriff Coon.

4 MR. COON: Number one, the Governor appointed
5 him and the New Mexico Legislature okayed that,
6 confirmed his appointment by the Governor. Obviously
7 they knew he was not a District Attorney.

8 MR. MECHELS: May I respond.

9 MR. KING: Well, let me do this. Let's do it
10 with regard to process. I'll certainly give you an
11 opportunity. Like I said I'll have some comments too.
12 But I'll give you a chance. Is that it, Sheriff Coon?

13 MR. COON: That's it.

14 MR. KING: Other questions or comments?
15 Okay.

16 Actually, for one, I don't know whether the
17 Senate actually confirms any of us. Do you guys have
18 to have Senate confirmation hearings?

19 MR. COON: Yes. He went up for a
20 confirmation hearing.

21 MR. KING: That's something I wasn't aware
22 of, who all gets Senate confirmed and who doesn't.
23 I'm on as a matter of statute so obviously I don't
24 have to be confirmed.

25 We have had this discussion about whether I

1 can appoint someone to sit in my chair. It's actually
2 my belief that I do have authority to do that. But
3 because of the discussion we've had, I felt like it
4 was important for me to be here personally. So I
5 tried to be here personally.

6 Now, with regard to the District Attorney, I
7 looked at that issue as well whenever it occurred,
8 because we've always had a District Attorney on the
9 Board. And I think that the rule is fairly specific
10 too.

11 There are two reasons that I haven't moved
12 forward in challenging that. One is that the Governor
13 makes the appointments. And I think that it's kind of
14 on the head of the Governor to comply with the
15 statute. And I'm not 100 percent sure how that gets
16 challenged.

17 I mean I appreciate you coming and actually
18 raising the issue in a way because I don't know. But
19 unless a court says that the law says it has to be a
20 District Attorney, that that means it has to be an
21 elected District Attorney, a sitting District
22 Attorney.

23 My guess is that the courts would actually
24 find broadly enough that the representative from the
25 District Attorney has to be an employee of a District

1 that authority.

2 I was a legislator for 12 years. And we
3 actually had authority to expel a member. We actually
4 took a vote to expel a member one time. But the vote
5 failed and so that member continued in the body.

6 But by and large I'm not aware of that
7 authority extending to boards and commissions in New
8 Mexico. Now, having said that, your turn.

9 MR. MECHELS: Thank you. I think it raises a
10 very interesting question. And I think the questions
11 are broader than this issue. You know, to me it's a
12 matter of law. And it's interesting to me, because I
13 believe you are all sworn. I've looked at your oath.

14 You're all sworn to uphold the laws of the
15 State of New Mexico. This is the law of the State of
16 New Mexico, which you are all sworn to uphold. So why
17 are we in a position to say -- my assumption about the
18 Governor is the Governor probably doesn't spend much
19 time on these appointments, they probably staff it out
20 and blah, blah, blah.

21 So actually where the rubber hits the road is
22 when it ends up at the Board and it doesn't comply
23 with the law. And I would say at that point, since
24 you're all sworn to uphold the laws of the State of
25 New Mexico, you could rightly question his presence.

1 Attorney's Office but maybe not like the District
2 Attorney. But I think it's a valid question, let me
3 just say that I think it's a valid question.

4 The secondary problem that I have is that,
5 whereas like the Legislature has the authority, and
6 Congress has this authority too, to determine whether
7 they're going to seat a member or not, I doubt that
8 this Board has the authority to say we're just not
9 going to seat you as a member or we're not going to
10 listen to what you have to say or whatever, partly
11 because of what Sheriff Coon says; that if the
12 Governor appoints somebody and the Senate confirms
13 them, then I think that the only way that that can be
14 challenged would be in court, not before our body.

15 But I'm willing to do this, I'm willing to
16 ask Rick if he can do a little research to see whether
17 or not this Board or any board for that matter has
18 authority to determine, you know, the credentials of
19 somebody to be seated on the Board; because that's
20 really your question, is what's our jurisdiction.

21 But by and large it's been my experience in
22 30 years of New Mexico politics that the courts have
23 found that the Governor has that authority, not the
24 Members of the Board, to decide whether somebody can
25 sit on the Board or not; whereas legislatures do have

1 MR. KASSETAS: Mr. Chair, if I may. I don't
2 appoint people to this Board nor do I -- I'm not
3 involved in that. Nobody is. I think that we should
4 take this information and the research that is done by
5 your office and forward that to the office that
6 handles that and to the Senate and let them look at
7 that. It could be a viable issue. But this isn't
8 something that we can solve. Right?

9 MR. MECHELS: It's a matter of law, it's
10 clearly before us.

11 MR. KASSETAS: I think it's a matter of
12 interpretation. And my interpretation is that
13 Mr. Barncastle can be on the board. But I say we take
14 it to the next level, you do your research, and we
15 move forward with this conversation and send it to I
16 suppose the Senate, if they're the ones that do the
17 confirmation; and we also send it to the head of the
18 Board's commission and let them look at it out of the
19 Governor's office. That would get you some
20 resolution.

21 MR. MECHELS: I think that's an excellent
22 resolution, because I think it needs to be looked at.

23 MR. KASSETAS: Sure.

24 MR. KING: Seriously I thought about it. I
25 mean this is not something that passed my notice,

1 because we do have that requirement. Interestingly
2 enough, in this case I think the courts are the
3 arbiters of what the law means and not us.

4 But I think that that's a good way to move
5 forward, take a look at that. Interestingly enough, I
6 had a conversation not about this specific issue, but
7 with the chair of the Senate rules committee the other
8 day.

9 And apparently, in the new Governor's term,
10 everybody gets another look. So it might be worth
11 raising it to the chairman of the Senate rules
12 committee.

13 MR. MECHELS: A final point of information,
14 because I was at a hearing two days ago where they
15 were -- a bill was being presented by DPS going
16 forward to the next Legislature. The language in --
17 there's a change in the membership of this Board or a
18 proposed change.

19 And the proposed change is that the District
20 Attorney line is stricken and it says an attorney
21 appointed by a District Attorney. But the difference
22 there, of course, is that Mr. Barncastle is not an
23 attorney. So again he wouldn't be eligible. But that
24 language is simply at that point a prospective one.

25 MR. KING: But that would clean it up.

1 years, I was on the transportation board, I had
2 frequent interaction with the police force.

3 The Los Alamos Police Department, I'm sure as
4 you're aware, is a bit atypical. For one thing, they
5 have a very different community. The attitude of the
6 police at Los Alamos is very different. Basically we
7 all work together, there was no sense -- I mean we
8 never -- I talked about this with my friends at Los
9 Alamos that have lived there a long time.

10 The idea that we would be afraid of a Los
11 Alamos policeman is outrageous. The community would
12 not tolerate a police force that we were afraid of. I
13 mean I've been pulled over a few times by cops and I
14 was careless and I was going five miles an hour over
15 the speed limit.

16 The exchange was always polite and
17 professional and there was never any issue. Those
18 exchanges were invariably pleasant. That's what I
19 know -- my first encounter with New Mexico policing
20 was at Los Alamos.

21 So we were discussing this. And we were all
22 expressing our admiration for the Los Alamos police
23 force, which is admired in our community. They
24 mentioned that there was a code of ethics in the Los
25 Alamos police force that they were really proud.

1 MR. COON: May I add one thing. On my
2 confirmation hearing, it was over an hour, it wasn't
3 rubber stamped. And there was a vote of the Senate,
4 while it was in session, to confirm my appointment to
5 this Board. I don't know if anybody else's was that
6 way. Mine wasn't rubber stamped.

7 MR. MECHELS: Then I stand corrected perhaps.
8 Okay. Thank you.

9 ITEM NO. 17: REQUEST FOR ADOPTION OF AN
10 LEA CODE OF ETHICS

11 MR. KING: The next item on the agenda is
12 item No. 17, request for adoption of an LEA code of
13 ethics. Mr. Mechels.

14 MR. MECHELS: Thank you, Mr. Chair. I think
15 the reason for bringing this is a couple of things. I
16 go into some detail here over a number of experiences
17 I had, which weren't necessarily what I expected when
18 encountering the law enforcement community.

19 I was somewhat disappointed with what I
20 perceived to be a lack of let's say concern for the
21 truth in all instances. But I'm not going to go into
22 detail.

23 I was discussing this with some friends up at
24 Los Alamos. And I confess that I worked for Los
25 Alamos National Laboratory, I worked there for 11

1 So I walked over, the doors were open, you
2 walk in, and there it is. It's the code of ethics.
3 It's the law enforcement code of ethics. And I'm sure
4 you are all aware, though the public may not be, that
5 it's not an uncommon concept.

6 It's promoted actively in many quarters
7 today. And specifically it's promoted by the
8 International Association of Chiefs of Police, of
9 which Los Alamos is a member. They have a code of
10 honor that they -- and part of that tradition is they
11 repeat their oath, you know, that code of ethics as a
12 policeman annually.

13 I think it's a fine idea. And I think that
14 doing such a thing might be a very useful thing for
15 the police and I think it might be a useful thing for
16 the community. It is done in some cases. I know
17 there's a town in Arizona where they have a public
18 meeting and the police stand up and swear to this code
19 of ethics.

20 I think we've got -- I have many concerns for
21 community policing in this state. One of the few
22 places I don't have concerns for is Los Alamos. And I
23 think that this could help ease some of the tensions
24 that arise between the police and the citizens.

25 So I commend this to you. I believe Sheriff

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<p>1 Coon could tell me certainly that I believe that the 2 sheriffs association in the state has a code of 3 ethics.</p> <p>4 MR. COON: Yes. And every manual we have, 5 policies and procedures manual in my department, has 6 this same document, a code of ethics, on the very 7 front page. And I know the State Police does and 8 everybody else does too. Somewhere in their policies 9 and procedures manuals they'll have the code of 10 ethics.</p> <p>11 MR. MECHELS: But I think the problem I have 12 as a citizen is looking at this. And then, of course, 13 I looked at some of the hearings that you have before 14 the Board. You seem to have -- you seem to have 15 ongoing problems with ethics in the police force.</p> <p>16 And this shows up in your hearings. It's 17 like part of the disciplinary notice is concerns with 18 lying and the truth. I applaud those concerns. If 19 police officers aren't honest, that's a real problem 20 for us all.</p> <p>21 So again I'm not saying -- I'm not trying to 22 impose anything on you. I'm just saying, as a citizen 23 and from having some involvement with the police, and 24 especially the police in Los Alamos, and looking at 25 the differences between the citizens' engagement with</p>	<p>1 that police force versus other communities, I think 2 it's a good idea. That's all I'm saying. I'm not 3 suggesting that you rush out and adopt it.</p> <p>4 MR. KING: No. That's good. I appreciate 5 that. I don't think that it takes a lot more 6 conversation. But I'm assuming that indeed most 7 agencies have one. You know, I said I was in the 8 Legislature. At the beginning of every legislative 9 session now, we all swear to the code of ethics for 10 legislators.</p> <p>11 Mr. Jones, in what we teach in the Law 12 Enforcement Academy, is there like a basic code of 13 ethics for police officers?</p> <p>14 MR. JONES: Dr. King, we use the same one 15 from IACP. So it's taught all throughout the academy, 16 the code of ethics is taught throughout the academy. 17 After they graduate it's up to every individual agency 18 to move forward with the code of ethics for their 19 agency. But this same thing is taught within our 20 academy. And we start from day one.</p> <p>21 MR. KING: I know we have staff here. Has 22 this Board ever adopted that? I mean it's not a bad 23 idea to adopt, if we haven't adopted it. I don't know 24 whether we've adopted it or not.</p> <p>25 MR. KASSETAS: Mr. Chair, I came to this</p>
<p>Page 100</p> <p>1 Board with my ethics intact. I took an oath with the 2 New Mexico State Police. You know, the reality is in 3 this profession no profession is immune to misconduct. 4 You find me one, sir, and I'll probably lose half my 5 force to it.</p> <p>6 It's how we deal with that. And the time in 7 my opinion should be spent towards is this Board and 8 the chiefs and sheriffs ensuring that the officers out 9 there are following the law as you reference in 10 policies and procedures.</p> <p>11 I can show you a State Police or a Department 12 of Public Safety policy book that is literally eight 13 inches deep. We are so regulated and regimented in 14 the way we operate, it's amazing an officer can't take 15 two left turns and violate six polices. But officers 16 learn. And that's important, we have to have that in 17 place.</p> <p>18 I think some agencies have more robust 19 policies than others. But the reality is every agency 20 now in 2014 has a set of guidelines and rules. And we 21 go by those. And when we color outside those lines so 22 to speak, then it's up to the agency head and, of 23 course, the LEA Board to address that.</p> <p>24 So I mean I look behind you and I see the 25 oath of office for the Albuquerque Police Department.</p>	<p>Page 101</p> <p>1 We're surrounded by what this job entails. I hear 2 what you're saying. I don't know if you're asking for 3 this Board to take an ethical oath.</p> <p>4 MR. MECHELS: I'm raising it as a concern. 5 And part of what you referred to, Chief, is that how 6 do we actually incorporate that behavior, not just 7 speak it, how do we incorporate it.</p> <p>8 I mean we just had a big consent agreement 9 between the Department of Justice and the APD. The 10 APD policies are good policies. They're better than 11 Santa Fe's policies. So why all the difficulty?</p> <p>12 Because the policies and the ethics seem to 13 get disconnected and the law didn't get followed. The 14 next thing you know, you've got the Department of 15 Justice here.</p> <p>16 And it's like how do we get some good out of 17 things like this settlement, how do we get some 18 improvements out of things like this settlement. It's 19 not a punishment, it's an opportunity for improvement. 20 And I think it's an opportunity for improvement 21 statewide, not just in Albuquerque.</p> <p>22 And I think part of the reason we need that 23 improvement is because we have policies and then we 24 have performance. And the question is how do you 25 bring the two together. And in some ways I think the</p>

1 ethical structure is lacking. And that's what I'm
 2 trying to address.
 3 MR. KING: Okay. Thank you.
 4 ITEM NO. 18: SCHEDULING A RULEMAKING PUBLIC HEARING
 5 ON LEA CURRICULUM
 6 MR. KING: The next item on the agenda is
 7 item No. 18, scheduling a rulemaking hearing on the
 8 Law Enforcement Academy curriculum.
 9 MR. MECHELS: Okay. Mr. Chair, this is
 10 perhaps the one I would like some action on. I'm not
 11 sure if I'm going to get it. The request for the
 12 hearing is detailed at some length. And I won't go
 13 through it in any detail, but I'll touch on the
 14 highlights of it.
 15 I think the current curriculum as it stands
 16 was adopted unwisely. And it wasn't adopted using
 17 procedures that were legally correct. I think along
 18 the way -- and this is all detailed within the body of
 19 this.
 20 I think that along the way the State Rules
 21 Act was violated. I think every time you vote on your
 22 curriculum, you are violating the State Rules Act
 23 because you are not following the requirements of the
 24 State Rules Act.
 25 Now, someone may have an opinion that it is

1 not necessary for the Board to follow the State Rules
 2 Act when you change the curriculum. But the fact is
 3 you have always followed the State Rules Act since the
 4 State Rules Act was originated as far as I can tell
 5 until the decision that was made last September.
 6 And then in December you made a curriculum
 7 change without following the procedures of the State
 8 Rules Act. And it's my observation that what you've
 9 got as a result is chaos. You've got an ongoing Board
 10 discussion between what the curriculum ought to be --
 11 and most recently it centers around the physical
 12 fitness requirements which was always part of that
 13 curriculum.
 14 You have no apparent lesson plans. The
 15 lesson plans aren't online as your new procedures that
 16 you put in state they will be. They're still not
 17 online, they're not accessible to the public. You're
 18 operating under temporary approvals.
 19 And the reason for having the old way of
 20 doing business is checks and balances. I mean it's
 21 fun to rush around and change things. But it's
 22 unstable. And in a democracy this ability is
 23 precious.
 24 One of the stabilizing factors of our
 25 government is public involvement. The State Rules Act

1 provides for public involvement. When you get public
 2 involvement in an orderly process, that takes time.
 3 It also tends to make -- it tends to get the
 4 questions resolved as part of the process. Where if
 5 you make a quick decision in the moment, you may not
 6 look at it thoroughly. And you may not get the
 7 involvement of the parties. And this just leads to
 8 ongoing discussion and turmoil.
 9 My suggestion is -- I mean I believe as I
 10 state here that there are a number of legal issues
 11 with what you did. And I think that, if the Board
 12 doesn't accept the direction that I propose and just
 13 have a public hearing using a rulemaking process as
 14 the boards and commissions of this state do when they
 15 make policy, that, in fact, the public -- and
 16 certainly the curriculum does, then you have a chance
 17 to go back and build a solid base.
 18 There's no saying you can't change the
 19 curriculum. You could have had your new curriculum
 20 last September following a rulemaking and had the
 21 curriculum going through the normal process. But you
 22 didn't. You changed the rules. And then in December
 23 you imposed the curriculum. You basically wiped out
 24 public input.
 25 I brought this to the attention of the

1 judicial committee last week. They were surprised. I
 2 don't think they're pleased. I don't think they -- I
 3 don't think the Legislature -- we've got a part-time
 4 Legislature, it takes them awhile to get around to
 5 stuff.
 6 I don't think that the Legislature is going
 7 to particularly like the fact that the Board chose to
 8 walk away from the rules act. The rules act is sort
 9 of like one of the sacred cows around here.
 10 So what I'm proposing here is simply that you
 11 go back to where you were when you took the wrong
 12 turn, go back to the rules act. If you want to make a
 13 curriculum, get public input, follow the rules act,
 14 make your curriculum, then you're legally correct and
 15 go forward from there.
 16 I think right now you're operating in chaos.
 17 You don't even have a fixed curriculum or a fixed set
 18 of lesson plans. I'll take questions, if you would
 19 like.
 20 MR. KING: Actually I'm going to ask the
 21 first question because I haven't studied the
 22 litigation. This is a matter of current litigation?
 23 MR. MECHELS: A piece is part of current
 24 litigation.
 25 MR. KING: So interestingly enough, it might

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<p>1 be worthwhile to allow that to play for a little bit. 2 So here is what I think. I think that if I recall -- 3 and I don't know whether we're under the 4 Administrative Procedures Act. 5 MR. WORD: I don't believe so. 6 MR. KING: I'm trying to think of who it is 7 who can ask for a rulemaking to be triggered. I think 8 a member of the Board probably could. Can a member of 9 the public ask for a rulemaking? 10 MR. WORD: Mr. Chair, Members of the Board, 11 under the current rules, a member of the public can, 12 as Mr. Mechels has done, petition the Director to have 13 an item placed on the agenda. And I believe that's 14 the extent of the authority of the public as public to 15 commence a rulemaking. 16 Despite Mr. Mechels statements, he is not 17 talking about the Open Meetings Act. He has sued this 18 Board represented by counsel asserting that the Board, 19 in taking its action amending its rule, violated the 20 Open Meetings Act. 21 I would submit that it would be hard to talk 22 about this without perhaps getting into matters that 23 are at issue in that litigation. And I would caution 24 this Board appropriately. 25 I know he's talking about the rules act</p>	<p>1 today. But the complaint to which this Board has 2 filed an answer -- I filed it on your behalf -- has a 3 challenge on the factual allegations. 4 And it's the position of the Board, as it 5 appeared in the answer which has been distributed to 6 all of you, that this Board complied with the Open 7 Meetings Act and all applicable law in how it 8 conducted this. 9 And I won't belabor the point. But the Board 10 had put its curriculum in the NMAC in the past. It 11 was not required to do so by law. And if you look at 12 the history of NMAC, this necessitated amendment after 13 amendment after amendment. 14 Every time, for example, the Legislature 15 imposed a new requirement on the cadets in the 16 training program, a rule hearing was necessitated. 17 This Board had testimony and comment from its Director 18 in 2013 about the process and the laboriousness of 19 that process. 20 It amended its rule so that it did not have 21 to go through a rule process to change the curriculum. 22 But the new rule did require that the Board would have 23 to approve a new curriculum, which it obviously had to 24 be done in an open meeting, and would obviously have 25 to approve lesson plans, which were not addressed in</p>
<p>Page 108</p> <p>1 the previous NMAC I don't believe, just the 2 curriculum. 3 So it can be argued, and the answer asserts 4 this, that, in fact, there is more process, there is 5 more public input now because there is more that is 6 done in the context of a public meeting. 7 This Board now has to look at lesson plans 8 and approve them and did put in its rule that these 9 lesson plans shall be posted on the academy website. 10 So with all that I just caution getting too 11 far down the road discussing this matter. And I did 12 inform Mr. Mechels' counsel prior to this meeting that 13 he had put this on the agenda. 14 MR. KING: So actually I think that that's 15 sufficient discussion. 16 I think that what we will do, Mr. Mechels, 17 because of the litigation, is just to not have further 18 discussion about this specific issue. But we will 19 certainly accept your request that the Board consider 20 a rulemaking to consider just those topics that you 21 were thinking about. 22 And that's something that we can potentially 23 have put on the agenda. There's a process for that. 24 So what you've done today has triggered a request for 25 a rulemaking. And then I think we'll just move</p>	<p>Page 109</p> <p>1 forward according to our process with regard to that. 2 MR. MECHELS: Okay. Thank you for your 3 attention. 4 MR. KING: Sure. Any other agenda items to 5 be discussed? Okay. 6 ITEM NO. 19: SCHEDULING OF NEXT BOARD MEETING 7 MR. KING: The next item is scheduling of the 8 next Board Meeting. Do we have a tentative date for 9 the next meeting? 10 MS. LOPEZ: No, sir. 11 MR. KING: Sometime in March? 12 MS. LOPEZ: About February. 13 MR. KING: I assume, because we're going to 14 have new members and such, I think that it's not 15 necessarily appropriate for us to set a meeting. 16 I assume, Mr. Director, you'll do the normal 17 process and send out an email I suppose to the new 18 committee to find out when they're available. 19 MR. JONES: Yes, sir. 20 MR. KING: And then we'll publish it, 21 et cetera. I anticipate probably the next meeting may 22 be after the legislative session is done. 23 Does this Board care whether they meet during 24 the Legislature? A lot of agencies don't carry out 25 much work during the legislative session because</p>

1 they're all busy supporting the Legislature.
 2 I reckon that the time frame will be
 3 somewhere in February or March. And then we'll
 4 publish it, et cetera.
 5 ITEM NO. 20: ADJOURNMENT
 6 MR. KING: I don't see any other items so
 7 I'll take a motion to adjourn.
 8 MR. KORN: So moved.
 9 MR. McCALL: Second.
 10 MR. KING: All in favor say aye.
 11 (Those in favor so indicate.)
 12 MR. KING: Any opposed. Okay. We're
 13 adjourned.
 14 (At 3:35 p.m. the meeting was adjourned.)
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1 REPORTER'S CERTIFICATE
 2
 3 I, JAN A. WILLIAMS, New Mexico CCR #14, DO
 4 HEREBY CERTIFY that on December 8, 2014, the
 5 proceedings in the above captioned matter were taken
 6 before me, that I did report in stenographic shorthand
 7 the proceedings set forth herein, and the foregoing
 8 pages are a true and correct transcription to the best
 9 of my ability.
 10 I FURTHER CERTIFY that I am neither employed
 11 by nor related to nor contracted with (unless excepted
 12 by the rules) any of the parties or attorneys in this
 13 case, and that I have no interest whatsoever in the
 14 final disposition of these proceedings.
 15
 16
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 18
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 21
 22
 23 _____
 24 JAN A. WILLIAMS, RPR
 25 New Mexico CCR #14
 License Expires: 12/31/14

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