

NEW MEXICO LAW ENFORCEMENT ACADEMY  
REGULAR BOARD MEETING

September 6, 2016  
12:00 p.m.  
MCM Elegante Lodge & Suites  
107 Sierra Blanca Drive  
Ruidoso, New Mexico 88345

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

BOARD MEMBERS

New Mexico Attorney General Hector Balderas, Chairman

Chief Chris McCall, Vice Chairman

Chief Pete Kassetas

Sheriff Wesley Waller

Chief Darren Soland

Scot Key

Elisabeth Miller

Kelly Burnham

ALSO PRESENT

Stephan Marshall, Director

Brian Coss, Deputy Director

Joseph M. Dworak, Esq.

Monica Medrano, Case Manager

## AGENDA ITEM INDEX

2	ITEM	PAGE
3	1 Call to Order	4
4	2 Roll Call	4
5	3 Approval of Agenda	5
6	4 Approval of Meeting Minutes (June 8 and 9, 2016)	5
7	5 Director's Report	6
8	6 Public Comment	17
9	7 Ratification of Certifications for Law Enforcement Officers	20
10	8 Ratification of Certifications for Public Safety Telecommunicators	25
11	9 Request Regarding Sheriff Harvey Re-Entry into Basic Academy	27
12	10 Proposed Changes to the NMLEA Fee Structure	67
13	11 Consideration and Possible Adoption of Proposed Rule Changes	72
14	12 Discuss Approval of the LEA Santa Fe Class Schedule and Content	108
15	13 Recess - Reconvene at 8:30, Wednesday, September 7, 2016	109
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

## Attached:

Exhibits 1 through 6 - Certifications of Law  
Enforcement Officers

Exhibits 1 and 2 - Certifications of Public  
Safety Telecommunicators

1                   ITEM NO. 1:   CALL TO ORDER

2           CHIEF McCALL:   Good morning, everyone.   We'll  
3 go ahead and call this meeting to order.

4                   ITEM NO. 2:   ROLL CALL

5           CHIEF McCALL:   Ms. Medrano, would you call  
6 the roll.

7           MS. MEDRANO:   The Honorable Hector Balderas.  
8 Mr. Scot Key.

9           MR. KEY:   Present.

10          MS. MEDRANO:   Chief Pete Kassetas.

11          CHIEF KASSETAS:   Here.

12          MS. MEDRANO:   Sheriff Wesley Waller.

13          SHERIFF WALLER:   Here.

14          MS. MEDRANO:   Chief Darren Soland.

15          CHIEF SOLAND:   Present.

16          MS. MEDRANO:   Chief Chris McCall.

17          CHIEF McCALL:   Here.

18          MS. MEDRANO:   Sergeant Jaime Quezada.

19          Ms. Kelly Burnham.

20          MS. BURNHAM:   Here.

21          MS. MEDRANO:   Dr. Elisabeth Miller.

22          DR. MILLER:   Here.

23          CHIEF McCALL:   I would like to ask everybody  
24 to stand for just a moment for a moment of silence for  
25 Officer Jose Chavez of the Hatch Police Department and

1 Officer Clint Corvinus of the Alamogordo Police  
2 Department.

3 (Moment of silence.)

4 CHIEF McCALL: Thank you. Be seated.

5 ITEM NO. 3: APPROVAL OF AGENDA

6 CHIEF McCALL: All right. We'll move on to  
7 the approval of the agenda. Can I get a motion for  
8 approval of the agenda.

9 SHERIFF WALLER: I move to approve.

10 CHIEF KASSETAS: Second.

11 CHIEF McCALL: A motion and a second. All in  
12 favor.

13 (Those in favor so indicate.)

14 ITEM NO. 4: APPROVAL OF MEETING MINUTES

15 (JUNE 8 AND 9, 2016)

16 CHIEF McCALL: Next will be approval of the  
17 meeting minutes from the June 8th and 9th, 2016,  
18 meetings.

19 MR. KEY: Motion for approval.

20 CHIEF McCALL: I have a motion for approval.  
21 Is there a second?

22 CHIEF SOLAND: Second.

23 CHIEF McCALL: And a second. All in favor.

24 (Those in favor so indicate.)

25 ITEM NO. 5: DIRECTOR'S REPORT

1 CHIEF McCALL: Okay. The next item on the  
2 agenda will be the Director's report. Director  
3 Marshall.

4 DIRECTOR MARSHALL: Thank you, Mr. Chairman.  
5 Mr. Chairman, ladies and gentlemen of the  
6 Board, it's a privilege to address the Board. This is  
7 my second meeting. I've been in the position for  
8 about four months now as the Director of the Law  
9 Enforcement Academy.

10 I have learned a lot, I think I'm catching on  
11 to the point that I'm hopefully being useful to the  
12 Board and to the law enforcement agencies in New  
13 Mexico and most importantly to the men and women in  
14 law enforcement in this state and to the cadets that  
15 we're responsible for training.

16 I respectfully present the following  
17 information highlighting the activities that have  
18 taken place at the New Mexico Law Enforcement Academy  
19 and the satellite academies since the last Board  
20 meeting on June 8th, 2016, in Farmington.

21 The New Mexico Law Enforcement Academy Basic  
22 Class No. 193 started on July 24th of this year. We  
23 began with 67 cadets, we're now at 63 I believe, with  
24 graduation scheduled for November.

25 On July 29th, 2016, we graduated Public

1 Safety Telecommunicator Class No. 132, graduating 28  
2 telecommunicators.

3 The Advanced Training Bureau recently added  
4 another very experienced instructor. And we are  
5 finalizing a very aggressive advanced training  
6 schedule for the upcoming year.

7 We talked about at the last meeting that one  
8 of our primary goals with the current administration  
9 is to increase our advanced training and to offer the  
10 opportunities and the type of training that everybody  
11 is requiring.

12 The biennium reports are still being sought  
13 from a few agencies. As I mentioned last time, a few  
14 of them still hadn't reported yet. We've still got a  
15 number that we're working with.

16 We're trying to make sure that they get the  
17 training caught up. I have confidence that we're  
18 going to get there, we're just still trying to be  
19 careful to make sure that everybody gets accounted for  
20 and everybody is current.

21 We worked with Southwest Training and  
22 Consulting to review the lesson plans and goals and  
23 objectives for all 82 subblocks of instruction. We  
24 expect this review to be continual and ongoing to  
25 ensure that all the cadets in the Law Enforcement

1 Academy and all the satellite academies have the most  
2 up-to-date, state-of-the-art training available.

3 Additionally, we're working on revamping the  
4 LEOCE test to maintain both the integrity and fairness  
5 of the test. We're continually updating the  
6 curriculum. It's important that we continually update  
7 the test. So we're pretty close to completing the  
8 current version of that.

9 We've almost completed retrofitting the  
10 heating and air-conditioning units in the dorms at the  
11 Santa Fe Academy. We've completed an upgrade to the  
12 AV equipment as well as computers in the computer  
13 room. We've updated the fee schedule for some of the  
14 advanced training, which will be presented later this  
15 afternoon.

16 Specifically, of the satellite academies,  
17 almost all of whom are represented at the meeting here  
18 today, I had the directors of the satellite academies  
19 meet with me last night and again this morning.  
20 They're all here for the meeting. They continue to do  
21 great work in providing training in other areas of the  
22 state.

23 On June 15th of this year, the Southeastern  
24 New Mexico Law Enforcement Academy in Hobbs graduated  
25 a class of 22 cadets. They started a class of 20 on



1 August 8th, with an expected graduation in December.

2 On June 17th, 2016, the Western New Mexico  
3 University Academy in Silver City graduated a class of  
4 12 cadets in Class No. 61.

5 On July 1st, 2016, the San Juan Academy  
6 graduated 10 cadets in Class No. 38. They started  
7 Class No. 39 with 16 cadets on July 11th, with an  
8 expected graduation date of November 17th.

9 On July 22nd of this year, the New Mexico  
10 State Police graduated an abbreviated lateral academy  
11 of four officers.

12 APD graduated Class No. 115 of 30 cadets on  
13 July 28th, 2016. They started Class No. 116 on June  
14 27th with 38 cadets, with a graduation anticipated of  
15 December 30th.

16 The Bernalillo County Sheriff's Office  
17 Academy is expected to graduate 21 cadets on December  
18 9th, with a class that began on June 27th.

19 So as you can see, all the satellite  
20 academies are running as many cadets through as we  
21 can, with giving them the appropriate training.

22 As we mentioned last time, the basic class  
23 for the Santa Fe Academy we started larger than we  
24 would have liked. But I have trouble telling agencies  
25 that are short-handed that we can't find room for

1 their cadets, if we can possibly find the ability to  
2 give them training, without compromising that  
3 training.

4 So that's why we started a big class. We  
5 still have most of them. And I think we're going to  
6 be able to graduate most of the ones we still have.

7 At the last Board meeting, it was requested  
8 that we find out if any other states permit officers  
9 to work prior to being certified. The best way we  
10 found to check that was to request that IADLEST, the  
11 International Association of Directors of Law  
12 Enforcement Standards and Training, conduct a survey.

13 We received responses from 38 states with a  
14 wide variety of answers. Nine states responded that  
15 they have no ability to work prior to certification.  
16 I kind of expected that number to be higher frankly.

17 Fourteen states advised that officers may  
18 work for up to a year, some with additional  
19 requirements such as attendance in the next available  
20 academy.

21 Louisiana has a one-year requirement with an  
22 additional year for communities of less than 1,000  
23 people. I point that out because that was one of the  
24 reasons I think the question came up, was if there's  
25 any way to assist the smaller communities.

1           New Hampshire has a six-month requirement,  
2 with a hardship extension for up to two years. So  
3 again, sort of like Louisiana, they have a little  
4 flexibility. Three others allow extensions for  
5 critical needs or exigent circumstances.

6           So bottom line, to say there's a consistent  
7 practice nationwide isn't really possible.

8           Again any change I think in the New Mexico  
9 plan would require a statutory change, because it's in  
10 the statutory guidelines that the 12 months of work  
11 without attending an academy is found. So if it was  
12 an NMAC rule, it would be a lot easier for us to be  
13 flexible obviously.

14           There was a rules hearing on August 23rd  
15 which we'll be discussing on today's agenda, looking  
16 at improving, among other things, the LEA-90 process.  
17 We continue to try to improve the process to improve  
18 consistency and to expeditiously deal with the pending  
19 cases.

20           There were 38 cases received in 2016 and 31  
21 have been adjudicated. Currently we have one case  
22 pending additional documentation from the reporting  
23 agency.

24           We have eight cases pending a response to the  
25 Notice of Contemplated Action, three cases pending a

1 discipline recommendation from an oral response  
2 meeting, seven cases pending a response to a Notice of  
3 Final Decision, and eight cases pending a formal  
4 hearing. There are 16 cases on immediate suspension,  
5 generally meaning that there was a criminal charge  
6 involved that's still pending.

7 So we have a total of 60 pending cases at  
8 various stages. I have recently addressed both the  
9 Sheriffs' Association and the Chiefs Association in  
10 order to explain to them the process so that we can  
11 try to shoot for a goal of more consistent reporting.

12 One of the complaints have been that some  
13 agencies report things that other agencies don't. So  
14 we're making a concerted effort to advise all the  
15 agencies what the standards are. We've advised them  
16 as to what the proposed changes to the rules are so  
17 they would be familiar with the process.

18 But we'll continue to make those efforts to  
19 make sure that everybody is as well aware of what's  
20 going on as possible so that we can again shoot for a  
21 goal of consistency and expediency.

22 That's all I have. I'm happy to answer any  
23 questions that you may have.

24 A.G. BALDERAS: Any questions?

25 MS. BURNHAM: Director Marshall, I have some

1 comments and a question. First of all, I would really  
2 like to thank you for the way you prepare your  
3 reports.

4 Your report to this Board last session laid  
5 out very clearly a number of changes that you intended  
6 to make. And I appreciated things that I had heard,  
7 complaints from the public being addressed in that  
8 report, just lined out there for everybody to see.  
9 And I appreciated that very much.

10 DIRECTOR MARSHALL: Thank you.

11 MS. BURNHAM: I also appreciate your kind of  
12 quick follow-up when this Board asks you to do  
13 something. At the last Board meeting, we asked you to  
14 find out what other states let officers work before  
15 being certified. Boom, we have our answer at this  
16 meeting. And that's pretty nice.

17 The question I have is, on the biennium  
18 training reports, the last time our minutes reflect  
19 that we talked about the biennium training reports.  
20 And I was shocked when I heard the number of reports  
21 that were still outstanding.

22 Those minutes said Chief Soland asked, out of  
23 105 agencies, which ones have not responded to your  
24 outreach to them. And you responded that only 15 had  
25 responded. And you said you were going to work on

1 that and try to make some progress on that.

2 And I don't know how much of a hammer you  
3 have. Probably not a big one. But I wanted to know,  
4 numerically what progress have you made?

5 DIRECTOR MARSHALL: We are down to I believe  
6 approximately 80 agencies that we still don't have  
7 final reports from.

8 MS. BURNHAM: Okay.

9 DIRECTOR MARSHALL: That have met the  
10 requirements. I think the biggest hammer we have is  
11 it's possible to decertify the officers that haven't  
12 been done. But that's I think a very extreme  
13 response.

14 MS. BURNHAM: Right.

15 DIRECTOR MARSHALL: I think to leave agencies  
16 without protection because they haven't completed our  
17 training requirements or significant reporting  
18 requirements obviously less so. So we're still  
19 pushing to find out what the holdup is.

20 We have tried to structure as many trainings  
21 as we can for those agencies that just couldn't get  
22 the trainings met. We haven't made as much progress  
23 on that as I would have liked.

24 But we will continue to push that, as we push  
25 our Advanced Training Bureau, forward. Our goal for

1 this year is to get as many instructors certified and  
2 trained up as we can so that next year we have more  
3 people available to offer those kind of trainings.

4 Some of the areas we have lots of instructors  
5 frankly. Firearms, lots of people are firearms  
6 instructors. It's a collateral duty that a lot of  
7 officers enjoy. It's harder to find qualified  
8 instructors for teaching driving skills or teaching  
9 some of the other issues that we have to deal with.

10 So we're really pushing to identify the needs  
11 of the advanced instructors. I'm not sure how far  
12 we're going to be able to push them to meet the last  
13 biennium. But I want to make certain that we are in a  
14 position that the training is being provided in a  
15 timely manner and available for the upcoming biennium.

16 MS. BURNHAM: Thank you, sir.

17 DIRECTOR MARSHALL: Sure.

18 A.G. BALDERAS: Thank you, Board Member  
19 Burnham. Any other questions for our Director?

20 CHIEF SOLAND: Mr. Chairman, I have a  
21 question. Mr. Marshall, I'm just curious for a point  
22 of information and a direct question.

23 Some of the other states, their law  
24 enforcement academy boards and programs, you're  
25 talking about exigencies that are in place and

1 hardships. Is there a boilerplate of specific  
2 exigencies or is it open-ended based upon the director  
3 of each state's program?

4 DIRECTOR MARSHALL: It was very broad in the  
5 responses we got. It wasn't specific as far as what  
6 would create an exigency other than, as I said, the  
7 one state that for communities of less than 1,000  
8 people had a particular role. For the others,  
9 exigencies was about as specific as they got.

10 CHIEF SOLAND: Thank you.

11 SHERIFF WALLER: But they all did allow for  
12 exigencies?

13 DIRECTOR MARSHALL: There was only a handful  
14 I believe, three. I can tell you here in a second.

15 New Hampshire has a six-month requirement  
16 with an extension of up to two years for hardship.  
17 They didn't define hardship for us. Three other  
18 agencies allowed for extensions for critical needs or  
19 exigent circumstances.

20 So a total of four of them had an exigent  
21 circumstance plus the one that had a particular  
22 provision for smaller communities.

23 SHERIFF WALLER: That's four out of 38  
24 responses.

25 DIRECTOR MARSHALL: Right.



1 DR. MILLER: But they didn't have a  
2 definition for what they meant by hardship or critical  
3 need?

4 DIRECTOR MARSHALL: No. My guess is they  
5 probably left that broad deliberately.

6 A.G. BALDERAS: Any other questions for the  
7 Director? Thank you for your report, appreciate it.

8 DIRECTOR MARSHALL: Thank you, Mr. Chairman.

9 A.G. BALDERAS: Let the record reflect that I  
10 came in at 12:06. Thank you, Vice Chairman, for  
11 starting our meeting.

12 ITEM NO. 6: PUBLIC COMMENT

13 A.G. BALDERAS: We now move on to item No. 6,  
14 public comment. We do have one person, Mr. Jack  
15 Jones. Welcome back, sir.

16 MR. JONES: Sir, it's my honor to be here,  
17 Attorney General Balderas. Thank you very much.

18 A.G. BALDERAS: I'll give this to you. I  
19 know I don't have to tell you about our little  
20 five-minute rule here, I know you're well aware of it.  
21 But you have the floor, sir.

22 MR. JONES: It's my pleasure to address this  
23 distinguished Board again.

24 I am now the Executive Director of the New  
25 Mexico Sheriffs' Association. And several chiefs of

1 police and sheriffs have called me reference the LEOCE  
2 that was just given to the cert-by-waiver class at the  
3 New Mexico Law Enforcement Academy.

4 The LEOCE had been changed. And they had  
5 issued a new LEOCE for them to take. And they have  
6 not issued any new lesson plans for this to be  
7 validated or looked at by any of the other academy  
8 directors. Nobody knew they were going to do this, it  
9 was done in a vacuum.

10 And my question, as has been presented to me  
11 to ask the Board, is what is the condition that we  
12 have to ensure that those people going through the Law  
13 Enforcement Academy to date under the old lesson plans  
14 will be able to -- that that LEOCE and those lesson  
15 plans meet the requirements for them to take that test  
16 and pass.

17 Several of the people that took this last  
18 LEOCE, the new LEOCE, with the cert by waiver weren't  
19 sure they passed, they had a very low passing rate,  
20 and they were very concerned about it. And they went  
21 back to their agencies and asked me to pass this along  
22 to the Board.

23 I have discussed this with Director Marshall.  
24 However, the sheriff's association board has asked me  
25 to come and present this to the Law Enforcement

1 Academy Board so that you're aware of it.

2 And we understand that there is an issue with  
3 doing things in a vacuum, from the academy to the  
4 agencies to the other academies, and that nobody knew  
5 that they were going to do this.

6 So Director Marshall has assured me that they  
7 have corrected the problems, that the other  
8 instructors have looked at it. I am presenting this  
9 to the Board so you can be aware of it.

10 CHIEF KASSETAS: I have a question,  
11 Mr. Chair. The LEOCE test is created from the  
12 16 weeks of instruction, the blocks of instructions,  
13 correct?

14 MR. JONES: Yes, sir.

15 CHIEF KASSETAS: So wouldn't it be -- I mean  
16 to draw a parallel, wouldn't you say, no matter what  
17 was on the test, it should be covered in that  
18 16 weeks. I'm missing the connection.

19 MR. JONES: They've rewritten the LEOCE.  
20 It's my understanding they've rewritten the LEOCE for  
21 the new lesson plans that will be coming out. I don't  
22 know that they rewrote the LEOCE for the old 16-week  
23 lesson plans.

24 The people that just took this at the last  
25 cert-by-waiver class, three failed and a bunch of them

1 had low scores.

2 And the sheriffs and the chiefs of police  
3 that called me and were concerned that this would be  
4 the LEOCE that would be given for these that are in  
5 the academy currently without having new lesson plans  
6 to be taught.

7 CHIEF KASSETAS: Okay. I follow that. Okay.

8 MR. JONES: I've been asked to present this  
9 to the Board. And thank you all very, very much.

10 A.G. BALDERAS: Thank you, Mr. Jones,  
11 appreciate it. I believe we don't have any more  
12 members for public comment; is that correct?

13 ITEM NO. 7: RATIFICATION OF CERTIFICATIONS FOR LAW  
14 ENFORCEMENT OFFICERS

15 A.G. BALDERAS: We can now move on to item  
16 No. 7, ratification of certifications for law  
17 enforcement officers. We're going to go ahead and  
18 approve these by exhibit. Director Marshall.

19 DIRECTOR MARSHALL: Thank you, sir.

20 A.G. BALDERAS: You have the floor.

21 DIRECTOR MARSHALL: Thank you. Our first  
22 exhibit will be from the Southeastern New Mexico Law  
23 Enforcement Academy, Certification Nos. 16-0159  
24 through 16-0161, 16-0163 through 16-0168, 16-0170,  
25 16-0172 and 16-0173, 16-0176 through 16-0182, and

1 16-0184 and 16-0185. We would state that all of these  
2 cadets have met the certification requirements and  
3 would request that they be certified.

4 A.G. BALDERAS: Director Marshall, just so  
5 I'm clear, my packet says Exhibit 1 through Exhibit 6;  
6 is that correct?

7 DIRECTOR MARSHALL: Yes, sir. I believe so.  
8 Mine is alphabetized.

9 DR. MILLER: I believe it's just Exhibit 1.

10 DIRECTOR MARSHALL: Yes, sir. That was  
11 Exhibit 1.

12 A.G. BALDERAS: Okay. I'll take a motion to  
13 approve all the individual officers included in the  
14 Exhibit 1.

15 CHIEF McCALL: Motion to approve Exhibit 1.

16 MS. BURNHAM: Second.

17 A.G. BALDERAS: There's a second. All in  
18 favor say aye.

19 (Those in favor so indicate.)

20 A.G. BALDERAS: Any opposed? Great. The  
21 motion passes to approve certifications in Exhibit 1.

22 DIRECTOR MARSHALL: Thank you, sir. Our next  
23 exhibit would include the San Juan Academy No. 37,  
24 which would include Certification Nos. 16-0186 through  
25 16-0195. And we would state that those cadets listed

1 in that exhibit have met the certification  
2 requirements and would request that they be certified.

3 A.G. BALDERAS: I'll entertain a motion to  
4 approve all individuals included in Exhibit 2.

5 MR. KEY: So moved.

6 A.G. BALDERAS: And is there a second?

7 SHERIFF WALLER: Second.

8 A.G. BALDERAS: All in favor.

9 (Those in favor so indicate.)

10 A.G. BALDERAS: Any opposed? The motion  
11 passes to approve the individuals in Exhibit 2.

12 DIRECTOR MARSHALL: Thank you, sir.

13 Exhibit 3 involves one certification number who was  
14 part of the New Mexico State Police lateral class that  
15 we referenced during the Director's report, 16-0196.  
16 And I would state that he has met the certification  
17 requirements. And we ask that he be certified by the  
18 Board as well.

19 A.G. BALDERAS: I'll take a motion to approve  
20 Exhibit No. 3. Well, there's only one officer from  
21 State Police in Exhibit No. 3.

22 MR. KEY: So moved, Mr. Chairman.

23 A.G. BALDERAS: Great. Is there a second?

24 CHIEF SOLAND: Second.

25 A.G. BALDERAS: All in favor say aye.

1 (Those in favor so indicate.)

2 A.G. BALDERAS: Any opposed to this motion?

3 Okay. The motion passes to approve Exhibit No. 3.

4 DIRECTOR MARSHALL: In Exhibit No. 4, sir, we  
5 have the Albuquerque Police Academy No. 115, which  
6 would include Certification Nos. 16-0197 through  
7 16-0226.

8 A.G. BALDERAS: I'll take a motion to approve  
9 all individuals in Exhibit 4.

10 SHERIFF WALLER: So moved.

11 MS. BURNHAM: Excuse me, Mr. Chairman.

12 A.G. BALDERAS: Sure.

13 MS. BURNHAM: I believe the last number was  
14 16-0228. I'm so sorry. I'm wrong. I'm sorry.

15 DIRECTOR MARSHALL: Numbers 227 and 228 are  
16 the next exhibits.

17 MS. BURNHAM: You're correct.

18 A.G. BALDERAS: That's okay. I'll entertain  
19 a motion to approve all individuals included in  
20 Exhibit 4.

21 SHERIFF WALLER: So moved.

22 A.G. BALDERAS: Is there a second to that  
23 motion?

24 MS. BURNHAM: Second.

25 A.G. BALDERAS: All in favor say aye.

1 (Those in favor so indicate.)

2 A.G. BALDERAS: Any opposed say no. The  
3 motion passes to approve all officers in Exhibit 4.

4 We now move on to item No. 8 on the agenda,  
5 which is ratifications.

6 MR. KEY: Mr. Chairman, I think we have two  
7 other exhibits, five and six.

8 DIRECTOR MARSHALL: We have five and six,  
9 sir.

10 A.G. BALDERAS: You're correct. You have the  
11 floor, sir.

12 DIRECTOR MARSHALL: Thank you. For  
13 Exhibit 5, sir, we have certification Nos. 16-0227 and  
14 16-0228, both of whom graduated from the Western New  
15 Mexico University Police Academy Class No. 61. I'll  
16 state that they have met the requirements for  
17 certification and would ask that they be approved as  
18 well.

19 A.G. BALDERAS: I'll entertain a motion to  
20 approve the two individuals included in Exhibit 5.

21 MR. KEY: So moved.

22 A.G. BALDERAS: Is there a second to that  
23 motion?

24 CHIEF SOLAND: Second.

25 A.G. BALDERAS: All in favor say aye.



1 (Those in favor so indicate.)

2 A.G. BALDERAS: Any opposed? The motion  
3 passes to approve the two individuals in Exhibit 5 for  
4 certification.

5 DIRECTOR MARSHALL: For the last exhibit,  
6 sir, we have Exhibit 6, which is the  
7 certification-by-waiver class from the New Mexico Law  
8 Enforcement Academy, Class No. 89, which would be  
9 certifications 16-0230 through 16-0237. And then  
10 00-0132, 97-0130, 11-0009, 04-0045, and 89-0345.

11 A.G. BALDERAS: Thank you, Director Marshall.  
12 I'll entertain a motion to include all individuals  
13 included in Exhibit 6.

14 SHERIFF WALLER: So moved.

15 A.G. BALDERAS: Is there a second to that  
16 motion?

17 CHIEF McCALL: Second.

18 A.G. BALDERAS: All in favor to approve the  
19 individuals in Exhibit 6 say aye.

20 (Those in favor so indicate.)

21 A.G. BALDERAS: Any opposed? The motion  
22 passes to approve all the individuals in Exhibit 6 for  
23 certification.

24 ITEM NO. 8: RATIFICATION OF CERTIFICATIONS FOR PUBLIC  
25 SAFETY TELECOMMUNICATORS

1           A.G. BALDERAS: Now we can move to item  
2 No. 8, ratification of certifications for public  
3 safety telecommunicators.

4           DIRECTOR MARSHALL: For item No. 8, sir, for  
5 Exhibit 1, the New Mexico Law Enforcement Academy  
6 Public Safety Telecommunicator Class No. 132, we have  
7 certification Nos. 03-0028-PR and 16-0042-PS through  
8 16-0068-PS.

9           A.G. BALDERAS: Thank you, Director. I will  
10 entertain a motion to approve all individuals in  
11 Exhibit 1.

12           MR. KEY: So moved, Mr. Chairman.

13           A.G. BALDERAS: Thank you. Is there a second  
14 to that motion?

15           CHIEF SOLAND: Second.

16           A.G. BALDERAS: All in favor to approve the  
17 individuals in Exhibit 1 say aye.

18           (Those in favor so indicate.)

19           A.G. BALDERAS: Any opposed? The motion  
20 passes to approve all officers in Exhibit 1.

21           DIRECTOR MARSHALL: Our next exhibit is  
22 Exhibit No. 2 from the San Juan Academy. We have  
23 public safety telecommunicator certification  
24 Nos. 16-0036-PS through 16-0041-PS.

25           And I would state that all of these

1 telecommunicators as well as the ones from the  
2 previous exhibit have met all the requirements for  
3 certification. And I would ask that the ones in  
4 Exhibit 2 be certified as well.

5 A.G. BALDERAS: Thank you, Director Marshall.  
6 I'll entertain a motion for all individuals included  
7 in Exhibit 2, starting with 36 and ending in 41.

8 MS. BURNHAM: So moved.

9 A.G. BALDERAS: Is there a second?

10 CHIEF SOLAND: Second.

11 A.G. BALDERAS: All in favor say aye.

12 (Those in favor so indicate.)

13 A.G. BALDERAS: Any nays or opposed? The  
14 motion passes for Exhibit No. 2, ratification of  
15 certifications for public safety telecommunicators.  
16 Thank you, Director.

17 DIRECTOR MARSHALL: Thank you, sir.

18 ITEM NO. 9: REQUEST REGARDING SHERIFF HARVEY RE-ENTRY  
19 INTO BASIC ACADEMY

20 A.G. BALDERAS: We now move to item No. 9,  
21 Sheriff Harvey's re-entry into the basic academy,  
22 which will be presented by Mr. Jack Jones. You have  
23 the floor, sir.

24 MR. JONES: Attorney General Balderas,  
25 Members of this Board, it's my pleasure to be here as

1 the Executive Director of the New Mexico Sheriffs'  
2 Association. And I understand the Board's  
3 requirements for being able to talk to the individuals  
4 as we address certain issues.

5 But one of the things that the Sheriffs'  
6 Association would like me to do is come before you and  
7 ask that you allow Elva Harvey, who was a cadet in  
8 Class 192, to return to the New Mexico Law Enforcement  
9 Academy in Santa Fe at the 11th week, when she was  
10 relieved from a position as a cadet at the academy  
11 because she failed to make a run.

12 While she is disheartened and she understands  
13 the issues that she had for not making the run -- and  
14 we would not like to go into that. But she did pass  
15 all the minimum requirements up to that point and to  
16 include DTs and the law block.

17 There is nothing in the NMAC that says she  
18 cannot attend the academy at the 11th week. She has  
19 met all of those requirements of DTs.

20 No officer, since they graduated from the  
21 academy, has had to go back through DTs, no officers  
22 had to go back through doing the law block or the  
23 other items that she passed in the academy except for  
24 some updates that they had to do during biennium  
25 training.

1           For her to have to go back through all of the  
2 other 11 weeks of the Law Enforcement Academy would be  
3 an injustice to her agency and would create a strain  
4 on her department and the community that she's from,  
5 which is De Baca County.

6           She has since stepped up to become the  
7 sheriff of De Baca County because the sheriff had to  
8 take -- the elected sheriff had taken a position of  
9 chief of police in Belen, New Mexico.

10          So Sheriff Harvey is here, if you would like  
11 to speak to her. She is willing to go back through  
12 the full academy, if that is the desire of this Board.

13          We know that there was an issue several Board  
14 meetings back. But they are two different types of  
15 issues. And I would be glad to go into the two  
16 different types and talk about those, if we need to.

17          But the New Mexico Law Enforcement Academy in  
18 Santa Fe is a 16-week academy that has a set  
19 curriculum and schedule that they usually maintain.  
20 In the three years that I was there, the schedule  
21 rarely changed anything that was significant,  
22 especially for the next group that she would come back  
23 in on, which would be the firearms and the EVOC.

24          So she would be having to do the EVOC and the  
25 firearms, meet her minimum requirements for the

1 physical fitness requirements, and then the LEOCE and  
2 a couple other small things that she would have to  
3 pass.

4 But she's passed the major requirements for  
5 the Law Enforcement Academy at this time. We humbly  
6 ask that you look at this and allow her to attend the  
7 academy again at the 11th week.

8 MS. BURNHAM: What's EVOC.

9 MR. JONES: Emergency vehicle operations,  
10 which is driving police cars. Her class was 192,  
11 which she was relieved from. The current class is  
12 Class 193. She could start in the next class at the  
13 11th week of Class 194.

14 I disagree with her going any longer than  
15 that, if the Board would allow us to do that. She's  
16 been running, she's currently in shape, and she can  
17 currently pass the requirements for the academy at  
18 this time for the exit standards.

19 DR. MILLER: So if she were to do the entire  
20 16-week course, who would serve as sheriff while she  
21 was gone?

22 MR. JONES: She could still serve as sheriff.  
23 The requirements in the State of New Mexico for  
24 sheriff say that they have to serve eight hours a  
25 month as sheriff.

1           If she couldn't go back to the 11th week of  
2 the New Mexico Law Enforcement Academy in Santa Fe, we  
3 are suggesting that she go back to the Southeastern  
4 New Mexico Law Enforcement Academy in Hobbs, because  
5 they are on a 4/10 schedule, which means that she  
6 would get off on Thursday and could go work Friday,  
7 Saturday, and Sunday and meet that minimum requirement  
8 of being the sheriff for the county for that eight  
9 hours.

10           DR. MILLER: And how large is that  
11 department, how many people do they have?

12           MR. JONES: To include the sheriff, they have  
13 a five-man department.

14           MR. KEY: Jack, in terms of statutory  
15 requirements, do sheriffs have to be certified?

16           MR. JONES: No, sir, they do not. However,  
17 Sheriff Harvey would like to get her certification.  
18 She is a young police officer. And she would like to  
19 have a certification so she may continue.

20           As you know, sheriffs can only succeed  
21 themselves one time in the State of New Mexico. So  
22 that would give her an eight-year requirement if she  
23 did meet that. So she would have to be certified  
24 eventually down the road if she wanted to retire as a  
25 peace officer in the State of New Mexico.

1 DR. MILLER: And the reason she can't  
2 challenge the LEOCE is because she doesn't have a  
3 certification?

4 MR. JONES: She's never had a certification.  
5 Yes, ma'am.

6 MR. KEY: I guess the next question I have  
7 probably for the Board is precedence that we've  
8 discussed in previous issues, what have we done in the  
9 past for situations such as this. And for you too,  
10 Jack.

11 What is different here than the other cases  
12 that we've talked about, the unfortunate circumstances  
13 for some that we've talked about in terms of the  
14 justice involved in previous cases?

15 MR. JONES: Sir, may I answer that?

16 A.G. BALDERAS: Sure, please.

17 MR. JONES: Sir, what we had in the past was  
18 that, at the last Board meeting we had in Gallup, New  
19 Mexico, if you'll recall, we had a young cadet that  
20 was from Clovis, New Mexico.

21 And she had left the academy because she was  
22 pregnant and didn't want to go through the firearms or  
23 the EVOC or the other things because she was afraid it  
24 would harm her child.

25 She was asking to be allowed to go back into



1 the academy, at the seventh week of the academy, which  
2 in the Southeastern New Mexico Law Enforcement  
3 Academy, even though they do the 16-week core  
4 curriculum, they do DTs every day instead of just  
5 doing DTs once for two weeks in the Law Enforcement  
6 Academy like they do in Santa Fe, New Mexico.

7 And then they bring in a lot of adjunct  
8 faculty, where they can't maintain that schedule  
9 sometimes because sometimes the adjunct faculty can't  
10 come in and teach accident investigation. So then  
11 they have to reschedule that, move it forward or to  
12 the right on the calendar.

13 So it would have been hard for her to go back  
14 in, with the small staff that they have at the  
15 Southeastern New Mexico Law Enforcement Academy, and  
16 start where she left off; because she wouldn't have  
17 been able to meet those requirements because that  
18 academy schedule changes so much.

19 The academy schedule in Santa Fe, New Mexico,  
20 is a pretty set schedule for what they're going to do  
21 and for how they do it, because they do DTs for a  
22 two-week period, they do firearms and emergency  
23 vehicle operation training for a set two-week period  
24 that's in there.

25 And she has passed everything up to that

1 point where she would start firearms or emergency  
2 vehicle operation training. And she would be able to  
3 go back in at that point where they started.

4 Usually the New Mexico Law Enforcement  
5 Academy has not had any major changes up to that  
6 standard of time where they finish defensive tactics.

7 DR. MILLER: I actually just wanted to  
8 proffer an opinion. From a policy standpoint, I don't  
9 believe the NMAC includes any language that allows for  
10 waivers of these sorts.

11 And in the past, when we've talked about  
12 waivers of these sorts, we've been inclined not to do  
13 it because we don't want to set a precedent of  
14 allowing people to think, well, I can enter the  
15 academy and then I can leave and then I can come back.  
16 And so that's a concern I have.

17 And then secondly -- this is going to sound a  
18 little odd. But I have a concern from a -- what's the  
19 word. The optics perspective of people that are not  
20 in law enforcement; that if someone divides up the  
21 training in this manner, that the quality of their  
22 training could be challenged.

23 So if anything were to happen in their  
24 career, where a decision they made becomes challenged,  
25 that that could be potentially harmful.

1           And so from that perspective, even though I  
2 know it would be a pain, having Sheriff Harvey do the  
3 Hobbs training would protect her from any of those  
4 kinds of charges on down the line should it surface.

5           MR. JONES: May I respond to that, sir.

6           A.G. BALDERAS: Go ahead.

7           MR. JONES: The optics are that she has  
8 already finished defense tactics. Nobody, once they  
9 become a certified officer, are required to go back  
10 through defense tactics again except for updates. She  
11 has met the requirements for the Board to get through  
12 that much of the 11th week of the academy.

13           DR. MILLER: Right. I understand what you're  
14 saying and I understand your opinion. So when I talk  
15 about optics, I'm talking about outside the law  
16 enforcement community; journalists, lawyers, the  
17 people in the peanut gallery that, you know, like to  
18 throw stones, because they're not going to understand  
19 that.

20           And I'm just proffering the opinion for the  
21 Board that there could be something where, God forbid,  
22 something happens in her career on down the line and  
23 somebody could challenge that by challenging the  
24 quality of her training because there was a break  
25 involved there.

1 MR. JONES: And I agree with you, that I  
2 think it should be on a case-by-case basis and there  
3 shouldn't be a block of just we'll allow people to  
4 come back to the academy.

5 DR. MILLER: And I understand that law  
6 enforcement officers might see that differently. But  
7 I'm just thinking, you know, as a citizen who gets  
8 talked to by citizens, that because they don't really  
9 understand, that that might be an issue that they will  
10 harp on.

11 MR. JONES: Yes, ma'am.

12 MS. BURNHAM: Could I ask, what's the square  
13 mileage that has to be covered by that five-man police  
14 force at the sheriff's office, what's the square  
15 mileage of De Baca County?

16 MR. JONES: It's De Baca County. And I do  
17 not know.

18 SHERIFF WALLER: The sheriff is obviously the  
19 administrator of that agency. Does the sheriff also  
20 serve in a patrol capacity for the agency?

21 MR. JONES: Yes, sir.

22 CHIEF KASSETAS: Mr. Chair, if I may. And  
23 please, Sheriff, don't take this personally. But I  
24 don't think the Board can make a decision on the size  
25 of the agency. It's an interesting dynamic.

1           For instance, Chief Soland had left State  
2 Police, where we're 650 plus strong, to a smaller  
3 tribal entity that has how many, Darren?

4           CHIEF SOLAND: Six.

5           CHIEF KASSETAS: Six. And so you can relate  
6 to what the sheriff is going through. But at the end  
7 of the day, my opinion -- and it's just my opinion as  
8 one Board Member -- is there's a standard for a  
9 reason. And where does it end?

10           It seems like, just looking at the business  
11 end of running an academy, the run was missed by a  
12 couple seconds. The firearm qualifications, not in  
13 the sheriff's case but in another case, was maybe  
14 missed by one; the defensive tactics, a test here or  
15 there, where do we stop that at the end of the day.

16           I have turned away countless potential State  
17 Police officers, Jack, for missing the run by two  
18 seconds because that's just the standard. And if we  
19 choose to change that standard, that's one thing.

20           But I feel like we would set a very dangerous  
21 precedent for all of law enforcement in New Mexico and  
22 also to command that out of the academies would seem  
23 to be problematic.

24           I believe, when you were the Director, Jack,  
25 you had argued against this. I think there's like 15

1 pages in past meetings, notes from prior meetings,  
2 where you were the Director and you were adamant that  
3 it was hard to bring people in to a six, seven,  
4 eight-week, 11-week academy when that much time had  
5 gone by and there's a certain reaction with that class  
6 and instructors and keeping track of that.

7 So I mean I understand the dilemma that the  
8 sheriff is in. I believe the right thing to do is to  
9 start the academy from the beginning. We've had many  
10 people do that. It's difficult, I understand that.

11 But after hearing your presentation and  
12 listening to some of the discussion, I'm not convinced  
13 as a Board Member that that's the way to go, to waive  
14 it one time. I believe we'll have a line out the  
15 door, Jack, of people saying, hey, I qualified. But  
16 instead of getting a passing score of 80 or 70 is it?

17 MR. JONES: On what, firearms?

18 CHIEF KASSETAS: Firearms.

19 MR. JONES: Eighty.

20 CHIEF KASSETAS: Eighty. I got a 79, I could  
21 do better next time, I've been practicing; that's just  
22 an example. So again I wish the sheriff the best of  
23 luck. But I'm not inclined to support that.

24 SHERIFF WALLER: I would like to point out  
25 that we did change the procedure for the run with our

1 last meeting. And it was all based upon this case.

2 So we've already moved forward with changing  
3 the time requirements. And that's exactly where she  
4 was inadequate, was on the time of that run. We're  
5 now allowing for the handicap for the elevation.

6 A.G. BALDERAS: Can you refresh the rest of  
7 the Board on what that modification was. It was  
8 according to elevation, wasn't it?

9 SHERIFF WALLER: Right. I believe was it  
10 anything 6,000 feet and above was 45 seconds? And  
11 this was the case that addressed that issue.

12 CHIEF KASSETAS: I think either way the issue  
13 at hand is do we as a Board allow for a waiver as we  
14 call it. And Dr. Miller had some very good points. I  
15 don't know if the NMAC would allow that as it stands.

16 But even if we're considering it, the  
17 question for the Board is should we. And how do we  
18 manage that going forward. That's the question  
19 everybody has to answer. Whether you're a five-man  
20 department or a 500-man department, it's difficult.

21 SHERIFF WALLER: And I agree with you. And I  
22 realize the problem that that creates. I think this  
23 is a special request. There's a very unique set of  
24 circumstances here that I think we should consider.  
25 I think De Baca County is -- basically their law

1 enforcement is somewhat in crisis with this situation.

2 As I understand it, and Sheriff Harvey can  
3 correct me if I'm wrong, there's nobody else that is  
4 willing to step up to take this position. She was the  
5 only person that took that step forward. I think it's  
6 desperately needed.

7 MR. JONES: And if I can address Chief  
8 Kassetas, the issue the last time was -- it's apples  
9 and oranges. Yes, she wanted to go back to the  
10 academy. But she couldn't go back to the academy  
11 because of how the Southeastern New Mexico Law  
12 Enforcement Academy is structured and how they do  
13 things.

14 Chief McCall will confirm that they're always  
15 asking for instructors to come over at different times  
16 because other instructors can't make it. The New  
17 Mexico Law Enforcement Academy in Santa Fe has a  
18 staff, they have a cadre of instructors that are there  
19 to ensure that this schedule is maintained and met.

20 But it's two different circumstances that  
21 we're talking about. Yes, I did argue against it.  
22 But it was for that reason, because the Southeastern  
23 New Mexico Law Enforcement Academy does not have a  
24 staff of cadre, they have to rely on adjunct faculty  
25 to come in.



1           And it's hard for them to establish and say  
2 this is going to be the schedule. They meet all the  
3 requirements. But they may have to do something at  
4 the end.

5           CHIEF KASSETAS: Jack, I understand the  
6 logistics of it would work. But my question to you  
7 is, placing yourself back in the Director's shoes,  
8 what does that do to everybody else moving forward  
9 that doesn't make the run? Is it two seconds off, a  
10 minute, 50 seconds?

11           I mean how do you gauge who gets to come  
12 back? Because they're going to stand in line and say,  
13 wait a minute, the sheriff from De Baca County, who  
14 missed the run by two seconds, I missed it by four,  
15 how come I don't get to come back? How do we deal  
16 with that? I don't know the answer other than there's  
17 a standard to be met.

18           MR. JONES: Well, I will tell you, if you're  
19 asking me what I did when I was Director, she wouldn't  
20 have been gone, she would have been retested by the  
21 end of the week; and if she failed it then, then she  
22 would have been gone. She wasn't given an opportunity  
23 to retest.

24           So as we look at this and we see where we're  
25 going to go, there's a lot of things that are

1 happening at the Law Enforcement Academy now that are  
2 done in a vacuum. Nobody knows what's happening over  
3 there and they're not discussing this with anybody.

4 We're asking that she be allowed to go back  
5 at the 11th week, take all the tests that she is  
6 required to take to get into that 11th week, which is  
7 the physical assessment test -- because she has passed  
8 everything to this point. Everything to this point.  
9 And was it a two second run? Yes, sir, it is. And I  
10 agree with you, sir.

11 CHIEF KASSETAS: I want to point out, you've  
12 said it four times now. We've got a lot of respect  
13 for each other, we had a great conversation this  
14 morning.

15 And I see some sheriffs in this room and I  
16 want you to hear me. As a Board Member, I do not want  
17 to get into a head-butting competition with the  
18 Sheriffs' Association and this whole issue of the  
19 academies operating in a vacuum.

20 Folks, I'm here to tell you that we're one of  
21 the most transparent entities out there. Believe me,  
22 everything we do is on the web. And if you want to  
23 read it, there's an individual that posts everything  
24 if we didn't get to post it.

25 I hope the sheriffs understand in this room

1 and pass it on that our doors are open at the academy.  
2 Stephan Marshall, the Director, and Brian Coss are  
3 doing the best they can to keep this thing afloat on a  
4 shoestring budget, folks. And I'm concerned.

5 I'm concerned that you all put people through  
6 these academies and pay not a dime for it because the  
7 legislature is supposed to pick it up. And it's  
8 becoming a problem because it ain't getting picked up.  
9 And we know that, we're all in the same boat.

10 But I don't want to paint the picture that  
11 things are happening in a vacuum. Have mistakes been  
12 made? They have been made certainly recently and they  
13 have been made under you, Jack, and other directors  
14 and made under me. I get it.

15 But I want to reemphasize that I think  
16 logistically we can probably make this happen. The  
17 question the Board has to struggle with is is it the  
18 right thing to do, is the standard the standard and  
19 what qualifies someone for a waiver and where do we  
20 draw the line. And that's what each member has to  
21 determine.

22 A.G. BALDERAS: Before we conclude your  
23 presentation, I do want to pay our respects to the  
24 sheriff, if she wants to offer a few words.

25 And then I do kind of want to sum up what I'm

1 hearing and extract from the Board what it is that we  
2 want to do to move forward.

3 Sheriff, you have the floor.

4 SHERIFF HARVEY: Good afternoon, ladies and  
5 gentlemen. Thank you for having me here today. I  
6 appreciate everything you do for the Board and for the  
7 State of New Mexico and law enforcement in general.

8 I understand that there are several different  
9 aspects of this situation. And coming from a small  
10 department, you know, it would be an asset for me to  
11 have the certification and it would be an asset for me  
12 to complete it in five weeks.

13 I have completed the 11 weeks. Everything  
14 that Jack stated is correct. And I think it would be  
15 an honor to be able to go back to the academy and get  
16 that certification, because ultimately that's what --  
17 it's an ultimate goal that I have.

18 And so if you all would please consider it,  
19 it would be a great honor and I would greatly  
20 appreciate it.

21 DR. MILLER: So it's five weeks and there is  
22 one month in there where you're going to have to do  
23 that eight hours, correct?

24 SHERIFF HARVEY: Yes, ma'am.

25 DR. MILLER: And so if you're in Santa Fe

1 doing five days a week, is that going to be an issue  
2 for you?

3 SHERIFF HARVEY: No, ma'am. I could do it on  
4 the weekends. And to answer your question, ma'am, the  
5 mileage is 2,334 square feet.

6 MR. JONES: Miles.

7 SHERIFF HARVEY: Miles.

8 A.G. BALDERAS: Any other questions? Are you  
9 up for election currently in November?

10 SHERIFF HARVEY: Yes, sir.

11 A.G. BALDERAS: Do you have an opponent?

12 SHERIFF HARVEY: There is an opponent.

13 A.G. BALDERAS: So there was a question about  
14 whether, if you are victorious, you still will be able  
15 to serve as a lawfully elected sheriff; am I correct?

16 SHERIFF HARVEY: Yes, sir.

17 A.G. BALDERAS: So aside from being maybe the  
18 only one not part of the law enforcement community,  
19 this is a pretty healthy tension. And I mean tension  
20 not in a bad way, I mean legally.

21 If the voters do the right thing and you are  
22 elected sheriff, you are legally authorized to serve  
23 as the sheriff in spite of the certification issue.

24 However, I think we're struggling not with  
25 the policy decision, there actually will be a

1 different question as well. Does the Board have the  
2 legal authority to make the policy exception? And  
3 that's what my Assistant AG will struggle with  
4 regardless of what Board action is taken today.

5 We want to make sure we do the right thing  
6 for the citizens of your county as well by taking a  
7 lawful action, not just an action that could  
8 potentially be overturned at a later date or  
9 challenged as well. So this is definitely one where  
10 we'll earn a per diem or paycheck.

11 So thank you. Is there anything else, do you  
12 have any other questions for us?

13 SHERIFF HARVEY: No, sir.

14 CHIEF McCALL: I have one question. Did I  
15 hear that the plan was for you to return to the  
16 Southeastern New Mexico Law Enforcement Academy due to  
17 their schedule?

18 SHERIFF HARVEY: Yes, sir.

19 A.G. BALDERAS: Thank you. Congratulations.

20 SHERIFF HARVEY: Thank you. Thank you very  
21 much.

22 A.G. BALDERAS: So we're back to the Board.  
23 Is there anything else on your presentation?

24 MR. JONES: I would like to clarify myself,  
25 if I may. Please, I don't want to alienate anybody on

1 this Board. I think that you're all friends. I want  
2 to ensure that you don't think of me as any other  
3 people that come before this Board to create problems.

4 And Chief Kassetas is correct. There are  
5 issues at the Law Enforcement Academy. And they do a  
6 lot of great work and they do a lot of things and the  
7 instructors are magnificent there. So I would just  
8 like to clarify that, that I am not here to crumb the  
9 academy in any way.

10 A.G. BALDERAS: Sure. No. I don't think we  
11 take it that way. Pete usually speaks with a lot of  
12 affection and animation.

13 MR. JONES: I tried not to yell at this Board  
14 meeting. I don't want Pete to think I'm yelling at  
15 him.

16 A.G. BALDERAS: For a whole half year, I  
17 thought he was yelling at me and then I realized he  
18 liked me.

19 CHIEF KASSETAS: I have a healthy respect for  
20 Jack and I always have and value his law enforcement  
21 input. You know, this Board, we meet four times a  
22 year. The academy staff lives it every day, whether  
23 they're at the main academy in Santa Fe or at the  
24 satellite academies.

25 And it's an uphill battle with everything

1 going on in the law enforcement community. So if we  
2 could just, you know, stay positive and move forward.

3 And definitely, you know, Stephan Marshall,  
4 the Director, has an open door. If there are sheriffs  
5 and chiefs out there that have issues, I would say  
6 call him direct because that's what gets things done.

7 I don't oversee him. I'm just a Board  
8 Member. I happen to be part of DPS. But the LEA is  
9 supposed to be stand-alone for a reason. And he  
10 serves the sheriffs and chiefs. And if they're not  
11 getting what they think they need out of the academy,  
12 we need to address that right away.

13 And, Jack, your work went a long way to fix  
14 some of that, because it was a contentious  
15 relationship. And I hope at some point the academy  
16 will be in a position to provide the advanced training  
17 out there that we're looking for, all of us.

18 How many of the chiefs and sheriffs have to  
19 send their people out of state to get what we should  
20 probably get here. It's slowly changing. And also to  
21 work with them to get a better product out of these  
22 academies. So I appreciate the dialogue. And we just  
23 have a decision to make.

24 MR. JONES: Well, I have a great working  
25 relationship with Director Marshall. I definitely



1 don't want to lose that, especially being an executive  
2 member of the association.

3 We appreciate you all listening to us. Thank  
4 you very, very much. We would like you to consider  
5 it. The next class that she could go to would be  
6 Class 194, if she was to go the 11th week, which would  
7 start in January or February in Santa Fe. If the  
8 Board elects not do so, then she would start at the  
9 next academy as Southeastern New Mexico Law  
10 Enforcement Academy in Hobbs.

11 A.G. BALDERAS: Thank you, Jack. We  
12 appreciate your presentation.

13 MR. JONES: Thank you.

14 A.G. BALDERAS: So generally, when we're  
15 presented with a policy question, one, we could take  
16 this under advisement.

17 We could also even direct or request the  
18 Director to do a little bit of research, which is  
19 probably where I'm curious either way, regardless of  
20 what the Board wants to do, on what are other  
21 states -- in terms of what the legal mechanisms are,  
22 whether it's regs, statutes, or discretion, what legal  
23 mechanisms are granting authority to create an  
24 exception methodology that keeps boards out of trouble  
25 or from some type of bias claims or rural versus

1 urban.

2 I would like you, Director, to maybe do a  
3 little research on whether other states are facing  
4 this question and whether we need to authorize a legal  
5 mechanism that creates a certain methodology or  
6 standardization, because I'm hearing these exceptions.

7 I actually was sympathetic to one on the  
8 medical claim and disability claim that didn't fly  
9 based on a policy. And so I'm getting a little  
10 nervous that the Board is becoming kind of a de facto  
11 decision-maker as well.

12 So just like the other question that was  
13 presented, could we extend waivers of exception for  
14 rural communities. We absolutely could. Clearly it's  
15 authorized in the statute. That would be something  
16 that we could push for.

17 I'm a little unclear in terms of granting  
18 exceptions on when academies start and when a cadet  
19 could re-begin. I was concerned last time about also  
20 the due process notification.

21 When a cadet starts, we probably want to give  
22 them their rights up front on when they can jump in  
23 and out so as to not put you in this fact-finding mode  
24 of trying to recall exceptions.

25 So, one, we have potentially an advisement

1 option where either way you should do the research for  
2 us, because I think this one is going to keep coming  
3 up regardless. Number two, I could entertain a motion  
4 on a direct request as requested here before. Or  
5 number three -- actually that is the third.

6 We could do an advisement or direct the  
7 Director to do some research before we figure out if  
8 there's another legal mechanism or we could entertain  
9 the request by some motion and second. And those are  
10 generally the three in terms of solutions that I  
11 heard.

12 SHERIFF WALLER: Mr. Chairman, is it unclear  
13 if we can legally proceed at this point with making a  
14 decision on this?

15 A.G. BALDERAS: I'm a little unclear. I'm  
16 only one vote. From the perspective of last time,  
17 where I thought there was a clear medical pathway, we  
18 went into the medical review and then we kind of let  
19 that die at that point. No. We didn't let it die.  
20 We put it to a procedural vote, right?

21 DR. MILLER: And I believe his department  
22 then handled it with him.

23 A.G. BALDERAS: Right. And I think we're  
24 kind of headed toward that here. We could go through  
25 a vote now. That would be past part of my research

1 request, is what would be the proper legal mechanism.

2 Do we have legally the authority to vote this  
3 exception through, where she's in good standing. I  
4 also don't want to create a more complicated legal  
5 quandary for her as well.

6 DR. MILLER: Can I piggyback on the Attorney  
7 General's comments for a second. There are several --  
8 I don't know how many. But I know there's more than  
9 one county in New Mexico where the sheriff doesn't  
10 have to have a certification.

11 And so if you could include that in what you  
12 look at. Because I think, if there is a  
13 differentiating circumstance, that would be one.  
14 Because I know of one county that they used to allow  
15 someone without a certification to be sheriff and then  
16 they recently changed it.

17 MR. JONES: Right now we have three counties  
18 in the State of New Mexico where the sheriffs are not  
19 certified to include Sheriff Harvey. There is nothing  
20 in State statute that says any of the sheriffs have to  
21 be certified in the State of New Mexico.

22 DR. MILLER: If you could just add that  
23 question about positions in other states where the  
24 chief or the sheriff doesn't have to have  
25 certification. I would be interested to hear about

1 that as part of this discussion.

2 CHIEF KASSETAS: Mr. Chair, I'll point out  
3 that I think we're overcomplicating the issue just  
4 from my perspective. It's a very simple question. Is  
5 this Board willing to adjust the standards that we  
6 have in place for not only the run, but anything else  
7 in the academy.

8 I think it's a slippery slope. I think it's  
9 dangerous, especially in a time when people are  
10 looking for us to uphold the standards we have. We've  
11 already changed it once. And I didn't recall it was  
12 this case. To me none of that matters.

13 What we're asking for is a simple question of  
14 are we willing to give a person, whether it's this  
15 sheriff or any other police officer that comes before  
16 us, a waiver because they missed a particular run or a  
17 particular mark in the academy. Where does that end.  
18 That's what's before us today unless I have it wrong.

19 A.G. BALDERAS: No. But also I think I just  
20 asked it differently. By giving that waiver, are we  
21 actually then changing the rule, changing the  
22 standard, through this rather than through a more  
23 formal process I guess is what I'm saying.

24 MS. BURNHAM: I agree with Attorney General  
25 Balderas. I think, if we want to look at what other

1 states do to make exceptions, that's something that we  
2 might follow up on for the future.

3 But now we have a standard that we should  
4 uphold. And then we can look in the future about  
5 whether there are good reasons in the law and in  
6 practice where boards have made exceptions. But I  
7 don't think now is the time to go down that rabbit  
8 trail.

9 A.G. BALDERAS: There is still no motion. So  
10 we would just be taking it under advisement. I  
11 actually want to give my counsel just a few minutes to  
12 clarify some of the jargon that I've stated earlier in  
13 a confusing fashion.

14 MR. DWORAK: Sure. Members of the Board, I  
15 think my concern -- and I won't give explicit legal  
16 advice now for obvious reasons.

17 But I think the question before the Board is  
18 whether or not there is clear authority for the Board  
19 to move forward with stating that what is required in  
20 its rules can be adjusted by a vote of the Board.  
21 That's a question I think that we need to look  
22 through.

23 From my review in discussing this previously  
24 with the Director, I don't think that there is a clear  
25 mechanism in the Board's rules for a petition like

1 this to come forward and be approved or accepted or  
2 denied by the Board.

3 I think the only way at this point right now  
4 would be that if the Board somehow has the implied  
5 authority through its general delegations by statute  
6 of the Board powers. So that would be a complicated  
7 review. I don't think the answer would be completely  
8 clear, at least not right away. So I think that would  
9 be something that would take a little bit of time.

10 If the Board would like to vote on this as a  
11 formal proposal at its December meeting, I would be  
12 happy to work with the Director and provide a little  
13 bit more clear legal advice. And I can do that in the  
14 form of a memo prior to the meeting as well.

15 MR. JONES: If I may respond to that, there  
16 is a policy in the NMAC -- and I'm trying to look it  
17 up right now -- that says that the Director may act on  
18 behalf of the Board. And the Board may do things that  
19 are in the best interests of the public for safety to  
20 ensure that the safety, the community, and everybody  
21 are taken care of and it is in the best interests of  
22 the public to do so.

23 I think that implies that this Board has the  
24 authority to do that. I'm trying to find that statute  
25 right now in the NMAC. But it does say that this

1 Board can give that direction to the Director or it  
2 can take that direction itself.

3 I am by no means a lawyer. But I do see  
4 that, where that is something for this community, it's  
5 safety for the community, it's safety for that  
6 department, and it is something that I think this  
7 Board has the authority to do. I am by no means an  
8 attorney, sir.

9 A.G. BALDERAS: I appreciate your passion,  
10 Jack. Any other questions at this time?

11 DR. MILLER: Well, I kind of have a  
12 quasi-comment. Since I've been on the Board, this is  
13 our third occasion where someone has come with I'll  
14 call it a waiver request, where you can't help but be  
15 sympathetic to the position that they're in.

16 And yet, Chief Kassetas' comment regarding  
17 not allowing the standard to be damaged I think is an  
18 important concern, maybe a paramount concern. But  
19 since it's come up three times, if you could add to  
20 your research trying to determine if there's a way to  
21 include some sort of line item that addresses this.

22 And I know it gets wishy-washy with the  
23 language and everything. But it keeps coming up. And  
24 because of that I don't think making a different  
25 decision each time is very fair to the people that are



1 in those circumstances.

2 CHIEF KASSETAS: And I would comment,  
3 Mr. Chair, that that's an easy answer for me,  
4 Dr. Miller. And the answer is no, because we have a  
5 standard in this profession just like lawyers have  
6 them and anybody else.

7 And I think that, if we start picking at  
8 these ones and twos, it's going to lower the  
9 professionalism of what we do. And that's again I'll  
10 use the term slippery slope. I get it, I'm  
11 sympathetic to it.

12 DR. MILLER: You do know that I uphold your  
13 opinion at times. So if you were going to like maybe  
14 me say what I think right now, I'm going to agree with  
15 you.

16 But I think when we did the disability  
17 review, we had no direction from the NMAC whatsoever.  
18 And that made it very, very tough to grapple with the  
19 question at hand. Of course, that was somebody who  
20 already had their certification.

21 So some due diligence on how other  
22 departments handle it I don't think would be amiss,  
23 even though I still agree with you.

24 A.G. BALDERAS: In taking the whole  
25 discussion, I do remember a lot of discussion about a

1 lot of pressure on small rural departments. There's a  
2 lot of pressure also on the question I think the  
3 previous sheriff brought up, why do training standards  
4 exist.

5 That is actually a good question that we  
6 should be asking ourself on an annual basis. I think  
7 just taking a look at what the rest of the country is  
8 doing would be a good process for us to see if we are  
9 missing anything.

10 Does this question need to be modernized in  
11 any way, are we missing something? Because I do agree  
12 with you. Every meeting there's going to be a  
13 different life situation in good faith.

14 We seem a little rigid to a certain degree.  
15 But also I take into account what you're saying as  
16 meritorious as well.

17 CHIEF KASSETAS: I meet with my counterparts  
18 two or three times a year, the State Police and  
19 Highway Patrol. And there is a push. And again I  
20 look to my peers in the room that are sheriffs and  
21 chiefs.

22 We're all fighting for the same recruiting  
23 base. And so if one agency can lower or change a  
24 standard that makes a group of people more attractive  
25 to come to their agency, then that's what we're facing

1 as a profession. It's a difficult time for us.

2 A.G. BALDERAS: You brought it up last time  
3 after the meeting, that there are these PT standards.  
4 And they're not necessarily when you give them, it's  
5 just the standard. And so we could probably improve  
6 on that.

7 And you said that there are no PT standards  
8 for someone like you afterwards. There is a pressure  
9 on the force. We're arbitrarily cutting folks to a  
10 certain degree. But then once they're in, they're in.  
11 And then there is no PT standard.

12 So I'm curious to see what the rest of the  
13 country is doing. I haven't heard a motion yet other  
14 than what we're discussing. Is there a motion?  
15 Director.

16 DIRECTOR MARSHALL: If I could offer just a  
17 quick observation on behalf of the academy. I have a  
18 great deal of respect for Mr. Jones, I have a great  
19 deal of respect for the sheriff.

20 A couple of the bigger issues we have,  
21 though, is, in spite of the fact that we have an  
22 ongoing staff of training, things shift around. As I  
23 mentioned in the Director's report, we're constantly  
24 looking at evaluating our criteria, our curriculum,  
25 our goals and objectives, our tests.

1           There is no guarantee that the class that we  
2 offer in a year is going to be not only containing the  
3 same material as was contained in the previous class,  
4 but that it's going to be on the same schedule.  
5 Things get shifted around.

6           We had a shift this last week. We discovered  
7 a MRSA virus in the academy, a person was infected.  
8 We had to shut everything down and decontaminate the  
9 academy. Things get moved around.

10           The other concern that I have which is a  
11 bigger concern is that we've already been contacted by  
12 another cadet out of the same class that was dismissed  
13 who said that he would like to come back at week 12 to  
14 get his certification under the new rule that we're  
15 looking at.

16           I don't know how we make this exception for  
17 the sheriff and continue to hold the line on  
18 qualifications with everybody else. So that's the  
19 biggest concern I have as the Director of the academy.

20           A.G. BALDERAS: Thank you.

21           CHIEF McCALL: Sheriff, I appreciate the fact  
22 that you want to be certified and want to chase that  
23 down. I would have to say I agree with the fact we  
24 have a set of standards and they are what they are.

25           If we do this, I see a Pandora's box opening

1 for us. Another one out of the same academy from week  
2 12 wants to come in now. I'm sure we probably have  
3 some at the Southeastern New Mexico Law Enforcement  
4 Academy and San Juan County has people in the same  
5 situation.

6 And I talked with the academy directors the  
7 last time this issue came up. And they believe that  
8 bringing someone in midstream can be extremely  
9 difficult. Although the curriculum may be the same,  
10 that doesn't mean that curriculum falls in the same  
11 time period.

12 And to consider the possibility of coming to  
13 Southeastern New Mexico Law Enforcement Academy, I can  
14 tell you for a fact they are not on the same schedule  
15 as Santa Fe. It's very different when they can get  
16 instructors to come in and teach.

17 So basically saying she'll come in at week 11  
18 and start would be very difficult to try to determine  
19 what topics would need to even be covered.

20 But I agree. I think we've started a  
21 conversation here that we already have an answer to.  
22 We set out standards in our academies. They are the  
23 standards.

24 Some details can be handled differently.  
25 Maybe we can do that. But as we stand right now,

1 we've held someone to a standard. And we've held many  
2 people to those standards.

3 And while I definitely feel for the position  
4 that your community is in and I think it would  
5 definitely be better served with a certified sheriff,  
6 I don't think I could support a waiver at this point  
7 in this situation.

8 If I were going to look at supporting a  
9 waiver, I would definitely be more apt to looking at  
10 medical conditions or things of that nature that would  
11 cause a disruption in your academy.

12 SHERIFF WALLER: Mr. Chairman, I think there  
13 are a lot of questions about whether we can pursue  
14 this and address this. And I'm worried, if we take a  
15 vote, it could be an invalid vote.

16 I would make the motion that we postpone this  
17 until the next meeting. And in the meantime if we  
18 could get an administrative and also a legal review of  
19 this issue so we know where to stand; and as  
20 Dr. Miller pointed out, to determine if we need to  
21 establish a process for situations like this to  
22 address those.

23 A.G. BALDERAS: And we don't need a motion,  
24 we can take that under advisement. And we can direct  
25 Director Marshall to oblige your request. And I'll

1 make sure that there's a full legal briefing for the  
2 Board's pleasure at the next meeting.

3 CHIEF KASSETAS: So, Mr. Chair, I understand  
4 we're not going to take any action, we're going to  
5 take it under advisement. And legal counsel is going  
6 to research what ability the Board has based on some  
7 of the comments made, especially by former Director  
8 Jones, pointing out a clause in NMAC.

9 And he'll report back through a memo to the  
10 Director regarding our ability to do this or not?  
11 Because you're right, Sheriff Waller, a vote at this  
12 point might be invalid depending on what counsel  
13 finds.

14 MR. DWORAK: Mr. Chair, Members of the Board,  
15 I think the one thing I do want to clarify -- and I  
16 can review the NMAC more. But my understanding now is  
17 that there is no process for this in the NMAC to begin  
18 with.

19 So even if the Board has authority, there's  
20 not a process that would ensure that the Board applies  
21 this type of review consistently in the future. And  
22 so I think that that's one other thing that can be  
23 reviewed.

24 And I think, if this kind of authority is  
25 even possible under the Board's statutes and rules,

1 then it might be something for the Board to consider  
2 in the future, a rule change to create a process.

3 CHIEF KASSETAS: In order to give the sheriff  
4 an answer, we would need a motion which would be in  
5 the form of making a motion to not accept a request by  
6 Executive Director Jones to provide a waiver to  
7 Sheriff Harvey to reenter into the 11th week of the  
8 next academy or any academy, correct?

9 That would then give sheriff an answer today.  
10 And then all the stuff you're talking about we can  
11 move forward on.

12 So I would make that motion, for the Board to  
13 vote on that now. A motion as to not allow the  
14 sheriff to go into week 11 and not provide a waiver.  
15 That's the question at hand, right?

16 A.G. BALDERAS: So we did not second Sheriff  
17 Waller's motion. I'm unclear. You were posing  
18 another motion?

19 CHIEF KASSETAS: It would be to vote on this  
20 and either give the sheriff an answer that, yes, you  
21 can come back to the academy, or no, you can't.  
22 Because counsel is saying there's nothing that  
23 prevents us from doing that, from what I understand.  
24 Am I wrong?

25 MR. DWORAK: I mean the question of authority



1 remains. If you want to give an answer now and say  
2 deny, that would be in the Board's discretion. My  
3 concern is, if the Board was to grant the request,  
4 whether or not the Board has the authority to do that.

5 CHIEF KASSETAS: So we can go back to Sheriff  
6 Waller's research first.

7 MR. JONES: And then that would come in  
8 December, at the December meeting?

9 A.G. BALDERAS: Yes, Jack. By December  
10 hopefully we'll have the legal opinion and then the  
11 research.

12 MR. JONES: I will tell you that Sheriff  
13 Harvey is willing to start the academy again. But it  
14 will be in Hobbs, because it's a four-day week instead  
15 of a five-day week.

16 We appreciate your time. And thank you all  
17 very, very much for going through this thing with us  
18 and working it. Thank you all very much and have a  
19 great day.

20 A.G. BALDERAS: Thank you for coming back.

21 SHERIFF WALLER: Mr. Chairman, do we need to  
22 vote on my motion?

23 A.G. BALDERAS: There was not a second to it.  
24 So it is still pending.

25 MR. DWORAK: It failed without a second.

1 CHIEF KASSETAS: I thought you said we needed  
2 a motion to do that.

3 A.G. BALDERAS: He was just wondering if it's  
4 still pending. So it just doesn't pass, there was no  
5 second.

6 SHERIFF WALLER: That's the process we're  
7 still going to take?

8 A.G. BALDERAS: I'll entertain a motion.

9 SHERIFF WALLER: Mr. Chairman, I believe the  
10 proper procedure is a motion to postpone action on  
11 this item, item No. 9, until this Board can receive a  
12 review and report, an administrative review and  
13 report, as well as a legal review and report.

14 A.G. BALDERAS: There is a motion from  
15 Sheriff Waller to postpone and table Jack Jones'  
16 request until a review and a report from the Director  
17 and a legal opinion from my general counsel can be  
18 provided at the December meeting. Is there a second  
19 to that motion?

20 MS. BURNHAM: I'll second it.

21 A.G. BALDERAS: There is a second. All in  
22 favor say aye.

23 (Those in favor so indicate.)

24 A.G. BALDERAS: Are there any nays?

25 MR. KEY: Nay.

1           A.G. BALDERAS: Let the record reflect that  
2    Board Member Key voted against.

3           The motion to postpone and table Jack Jones'  
4    request for an exception still passes with Board  
5    Member Key in opposition.

6           ITEM NO. 10: PROPOSED CHANGES TO THE NMLEA FEE  
7    STRUCTURE

8           A.G. BALDERAS: We'll now move to item  
9    No. 10, proposed changes to the New Mexico Law  
10   Enforcement Academy fee structure. We have our Deputy  
11   Director Coss. You have the floor, sir.

12          MR. COSS: Ladies and gentlemen of the Board,  
13   Mr. Chairman, every so often we have to come back and  
14   review the fee structure for different services and  
15   things of that nature. And there are several reasons  
16   for that.

17          The Board has before you a proposal. The  
18   rules clearly state that the academy can at any time  
19   raise these fee structures. But they ask that it  
20   comes back before the Board for approval.

21          So these are just proposals on the front  
22   side. Anything in red would be a change. So in  
23   particular there is a center section there that is  
24   entitled Application Fees.

25          A couple of these we already have in place

1 and have kind of historically been in place, such as  
2 the private vendor course accreditations, a fee for  
3 accrediting courses for private vendors. This does  
4 not affect a law enforcement agency, it just simply  
5 affects those private entities or companies.

6 The reissue of a certification; in other  
7 words, somebody loses their certification. That's  
8 been a standing rule, if you will, or an operating  
9 policy within the organization. We just haven't  
10 articulated it in the fee structure.

11 So the only two new ones in that particular  
12 section are the first one, the instructor  
13 certification application processing fee, if you will,  
14 and then the last one, which is the psychological  
15 appeal application.

16 The psychological appeal application, you  
17 know, that's -- while it's not an extremely arduous  
18 process, it does take several months to work through  
19 some of those appeal processes.

20 And so attaching a fee to that is going to  
21 help us to be able to streamline that and be able to  
22 continue to keep up with those kinds of processes.

23 All the others are simply just, you know,  
24 updating with the time, you know. The cost of our  
25 meals at the academy has gone up, utilities have

1 naturally gone up, those kind of things.

2 And then all the way down at the bottom  
3 you'll find that there are certain things that have  
4 been struck through. You know, the days of needing a  
5 VCR or an overhead projector. I'm sorry to say I  
6 still like using an overhead projector myself. But  
7 apparently those days are starting to wane slightly.

8 So I'll stand for any questions that the  
9 Board Members have. But in general this is just kind  
10 of updating our current fee structure.

11 A.G. BALDERAS: Any questions from the Board?

12 CHIEF KASSETAS: I have a question, Deputy  
13 Director Coss. So if a civilian chooses to put  
14 themselves through the academy, and I think that's  
15 happened a few times that I've heard of, there's a  
16 \$1,250 price tag on that?

17 MR. COSS: Yes, sir. And that's just for the  
18 training, sir.

19 CHIEF KASSETAS: Yeah. That's my question.  
20 The reality is that other agencies -- what is the  
21 price tag on that including firearms, do we know what  
22 that is?

23 MR. COSS: Well, there are a couple different  
24 ways to look at that. There's the expense to the  
25 student who is self-sponsored up front. So you're

1 looking at probably around \$3,000 for them to be able  
2 to complete the psychological, medical, background,  
3 and then all the personal equipment they might need,  
4 body armor, you know, uniforms, et cetera.

5 And then there's the second component of  
6 that, which is the actual training component. And  
7 then the third being room and board, housing and  
8 meals.

9 So when you combine all those components  
10 together -- so in this case, if we had somebody that  
11 was trying to self-sponsor, the training itself would  
12 be 1,250. If they already have the up-front costs  
13 themselves of the psychological --

14 CHIEF KASSETAS: Let me rephrase that  
15 question. If Valencia County sends someone to the LEA  
16 academy, what's the cost on that? Don't worry about  
17 self-sponsoring. The agency has done their  
18 psychological and the background and paid for all  
19 that.

20 What does it cost the LEA to put someone  
21 through the academy from day one to the end? Do we  
22 have that figure calculated?

23 MR. COSS: It's roughly about \$3,600 to  
24 include room and board.

25 CHIEF KASSETAS: \$3,600. Why wouldn't that

1 civilian pay \$3,600?

2 MR. COSS: Again that's just the training,  
3 sir. When you go down to lodging, they would be  
4 responsible for that; because we're a residential  
5 academy. So those two numbers would combine.

6 CHIEF KASSETAS: I see. You're doing the  
7 math, adding them together.

8 MR. COSS: Yes, sir.

9 CHIEF KASSETAS: I was confused. Now I'm not  
10 anymore.

11 MR. KEY: Mr. Coss, what's the thought on  
12 certification by waiver being a cost attributable to  
13 county, municipal, tribal, federal, and state  
14 universities as opposed to the regular course being  
15 paid for?

16 MR. COSS: The difference is in the  
17 application of a private citizen trying to come in for  
18 CBW. That's the only difference.

19 MR. KEY: What if they're sponsored by an  
20 agency for that certification?

21 MR. COSS: Absolutely. Then they would fall  
22 under that county, municipal, or tribal.

23 MR. KEY: Okay. I understand. Thank you.

24 A.G. BALDERAS: Any more questions? Great.  
25 Thank you for your report.

1 Do you mind if we take about a ten-minute  
2 break before we go through Dr. Miller's presentation?  
3 Are we voting on this?

4 MR. COSS: If we would, please.

5 A.G. BALDERAS: Okay. That would be helpful.

6 CHIEF KASSETAS: I make a motion to accept  
7 the fee increase proposed to us by the LEA.

8 A.G. BALDERAS: There is a motion to accept  
9 the fee structure increase as presented. Is there a  
10 second?

11 MR. KEY: Second.

12 A.G. BALDERAS: All in favor say aye.

13 (Those in favor so indicate.)

14 A.G. BALDERAS: Are there any nays in  
15 opposition? The motion passes to accept the fee  
16 structure as presented.

17 Let's take a ten-minute break.

18 (Break.)

19 ITEM NO. 11: CONSIDERATION AND POSSIBLE ADOPTION OF  
20 PROPOSED RULE CHANGES

21 A.G. BALDERAS: We're now on item 11,  
22 consideration and possible adoption of proposed rule  
23 changes. The next four agenda subitems are very  
24 important to the law enforcement community and to the  
25 State of New Mexico.



1           More importantly, though, before we move on  
2 to the four general items, I would like to recognize  
3 and also personally thank Dr. Elisabeth Miller.  
4 Obviously the Members of the Board here give a lot of  
5 time away from their communities and families. So I'm  
6 always grateful for the strong leadership we have on  
7 the Board.

8           But every now and then we also ask Board  
9 Members to step up in subcommittees or take on other  
10 issues that take up a lot of other time that are very  
11 vitally important to the administrative process. And  
12 Dr. Miller was gracious enough to facilitate this  
13 rules hearing for us.

14           I would also now like to thank Dr. Miller and  
15 recognize her and turn it over to her so she could  
16 work with our Deputy Director. And they could give us  
17 a report on the proposed rule changes and the  
18 outcomes.

19           Dr. Miller, you have the floor.

20           DR. MILLER: Okay. I think, Brian, if you  
21 could present the actual NMAC sections and rule  
22 changes or the Director, one of you.

23           MR. COSS: I would be more than happy to.

24           DR. MILLER: The way you did in the rules  
25 hearing. And then I have a couple of comments based

1 on comments we received that I do want to reference  
2 just to make sure I call them out from the information  
3 we received during the hearing.

4 MR. COSS: Chairman, Members of the Board,  
5 the first rule for consideration is 10.29.1 entitled  
6 General Provisions. You all have the bold and  
7 strike-through versions of those for the recommended  
8 language changes. And what you have in front of you  
9 is what was published and what was before the public  
10 hearing back on August 23rd.

11 I would ask for consideration of one  
12 amendment, technical amendment, if you will. And that  
13 would be striking the language Training and Recruiting  
14 Division and replacing it with Law Enforcement  
15 Academy.

16 The statutory change that occurred back in  
17 2015, the language changed to our particular division.  
18 So it's no longer the Training and Recruiting  
19 Division, it's the Law Enforcement Academy.

20 A.G. BALDERAS: Deputy Director Coss, can you  
21 be more specific on which change you're proposing.

22 MR. COSS: The amendment?

23 A.G. BALDERAS: Yes.

24 MR. COSS: Again specifically on 10.29.1  
25 there is language throughout the document that

1 references the Training and Recruiting Division.

2 And so this is just working towards trying to  
3 standardize that language to reflect New Mexico Law  
4 Enforcement Academy rather than the Training and  
5 Recruiting Division, if that helps you, sir.

6 A.G. BALDERAS: Yes. That's correct. And I  
7 would assume you will be making this request for A, B,  
8 C, and D as well.

9 MR. COSS: It will be for 10.29.1, 10.29.6,  
10 10.29.7, and 10.29.9.

11 MR. DWORAK: Members of the Board, I've asked  
12 Deputy Director Coss to keep these proposed changes to  
13 each part so we have a very clean record. So in case  
14 there is any concern for the Board's adoption, I've  
15 asked the Board -- and I've clarified this with the  
16 staff -- that each part be voted on one at a time.

17 So this recommended amendment to Part 1  
18 should be voted on by the Board by itself first. And  
19 then Part 1 will be voted on to be approved as  
20 amended, if the amendment is approved. And then we'll  
21 move on to discussion and possible adoption of Part 2,  
22 just so the whole Board is understanding that.

23 And the reason is just because this is a very  
24 technical process that's governed by several different  
25 rules and is subject to review in district court, if

1 someone would like to contest these rules. So just  
2 for the record, I wanted it to be very clear in case  
3 that happens.

4 DR. MILLER: Based upon comments that we  
5 received, I just want to highlight one thing in  
6 10.29.1.8, Section D, Item 6. At our last Board  
7 meeting, we actually approved a line item for public  
8 comment. And it didn't make it into this version. So  
9 that's not there.

10 But I just want to call out that -- not the  
11 public putting something on the agenda. But when we  
12 move forward, because there is likely going to be more  
13 changes, we are going to make sure that the public  
14 comment is included in the order of business. That's  
15 all I have on this section.

16 A.G. BALDERAS: Thank you.

17 CHIEF KASSETAS: So, Mr. Chair, we all  
18 received this prior to the meeting and we've read  
19 these documents. Are we ready for a motion or is  
20 there any further discussion on the contents of this?

21 A.G. BALDERAS: Are there any questions or  
22 discussion?

23 MS. BURNHAM: I have one small, teeny, tiny  
24 thing. On 10.29.1.6, Objectives, you have the  
25 subject-verb agreement problem, which nobody would

1 care about but this old English teacher.

2 And the statute reads, "The objective part of  
3 Part 1 is to, one, establish procedures; two,  
4 establish criteria; three, identify grounds; four,  
5 establish administrative procedures." And five says  
6 "requires" and it should be "require." And then six  
7 says "identifies" and it should say "identify."

8 It's not any big deal, it doesn't change the  
9 meaning of anything, it's just bad grammar.

10 A.G. BALDERAS: Madam Board Member, is that a  
11 motion to amend as well?

12 MS. BURNHAM: I would move to amend that  
13 subsection just to correct the two subject-verb  
14 agreement problems, where it says "requires," it just  
15 should say "require." And where it says "identifies,"  
16 it should say "identify."

17 A.G. BALDERAS: So take out the S?

18 MS. BURNHAM: Yes, sir. Then I'll be happy.

19 A.G. BALDERAS: I'm entertaining a motion to  
20 amend the rule as presented, to change the word  
21 "requires" to "require" and "identifies" to  
22 "identify." Is there a second to that motion to  
23 amend?

24 CHIEF KASSETAS: Second.

25 A.G. BALDERAS: There is a second to the

1 motion to amend the rule as presented. All in favor  
2 say aye.

3 (Those in favor so indicate.)

4 A.G. BALDERAS: Any in opposition? The  
5 motion passes to amend the rule as presented.

6 I'll also entertain an additional motion to  
7 amend 10.29.1.1, that Training and Recruiting Division  
8 be changed to New Mexico Law Enforcement Academy  
9 throughout the rule.

10 CHIEF KASSETAS: So moved.

11 A.G. BALDERAS: Is there a second?

12 SHERIFF WALLER: Second.

13 MR. DWORAK: And to clarify -- excuse me.  
14 Mr. Chair, that would be for all references within the  
15 rule. Because, Brian, there is more than one,  
16 correct?

17 MR. COSS: That's correct. For the entire  
18 section of 10.29.1.

19 A.G. BALDERAS: Great. There is a motion and  
20 a second to amend the rule, to change it to New Mexico  
21 Law Enforcement Academy throughout the rule. All in  
22 favor say aye.

23 (Those in favor so indicate.)

24 A.G. BALDERAS: Any in opposition? The  
25 motion passes as well to amend the rule as presented,

1 to change it to New Mexico Law Enforcement Academy.

2 Are there any other motions to amend to be  
3 entertained on this rule at this time before we move  
4 on?

5 MS. BURNHAM: I have a question,  
6 Mr. Chairman. On 10.29.1.11, "Grounds for denial,  
7 revocation, or suspension of a police officer or  
8 telecommunicator certification reporting  
9 requirements," on Subsection B, we've changed "shall"  
10 to "may," we've changed it from mandatory language to  
11 permissive language in Subsection B 1. And we've also  
12 done it in Subsection B 2. And I just didn't  
13 understand the reason for that change.

14 A.G. BALDERAS: Deputy Director Coss, do you  
15 have an answer to that question?

16 MR. COSS: I would be glad to. Let me catch  
17 back up with you again. The section again, ma'am?

18 MS. BURNHAM: I wish it was paginated.

19 CHIEF KASSETAS: It's page 7.

20 MS. BURNHAM: There it is. Yes, sir. It is  
21 page 7. It's 10.29.1.11 B Sub 1. And "may" has been  
22 substituted for "shall." And the same thing happens  
23 in Subsection 1, "may" has been substituted for  
24 "shall."

25 Shall means you've got to do it, it's

1 mandatory, you have to do it. May means you can do  
2 it. And I was just wondering why we gave that wiggle  
3 room. I know there's a good reason, I just don't know  
4 what it is.

5 MR. COSS: And I apologize, ma'am. I  
6 probably have to defer to Board counsel who helped me  
7 draft this particular section. I think it has  
8 something to do with trying to standardize the  
9 language throughout the document. But I don't want to  
10 speak out of turn.

11 MR. DWORAK: Chairman, Members of the Board,  
12 Member Burnham, that is simply just providing  
13 permissive language. There were a lot of statements  
14 in the rules generally throughout Part 1 that had  
15 obligatory language.

16 And I think that this Board is very unique in  
17 the sense that the Director has much more autonomy,  
18 and I think for appropriate reasons, than other  
19 boards. So it allows the Director some flexibility.

20 Granted, if the Board wishes to keep the rule  
21 the same and have it as a requirement that the Board  
22 initiate these disciplinary proceedings, then it takes  
23 away that autonomy.

24 There's nothing wrong with that. It's just  
25 simply more consistent with the other changes that



1 allows the Director some flexibility in deciding  
2 whether or not to initiate a prosecution or a summary  
3 suspension in the case.

4 MS. BURNHAM: Okay. What are some reasons  
5 why we would want the Director -- even after he's been  
6 notified that a police officer or telecommunicator has  
7 been indicted on a felony, why would we want to give  
8 him permissive ability to notify the individual?

9 Shouldn't it be mandatory that he notify the  
10 person that there's an intent to suspend them or is  
11 there some law enforcement reason why we would want to  
12 have that wiggle room? I just don't understand the  
13 reasoning behind it.

14 MR. DWORAK: I was just changing the language  
15 here to reflect the other permissive language for the  
16 Director's responsibilities throughout Part 1. I mean  
17 it's a very good question.

18 That's a policy decision. And I think the  
19 Board should decide whether or not it wants to require  
20 the Director to initiate actions or if the Board wants  
21 to allow the Director some flexibility under certain  
22 circumstances of not initiating an action in this type  
23 of situation.

24 CHIEF KASSETAS: In my opinion this is a  
25 safety valve in that a chief or sheriff, when one of

1 their officers is arrested and convicted of a felony,  
2 should bring that forward to the Board for  
3 decertification. Some don't. I don't know why, but  
4 some don't.

5 So sometimes the Director would find out  
6 about that and bring it forward. In this case I don't  
7 like the "may," I like the "shall."

8 I think if the Director finds out and the  
9 head of that agency hasn't brought it forward yet  
10 because maybe there's been turnover or maybe there's  
11 been some change, it takes a year or so to process  
12 through the legal system and the person is convicted,  
13 I think the Director should be bound to bring that to  
14 the attention of the Board for certification issues.  
15 So in that case I like the "shall" to be honest with  
16 you.

17 MS. BURNHAM: And the same argument applies  
18 with Subsection 1, because after you've been convicted  
19 of felony charges, the Director, if he's notified,  
20 shall initiate the process.

21 I don't see any reason to put wiggle room in  
22 there unless somebody can -- the only thing that I can  
23 dream up is if there was a sealed indictment. But  
24 then nobody would know about it so that wouldn't mess  
25 things up.

1 CHIEF KASSETAS: I think "shall" is more  
2 directing of the person in charge of the LEA. What if  
3 the Director says no, it says I may and I'm not going  
4 to, and what if the chief says no. What's the Board  
5 to do, how do we address that certification issue?

6 So I would agree that those two should be  
7 changed to "shall." And I did note that after reading  
8 this. And I didn't see any others.

9 MS. BURNHAM: I didn't see any more that  
10 worried me, but that one worried me.

11 A.G. BALDERAS: What page are you on, Pete?

12 CHIEF KASSETAS: Page 7, halfway down the  
13 page, three-quarters of the way down the page. It's  
14 under 10.29.1.11, Subsection B, 1 and 2.

15 MR. KEY: Mr. Chairman, maybe I can give you  
16 one horror story.

17 MS. BURNHAM: Okay. I knew there was one out  
18 there.

19 MR. KEY: Twenty-five or more years ago,  
20 under two or three Attorney Generals ago, we took over  
21 a special prosecution in our judicial district. Very  
22 little evidence, if any, of corruption or ticket  
23 fixing or whatever the situation was.

24 Nonetheless, in a very politically charged  
25 time period in Alamogordo's history, the police chief

1 and others were indicted in my opinion by a runaway  
2 grand jury. And it was subsequently dismissed by a  
3 special prosecutor appointed by me from another  
4 district, who almost immediately dismissed it.

5 So under this rule a "shall" would have been  
6 an initiation of a revocation perhaps needlessly in a  
7 situation that took two or three weeks in order for a  
8 special prosecutor to decline to prosecute and dismiss  
9 the indictment.

10 You know, of course, we don't normally have  
11 rules and regulations for the one in 1,000 situations.  
12 So maybe that's just a poor example. Personally I  
13 like the "shall" because normally a charging document  
14 such as that is fairly definitive that there should be  
15 initiation of a proceeding. So I would support it  
16 being maintained as shall.

17 CHIEF KASSETAS: Mr. Key, I believe there is  
18 an outlet also. As I read this again, there's an  
19 opportunity to challenge that later on. So the  
20 Director could address that suspension of a  
21 certification later on down the line.

22 I think the "shall" would catch the majority  
23 of folks arrested or indicted on the front end. I  
24 think the worst-case scenario is to have an officer  
25 out there working under a felony indictment, which

1 would be horrendous for the profession.

2 But I do see what you're saying. I do like  
3 it, though, under "shall." I don't know what the rest  
4 of the Board wants to do. But I would ask for an  
5 amendment. Would we need to amend something that we  
6 haven't done yet?

7 MR. DWORAK: Because this was proposed as a  
8 proposed change, I think one vote to switch these  
9 back, not accept the recommended change and change  
10 them back to shall would be sufficient for both of  
11 these. So one amendment to just change the proposed  
12 "mays" back to "shalls" under Paragraph B of Part 1  
13 would be fine.

14 A.G. BALDERAS: One and two, though, right?  
15 You're wanting to correct the shalls in one and two?

16 MR. DWORAK: Yes.

17 MS. BURNHAM: Uh-huh.

18 CHIEF KASSETAS: So moved.

19 MR. KEY: Second.

20 MS. BURNHAM: I move that the language of  
21 10.29.1.11 B revert to the original "shall" in  
22 Subsection 1 and in Subsection 2 so that that language  
23 is mandatory rather than -- what's the other word?

24 A.G. BALDERAS: Discretionary.

25 MS. BURNHAM: Discretionary.

1 MR. KEY: I'll second.

2 A.G. BALDERAS: There is a motion and a  
3 second to amend 10.29.1.11, Subsection B, 1 and 2, to  
4 change the "may" proposed language to "shall" in both  
5 Subsections 1 and 2. There is a motion and a second.  
6 All in favor say aye.

7 (Those in favor so indicate.)

8 A.G. BALDERAS: Any opposed to this  
9 amendment? The motion passes to amend the rule as  
10 presented.

11 CHIEF KASSETAS: So I would make a motion to  
12 accept the changes to Part 1 of the NMAC with the  
13 three already passed motions.

14 A.G. BALDERAS: There is a motion from Chief  
15 Kassetas to adopt the rule as amended for 10.29.1. Is  
16 there a second?

17 SHERIFF WALLER: Second.

18 A.G. BALDERAS: There is a second. All in  
19 favor to adopt the rule as amended in 10.29.1 say aye.

20 (Those in favor so indicate.)

21 A.G. BALDERAS: Any in opposition? The  
22 motion to pass the amended rule is approved.

23 We now go to Subsection B, 10.29.6. Deputy  
24 Director Coss.

25 MR. COSS: Thank you, Mr. Chairman. This

1 proposal change affects 10.29.6, Certification by  
2 Waiver of Previous Training, if you will. And in a  
3 summary, this basically increases the cert by waiver  
4 or CBW program from 40 hours to 80 hours.

5 And the Board has the information that has  
6 been published and was before the public hearing. And  
7 I would be more than happy to stand for any questions  
8 that you might have. The one thing I would ask again  
9 similarly is the amendment to strike the Training and  
10 Recruiting Division and replace it with Law  
11 Enforcement Academy.

12 CHIEF KASSETAS: Which was done throughout  
13 already, correct?

14 MR. DWORAK: That was just to Part 1. So now  
15 the Board is voting on part 6. And so Part 6 also  
16 includes Training and Recruiting Division. And that  
17 needs to be replaced. So a motion for each part.

18 CHIEF KASSETAS: So a question, Mr. Chair, if  
19 I may. This is a change to add another additional  
20 week to cert by waiver. During the public hearing,  
21 did the Sheriffs' Association and the Police Chiefs  
22 Association -- I think you're the head of that -- have  
23 any input on that? Because they mostly use that,  
24 correct?

25 MR. COSS: They do. There wasn't any input

1 at the public hearing. But there was a fair amount of  
2 discussion before this Board in the initial discussion  
3 and vote to move to a rulemaking sometime ago. It  
4 does include the specific points and curriculum  
5 outline, if you will, for the cert-by-waiver program.

6 DR. MILLER: So I would like to respond to  
7 one of the comments we did have at the rule hearing  
8 for 10.29.6.6 under Objectives.

9 The comment that was made was that the line  
10 item of training here for the 80 hours was not  
11 comparable to what other states do and was not a  
12 sufficient amount of training.

13 So I went and looked at just states that sort  
14 of border us. Texas has 40 hours every two years;  
15 Arizona has eight hours of continuing training every  
16 year and then eight hours of proficiency training  
17 every three years; California has two courses that  
18 together total 24 hours every two years, a perishable  
19 skills course and a communications course.

20 So I just wanted it noted that this 80 hours  
21 actually -- what's the word I'm looking for? Exceeds.  
22 Thank you.

23 MR. COSS: And thank you, Dr. Miller. But  
24 this is just for folks that their certification has  
25 either lapsed -- in other words, in our state they



1 stepped away from the profession for greater than two  
2 years or less than eight, or they've come in from  
3 another state.

4 DR. MILLER: Right. But I just wanted to  
5 comment that that 80 hours was better than other  
6 states as opposed to not comparable in response to the  
7 comment that we received in the hearing.

8 CHIEF KASSETAS: I cannot not support adding  
9 training hours. We talk about that. That's the  
10 lifeblood of any agency. So I support that. Is there  
11 any more discussion, Mr. Chair?

12 A.G. BALDERAS: Any more questions or  
13 discussion?

14 CHIEF KASSETAS: So I make a motion to amend  
15 the verbiage throughout Part 6 anywhere it notes  
16 Training and Recruiting Division and to change that to  
17 Law Enforcement Academy.

18 A.G. BALDERAS: There is a motion to amend  
19 the Training and Recruiting Division language to Law  
20 Enforcement Academy throughout the rule. Is there a  
21 second to that motion?

22 SHERIFF WALLER: Second.

23 A.G. BALDERAS: There is a second. All in  
24 favor to change Training and Recruiting Division  
25 language to Law Enforcement Academy language as

1 amended, all in favor say aye.

2 (Those in favor so indicate.)

3 A.G. BALDERAS: Any in opposition? The  
4 motion passes to amend the Rule 10.29.6, to amend it  
5 to reflect Law Enforcement Academy language.

6 Are there any other amendments before we  
7 consider adoption of the rule? Any other discussion?

8 MS. BURNHAM: I have a question.

9 A.G. BALDERAS: Is it grammatical?

10 MS. BURNHAM: No. It's not grammatical. As  
11 a 60-year-old fat woman, I have a question about the  
12 eligibility of retirees, 10.29.6.10, which is -- I  
13 can't see the page. But part C says that such people  
14 have to complete all the other conditions required  
15 under certification by waiver except for the physical  
16 fitness and agility requirements.

17 Now, I understand from my own personal  
18 position that I could never do the physical fitness  
19 part, either at the beginning or now at the end. But  
20 why don't we make officers -- why do we stop expecting  
21 them to be physically fit once they have passed the  
22 academy? Is it just not practical, is that the  
23 reason?

24 CHIEF KASSETAS: I can only speak for the  
25 State Police. Unfortunately we did get away from

1 that. We had mandatory PT testing twice per year.

2 And it was challenged at some point with  
3 folks saying how does X, Y, and Z relate to my job.  
4 And then at the time the administration I believe  
5 didn't have good answers for that.

6 MS. BURNHAM: They have to run after  
7 criminals.

8 CHIEF KASSETAS: Normally not a mile and a  
9 half. But it does happen. There are probably other  
10 reasons behind it. We're taking a hard look at our  
11 agency on bringing that back. I've seen some agencies  
12 throughout the country that are so strict that, if you  
13 don't meet a requirement, you lose your job. It's  
14 that strict.

15 Maybe someone else has another opinion in  
16 here. But I believe that why this is structured this  
17 way is because these folks have already been through a  
18 certified program at some point in their career and  
19 they're coming back to it. So it's been proven they  
20 have done the job before, have retired, and they're  
21 coming back to work. The agency that they're getting  
22 hired on with may have that standard in place.

23 A.G. BALDERAS: All my AGs have to run.

24 CHIEF SOLAND: Mr. Chair, just as a point on  
25 this. I retired from the New Mexico State Police.

1           And I went to work for a tribal police  
2 department that has oversight from the Bureau of  
3 Indian Affairs Office of Justice Services, which  
4 mandates twice a year a PT test and annually a  
5 comprehensive physical.

6           And I had to take it. I take the test twice  
7 a year. And I have to pass. There's parameters to  
8 take. So it's completely opposite under Bureau of  
9 Indian Affairs Office of Justice Services rules and  
10 regs than what the NMAC rules are for eligible  
11 retirees coming back to service in the State of New  
12 Mexico, just as a point of information.

13           MS. BURNHAM: Thank you.

14           A.G. BALDERAS: Now you're going to make us  
15 feel really bad.

16           CHIEF KASSETAS: We can address that in  
17 another rule hearing I suppose.

18           CHIEF McCALL: I think this statement may be  
19 left over from previous cert-by-waiver language. When  
20 I came to New Mexico and did cert by waiver, you still  
21 had to meet physical requirements. Currently you  
22 don't. I think this may be leftover language from  
23 that time. It may be unnecessary.

24           CHIEF KASSETAS: I don't imagine that the  
25 Sheriffs' Association or Chiefs Association would push

1 back on that particular section. I don't know.

2 Brian, do you know?

3 MR. COSS: If I could, I was just going to  
4 try to add an historical perspective. You know,  
5 Chief, when you were talking about the cert-by-waiver  
6 program, probably pre let's say maybe 2012, 2013, it  
7 was a 120-hour program. And it did have a PT entrance  
8 requirement.

9 And back then, when we were using the Cooper  
10 standards, a basic academy student would enter the  
11 academy at the 40th percent and graduate at the 60.  
12 So the CBW candidate then would have to meet the  
13 midpoint, they would have to come in at the 50th  
14 percentile.

15 A previous Board adopted the language as it  
16 is sitting before you, removing that from the CBW  
17 program and then reducing the program from the  
18 120-hour program previously to the 40-hour. So a  
19 little bit of historical perspective.

20 But it absolutely was there. I don't know  
21 that I can come up with a percentage. But, you know,  
22 unfortunately there was a fair number of folks that  
23 came to a CBW program that didn't meet the 50th  
24 percentile.

25 So I can imagine that that was part of the

1 impetus to get to the rule as it's written now, was  
2 that it was a hardship, if you will, on the CBW  
3 program.

4 A.G. BALDERAS: And I assume there wasn't any  
5 public comment on that portion, any feedback?

6 MR. DWORAK: I just wanted to clarify two  
7 points for the Board. One is that there were a lot of  
8 public comments obviously received. And I just want  
9 to state on the record -- and Chief Kassetas has  
10 already alluded to this.

11 But the Board was provided a copy of the full  
12 transcript and all of the exhibits admitted. The only  
13 public comments received were by Chris Mechels who was  
14 present at the meeting. He submitted prior written  
15 comments, which were provided to the Board ahead of  
16 the meeting as exhibits.

17 There was oral testimony as well as written  
18 exhibits during the hearing itself, which are all in  
19 the Board's packets and were provided to the Board  
20 ahead of time. There was only one other comment, and  
21 that was in Part 1, from the Foundation for Open  
22 Government. And it was just one specific item that  
23 was in Part 1. And the Board has received all of  
24 that.

25 One, I wanted to make that point. But the

1 second, which goes to the question of this section,  
2 which is Section 10 of Part 6, unfortunately this  
3 section doesn't include any changes. And, therefore,  
4 if the Board was interested in making changes at this  
5 time, it's out of the purview of what was published  
6 and noticed to the public.

7 So a change would have to come before the  
8 Board, the Board would have to vote to set it for  
9 public hearing, and then give the public an  
10 opportunity to discuss it. That was one of the issues  
11 that we had during the hearing.

12 Several comments were made, many comments  
13 were made about sections that changes were not even  
14 included for, where there were no changes.

15 So I know the Board has a rules committee.  
16 And any future changes including, you know, possible  
17 change to this section, Section 10, would have to be,  
18 you know, posted to the public again in a new hearing.

19 CHIEF KASSETAS: Mr. Chair, that brings up a  
20 good point, counsel brings up a good point. This is a  
21 good learning environment for the Board. This Board  
22 has never been through a rules change.

23 So maybe, for the purpose of this meeting,  
24 we'll stick with just items that are underlined and  
25 the strike-throughs, and then we can note all those

1 other things for the next proposed change.

2 So I suppose, as it stands now, I have no  
3 further comments and I'm ready to move forward.

4 Anybody else?

5 MR. DWORAK: And the only reason I brought  
6 that up was just because I think it's fine to discuss  
7 it, how it relates to the current changes. But I  
8 wanted to just give you a little forewarning that, if  
9 there were any consideration of possible changes, that  
10 the Board wouldn't be able to do it.

11 A.G. BALDERAS: We have before us the current  
12 rule as amended. And I'll entertain any Board action  
13 at this time.

14 CHIEF KASSETAS: I would like to make a  
15 motion to accept the proposed changes to Part 6.

16 MR. KEY: I'll second that motion.

17 A.G. BALDERAS: There is a motion and a  
18 second to adopt the rule as amended. All in favor say  
19 aye.

20 (Those in favor so indicate.)

21 A.G. BALDERAS: Any opposed? The motion does  
22 pass to adopt the rule as amended for 10.29.6.

23 We now move to Subsection C.

24 MR. COSS: Thank you, Mr. Chairman. 10.29.7  
25 just in a brief summary deals with in-service



1 training, some refer to it as biennial training  
2 requirements, 40 hours every two-year cycle.

3 The Board has had this information to look  
4 over. I would be glad to answer any questions. But  
5 again I would ask the Board's indulgence for an  
6 amendment to any reference to Training and Recruiting  
7 Division to be struck and to replace it with Law  
8 Enforcement Academy.

9 To provide a brief synopsis, one of the  
10 primary changes in this rule is simply updating it to  
11 the current biennium, just plugging in the correct  
12 year cycle.

13 And so every 16 or so months we're going to  
14 have to come back and review this again to make sure  
15 that we're prepared for the next biennium that we're  
16 going to get into on Part 7. And I'll stand for any  
17 questions.

18 CHIEF KASSETAS: The question I have is this.  
19 I want to be sure of this, because if we get this  
20 wrong, we're going to be open to a lot of criticism.  
21 The changes in here are in line with the legislative  
22 mandates that have come down?

23 For instance, when the legislature passes  
24 direction or law that says we have to have a certain  
25 amount of training on a particular issue, all of that

1 was vetted in here and it's still in here, correct?

2 MR. COSS: Chief, we do our absolute best to  
3 include that in the biennial training requirements.  
4 Occasionally statutory requirements will come down,  
5 let's say, mid-cycle within a biennium training  
6 period, right, within a two-year span.

7 There may be some training requirements that  
8 are handed down from the legislature in that midterm  
9 that will -- you know, we wouldn't be able to include  
10 those back into the biennium at that particular point  
11 in time.

12 So we do our best to absolutely assure that  
13 the topic areas that are statutorily mandated are  
14 included in there. But again, you know, it is pretty  
15 dynamic.

16 CHIEF KASSETAS: Brian, what I'm talking  
17 about is not in the future. You don't know what  
18 they're going to do in the next session. But whatever  
19 was agreed upon prior to, if there are any, that's in  
20 here, correct?

21 MR. COSS: Absolutely. At the time that the  
22 Board originally voted to move this to rulemaking,  
23 everything that was required statutorily is in there.

24 CHIEF KASSETAS: Okay. That's what I wanted  
25 to know. Thank you. One more issue. There's no way

1 to get around the date, because obviously, when 2017  
2 ends, we're back on this in 2018. Is that just a  
3 matter of how this works?

4 MR. COSS: Sir, it is our goal at the Law  
5 Enforcement Academy to be bringing you, about this  
6 same time next year, the 2018-2019 biennium. So that,  
7 come your December meeting, you can vote.

8 There will be a public hearing in between.  
9 And you can vote. And should they be approved by the  
10 Board, they're ready for January 1st. That's the  
11 ultimate goal.

12 CHIEF KASSETAS: Okay.

13 A.G. BALDERAS: Is that the reason for using  
14 some of the sunset clause language?

15 MR. COSS: I think that was part of it, sir.  
16 I genuinely do. I don't know all the history on some  
17 of that sunset. But I think that was part of it, to  
18 be able to help with some of that.

19 A.G. BALDERAS: Any further discussion or  
20 questions?

21 CHIEF KASSETAS: So I would like to make a  
22 motion to amend the proposed changes to Part 7, any  
23 verbiage relating to Training and Recruiting Division  
24 be changed to Law Enforcement Academy.

25 A.G. BALDERAS: There's a motion to amend

1 Rule 10.29.7 from Training and Recruiting Division to  
2 New Mexico Law Enforcement Academy throughout the  
3 rule. Is there a second?

4 SHERIFF WALLER: Second.

5 A.G. BALDERAS: There is a second. All in  
6 favor to amend to take out Training and Recruiting  
7 Division language and include Law Enforcement Academy  
8 language, all in favor say aye.

9 (Those in favor so indicate.)

10 A.G. BALDERAS: Any opposition? The motion  
11 passes to amend the rule to include New Mexico Law  
12 Enforcement Academy. Are there any other amendments  
13 to the rule?

14 MS. BURNHAM: I know this is biennial  
15 training. But I have a question on pages 21 and 21.  
16 There are lots of 21s I'm sorry to say.

17 On 10.29.9.14, where it talks about  
18 marksmanship fundamentals, it's No. 5. There are too  
19 many page 21s.

20 CHIEF KASSETAS: We're on Part 7 still.  
21 You're on Part 9.

22 MS. BURNHAM: I am.

23 MR. DWORAK: The Board hasn't voted to adopt  
24 Part 7 yet.

25 MS. BURNHAM: Okay. I'm sorry.

1 A.G. BALDERAS: That's okay.

2 MR. KEY: I'll make a motion to accept the  
3 changes to Rule 10.29.7.

4 A.G. BALDERAS: There is a motion from Board  
5 Member Key to accept the rule as amended for 10.29.7.  
6 Is there a second?

7 CHIEF McCALL: Second.

8 A.G. BALDERAS: There is a second to consider  
9 amended Rule 10.29.7 as presented. All in favor say  
10 aye.

11 (Those in favor so indicate.)

12 A.G. BALDERAS: Any in opposition? The  
13 motion passes to accept the rule as amended by Board  
14 Member Key, 10.29.7 as amended passes.

15 We now move to Subsection D. And I believe  
16 Board Member Burnham has some questions for you  
17 already.

18 MR. COSS: So this next section would be  
19 10.29.9, Police Officer. And here it's basically  
20 including a curriculum outlined back into the New  
21 Mexico Administrative Code.

22 MS. BURNHAM: On 10.29.9.14, Subsection 5,  
23 when it talks about marksmanship fundamentals, A,  
24 stance, do you see that, Brian?

25 MR. COSS: 10.29.9.14, subsection what?

1 MS. BURNHAM: A 5.

2 MR. COSS: Okay. Yes, ma'am.

3 MS. BURNHAM: What does stance mean?

4 MR. COSS: Well, there are two basic types of  
5 shooting platforms that are defensive stances for  
6 firearms. Isosceles is more or less straight on. And  
7 then a modified waiver, a slightly bladed stance. So  
8 that's just articulating the seven fundamentals of  
9 handgun marksmanship.

10 MS. BURNHAM: Does that mean that you have to  
11 be able to stand to do that?

12 CHIEF KASSETAS: No. It just means how you  
13 hold the weapon and face your adversary. It's just  
14 how you stand holding the weapon, not being able to  
15 stand I believe.

16 MS. BURNHAM: Okay. Then under 10.29.9.14 B  
17 4, Shooting Positions, Weapon Manipulation. B 4 E,  
18 Shooting Positions. What does that mean?

19 MR. COSS: That's shooting from lower  
20 platforms. That can be prone, that can be kneeling.  
21 It's adapting to whatever cover or concealment might  
22 be available to a given officer. So you have an  
23 elevated platform and a standing platform and you have  
24 a lower platform.

25 MS. BURNHAM: Okay. So our position is

1 clear, that you have to be able to do all those  
2 positions? From what we've written there in our  
3 standards, that you have to be able to -- I'm thinking  
4 about the young man that wanted an exception.

5 MR. COSS: Yes, ma'am.

6 MS. BURNHAM: And how our language I don't  
7 think -- maybe it was clear and maybe it wasn't. But  
8 do you see what I'm saying about the young man who had  
9 been injured and wanted a waiver of the firearms?

10 MR. COSS: Yes, ma'am.

11 MS. BURNHAM: And he couldn't stand -- well,  
12 he could stand. But he couldn't kneel. Does this  
13 cover that kind of situation?

14 MR. COSS: Well, it does articulate the  
15 requirements for the operation of firearms in various  
16 training programs. And in particular here we're  
17 talking about entry-level firearms training, that they  
18 would need to be able to shoot from a standing  
19 position or a kneeling position or a prone position.

20 MS. BURNHAM: Okay. So this doesn't have  
21 any -- I'm off the issue. So I'll withdraw any  
22 further comment.

23 CHIEF KASSETAS: That brings up a good  
24 question. Where is that in here, that you have to  
25 shoot from a standing and a kneeling and a prone? Is

1 that in here or is that in the specific range rules?

2 MR. COSS: It's involved in all of your  
3 training materials. But that particular subject has  
4 not, at least to my knowledge, been addressed  
5 specifically in the code.

6 CHIEF KASSETAS: It should be.

7 MS. BURNHAM: I mean I know we can't change  
8 it now because it hasn't gone to public comment. But  
9 it's something to think about, where we specify what  
10 we mean by shooting positions, where we specify what  
11 we're talking about about stance.

12 CHIEF KASSETAS: And the question I have is  
13 are the shooting course of fire -- I'm not a great  
14 firearms person. Are those approved through the LEA,  
15 the standard for the entire state? How you shoot the  
16 LEA course, that's approved through there and those  
17 are the certain things you have to do?

18 MR. COSS: Yes, sir. The Academy Board does  
19 approve the qualification courses for handgun day and  
20 night.

21 CHIEF KASSETAS: And in there it specifies?

22 MR. COSS: It does. It specifies, you know,  
23 standing position, draw and fire, two rounds in X  
24 number of seconds. Assume a kneeling position and  
25 draw, assume a kneeling position and fire X number of



1 rounds in X period of time.

2 CHIEF McCALL: I think that's the difference  
3 between curriculums. We've had some discussion  
4 before.

5 MR. COSS: The testing component. Yes, sir.  
6 But it is included in the current qualifications that  
7 the Board recently voted on. And that language was  
8 specifically added in there after the Medical Review  
9 Board, because there was some discussion as to whether  
10 a position needed to be from -- if that was truly from  
11 a standing position.

12 CHIEF KASSETAS: Okay.

13 MR. KEY: But we should not forget that a  
14 prerequisite to even getting to the consideration of  
15 the curriculum is a medical, psychological, et cetera,  
16 et cetera, to even get in.

17 MR. COSS: Yes, sir.

18 MR. KEY: So one would assume that, if you  
19 can't kneel, you can't stand, you can't shoot, you  
20 wouldn't pass the medical to even get to this  
21 curriculum.

22 MR. COSS: And those would be articulated in  
23 29.7.6, State Statute Qualifications for  
24 Certification.

25 MS. BURNHAM: Thank you.

1 MR. COSS: Again, Mr. Chair, if I could, I  
2 would ask for the same amendment, to strike any  
3 reference to Training and Recruiting Division and  
4 replace it with Law Enforcement Academy.

5 CHIEF KASSETAS: So I'll make a motion to  
6 amend Part 9 and the verbiage where it says Training  
7 and Recruiting Division to be changed to Law  
8 Enforcement Academy throughout that section.

9 A.G. BALDERAS: There's a motion to amend  
10 Rule 10.29.89 and strike Training and Recruiting  
11 Division and change it to Law Enforcement Academy  
12 language throughout. Is there a second?

13 MS. BURNHAM: Second.

14 A.G. BALDERAS: There is a second and a  
15 motion to amend the rule as presented. All in favor  
16 say aye.

17 (Those in favor so indicate.)

18 A.G. BALDERAS: Any in opposition? The  
19 motion passes to amend and include Law Enforcement  
20 Academy language. Any further discussion?

21 MR. KEY: I make a motion that we adopt the  
22 proposed changes to Rule 10.29.9.

23 A.G. BALDERAS: There is a motion from Board  
24 Member Key to adopt the rule as amended, 10.29.9. Is  
25 there a second?

1 CHIEF SOLAND: Second.

2 A.G. BALDERAS: There's a second and a motion  
3 to adopt 10.29.9 as amended. All in favor say aye.

4 (Those in favor so indicate.)

5 A.G. BALDERAS: Any in opposition? The  
6 motion does pass, the ruled is adopted, 10.29.9, as  
7 amended.

8 MR. DWORAK: Can I ask one question of the  
9 Board.

10 A.G. BALDERAS: Sure.

11 MR. DWORAK: Mr. Chairman and Members of the  
12 Board, I would like to ask for one final motion from  
13 the Board just to clean up and clarify this process,  
14 just for a motion to direct the Board staff to file  
15 these adopted rules with the State Records Center.

16 The rules will become effective on the date  
17 they are filed. I want to clarify, though, that there  
18 may be a little bit of lag time if there are editorial  
19 changes or mostly formatting.

20 The Records Center is very specific on what  
21 format the rules need to be in, spacing, underlining,  
22 all those things. So if there are questions about  
23 that, I'm happy to answer.

24 Otherwise I would ask that the Board make a  
25 motion to direct the staff to file the adopted rules

1 with the Records Center.

2 CHIEF McCALL: I make that motion.

3 A.G. BALDERAS: There is a motion that staff  
4 file adopted rules as presented at the State Records  
5 Center. Is there a second to that?

6 DR. MILLER: Second.

7 A.G. BALDERAS: There is also a second on  
8 that motion to direct staff to file adopted rules as  
9 presented with the State Records Center. All in favor  
10 say aye.

11 (Those in favor so indicate.)

12 A.G. BALDERAS: Any in opposition to the  
13 filing of these rules with State records? The motion  
14 passes to direct staff to file the rules as amended  
15 and presented and to direct staff to file those  
16 adopted rules with the State Records Center.

17 ITEM NO. 12: DISCUSS APPROVAL OF THE LEA SANTA FE  
18 CLASS SCHEDULE AND CONTENT

19 A.G. BALDERAS: I believe we now move to item  
20 No. 12, discussion and approval of the LEA Santa Fe  
21 class schedule. Our final order of business would  
22 have been presented by Chris Mechels. Mr. Mechels is  
23 not in attendance.

24 DR. MILLER: He notified myself at least, I  
25 don't know if he notified anyone else, through email

1 that he would not be able to attend today.

2 A.G. BALDERAS: Okay. And did he have any  
3 other special requests for his presentation?

4 ITEM NO. 13: RECESS

5 A.G. BALDERAS: If there is no further  
6 discussion on item 12 for Board presentation, we will  
7 now move to item 13. We have now reached the end of  
8 our agenda, unless there are any further comments from  
9 Board Members.

10 I do want to thank everyone in attendance.  
11 It's been a rough go in the last few months for law  
12 enforcement. So on behalf of this Board, but more  
13 personally from someone who doesn't serve directly  
14 with you, we're really grateful for your service and  
15 attendance at this meeting.

16 We do thank you for your service in your  
17 community. And we thank you for your service in the  
18 State of New Mexico.

19 And I also want to thank my Board Members for  
20 what they do to protect their communities. We are all  
21 grateful to all of you.

22 And so with that I'll entertain a motion to  
23 adjourn for tomorrow's meeting at 8:30. Is there a  
24 motion?

25 MR. KEY: Before we do that, Mr. Chairman, I

1 did want to let the Board know and to all the public  
2 that there will be a memorial service for Officer  
3 Clint Corvinus at 10 a.m. on Saturday at the Tays  
4 Center at the university up on the hill, if you can  
5 attend.

6 The family is law enforcement family  
7 obviously. Clint's dad is a retired Border Patrol  
8 always in Alamogordo. So they have expressed their  
9 thanks to you, law enforcement, and to the Board for  
10 your words and your prayers. Thank you.

11 A.G. BALDERAS: Thank you, Board Member Key.  
12 Any other announcements? I appreciate that input as  
13 well.

14 I'll entertain a motion to adjourn at this  
15 time.

16 MR. KEY: I'll so move.

17 A.G. BALDERAS: Is there a second to adjourn?

18 CHIEF SOLAND: Second.

19 A.G. BALDERAS: There is a second. All in  
20 favor.

21 (Those in favor so indicate.)

22 A.G. BALDERAS: Any in opposition? The  
23 motion passes to adjourn.

24 (At 2:40 p.m. the meeting was adjourned until  
25 8:30 a.m., Wednesday, September 7, 2016.)

## REPORTER'S CERTIFICATE

1  
2  
3 I, JAN A. WILLIAMS, New Mexico CCR #14, DO  
4 HEREBY CERTIFY that on September 6, 2016, 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.  
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23 JAN A. WILLIAMS, RPR  
24 New Mexico CCR #14  
25 License Expires: 12/31/16

## A

- A.G** 12:24 15:18 17:6,9,13,18  
20:10,15,20 21:4,12,17,20 22:3  
22:6,8,10,19,23,25 23:2,8,12,18  
23:22,25 24:2,10,19,22,25 25:2  
25:11,15,18,21 26:1,9,13,16,19  
27:5,9,11,13,20 32:16 35:6 39:6  
43:22 45:8,11,13,17 46:19,22  
47:10,16 49:11,14 51:15,23  
53:19 54:9 56:9 57:24 59:2  
60:20 62:23 64:16 65:9,20,23  
66:3,8,14,21,24 67:1,8 69:11  
71:24 72:5,8,12,14,21 74:20,23  
75:6 76:16,21 77:10,17,19,25  
78:4,11,19,24 79:14 83:11 85:14  
85:24 86:2,8,14,18,21 89:12,18  
89:23 90:3,9 91:23 92:14 94:4  
96:11,17,21 99:13,19,25 100:5  
100:10 101:1,4,8,12 106:9,14,18  
106:23 107:2,5,10 108:3,7,12,19  
109:2,5 110:11,17,19,22
- a.m** 110:3,25
- abbreviated** 9:10
- ability** 10:1,15 63:6,10 81:8 111:9
- able** 10:6 15:12 18:14 28:3 33:17  
34:2 44:15 45:14 68:21,21 70:1  
96:10 98:9 99:18 102:11,14  
103:1,3,18 109:1
- absolute** 98:2
- absolutely** 50:14 71:21 93:20  
98:12,21
- academies** 6:19 8:1,16,18 9:20  
19:4 37:22 42:19 43:6 47:24  
48:22 50:18 61:22
- academy** 1:5 3:13 6:9,18,21 8:1  
8:11,24 9:3,5,10,17,23 10:20  
11:11 15:24 18:3,7,13 19:1,3  
20:5,23 21:23 23:5 24:15 25:8  
26:5,22 27:19,21 28:9,10,18,21  
28:23 29:2,12,17,18 30:5,7,17  
31:2,4 32:21 33:1,1,3,6,15,18,19  
34:5,15 35:12 36:4 37:11 38:4,9  
40:10,10,12,17,23 42:1 43:1  
44:15 46:16 47:5,9,22,23 48:11  
48:15 49:9,10 53:7,17 59:17  
60:7,9,19 61:1,4,6,13 62:11 64:8  
64:8,21 65:13 67:10,18 68:25  
69:14 70:16,21 71:5 74:15,19  
75:4 78:8,21 79:1 87:11 89:17  
89:20,25 90:5,22 93:10,11 97:8
- 99:5,24 100:2,7,12 104:18 106:4  
106:8,11,20
- accept** 64:5 72:6,8,15 85:9 86:12  
96:15 101:2,5,13
- accepted** 55:1
- accident** 33:10
- account** 58:15
- accounted** 7:19
- accreditations** 68:2
- accrediting** 68:3
- act** 55:17
- action** 11:25 46:4,7,7 63:4 66:10  
81:22 96:12
- actions** 81:20
- activities** 6:17
- actual** 70:6 73:21
- adamant** 38:2
- adapting** 102:21
- add** 52:22 56:19 87:19 93:4
- added** 7:3 105:8
- adding** 71:7 89:8
- additional** 10:18,22 11:22 78:6  
87:19
- Additionally** 8:3
- address** 6:6 17:22 28:4 40:7 48:12  
62:14,22 83:5 84:20 92:16
- addressed** 12:8 13:7 39:11 104:4
- addresses** 56:21
- adjourn** 109:23 110:14,17,23
- adjourned** 110:24
- adjudicated** 11:21
- adjunct** 33:7,9 40:24
- adjust** 53:5
- adjusted** 54:20
- administration** 7:8 91:4
- administrative** 62:18 66:12 73:11  
77:5 101:21
- administrator** 36:19
- admitted** 94:12
- adopt** 86:15,19 96:18,22 100:23  
106:21,24 107:3
- adopted** 93:15 107:6,15,25 108:4  
108:8,16
- adoption** 3:15 72:19,22 75:14,21  
90:7
- advanced** 7:3,5,9 8:14 14:25  
15:11 48:16
- adversary** 102:13
- advice** 54:16 55:13
- advise** 12:14
- advised** 10:17 12:15
- advisement** 49:16 50:25 51:6  
54:10 62:24 63:5
- Affairs** 92:3,9
- affect** 68:4
- affection** 47:12
- afloat** 43:3
- afraid** 32:23
- afternoon** 8:15 44:4
- AG** 46:3
- agencies** 6:12 7:13 9:24 12:13,13  
12:15 13:23 14:6,15,21 16:18  
18:21 19:4 69:20 91:11
- agency** 11:23 29:3 36:19,20,25  
58:23,25 68:4 70:17 71:20 82:9  
89:10 91:11,21
- agenda** 3:1,5 5:5,7,8 6:2 11:15  
24:4 72:23 76:11 109:8
- aggressive** 7:5
- agility** 90:16
- ago** 83:19,20 88:3
- agree** 36:1 39:21 42:10 53:24  
57:14,23 58:11 60:23 61:20 83:6
- agreed** 98:19
- agreement** 76:25 77:14
- AGs** 91:23
- ahead** 4:3 20:17 35:6 94:15,20
- ain't** 43:8
- air-conditioning** 8:10
- Alamogordo** 5:1 110:8
- Alamogordo's** 83:25
- Albuquerque** 23:5
- alienate** 46:25
- allow** 11:4 16:11 28:7 30:6,15  
36:3 39:13,15 52:14 64:13 81:21
- allowed** 16:18 32:25 42:4
- allowing** 34:14 39:5 56:17
- allows** 34:9 80:19 81:1
- alluded** 94:10
- alphabetized** 21:8
- amend** 77:11,12,20,23 78:1,5,7,20  
78:25 79:2 85:5 86:3,9 89:14,18  
90:4,4 99:22,25 100:6,11 106:6  
106:9,15,19
- amended** 75:20 86:15,19,22 90:1  
96:12,18,22 101:5,9,13,14  
106:24 107:3,7 108:14
- amendment** 74:12,12,22 75:17,20  
85:5,11 86:9 87:9 97:6 106:2
- amendments** 90:6 100:12



**amiss** 57:22  
**amount** 88:1,12 97:25  
**animation** 47:12  
**announcements** 110:12  
**annual** 58:6  
**annually** 92:4  
**answer** 12:22 13:15 32:15 39:19  
 41:16 45:4 55:7 57:3,4 61:21  
 64:4,9,20 65:1 79:15 97:4  
 107:23  
**answers** 10:14 91:5  
**anticipated** 9:14  
**anybody** 42:3 46:25 57:6 96:4  
**anymore** 71:10  
**APD** 9:12  
**apologize** 80:5  
**apparently** 69:7  
**appeal** 68:15,16,19  
**apples** 40:8  
**application** 67:24 68:13,15,16  
 71:17  
**applies** 63:20 82:17  
**appointed** 84:3  
**appreciate** 13:11 17:7 20:11 44:6  
 44:20 48:22 49:3,12 56:9 60:21  
 65:16 110:12  
**appreciated** 13:6,9  
**appropriate** 9:21 80:18  
**approval** 3:5,6,16 5:5,7,8,14,16  
 5:19,20 67:20 108:17,20  
**approve** 5:9 20:18 21:13,15,21  
 22:4,11,19 23:3,8,19 24:3,20  
 25:3,18,22 26:10,16,20 104:19  
**approved** 24:17 55:1 75:19,20  
 76:7 86:22 99:9 104:14,16  
**approximately** 14:6  
**apt** 62:9  
**arbitrarily** 59:9  
**arduous** 68:17  
**areas** 8:21 15:4 98:13  
**argue** 40:21  
**argued** 37:25  
**argument** 82:17  
**Arizona** 88:15  
**armor** 70:4  
**arrested** 82:1 84:23  
**articulate** 103:14  
**articulated** 68:10 105:22  
**articulating** 102:8  
**aside** 45:17

**asked** 13:13,22 18:21,24 20:8  
 53:20 75:11,15  
**asking** 32:25 40:15 41:19 42:4  
 53:13 58:6  
**asks** 13:12  
**aspects** 44:9  
**assessment** 42:7  
**asset** 44:10,11  
**assist** 10:25  
**Assistant** 46:3  
**association** 10:11 12:9,9 17:25  
 18:24 28:2,6 42:18 49:2 87:21  
 87:22 92:25,25  
**assume** 75:7 94:4 104:24,25  
 105:18  
**assure** 98:12  
**assured** 19:6  
**Attached** 3:20  
**attaching** 68:20  
**attend** 28:18 30:6 109:1 110:5  
**attendance** 10:19 108:23 109:10  
 109:15  
**attending** 11:11  
**attention** 82:14  
**attorney** 2:2 17:17 27:24 52:6  
 53:24 56:8 83:20  
**attorneys** 111:12  
**attractive** 58:24  
**attributable** 71:12  
**August** 9:1 11:14 74:10  
**authority** 46:2 49:23 52:2 54:18  
 55:5,24 56:7 63:19,24 64:25  
 65:4  
**authorize** 50:4  
**authorized** 45:22 50:15  
**autonomy** 80:17,23  
**AV** 8:12  
**available** 8:2 10:19 15:3,15  
 102:22  
**aware** 12:19 17:20 19:1,9  
**aye** 21:18 22:25 23:25 24:25 25:19  
 26:17 27:11 66:22 72:12 78:2,22  
 86:6,19 90:1 96:19 100:8 101:10  
 106:16 107:3 108:10

---

**B**

---

**B** 75:7 79:9,11,12,21 83:14 85:12  
 85:21 86:3,23 102:16,17  
**Baca** 29:5,7 36:15,16 39:25 41:13  
**back** 17:15 18:21 28:21,22 29:1

29:11,14,22 31:1,3 32:25 33:13  
 34:3,15 35:9 36:4 40:9,10 41:7  
 41:12,15 42:4 44:15 46:22 60:13  
 63:9 64:21 65:5,20 67:13,20  
 74:10,16 79:17 85:9,10,12 91:11  
 91:19,21 92:11 93:1,9 97:14  
 98:10 99:2 101:20  
**background** 70:2,18  
**bad** 45:20 77:9 92:15  
**Balderas** 2:2 4:7 12:24 15:18 17:6  
 17:9,13,17,18 20:10,15,20 21:4  
 21:12,17,20 22:3,6,8,10,19,23,25  
 23:2,8,12,18,22,25 24:2,10,19,22  
 24:25 25:2,11,15,18,21 26:1,9  
 26:13,16,19 27:5,9,11,13,20,24  
 32:16 35:6 39:6 43:22 45:8,11  
 45:13,17 46:19,22 47:10,16  
 49:11,14 51:15,23 53:19,25 54:9  
 56:9 57:24 59:2 60:20 62:23  
 64:16 65:9,20,23 66:3,8,14,21  
 66:24 67:1,8 69:11 71:24 72:5,8  
 72:12,14,21 74:20,23 75:6 76:16  
 76:21 77:10,17,19,25 78:4,11,19  
 78:24 79:14 83:11 85:14,24 86:2  
 86:8,14,18,21 89:12,18,23 90:3  
 90:9 91:23 92:14 94:4 96:11,17  
 96:21 99:13,19,25 100:5,10  
 101:1,4,8,12 106:9,14,18,23  
 107:2,5,10 108:3,7,12,19 109:2  
 109:5 110:11,17,19,22  
**base** 58:23  
**based** 16:2 39:1 50:9 63:6 73:25  
 76:4  
**basic** 3:13 6:21 9:22 27:19,21  
 93:10 102:4  
**basically** 39:25 61:17 87:3 101:19  
**basis** 36:2 58:6  
**battle** 47:25  
**becoming** 43:8 50:10  
**began** 6:23 9:18  
**beginning** 38:9 90:19  
**behalf** 55:18 59:17 109:12  
**Belen** 29:9  
**believe** 6:23 14:5 16:14 20:11 21:7  
 21:9 23:13 34:9 37:24 38:8,14  
 39:9 42:21 51:21 61:7 66:9  
 84:17 91:4,16 101:15 102:15  
 108:19  
**Bernalillo** 9:16  
**best** 10:9 38:22 43:3 55:19,21 98:2

98:12 111:8  
**better** 38:21 48:21 62:5 89:5  
**bias** 49:25  
**biennial** 97:1 98:3 100:14  
**biennium** 7:12 13:17,19 15:13,15  
 28:24 97:11,15 98:5,10 99:6  
**big** 10:4 14:3 77:8  
**bigger** 59:20 60:11  
**biggest** 14:10 60:19  
**bit** 49:18 55:9,13 93:19 107:18  
**bladed** 102:7  
**Blanca** 1:8  
**block** 28:16,22 36:3  
**blocks** 19:12  
**board** 1:6 2:1 6:6,6,12,19 10:7  
 13:4,12,13 15:18 17:23 18:11,22  
 18:24 19:1,9 20:9 22:18 27:25  
 29:12,13 30:15 32:7,18 35:11,21  
 36:24 37:8 38:13 39:7,13,17  
 42:16 43:17 44:1,6 46:1,4,22  
 47:1,3,13,21 48:7 49:8,20 50:10  
 53:5 54:14,17,18,20 55:2,4,6,10  
 55:18,18,23 56:1,7,12 63:6,14  
 63:19,20 64:1,12 65:3,4 66:11  
 67:2,4,12,17,20 69:9,11 70:7,24  
 73:4,7,8 74:4 75:11,15,18,22  
 76:6 77:10 80:6,11,16,20,21  
 81:19,20 82:2,14 83:4 85:4 87:5  
 87:15 88:2 93:15 94:7,11,15,19  
 94:23 95:4,8,8,15,21,21 96:10  
 96:12 97:3 98:22 99:10 100:23  
 101:4,13,16 104:18 105:7,9  
 106:23 107:9,12,13,14,24 109:6  
 109:9,12,19 110:1,9,11  
**Board's** 28:2 54:25 63:2,25 65:2  
 75:14 94:19 97:5  
**boards** 15:24 49:24 54:6 80:19  
**boat** 43:9  
**body** 70:4  
**boilerplate** 16:1  
**bold** 74:6  
**Boom** 13:15  
**border** 88:14 110:7  
**bottom** 11:6 69:2  
**bound** 82:13  
**box** 60:25  
**break** 35:24 72:2,17,18  
**Brian** 2:15 43:2 73:20 78:15 93:2  
 98:16 101:24  
**brief** 96:25 97:9

**briefing** 63:1  
**bring** 33:7 38:3 82:2,6,13  
**bringing** 61:8 91:11 99:5  
**brings** 95:19,20 103:23  
**broad** 16:4 17:5  
**brought** 58:3 59:2 82:9 96:5  
**budget** 43:4  
**bunch** 19:25  
**Bureau** 7:3 14:25 92:2,8  
**Burnham** 2:9 4:19,20 12:25 13:11  
 14:8,14 15:16,19 21:16 23:11,13  
 23:17,24 27:8 30:8 36:12 53:24  
 66:20 76:23 77:12,18 79:5,18,20  
 80:12 81:4 82:17 83:9,17 85:17  
 85:20,25 90:8,10 91:6 92:13  
 100:14,22,25 101:16,22 102:1,3  
 102:10,16,25 103:6,11,20 104:7  
 105:25 106:13  
**business** 37:10 76:14 108:21

---

### C

---

**C** 75:8 90:13 96:23  
**cadet** 28:7,10 32:19 50:18,21  
 60:12  
**cadets** 6:14,23 7:25 8:25 9:4,6,7  
 9:12,14,17,20 10:1 21:2,25  
**cadre** 40:18,24  
**calculated** 70:22  
**calendar** 33:12  
**California** 88:17  
**call** 3:3,4 4:1,3,4,5 39:14 48:6  
 56:14 74:2 76:10  
**called** 18:1 20:3  
**candidate** 93:12  
**capacity** 36:20  
**captioned** 111:5  
**care** 55:21 77:1  
**career** 34:24 35:22 91:18  
**careful** 7:19  
**cars** 30:10  
**case** 2:17 11:21 37:13,13 39:1,11  
 53:12 70:10 75:13 76:2 81:3  
 82:6,15 111:13  
**case-by-case** 36:2  
**cases** 11:19,20,24,25 12:2,3,4,7  
 32:11,14  
**catch** 79:16 84:22  
**catching** 6:10  
**caught** 7:17  
**cause** 62:11

**CBW** 71:18 87:4 93:12,16,23 94:2  
**CCR** 1:22 111:3,23  
**center** 67:23 107:15,20 108:1,5,9  
 108:16 110:4  
**cert** 18:18 87:3,20 92:20  
**cert-by-waiver** 18:2 19:25 88:5  
 92:19 93:5  
**certain** 15:13 28:4 38:5 50:5  
 58:14 59:10 69:3 81:21 97:24  
 104:17  
**certainly** 43:12  
**CERTIFICATE** 111:1  
**certification** 10:15 20:23 21:2,24  
 22:1,13,16 23:6 24:13,17 25:4  
 25:23 26:7,23 27:3 31:17,19  
 32:3,4 44:11,16 45:23 52:10,15  
 52:25 57:20 60:14 68:6,7,13  
 71:12,20 79:8 82:14 83:5 84:21  
 87:1 88:24 90:15 105:24  
**certification-by-waiver** 25:7  
**certifications** 3:9,11,21,23 20:13  
 20:16 21:21 25:9,24 26:2 27:15  
**certified** 10:9 13:15 15:1 21:3  
 22:2,17 27:4 31:15,23 35:9  
 52:19,21 60:22 62:5 91:18  
**CERTIFY** 111:4,10  
**cetera** 70:4 105:15,16  
**Chair** 19:11 36:22 53:2 57:3 63:3  
 63:14 76:17 78:14 87:18 89:11  
 91:24 95:19 106:1  
**Chairman** 2:2,3 6:4,5 15:20 17:8  
 17:10 22:22 23:11 24:6 26:12  
 51:12 62:12 65:21 66:9 67:13  
 74:4 79:6 80:11 83:15 86:25  
 96:24 107:11 109:25  
**challenge** 32:2 35:23 84:19  
**challenged** 34:22,24 46:9 91:2  
**challenging** 35:23  
**change** 11:8,9 37:19 38:25 58:23  
 64:2 67:22 74:16,21 77:8,20  
 78:20 79:1,13 82:11 85:8,9,9,11  
 86:4 87:1,19 89:16,24 95:7,17  
 95:22 96:1 104:7 106:11  
**changed** 18:4 29:21 52:16 53:11  
 74:17 78:8 79:9,10 83:7 99:24  
 106:7  
**changes** 3:14,15 12:16 13:5 33:18  
 34:5 67:6,9 72:20,23 73:17,22  
 74:8 75:12 76:13 80:25 86:12  
 95:3,4,13,14,16 96:7,9,15 97:10

97:21 99:22 101:3 106:22  
107:19  
**changing** 39:2 48:20 53:21,21  
81:14  
**charge** 12:5 83:2  
**charged** 83:24  
**charges** 35:4 82:19  
**charging** 84:13  
**chase** 60:22  
**Chavez** 4:25  
**check** 10:10  
**chief** 2:3,4,6 4:2,5,10,11,14,15,16  
4:17,23 5:4,6,10,11,16,20,22,23  
6:1 13:22 15:20 16:10 19:10,15  
20:7 21:15 22:24 24:24 25:17  
26:15 27:10 29:9 36:22 37:1,4,5  
38:18,20 39:12 40:7,14 41:5  
42:11 46:14 47:4,19 52:24 53:2  
56:16 57:2 58:17 60:21 63:3  
64:3,19 65:5 66:1 69:12,19  
70:14,25 71:6,9 72:6 76:17  
77:24 78:10 79:19 81:24,25 83:1  
83:4,12,25 84:17 85:18 86:11,14  
87:12,18 89:8,14 90:24 91:8,24  
92:16,18,24 93:5 94:9 95:19  
96:14 97:18 98:2,16,24 99:12,21  
100:20 101:7 102:12 103:23  
104:6,12,21 105:2,12 106:5  
107:1 108:2 110:18  
**chiefs** 12:9 17:25 20:2 48:5,10,18  
58:21 87:21 92:25  
**child** 32:24  
**choose** 37:19  
**chooses** 69:13  
**Chris** 2:3 4:16 94:13 108:22  
**circumstance** 16:21 52:13  
**circumstances** 11:5 16:19 32:12  
39:24 40:20 57:1 81:22  
**citizen** 36:7 71:17  
**citizens** 36:8 46:6  
**City** 9:3  
**civilian** 69:13 71:1  
**claim** 50:8,8  
**claims** 49:25  
**clarified** 75:15  
**clarify** 46:24 47:8 54:12 63:15  
78:13 94:6 107:13,17  
**class** 3:16 6:22 7:1 8:25,25 9:3,4,6  
9:7,12,13,18,22 10:4 18:2 19:25  
22:14 24:15 25:7,8 26:6 28:8

30:10,11,12,12,13 38:5 49:5,6  
60:1,3,12 108:18,21  
**clause** 63:8 99:14  
**clean** 75:13 107:13  
**clear** 21:5 51:17 54:18,24 55:8,13  
76:2 103:1,7  
**clearly** 13:5 50:14 67:18  
**Clint** 5:1 110:3  
**Clint's** 110:7  
**close** 8:7  
**Clovis** 32:20  
**code** 101:21 104:5  
**collateral** 15:6  
**combine** 70:9 71:5  
**come** 18:25 28:6 29:22 33:10  
34:15 36:4 40:15,25 41:11,15,15  
47:3 55:1 56:13,19 58:25 60:13  
61:2,16,17 64:21 65:7 67:13  
71:17 89:2 93:13,21 95:7 97:14  
97:22 98:4 99:7  
**comes** 53:15 67:20  
**coming** 19:21 44:9 51:2 56:23  
61:12 65:20 91:19,21 92:11  
**command** 37:22  
**comment** 3:8 17:12,14 20:12  
56:16 57:2 76:8,14 88:9 89:5,7  
94:5,20 103:22 104:8  
**comments** 13:1 52:7 63:7 73:25  
74:1 76:4 88:7 94:8,13,15 95:12  
95:12 96:3 109:8  
**committee** 95:15  
**communications** 88:19  
**communities** 10:22,25 16:7,22  
50:14 73:5 109:20  
**community** 29:4 35:16 45:18 48:1  
55:20 56:4,5 62:4 72:24 109:17  
**companies** 68:5  
**comparable** 88:11 89:6  
**competition** 42:17  
**complaints** 12:12 13:7  
**complete** 44:12 70:2 90:14  
**completed** 8:9,11 14:16 44:13  
**completely** 55:7 92:8  
**completing** 8:7  
**complicated** 52:4 55:6  
**component** 70:5,6 105:5  
**components** 70:9  
**comprehensive** 92:5  
**compromising** 10:2  
**computer** 8:12

**computers** 8:12  
**concealment** 102:21  
**concern** 34:16,18 54:15 56:18,18  
60:10,11,19 65:3 75:14  
**concerned** 18:20 20:3 43:4,5  
50:19  
**concerted** 12:14  
**conclude** 43:22  
**condition** 18:11  
**conditions** 62:10 90:14  
**conduct** 10:12  
**confidence** 7:17  
**confirm** 40:14  
**confused** 71:9  
**confusing** 54:13  
**Congratulations** 46:19  
**connection** 19:18  
**consider** 39:24 44:18 49:4 61:12  
64:1 90:7 101:8  
**consideration** 3:15 72:19,22 74:5  
74:11 96:9 105:14  
**considering** 39:16  
**consistency** 11:18 12:21  
**consistent** 11:6 12:11 80:25  
**consistently** 63:21  
**constantly** 59:23  
**Consulting** 7:22  
**contacted** 60:11  
**contained** 60:3  
**containing** 60:2  
**Contemplated** 11:25  
**Content** 3:17 108:18  
**contentious** 48:14  
**contents** 76:20  
**contest** 76:1  
**continual** 7:24  
**continually** 8:5,6  
**continue** 8:20 11:17 12:18 14:24  
31:19 60:17 68:22  
**continuing** 88:15  
**contracted** 111:11  
**conversation** 42:13 61:21  
**convicted** 82:1,12,18  
**convinced** 38:12  
**Cooper** 93:9  
**copy** 94:11  
**core** 33:3  
**correct** 19:13 20:12 21:6 23:17  
24:10 40:3 44:14,23 45:15 47:4  
64:8 75:6 77:13 78:16,17 85:15

87:13,24 97:11 98:1,20 111:8  
**corrected** 19:7  
**corruption** 83:22  
**Corvinus** 5:1 110:3  
**Coss** 2:15 43:2 67:11,12 69:13,17  
 69:23 70:23 71:2,8,11,16,21  
 72:4 73:23 74:4,20,22,24 75:9  
 75:12 78:17 79:14,16 80:5 86:24  
 86:25 87:25 88:23 93:3 96:24  
 98:2,21 99:4,15 101:18,25 102:2  
 102:4,19 103:5,10,14 104:2,18  
 104:22 105:5,17,22 106:1  
**cost** 68:24 70:16,20 71:12  
**costs** 70:12  
**counsel** 54:11 63:5,12 64:22 66:17  
 80:6 95:20  
**counterparts** 58:17  
**counties** 52:17  
**countless** 37:16  
**country** 58:7 59:13 91:12  
**county** 9:16 29:5,7 31:8 36:15,16  
 39:25 41:13 46:6 52:9,14 61:4  
 70:15 71:13,22  
**couple** 30:2 37:12 59:20 67:25  
 69:23 73:25  
**course** 30:20 57:19 68:2 71:14  
 84:10 88:19,19 104:13,16  
**courses** 68:3 88:17 104:19  
**court** 75:25  
**cover** 102:21 103:13  
**covered** 19:17 36:13 61:19  
**create** 16:6 29:3 47:3 49:23 52:4  
 64:2  
**created** 19:11  
**creates** 39:22 50:5  
**criminal** 12:5  
**criminals** 91:7  
**crisis** 40:1  
**criteria** 59:24 77:4  
**critical** 11:5 16:18 17:2  
**criticism** 97:20  
**crumb** 47:8  
**curious** 15:21 49:19 59:12  
**current** 7:8,20 8:8 30:11 69:10  
 96:7,11 97:11 105:6  
**currently** 11:21 20:5 30:16,17  
 45:9 92:21  
**curriculum** 8:6 29:19 33:4 59:24  
 61:9,10 88:4 101:20 105:15,21  
**curriculum**s 105:3

**cutting** 59:9  
**cycle** 97:2,12

---

## D

---

**D** 75:8 76:6 101:15  
**dad** 110:7  
**damaged** 56:17  
**dangerous** 37:20 53:9  
**Darren** 2:6 4:14 37:3  
**date** 9:8 18:13 46:8 99:1 107:16  
**day** 33:4 37:7,15 47:22 65:19  
 70:21 104:19  
**days** 45:1 69:4,7  
**de** 29:5,7 36:15,16 39:25 41:13  
 50:10  
**deal** 11:18 15:9 41:15 59:18,19  
 77:8  
**deals** 96:25  
**December** 9:1,15,17 55:11 65:8,8  
 65:9 66:18 99:7  
**decertification** 82:3  
**decertify** 14:11  
**decide** 81:19  
**deciding** 81:1  
**decision** 12:3 34:24 36:24 45:25  
 48:23 51:14 56:25 81:18  
**decision-maker** 50:11  
**decline** 84:8  
**decontaminate** 60:8  
**defense** 35:8,10  
**defensive** 34:6 37:14 102:5  
**defer** 80:6  
**define** 16:17  
**definitely** 46:9 48:3,25 62:3,5,9  
**definition** 17:2  
**definitive** 84:14  
**degree** 58:14 59:10  
**delegations** 55:5  
**deliberately** 17:5  
**denial** 79:6  
**denied** 55:2  
**deny** 65:2  
**department** 4:25 5:2 29:4 31:11  
 31:13 39:20,20 44:10 51:21 56:6  
 92:2  
**departments** 57:22 58:1  
**depending** 63:12  
**Deputy** 2:15 67:10 69:12 73:16  
 74:20 75:12 79:14 86:23  
**desire** 29:12

**desperately** 40:6  
**details** 61:24  
**determine** 43:21 56:20 61:18  
 62:20  
**dialogue** 48:22  
**die** 51:19,19  
**diem** 46:10  
**difference** 71:16,18 105:2  
**different** 29:14,16 32:11 40:15,20  
 44:8 46:1 56:24 58:13 61:15  
 67:14 69:23 75:24  
**differentiating** 52:13  
**differently** 36:6 53:20 61:24  
**difficult** 38:10 39:20 59:1 61:9,18  
**dilemma** 38:7  
**diligence** 57:21  
**dime** 43:6  
**direct** 15:22 48:6 49:17 51:4,6  
 62:24 107:14,25 108:8,14,15  
**directing** 83:2  
**direction** 56:1,2 57:17 97:24  
**directly** 109:13  
**director** 2:14,15 6:2,4,8 12:25  
 13:10 14:5,9,15 15:17,19 16:2,4  
 16:13,25 17:4,7,8,24 18:23 19:6  
 20:18,19,21 21:4,7,10,22 22:12  
 23:4,15 24:8,12 25:5,11 26:4,9  
 26:21 27:5,16,17 28:1 37:24  
 38:2 41:19 43:2 48:4,25 49:18  
 50:2 51:7 54:24 55:12,17 56:1  
 59:15,16 60:19 62:25 63:7,10  
 64:6 66:16 67:11 69:13 73:16,22  
 74:20 75:12 79:14 80:17,19 81:1  
 81:5,20,21 82:5,8,13,19 83:3  
 84:20 86:24  
**Director's** 3:7 5:25 6:2 22:15 41:7  
 59:23 81:16  
**directors** 8:18 10:11 18:8 43:13  
 61:6  
**disability** 50:8 57:16  
**disagree** 30:14  
**disciplinary** 80:22  
**discipline** 12:1  
**discovered** 60:6  
**discretion** 49:22 65:2  
**Discretionary** 85:24,25  
**discuss** 3:16 95:10 96:6 108:17  
**discussed** 18:23 32:8  
**discussing** 11:15 42:3 54:23 59:14  
**discussion** 38:12 53:1 57:25,25

75:21 76:20,22 88:2,2 89:11,13  
90:7 99:19 105:3,9 106:20  
108:20 109:6  
**disheartened** 28:12  
**dismiss** 84:8  
**dismissed** 60:12 84:2,4  
**disposition** 111:14  
**disruption** 62:11  
**distinguished** 17:23  
**district** 75:25 83:21 84:4  
**divides** 34:20  
**division** 74:14,17,19 75:1,5 78:7  
87:10,16 89:16,19,24 97:7 99:23  
100:1,7 106:3,7,11  
**document** 74:25 80:9 84:13  
**documentation** 11:22  
**documents** 76:19  
**doing** 19:3 28:22 33:5 43:3 45:1  
58:8 59:13 64:23 71:6  
**door** 38:15 48:4  
**doors** 43:1  
**dorms** 8:10  
**DPS** 48:8  
**Dr** 4:21,22 17:1 21:9 30:19 31:10  
32:1 34:7 35:13 36:5 39:14  
44:21,25 51:21 52:6,22 56:11  
57:4,12 62:20 72:2 73:3,12,14  
73:19,20,24 76:4 88:6,23 89:4  
108:6,24  
**draft** 80:7  
**draw** 19:16 43:20 104:23,25  
**dream** 82:23  
**Drive** 1:8  
**driving** 15:8 30:10  
**DTs** 28:16,19,21 33:4,5,21  
**due** 46:16 50:20 57:21  
**duty** 15:6  
**Dworak** 2:16 54:14 63:14 64:25  
65:25 75:11 78:13 80:11 81:14  
85:7,16 87:14 94:6 96:5 100:23  
107:8,11  
**dynamic** 36:25 98:15

---

## E

---

**E** 102:17  
**earlier** 54:12  
**earn** 46:10  
**easier** 11:12  
**easy** 57:3  
**editorial** 107:18

**effective** 107:16  
**effort** 12:14  
**efforts** 12:18  
**eight** 11:24 12:3 30:24 31:8 44:23  
88:15,16 89:2  
**eight-week** 38:4  
**eight-year** 31:22  
**Eighty** 38:19,20  
**either** 39:12 49:19 51:1 64:20  
88:25 90:19  
**elected** 29:8 45:15,22  
**election** 45:9  
**elects** 49:8  
**Elegante** 1:8  
**elevated** 102:23  
**elevation** 39:5,8  
**eligibility** 90:12  
**eligible** 92:10  
**Elisabeth** 2:8 4:21 73:3  
**Elva** 28:7  
**email** 108:25  
**emergency** 30:9 33:22 34:1  
**employed** 111:10  
**ends** 99:2  
**enforcement** 1:5 3:10,22 6:9,12  
6:14,18,21 7:25 8:24 10:12  
15:24 18:3,13,25 20:14,17,23  
25:8 26:5 28:8 29:2,17 30:5 31:2  
31:4 33:2,5,15 34:4,20 35:16  
36:6 37:21 40:1,12,17,23 42:1  
44:7 45:18 46:16 47:5,20 48:1  
49:10 61:3,13 67:10 68:4 72:24  
74:14,19 75:4 78:8,21 79:1  
81:11 87:11 89:17,20,25 90:5  
97:8 99:5,24 100:2,7,12 106:4,8  
106:11,19 109:12 110:6,9  
**English** 77:1  
**enjoy** 15:7  
**ensure** 7:25 18:12 40:19 47:2  
55:20 63:20  
**enter** 34:14 93:10  
**entertain** 22:3 23:18 24:19 25:12  
26:10 27:6 51:3,8 66:8 78:6  
96:12 109:22 110:14  
**entertained** 79:3  
**entertaining** 77:19  
**entire** 30:19 78:17 104:15  
**entities** 42:21 68:5  
**entitled** 67:24 74:5  
**entity** 37:3

**entrance** 93:7  
**entry-level** 103:17  
**environment** 95:21  
**equipment** 8:12 70:3  
**especially** 29:22 49:1 53:9 63:7  
**Esq** 2:16  
**establish** 41:1 62:21 77:3,4,5  
**et** 70:4 105:15,16  
**evaluating** 59:24  
**eventually** 31:24  
**everybody** 4:23 7:10,19,20 12:19  
13:8 39:19 41:8 55:20 60:18  
**evidence** 83:22  
**EVOC** 29:23,24 30:8 32:23  
**exactly** 39:3  
**example** 38:22 84:12  
**Exceeds** 88:21  
**excepted** 111:11  
**exception** 46:2 49:24 50:13 52:3  
60:16 67:4 103:4  
**exceptions** 50:6,18,24 54:1,6  
**excuse** 23:11 78:13  
**executive** 17:24 28:1 49:1 64:6  
**exhibit** 20:18,22 21:5,5,9,11,14,15  
21:21,23 22:1,4,11,13,20,21  
23:3,4,9,20 24:3,13,20 25:3,5,6  
25:13,19,22 26:5,11,17,20,21,22  
27:2,4,7,14  
**exhibits** 3:21,23 23:16 24:7 94:12  
94:16,18  
**exigencies** 15:25 16:2,9,12  
**exigency** 16:6  
**exigent** 11:5 16:19,20  
**exist** 58:4  
**exit** 30:18  
**expect** 7:24  
**expected** 9:1,8,17 10:16  
**expecting** 90:20  
**expediency** 12:21  
**expeditiously** 11:18  
**expense** 69:24  
**experienced** 7:4  
**Expires** 111:23  
**explain** 12:10  
**explicit** 54:15  
**expressed** 110:8  
**extend** 50:13  
**extension** 11:2 16:16  
**extensions** 11:4 16:18  
**extract** 44:1

**extreme** 14:12  
**extremely** 61:8 68:17

---

**F**

---

**face** 102:13  
**facilitate** 73:12  
**facing** 50:3 58:25  
**fact** 59:21 60:21,23 61:14  
**fact-finding** 50:23  
**facto** 50:10  
**faculty** 33:8,9 40:24  
**failed** 19:25 28:11 41:21 65:25  
**fair** 56:25 88:1 93:22  
**fairly** 84:14  
**fairness** 8:4  
**faith** 58:13  
**fall** 71:21  
**falls** 61:10  
**familiar** 12:17  
**families** 73:5  
**family** 110:6,6  
**far** 15:11 16:5  
**Farmington** 6:20  
**fashion** 54:13  
**fat** 90:11  
**favor** 5:12,13,23,24 21:18,19 22:8  
 22:9,25 23:1,25 24:1,25 25:1,18  
 25:20 26:16,18 27:11,12 66:22  
 66:23 72:12,13 78:1,3,22,23  
 86:6,7,19,20 89:24 90:1,2 96:18  
 96:20 100:6,8,9 101:9,11 106:15  
 106:17 107:3,4 108:9,11 110:20  
 110:21  
**Fe** 3:16 8:11 9:23 28:9 29:18 31:2  
 33:6,19 40:17 44:25 47:23 49:7  
 61:15 108:17,20  
**February** 49:7  
**federal** 71:13  
**fee** 3:14 8:13 67:6,10,14,19 68:2  
 68:10,13,20 69:10 72:7,9,15  
**feedback** 94:5  
**feel** 37:20 62:3 92:15  
**Fees** 67:24  
**feet** 39:10 45:5  
**felony** 81:7 82:1,19 84:25  
**fighting** 58:22  
**figure** 51:7 70:22  
**file** 107:14,25 108:4,8,14,15  
**filed** 107:17  
**filing** 108:13

**final** 12:3 14:7 107:12 108:21  
 111:14  
**finalizing** 7:5  
**find** 9:25 10:1,8 13:14 14:19 15:7  
 55:24 69:3 82:5  
**finds** 63:13 82:8  
**fine** 85:13 96:6  
**finish** 34:6  
**finished** 35:8  
**fire** 104:13,23,25  
**firearm** 37:12  
**firearms** 15:5,5 29:23,25 32:22  
 33:22 34:1 38:17,18 69:21 102:6  
 103:9,15,17 104:14  
**first** 13:1 20:21 65:6 68:12 74:5  
 75:18  
**fit** 90:21  
**fitness** 30:1 90:16,18  
**five** 24:7,8 44:12,21 45:1 77:5  
**five-day** 65:15  
**five-man** 31:13 36:13 39:19  
**five-minute** 17:20  
**fix** 48:13  
**fixing** 83:23  
**flexibility** 11:4 80:19 81:1,21  
**flexible** 11:13  
**floor** 17:21 20:20 24:11 27:23  
 44:3 67:11 73:19  
**fly** 50:8  
**folks** 42:20 43:4 59:9 84:23 88:24  
 91:3,17 93:22  
**follow** 20:7 54:2  
**follow-up** 13:12  
**following** 6:16  
**forbid** 35:21  
**force** 36:14 59:9  
**foregoing** 111:7  
**forewarning** 96:8  
**forget** 105:13  
**form** 55:14 64:5  
**formal** 12:3 53:23 55:11  
**format** 107:21  
**formatting** 107:19  
**former** 63:7  
**forth** 111:7  
**forward** 14:25 33:11 39:2,18 40:5  
 41:8 44:2 48:2 54:19 55:1 64:11  
 76:12 82:2,6,9 96:3  
**found** 10:10 11:11  
**Foundation** 94:21

**four** 6:8 9:11 16:20,23 41:14  
 42:12 47:21 72:23 73:2 77:4  
**four-day** 65:14  
**Fourteen** 10:17  
**frankly** 10:16 15:5  
**Friday** 31:6  
**friends** 47:1  
**front** 50:22 67:21 69:25 74:8  
 84:23  
**full** 29:12 63:1 94:11  
**fundamentals** 100:18 101:23  
 102:8  
**further** 76:20 96:3 99:19 103:22  
 106:20 109:5,8 111:10  
**future** 54:2,4 63:21 64:2 95:16  
 98:17

---

**G**

---

**gallery** 35:17  
**Gallup** 32:18  
**gauge** 41:11  
**general** 2:2 17:17 27:24 44:7  
 53:24 55:5 66:17 69:9 73:2 74:6  
**General's** 52:7  
**generally** 12:5 49:14 51:10 80:14  
**Generals** 83:20  
**gentlemen** 6:5 44:5 67:12  
**genuinely** 99:16  
**getting** 38:16 43:8 48:11 50:9  
 91:21 105:14  
**give** 10:2 17:18 31:22 50:21 53:14  
 54:11,15 56:1 59:4 64:3,9,20  
 65:1 73:4,16 81:7 83:15 95:9  
 96:8  
**given** 18:2 20:4 41:22 102:22  
**giving** 9:21 53:20  
**glad** 29:15 79:16 97:4  
**go** 4:3 20:17 28:14,21,22 29:1,11  
 29:15 31:1,3,6 32:22,25 33:13  
 34:3 35:6,9 38:13 40:9,10 41:25  
 42:4 44:15 49:5,6 51:24 54:7  
 64:14 65:5 71:3 72:2 86:23  
 109:11  
**goal** 12:11,21 14:25 44:17 99:4,11  
**goals** 7:8,22 59:25  
**God** 35:21  
**goes** 95:1  
**going** 7:18 10:5 12:20 13:25 15:12  
 18:8,12 19:5 20:17 30:14 33:20  
 34:17 35:18 37:6 39:18 41:2,12

41:25 44:22 45:1 48:1 51:2 57:8  
57:13,14 58:12 60:2,4 62:8 63:4  
63:4,5 65:17 66:7 68:20 76:12  
76:13 83:3 92:14 93:3 97:13,16  
97:20 98:18  
**good** 4:2 39:14 44:4 52:3 54:5  
58:5,8,13 80:3 81:17 91:5 95:20  
95:20,21 103:23  
**governed** 75:24  
**Government** 94:22  
**gracious** 73:12  
**graduate** 9:17 10:6 93:11  
**graduated** 6:25 8:24 9:3,6,10,12  
24:14 28:20  
**graduating** 7:1  
**graduation** 6:24 9:1,8,14  
**grammar** 77:9  
**grammatical** 90:9,10  
**grand** 84:2  
**grant** 65:3  
**Granted** 80:20  
**granting** 49:23 50:17  
**grapple** 57:18  
**grateful** 73:6 109:14,21  
**great** 8:21 21:20 22:23 42:13  
44:19 47:6 48:24 59:18,18 65:19  
71:24 78:19 104:13  
**greater** 89:1  
**greatly** 44:19  
**grounds** 77:4 79:6  
**group** 29:22 58:24  
**guarantee** 60:1  
**guess** 17:4 32:6 53:23  
**guidelines** 11:10

---

## H

**half** 47:16 91:9  
**halfway** 83:12  
**hammer** 14:2,10  
**Hampshire** 11:1 16:15  
**hand** 39:13 57:19 64:15  
**handed** 98:8  
**handful** 16:13  
**handgun** 102:9 104:19  
**handicap** 39:5  
**handle** 57:22  
**handled** 51:22 61:24  
**happen** 34:23 43:16 48:8 91:9  
**happened** 69:15  
**happening** 42:1,2 43:11

**happens** 35:22 76:3 79:22  
**happy** 12:22 55:12 73:23 77:18  
87:7 107:23  
**hard** 33:13 38:3 41:1 91:10  
**harder** 15:7  
**hardship** 11:2 16:16,17 17:2 94:2  
**hardships** 16:1  
**harm** 32:24  
**harmful** 34:25  
**harp** 36:10  
**Harvey** 3:12 27:18 28:7 29:10  
31:17 35:2 40:2 44:4,24 45:3,7  
45:10,12,16 46:13,18,20 52:19  
64:7 65:13  
**Harvey's** 27:21  
**Hatch** 4:25  
**he'll** 63:9  
**head** 82:9 87:22  
**head-butting** 42:17  
**headed** 51:24  
**healthy** 45:19 47:19  
**hear** 42:16 46:15 52:25  
**heard** 13:6,20 51:11 59:13 69:15  
**hearing** 11:14 12:4 38:11 44:1  
50:6 73:13,25 74:3,10 87:6,20  
88:1,7 89:7 92:17 94:18 95:9,11  
95:18 99:8  
**heating** 8:10  
**Hector** 2:2 4:7  
**held** 62:1,1  
**help** 56:14 68:21 99:18  
**helped** 80:6  
**helpful** 72:5  
**helps** 75:5  
**hey** 38:15  
**higher** 10:16  
**highlight** 76:5  
**highlighting** 6:17  
**Highway** 58:19  
**hill** 110:4  
**hired** 91:22  
**historical** 93:4,19  
**historically** 68:1  
**history** 83:25 99:16  
**Hobbs** 8:24 31:4 35:3 49:10 65:14  
**hold** 60:17 102:13  
**holding** 102:14  
**holdup** 14:19  
**honest** 82:15  
**honor** 17:16 44:15,19

**Honorable** 4:7  
**hope** 42:25 48:15  
**hopefully** 6:11 65:10  
**horrendous** 85:1  
**horror** 83:16  
**hours** 30:24 31:9 44:23 87:4,4  
88:10,14,15,16,18,20 89:5,9  
97:2  
**housing** 70:7  
**humbly** 30:5

---

## I

**IADLEST** 10:10  
**identifies** 77:7,15,21  
**identify** 15:10 77:4,7,16,22  
**imagine** 92:24 93:25  
**immediate** 12:4  
**immediately** 84:4  
**impetus** 94:1  
**implied** 55:4  
**implies** 55:23  
**important** 8:6 56:18 72:24 73:11  
**importantly** 6:13 73:1  
**improve** 11:17,17 59:5  
**improving** 11:16  
**in-service** 96:25  
**inadequate** 39:4  
**inclined** 34:12 38:23  
**include** 21:23,24 23:6 25:12 28:16  
31:12 52:11,19 56:21 70:24 88:4  
95:3 98:3,9 100:7,11 106:19  
**included** 21:13 22:4 23:19 24:20  
25:13 27:6 76:14 95:14 98:14  
105:6  
**includes** 34:9 87:16  
**including** 69:21 95:16 101:20  
**increase** 7:9 72:7,9  
**increases** 87:3  
**INDEX** 3:1  
**Indian** 92:3,9  
**indicate** 5:13,24 21:19 22:9 23:1  
24:1 25:1,20 26:18 27:12 66:23  
72:13 78:3,23 86:7,20 90:2  
96:20 100:9 101:11 106:17  
107:4 108:11 110:21  
**indicted** 81:7 84:1,23  
**indictment** 82:23 84:9,25  
**individual** 21:13 42:23 81:8  
**individuals** 22:4,11 23:9,19 24:20  
25:3,12,19,22 26:10,17 27:6

28:3  
**indulgence** 97:5  
**infected** 60:7  
**information** 6:17 15:22 74:2 87:5  
 92:12 97:3  
**initial** 88:2  
**initiate** 80:22 81:2,20 82:20  
**initiating** 81:22  
**initiation** 84:6,15  
**injured** 103:9  
**injustice** 29:3  
**input** 47:21 87:23,25 110:12  
**instance** 37:1 97:23  
**instruction** 7:23 19:12  
**instructions** 19:12  
**instructor** 7:4 68:12  
**instructors** 15:1,4,6,8,11 19:8  
 38:6 40:15,16,18 47:7 61:16  
**integrity** 8:4  
**intended** 13:5  
**intent** 81:10  
**interest** 111:13  
**interested** 52:25 95:4  
**interesting** 36:25  
**interests** 55:19,21  
**International** 10:11  
**invalid** 62:15 63:12  
**investigation** 33:10  
**involved** 12:6 32:14 35:25 104:2  
**involves** 22:13  
**Isosceles** 102:6  
**issue** 19:2 29:13 36:9 39:11,12  
 40:8 42:18 45:1,23 53:3 61:7  
 62:19 83:5 97:25 98:25 103:21  
**issued** 18:5,6  
**issues** 15:9 28:4,13 29:15 32:8  
 47:5 48:5 59:20 73:10 82:14  
 95:10  
**item** 3:1,2 4:1,4 5:5,14,25 6:1  
 17:12,13 20:13,15 24:4 25:24  
 26:1,4 27:18,20 56:21 66:11,11  
 67:6,8 72:19,21 76:6,7 88:10  
 94:22 108:17,19 109:4,6,7  
**items** 28:23 73:2 95:24

---

**J**


---

**Jack** 17:14 27:22 31:14 32:10  
 37:17,24 38:15 41:5 43:13 44:14  
 47:20 48:13 49:11 56:10 65:9  
 66:15 67:3

**Jaime** 4:18  
**Jan** 1:22 111:3,22  
**January** 49:7 99:10  
**jargon** 54:12  
**job** 91:3,13,20  
**Jones** 17:15,16,22 19:14,19 20:8  
 20:10 27:22,24 30:9,22 31:12,16  
 32:4,15,17 35:5,7 36:1,11,16,21  
 38:17,19 40:7 41:18 45:6 46:24  
 47:13 48:24 49:13 52:17 55:15  
 59:18 63:8 64:6 65:7,12  
**Jones'** 66:15 67:3  
**Jose** 4:25  
**Joseph** 2:16  
**journalists** 35:16  
**Juan** 9:5 21:23 26:22 61:4  
**judicial** 83:21  
**July** 6:22,25 9:5,7,9,13  
**jump** 50:22  
**June** 3:6 5:15,17 6:20 8:23 9:2,13  
 9:18  
**jury** 84:2  
**justice** 32:14 92:3,9

---

**K**


---

**Kassetas** 2:4 4:10,11 5:10 19:10  
 19:15 20:7 36:22 37:5 38:18,20  
 39:12 40:8 41:5 42:11 47:4,19  
 53:2 57:2 58:17 63:3 64:3,19  
 65:5 66:1 69:12,19 70:14,25  
 71:6,9 72:6 76:17 77:24 78:10  
 79:19 81:24 83:1,12 84:17 85:18  
 86:11,15 87:12,18 89:8,14 90:24  
 91:8 92:16,24 94:9 95:19 96:14  
 97:18 98:16,24 99:12,21 100:20  
 102:12 103:23 104:6,12,21  
 105:12 106:5  
**Kassetas'** 56:16  
**keep** 43:3 51:2 68:22 75:12 80:20  
**keeping** 38:6  
**keeps** 49:24 56:23  
**Kelly** 2:9 4:19  
**Key** 2:7 4:8,9 5:19 22:5,22 24:6,21  
 26:12 31:14 32:6 66:25 67:2,5  
 71:11,19,23 72:11 83:15,19  
 84:17 85:19 86:1 96:16 101:2,5  
 101:14 105:13,18 106:21,24  
 109:25 110:11,16  
**kind** 10:16 13:11 15:3 43:25 50:10  
 51:18,24 56:11 63:24 68:1 69:1

69:9 103:13  
**kinds** 35:4 68:22  
**kneel** 103:12 105:19  
**kneeling** 102:20 103:19,25 104:24  
 104:25  
**knew** 18:8 19:4 83:17  
**know** 14:2,3 17:19,20 19:22 29:13  
 31:20 35:2,17 36:7,17 39:15  
 41:16 43:9 44:10 47:21 48:2,3  
 52:8,8,14 56:22 57:12 60:16  
 62:19 68:17,23,24 69:4,21 70:4  
 80:3,3 82:3,24 84:10 85:3 93:1,2  
 93:4,20,21 95:15,16,18 98:9,14  
 98:17,25 99:16 100:14 104:7,22  
 108:25 110:1  
**knowledge** 104:4  
**knows** 42:2

---

**L**


---

**ladies** 6:5 44:4 67:12  
**lag** 107:18  
**laid** 13:4  
**language** 34:9 56:23 74:8,13,17  
 74:25 75:3 79:10,11 80:9,13,15  
 81:14,15 85:20,22 86:4 89:19,25  
 89:25 90:5 92:19,22 93:15 99:14  
 100:7,8 103:6 105:7 106:12,20  
**lapsed** 88:25  
**large** 31:10  
**larger** 9:23  
**lateral** 9:10 22:14  
**law** 1:5 3:9,21 6:8,12,14,18,21  
 7:25 8:24 10:11 15:23 18:3,12  
 18:25 20:13,16,22 25:7 26:5  
 28:8,16,22 29:2,17 30:5 31:2,4  
 33:2,5,15 34:4,20 35:15 36:5  
 37:21 39:25 40:11,17,23 42:1  
 44:7 45:18 46:16 47:5,20 48:1  
 49:9 54:5 61:3,13 67:9 68:4  
 72:24 74:14,19 75:3 78:8,21  
 79:1 81:11 87:10 89:17,19,25  
 90:5 97:7,24 99:4,24 100:2,7,11  
 106:4,7,11,19 109:11 110:6,9  
**lawful** 46:7  
**lawfully** 45:15  
**lawyer** 56:3  
**lawyers** 35:16 57:5  
**LEA** 3:16 48:8 70:15,20 72:7 83:2  
 104:14,16 108:17,20  
**LEA-90** 11:16



**leadership** 73:6  
**learned** 6:10  
**learning** 95:21  
**leave** 14:15 34:15  
**left** 17:5 32:21 33:16 37:1 92:19  
**leftover** 92:22  
**legal** 46:2 49:21,22 50:4 51:8 52:1  
 52:4 54:15 55:13 62:18 63:1,5  
 65:10 66:13,17 82:12  
**legally** 45:20,22 51:13 52:2  
**legislative** 97:21  
**legislature** 43:7 97:23 98:8  
**LEOCE** 8:4 18:1,4,5,14,18,18  
 19:11,19,20,22 20:4 30:1 32:2  
**lesson** 7:22 18:6,13,14 19:21,23  
 20:5  
**let's** 72:17 93:6 98:5  
**License** 111:23  
**life** 58:13  
**lifeblood** 89:10  
**liked** 9:24 14:23 47:18  
**line** 11:6 35:4,22 38:14 41:12  
 43:20 56:21 60:17 76:7 84:21  
 88:9 97:21  
**lined** 13:8  
**listed** 21:25  
**listening** 38:12 49:3  
**little** 11:3 17:19 34:18 49:18 50:3  
 50:9,17 51:15 55:9,12 58:14  
 83:22 93:19 96:8 107:18  
**lives** 47:22  
**Lodge** 1:8  
**lodging** 71:3  
**logistically** 43:16  
**logistics** 41:6  
**long** 48:13  
**longer** 30:14 74:18  
**look** 30:6 41:24 52:12 53:25 54:4  
 54:21 55:16 58:7,20 62:8 69:24  
 91:10 97:3  
**looked** 18:7 19:8 88:13  
**looking** 11:15 37:10 48:17 53:10  
 59:24 60:15 62:9 70:1 88:21  
**lose** 49:1 91:13  
**loses** 68:7  
**lot** 6:10 11:12 15:6 33:7 41:25  
 42:12 47:6,6,11 57:25 58:1,2  
 62:13 73:4,10 80:13 94:7 97:20  
**lots** 15:4,5 100:16  
**Louisiana** 10:21 11:3

**low** 18:19 20:1  
**lower** 57:8 58:23 102:19,24  
**luck** 38:23

---

## M

---

**M** 2:16  
**ma'am** 32:5 36:11 44:24 45:3,4  
 79:17 80:5 102:2 103:5,10  
**Madam** 77:10  
**magnificent** 47:7  
**main** 47:23  
**maintain** 8:4 29:19 33:8  
**maintained** 40:19 84:16  
**major** 30:4 34:5  
**majority** 84:22  
**making** 12:14 28:13 51:13 56:24  
 64:5 75:7 95:4  
**man** 103:4,8  
**manage** 39:18  
**Manager** 2:17  
**mandated** 98:13  
**mandates** 92:4 97:22  
**mandatory** 79:10 80:1 81:9 85:23  
 91:1  
**Manipulation** 102:17  
**manner** 15:15 34:21  
**mark** 53:17  
**marksmanship** 100:18 101:23  
 102:9  
**Marshall** 2:14 6:3,4 12:25 13:10  
 14:5,9,15 15:17,21 16:4,13,25  
 17:4,8 18:23 19:6 20:18,19,21  
 21:4,7,10,22 22:12 23:4,15 24:8  
 24:12 25:5,11 26:4,21 27:5,17  
 43:2 48:3,25 59:16 62:25  
**material** 60:3  
**materials** 104:3  
**math** 71:7  
**matter** 19:16 99:3 111:5  
**matters** 53:12  
**mays** 85:12  
**McCall** 2:3 4:2,5,16,17,23 5:4,6  
 5:11,16,20,23 6:1 21:15 25:17  
 40:14 46:14 60:21 92:18 101:7  
 105:2 108:2  
**MCM** 1:8  
**meals** 68:25 70:8  
**mean** 19:15 38:7 41:11 45:19,20  
 61:10 64:25 81:16 102:3,10,18  
 104:7,10

**meaning** 12:5 77:9  
**means** 31:5 56:3,7 79:25 80:1  
 102:12  
**meant** 17:2  
**mechanism** 50:5 51:8 52:1 54:25  
**mechanisms** 49:21,23  
**Mechels** 94:13 108:22,22  
**medical** 50:8 51:17,18 62:10 70:2  
 105:8,15,20  
**Medrano** 2:17 4:5,7,10,12,14,16  
 4:18,21  
**meet** 8:19 15:12 18:15 29:25 31:7  
 31:23 33:17 41:2 47:21 58:17  
 91:13 92:21 93:12,23  
**meeting** 1:6 3:6 4:3 5:14,17 6:7,20  
 7:7 8:17,20 10:7 12:2 13:13,16  
 17:11 32:18 39:1 47:14 55:11,14  
 58:12 59:3 62:17 63:2 65:8  
 66:18 76:7,18 94:14,16 95:23  
 99:7 109:15,23 110:24  
**meetings** 5:18 29:14 38:1,1  
**member** 15:18 37:8 38:13 42:16  
 43:20 48:8 49:2 67:2,5 77:10  
 80:12 101:5,14,16 106:24  
 110:11  
**members** 2:1 20:12 27:25 54:14  
 63:14 69:9 73:4,9 74:4 75:11  
 80:11 107:11 109:9,19  
**memo** 55:14 63:9  
**memorial** 110:2  
**men** 6:13  
**mentioned** 7:13 9:22 59:23  
**meritorious** 58:16  
**mess** 82:24  
**met** 14:9,22 21:2 22:1,16 24:16  
 27:2 28:19 35:11 40:19 41:17  
**methodology** 49:24 50:5  
**Mexico** 1:5,9 2:2 6:13,18,21 8:24  
 9:2,9 11:8 17:25 18:3 20:22  
 22:14 24:15 25:7 26:5 28:1,8  
 29:9,17 30:23 31:2,4,21,25  
 32:19,20 33:2,6,15,19 34:4  
 37:21 40:11,17,23 44:7 46:16  
 49:9 52:9,18,21 61:3,13 67:9  
 72:25 75:3 78:8,20 79:1 91:25  
 92:12,20 100:2,11 101:21  
 109:18 111:3,23  
**mid-cycle** 98:5  
**midpoint** 93:13  
**midstream** 61:8

**midterm** 98:8  
**mile** 91:8  
**mileage** 36:13,15 45:5  
**Miles** 45:6,7  
**Miller** 2:8 4:21,22 17:1 21:9 30:19  
 31:10 32:1 34:7 35:13 36:5  
 39:14 44:21,25 51:21 52:6,22  
 56:11 57:4,12 62:20 73:3,12,14  
 73:19,20,24 76:4 88:6,23 89:4  
 108:6,24  
**Miller's** 72:2  
**mind** 72:1  
**Mine** 21:8  
**minimum** 28:15 29:25 31:7  
**minute** 41:10,13  
**minutes** 3:6 5:14,17 13:18,22  
 54:11  
**missed** 37:11,14 41:14,14 53:16  
**missing** 19:18 37:17 58:9,11  
**mistakes** 43:11  
**mode** 50:23  
**modernized** 58:10  
**modification** 39:7  
**modified** 102:7  
**moment** 4:24,24 5:3  
**Monica** 2:17  
**month** 30:25 44:22  
**months** 6:8 11:10 68:18 97:13  
 109:11  
**morning** 4:2 8:19 42:14  
**motion** 5:7,11,19,20 21:12,15,21  
 22:3,10,19 23:2,3,8,19,23 24:3  
 24:19,23 25:2,12,16,21 26:10,14  
 26:19 27:6,14 51:3,9 54:9 59:13  
 59:14 62:16,23 64:4,5,12,13,17  
 64:18 65:22 66:2,8,10,14,19  
 67:3 72:6,8,15 76:19 77:11,19  
 77:22 78:1,5,6,19,25 86:2,5,9,11  
 86:14,22 87:17 89:14,18,21 90:4  
 96:15,16,17,21 99:22,25 100:10  
 101:2,4,13 106:5,9,15,19,21,23  
 107:2,6,12,14,25 108:2,3,8,13  
 109:22,24 110:14,23  
**motions** 79:2 86:13  
**move** 5:6,9 17:13 20:15 24:4 26:1  
 27:20 33:11 44:2 48:2 54:19  
 64:11 67:8 73:1 75:21 76:12  
 77:12 79:3 85:20 88:3 96:3,23  
 98:22 101:15 108:19 109:7  
 110:16

**moved** 22:5,22 23:10,21 24:21  
 25:14 26:12 27:8 39:2 60:9  
 78:10 85:18  
**moving** 41:8  
**MRSA** 60:7  
**municipal** 71:13,22

---

**N**

---

**nationwide** 11:7  
**naturally** 69:1  
**nature** 62:10 67:15  
**Nay** 66:25  
**nays** 27:13 66:24 72:14  
**necessarily** 59:4  
**need** 17:3 29:16 48:11,12 50:4  
 54:21 58:10 61:19 62:20,23 64:4  
 65:21 70:3 85:5 103:18 107:21  
**needed** 40:6 66:1 105:10  
**needing** 69:4  
**needlessly** 84:6  
**needs** 11:5 15:10 16:18 87:17  
**neither** 111:10  
**nervous** 50:10  
**never** 32:4 90:18 95:22  
**new** 1:5,9 2:2 6:12,18,21 8:24 9:2  
 9:9 11:1,8 16:15 17:24 18:3,5,6  
 18:18 19:21 20:5,22 22:14 24:14  
 25:7 26:5 28:1,8 29:9,17 30:23  
 31:2,4,21,25 32:18,20 33:2,6,15  
 33:19 34:4 37:21 40:11,16,23  
 44:7 46:16 49:9 52:9,18,21  
 60:14 61:3,13 67:9 68:11 72:25  
 75:3 78:8,20 79:1 91:25 92:11  
 92:20 95:18 100:2,11 101:20  
 109:18 111:3,23  
**nice** 13:16  
**night** 8:19 104:20  
**Nine** 10:14  
**NM** 1:22  
**NMAC** 11:12 28:17 34:9 39:15  
 55:16,25 57:17 63:8,16,17 73:21  
 86:12 92:10  
**NMLEA** 3:14 67:6  
**normally** 84:10,13 91:8  
**Nos** 20:23 21:24 23:6 24:13 26:7  
 26:24  
**note** 83:7 95:25  
**noted** 88:20  
**notes** 38:1 89:15  
**Notice** 11:25 12:2

**noticed** 95:6  
**notification** 50:20  
**notified** 81:6 82:19 108:24,25  
**notify** 81:8,9  
**November** 6:24 9:8 45:9  
**number** 7:15 10:16 13:5,20 22:13  
 23:13 51:3,5 93:22 104:24,25  
**numbers** 23:15 71:5  
**numerically** 14:4

---

**O**

---

**objective** 77:2  
**objectives** 7:23 59:25 76:24 88:8  
**obligatory** 80:15  
**oblige** 62:25  
**observation** 59:17  
**obvious** 54:16  
**obviously** 11:13 14:18 36:18 73:4  
 94:8 99:1 110:7  
**occasion** 56:13  
**Occasionally** 98:4  
**occurred** 74:16  
**odd** 34:18  
**offer** 7:9 15:3 43:24 59:16 60:2  
**office** 9:16 36:14 92:3,9  
**officer** 4:25 5:1 22:20 28:20 31:18  
 31:25 35:9 53:15 79:7 81:6  
 84:24 101:19 102:22 110:2  
**officers** 3:10,22 9:11 10:8,17  
 13:14 14:11 15:7 20:14,17 21:13  
 24:3 26:20 28:21 36:6 37:17  
 82:1 90:20  
**okay** 6:1 14:8 20:7,7 21:12 23:3  
 23:18 71:23 72:5 73:20 81:4  
 83:17 98:24 99:12 100:25 101:1  
 102:2,16,25 103:20 105:12  
 109:2  
**old** 18:13 19:22 77:1  
**once** 33:5 35:8 53:11 59:10 90:21  
**one-year** 10:21  
**ones** 10:6 13:23 27:1,3 57:8 68:11  
**ongoing** 7:24 59:22  
**open** 43:1 48:4 94:21 97:20  
**open-ended** 16:2  
**opening** 60:25  
**operating** 42:19 68:8  
**operation** 33:23 34:2 103:15  
**operations** 30:9  
**opinion** 34:8 35:14,20 37:7,7  
 57:13 65:10 66:17 81:24 84:1

91:15  
**opponent** 45:11,12  
**opportunities** 7:10  
**opportunity** 41:22 84:19 95:10  
**opposed** 21:20 22:10 23:2 24:2  
 25:2,21 26:19 27:13 71:14 86:8  
 89:6 96:21  
**opposite** 92:8  
**opposition** 67:5 72:15 78:4,24  
 86:21 90:3 100:10 101:12  
 106:18 107:5 108:12 110:22  
**optics** 34:19 35:7,15  
**option** 51:1  
**oral** 12:1 94:17  
**oranges** 40:9  
**order** 3:3 4:1,3 12:10 64:3 76:14  
 84:7 108:21  
**organization** 68:9  
**original** 85:21  
**originally** 98:22  
**ourself** 58:6  
**outcomes** 73:18  
**outlet** 84:18  
**outline** 88:5  
**outlined** 101:20  
**outreach** 13:24  
**outside** 35:15  
**outstanding** 13:21  
**overcomplicating** 53:3  
**overhead** 69:5,6  
**oversee** 48:7  
**oversight** 92:2  
**overturned** 46:8

---

**P**

**p.m** 1:7 110:24  
**packet** 21:5  
**packets** 94:19  
**page** 3:2 79:19,21 83:11,12,13,13  
 90:13 100:19  
**pages** 38:1 100:15 111:8  
**paginated** 79:18  
**paid** 70:18 71:15  
**pain** 35:2  
**paint** 43:10  
**Pandora's** 60:25  
**Paragraph** 85:12  
**parallel** 19:16  
**parameters** 92:7  
**paramount** 56:18

**part** 22:14 45:18 48:8 51:25 53:1  
 75:13,16,17,19,21 77:2,3 80:14  
 81:16 85:12 86:12 87:14,15,15  
 87:17 89:15 90:13,19 93:25  
 94:21,23 95:2 96:15 97:16 99:15  
 99:17,22 100:20,21,24 106:6  
**particular** 16:8,21 53:16,17 67:23  
 68:11 74:17 80:7 93:1 97:25  
 98:10 103:16 104:3  
**parties** 111:12  
**pass** 18:16,21 28:14 30:3,17 43:1  
 66:4 86:22 92:7 96:22 105:20  
 107:6  
**passed** 18:19 28:23 30:4 33:25  
 42:7 86:13 90:21  
**passes** 21:21 22:11 23:3 24:3 25:3  
 25:22 26:20 27:14 67:4 72:15  
 78:5,25 86:9 90:4 97:23 100:11  
 101:13,14 106:19 108:14 110:23  
**passing** 18:19 38:16  
**passion** 56:9  
**pathway** 51:17  
**patrol** 36:20 58:19 110:7  
**pay** 43:6,23 71:1  
**paycheck** 46:10  
**peace** 31:25  
**peanut** 35:17  
**peers** 58:20  
**pending** 11:18,22,24,25 12:2,3,6,7  
 65:24 66:4  
**people** 10:23 15:3,5 16:8 18:12,17  
 19:24 31:11 34:14,19 35:17 36:3  
 38:3,10,15 43:5 47:3 48:19 53:9  
 56:25 58:24 61:4 62:2 90:13  
**percent** 93:11  
**percentage** 93:21  
**percentile** 93:14,24  
**period** 33:22,23 61:11 83:25 98:6  
 105:1  
**perishable** 88:18  
**permissive** 79:11 80:13 81:8,15  
**permit** 10:8  
**person** 17:14 40:5 53:14 60:7  
 81:10 82:12 83:2 104:14  
**personal** 70:3 90:17  
**personally** 36:23 73:3 84:12  
 109:13  
**perspective** 34:19 35:1 51:16 53:4  
 93:4,19  
**Pete** 2:4 4:10 47:11,14 83:11

**petition** 54:25  
**physical** 30:1 42:7 90:15,18 92:5  
 92:21  
**physically** 90:21  
**pick** 43:7  
**picked** 43:8  
**picking** 57:7  
**picture** 43:10  
**piggyback** 52:6  
**place** 6:18 15:25 53:6 67:25 68:1  
 91:22  
**placing** 41:7  
**plan** 11:9 46:15  
**plans** 7:22 18:6,13,15 19:21,23  
 20:5  
**platform** 102:23,23,24  
**platforms** 102:5,20  
**please** 32:16 36:23 44:18 46:25  
 72:4  
**pleasure** 17:22 27:25 63:2  
**plugging** 97:11  
**plus** 16:21 37:2  
**point** 6:11 10:23 15:21 28:15 34:1  
 34:3 38:24 42:8,8,11 48:15  
 51:13,19 53:2 55:3 62:6 63:12  
 91:2,18,24 92:12 94:25 95:20,20  
 98:10  
**pointed** 62:20  
**pointing** 63:8  
**points** 39:14 88:4 94:7  
**police** 4:25 5:1 9:10 18:1 20:2  
 22:14,21 23:5 24:15 29:9 30:10  
 31:18 36:13 37:2,17 53:15 58:18  
 79:7 81:6 83:25 87:21 90:25  
 91:25 92:1 101:19  
**policy** 34:8 45:25 46:2 49:15 50:9  
 55:16 68:9 81:18  
**politically** 83:24  
**poor** 84:12  
**portion** 94:5  
**posing** 64:17  
**position** 6:7 15:14 28:10 29:8 40:4  
 48:16 56:15 62:3 90:18 102:25  
 103:19,19,19 104:23,24,25  
 105:10,11  
**positions** 52:23 102:17,18 103:2  
 104:10  
**positive** 48:2  
**possibility** 61:12  
**possible** 3:15 11:7 12:20 14:11

63:25 72:19,22 75:21 95:16 96:9  
**possibly** 10:1  
**post** 42:24  
**posted** 95:18  
**postpone** 62:16 66:10,15 67:3  
**posts** 42:23  
**potential** 37:16  
**potentially** 34:25 46:8 50:25  
**powers** 55:6  
**practical** 90:22  
**practice** 11:7 54:6  
**practicing** 38:21  
**prayers** 110:10  
**pre** 93:6  
**precedence** 32:7  
**precedent** 34:13 37:21  
**pregnant** 32:22  
**prepare** 13:2  
**prepared** 97:15  
**prerequisite** 105:14  
**present** 2:13 4:9,15 6:16 18:25  
 20:8 73:21 94:14  
**presentation** 38:11 43:23 46:23  
 49:12 72:2 109:3,6  
**presented** 8:14 18:10 27:22 49:15  
 50:13 72:9,16 77:20 78:1,5,25  
 86:10 101:9 106:15 108:4,9,15  
 108:22  
**presenting** 19:8  
**pressure** 58:1,2 59:8  
**pretty** 8:7 13:16 33:20 45:19  
 98:14  
**prevents** 64:23  
**previous** 27:2 32:8,14 58:3 60:3  
 87:2 92:19 93:15  
**previously** 54:23 93:18  
**price** 69:16,21  
**primary** 7:8 97:10  
**prior** 10:9,15 38:1 55:14 76:18  
 94:14 98:19  
**private** 68:2,3,5 71:17  
**privilege** 6:6  
**probably** 14:3 17:5 32:7 43:16  
 48:20 49:19 50:21 59:5 61:2  
 70:1 80:6 91:9 93:6  
**problem** 39:22 43:8 76:25  
**problematic** 37:23  
**problems** 19:7 47:3 77:14  
**procedural** 51:20  
**procedure** 38:25 66:10

**procedures** 77:3,5  
**proceed** 51:13  
**proceeding** 84:15  
**proceedings** 80:22 111:5,7,14  
**process** 11:16,17 12:10,17 50:20  
 53:23 58:8 62:21 63:17,20 64:2  
 66:6 68:18 73:11 75:24 82:11,20  
 107:13  
**processes** 68:19,22  
**processing** 68:13  
**product** 48:21  
**profession** 57:5 59:1 85:1 89:1  
**professionalism** 57:9  
**proffer** 34:8  
**proffering** 35:20  
**proficiency** 88:16  
**program** 16:3 87:4 88:5 91:18  
 93:6,7,17,17,18,23 94:3  
**programs** 15:24 103:16  
**progress** 14:1,4,22  
**projector** 69:5,6  
**prone** 102:20 103:19,25  
**proper** 52:1 66:10  
**proposal** 55:11 67:17 87:1  
**proposals** 67:21  
**proposed** 3:14,15 12:16 67:6,9  
 72:7,20,22 73:17 75:12 85:7,8  
 85:11 86:4 96:1,15 99:22 106:22  
**proposing** 74:21  
**prosecute** 84:8  
**prosecution** 81:2 83:21  
**prosecutor** 84:3,8  
**protect** 35:3 109:20  
**protection** 14:16  
**proven** 91:19  
**provide** 48:16 55:12 64:6,14 97:9  
**provided** 15:14 66:18 94:11,15,19  
**providing** 8:21 80:12  
**provision** 16:22  
**Provisions** 74:6  
**psychological** 68:14,16 70:2,13,18  
 105:15  
**PT** 59:3,7,11 91:1 92:4 93:7  
**public** 3:8,11,23 6:25 13:7 17:12  
 17:14 20:12 25:24 26:2,6,23  
 27:15 55:19,22 74:9 76:7,11,13  
 87:6,20 88:1 94:5,8,13 95:6,9,9  
 95:18 99:8 104:8 110:1  
**published** 74:9 87:6 95:5  
**purpose** 95:23

**pursue** 62:13  
**purview** 95:5  
**push** 14:24,24 15:12 50:16 58:19  
 92:25  
**pushing** 14:19 15:10  
**put** 43:5 50:23 51:20 69:13 70:20  
 82:21  
**putting** 76:11

---

**Q**


---

**qualification** 104:19  
**qualifications** 37:12 60:18 105:6  
 105:23  
**qualified** 15:7 38:15  
**qualifies** 43:19  
**quality** 34:21 35:24  
**quandary** 52:5  
**quasi-comment** 56:12  
**question** 10:24 13:1,17 15:21,22  
 18:10 19:10 32:6 39:17,18 41:6  
 43:17 45:4,13 46:1,14 49:15  
 50:4,12 52:23 53:4,13 54:17,21  
 57:19 58:2,5,10 64:15,25 69:12  
 69:19 70:15 79:5,15 81:17 87:18  
 90:8,11 95:1 97:18 100:15  
 103:24 104:12 107:8  
**questions** 12:23,24 15:19 17:6  
 45:8 46:12 56:10 62:13 69:8,11  
 71:24 76:21 87:7 89:12 97:4,17  
 99:20 101:16 107:22  
**Quezada** 4:18  
**quick** 13:12 59:17

---

**R**


---

**rabbit** 54:7  
**raise** 67:19  
**range** 104:1  
**rarely** 29:21  
**rate** 18:19  
**ratification** 3:9,11 20:13,16 25:24  
 26:2 27:14  
**ratifications** 24:5  
**re-begin** 50:19  
**re-entry** 3:12 27:18,21  
**reached** 109:7  
**reaction** 38:5  
**read** 42:23 76:18 84:18  
**reading** 83:7  
**reads** 77:2  
**ready** 76:19 96:3 99:10

**reality** 69:20  
**realize** 39:22  
**realized** 47:17  
**really** 11:7 13:1 15:10 36:8 92:15 109:14  
**reason** 32:1 37:9 40:22 48:9 75:23 79:13 80:3 81:11 82:21 90:23 96:5 99:13  
**reasoning** 81:13  
**reasons** 10:24 54:5,16 67:15 80:18 81:4 91:10  
**recall** 32:19 50:24 53:11  
**receive** 66:11  
**received** 10:13 11:20 74:1,3 76:5 76:18 89:7 94:8,13,23  
**Recess** 3:18 109:4  
**recognize** 73:2,15  
**recommendation** 12:1  
**recommended** 74:7 75:17 85:9  
**Reconvene** 3:18  
**record** 17:9 67:1 75:13 76:2 94:9  
**records** 107:15,20 108:1,4,9,13,16  
**recruiting** 58:22 74:13,18 75:1,5 78:7 87:10,16 89:16,19,24 97:6 99:23 100:1,6 106:3,7,10  
**red** 67:22  
**reducing** 93:17  
**reemphasize** 43:15  
**reenter** 64:7  
**refer** 97:1  
**reference** 18:1 74:1 97:6 106:3  
**referenced** 22:15  
**references** 75:1 78:14  
**reflect** 13:18 17:9 67:1 75:3 81:15 90:5  
**refresh** 39:6  
**regarding** 3:12 27:18 56:16 63:10  
**regardless** 46:4 49:19 51:3  
**regs** 49:22 92:10  
**regular** 1:6 71:14  
**regulations** 84:11  
**reissue** 68:6  
**relate** 37:5 91:3  
**related** 111:11  
**relates** 96:7  
**relating** 99:23  
**relationship** 48:15,25  
**relieved** 28:10 30:11  
**rely** 40:24  
**remains** 65:1

**remember** 57:25  
**removing** 93:16  
**rephrase** 70:14  
**replace** 87:10 97:7 106:4  
**replaced** 87:17  
**replacing** 74:14  
**report** 3:7 5:25 6:2 12:13 13:4,8 17:7 22:15 59:23 63:9 66:12,13 66:13,16 71:25 73:17 111:6  
**reported** 1:22 7:14  
**REPORTER'S** 111:1  
**reporting** 11:22 12:11 14:17 79:8  
**reports** 7:12 13:3,18,19,20 14:7  
**represented** 8:17  
**request** 3:12 10:10 21:3 22:2 27:18 39:23 49:17 51:4,9 52:1 56:14 62:25 64:5 65:3 66:16 67:4 75:7  
**requested** 10:7 51:4  
**requests** 109:3  
**require** 11:9 77:6,15,21 81:19  
**required** 35:9 42:6 54:19 90:14 98:23  
**requirement** 10:21 11:1 16:15 31:7,22 80:21 91:13 93:8  
**requirements** 10:19 14:10,17,18 18:15 21:2 22:2,17 24:16 27:2 28:3,15,19 29:25 30:1,4,17,23 31:15 33:17 35:11 39:3 41:3 79:9 90:16 92:21 97:2 98:3,4,7 103:15  
**requires** 77:6,14,21  
**requiring** 7:11  
**reschedule** 33:11  
**research** 49:18 50:3 51:1,7,25 56:20 63:6 65:6,11  
**residential** 71:4  
**respect** 42:12 47:19 59:18,19  
**respectfully** 6:16  
**respects** 43:23  
**respond** 35:5 55:15 88:6  
**responded** 10:14 13:23,24,25  
**response** 11:24 12:1,2 14:13 89:6  
**responses** 10:13 16:5,24  
**responsibilities** 81:16  
**responsible** 6:15 71:4  
**rest** 39:6 58:7 59:12 85:3  
**retest** 41:23  
**retested** 41:20  
**retire** 31:24

**retired** 91:20,25 110:7  
**retirees** 90:12 92:11  
**retrofitting** 8:9  
**return** 28:8 46:15  
**revamping** 8:3  
**revert** 85:21  
**review** 7:22,24 51:18 54:23 55:7 57:17 62:18 63:16,21 66:12,12 66:13,16 67:14 75:25 97:14 105:8  
**reviewed** 63:23  
**revocation** 79:7 84:6  
**rewritten** 19:19,20  
**rewrote** 19:22  
**right** 5:6 14:14 16:25 33:12 35:13 38:8 39:9 43:18 45:21 46:5 48:12 51:20,23 52:17 55:3,8,17 55:25 57:14 61:25 63:11 64:15 85:14 89:4 98:6  
**rights** 50:22  
**rigid** 58:14  
**road** 31:24  
**role** 16:8  
**roll** 3:4 4:4,6  
**room** 8:13 9:25 42:15,25 58:20 70:7,24 80:3 81:12 82:21  
**rough** 109:11  
**roughly** 70:23  
**rounds** 104:23 105:1  
**RPR** 1:22 111:22  
**Ruidoso** 1:9  
**rule** 3:15 11:12 17:20 53:21 60:14 64:2 68:8 72:20,22 73:17,21 74:5 77:20 78:1,5,9,15,20,21,25 79:3 80:20 84:5 86:9,15,19,22 88:7 89:20 90:4,7 92:17 94:1 96:12,18,22 97:10 100:1,3,11,13 101:3,5,9,13 106:10,15,22,24  
**ruled** 107:6  
**rulemaking** 88:3 98:22  
**rules** 11:14 12:16 54:20,25 63:25 67:18 73:13,24 75:25 76:1 80:14 84:11 92:9,10 95:15,22 104:1 107:15,16,21,25 108:4,8,13,14 108:16 111:12  
**run** 28:11,13 37:11,17 38:25 39:4 41:9,14 42:9 53:6,16 91:6,23  
**runaway** 84:1  
**running** 9:20 30:16 37:11  
**rural** 49:25 50:14 58:1

## S

**S** 77:17  
**safety** 3:11,23 7:1 25:25 26:3,6,23  
 27:15 55:19,20 56:5,5 81:25  
**San** 9:5 21:23 26:22 61:4  
**Santa** 3:16 8:11 9:23 28:9 29:18  
 31:2 33:6,19 40:17 44:25 47:23  
 49:7 61:15 108:17,20  
**satellite** 6:19 8:1,16,18 9:19 47:24  
**Saturday** 31:7 110:3  
**saying** 35:14 38:15 53:23 58:15  
 61:17 64:22 85:2 91:3 103:8  
**says** 21:5 28:17 52:20 55:17 77:5  
 77:7,14,15 83:3,3,4 90:13 97:24  
 106:6  
**scenario** 84:24  
**schedule** 3:17 7:6 8:13 29:19,20  
 31:5 33:8,18,19,20 40:19 41:2  
 46:17 60:4 61:14 108:18,21  
**scheduled** 6:24  
**score** 38:16  
**scores** 20:1  
**Scot** 2:7 4:8  
**sealed** 82:23  
**seated** 5:4  
**second** 5:10,11,21,22,23 6:7 16:14  
 21:16,17 22:6,7,23,24 23:22,24  
 24:22,24 25:15,17 26:13,15 27:9  
 27:10 42:9 51:9 52:7 64:16  
 65:23,25 66:5,18,20,21 70:5  
 72:10,11 77:22,24,25 78:11,12  
 78:20 85:19 86:1,3,5,16,17,18  
 89:21,22,23 95:1 96:16,18 100:3  
 100:4,5 101:6,7,8 106:12,13,14  
 106:25 107:1,2 108:5,6,7 110:17  
 110:18,19  
**secondly** 34:17  
**seconds** 37:12,18 39:10 41:9,10,14  
 104:24  
**section** 67:23 68:12 76:6,15 78:18  
 79:17 80:7 93:1 95:1,2,3,17,17  
 101:18 106:8  
**sections** 73:21 95:13  
**see** 9:19 13:8 36:6 41:24 42:15  
 56:3 58:8 59:12 60:25 71:6  
 82:21 83:8,9 85:2 90:13 101:24  
 103:8  
**seen** 91:11  
**self-sponsor** 70:11  
**self-sponsored** 69:25

**self-sponsoring** 70:17  
**send** 48:19  
**sends** 70:15  
**sense** 80:17  
**September** 1:7 3:18 110:25 111:4  
**Sergeant** 4:18  
**serve** 30:20,22,24 36:20 45:15,22  
 109:13  
**served** 62:5  
**serves** 48:10  
**service** 92:11 109:14,16,17 110:2  
**services** 67:14 92:3,9  
**session** 13:4 98:18  
**set** 29:18 33:20,23 34:13 37:20  
 39:23 60:24 61:22 95:8 111:7  
**seven** 12:2 38:3 102:8  
**seventh** 33:1  
**shalls** 85:12,15  
**shape** 30:16  
**she'll** 61:17  
**sheriff** 2:5 3:12 4:12,13 5:9 16:11  
 16:23 22:7 23:10,21 25:14 27:18  
 27:21 29:7,7,8,10 30:20,22,24  
 30:25 31:8,12,17 35:2 36:18,18  
 36:19,23 37:6 38:8,22,24 39:9  
 39:21 40:2 41:13 43:24 44:3,4  
 44:24 45:3,7,10,12,15,16,22,23  
 46:13,18,20 51:12 52:9,15,19,24  
 53:15 58:3 59:19 60:17,21 62:5  
 62:12 63:11 64:3,7,9,14,16,20  
 65:5,12,21 66:6,9,15 78:12  
 81:25 86:17 89:22 100:4  
**sheriff's** 9:16 18:24 36:14 37:13  
**sheriffs** 18:1 20:2 31:15,20 42:15  
 42:25 48:4,10,18 52:18,20 58:20  
**Sheriffs'** 12:9 17:25 28:1,5 42:18  
 87:21 92:25  
**shift** 59:22 60:6  
**shifted** 60:5  
**shocked** 13:20  
**shoes** 41:7  
**shoestring** 43:4  
**shoot** 12:11,20 103:18,25 104:15  
 105:19  
**shooting** 102:5,17,18,19 104:10  
 104:13  
**short-handed** 9:25  
**shorthand** 111:6  
**shut** 60:8  
**side** 67:22

**Sierra** 1:8  
**significant** 14:17 29:21  
**silence** 4:24 5:3  
**Silver** 9:3  
**similarly** 87:9  
**simple** 53:4,13  
**simply** 68:4,23 80:12,25 97:10  
**sir** 15:16 17:15,16,21 19:14 20:19  
 21:7,10,22 22:12 23:4 24:9,11  
 24:13 25:6 26:4 27:17,23 31:16  
 32:15,17 35:5 36:21 42:9,10  
 45:10,16 46:13,18 56:8 67:11  
 69:17,18 71:3,8 75:5 77:18  
 79:20 99:4,15 104:18 105:5,17  
**sitting** 93:16  
**situation** 40:1 44:9 58:13 61:5  
 62:7 81:23 83:23 84:7 103:13  
**situations** 32:9 62:21 84:11  
**six** 24:7,8 37:4,5 38:3 77:6  
**six-month** 11:1 16:15  
**size** 36:24  
**skills** 15:8 88:19  
**slightly** 69:7 102:7  
**slippery** 53:8 57:10  
**slope** 53:8 57:10  
**slowly** 48:20  
**small** 30:2 33:14 44:9 58:1 76:23  
**smaller** 10:25 16:22 37:2  
**Soland** 2:6 4:14,15 5:22 13:22  
 15:20 16:10 22:24 24:24 26:15  
 27:10 37:1,4 91:24 107:1 110:18  
**solutions** 51:10  
**somebody** 35:23 57:19 68:7 70:10  
 82:22  
**somewhat** 40:1  
**sorry** 23:14,14 69:5 100:16,25  
**sort** 11:3 56:21 88:13  
**sorts** 34:10,12  
**sought** 7:12  
**sound** 34:17  
**Southeastern** 8:23 20:22 31:3  
 33:2,15 40:11,22 46:16 49:9  
 61:3,13  
**Southwest** 7:21  
**spacing** 107:21  
**span** 98:6  
**speak** 29:11 80:10 90:24  
**speaks** 47:11  
**special** 39:23 83:21 84:3,8 109:3  
**specific** 16:1,5,9 74:21 88:4 94:22

104:1 107:20  
**specifically** 8:16 74:24 104:5  
 105:8  
**specifies** 104:21,22  
**specify** 104:9,10  
**spite** 45:23 59:21  
**sponsored** 71:19  
**square** 36:12,14 45:5  
**staff** 33:14 40:18,24 47:22 59:22  
 75:16 107:14,25 108:3,8,14,15  
**stages** 12:8  
**stance** 101:24 102:3,7 104:11  
**stances** 102:5  
**stand** 4:24 41:12 61:25 62:19 69:8  
 87:7 97:16 102:11,14,15 103:11  
 103:12 105:19  
**stand-alone** 48:9  
**standard** 34:6 37:8,18,19 41:17  
 43:18,18 53:22 54:3 56:17 57:5  
 58:24 59:5,11 62:1 91:22 104:15  
**standardization** 50:6  
**standardize** 75:3 80:8  
**standards** 10:12 12:15 30:18 53:5  
 53:10 58:3 59:3,7 60:24 61:22  
 61:23 62:2 93:10 103:3  
**standing** 52:3 68:8 102:23 103:18  
 103:25 104:23 105:11  
**standpoint** 34:8  
**stands** 39:15 96:2  
**start** 30:12 33:16 34:1 38:9 49:7,8  
 50:18 57:7 61:18 65:13  
**started** 6:22 8:25 9:6,13,23 10:4  
 34:3 61:20  
**starting** 17:11 27:7 69:7  
**starts** 50:21  
**state** 6:14 8:22 9:10 16:7 21:1,25  
 22:14,16,21 24:16 26:25 30:23  
 31:21,25 37:1,16 44:7 48:19  
 52:18,20,21 58:18 67:18 71:13  
 72:25 88:25 89:3 90:25 91:25  
 92:11 94:9 104:15 105:23  
 107:15 108:4,9,13,16 109:18  
**state's** 16:3  
**state-of-the-art** 8:2  
**stated** 44:14 54:12  
**statement** 92:18  
**statements** 80:13  
**states** 10:8,13,14,17 13:14 15:23  
 49:21 50:3 52:23 54:1 88:11,13  
 89:6

**stating** 54:19  
**statute** 50:15 52:20 55:5,24 77:2  
 105:23  
**statutes** 49:22 63:25  
**statutorily** 98:13,23  
**statutory** 11:9,10 31:14 74:16  
 98:4  
**stay** 48:2  
**stenographic** 111:6  
**step** 40:4,5 73:9  
**Stephan** 2:14 43:2 48:3  
**stepped** 29:6 89:1  
**stick** 95:24  
**stones** 35:18  
**stop** 37:15 90:20  
**story** 83:16  
**straight** 102:6  
**strain** 29:3  
**streamline** 68:21  
**strict** 91:12,14  
**strike** 87:9 106:2,10  
**strike-through** 74:7  
**strike-throughs** 95:25  
**striking** 74:13  
**strong** 37:2 73:6  
**struck** 69:4 97:7  
**structure** 3:14 14:20 67:7,10,14  
 68:10 69:10 72:9,16  
**structured** 40:12 91:16  
**structures** 67:19  
**struggle** 43:17 46:3  
**struggling** 45:24  
**student** 69:25 93:10  
**stuff** 64:10  
**Sub** 79:21  
**subblocks** 7:23  
**subcommittees** 73:9  
**subitems** 72:23  
**subject** 75:25 104:3  
**subject-verb** 76:25 77:13  
**submitted** 94:14  
**subsection** 77:13 79:9,11,12,23  
 82:18 83:14 85:22,22 86:3,23  
 96:23 101:15,22,25  
**Subsections** 86:5  
**subsequently** 84:2  
**substituted** 79:22,23  
**succeed** 31:20  
**sufficient** 85:10 88:12  
**suggesting** 31:3

**Suites** 1:8  
**sum** 43:25  
**summary** 81:2 87:3 96:25  
**Sunday** 31:7  
**sunset** 99:14,17  
**support** 38:23 62:6 84:15 89:8,10  
**supporting** 62:8  
**suppose** 92:17 96:2  
**supposed** 43:7 48:9  
**sure** 7:16,19 12:19 15:11,17 18:19  
 23:12 32:16 46:5 47:10 54:14  
 61:2 63:1 74:2 76:13 97:14,19  
 107:10  
**surface** 35:4  
**survey** 10:12  
**suspend** 81:10  
**suspension** 12:4 79:7 81:3 84:20  
**switch** 85:8  
**sympathetic** 50:7 56:15 57:11  
**synopsis** 97:9  
**system** 82:12

---

**T**


---

**table** 66:15 67:3  
**tactics** 34:6 35:8,10 37:14  
**tag** 69:16,21  
**take** 18:5,15 21:12 22:19 23:8  
 29:8 36:23 40:4 42:5,6 47:11  
 49:15 55:9 56:2 58:15 62:14,24  
 63:4,5 66:7 68:18 72:1,17 73:9  
 73:10 77:17 92:6,6,8 100:6  
**taken** 6:18 29:8 46:4 55:21 111:5  
**takes** 80:22 82:11  
**talk** 28:3 29:16 35:14 89:9  
**talked** 7:7 13:19 32:12,13 34:11  
 36:8 61:6  
**talking** 15:25 35:15 40:21 64:10  
 93:5 98:16 103:17 104:11  
**talks** 100:17 101:23  
**taught** 20:6  
**Tays** 110:3  
**teach** 33:10 61:16  
**teacher** 77:1  
**teaching** 15:8,8  
**technical** 74:12 75:24  
**teeny** 76:23  
**telecommunicator** 7:1 26:6,23  
 79:8 81:6  
**telecommunicators** 3:11,23 7:2  
 25:25 26:3 27:1,15

**tell** 16:14 17:19 41:18 42:20 61:14  
 65:12  
**telling** 9:24  
**ten-minute** 72:1,17  
**tension** 45:19,19  
**term** 57:10  
**terms** 31:14 32:13 49:21 50:17  
 51:10  
**test** 8:4,5,7 18:15 19:11,17 37:14  
 42:7 92:4,6  
**testimony** 94:17  
**testing** 91:1 105:5  
**tests** 42:5 59:25  
**Texas** 88:14  
**thank** 5:4 6:4 13:2,10 15:16,18  
 16:10 17:7,8,10,17 20:9,10,19  
 20:21 21:22 22:12 24:12 25:11  
 26:9,13 27:5,16,17 44:5 46:11  
 46:19,20,20 49:3,11,13 60:20  
 65:16,18,20 71:23,25 73:3,14  
 76:16 86:25 88:22,23 92:13  
 96:24 98:25 105:25 109:10,16  
 109:17,19 110:10,11  
**thanks** 110:9  
**thing** 37:19 38:8 43:3,18 45:21  
 46:5 63:15,22 65:17 76:5,24  
 79:22 82:22 87:8  
**things** 11:16 12:13 13:6 19:3 28:5  
 30:2 32:23 40:13 41:25 43:11  
 47:6 48:6 55:18 59:22 60:5,9  
 62:10 67:15 69:1,3 82:25 96:1  
 104:17 107:22  
**think** 6:10 10:5,24 11:8 14:10,12  
 14:15 24:6 34:14 36:2,24 37:25  
 39:12,22,24,25 40:5 43:15 44:14  
 45:24 47:1,2,10,14 48:11 51:2  
 51:23 52:12 53:3,8,8,19,25 54:7  
 54:15,17,21,24 55:3,7,8,23 56:6  
 56:17,24 57:7,14,16,22 58:2,6  
 61:20 62:4,6,12 63:15,22,24  
 69:14 73:20 80:7,16,18 81:18  
 82:8,13 83:1 84:22,24 85:8  
 87:22 92:18,22 96:6 99:15,17  
 103:7 104:9 105:2  
**thinking** 36:7 103:3  
**third** 51:5 56:13 70:7  
**thought** 47:17 51:17 66:1 71:11  
**three** 11:4,25 16:14,17 19:25  
 29:20 51:5,10 52:17 56:19 58:18  
 77:4 83:20 84:7 86:13 88:17

**three-quarters** 83:13  
**throw** 35:18  
**Thursday** 31:6  
**ticket** 83:22  
**time** 7:13 9:22 13:18 30:5,18  
 31:21 34:6 38:4,14,21 39:3,4  
 40:8 50:19 51:16 53:9 54:7 55:9  
 56:10,25 59:1,2 61:7,11 65:16  
 67:18 68:24 73:5,10 75:16 79:3  
 83:25 91:4 92:23 94:20 95:5  
 96:13 98:11,21 99:6 105:1  
 107:18 110:15  
**timely** 15:15  
**times** 40:15 42:12 47:21 56:19  
 57:13 58:18 69:15  
**tiny** 76:23  
**today** 8:18 44:5 46:4 53:18 64:9  
 109:1  
**today's** 11:15  
**tomorrow's** 109:23  
**topic** 98:13  
**topics** 61:19  
**total** 12:7 16:20 88:18  
**tough** 57:18  
**track** 38:6  
**trail** 54:8  
**trained** 15:2  
**training** 6:15 7:3,5,9,10,17,21 8:2  
 8:14,21 9:21 10:2,3,12 13:18,19  
 14:17,25 15:14 28:25 33:23 34:2  
 34:21,22 35:3,24 48:16 58:3  
 59:22 69:18 70:6,11 71:2 74:13  
 74:18 75:1,4 78:7 87:2,9,16  
 88:10,12,15,16 89:9,16,19,24  
 97:1,1,6,25 98:3,5,7 99:23 100:1  
 100:6,15 103:16,17 104:3 106:3  
 106:6,10  
**trainings** 14:20,22 15:3  
**transcript** 94:12  
**transcription** 111:8  
**transparent** 42:21  
**tribal** 37:3 71:13,22 92:1  
**tried** 14:20 47:13  
**trouble** 9:24 49:24  
**true** 111:8  
**truly** 105:10  
**try** 11:17 12:11 14:1 61:18 93:4  
**trying** 7:16,18 50:24 55:16,24  
 56:20 70:11 71:17 75:2 80:8  
**turn** 73:15 80:10

**turned** 37:16  
**turnover** 82:10  
**Twenty-five** 83:19  
**twice** 91:1 92:4,6  
**two** 11:2 16:16 24:6,20 25:3 29:14  
 29:15 33:5 37:17 40:20 41:9,14  
 42:9 51:3 58:18 68:11 71:5 77:3  
 77:13 83:6,20 84:7 85:14,15  
 88:14,17,18 89:1 94:6 102:4  
 104:23  
**two-week** 33:22,23  
**two-year** 97:2 98:6  
**twos** 57:8  
**type** 7:10 49:25 63:21 81:22  
**types** 29:14,16 102:4

---

 U
 

---

**Uh-huh** 85:17  
**ultimate** 44:17 99:11  
**ultimately** 44:16  
**unclear** 50:17 51:12,15 64:17  
**underlined** 95:24  
**underlining** 107:21  
**understand** 19:2 28:2 35:13,14,18  
 36:5,9 38:7,10 40:2 41:5 42:25  
 44:8 63:3 64:23 71:23 79:13  
 81:12 90:17  
**understanding** 19:20 63:16 75:22  
**understands** 28:12  
**unfortunate** 32:12  
**unfortunately** 90:25 93:22 95:2  
**uniforms** 70:4  
**unique** 39:23 80:16  
**units** 8:10  
**universities** 71:14  
**university** 9:3 24:15 110:4  
**unnecessary** 92:23  
**up-front** 70:12  
**up-to-date** 8:2  
**upcoming** 7:6 15:15  
**update** 8:6  
**updated** 8:13  
**updates** 28:24 35:10  
**updating** 8:5 68:24 69:10 97:10  
**upgrade** 8:11  
**uphill** 47:25  
**uphold** 53:10 54:4 57:12  
**urban** 50:1  
**use** 57:10 87:23  
**useful** 6:11



**usually** 29:19 34:4 47:11  
**utilities** 68:25

---

**V**

---

**vacuum** 18:9 19:3 42:2,19 43:11  
**Valencia** 70:15  
**validated** 18:7  
**value** 47:20  
**valve** 81:25  
**variety** 10:14  
**various** 12:8 103:15  
**VCR** 69:5  
**vehicle** 30:9 33:23 34:2  
**vendor** 68:2  
**vendors** 68:3  
**verbiage** 89:15 99:23 106:6  
**version** 8:8 76:8  
**versions** 74:7  
**versus** 49:25  
**vetted** 98:1  
**Vice** 2:3 17:10  
**victorious** 45:14  
**virus** 60:7  
**vitality** 73:11  
**vote** 51:16,20,25 52:2 54:20 55:10  
 62:15,15 63:11 64:13,19 65:22  
 85:8 88:3 95:8 99:7,9  
**voted** 67:2 75:16,18,19 98:22  
 100:23 105:7  
**voters** 45:21  
**voting** 72:3 87:15

---

**W**

---

**wait** 41:13  
**waive** 38:13  
**waiver** 18:18 39:13 43:19 53:16  
 53:20 56:14 62:6,9 64:6,14  
 71:12 87:2,3,20 90:15 92:20  
 102:7 103:9  
**waivers** 34:10,12 50:13  
**Waller** 2:5 4:12,13 5:9 16:11,23  
 22:7 23:10,21 25:14 36:18 38:24  
 39:9,21 51:12 62:12 63:11 65:21  
 66:6,9,15 78:12 86:17 89:22  
 100:4  
**Waller's** 64:17 65:6  
**wane** 69:7  
**want** 15:13 32:22 34:13 42:11,16  
 42:16,22 43:10,15,23,25 44:2  
 46:5,25 47:1,14 49:1 50:21 52:4

53:25 54:11 60:22,22 63:15 65:1  
 74:1 76:5,10 80:9 81:5,7,11 94:8  
 97:19 107:17 109:10,19 110:1  
**wanted** 14:3 31:24 34:7 40:9 76:2  
 88:20 89:4 94:6,25 96:8 98:24  
 103:4,9  
**wanting** 85:15  
**wants** 43:24 49:20 61:2 81:19,20  
 85:4  
**wasn't** 16:5 39:8 41:22 87:25 94:4  
 103:7  
**way** 10:9,25 13:2 38:13 39:12  
 45:20 47:9,11 48:13 49:19 51:1  
 55:3 56:20 58:11 69:2 73:24  
 83:13 91:17 98:25  
**ways** 69:24  
**we'll** 4:2 5:6 11:15 12:18 36:3  
 38:14 46:10 65:10 67:8 75:20  
 95:24  
**we're** 6:15,23 7:15,16,17,18 8:3,5  
 8:7 10:5 12:14 14:18 15:10,12  
 20:17 37:2 39:4,16 40:21 41:24  
 42:4,20 43:9 45:24 46:22 48:17  
 49:14 51:23 53:3,13 58:22,25  
 59:9,14,23 60:14 63:4,4 66:6  
 71:4 72:21 91:10 97:13,15,15,20  
 99:2 100:20 103:16 104:11  
 109:14  
**we've** 7:14 8:9,11,13 12:15 32:7  
 32:12,13 34:11,12 38:9 39:2  
 42:12 53:10 60:11 61:20 62:1,1  
 76:18 79:9,10,11 103:2 105:3  
**weapon** 102:13,14,17  
**web** 42:22  
**Wednesday** 3:18 110:25  
**week** 28:9,18 30:7,13 31:1 33:1  
 35:12 41:21 42:5,6 45:1 49:6  
 60:6,13 61:1,17 64:7,14 65:14  
 65:15 87:20  
**weekends** 45:4  
**weeks** 19:12,18 29:2 33:5 44:12  
 44:13,21 84:7  
**Welcome** 17:15  
**went** 18:20 48:13 51:18 88:13  
 92:1  
**weren't** 18:18  
**Wesley** 2:5 4:12  
**Western** 9:2 24:14  
**whatsoever** 57:17 111:13  
**wide** 10:14

**wiggle** 80:2 81:12 82:21  
**Williams** 1:22 111:3,22  
**willing** 29:11 40:4 53:5,14 65:13  
**wish** 38:22 79:18  
**wishes** 80:20  
**wishy-washy** 56:22  
**withdraw** 103:21  
**woman** 90:11  
**women** 6:13  
**wondering** 66:3 80:2  
**word** 34:19 77:20 85:23 88:21  
**words** 43:24 68:7 88:25 110:10  
**work** 8:21 10:9,15,18 11:10 13:14  
 13:25 31:6 41:6 47:6 48:13,21  
 55:12 68:18 73:16 91:21 92:1  
**worked** 7:21  
**working** 7:15 8:3 48:24 65:18  
 75:2 84:25  
**works** 99:3  
**worried** 62:14 83:10,10  
**worry** 70:16  
**worst-case** 84:24  
**wouldn't** 19:15,16 33:16 41:19  
 70:25 82:24 96:10 98:9 105:20  
**written** 94:1,14,17 103:2  
**wrong** 23:14 40:3 53:18 64:24  
 80:24 97:20

---

**X**

---

**X** 91:3 104:23,25 105:1

---

**Y**

---

**Y** 91:3  
**Yeah** 69:19  
**year** 6:22 7:6 8:23 9:9 10:18,22  
 15:1,2 47:16,22 58:18 60:2  
 82:11 88:16 91:1 92:4,7 97:12  
 99:6  
**years** 11:2 16:16 29:20 83:19  
 88:14,17,18 89:2  
**yell** 47:13  
**yelling** 47:14,17  
**young** 31:18 32:19 103:4,8

---

**Z**

---

**Z** 91:3

---

**0**

---

**00-0132** 25:10  
**03-0028-PR** 26:7  
**04-0045** 25:10

---

**1**

---

**1** 3:3,21,23 4:1 21:5,9,11,14,15,21  
 26:5,11,17,20 75:17,19 77:3  
 79:11,21,23 80:14 81:16 82:18  
 83:14 85:12,22 86:3,5,12 87:14  
 94:21,23  
**1,000** 10:22 16:7 84:11  
**1,250** 69:16 70:12  
**10** 3:14 9:6 67:6,9 95:2,17 110:3  
**10.29.1** 74:5,24 75:9 78:18 86:15  
 86:19  
**10.29.1.1** 78:7  
**10.29.1.11** 79:6,21 83:14 85:21  
 86:3  
**10.29.1.6** 76:24  
**10.29.1.8** 76:6  
**10.29.6** 75:9 86:23 87:1 90:4  
 96:22  
**10.29.6.10** 90:12  
**10.29.6.6** 88:8  
**10.29.7** 75:10 96:24 100:1 101:3,5  
 101:9,14  
**10.29.89** 106:10  
**10.29.9** 75:10 101:19 106:22,24  
 107:3,6  
**10.29.9.14** 100:17 101:22,25  
 102:16  
**105** 13:23  
**107** 1:8  
**108** 3:17  
**109** 3:18  
**11** 3:15 29:2 44:13 61:17 64:14  
 72:19,21  
**11-0009** 25:10  
**11-week** 38:4  
**115** 9:12 23:5  
**116** 9:13  
**11th** 9:7 28:9,18 30:7,13 31:1  
 35:12 42:5,6 49:6 64:7  
**12** 3:16 9:4 11:10 60:13 61:2  
 108:17,20 109:6  
**12/31/16** 111:23  
**12:00** 1:7  
**12:06** 17:10  
**120-hour** 93:7,18  
**13** 3:18 109:4,7  
**132** 7:1 26:6  
**14** 1:22 111:3,23  
**15** 13:24 37:25  
**15th** 8:23

16 9:7 12:4 19:12,18 97:13

**16-0036-PS** 26:24  
**16-0041-PS** 26:24  
**16-0042-PS** 26:7  
**16-0068-PS** 26:8  
**16-0159** 20:23  
**16-0161** 20:24  
**16-0163** 20:24  
**16-0168** 20:24  
**16-0170** 20:24  
**16-0172** 20:25  
**16-0173** 20:25  
**16-0176** 20:25  
**16-0182** 20:25  
**16-0184** 21:1  
**16-0185** 21:1  
**16-0186** 21:24  
**16-0195** 21:25  
**16-0196** 22:15  
**16-0197** 23:6  
**16-0226** 23:7  
**16-0227** 24:13  
**16-0228** 23:14 24:14  
**16-0230** 25:9  
**16-0237** 25:9  
**16-week** 19:22 29:18 30:20 33:3  
**17** 3:8  
**17th** 9:2,8  
**192** 28:8 30:10  
**193** 6:22 30:12  
**194** 30:13 49:6  
**1st** 9:5 99:10

---

**2**

---

**2** 3:4,23 4:4 22:4,11 26:22 27:4,7  
 27:14 75:21 79:12 83:14 85:22  
 86:3,5  
**2,334** 45:5  
**2:40** 110:24  
**20** 3:10 8:25  
**2012** 93:6  
**2013** 93:6  
**2015** 74:17  
**2016** 1:7 3:6,18 5:15,17 6:20,25  
 9:2,5,13 11:20 110:25 111:4  
**2017** 99:1  
**2018** 99:2  
**2018-2019** 99:6  
**21** 9:17 100:15,15  
**21s** 100:16,19

**22** 8:25  
**227** 23:15  
**228** 23:15  
**22nd** 9:9  
**23rd** 11:14 74:10  
**24** 88:18  
**24th** 6:22  
**25** 3:11  
**27** 3:13  
**27th** 9:14,18  
**28** 7:1  
**28th** 9:13  
**29.7.6** 105:23  
**29th** 6:25

---

**3**

---

**3** 3:5 5:5 22:13,20,21 23:3  
**3,000** 70:1  
**3,600** 70:23,25 71:1  
**30** 9:12  
**30th** 9:15  
**31** 11:20  
**36** 27:7  
**37** 21:23  
**38** 9:6,14 10:13 11:20 16:23  
**39** 9:7

---

**4**

---

**4** 3:3,4,6 5:14 23:4,9,20 24:3  
 102:17,17  
**4/10** 31:5  
**40** 87:4 88:14 97:2  
**40-hour** 93:18  
**40th** 93:11  
**41** 27:7  
**45** 39:10

---

**5**

---

**5** 3:5,6,7 5:25 24:13,20 25:3  
 100:18 101:22 102:1  
**50** 41:10  
**500-man** 39:20  
**50th** 93:13,23

---

**6**

---

**6** 1:7 3:7,8,21 17:12,13 21:5 25:6  
 25:13,19,22 76:6 87:15,15 89:15  
 95:2 96:15 111:4  
**6,000** 39:10  
**60** 12:7 93:11  
**60-year-old** 90:11

**61** 9:4 24:15

**63** 6:23

**650** 37:2

**67** 3:14 6:23

---

**7**

**7** 3:9,18 20:13,16 79:19,21 83:12  
97:16 99:22 100:20,24 110:25

**70** 38:16

**72** 3:15

**79** 38:20

---

**8**

**8** 3:6,11 5:15 24:4 25:24 26:2,4

**8:30** 3:18 109:23 110:25

**80** 14:6 38:16 87:4 88:10,20 89:5

**82** 7:23

**88345** 1:9

**89** 25:8

**89-0345** 25:10

**8th** 5:17 6:20 9:1

---

**9**

**9** 3:6,12 5:15 27:18,20 66:11

100:21 106:6

**97-0130** 25:10

**9th** 5:17 9:18