

February 27, 2009

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BEFORE THE STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:	)	
	)	
STATE OF CALIFORNIA, Employer,	)	Unfair Practice
and PEACE OFFICERS OF CALIFORNIA,	)	Charge No.
Petitioner, and CALIFORNIA	)	SA-SV-171-S
STATEWIDE LAW ENFORCEMENT ASSOC.,	)	
Exclusive Representative.	)	
	)	
_____	)	

FEBRUARY 27, 2009

SHAWN CLOUGHESY  
Administrative Law Judge

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street, Room 214  
Sacramento, CA

Transcribed by: Leisa M. Miller

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APPEARANCES

Administrative Law Judge

SHAWN CLOUGHESY

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1 PROCEEDINGS - FEBRUARY 27, 2009

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3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
4 We're back on the record. The date is February 27, 2009.  
5 time is approximately 9:10 a.m.

6 This is day four of the proceedings of the Unit 7  
7 severance hearing. State of California is the Employer.  
8 Peace Officers of California is the Petitioner. The  
9 CSLEA is the Exclusive Representative, California  
10 Statewide Law Enforcement Association.

11 My name is Shawn Cloughesy. I'm the Administrative  
12 Law Judge assigned to hear this case on behalf of the  
13 Public Employment Relations Board.

14 This hearing is being held at the PERB Headquarters,  
15 Sacramento, 1031 18th Street, Sacramento, California.

16 If I can have the parties state their appearances for  
17 the record? Exclusive Representative first.

18 MR. MESSING: Gary Messing, Carroll, Burdick and  
19 McDonough. And with me is CSLEA Chief Counsel Kasey  
20 Clark.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf of  
22 the Employer?

23 MS. TRUONG: Shannan Truong, Legal Counsel for the  
24 Department of Personnel Administration. With me is Linda  
25 Mayhew, Assistant Chief Counsel for Department of

1 Personnel Administration.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf of  
3 the Petitioner?

4 MR. ROSE: Joe Rose representing Peace Officers of  
5 California. Seated to my left at counsel table is my  
6 associate, attorney Diane Sabonis. And seated to her  
7 immediate left is our case manager, Chris Lewis.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
9 We're going to be -- the ALJ and the witness are on  
10 channel one. The Exclusive Representative is on two.  
11 The Employer is on channel three. And the Petitioner is  
12 on channel four.

13 We are now I'll use the word in the open portion of  
14 the hearing. We are going to be interrupting the  
15 examination of Margaret Sklueff and going to be taking  
16 another witness for the petitioner.

17 So, sir, you know the drill by now. Why don't you  
18 come on up here. And I'll get out your -- please be  
19 seated. And I'll get out your Declaration.

20 (Off the record.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
22 We're back on the record. Marking as Petitioner's  
23 Exhibit U what appears to be a Declaration of Chris  
24 Lewis.

25 (Petitioner's Exhibit U marked for

1 identification.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, I'm going  
3 to ask you to raise your right hand.

4 (Witness sworn by the Judge.)

5 THE WITNESS: I do.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
7 your name for the record, spelling your last name.

8 THE WITNESS: Christopher Paul Lewis. L-E-W-I-S.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
10 as the case manager, I'm not going to be -- or designated  
11 representative, I'm not going to be asking you the  
12 traditional questions we've been asking people as far as  
13 in regards to whether they've reviewed the transcript or  
14 not, because you have a right to review the transcripts.

15 THE WITNESS: Uh-hmm.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, other than  
17 that, I'm going to be showing you the document Petitioner  
18 U. And if you can review that document and tell me what  
19 it is.

20 THE WITNESS: This is a Declaration that I prepared  
21 in lieu of direct testimony that I signed and dated on  
22 January 14th, 2009, in the city of Sacramento.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
24 are the contents of that Declaration true and correct to  
25 the best of your knowledge?

1 THE WITNESS: Yes.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Is  
3 there any corrections you need to make, or any --

4 THE WITNESS: After reviewing this, I think that  
5 there might be a terminology issue between how cases were  
6 presented when I was an insurance investigator as they  
7 are under the 830.11 Penal Code designated compared to  
8 what they would be presented to a district attorney's  
9 office under the 833 -- 830.3 designation.

10 Where as the insurance investigator I wrote in here  
11 that I filed cases. That was more of an introduction of  
12 or referral of a case to a district attorney's office in  
13 my capacity as the insurance investigator. Where as the  
14 830.3 peace officer, I can go down to the district  
15 attorney's office, and have, actually go to the counter  
16 and file a complaint, and then review with the D.A.'s  
17 office the finding of my investigation.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So  
19 you're saying that you did the first that you described  
20 is that you would go down to the D.A.'s office and  
21 recommend a filing? Is that --

22 THE WITNESS: That's correct.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 THE WITNESS: And I used the word "file" in both  
25 manners in the Declaration.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
2 right. Any other clarifications?

3 THE WITNESS: No.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any  
5 clarifications on your part, or additional testimony,  
6 Mr. Rose?

7 MR. ROSE: Yes.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

9 MR. MESSING: And before you do, I have a couple of  
10 preliminary issues.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

12 MR. MESSING: First, you haven't asked the witness  
13 about the transcripts, which you have been doing with the  
14 previous witnesses, whether they've seen the transcripts.

15 MR. CLARK: He said he had a right to see them  
16 because he's their designated representative.

17 MR. MESSING: Oh, I see. I'm sorry. Okay. I  
18 didn't -- I didn't hear that. We have not been -- heard  
19 any witnesses who have already testified be admonished  
20 that their testimony is confidential, which is something  
21 that's typically done. Is it your pleasure that --

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you want me  
23 to admonish this witness after the end of his testimony,  
24 I'd be happy to.

25 MR. MESSING: Okay. I'd also request that all

1 parties admonish all of their witnesses that once they're  
2 done testifying that their -- that this is a closed  
3 hearing and -- in that regard and that they're not to  
4 share their testimony with -- it's closed to other  
5 witnesses, and that they're not to share their testimony  
6 with other witnesses.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any  
8 objection, sir, Mr. Rose?

9 MR. ROSE: None.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On behalf of the  
11 Employer?

12 MS. TRUONG: None.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I  
14 will issue such instruction to the parties that those  
15 that have already testified only that not to speak with  
16 other witnesses except for --

17 MR. MESSING: Right.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- Mr. Lewis  
19 here or any of the representatives in any -- any of the  
20 representatives or any of the designated, I'll say,  
21 representatives that have been at the counsel table.

22 MR. MESSING: Thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So --

24 MR. ROSE: Well, Judge, in that connection, perhaps  
25 this is not the time, but we probably ought to have a

1 hearing on this matter because CSLEA is posting the  
2 testimony of witnesses on its website. And specifically,  
3 CSLEA has posted the testimony of Jerry Karnow on its  
4 website. And so I would like to set aside time separate  
5 from our allocation of five days to have a hearing on  
6 that question, since it was raised by counsel for CSLEA.  
7 And I'd like to bring copies of the website material from  
8 CSLEA's website showing that they're revealing testimony  
9 of witnesses on the worldwide web.

10 MR. MESSING: Okay. Well, I'm going to address that  
11 right now. It'll take a minute. That was posted before  
12 the issue came up before this body, number one.

13 And number two, we did not post the transcripts. It  
14 was a comment made about one part of Mr. Karnow's  
15 testimony and that's it. And as I said, that preceded  
16 any orders from this body.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I -- all  
18 right.

19 MR. MESSING: Yeah. I'm sorry. And there was also  
20 one comment about witness Bergstresser that was also the  
21 same time, preceding the order of the PERB regarding --  
22 the PERB ALJ regarding this matter.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
24 Well, we can discuss that later. But then here's my  
25 additional question. So, in light of that, is CSLEA

1 going to be removing those statements from their website?

2 MR. MESSING: Yeah. If we're directed to do so, we  
3 will.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, it's your  
5 motion that all the parties be admonished, and I mean  
6 it's --

7 MR. MESSING: I don't see that making a comment about  
8 one point that a witness raised is the same as not  
9 sharing transcripts of the hearing with witnesses. So,  
10 you know, frankly, I see those as two distinct matters.

11 However, if we wish to extend this to not putting up  
12 summaries of any sort of what the witnesses say, or  
13 references, then we will remove those references from the  
14 website.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any  
16 further input? Anything on your part, Mr. Rose?

17 MR. ROSE: Just to say Mr. Messing didn't say -- we  
18 weren't talking about transcripts. We were talking about  
19 witnesses discussing testimony with other witnesses. And  
20 he was quite indignant in that regard. They're  
21 characterizing that testimony of two witnesses on their  
22 website. Not transcripts, but characterizations of their  
23 testimony in that chair. And I would ask that they  
24 remove and desist from describing and explaining and  
25 sharing witness testimony on the worldwide web.

1 MR. MESSING: Well, I just want to comment that my  
2 alleged great concern over this matter is a bit in  
3 conflict with the fact that I proposed yesterday that we  
4 open up the entire hearing and let all of the transcripts  
5 and testimony be heard by everyone. So I'm not exactly  
6 sure what Mr. Rose is referring to.

7 But, in any event, we were the ones who raised this  
8 issue. Mr. Rose is the one who shared the transcripts  
9 with about eight or nine different witnesses, and so he  
10 is the one who had the advantage in this matter coming  
11 in, in any event.

12 So, with that said, we're willing to do whatever is  
13 proposed. But the previous order had to do with the  
14 transcripts and nothing else. Now we're raising this  
15 issue, and we'll go with whatever the ALJ directs on this  
16 matter.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any response on  
18 behalf of the Employer?

19 MS. MAYHEW: If I may speak?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: yes.

21 MS. MAYHEW: I think it's a sad state of affairs that  
22 we are here discussing the posting of transcripts and the  
23 discussion of witness testimony after the Administrative  
24 Law Judge, at the request of the parties, instructed that  
25 witnesses were to be removed from the room.

1           It's my understanding that the purpose of having  
2 witnesses removed from the room is that the testimony  
3 would not be discussed or distributed. So I find it  
4 somewhat distressing that we're here discussing this to  
5 begin with.

6           At this point, we again will say that we have no  
7 objection to opening the hearing or the transcripts  
8 because by now, if you will, the horse is so far out of  
9 the barn I don't see how we could go forward and with any  
10 real intent at all, with the exception, perhaps, of  
11 Ms. Sklueff, prevent dissemination of further  
12 information. I just don't think it's within our power  
13 now to do that given the circumstances we find ourselves  
14 in.

15           ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can't make  
16 such a ruling without every party agreeing to open up the  
17 record, except for I will not budge on Sklueff. I mean I  
18 just cannot do that pursuant to some peace officer  
19 issues. But --

20           MR. MESSING: Well, for the record, we agree with the  
21 comments of the proposal by DPA, so that's two of the  
22 parties.

23           ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
24 Anything -- is it --

25           MR. ROSE: Well, we won't agree to that. I don't

1 agree with that. There's three separate issues here.  
2 One is the transcripts. No one, to my knowledge, posted  
3 the transcripts. We've talked about that in great detail  
4 yesterday.

5 And by the way, I would like to add that when this  
6 issue was raised by Mr. Messing, it was -- it was POC  
7 that made the initial disclosure. And only after we  
8 disclosed to you, Judge, that we had revealed that by  
9 name to whom, then CSLEA revealed, then and only then,  
10 that they had indeed revealed it to two of -- two of  
11 their officers. So that's one issue.

12 But the transcripts, we're not talking about the  
13 transcripts. We're talking about characterizing and  
14 describing and sharing the characterization of witness  
15 testimony on the internet. That's what we're talking  
16 about. And so I would ask that all the parties be  
17 directed not to describe, characterize, or post, or  
18 otherwise explain what witnesses are saying here in this  
19 room on the internet.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
21 Anything, counsel?

22 MR. MESSING: I have one more matter that I want on  
23 this. First of all, for the record, we were the ones who  
24 brought this attention to the attention of the ALJ.

25 Second, my understanding is is that we had a reporter

1 from the Orange County I think it's Register who was  
2 sitting in on this hearing and looking at the files in  
3 this case. So -- and there's been no proscription on  
4 people of that sort reporting the same kind of thing that  
5 was reported by CSLEA on its website, you know, which was  
6 basically one or two comments.

7 Be that as it may, please remember, we are the ones  
8 who raised this issue. And while the issue had not been  
9 raised, POC had shared the transcripts with eight or nine  
10 of their -- at least eight or nine of their witnesses.  
11 So, with that said, we put this into your hands.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, it's an  
13 easy solution. Without all parties -- without all  
14 parties agreeing to open up, except for Sklueff, I am  
15 going to direct, in line with what Mr. Rose is saying,  
16 CSLEA to remove testimony from the website. Because  
17 they're a party. I can't control Orange County Register.  
18 Who can? So -- but as far as parties that appear and  
19 that have a stake in this hearing, that I do have control  
20 over.

21 MR. MESSING: All right. So the ruling extends to  
22 all of the parties here?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

24 MR. MESSING: Okay.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what I'm

1 talking about is testimony. What someone said at the  
2 hearing. Because that's what I'm admonishing people  
3 about. I'm not admonishing people about anything else.  
4 And that's what I'm trying to preserve. All right.

5 MR. MESSING: One last thing, your Honor.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

7 MR. MESSING: The motion to amend the Petition.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

9 MR. MESSING: We don't object to that amendment.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

11 MS. TRUONG: We -- DPA doesn't object either at this  
12 point.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So granted, sir.  
14 Amendment made.

15 MR. ROSE: Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Those  
17 classifications are deleted from the petitioned class.  
18 So -- as of February 27th. So, with that --

19 MS. MAYHEW: May I --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

21 MS. MAYHEW: -- be heard one more time? And then  
22 I'll be quiet. I want to clarify the order that you were  
23 just making. Is it that all parties are ordered to  
24 remove and reframe from putting on any website or  
25 otherwise distributing testimony? Is that what I

1 understand the order to be?

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In other words,  
3 the issue is I'm trying to protect the -- the  
4 admonishment of testimony goes to witnesses and goes to  
5 potential witnesses that will appear here. As long as  
6 those witnesses are going to be seeing the testimony on  
7 whatever medium is set forth, then it goes to subvert the  
8 whatever admonishment's going to be.

9 This is the first time I've -- I'm going to be giving  
10 the admonishments really in regards to Mr. Lewis, he's  
11 going to be the first witness I'm going to be giving such  
12 admonishment to as to other witnesses. Now, I'll let you  
13 figure out who that is, but you definitely know who the  
14 witnesses probably are on your side. So --

15 MS. MAYHEW: Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we have an  
17 idea on who may be some of the others. So --

18 MR. ROSE: Well, isn't Mr. Lewis exempt from that  
19 because of his status as case manager?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: To tell other  
21 people who are witnesses his testimony? Absolutely, he  
22 cannot.

23 MR. ROSE: No, no. He can't speak with witnesses in  
24 our case?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: About his

1 testimony, no, sir.

2 MR. ROSE: Or about their testimony?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: About their  
4 testimony he can talk to them as much as he wants.

5 MR. ROSE: Okay. Well, I'm just not understanding --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But for him  
7 to -- for him to tell other witnesses his -- what he  
8 testified to so follow along, absolutely not.

9 MR. ROSE: Right. But the --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean that's  
11 not -- that's the whole reason --

12 MR. ROSE: No. But the usual admonishment is that  
13 the witnesses don't speak to one another about their  
14 testimony, and so --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Absolutely.

16 MR. ROSE: -- that wouldn't apply to him. It would  
17 apply to him speaking about his testimony to the  
18 witnesses.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. He can  
20 talk to them about their testimony all he wants. He's  
21 the case manager.

22 MR. ROSE: Okay. I just wanted to clarify that  
23 point.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: His proscriptio  
25 is going to be in regards to your testimony.

1 MR. ROSE: Understood.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's pretty  
3 easy. So, all right. You had some -- anything further?

4 MR. MESSING: No.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, Mr. Rose,  
6 you have some questions for this witness.

7 MR. ROSE: I do. Thank you, Judge.

8 TESTIMONY OF

9 CHRISTOPHER P. LEWIS,

10 Having been duly and regularly sworn, testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. ROSE:

14 Q. Mr. Lewis, are you currently a member of CSLEA?

15 A. As an objector status.

16 MR. MESSING: Object. Relevance.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

18 BY MR. ROSE:

19 Q. Okay. Are you currently in a classification  
20 represented by CSLEA?

21 A. Yes.

22 Q. How long have you been in a classification  
23 represented by CSLEA?

24 A. Since 1998.

25 Q. And have you -- are you currently satisfied with

1 the representation, the adequacy of representation by  
2 CSLEA of you?

3 A. No.

4 Q. Have you always been dissatisfied with CSLEA's  
5 representation of you?

6 A. No.

7 Q. When did you become dissatisfied of CSLEA's  
8 representation of you?

9 A. Approximately September of 2006.

10 Q. Was there any triggering event or events, plural,  
11 that caused you to become dissatisfied with CSLEA's  
12 representation of you?

13 A. Yes.

14 Q. What were those?

15 A. In the scope of my knowledge of CSLEA and the  
16 inner workings of the structure of CSLEA being the parent  
17 over affiliates within CSLEA, my participation was along  
18 the lines of this is a union made up of members, and that  
19 the union needs to represent the members' interests. And  
20 in that fashion, there were other members that I heard  
21 were having internal problems with CSLEA, so I wanted to  
22 investigate a little bit more.

23 At that time it was issues between the game wardens  
24 and CSLEA. And I didn't know much about what game  
25 wardens did, so I asked a game warden to take me along on

1 a ride-along one night, which he did.

2 In the course of that ride-along, we -- I learned,  
3 you know, the aspects of the job, the dangers of the job,  
4 which included securing an unregistered AR-15 out of the  
5 state of Nevada, you know, in a -- in a live situation  
6 where somebody was spotlighting, violating the Fish and  
7 Game Code. Six 30-round magazines that were accompanying  
8 it in a humongous spotting light.

9 You know, another call for service that night was a  
10 backup 60 miles to the north, a backup, a lone, excuse  
11 me, game warden who was in the process of getting two  
12 spot lighters, who eventually were found to be on  
13 methamphetamines and in possession of guns and did flee  
14 when the initial contact was made by not only Fish and  
15 Game but the local sheriff's office in the county. In  
16 that -- in that process, the game warden I was with was  
17 injured. I had to take him to the hospital and he had 33  
18 stitches.

19 So when I -- I took that information back to CSLEA  
20 and said, "What seems to be the problem?" Talked to  
21 folks there and said, "Boy, I sure wish you guys could  
22 work out these issues internally." Because, you know, if  
23 I had found about it, it bled into public knowledge. And  
24 I believe in a united front, if there's internal issues,  
25 you take care of them.

1           And because it was spilling over to public knowledge,  
2 I wasn't satisfied with CSLEA at that point when, you  
3 know, the person I addressed this issue to said, well,  
4 decisions about whether or not and how we handle disputes  
5 within the union is made at a higher pay scale than his.  
6 And so that was probably the point that I started to  
7 become disenfranchised with the representation of me as  
8 being part of CSLEA.

9           Q. When you say you took that information back to  
10 CSLEA about what can be done, who did you take that  
11 information to?

12          A. Coby Pizzotti.

13          Q. What was Mr. Pizzotti's status within CSLEA?

14          A. I believe he was involved in the legislative  
15 outreach portion of CSLEA.

16          Q. And you said that there was something spilling  
17 over into public knowledge. What did you mean by that?

18          A. Well, that there were questions that the Fish and  
19 Game Wardens were having of the union regarding how the  
20 union spent money and the appropriate flow of money and  
21 decisions that were made in expenditures of money. And I  
22 heard about it. And my thought was if there's disputes  
23 on that and there's actions being taken and it would  
24 reach out to the public, that part of representation as a  
25 whole to me is that it's not only sitting down at the

1 bargaining table, it's the representation. It's the  
2 represent -- reputation of the bargaining unit. It's all  
3 encompassing at every level all day long. And, you know,  
4 those particular issues were issues about State employee  
5 union money going to a sheriff's race in Stanislaus  
6 County.

7 Q. We'll get to that in a minute. But going to the  
8 question of bringing that information back to CSLEA to  
9 Mr. Pizzotti, did you -- what was your purpose in  
10 bringing that information to Mr. Pizzotti?

11 A. To make them aware that I was aware that, you  
12 know, game wardens were true law enforcement individuals  
13 and needed to be treated with respect, accordingly. They  
14 were not in the same affiliate that I was in. It was a  
15 learning process for me.

16 My whole goal is to try to get internal disputes  
17 handled internally. Because when it becomes public  
18 knowledge, then, you know, people are going to ask me  
19 what's going on with your union, what are the issues you  
20 guys are having over there. I hear there's something  
21 going on with game wardens.

22 Q. What was your role or your status in CSLEA at  
23 that time, if any?

24 A. I was involved at the affiliate level. I was a  
25 board member of our affiliate.

1 Q. What affiliate was that?

2 A. CAFI, the California Association of Fraud  
3 Investigators.

4 Q. You were a board member then. Are you still a  
5 board member there?

6 A. No.

7 Q. When did you cease being a board member of CAFI?

8 A. Near the end of 2006 to early part of 2007. I  
9 don't recall the actual date.

10 Q. Other than the game wardens, did you hear from  
11 anyone else that there was -- in CSLEA's bargaining unit  
12 that there was dissatisfaction?

13 A. I'm sure that I did, but I don't recall any  
14 specific names at the time now.

15 Q. Did you have discussion with other board members  
16 in CAFI when you were on the board about CSLEA's  
17 representation?

18 A. Regarding this issue, yes.

19 Q. Regarding the issue of the game wardens?

20 A. That's correct.

21 Q. Who did you discuss it with?

22 A. Our board president, Keith Cook.

23 Q. What did -- how many discussions did you and  
24 Mr. Cook have about this subject?

25 A. I don't remember the exact number, but the

1 consensus of the -- of our conversation was that Keith  
2 Cook was not very satisfied with the current president of  
3 the California Fish and Game Warden Association and  
4 thought that he didn't do his job very well. Which may  
5 have added to some of the internal issues.

6 Q. Okay. Now, you earlier mentioned something about  
7 political contributions to a sheriff. What were you  
8 referring to?

9 A. I first learned about this issue when I was asked  
10 by Alan Barcelona, the then president of CSLEA --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can I just get  
12 an -- can I get an offer of proof on -- I'm trying to  
13 stick as close to the scope of representation in DFR, if  
14 I can. And once I get into PAC areas, I can't tell you  
15 what a wild ride that is. Meaning that, okay, did you  
16 bet on a winner, did you bet on a loser, why give local,  
17 why not give local. It's -- there's no ruler to hold up  
18 to such a contest, you know, or such a thing. So if you  
19 can just give me kind of an offer of proof of -- just so  
20 you preserve on the record, you know, kind of what you're  
21 trying to show in regards of adequacy of representation,  
22 political contributions.

23 MR. ROSE: Let me let -- let me ask some foundational  
24 questions instead, if I might, or --

25 MR. MESSING: Well, I'm going to suggest this should

1 all be foundational. But why does that excuse making an  
2 offer of proof at this point? Our time is limited and  
3 Mr. Mello -- I mean Mr. Rose has been --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you can just  
5 give me a thumbnail of what you're --

6 MR. ROSE: Well, the -- okay. The membership of  
7 Bargaining Unit 7 is unhappy because they believe that  
8 Mr. Barcelona directed PAC money to a local county  
9 sheriff's candidate for the purpose of obtaining  
10 employment as the under sheriff in that county after that  
11 sheriff's candidate is successfully elected to office.  
12 And that they used member dues for that purpose.  
13 That's -- that was the concern. And that forms the basis  
14 of dissatisfaction with the representation of CSLEA.  
15 We've already had testimony by Craig Brown explaining at  
16 least in some degree that the effectiveness of a union is  
17 beyond just direct bargaining with DPA, but also involves  
18 political action and persuasion. And so that's the offer  
19 of proof.

20 MR. MESSING: This is scurrilous --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead, sir.

22 MR. MESSING: -- as far as I'm concerned.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you say  
24 scurrilous?

25 MR. MESSING: Scurrilous.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, okay.

2 MR. MESSING: And I don't --

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I haven't heard  
4 that one for a while, so --

5 MR. MESSING: I don't see any witness on their  
6 witness list that's going to testify to anything  
7 substantial about that. They're bringing the sheriff  
8 who's going to say that he offered a job? You know, Alan  
9 Barcelona is certainly not going to testify to that. So  
10 this is a foundation for nothing but speculation. I  
11 think it's irrelevant.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything on the  
13 Employer's part?

14 MS. TRUONG: I agree that it's totally irrelevant to  
15 adequacy of representation.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just can't  
17 imagine PERB putting itself in that sort of judgment  
18 seat. And the appropriateness of the agency to have that  
19 type of regulatory over the unions is just not there,  
20 period. So I got the offer of proof. I'm going to  
21 basically rule that not being relevant, and go from  
22 there. So --

23 MR. ROSE: Thank you.

24 BY MR. ROSE:

25 Q. Without regard to political action contributions

1 or money, without regard to that, have you had any other  
2 concerns about CSLEA's influence at the state level for  
3 the benefit of its members?

4 A. I think I find it troubling in my experience when  
5 I've actually met with people who have influence on how  
6 the state is run when I've talked to them about issues  
7 about furloughs, and they ask me, "Who is the president  
8 of your bargaining unit?"

9 Q. Who specifically have you talked to that didn't  
10 know who your president was?

11 A. That was Governor Arnold Schwarzenegger's law  
12 enforcement liaison, Tom Sawyer.

13 Q. When did you have such a conversation?

14 A. Several weeks back.

15 Q. What's so troubling about that?

16 A. In itself it's kind of a self-actualization that  
17 in fact that our bargaining unit had not been in contact  
18 with the Governor's office through that channel to  
19 discuss issues directly affecting, you know, members of  
20 our union.

21 MR. MESSING: Okay. Object. Speculation. He's  
22 talking about the Governor's office, not this one person.  
23 Speculation as to whether there was contact. Whether  
24 this guy forgot or misstated it. DPA is also part of the  
25 Governor's representatives. I mean this whole thing

1 is --

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as the  
3 conclusory statement, I agree, so I mean I can strike  
4 that and weigh -- I mean I understand what -- I'm not  
5 striking the part where you said what was told to you.  
6 What you said, what was said to you. Take it from there,  
7 Mr. Rose.

8 MR. ROSE: Okay.

9 BY MR. ROSE:

10 Q. How long have you been with the Department of  
11 Corporations?

12 A. Two years and closing in on a month.

13 Q. And during that period how many times have CSLEA  
14 representatives come to the Sacramento Department of  
15 Corporations to inquire about your working conditions?

16 A. Not once.

17 Q. Do you consider that to be -- do you have any  
18 concern about that one way or the other?

19 A. I do. It goes back in time where the Department  
20 of Corporations had approximately 17 investigators around  
21 the 2000-2001 era, and that currently 2 investigators  
22 employed.

23 Q. Why is that a concern?

24 A. The concern is not so much whether or not the  
25 bargaining unit can, you know, create, you know,

1 positions within the department regarding how many  
2 investigators we can have or not have. It's the concern  
3 is, you know, policy and procedure issues, things that  
4 would hold me accountable to the State. I don't have a  
5 policy and procedure for my peace officer activity at my  
6 department. Those things are kind of troubling. And I  
7 think if the union had been in contact to find out what  
8 was going on after all the investigators had been laid  
9 off from around 2001 to about February of 2007, that it  
10 would have been a good place to come back to, for them to  
11 visit, when they were aware that the investigators got  
12 laid off.

13 Q. Now, I note in your Declaration, I don't see  
14 mention of you carrying a firearm; is that true?

15 A. That's correct. I do not.

16 Q. Do you consider that a good thing?

17 A. No, I do not.

18 Q. Why not?

19 A. Because I actually serve search warrants and make  
20 arrests unarmed.

21 Q. Do you ever do that with other peace officers?

22 A. I do.

23 Q. How often have you done that in the last year?

24 A. I made the first arrest for Department of In -- I  
25 mean, excuse me, the Department of Corporations, which I

1 believe was the first arrest in 10 years, in January. A  
2 year prior to that I served, I believe, our first search  
3 warrant in as many years. I've served search warrants  
4 since then. You know, these are large dollar cases, and  
5 it's a -- it's a concern for safety.

6 Q. And when you serve -- when you conduct these  
7 activities with other peace officers, are any of those  
8 other peace officers armed --

9 A. They are.

10 Q. -- with a firearm?

11 A. Yes, they are.

12 Q. When you've conducted these activities in the  
13 past, have you ever encountered citizens or suspects who  
14 are armed with a firearm?

15 A. Yes, I have.

16 Q. Can you -- do you have any memorable incidents  
17 where your interaction with someone who was armed with a  
18 firearm?

19 A. I do. It started with my very first field visit  
20 as an investigator for the Department of Corporations.  
21 We had an all-hands meeting in the morning where one of  
22 our attorneys asked the Commissioner about getting  
23 investigators firearms for their safety and the safety of  
24 others.

25 Later that afternoon I went out in the field with

1 that very same attorney and came across -- well, we did a  
2 subject interview at a machine shop, where he was making  
3 a revolutionary new motor from scratch, which made me  
4 believe that he had the ability to machine parts out of  
5 metal. And upon entering the shop, first thing I noticed  
6 was a machine gun, which I later identified as a Browning  
7 model 1918 air-cooled .30 caliber machine gun sitting on  
8 top of a safe with a Dixie cup over the end of the  
9 barrel. Being familiar with firearms in storage, that --  
10 my conclusion from that was to keep dust and other  
11 objects out of the barrel.

12 I looked at the bolt on the barrel. And being  
13 familiar with bolts, because I do own several bolt-action  
14 rifles, it looked like that bolt would actually properly  
15 work. Which made me believe that that was an operable  
16 machine gun.

17 I also looked on the desk, which the gentleman was  
18 standing next to, and saw what appeared to be a homemade  
19 flint lock-type pistol with a fluted end that -- and I  
20 did not see any serial numbers on that. So both of those  
21 firearms in itself would be a 12025 violation of the  
22 California Penal Code, a felony.

23 Q. Are you satisfied with -- are you aware of any  
24 efforts to CSLEA to advocate on your behalf to get you a  
25 firearm?

1 A. Not since I've been a peace officer, no.

2 Q. How many affiliates does CSLEA have?

3 A. Right now I do not know.

4 MR. ROSE: Nothing further at this time.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

6 Ready for cross, sir.

7 MR. MESSING: Okay. All right.

8 CROSS-EXAMINATION

9 BY MR. MESSING:

10 Q. Well, first of all, I'm just a little confused  
11 actually on paragraph 10 of your Declaration. You say  
12 that you're a peace officer for the purpose of performing  
13 your primary duty, or when making an arrest pursuant to  
14 Penal Code section 836. So are there parts of 836 that  
15 do not -- that do not deal with making an arrest that you  
16 do not have the power to enforce or utilize? Do you  
17 understand the question?

18 A. I do understand the question.

19 Q. Okay. Can you answer it?

20 A. Not without actually seeing the full version of  
21 the Penal Code 836. It's a large section.

22 Q. Okay. All right.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have it if --  
24 witness has the Code.

25 THE WITNESS: No, your Honor, it doesn't. It only

1 goes to 832.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I'm sorry.

3 It only goes to 832. Sorry about that.

4 MR. MESSING: Well, I'm actually -- I'm asking  
5 because I actually don't know. It would seem that 836  
6 would swallow up your powers of performing your primary  
7 duty. So I don't quite understand that. But let's move  
8 on.

9 BY MR. MESSING:

10 Q. Let's -- now, you've been a peace officer since  
11 2007?

12 A. Yes.

13 Q. Okay. And is it -- you talked about the fact  
14 that there used to be 16 Corporations investigators and  
15 there are now 2?

16 A. Yes, there are only two.

17 Q. Okay. And isn't it true that CSLEA challenged  
18 that reduction?

19 A. Through conversations with a investigator who  
20 used to work there, yes.

21 Q. Okay. And also, in terms of your complaints  
22 about CSLEA not coming out to visit your -- the two  
23 investigators who now remain, you're stationed in  
24 Sacramento, right?

25 A. Yes, I am.

1 Q. Okay. And you have in fact visited the CSLEA  
2 offices numerous times, correct?

3 A. In the broad scope, yes.

4 Q. Okay. Not only have you visited those offices,  
5 but you've had occasion to speak directly with Alan  
6 Barcelona on various occasions, correct?

7 A. What time period are we talking? I don't  
8 understand.

9 Q. How about from -- let's take the time period of  
10 2007 to the present.

11 A. I don't -- I don't recall that I --

12 Q. You don't. Okay. How about --

13 A. I don't recall.

14 Q. How about going back from 1998 through 2007?  
15 You've had -- you had numerous contacts with Alan  
16 Barcelona during that period of time, correct?

17 A. Correct.

18 Q. Okay. So there was an open door for you to talk  
19 to Mr. Barcelona. Do you know who Paul Satkowski is?

20 A. I do.

21 Q. Who is he?

22 A. He's the gentleman sitting in the back of the  
23 courtroom here with a yellow pamphlet in his hand and  
24 wearing a black jacket.

25 Q. Okay. And you know him because you've met with

1 him over the past years?

2 A. Yes.

3 Q. Okay. And do you know his function with CSLEA?

4 A. Yes.

5 Q. What is that?

6 A. Membership outreach.

7 Q. Okay. Okay. Did you assist Mr. Satkowski on  
8 membership outreach?

9 A. When?

10 Q. From 1998 to the present any time.

11 A. Yes.

12 Q. Okay. So you worked together with him on those  
13 projects? Was it one project or many projects?

14 A. I remember one instance that we -- I met him at  
15 the Fair Political Practice Commission to talk to  
16 prospective members.

17 Q. Okay. Do you know who Coby Pizzotti is?

18 A. I do.

19 Q. Okay. What is his function -- he's with CSLEA?

20 A. I believe so.

21 Q. And what is his function there? Do you know?

22 A. I do not recall his exact job title, but I  
23 believe he's involved in legislation outreach.

24 Q. Okay. And you know him because --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on,

1 Mr. Messing. Can you give us your best shot at spelling  
2 that last name or --

3 MR. CLARK: P-I-Z-Z-O-T-T-I.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Does that sound  
5 about right to you?

6 THE WITNESS: That sounds about right.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

8 THE WITNESS: Your Honor, I can identify him, if you  
9 like.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You don't have  
11 to identify him.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just need to  
14 be kind to the transcribers.

15 BY MR. MESSING:

16 Q. Okay. And you know who he is because you've met  
17 with him before, correct?

18 A. Correct.

19 Q. Okay. You've met with him about legislative  
20 issues, correct?

21 A. Correct.

22 Q. Okay. And you know who Kasey Clark is?

23 A. I do.

24 Q. Okay. And, of course, this is Kasey Clark  
25 sitting next to me. But you've worked with Kasey Clark

1 in the past. That's how you know him, correct?

2 A. Correct.

3 Q. Okay. And when you met with Kasey Clark, he was  
4 Chief Legal Counsel of CSLEA, correct?

5 A. Correct.

6 Q. And you had various meetings and telephone calls  
7 with Kasey Clark about any issues that might concern you,  
8 correct?

9 A. Correct.

10 Q. Okay. And isn't it true that Kasey Clark was  
11 very responsive to you when you called? He'd call you  
12 back. And when he asked to meet with you, he'd meet with  
13 you?

14 A. Correct.

15 Q. Okay. Okay. And just I'm interested in this  
16 account that you gave about the firearm, where you  
17 discovered a machine gun where you were on an enforcement  
18 action. When you discovered there was a machine gun, did  
19 you retreat and call for assistance from a peace officer  
20 who was armed?

21 A. Not immediately, no.

22 Q. But that is what in fact you're directed to do in  
23 cases where there is extreme danger from potential  
24 firearms from people that you're investigating or serving  
25 warrants on, correct?

1           A. With all due respect, with the lack of policy,  
2 procedures, internal training, and anything that I  
3 remember from peace officers standards and training  
4 academy that I went to, no.

5           Q. Okay. So you're saying that your superiors would  
6 approve of you proceeding into a situation where there's  
7 a machine gun, and they would approve of your proceeding  
8 into that situation without calling for backup from an  
9 armed peace officer?

10          A. I can't speak for what my superiors would say.  
11 No, I cannot.

12          Q. Okay. So you're saying you don't know what  
13 you're supposed to do in that circumstance in terms of  
14 contacting an armed peace officer or not?

15          A. I'm not saying that.

16          Q. Well, then what are you supposed to do in that  
17 situation?

18          A. What did I do?

19          Q. What are you supposed to do? What do you think  
20 the department believes that you should do?

21          A. The department does not reflect an opinion one  
22 way or another on what I do as far as my peace officer's  
23 authority.

24          Q. Okay. So they're fine with whatever your  
25 decision is in that situation?

1 MR. ROSE: Objection. Asked and answered.  
2 Argumentative.

3 MR. MESSING: I'll move on.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

5 MR. MESSING: I'll move on.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

7 MR. MESSING: Never mind.

8 BY MR. MESSING:

9 Q. So you have an issue with not being able to carry  
10 a firearm. Isn't it true that your department opposes  
11 your carrying a firearm?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
13 know.

14 THE WITNESS: In definable terms, I do not know.

15 BY MR. MESSING:

16 Q. Okay. Have you gone to your department and asked  
17 them to support your quest to carry firearms?

18 A. The request was made approximately four hours  
19 before I encountered the very first firearm that I came  
20 across.

21 Q. Well, the question is -- then the answer is yes,  
22 you did request to be able to carry firearms of your  
23 department, correct?

24 A. One of our counsels did, yes.

25 Q. Okay. And what was their response?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If any.

2 THE WITNESS: Well, there was a response, and it was  
3 very -- let's see. It was very -- it was very  
4 interesting. It was along the lines of, well, after some  
5 fumbling on behalf of the Commissioner of the Department  
6 of Corporations, that maybe along the lines they could  
7 get me a squirt gun.

8 BY MR. MESSING:

9 Q. So the answer was no, you would not be permitted  
10 to carry a firearm?

11 A. I'm not sure how to answer that.

12 Q. Well --

13 A. I know the California Penal Code says I am  
14 prohibited from carrying a firearm.

15 Q. Okay. Did you -- and you -- have you asked your  
16 department to support legislation to change the Penal  
17 Code?

18 A. No.

19 Q. By the way, you talked also, just to clean up  
20 some areas later on in your testimony, you said that --  
21 you made reference to CSLEA, their efforts -- what you  
22 thought were poor efforts to deal with the Governor's  
23 office regarding furloughs. Do you recall that  
24 testimony?

25 A. I recall the testimony, yes.

1 Q. Okay. Do you know how many meetings CSLEA has  
2 held with the Department of Personnel Administration  
3 regarding furloughs?

4 A. Part and parcel of my dissatisfaction of not  
5 knowing is the lack of communication of how many meetings  
6 they've actually had, yes.

7 MR. MESSING: I'm going to move to --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So the answer is  
9 that you don't know?

10 THE WITNESS: I do not know, no. Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

12 BY MR. MESSING:

13 Q. Okay. Do you routinely visit the CSLEA website?

14 A. No.

15 Q. Okay. So you're not aware that they post updates  
16 about bargaining particularly with respect to furloughs  
17 on the website?

18 A. No.

19 Q. Okay. When you say no, you're agreeing with my  
20 statement?

21 A. Yes.

22 Q. Okay. All right. Now, I want to direct your  
23 attention now to your duties as a -- one second. Let me  
24 go back to one other issues that you raised.

25 This Fish and Game Warden who got injured, now, is

1 this the individual who got injured when he stepped into  
2 a ditch and bumped his head on the roof of his vehicle?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: (Inaudible.)

4 MR. MESSING: Well, I'm sorry. Let me rephrase that.

5 BY MR. MESSING:

6 Q. When his vehicle went into a ditch while he was  
7 driving and he bumped his head on the roof of his  
8 vehicle; is that right?

9 A. No. I can clarify what I think you're asking me,  
10 if you like.

11 Q. Go ahead.

12 A. Yes. He hit his head on the handle of the  
13 overhead light that comes down so that can be used to  
14 track people or game, yes.

15 Q. Oh, okay. Good.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

17 BY MR. MESSING:

18 Q. Now, this is an example that you brought up in  
19 terms of your understanding the dissatisfaction of Fish  
20 and Game Wardens with CSLEA representation, correct?

21 A. I don't understand the question.

22 Q. Well, you were -- you were answering a question  
23 by Mr. Rose regarding dissatisfaction of the members, and  
24 my recollection is is that you said the Fish and Game  
25 Wardens were unhappy with their representation, and then

1 you launched into a description of this incident.

2 So let me ask you this: Did this individual file a  
3 workers' compensation claim, do you know?

4 A. I don't know.

5 Q. Did this individual have a grievance based upon  
6 the incident that you described?

7 A. I don't know.

8 Q. You don't know. Okay. Also regarding the Fish  
9 and Game Wardens, because I think that that was at the  
10 heart of your discussion of your knowledge of individuals  
11 in CSLEA who are dissatisfied with the representation.

12 MR. ROSE: Objection. Counsel's testifying.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

14 BY MR. MESSING:

15 Q. Well, let me just ask you this: You were here  
16 when Jerry Karnow testified?

17 A. I was.

18 Q. Okay. And he testified that Fish and Game  
19 Wardens should have received a 43 percent pay increase  
20 even if no other peace officers in the bargaining unit  
21 got an increase. Remember that testimony?

22 A. I do.

23 Q. Okay. How did that make you feel?

24 A. I didn't really have an opinion one way or  
25 another on it. Didn't bother me.

1 Q. It wouldn't bother you? Okay. So if today CSLEA  
2 negotiated a 43 percent increase for Fish and Game  
3 Wardens and no other peace officers in the unit got an  
4 increase, that would be fine with you?

5 A. No, it would not.

6 Q. Okay. Let's turn to your duties as a -- as a  
7 Corporations investigator. Okay? Now, on page six of  
8 your Declaration you indicate in paragraph 34 that you  
9 conduct investigations of alleged administrative  
10 violations under sub (c), civil violations under (d), and  
11 criminal law violations; is that correct?

12 A. Criminal viol -- I conduct investigations of  
13 criminal violations. That would be under (e). That is  
14 correct.

15 Q. Okay. You also conduct civil investigations and  
16 administrative; is that correct?

17 A. That's correct.

18 Q. Okay. Now, I want to ask you what percentage of  
19 your investigations deal with administrative violations,  
20 roughly.

21 A. Well, you know, yesterday was the first day this  
22 year, I believe, that I actually started an involvement  
23 in an investigation regarding administrative civil  
24 issues. The remainder of the year has been appropriated  
25 towards criminal investigation.

1 Q. How many investigations do you conduct at any  
2 given time?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you can give  
4 a continuum if you want.

5 THE WITNESS: Yeah. That's a -- that's a really,  
6 really hard question to ask [sic] because with the  
7 enormity of our cases, I mean we're talking cases that go  
8 up to \$350 million mortgage backed security frauds to  
9 simple \$3 million Ponzi schemes.

10 MR. MESSING: Okay.

11 THE WITNESS: So focused solely on criminal  
12 investigations, I think I focus on about two or three at  
13 a time. But I have a whole lot more assigned to me.

14 BY MR. MESSING:

15 Q. Okay. Well, let's do it this way. You've been  
16 doing this job at Corporations for two years, right?

17 A. Correct.

18 Q. Okay. So in two years how many criminal  
19 investigations did you conduct, approximately?

20 A. You know, without checking department records, I  
21 couldn't tell you.

22 Q. Well, was it more than 100? Was it closer to 10  
23 or more closer to 100?

24 A. Well, prefacing my answer with the fact that, you  
25 know, violating the Corporate Securities Law Act of 1968,

1 which is where the primary focus of my investigation has  
2 been, selling an unauthor -- an unregistered securities  
3 in the state of California, making false or omission  
4 statements in the offer and sell of securities, or using  
5 an artifice scheme in which to do any of the above is a  
6 felony violation punishable two, three, five years in  
7 jail, million dollar fine the first time, two, three,  
8 five years in jail, \$10 million on, you know, with  
9 prior -- or with additional.

10 Everything, in my mind, when I get a case like that,  
11 starts out criminal. Because I can start out criminal  
12 and digress to civil or administrative, you know,  
13 depending on the facts bear out in the investigation.  
14 So, to answer your questions, you know, it's -- number  
15 cases of total is more than 15, less than 100.

16 Q. That you've handled of all -- of all sorts?

17 A. Yes.

18 Q. Okay. And how many of those cases have in two  
19 years become administrative cases regarding  
20 administrative violations? Also giving us a range is  
21 fine.

22 A. That's something our department is addressing  
23 internally with workflow issues that our brand new -- our  
24 newly appointed Deputy Commissioner in charge of our  
25 Enforcement Division is addressing communication between

1 investigators and the attorneys for which whom the cases  
2 are initially assigned. The disposition on a lot of the  
3 cases I'm not aware of because, in part, some of the  
4 cases are assigned, do XYZ specific duties only. And a  
5 few of the cases I've carved out and actually taken from  
6 beginning to end and worked criminally. And actually,  
7 you know, we have people arrested and people are  
8 complaint pending in Sacramento County right now.

9 Q. Okay. Well, so let me put it to you this way.  
10 When you start an investigation, many of the laws that  
11 you enforce have criminal, civil or administrative  
12 penalties. So you're looking at all of those  
13 possibilities when you're commencing an investigation,  
14 correct?

15 A. I do keep an open mind, yes, sir.

16 Q. Okay. So when you're conducting an  
17 investigation, it's not really a criminal investigation,  
18 it's not an administrative investigation. You're doing  
19 an investigation and then determining facts that will  
20 lead the case either to a civil violation, criminal  
21 violation, or administrative violation; is that fair to  
22 say?

23 A. No, it is not.

24 Q. Well, I --

25 A. I can expand.

1 Q. I thought that I just rephrased what you had said  
2 in a different way. So when you commence an  
3 investigation where there are -- under a statute that has  
4 potential civil and criminal penalties, aren't you  
5 conducting that investigation so that either a civil or a  
6 criminal penalty might be enforced at the end of the  
7 investigation?

8 A. That's correct.

9 Q. And the same with an administrative violation?

10 A. Can you reiterate the question so I can make a  
11 determination on your second question?

12 Q. When you commence an investigation, you're  
13 investigating so that at the end of the road of your  
14 investigation there might be either an administrative,  
15 civil or criminal penalty?

16 A. Yes. I start out in a manner to investigate to  
17 where all the evidence that is procured is -- can be  
18 preserved for criminal prosecution, if necessary, and  
19 constitutional rights are afforded to the people we're  
20 investigating.

21 Q. Okay. So, for example, have you done corporate  
22 securities law cases?

23 A. Yes.

24 Q. Okay. And that statute provides for criminal  
25 liability as well as civil penalties, correct?

1 A. I believe there's disgorgement that could be  
2 available under most all the laws that we enforce, yes.

3 Q. Okay. So when you do your investigation, when  
4 you commence your investigation, you don't know if that's  
5 going to end up with a criminal violation or a civil  
6 penalty being imposed; isn't that right?

7 A. Or any penalty, that's correct.

8 Q. Or any penalty. Okay. Do you -- have you done  
9 investigations under the franchise investment law?

10 A. Yes.

11 Q. Okay. And under that law there are both civil  
12 and criminal penalties as enforcement mechanisms,  
13 correct?

14 A. Yes. Yes.

15 Q. Okay. The same question. So when you commence  
16 an investigation, that investigation might lead to either  
17 a civil enforcement or a criminal enforcement penalty?

18 A. That's fair. Or none at all.

19 Q. Or none at all. Okay. Now, you're familiar with  
20 the California credit union law?

21 A. California credit union law?

22 Q. Yes.

23 A. In that terminology, no. And if we're going to  
24 test the veracity of every type of law that I enforced --

25 Q. There's no question pending at this point.

1 A. Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Don't worry  
3 about it, Mr. Lewis.

4 THE WITNESS: Okay.

5 BY MR. MESSING:

6 Q. Let's see here. Let's see. What is the check  
7 sellers bill -- wait. Are you familiar with the check  
8 sellers, bill payers and proraters law?

9 A. I am.

10 Q. Okay. And that law predominantly deals with the  
11 licensing and regulations of companies who sell and cash  
12 checks?

13 A. That's correct.

14 Q. Okay. And that law also deals with civil and  
15 administrative penalties?

16 A. That's correct.

17 Q. Okay. Would you say it predominantly deals with  
18 those penalties as opposed to criminal penalties?

19 A. My experience is not vast in it, but I think you  
20 have a fair statement, yes.

21 Q. Okay. Without going through each one, then --  
22 well, one more. One or two more. The escrow law, that  
23 also deals with licensing, correct?

24 A. Specifically, yes, the license of independent  
25 escrow agents.

1 Q. Okay. And you're familiar with the fact that  
2 that has both criminal and civil penalties as remedies  
3 for violations?

4 A. Correct.

5 Q. Okay. Now, an interesting one is the Knox-Keene  
6 healthcare service plan law. You listed that one as a  
7 law that you -- that you work with. Have you worked with  
8 that law?

9 A. I have not.

10 Q. You have not. Are you familiar with the law?

11 A. Only that it exists. And I have not worked a  
12 case on it, so I haven't had the opportunity to dive  
13 into it.

14 Q. Are you aware -- do you know whether in fact that  
15 law has predominantly non-criminal enforcement  
16 mechanisms?

17 A. I am not.

18 MR. ROSE: Objection. Lacks foundation.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you don't  
20 know --

21 THE WITNESS: I don't know.

22 BY MR. MESSING:

23 Q. So you don't know. How about the California  
24 commodities law, are you familiar with that?

25 A. A little bit.

1 Q. Okay. Have you worked any cases on the --  
2 regarding that law?

3 A. Not under -- through the front door case, no.

4 Q. Are you aware that that law predominantly deals  
5 with civil penalties and injunctive relief for  
6 violations?

7 A. No.

8 MR. ROSE: Objection. Assumes facts not in evidence.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It does.  
10 Sustained.

11 MR. MESSING: I said do you know if.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware  
13 whether or not I'm okay.

14 MR. MESSING: All right.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But --

16 BY MR. MESSING:

17 Q. I do you know whether or not that law deals with  
18 civil penalties and injunctive relief predominantly?

19 A. No, I'm not.

20 Q. Okay. All right. Now, I want to talk about some  
21 of the things that you say that you do. Now, as a  
22 Corporations investigator you listed in your Declaration  
23 things that you conduct or do or have, as opposed to --  
24 that's on page six. As opposed to page seven where you  
25 talk about as an investigator what you used to do, so

1 it's all in the past tense. I had, I conducted,  
2 et cetera.

3 Now, is it your testimony that you actually do and  
4 have -- you actually do perform the duties listed -- all  
5 of these duties under paragraph 34?

6 A. I'm saying that I do do them, or they are  
7 expected of me to do.

8 Q. Okay. Now I'm going to -- what I'm going to do  
9 is I'm going to ask you which of the ones that are listed  
10 here do you -- may be expected of you but you actually  
11 don't do.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or haven't done  
13 yet.

14 MR. MESSING: Haven't done. That's better. Can I  
15 have a moment off the record?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: While he's  
17 reviewing this list, why don't we just go ahead and take  
18 a break for five minutes. Off the record.

19 (Recess taken.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the  
21 record. Mr. Messing.

22 BY MR. MESSING:

23 Q. Okay. So you were going to let us know which  
24 items on this list have you actually not done under  
25 paragraph 34.

1 A. I have not done?

2 Q. Yes. It says that you interrogate suspects,  
3 et cetera.

4 A. I do.

5 Q. Now, you said -- you tried to draw a distinction  
6 between having the authority or the ability to do it as  
7 opposed to actually having done it. So I'd like to know  
8 which one of these items you have not done.

9 A. In your example of interrogating suspects, I have  
10 done that.

11 Q. Okay.

12 A. So let's go -- let me work down through the list  
13 here.

14 Q. Okay. I just want to know the ones that you -- I  
15 thought you were doing this --

16 A. I understand.

17 Q. -- at the break. Okay.

18 A. I under -- I want to -- it's --

19 Q. All right.

20 A. -- been a few minutes. I want to make sure I --

21 Q. Sure.

22 A. -- respond accurately. Under 34(g), I have the  
23 power to detain a suspect, and the definition as I  
24 understand detain to limit someone's movement while, you  
25 know, conducting an investigation. I have not used my

1 peace officer authority and said, no, you're not free to  
2 go.

3 Q. Okay.

4 A. But I do have that power. Although I will, I  
5 have not had the luxury of testifying as an expert  
6 witness in state or federal courts. But that will soon  
7 come to pass very shortly. Under paragraph 35 --

8 Q. No. I'm not on 35 yet. We're just dealing with  
9 34.

10 A. Okay.

11 Q. Okay.

12 A. Thank you.

13 Q. Have you ever had your deposition taken?

14 A. Yes.

15 Q. Okay. Was it in a civil case?

16 A. Yes.

17 Q. Okay. And at that deposition, were there two  
18 lawyers and a court reporter who took down questions and  
19 answers that were given during the course of the  
20 deposition?

21 A. Boy, it's been a long time ago since I've had --  
22 been the subject of a deposition, so I don't recall.

23 Q. But you say here that you take depositions.  
24 That's --

25 A. Not in that format. To answer your question, no.

1 Q. Not in that -- in some other format?

2 A. As I understand depositions, you know, gaining  
3 truth from people and telling them, you know, under  
4 penalty of perjury and all that, yes. But not with two  
5 attorneys and court reporters, no.

6 Q. Okay. So you're not sure about the -- you're not  
7 sure about the difference between a declaration and a  
8 deposition?

9 A. I think I -- in my understanding I am. The  
10 declaration is something that is the end product. I may  
11 be mistaken, though, on the -- on the definition.

12 Q. Well, it says in your statement, "and I take  
13 depositions and I prepare declarations." So I presume  
14 that you know that there's a difference between those.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Let's get  
16 a question.

17 BY MR. MESSING:

18 Q. Okay. Is -- do you -- do you know the difference  
19 between taking a deposition and preparing a declaration?

20 A. Based on my knowledge, yes.

21 Q. Okay. And what is the difference?

22 A. Taking a declaration is at the very end I go out  
23 and interview somebody. I come back. I write up my  
24 report, come back and I ask them then, would you mind  
25 signing a declaration to this, and they say sure. I

1 provide it. They review it. If they think there's any  
2 issues that they want to change, we get the record  
3 reflected correctly. They make corrections. They sign  
4 it. And then I have that document to use for whatever we  
5 need to.

6 In the deposition I tell them up front and agree with  
7 them, you know, this is -- you know, this is for real.  
8 We're going to do this, you know, and at the very end  
9 this is what we're going to get. We're going to get a  
10 declaration at the end.

11 Q. So you also -- I don't want to beat a dead horse  
12 here, but you also indicate here that you take  
13 statements. So what's the difference between taking a  
14 statement and the other two, taking a deposition and  
15 signed -- and taking -- and preparing declarations?

16 A. Taking a statement is something that if I go out  
17 and interview somebody in the field, and keeping in mind,  
18 you know, like Evidence Code 123.3, preliminary hearings,  
19 things like that, that I can testify to hearsay. So if  
20 I'm taking a statement from somebody, I'm not necessarily  
21 going all the way to the point of asking them to do a  
22 declaration.

23 Q. All right. Let's move on. I want to look at --  
24 okay. Let's -- actually, there are two more questions  
25 here. How many times have you performed surveillance in

1 the past two years?

2 A. At least a dozen times.

3 Q. Okay. And how many times have you done  
4 undercover law enforcement activity in the past two  
5 years? These will all be in the past two years.

6 A. Okay. Maybe a dozen times.

7 Q. Really? How many search warrants have you  
8 served?

9 A. If I can quantify it, I've served search warrants  
10 on two cases. They sometimes are multiple search  
11 warrants on a particular case for different locations for  
12 different reasons. And on two cases I've served them.

13 Q. Okay. Now, it says here you participate in the  
14 service of search warrants obtained by local and county  
15 peace officers. Let's -- and federal agents. Let's  
16 start with local and county peace officers. How many  
17 search warrants did you participate in that was obtained  
18 by a local or county peace officer?

19 A. To help you out here, it was all of the above on  
20 one search warrant in San Luis Obispo County.

21 Q. Okay. Were there -- so there were federal agents  
22 involved in that as well?

23 A. Yes.

24 Q. Okay. One time. Would you please enlighten us  
25 on what kind of undercover work you do as a Corporations

1 investigator?

2 A. We do everything from undercover shops to figure  
3 out if people are selling unauthorized, unregistered,  
4 unqualified securities in the state of California for the  
5 purpose of -- if they respond to us and they're blowing  
6 any exemption they may have under federal reg D  
7 violations or statutes of the state of California, to  
8 surveillance of subjects, you know, at places where I'll  
9 be doing search warrants for officer safety issues,  
10 surveillance at business locations to see what type of  
11 traffic is going in and out, what hours they keep. You  
12 know, see if they're packing any weapons that may not be  
13 registered.

14 Q. Okay. Well, I -- there are two different items  
15 here. One is, "I perform surveillance," and the other  
16 is, "I perform undercover law enforcement activity."  
17 There's a difference between those, correct?

18 A. Yeah. One is from a distance and one is  
19 surreptitious interaction.

20 Q. Okay. So, because you were -- I was asking you  
21 about undercover law enforcement activity, and you were  
22 just responding about surveillance.

23 MR. ROSE: Objection. Argumentative.

24 MR. MESSING: So I'm looking --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's state a

1 question. Go ahead.

2 BY MR. MESSING:

3 Q. So my quest -- I'm going to ask you this: Tell  
4 us how you actually go undercover as a Corporations  
5 investigator. Can you explain it?

6 A. Okay. Here goes our trade secrets. I use a  
7 pseudonym. Go on the internet after we've received some  
8 indication from somebody, or we do a cold shop on an  
9 entity. Go out there and use very vague language, types  
10 of language that would allow a normal -- a person in the  
11 industry that we are looking at, say securities, that  
12 would have a basic knowledge of the industry and the  
13 quali -- and the requirements to sell securities in  
14 California, use very vague language to see if in fact  
15 that -- you know, we give them the opportunity to break  
16 the law, but we don't ask them to break the law. So  
17 that's how we do it.

18 Q. Okay. Let me ask you this: How many arrests  
19 have you made in the past two years as a Corporations  
20 investigator?

21 A. With the enormity of our cases, I was lucky to  
22 make the first one.

23 Q. You made one?

24 A. One. That's correct.

25 Q. Okay. In two years? And which covering all two

1 years?

2 A. Absolutely.

3 Q. Okay. Now, I want to move on to paragraph 35.

4 And it appears to me that this list virtually mirrors the  
5 list of duties that you have as a Corporations  
6 investigator, with the exception of the fact that in  
7 terms of making arrests you first have to get permission  
8 from designated peace officers when you were at the  
9 Department of Insurance.

10 Let me ask you first: Do you -- when you make an  
11 arrest as a Corporations investigator, do you -- do  
12 you -- well, the arrest that you made, did you do it on  
13 your own, or did you get permission from somebody from  
14 your Department?

15 A. I'm not really in the business of making probable  
16 cause arrests. I obtained a search -- I mean arrest  
17 warrant from a judge, so permission from the court.

18 Q. Okay. But did you get permission to get that  
19 warrant and make the arrest from your department?

20 A. Yes.

21 Q. Okay. So, although you may be able to make an  
22 arrest on your own, as a Corporations investigator you  
23 actually haven't done that, correct? By on your own I  
24 mean without permission of somebody -- one of your  
25 superiors. Since you've only make one arrest. Is that

1 correct?

2 A. The phraseology of your question makes it very  
3 hard --

4 Q. All right.

5 A. -- to answer. I'm sorry.

6 Q. I'm going to move on. Never mind. Now, so --  
7 now, let's get back to the question of these two lists  
8 mirroring each other. Under X you say you could make  
9 arrests as a -- this is as an insurance investigator  
10 after first obtaining permission from designated peace  
11 officers of the Department of Insurance. So in terms of  
12 the one arrest you've made as a Corporations investigator  
13 and what you used to do as an insurance investigator, you  
14 still in both cases have permission?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Would you agree?

16 THE WITNESS: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You don't agree.

18 BY MR. MESSING:

19 Q. You didn't have permission?

20 A. I don't agree.

21 Q. You didn't have permission in those cases?

22 MR. ROSE: Objection. Asked and answered.

23 MR. MESSING: I'm asking -- well, he said no.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You said, "Would  
25 you agree?" The answer was, no, he doesn't agree. Let's

1 get the next question.

2 BY MR. MESSING:

3 Q. Okay. In both cases, any arrests that you --  
4 that you have made since 1998 have been with permission  
5 from somebody in your department; is that correct? Well,  
6 let me -- I'll withdraw the question and I'll ask --

7 A. I can -- if you want me to expand, I will.

8 Q. I'll with --

9 A. I'll help you out.

10 Q. I'm going to ask it --

11 A. Okay.

12 Q. -- withdraw the question and ask it another way.

13 A. Okay.

14 Q. It says that as an insurance investigator you  
15 could only make arrests after first obtaining permission  
16 from designated peace officers in the department. Did  
17 you make any arrests when you were with the Department of  
18 Insurance?

19 A. No.

20 Q. No. Okay. But it was your understanding -- was  
21 it your understanding that if you did make an arrest you  
22 needed permission from a peace officer in the Department?

23 A. My understanding is the policy and procedures  
24 said that. But the practical practice is, no, you could  
25 not.

1 Q. Okay. All right. And so with the exception --  
2 with the exception of what might be a slight  
3 inconsistency on the issue of arrests in terms of how  
4 it's written, all of the other items here seem to mirror  
5 each other.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you agree?

7 BY MR. MESSING:

8 Q. Do you agree? Or should we go down them one by  
9 one?

10 A. I'd prefer that. It makes it more clear for me.

11 Q. Okay. As an investigator for Department of  
12 Insurance -- by the way, you were not a peace officer in  
13 the Department of Insurance, correct?

14 A. I was not a peace officer, that is correct.

15 Q. Okay. So you conducted investigations of  
16 licensed or unlicensed entities doing business in  
17 insurance. Okay. Well, that -- you don't do insurance  
18 investigations anymore, but you do conduct  
19 investigations, correct?

20 A. Correct.

21 Q. Okay. All right. So, now, let's look at the  
22 rest. B, you conducted investigations of alleged  
23 administrative violations.

24 A. Correct.

25 Q. That's the same as what you do now, correct?

1 A. Correct.

2 Q. Okay. You conducted investigations of alleged  
3 civil violations, same as in your list for Corporations  
4 investigator, right?

5 A. Correct.

6 Q. Okay. Conducted investigations of alleged  
7 criminal law violations.

8 A. Correct.

9 Q. Same thing?

10 A. Same thing.

11 Q. Okay. Had the power to detain suspects. Same  
12 thing?

13 A. Had the power. Never exercised it. Yes.

14 Q. Same as what you --

15 A. Same.

16 Q. -- testified for Corporations investigator,  
17 correct?

18 A. Correct.

19 Q. Okay. Had the power to search suspects. Same  
20 thing, right?

21 A. No. I had the power at Department of Insurance  
22 to search subjects. I never did. At Corporations I have  
23 searched suspects incident to arrest.

24 Q. Well, I didn't ask you if you ever did. I said  
25 you had the power to detain -- to search suspects.

1 That's written exactly the same as subsection (i) under  
2 34. It says under (i) 34 for Corporations investigator,  
3 "Have the power to search suspects." So you had the same  
4 power in both places?

5 A. Correct.

6 Q. Okay. Okay. I'm sorry. That's 34(h), not (i).

7 Okay. Okay. Now let's go -- keep going down the  
8 list. "I interrogated suspects." Same, correct?

9 A. Correct.

10 Q. "I interviewed witnesses." Same, correct?

11 A. Correct.

12 Q. "Conferred with district attorneys, state and  
13 federal prosecutors in preparing cases for court." Same,  
14 correct?

15 A. Correct.

16 Q. "I took statements." The same, correct?

17 A. Correct.

18 Q. "I took depositions." With your understanding of  
19 depositions the same, correct?

20 A. Thank you. Correct.

21 Q. Okay. "I filed complaints." Same?

22 A. As we addressed and identified -- as identified  
23 earlier on, my -- the cases were referred. So the  
24 terminology, although being the same, the actual practice  
25 not the same.

1 Q. Okay. You performed surveillance?

2 A. Correct.

3 Q. Okay. The same, correct?

4 A. Correct.

5 Q. Okay. You wrote search warrants. The same,  
6 correct?

7 A. Correct.

8 Q. "Wrote affidavits in support of a search  
9 warrant." The same, correct?

10 A. Correct.

11 Q. "Affirm the truthfulness of affidavits before a  
12 superior court justice." The same, correct?

13 A. Correct.

14 Q. "Participate in the service of search warrants  
15 obtained by local and county peace officers and federal  
16 agents." The same, correct?

17 A. Correct.

18 Q. "Seized evidence." The same, correct?

19 A. Correct.

20 Q. "Maintain the chain of custody of evidence and  
21 review it accordingly." The same, correct?

22 A. Correct.

23 Q. "Prepared criminal reports." The same, correct?

24 A. Correct.

25 Q. "Testified as an expert" -- you said you

1 testified as an expert witness in state and federal  
2 courts. Did you actually testify as a witness?

3 A. I have testified for Department of Insurance in  
4 hearings, yes.

5 Q. Okay. And were you qualified by a judge as an  
6 expert witness in a particular area?

7 A. Like in voir dire? Like going back and saying  
8 why do I have --

9 Q. Yes.

10 A. -- more knowledge than the average person?

11 Q. Yes.

12 A. No.

13 Q. Okay. But you -- more of you -- you had the same  
14 item listed for a Corporations investigator, but you also  
15 have not been qualified as an expert there as well,  
16 correct?

17 A. Correct.

18 Q. Okay. And then we got to -- we've already dealt  
19 with the issue of making arrests. So that -- these  
20 lists, in my mind, seem to be virtually identical. Do  
21 you disagree with that?

22 A. I don't know if I'd say the word virtually.  
23 Because as a former computer forensics expert with the  
24 department, that was pretty specific. But, yes, they are  
25 very much the same.

1 Q. Okay. Now, you're -- as a Corporations  
2 investigator you work a four/ten?

3 A. I used to until my cooperation with the furlough.

4 Q. Okay. But your schedule is considered to be a  
5 four/ten, correct?

6 A. No. With my cooperation, I went to a 9/8/80 with  
7 Fridays off. Two of them.

8 Q. Nine/eight/eighty. Okay. And how about --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But before that  
10 saving the day you were a 4/10/40; is that correct?

11 THE WITNESS: Yes, your Honor, that's correct.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

13 BY MR. MESSING:

14 Q. When you were an investigator with the Department  
15 of Insurance you also worked a 4/10/40, correct?

16 A. Correct.

17 Q. Okay. Okay. Now, it's interesting here.

18 Your -- in your Declaration you talk about your  
19 supervisor. At the Department of Corporations, who is  
20 your immediate supervisor?

21 A. Deputy Commissioner Michael Pinkerton.

22 Q. Okay. Is he a super -- is he a peace officer?

23 A. No.

24 Q. Okay.

25 A. I'm the highest ranking peace officer at

1 Corporations.

2 Q. Okay. But you're not a manager, are you?

3 A. I am not.

4 Q. You're not a supervisor, are you?

5 A. I am not.

6 Q. Okay. And what about at the Department of  
7 Insurance, was your peace officer a supervisor?

8 A. Everybody at the insurance investigator level at  
9 Department of Insurance was 830.11 Penal Code designated.  
10 We were not peace officers, but we had the power of.

11 Q. Okay. But --

12 A. While on duty.

13 Q. Okay. But I'm asking you was your supervisor a  
14 peace officer.

15 A. Explaining no.

16 Q. Okay. All right. Now, just a couple more things  
17 here. Okay. Now, we talked about Coby Pizzotti a while  
18 ago. Now, isn't it true that he at one point when you  
19 were a Department of Insurance investigator tried to  
20 assist you with a personal work issue?

21 A. If you would be so kind to refresh my memory what  
22 you're asking?

23 Q. Didn't Coby Pizzotti try to get you a job at the  
24 Department of Insurance as a peace officer?

25 A. You know, honestly, I do not recall anything like

1 that. I would hope that somehow Mr. Pizzotti didn't have  
2 the ability to supersede civil service requirements for  
3 obtaining employment.

4 Q. Was anyone at CSLEA advocating -- when you were  
5 at Department of Insurance advocating for you to get a  
6 position at the Department of Insurance that would be a  
7 peace officer position?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That you know  
9 of.

10 THE WITNESS: Yes. CSL --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The answer's  
12 yes. Next.

13 BY MR. MESSING:

14 Q. And who was that?

15 A. Well, there were several people that advocated to  
16 get peace officer positions for the people -- the  
17 positions that I was in.

18 Q. Okay. All right. Now, while you were at the --  
19 one second. One second. Okay. When you were at the  
20 Department of Insurance, did Alan Barcelona try to assist  
21 you in getting a position at the Department of Justice as  
22 a special agent?

23 A. I think I heard grumblings of this before I came  
24 in. And I had asked Alan Barcelona what it takes to get  
25 a job at Justice and what type of positions were

1 available. I didn't know much about Department of  
2 Justice at the time. I just knew that they were higher  
3 paid than we were.

4 Q. I think that --

5 A. So in that capacity, the answer would be yes.

6 Q. Yes. Okay. And did you in fact interview for a  
7 job at the Department of Justice as a special agent?

8 A. No.

9 Q. Did you apply with the -- to the Department of  
10 Justice to be a special agent?

11 MR. ROSE: Objection. Relevance. Evidence Code  
12 section 352.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

14 MR. MESSING: Well, this goes to the issue of  
15 representation. He's complaining about whether people  
16 assisted him.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Whether he  
18 applied or not? I mean --

19 MR. CLARK: Can we just have a minute, your Honor?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21 BY MR. MESSING:

22 Q. Did Alan Barcelona or anyone at CSLEA arrange for  
23 you to have a meeting at the Department of Justice  
24 regarding becoming a special agent?

25 A. I don't know. I wouldn't be able to respond

1 that. I don't know if he arranged -- tried to arrange  
2 one or not.

3 Q. Well, did you have a meeting at the Department of  
4 Justice, with anyone at the Department of Justice,  
5 regarding becoming a special agent?

6 A. Not that I recall. I may have had conversations  
7 with Department of Justice agents while working with them  
8 about their duties and, you know, processes.

9 Q. Did -- were you ever informed by anyone that you  
10 couldn't get a position at the Department of Justice as a  
11 special agent because you didn't possess a basic POST  
12 certificate?

13 A. Oh, god, I don't recall that. But every --  
14 everybody that goes to Department of Justice has an  
15 830.1. A peace officer is required by the Penal Code to  
16 have a basic POST certificate. So you -- if you don't  
17 have one, you go to their academy.

18 MR. MESSING: Okay. Nothing further at this time.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

20 MS. TRUONG: I have nothing.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

22 MR. ROSE: Yes.

23 REDIRECT EXAMINATION

24 BY MR. ROSE:

25 Q. Do you need a break, Mr. Lewis?

1 A. I'm fine. Thank you.

2 Q. You were asked by Mr. Messing whether CSLEA  
3 challenged the reduction from 16 to 2 of the number of  
4 investigator at Department of Corporations.

5 A. I was asked that question.

6 Q. Was CSLEA successful in challenging that  
7 reduction, to your knowledge?

8 A. Well, with the -- with the loss of the  
9 investigators from the Department of Corporations, I  
10 would have to think that they weren't. I have not read  
11 or anything or a decision, but the mere fact that the  
12 department was down investigators for approximately three  
13 years, I would think that they failed.

14 Q. You were asked by Mr. Messing whether CSLEA had  
15 advocated for you to obtain a position at the Department  
16 of Insurance as a peace officer. Do you remember that  
17 line of questioning?

18 A. Yes, I do.

19 Q. And I believe your answer was something like you  
20 understood their advocacy to try to have those positions  
21 turned into peace officer positions. Is that a fair  
22 characterization of your testimony?

23 A. That's correct.

24 Q. Have they been successful in that regard, to your  
25 knowledge?

1 A. No.

2 Q. Let me ask you to please look at what's been  
3 marked and admitted as evidence in this case as Exhibit  
4 K.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Petitioner's K?

6 MR. ROSE: Petitioner's K.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

8 MR. ROSE: Which is --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have it.

10 MR. ROSE: Which is the Memorandum. Do you have it  
11 already?

12 MR. CLARK: Yeah.

13 MR. MESSING: Oh, yeah.

14 BY MR. ROSE:

15 Q. Take a moment to review that carefully. I'd like  
16 you to take as much time as you need to read it, and then  
17 I'll ask you a few questions about it. Before you spend  
18 that time, though, let me just ask this.

19 A. Okay.

20 Q. Are you -- have you seen this document before  
21 today?

22 A. I have.

23 Q. What do you recognize it as?

24 A. I recognize this as a document, an internal  
25 Memorandum from Rick Cline to Deputy Commissioner who

1 would be -- currently is in charge of the Enforcement  
2 Branch of the Department of Insurance.

3 Q. Okay. Let me just ask a few more questions about  
4 your knowledge of this document. How did you come to see  
5 this document before today?

6 A. This document was e-mailed to me by Department of  
7 Insurance Fraud Investigator Scott Edelen.

8 Q. Okay. And did you read it when you received it?

9 A. I did.

10 Q. Okay. Go ahead and take a minute and read it  
11 now, and I'll ask you a few questions.

12 A. Thank you.

13 Q. Okay. When you -- when did you receive this from  
14 Mr. Edelen?

15 A. I do not recall the exact date, but I believe it  
16 was in short order after it was released. And it shows a  
17 release date of February 4th --

18 Q. Did Mr. --

19 A. -- 2009.

20 Q. I'm sorry.

21 A. It shows a date of February -- it's dated  
22 February 4th, 2009.

23 Q. Did you and Mr. Edelen discuss this Memorandum?

24 A. Briefly.

25 Q. What was the substance of your discussion with

1 Mr. Edelen about this Memorandum?

2 A. Is that the department decide to create a cop  
3 unit, use people with 830.3 Penal Code designation to  
4 staff it, and that the insurance investigators were --  
5 positions were not going to be backfilled, so they would  
6 fade out or sunset through attrition, and that people  
7 that are in the insurance investigator position currently  
8 could apply.

9 Q. Now, the insurance investigator position that  
10 would sunset or fade out, was that the same position that  
11 you previously held?

12 A. Yes.

13 Q. Please look at page two, paragraph two of the  
14 document. I'll be reading from the third sentence of  
15 that paragraph. "This concept is illustrated by the  
16 recent revision of numerous Unit 7 classifications in  
17 which it divided existing classifications that are  
18 performing similar or identical duties into separate  
19 classifications based on whether or not the position is  
20 granted peace officer authority and performs peace  
21 officer-related duties." Do you see that?

22 A. I do.

23 Q. Are you aware whether or not there was a recent  
24 revision of numerous Unit 7 classifications that were  
25 divided as described in this memo there?

1           A. To answer your question directly, no. I'm just  
2 familiar with that there are split classes out there.  
3 But that's --

4           Q. Did Mr. Edelen tell you how he obtained this  
5 memo?

6           A. No.

7           Q. Okay. We're done with that for now.

8           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Just park  
9 it.

10 BY MR. ROSE:

11          Q. You were asked about your working alongside  
12 Mr. Satkowski in member outreach.

13          A. Correct.

14          Q. Based on your experience in working with  
15 Mr. Satkowski on member outreach, do you believe  
16 Mr. Satkowski's been an effective member outreach person  
17 for CSLEA?

18          A. You know, I would not know, because I do not know  
19 the outcome of the number of potential people at Fair  
20 Political Practice Commission who actually became members  
21 after the one visit I had with him.

22          Q. What was your understanding of Mr. Satkowski's  
23 goal at Fair Political Practices Commission?

24          A. To get people to sign membership applications.

25          Q. Are you aware whether or not Mr. Satkowski's role

1 is to fulfill members' needs after they have become  
2 members of CSLEA?

3 A. I believe that would be part and parcel of what  
4 he does based on communication he sent me when I  
5 attempted to resign from CSLEA, and he had it under his  
6 title membership.

7 MR. ROSE: Okay. Nothing further.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

9 Mr. Messing.

10 MR. MESSING: Okay. A couple of more questions.

11 RE-CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. The -- this Exhibit K from -- that you got from  
14 Mr. Edelen, how did he send this to you? Did he do it in  
15 person, or did he e-mail it?

16 A. E-mailed it to me.

17 Q. Okay. And approximately when did that happen?

18 A. As I stated earlier, this document is dated  
19 February 4th. I do not recall the actual date.

20 Q. Okay. Have you discussed the issue of the  
21 conversion of positions at the Department of Insurance,  
22 the peace officer positions, previously with Mr. Edelen?

23 A. I don't know. I don't -- I don't recall any  
24 instances.

25 Q. Okay. The -- when Mr. Edelen sent you this

1 Memorandum, what did his e-mail say that forwarded you  
2 the Memorandum?

3 A. I have 400 e-mails waiting for me at my office.  
4 I don't recall.

5 Q. Okay. Did he -- did he say that this was a bad  
6 idea when -- or does that refresh your recollection?

7 MR. ROSE: Objection. Lacks foundation.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
9 remember.

10 THE WITNESS: Yeah. I don't remember. I mean the  
11 substance was what we're looking at.

12 BY MR. MESSING:

13 Q. Have you had any discussion at any time with  
14 Mr. Edelen as to whether or not he believes that the  
15 conversion to peace officer positions is a good idea or  
16 bad idea?

17 A. I can't recall any specific conversations that I  
18 can, if you ask me a follow-up question, I go, yeah, we  
19 talked exactly about this, so I'd have to say no.

20 Q. Well, what's your impression? Do you have an  
21 impression as to whether or not he thinks this is a good  
22 or a bad idea?

23 MR. ROSE: Objection. Lacks foundation. Calls for  
24 speculation.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

1 BY MR. MESSING:

2 Q. Do you know why he sent you the document?

3 A. Yeah. It's a revelation within the department.  
4 That's my perception of it.

5 Q. So does --

6 A. Speculation on it.

7 Q. Does Mr. Edelen send you many documents that are  
8 revelations in the department, or is there some other  
9 reason why you think he sent this?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
11 know.

12 THE WITNESS: Yeah. I don't, your Honor.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you don't --

14 THE WITNESS: I don't.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Next.

16 BY MR. MESSING:

17 Q. Okay. Now -- okay. Now -- so, now, you  
18 understand that CSLEA attempted to convert positions at  
19 the Department of Insurance to peace officer positions.  
20 Do you -- do you think that that's a good idea?

21 A. Well, that seems to be a two-part question that  
22 you have. I am familiar that they attempted to do  
23 Assembly Bill 994 that would have brought that aspect to  
24 Department of Insurance for the insurance investigator.  
25 And if you can repeat the second part of your question?

1 Q. Well, let's -- let me ask another question. Are  
2 you aware of also Assembly Bill 1402? 1401. I'm sorry.  
3 That also attempted to get -- secure more money for the  
4 Department of Insurance so that more peace officers could  
5 be appointed?

6 MR. ROSE: Objection. Assumes facts not in evidence.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well --

8 MR. MESSING: I'm asking him if he knows.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember  
10 any bill with that sort of description? Does that come  
11 to your attention?

12 THE WITNESS: No, your Honor, it does not.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

14 BY MR. MESSING:

15 Q. Okay. You were asked if CSLEA has been  
16 successful in turning peace officer position --  
17 investigator positions into peace officers. Do you  
18 recall that?

19 A. I recall that.

20 Q. Okay. Well, this document would seem to indicate  
21 that the effort to make investigators into peace officers  
22 has been successful. Would you agree?

23 A. No, I would not.

24 Q. You don't?

25 A. No.

1 Q. So this document doesn't represent a statement by  
2 the Department that they're going to convert insurance  
3 positions into peace officer positions?

4 A. Plain English, yes, it does, sir.

5 MR. MESSING: Okay. No further questions.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

7 MS. TRUONG: Nothing, your Honor.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,  
9 anything further?

10 MR. ROSE: Nothing further.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With that, the  
12 Declaration, Petitioner's U, is admitted.

13 (Petitioner's Exhibit U received in  
14 evidence.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll take these.  
16 We'll take a break. And who do we have lined up next?

17 MR. ROSE: Sklueff.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Let me do  
19 what I have to on this thing. And I need to instruct  
20 those that are in the audience, we're going to have a  
21 closed hearing for the next witness, so -- and I don't  
22 know how long that witness is going to take. To be  
23 honest with you, it'll probably be a very long time, but  
24 I don't know. All right. With that, off the record.

25 (Recess taken.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

2 We're back on the record. We're back in the open hearing  
3 portion of this hearing, Unit 7 severance.

4 It's February 27th, the afternoon, 2009. The time is  
5 approximately 1:40 p.m.

6 Case No. SA-SV-171, in regards to Petitioner Peace  
7 Officer of California, Employer State of California, and  
8 Exclusive Representative California Statewide Law  
9 Enforcement Association.

10 My name is Shawn Cloughesy. I'm the Administrative  
11 Law Judge assigned to hear this case on behalf of the  
12 PERB.

13 Exclusive Representative, Mr. Messing, Mr. Kasey  
14 Clark. For the Employer, Shannan Truong, Linda Mayhew.  
15 For the Petitioner, Joe Rose, Diane Sabonis, and  
16 Mr. Chris Lewis.

17 We're resuming. We're starting the afternoon  
18 session. I'm going to be asking this witness to raise  
19 your right hand.

20 (Witness sworn by the Judge.)

21 THE WITNESS: I do.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
23 your name for the record, spelling your last name.

24 THE WITNESS: My name is Diego Busatto. That's B, as  
25 in boy, U-S-A-T-T-O.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I  
2 have a couple preliminary questions, Mr. Busatto. Did  
3 you ever receive an e-mail containing the transcripts of  
4 the first two days of this proceeding, by any chance?

5 THE WITNESS: No, I did not.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So  
7 you have not read any of the transcripts of this  
8 proceeding?

9 THE WITNESS: No, I have not.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
11 Next, I'm going to show you a document, sir. Marking as  
12 Petitioner V what appears to be a Declaration of this  
13 witness in lieu of direct testimony.

14 (Petitioner's Exhibit V marked for  
15 identification.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He is going to  
17 be reviewing it.

18 By the way, I'm also going to be sealing from public  
19 inspection Exclusive Representative J. I didn't say that  
20 on the record last time. So both I and J are also -- of  
21 Exclusive Rep are also going to be sealed from public  
22 inspection.

23 All right, sir, you've seen the document with the Job  
24 Specifications attached. And what do you recognize that  
25 as?

1 THE WITNESS: As my Declaration in Lieu of Testimony.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
3 if you can turn to your signature page. And do you  
4 recognize that signature, sir?

5 THE WITNESS: Yeah. That is my signature.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
7 did you sign it on the date set forth and at the place  
8 set forth?

9 THE WITNESS: I did sign it in Long Beach on  
10 February 11th.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Very good. And  
12 are all the contents set forth in that Declaration true  
13 and correct to the best of your knowledge?

14 THE WITNESS: Yes, they are.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there any  
16 corrections that you feel need to be made to the  
17 document?

18 THE WITNESS: I have not seen any, no.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
20 right. Mr. Rose, any further questions for this witness?

21 MR. ROSE: Yes.

22 TESTIMONY OF

23 DIEGO BUSATTO,

24 Having been duly and regularly sworn, testified as

25 follows:

1 DIRECT EXAMINATION

2 BY MR. ROSE:

3 Q. Mr. Busatto, do you know a man by the name of  
4 Ryan Gates?

5 A. I do.

6 Q. Do you work with Mr. Gates?

7 A. I do.

8 Q. How long have you known Mr. Gates?

9 A. Approximately 12 years. Or 11 or 12 years.

10 Q. And do you know what Mr. Gates' job title is?

11 A. He's a peace officer for the California -- or for  
12 State of California.

13 Q. Is that the same as you or different?

14 A. No. It's different. I'm a Seasonal Lifeguard  
15 II.

16 Q. Based on your experience working with Mr. Gates,  
17 are his job duties the same as yours or different?

18 A. They're different.

19 Q. How different are they?

20 A. He's a law enforcement officer, whereas I'm a  
21 lifeguard.

22 Q. In your job as a lifeguard, do you ever observe  
23 people fighting on the beach?

24 A. I've seen people fighting on the beach.

25 Q. What are you expected to do as a Seasonal

1 Lifeguard II if you see people fighting on the beach?

2 A. First and foremost, call a peace officer and let  
3 them know the situation so they could respond to it. And  
4 then if I feel it's safe to do so, intervene. Most of  
5 the time we are not expected to intervene. Maybe provide  
6 crowd control, if that. Most of the time we're expected  
7 just to stay away and call a peace officer.

8 Q. If you did intervene, how would you intervene?

9 A. I would probably just try to separate people and  
10 have them stand back. But like I said, that would only  
11 be in a situation where I felt it safe for me to do so.  
12 I have not been trained in anything like that.

13 Q. How long have you been a Seasonal Lifeguard II,  
14 did you say?

15 A. Seasonal Lifeguard II -- I've been a Seasonal  
16 Lifeguard for 12 years, Seasonal Lifeguard II for the  
17 past 3 years.

18 Q. Can you estimate for us --

19 A. Four years.

20 Q. -- in the period of time that you've been a  
21 Seasonal Lifeguard the last 12 years how many times  
22 you've actually intervened in a fight on the beach?

23 A. Maybe twice.

24 Q. Over a 12-year period?

25 A. Uh-hmm.

1 Q. Have you ever been in a helicopter as a part of  
2 your job?

3 A. I've been lifted by a helicopter, but never  
4 actually in the helicopter.

5 Q. Have you ever been on a bicycle as part of your  
6 job?

7 A. No.

8 Q. On horseback as part of your job?

9 A. No.

10 Q. Were you lifted by a State helicopter when you  
11 were lifted?

12 A. It was a Huntington City helicopter.

13 Q. Were you performing -- what were you doing when  
14 you were being lifted by a helicopter?

15 A. I was performing a demonstration for inner city  
16 kids at the time, and I was -- we were doing a mock  
17 rescue, and I was the mock victim.

18 Q. I see. Do you speak on the radio as a Seasonal  
19 Lifeguard II?

20 A. Yes.

21 Q. What kind of radio do you speak on?

22 A. I believe the Motorola. It's like a -- like a  
23 walkie-talkie. It's similar to the same radios that  
24 the -- that the peace officers use.

25 Q. Okay. And when -- who are you able to

1 communicate with when you speak on that radio?

2 A. I'm able to communicate with fellow lifeguards,  
3 our dispatch headquarters if we're using one, other peace  
4 office -- or peace officers, and Circom, our State  
5 dispatcher for the south sector.

6 Q. When you say other peace officers, are you  
7 referring to -- what are you referring to specifically?

8 A. Like the scenario that we just talked about. If  
9 someone was fighting on the beach, I would use my radio  
10 to contact the peace officer.

11 Q. I guess what I mean is peace officers from what  
12 agencies?

13 A. From the State.

14 Q. From the State of California?

15 A. Yeah. I don't -- we only have one radio that I  
16 could talk to outside agencies with, unless they decide  
17 to switch over to our radio to try to contact, which  
18 happens occasionally. But for -- say I want to get  
19 Huntington PD, I cannot do that with my radio. I'd have  
20 to go use a trunked radio, which the peace officers have.

21 Q. The trunked radio is a radio you have as well?

22 A. We have one, but we don't really -- we don't  
23 primarily use that. That one -- that one's just a new  
24 addition to the radios that we have.

25 Q. When was that added?

1 A. I think last year or the year before that.

2 Q. Since it was added, how many times, if you could  
3 estimate for us, have you personally spoken on the trunk  
4 radio?

5 A. I've used it many times, but never -- I've never  
6 used to communicate with another agency on it because --

7 MR. MESSING: I'm going to object. He's going beyond  
8 the -- move to strike. He's going beyond the question  
9 asked. He was simply asked how many times he used it.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree. So go  
11 ahead.

12 THE WITNESS: I've used --

13 BY MR. ROSE:

14 Q. Give us a number, and then I'll ask you the  
15 question that you were about to --

16 A. I've used the trunk radio many times.

17 Q. Could you estimate for us how many times? Do you  
18 use it daily or less than daily?

19 A. If I decide to -- we have a number of different  
20 radios. They're -- the majority of them are all the same  
21 ones, and we have one trunked radio. If duty --

22 Q. We're speaking only about the trunked radio.

23 MR. MESSING: Wait. Hold it. The witness was right  
24 in the middle of answering when he was interrupted by  
25 counsel. He needs to --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Go  
2 ahead.

3 MR. MESSING: -- finish those responses.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead, sir.

5 THE WITNESS: What we like to do is have one  
6 Lifeguard II on the beach with the trunked radio. That  
7 way, in case of emergency and we need to coordinate with  
8 other agencies, one of us has that radio. We obviously  
9 advocate for all of to have the trunked radio. But since  
10 they're expensive, we only get one. I've used it many  
11 times, but never have I used it to contact an outside  
12 agency.

13 BY MR. ROSE:

14 Q. Do you ever work with State Park peace officers,  
15 park rangers?

16 A. I work with peace officers. And I believe my  
17 superintendent is classified as a ranger, but -- and I --  
18 other actual classification as ranger, I've worked with  
19 one while she was training at our beach.

20 MR. ROSE: Okay. Nothing further.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

22 Mr. Messing.

23 CROSS-EXAMINATION

24 BY MR. MESSING:

25 Q. Okay. Now, do you know how many Seasonal

1 Lifeguard I's there are in the State?

2 A. In the State?

3 Q. Yeah.

4 A. No, I do not know.

5 Q. Do you know how many Seasonal Lifeguard II's  
6 there are in the State?

7 A. I do not know that.

8 Q. Okay. You work out of Huntington Beach?

9 A. Huntington State Beach.

10 Q. Huntington State Beach. Okay. How many Seasonal  
11 Lifeguard I's and II's work at Huntington Beach?

12 A. Lifeguard I's, I would guess 80 to 100.

13 Q. Okay. And II's?

14 A. And II's, I would say about 16.

15 Q. Okay. So is it fair to say that you would be  
16 familiar with the job duties of the folks who are  
17 Seasonal I's and II's who work at Huntington Beach?

18 A. Yeah.

19 Q. Okay. But you don't know how many people are  
20 employed as Seasonal I's and II's at other locations in  
21 the State?

22 A. If I was -- I heard a number a while ago and --  
23 but I have no way of confirming if that was true or not.  
24 If I was to guess, I'd say around 800. But I'm not sure.

25 Q. Okay. Out of whatever that other number is, are

1 you familiar with the working conditions of the Lifeguard  
2 I's and II's in those other areas?

3 A. Vaguely familiar from what I've heard from  
4 other -- from friends of mine who have gone and worked in  
5 those districts.

6 Q. But when you say vaguely, how many -- how many  
7 districts are there?

8 A. I don't know.

9 Q. You don't know? How many districts where you  
10 have friends have you heard of -- vaguely about what is  
11 done with Seasonal I's and II's?

12 A. I'd probably say about maybe five or six.

13 Q. Okay. How many hours a year -- let's say over  
14 the last couple of years, how many hours a year do you  
15 work?

16 A. I would say just under 1500.

17 Q. Okay. And if we go back over the whole 12-year  
18 period, about what's -- would that be about average?

19 A. Uh-hmm.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's a yes?

21 THE WITNESS: Yes.

22 BY MR. MESSING:

23 Q. Okay. Do you know what the annual limitations  
24 are on your ability to work in a year?

25 A. Fifteen hundred hours.

1 Q. Okay. Now, I want to just talk about your  
2 training. In your declaration you say knowledge of first  
3 aid is required. Is that the same for sworn personnel as  
4 well?

5 A. I don't know.

6 Q. Okay. What sworn personnel do you have occasion  
7 to work with who are State employees?

8 A. I don't under --

9 MR. ROSE: Objection. Vague.

10 THE WITNESS: I don't understand.

11 BY MR. MESSING:

12 Q. Classifications of employees that you would --  
13 who are State employees who you would have occasion to  
14 work with.

15 A. Sworn?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That are peace  
17 officers.

18 BY MR. MESSING:

19 Q. Sworn peace officers?

20 A. Sworn peace officers?

21 Q. Yeah.

22 A. The peace officers that work in our district as  
23 lifeguard supervisors and enforcement supervisors, like  
24 the night shift supervisor. I've worked with our  
25 superintendent of our State Park. And just the

1 individuals who fill out the ranks of our operation.

2 Q. And did you say park rangers?

3 A. I've worked with one park ranger while she was  
4 training.

5 Q. Okay. So let's talk about permanent lifeguards  
6 versus seasonal lifeguards.

7 A. Okay.

8 Q. Do the permanent life -- the permanent lifeguards  
9 are all sworn, correct?

10 A. They're sworn peace officers.

11 Q. They're sworn peace officers. Okay. Do they get  
12 the first -- the same first aid training that you do?

13 MR. ROSE: Objection. Asked and answered.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As the first  
15 aid -- I'm not sure. Go ahead, sir. Do you know? Only  
16 if you know.

17 THE WITNESS: I'm assuming that they get more  
18 intensive training because they go to a long six-month  
19 academy, which in that academy they have to go through --  
20 and part of that academy has first aid training in it.

21 BY MR. MESSING:

22 Q. Okay. How about ongoing training, do you train  
23 with the sworn lifeguards?

24 A. No. We are trained by them.

25 Q. Okay. Do you know if your ongoing training in

1 first aid procedures is the same?

2 A. No, it's not the same.

3 Q. On first aid?

4 A. On first aid, yes.

5 Q. And how does it differ?

6 A. I would assume it differs because we are trained  
7 by them. So I'm going to assume that they have more  
8 training than we do.

9 Q. Okay. Well, I can't ask you -- you can't testify  
10 to what you assume.

11 A. Uh-hmm.

12 Q. Tell me what you know. Do you know if it's  
13 different or the same?

14 A. I know it's different because they are not  
15 sitting in the same classroom being trained by us. So in  
16 that way it's different.

17 Q. But the material might be the same for all of  
18 you?

19 MR. ROSE: Objection. Calls for speculation. Asked  
20 and answered.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You don't know,  
22 do you?

23 THE WITNESS: No.

24 BY MR. MESSING:

25 Q. You don't know? Okay. What about do you get CPR

1 training?

2 A. We do.

3 Q. Okay. Do permanent lifeguards?

4 A. Don't know.

5 Q. Don't know? Do you get AED training, automatic  
6 external defibrillators?

7 A. We do.

8 Q. Okay. Do sworn lifeguards?

9 A. I do not know.

10 Q. Do you get driver training?

11 A. We do.

12 Q. Do sworn lifeguards?

13 A. I do not know.

14 Q. Do you get code three driving training?

15 A. We do.

16 Q. Do you know if the sworn lifeguards get that?

17 A. I do not.

18 Q. Now, you were talking about the trunked radio.  
19 Okay. Is that sort of your lifeline to be able to call  
20 peace officers for assistance if there is a necessity?

21 A. The trunk radio specifically is used to call  
22 other agencies, outside agencies.

23 Q. Okay.

24 A. But it can also be used to talk within our  
25 lifeguards and to peace officers.

1 Q. Okay. So do you -- you also talk to sworn  
2 lifeguards who are State employees?

3 A. Right. The radio doesn't have to be trunked to  
4 do that.

5 Q. Okay. Do you deal with, as a lifeguard,  
6 uncooperative law violators?

7 A. I do to a certain extent.

8 Q. Okay. Now, are there situations where you're  
9 able to gain their cooperation if they start out  
10 uncooperative?

11 A. There have been those situations.

12 Q. Okay. Now, when you have a law violator, do  
13 you -- and you call for peace officer backup, do you  
14 report to the peace officer what your observations were  
15 of the conduct and behavior of the individuals involved?

16 A. I do.

17 Q. Okay. Do you write reports that can contain  
18 accounts of what it is that you've observed of behavior  
19 or conduct on the beaches?

20 A. Only when I'm asked to and when I'm the reporting  
21 party.

22 Q. Okay. And are you on occasion the reporting  
23 party?

24 A. I am.

25 Q. Okay. Have you testified in court?

1 A. No, I have not.

2 Q. Okay. Are you familiar with the aquatic  
3 functions of lifeguards?

4 A. Yeah.

5 Q. Okay.

6 A. Yes.

7 Q. Are you familiar with the aquatic functions of  
8 park rangers?

9 A. Yes. Only from my experience as a Lifeguard II  
10 with the State.

11 Q. Okay. Can you explain what aquatic functions  
12 park rangers may have?

13 A. From my experience with the State and from what  
14 I've seen, it would be to insure the safety of the public  
15 at all times.

16 Q. Now, part of your duties involves patrolling,  
17 correct?

18 A. Correct.

19 Q. Okay. Is that a large part of your job?

20 A. I would say it's a large part of my job.

21 Q. Okay. And when you're patrolling, part of your  
22 job is looking for individuals in distress?

23 A. Correct.

24 Q. Okay. Also looking for persons -- I'm sorry --  
25 vessels in distress?

1 A. Correct.

2 Q. Okay. And also looking for potential or actual  
3 law violators, correct?

4 A. I would say that's incorrect.

5 Q. You're not -- you're not on the lookout for law  
6 violators?

7 MR. ROSE: Objection. Asked and answered.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

9 BY MR. MESSING:

10 Q. Well, can you explain how it is incorrect that  
11 you are not -- when you indicate that you're not  
12 looking -- on patrol looking for law violators?

13 A. That's not my job. I don't do that. When I'm on  
14 patrol, I am there to insure the safety of the public.  
15 If a potential law violator is jeopardizing himself or  
16 someone else, then that becomes my job. But if  
17 somebody's violating the law, they run a stop sign, I'm  
18 not going to do anything about it.

19 Q. Okay. So if you observe somebody let's say  
20 smoking pot on the beach --

21 A. Uh-hmm.

22 Q. -- what do you -- what do you understand that  
23 you're supposed to do?

24 A. I would -- my understanding of what I'm supposed  
25 to do is inform a peace officer that somebody's violating

1 the law.

2 Q. Okay. And are you supposed to be on the lookout  
3 for people smoking marijuana on the beach?

4 A. No.

5 Q. You're not. How about people drinking? Is it  
6 part of your duties to determine or look out for people  
7 drinking on the beach?

8 A. I would say no. But if -- my principle job is to  
9 insure the safety of the public. If somebody is drinking  
10 and, like I said before, putting themselves or someone  
11 else in danger, then it becomes my problem. If they're  
12 strictly drinking, there's many times when we, me and my  
13 fellow lifeguards, will see someone clear as day  
14 drinking, but we know that they're not going to be a  
15 jeopardy to themselves or others, and that we have  
16 bigger -- our primary concern is the safety of the people  
17 in the water. So if by stopping and talking to these  
18 people, or even reporting it to a peace officer, takes up  
19 time from executing rescues and/or preventative actions,  
20 then we will not deal with those people.

21 Q. So if you see somebody drinking on the beach and  
22 you believe that they are becoming rowdy, is it your  
23 responsibility to report that to a peace officer?

24 A. Yeah.

25 Q. Okay.

1 A. Yes.

2 Q. Okay. Now, you say your current hours of work  
3 are variable. But do you work a schedule?

4 A. I do work a schedule.

5 Q. What is that schedule?

6 A. It's variable.

7 Q. Okay. How many hours a week do you work?

8 A. Forty plus.

9 Q. Forty plus. Well, do you -- do you regularly  
10 schedule hours during the week?

11 A. I have written schedules.

12 Q. No.

13 A. If that's your question.

14 Q. No, no. The question is, is do you have regular  
15 scheduled hours as opposed to added hours for overtime?

16 A. It -- yes. And it depends on what time of year  
17 it is.

18 Q. Okay. So, for example, now you have a -- do you  
19 have regularly scheduled hours?

20 A. No. I'm not currently employed until the third  
21 of March.

22 Q. Okay. When were you last employed?

23 A. Yes, I had a set schedule.

24 Q. And what was that set schedule?

25 A. It was five eight-hour days and --

1 Q. Okay. Five/eights?

2 A. Yeah, five/eights.

3 Q. Okay. Are those the same schedules that  
4 permanent lifeguards work?

5 A. I do not know.

6 Q. Okay. All right. Now, do you ever dispatch the  
7 peace officers in the -- well, either park rangers or  
8 lifeguards?

9 A. When they decide to go through our dispatch  
10 center, yes. But they have their own dispatch center  
11 that they go through.

12 Q. Okay. But how often do the permanent lifeguards  
13 go through the same dispatch center that you have?

14 A. I don't know. Kind of often.

15 Q. Often?

16 A. Kind of often, I guess. Not every day, but  
17 sometimes.

18 Q. Is it true that if there are observations on the  
19 beach that require a peace officer response, then those  
20 will go through your dispatch?

21 A. Only if a seasonal lifeguard makes the call.

22 Q. Okay. Well, that's what I'm saying.

23 A. Well, no. Because most of the time that peace  
24 officers get dispatched, it goes through their  
25 dispatching center. That's why they have a dispatch

1 center. Because most of the times when peace officers  
2 are needed on a beach, most of the calls are made by  
3 people on the beach.

4 Q. Right. Okay. So they would be calling 911?

5 A. Right.

6 Q. Okay. But if the call originates with a  
7 lifeguard, it goes through your dispatch center?

8 A. Right.

9 Q. Okay. And let's see here.

10 A. However, let me -- only the call goes out. The  
11 actual rest of -- only the initial contact goes out.  
12 They're only notified initially. After that the call  
13 goes through Circom.

14 Q. All right. But that's an -- would you agree that  
15 that's an important function to be able to contact the  
16 peace officers through your dispatch?

17 A. Uh-hmm.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Say it again.

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Thank you.

21 This is all I got right here is just a microphone.

22 THE WITNESS: Yeah.

23 BY MR. MESSING:

24 Q. Okay. And isn't it true that many Lifeguard II's  
25 become peace officers, lifeguard peace officers?

1 A. I would say some, but not many.

2 MR. MESSING: I have no further questions.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

4 MS. TRUONG: No questions.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

6 MR. ROSE: Just a couple.

7 REDIRECT EXAMINATION

8 BY MR. ROSE:

9 Q. When you have -- in the instances where you've  
10 gained the cooperation of people on the beach who were  
11 law violators --

12 A. Uh-hmm.

13 Q. -- can you tell us how many times in the last  
14 year as a Seasonal Lifeguard you've gained the  
15 cooperation of a law violator?

16 A. I have no idea of knowing how to -- a couple -- a  
17 few times. Many times. It's really hard for me to say.  
18 Because when a law violator -- somebody, for instance, is  
19 walking their dog on the beach, we're not allowed to have  
20 dogs on our beach. And I'll say, hey, you guys, you're  
21 not allowed to have dogs on the beach, as I'm driving by  
22 watching the water. And I'll just drive by and say, hey,  
23 you guys aren't allowed to have dogs on the beach. And  
24 they'll go, okay, and they'll leave.

25 Q. Do you write a report about that?

1 A. No.

2 Q. Do you send that up to the district attorney's  
3 office for prosecution?

4 MR. MESSING: Object. Leading.

5 THE WITNESS: No.

6 MR. MESSING: Wait.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I --

8 MR. MESSING: The witness answered after I objected.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well --

10 MR. MESSING: And I say it's leading.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
12 overrule the leading question. The answer is no, I take  
13 it?

14 THE WITNESS: The answer is no.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you.

16 BY MR. ROSE:

17 Q. Write -- you were asked about writing reports.  
18 Do you remember that line of questioning?

19 A. Yeah.

20 Q. How many reports have you written in the last  
21 year?

22 A. Ten.

23 Q. How about in the last dozen years?

24 A. A hundred.

25 Q. What are the length of those reports,

1 approximately, in terms of page length?

2 A. We have two pages of patient assessment. At  
3 least 90 percent of my reports are for emergency first  
4 aid situations. I've not -- I've written one report  
5 with -- that had to do with criminal activities in the 12  
6 years that I've been the lifeguard. All the other  
7 reports have always been first aid emergency situations  
8 where somebody has an injury. We have a sheet, you know,  
9 of vitals that we take and that kind -- that sort of  
10 thing. And then, you know, we pass it along to whoever.  
11 But that's it.

12 MR. ROSE: Thank you. Nothing further.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

14 MR. MESSING: Just one more thing.

15 RE-CROSS-EXAMINATION

16 BY MR. MESSING:

17 Q. Walking dogs on the beach, that's a citable  
18 offense?

19 A. Yes.

20 MR. MESSING: Okay. Nothing further.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

22 MS. TRUONG: No.

23 MR. ROSE: Yes.

24 /////

25 /////

1 FURTHER REDIRECT EXAMINATION

2 BY MR. ROSE:

3 Q. Walking dogs on the beach, do you carry citation  
4 booklets so you -- to issue citations for that purpose?

5 A. I do not carry a citation booklet.

6 Q. Do you have the power to issue citations for that  
7 offense?

8 A. I do not have the power to issue a citation.

9 Q. Do you ever contact the peace officer to notify  
10 them that there's a potential citation to be had out on  
11 this dog caper?

12 A. Very rarely will I call for that particular  
13 reason.

14 MR. ROSE: Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
16 Anything further?

17 MR. MESSING: No.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

19 MS. TRUONG: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Congratulations,  
21 sir. You've been one of our shorter witnesses.

22 MR. MESSING: Well, he's -- let the record reflect  
23 he's probably close to six feet tall.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
25 We'll go off the record.

1 (Off the record.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
3 We're back on the record. Just as a couple of  
4 housekeeping issues, I'm admitting Petitioner V, the  
5 Declaration. And Petitioner T I think I've already  
6 admitted. But in case I haven't, I'm admitting that  
7 Declaration, and sealing from public inspection.

8 (Petitioner's Exhibits T and V received  
9 in evidence.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a witness  
11 to my left ready to be sworn in. Sir, raise your right  
12 hand.

13 (Witness sworn by the Judge.)

14 THE WITNESS: I do.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
16 your name for the record, spelling your last name.

17 THE WITNESS: Brandon Shoemaker. S-H-O-E-M-A-K-E-R.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
19 Mr. --

20 MR. MESSING: Before the witness testifies, since  
21 you're doing the housekeeping, do we have any outstanding  
22 exhibits that have not been moved into evidence? Because  
23 I'd ask that they all be --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think the  
25 answer is yes.

1 MR. MESSING: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And hold on a  
3 second here. I have -- you know, I just might not have  
4 marked them. I have E, F and G, which I'm not sure makes  
5 sense. Because some of them are just specs. Oh, that's  
6 right. E is part of the salary survey. And I don't  
7 remember having any objection on that. We had the whole  
8 document.

9 MR. ROSE: Right. Correct. No objection.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So no objection  
11 from the Employer on --

12 MS. TRUONG: No.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- on E? In  
14 regards to F and G, which are both SPB Job Specs, any  
15 objection?

16 MR. ROSE: None.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: None. And then  
18 on the -- okay. Is there going to be --

19 MS. TRUONG: I'm sorry.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there going  
21 to be any objection to F or G, the Job Specs for --

22 MS. TRUONG: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 MS. TRUONG: I apologize. I didn't -- I didn't  
25 realize you were looking at us.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: F and G are also  
2 admitted.

3 (Exclusive Representative Exhibits E, F  
4 and G received in evidence.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So now all  
6 Exclusive Rep exhibits have been admitted, Mr. Messing.

7 MR. MESSING: Okay. Good.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have --

9 MR. MESSING: So we're up to date.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- sworn in  
11 Mr. Shoemaker. And a couple preliminary questions, sir.  
12 Have you -- have you been sent an e-mail containing the  
13 transcripts our first two days of hearing?

14 THE WITNESS: No.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And have you not  
16 reviewed -- I guess that's a follow-up question which is  
17 probably going to have the same answer. Have you  
18 reviewed the transcripts of our first two days of  
19 hearing?

20 THE WITNESS: I haven't seen any transcripts of the  
21 hearing, no.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Good enough.  
23 You've already in our prior day of hearing in regards to  
24 Petitioner's D, which I've provided to you,  
25 authenticated. Is there going to be any questions for

1 this witness before he gets passed to Mr. Messing?

2 THE WITNESS: I just want to say, the only thing I  
3 don't -- isn't mine is the --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The Job Specs.

5 THE WITNESS: -- the Specs, right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
7 right. You know, why don't you have this before you in  
8 case you get asked about those. So --

9 THE WITNESS: I think I have the same one in front of  
10 me, Judge.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

12 THE WITNESS: Let me make sure, but I think they're  
13 the same.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean as far  
15 as the specs go, at least.

16 THE WITNESS: Okay. That's fine.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In case you get  
18 asked about that.

19 THE WITNESS: Right. Okay.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose, any --

21 MR. ROSE: Yeah. Let me just clarify something here.

22 TESTIMONY OF

23 BRANDON SHOEMAKER,

24 Having been duly and regularly sworn, testified as

25 follows:

1 DIRECT EXAMINATION

2 BY MR. ROSE:

3 Q. Can you -- can you state your job title for us?

4 A. I'm an Agent with the California State Lottery.

5 MR. ROSE: Okay. One moment, please.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Off the  
7 record.

8 (Off the record.)

9 MR. MESSING: I'll tell you what. I'll make this a  
10 really short cross.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
12 We're back on the record.

13 MR. ROSE: Thank you.

14 MR. MESSING: But you have to make your direct short.

15 MR. ROSE: All right.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 We're on the record. Mr. Rose.

18 MR. ROSE: Thank you.

19 BY MR. ROSE:

20 Q. Mr. Shoemaker, we've got your Declaration. Let  
21 me ask you, how long have you been in the classification  
22 represented by CSLEA?

23 A. In this classification or a classification?

24 Q. A classification.

25 A. July of 2006.

1 Q. And are you currently satisfied with the  
2 representation of CSLEA?

3 A. No.

4 Q. How long have you been dissatisfied with CSLEA's  
5 representation?

6 A. Probably about two years.

7 Q. And why are you dissatisfied with CSLEA's  
8 representation?

9 A. When Lottery Agents make it's about \$280 a month  
10 less than similar classifications, as an example, my  
11 peers from Alcoholic Behavior Control, Department of  
12 Motor Vehicles, State Medical Board, DCA's Division of  
13 Investigation, Toxic Substance Control, Department of  
14 Insurance, yet to become a Lottery Agent more specialized  
15 experience and a longer length of specialized experience  
16 is required.

17 What I mean by that is to work for the State Medical  
18 Board you just need to have two years of college and two  
19 years of investigative experience. To work for the  
20 Lottery, you need two years of college plus three years  
21 of specialized investigative experience in the areas of  
22 robbery, burglary, extortion, forgery, fraud, vice and so  
23 on. That experience in the law enforcement community is  
24 very hard to come by unless you work for a very large  
25 metropolitan agency.

1 MR. MESSING: Allow me to show you what we'll ask to  
2 be marked for identification.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.  
4 Marking as Petitioner Exhibit W what appears to be a  
5 multi-page document, the first page being a printout from  
6 the SPB website in regards to classifications of Chief  
7 Lottery Agent, Lottery Agent, Supervising Lottery Agent.  
8 Then we have also as part of the exhibit similar sort of  
9 documents for Fraud Investigator, Department of Health  
10 Services, and Criminal Investigator for Toxic Substance  
11 Control, Corporations Investigator, and probably a few  
12 others that I have missed.

13 (Petitioner Exhibit W marked for  
14 identification.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has W  
16 before him.

17 MR. MESSING: For the record, so the record need be  
18 overburdened, we're willing to stipulate that CSLEA  
19 believes that Lottery Agents should get the same pay as  
20 other investigators in the State.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know.  
22 Do you want to stipulate to that, sir?

23 MR. ROSE: A stipulation that CSLEA believes that --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: yes.

25 MR. ROSE: -- Lottery Agents should get the same --

1 I'll accept that stipulation.

2 MR. MESSING: Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
4 that stipulation, witness has W and is ready for your  
5 questions, sir.

6 MR. ROSE: I suppose the Employer has no opposition  
7 to that stipulation?

8 MS. MAYHEW: No.

9 MS. TRUONG: No.

10 MR. MESSING: Okay.

11 MS. MAYHEW: They can stipulate whatever they want.  
12 That doesn't reflect the belief of the State necessarily  
13 one way or the other.

14 MR. CLARK: That's the problem. Therein lies the  
15 problem.

16 THE WITNESS: Therein lies the problem, exactly.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

18 THE WITNESS: You just hit the nail on the head.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

20 BY MR. ROSE:

21 Q. Now, then, Mr. Shoemaker, what -- the document  
22 I've just handed you, do you recognize it?

23 A. Yes.

24 Q. What is it?

25 A. It's the different pay levels and job

1 descriptions that are going from the State Personnel  
2 Board website for those similar categories that we just  
3 talked about.

4 Q. Have you seen this document before today?

5 A. Yes.

6 Q. How did -- and what -- explain how you've seen  
7 it.

8 A. I've looked at it at the website many times, and  
9 I was the one that produced it two days ago.

10 Q. You assembled this document?

11 A. Yes.

12 Q. And the source of the information was from the?

13 A. The State -- the California State Personnel Board  
14 website.

15 MR. MESSING: If I may, the stipulation was intended  
16 to forego having to painstakingly go through this  
17 document. Can we get an offer of proof as to what POC  
18 wants to prove beyond --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So you have no  
20 objection to W being admitted, then?

21 MR. MESSING: No objection.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: W -- and no  
23 objection from the Employer?

24 MS. TRUONG: No.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you for

1 reminding me the last time, Mr. Rose. With that, W is  
2 admitted.

3 (Petitioner's Exhibit W received in  
4 evidence.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Further  
6 questions for this witness?

7 MR. ROSE: Nothing further.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing, you  
9 saved me a couple minutes, so thank you.

10 MR. MESSING: Maybe more than that. Okay.

11 CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. Now, I notice in your Declaration that you say  
14 that you provide mutual aid to other law enforcement  
15 agencies.

16 A. Yes.

17 Q. Either by formal or informal means. Do you know  
18 the -- or how would you define the difference between  
19 formal mutual aid and informal mutual aid?

20 A. I would say informal could be any one of  
21 countless investigators that I'm on a task force with or  
22 know through professional and personal contacts on  
23 saying, hey, can you check in -- check on this for me? I  
24 need to know who owns this store. I need to know where  
25 this ticket came from. I need to know where this ticket

1 was validated at. To a formal request through either my  
2 office or our headquarters in Sacramento through our  
3 chain of command asking for assistance on a task force,  
4 whether it be a joint terrorism task force through the  
5 FBI through one of the regional threat assessment centers  
6 in the state, assistance with obtaining videos, getting  
7 retailers to cooperate with law enforcement, other law  
8 enforcement agencies during our investigations.

9 Q. So you don't understand that there's a different  
10 between assistance to another agency and responding to  
11 mutual aid for another -- to another agency?

12 A. Sure.

13 Q. Okay.

14 A. There's a huge difference.

15 Q. So what is -- what is the meaning of responding  
16 to a request for mutual aid from another law enforcement  
17 agency?

18 A. Mutual aid is I'm listening on a radio and I hear  
19 a CHP officer on a freeway putting out a request for  
20 assistance on a vehicle stop. Being in a high crime  
21 area. Assisting other officers that my have seen a crime  
22 that they, for lack of a better term, just literally  
23 jumped in the middle of to break something up.

24 Q. Okay. So mutual aid, the formal definition of  
25 mutual aid doesn't include somebody calling you up from

1 another agency and saying, hey, how do you interpret this  
2 law, something like that? Mutual aid means a formal  
3 request for assistance from one agency to another during  
4 some kind of an emergency situation.

5 A. No. I think --

6 Q. Is that fair?

7 A. I don't think that is fair.

8 Q. Okay. Let's move on. You -- as a Lottery Agent  
9 you don't work in uniform, correct?

10 A. Sure. I work in uniform when we serve search  
11 warrants, when we're at the range, assisting other  
12 agencies with search warrants.

13 Q. Okay. So how many times a year do you serve a  
14 search warrant?

15 A. I would say at least on a monthly basis.

16 Q. Like once a month?

17 A. I would say ours are on a monthly basis, and  
18 probably assist other agencies probably in the same  
19 fashion, probably at least once a month.

20 Q. Okay. So the vast majority of the time you're  
21 plainclothes?

22 A. That's correct.

23 Q. Okay. Under your job duties you say that you  
24 conduct civil and criminal investigations on page six,  
25 line seven.

1 A. Okay.

2 Q. Okay. I didn't notice in there a reference to  
3 conducting administrative investigations. Is that an  
4 oversight?

5 A. I'm pretty sure it says administrative  
6 investigations somewhere in here. Give me just a moment.

7 Q. I'd love you to point it out to me.

8 A. I don't see where it says administrative  
9 investigations by that title. But I would say that on  
10 page six, line thirty-three, investigate backgrounds of  
11 applicants for Lottery staff and retailers is an  
12 administrative investigation. Instant ticket security at  
13 printing plants would be an administrative investigation.  
14 Planned and unplanned site inspections would be an  
15 administrative investigation. Monitoring licensees who  
16 are on probations would -- or on probation would be an  
17 administrative investigation as well.

18 Q. Okay. So when you were characterizing the kind  
19 of investigations that you conduct in paragraph 30, was  
20 it an oversight to leave out administrative  
21 investigations?

22 A. Yes.

23 Q. Okay. Your normal hours are from seven o'clock  
24 in the morning to 1700. What days of the week do you  
25 work? Do you have a regular schedule?

1 A. I would say before the furloughs it was Tuesday  
2 through Friday.

3 Q. Okay. Tuesday through Friday. So that's 4/10/40  
4 schedule?

5 A. Right. Right.

6 Q. Okay. You said, by the way, that you receive  
7 differential pay for being on call and for POST  
8 certifications. You get -- are you eligible for other  
9 differentials?

10 A. Overtime, on call. We have an agent on call  
11 every weekend, weekends and holidays. And then POST  
12 differential physical fitness incentive.

13 Q. Bilingual pay?

14 A. I don't believe we participate in bilingual pay.

15 Q. You don't participate meaning you don't have  
16 anybody who qualifies or --

17 A. No. I don't think the agency doesn't  
18 participate. Just like the agency doesn't believe in  
19 paying our investigators that live in high rent areas the  
20 \$200-a-month stip that they're allowed under a contract.

21 Q. Okay. Now, you said that -- you talk about the  
22 Lottery pay issues, the different -- the disparity  
23 between Lottery Agents and other investigators. Are you  
24 aware that CSLEA has raised this issue various times with  
25 the Department of Personnel Administration?

1 MR. ROSE: Objection. Assumes facts not in evidence.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It does. Are  
3 you aware whether or not they raised that with Department  
4 of Personnel Administration?

5 THE WITNESS: No.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

7 BY MR. MESSING:

8 Q. Did you ask anybody at CSLEA what steps have been  
9 taken by CSLEA to -- if any, to increase the pay of  
10 Lottery Agents to equalize it with investigators?

11 A. I think each year our field rep, Al Lewis, has  
12 sent an e-mail out asking for suggestions when it came  
13 time to negotiate, and I have e-mailed him those  
14 suggestions.

15 Q. All right. Perhaps you didn't understand. My  
16 question is, did you make inquiry to anybody at CSLEA as  
17 to what steps, if any, have been taken to secure equal  
18 pay with other investigators --

19 A. Yes.

20 Q. -- with Lottery Agents?

21 A. I've spoken with Al Lewis about it.

22 Q. Okay. And what steps did he say were taken?

23 A. Al said reduce it to writing and he would send it  
24 to Sacramento.

25 Q. Did he inform you -- did you -- do you think Al

1 Lewis is a representative of CSLEA?

2 A. Yes.

3 Q. Okay. Did you ask Al Lewis to find out and to  
4 communicate to you what steps, if any, CSLEA took to  
5 equalize the pay between agents and investigators?

6 A. No, I have not specifically said what steps has  
7 CSLEA taken.

8 Q. Okay. Do you know whether DPA has resisted  
9 equalizing pay for Lottery Agents with other  
10 investigators?

11 A. Well, since we don't have equal pay, I would  
12 assume somebody has resisted. But I don't specifically  
13 know about -- if DPA said, no, we're not doing that for  
14 you.

15 Q. Okay. So your complaint about CSLEA's  
16 representations is that they haven't done enough to  
17 secure equal pay for Lottery Agents, but you don't know  
18 what steps that they've taken; is that true?

19 MR. ROSE: Objection. Argumentative. Asked and  
20 answered.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you  
22 understand the question, sir?

23 THE WITNESS: Yes.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Go  
25 ahead. I'm going to overrule the objection.

1 THE WITNESS: I would -- I would say that would not  
2 be my only complaint with CSLEA as being.

3 BY MR. MESSING:

4 Q. Okay. But that doesn't answer the question. The  
5 question is is whether or not you would agree that your  
6 complaint with CSLEA is that it hasn't done enough to  
7 equalize pay with investigators if you don't know what  
8 steps they've taken.

9 MR. ROSE: Objection. Asked and answered. Compound  
10 question. Argumentative.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Last objection  
12 sustained.

13 MR. MESSING: Which? I'm sorry. Argumentative?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you don't  
15 know what steps they've taken. You've done this and you  
16 don't know --

17 BY MR. MESSING:

18 Q. Do you know what steps they have taken to  
19 equalize pay with other investigators in light of your  
20 complaint that CSLEA has not done enough to represent you  
21 in that regard?

22 A. No.

23 Q. Okay. And you have dealt with CSLEA on some  
24 other issues that have come up for Lottery Agents,  
25 correct? Well, let me withdraw the question. I'll be

1 more specific.

2 Did you contact Kasey Clark with a problem regarding  
3 some pay issues that CSLEA was having regarding either  
4 fitness pay or uniform allowance?

5 A. I think Kasey and I communicated via e-mail.  
6 There was an issue with physical fitness incentive that  
7 the Cooperative Personnel Services has canceled all of  
8 the physical agilities over budget, and they did not  
9 inform anybody that the testing had been canceled. So I  
10 think I either called or e-mailed Kasey. And there was  
11 an issue where the agency was saying they were not going  
12 to pay physical fitness. And Kasey I think left me a  
13 voicemail back saying, oh, you know, the contract says  
14 they will still have to pay it until this gets resolved.

15 Q. Okay.

16 A. And that's what happened.

17 Q. And that's what happened. And when did that  
18 occur, that interchange?

19 A. Sometime last I think August of '08.

20 Q. Last August. And would you say that Kasey Clark  
21 was very responsive to your request for assistance?

22 A. Very responsive. We e-mailed or called and  
23 that's how it was -- I mean, yeah, I was perfectly happy  
24 with what he said.

25 Q. And he got right back to you when you had the

1 problems?

2 A. I think it may have been a week or so.

3 Q. Okay. Are you aware that the Lottery was going  
4 to change the work weeks or proposed to change the work  
5 weeks of Lottery Agents from four/tens to five/eights  
6 because of the furlough situation?

7 A. Actually, what I'm aware of is a single  
8 supervisor that supervises the East Bay area that decided  
9 on his own he was going to change his employees from a  
10 four/ten to a five/eight system recently.

11 Q. Okay. And this is very recent, right?

12 A. I think within the last week.

13 Q. Okay. And you're aware -- are you aware that  
14 actions taken by Kasey Clark in response to that issue?

15 A. I am aware that the same supervisor sent an  
16 e-mail out saying the administration decided not to do  
17 that. And then Kasey and I had a conversation when I  
18 came into the PERB and he let me know that he was able to  
19 intervene in it and get it changed. So there is some  
20 discrepancy with what -- not to say anybody's telling the  
21 truth, anybody's lying. But internally, the e-mail,  
22 we're being told one thing, and then Kasey obviously  
23 having dealt directly with it is telling me what his  
24 actions were.

25 Q. Do you have any reason to disbelieve what Kasey

1 Clark told you?

2 A. No.

3 Q. Okay. Would you agree that less than half of the  
4 job of a Lottery Agent is to conduct criminal  
5 investigations and other criminal enforcement actions?

6 A. No. I would disagree with that. It's more than  
7 50 percent.

8 Q. More than 50 percent? How much more than 50  
9 percent?

10 A. Probably, I would say, 75 percent is criminal.

11 Q. Seventy-percent? Okay. And you think that  
12 that's true of all Lottery Agents? How many Lottery  
13 Agents are there?

14 A. I think we're slated from our Chief down, and  
15 there's current nine vacancies.

16 Q. There are nine vacancies? Okay.

17 A. So there's 21. The area I cover geographically  
18 is from San Joaquin County, about Manteca, down to Lebec  
19 on the Grapevine in Los Angeles County, the coastal  
20 mountains to the west, and the Nevada border to the east.  
21 So it's -- I always tell people it's pretty much the  
22 middle third of California that me and my partner cover.

23 Q. Okay. Would you say that 75 percent reflects  
24 your understanding of what other Lottery Agents do in  
25 terms of performance of criminal investigations and other

1 enforcement?

2 A. I can't vouch for the other geographic areas  
3 because we don't -- we don't work that close normally  
4 because we're so few and spread out so far.

5 Q. How many in your area?

6 A. There's myself, and I have one partner and that's  
7 it.

8 Q. Okay. And does your partner have about the same  
9 range of responsibilities as you do?

10 A. I would say he has the exact same range of job  
11 responsibilities that I do. I mean I have a couple  
12 collateral duties. Like I say, I'm the terrorism liaison  
13 officer coordinator for the State. I'm the statewide  
14 senior range master, the equipment officer. So he  
15 doesn't have those collateral duties. But other than  
16 that.

17 Q. Okay. You investigate complaints and allegations  
18 of administrative misconduct of retailers?

19 A. Sure.

20 Q. Okay. The same question as to claimants.

21 A. You're saying do we investigate claimants or --

22 Q. Claimants --

23 A. -- misconduct by claimants or --

24 Q. Complaints or allegations of administrative  
25 misconduct of claimants.

1           A. I don't know how a claimant could commit a  
2 violation of administrative misconduct. That kind of  
3 mis-phrases what we do with claimants.

4           Q. Would you say that you investigate complaints  
5 and/or allegations of administrative misconduct of  
6 distributors, suppliers and contractors --

7           A. Sure.

8           Q. -- for the Lottery?

9           A. Sure.

10          Q. Okay. Do you conduct retailer onsite complaints  
11 checks?

12          A. Yes.

13          Q. Okay. So those are all administrative duties,  
14 not criminal, correct?

15          A. Well, I would say when I go in and do a random --  
16 we call it a loss prevention inspection, administrative  
17 inspection of the business, and we find they're selling  
18 dirks and daggers that are felonies in violation of 12020  
19 of the Penal Code. We find they're selling illegal  
20 smoking pipes, things like that. It may -- it  
21 potentially did start as administrative inquiry that then  
22 became criminal.

23          Q. Okay. Would you say that 20 percent of your time  
24 is spent investigating complaints and/or allegations of  
25 administrative misconduct?

1 A. I would say probably 15 or 20.

2 Q. Fifteen or 20. Okay. Is it true that Lottery  
3 Agents provide physical building access for Lottery  
4 district offices and other security-related Lottery  
5 operations?

6 A. I don't know what that phrase means. We do a  
7 once-a-month after hour on overtime physical inspection  
8 of the district office, which takes about 30 minutes. In  
9 which case I have to set off and reset all the alarms and  
10 the cameras at the office.

11 Q. So you wouldn't agree that 10 percent of your  
12 time is spent --

13 A. Yeah. I would -- I would disagree with that.

14 Q. Okay. And you'd say the same -- but you don't  
15 know whether that's true of other Lottery Agents in other  
16 areas of the state?

17 A. Again, I couldn't -- not having worked at any of  
18 the other offices, I couldn't tell you.

19 Q. Do you advise and assist Lottery retailers and  
20 contractors regarding Lottery-related security matters?

21 A. I would say retailers, yes, when we do the loss  
22 prevention inspections. But not with contractors, no.

23 Q. Okay. Would you say --

24 A. A lot of the functions you're referring to -- I'm  
25 a field agent. We have what we call operations agents

1 that only work in our headquarters. They don't set foot  
2 out of the building on cases. And I would say the  
3 responsibilities you're -- the majority of the  
4 responsibilities you're talking about are those of our  
5 operations investigators. Which there's, I think, right  
6 now two or three possibly.

7 Q. Okay. Are they Lottery Agents?

8 A. Sure.

9 Q. Okay. Would you say that they spend 45 percent  
10 to 50 percent of their time doing criminal  
11 investigations?

12 A. You'd have to talk to them. I have no idea.

13 Q. Okay. Okay. I think you earlier testified that  
14 you assist in doing background investigations.

15 A. Yes.

16 Q. What percentage of the time do you think that you  
17 spend with that?

18 A. In the almost two years I've been with the  
19 Lottery, I think I've done one.

20 Q. Okay.

21 A. Then again, these are not on retailers. These  
22 are on civilian employees that take a very short amount  
23 of time.

24 MR. MESSING: I'm going to mark as -- for  
25 identification a Duty Statement for Lottery Agent.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
2 Thank you. Marking as Petitioner's Exhibit X what  
3 appears to be a two-page document, specifically a --

4 MR. MESSING: No, it's not Petitioner's.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry about  
6 that. Thank you. Exclusive Representative. Let me get  
7 that sheet out.

8 MR. ROSE: K.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Thank you.  
10 K.

11 MR. MESSING: No objection to admission of this  
12 document. It's authentic.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. K is  
14 admitted. Anyway, Exclusive Representative K is a Duty  
15 Statement of Lottery Agent.

16 (Exclusive Representative Exhibit K  
17 marked for identification.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is there any  
19 objection on behalf of the Employer also?

20 MS. TRUONG: No.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. With  
22 that, K is admitted.

23 (Exclusive Representative Exhibit K  
24 received in evidence.)

25 MR. MESSING: Okay. Then I have no further

1 questions.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

3 MR. ROSE: Take a look at Exhibit K. Oops, I'm  
4 sorry. Go ahead.

5 MS. TRUONG: That's okay. No questions.

6 MR. ROSE: I got into the --

7 MS. TRUONG: That's okay.

8 MR. ROSE: -- habit of expecting a no to ask  
9 questions.

10 THE WITNESS: Thank you.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's K.

12 REDIRECT EXAMINATION

13 BY MR. ROSE:

14 Q. Looking at Exhibit K that's just been placed in  
15 front of you, scan it and tell me whether you think that  
16 accurately reflects your actual job duties in terms of  
17 the percentages allocated there.

18 A. I would say it doesn't. Plus, this says it's for  
19 the San Francisco District Office, and I don't work in  
20 San Francisco. So I don't know what they do. Should say  
21 I don't know what they do. I don't know what the  
22 percentages of times that they spend doing these  
23 different things. Right now San Francisco is down one  
24 investigator and another one that's in bad health. So I  
25 don't have any clue what happens there.

1 Q. Well, if you look at the essential functions, how  
2 would it -- how would you disagree with the percentages  
3 if this was applicable to your office? Which it's not.

4 A. Can I write on this, Gary, or just --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I tell you what,  
6 write on this one and --

7 THE WITNESS: Give me just a minute. These add up to  
8 100, right?

9 BY MR. ROSE:

10 Q. Make sure they do, or Mr. Messing will surely  
11 point it out.

12 A. I'm a graduate of public school, so you have to  
13 bear with me for a minute. Can I add another category  
14 that says other? Is that okay?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're just  
16 asking if it's consistent, right?

17 MR. ROSE: Well, I asked him to reallocate the  
18 percentages for the categories. There's a marginal  
19 functions category at the bottom.

20 THE WITNESS: Oh, marginal functions. I'm sorry.  
21 Okay. That's where I can put it. That's fine. See, I  
22 don't have my glasses either, so okay. I would -- the  
23 first thing I would do is the last two lines on A where  
24 it talks about key information into the case management  
25 computer system. We don't have a case management

1 computer system any longer. Maintain investigative files  
2 and reports in storage boxes.

3 BY MR. ROSE:

4 Q. Let me just stop you. We're looking at the 45  
5 percent?

6 A. That's correct.

7 Q. Okay.

8 A. So where --

9 Q. Continue.

10 A. Where it says, "Maintain investigative files and  
11 reports in storage boxes, we don't do that."

12 MR. MESSING: Well, I'm going to object. I think the  
13 witness is not responding to the question. The question  
14 was how would these percentages differ.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not sure.  
16 And I actually think the witness is correct. I mean I  
17 think that was the question. But can you just jiggle the  
18 percentages?

19 THE WITNESS: Oh, sure.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Then it would be  
21 accurate.

22 THE WITNESS: Sure.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm saying would  
24 it correctly reflect it if you just change percentages?

25 THE WITNESS: I don't -- a good portion of it, yes.

1 But some things, no. I think this is probably -- this  
2 may have been written some time ago. And some of the  
3 things on here we just don't do anymore.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
5 Well --

6 THE WITNESS: I mean I can leave it like it is and  
7 juggle the percentages and give you 100 percent. But  
8 these as they're listed, I don't believe they're  
9 accurate.

10 MR. ROSE: Let me ask --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll let you  
12 take it from there, Mr. Rose.

13 BY MR. ROSE:

14 Q. All right. Looking at the 45 percent under the  
15 first -- the first major paragraph under A.

16 A. Right.

17 Q. Any of those duties that you currently do not do?

18 A. Key information into the case management computer  
19 system. Maintain investigative files and reports in  
20 storage boxes we do not do.

21 Q. Do you -- the remaining description in that  
22 paragraph, would you -- would you allocate that to 45  
23 percent of your time?

24 A. No.

25 Q. What would you allocate it to?

1 A. Seventy-five.

2 Q. Looking down to the next paragraph.

3 A. I would -- I would --

4 Q. Of the 20 percent, anything in that paragraph  
5 that you currently do not perform?

6 A. Yes. I would -- I would have to delete the  
7 second line, the words "distributors, suppliers and  
8 contractors to the Lottery."

9 Q. And having made that deletion, would you leave  
10 the same or change the 20 percent number?

11 A. No. I'd change it to five.

12 Q. Looking now to the 10 percent paragraph  
13 immediately below that, any deletions from there in terms  
14 of what you actually do?

15 A. I think that one's probably okay.

16 Q. Is it okay with respect to the percentage as well  
17 or not?

18 A. No. I would change it to two and a half.

19 Q. Looking to the next 10 percent beginning with  
20 "advise and assist Lottery," do you see that?

21 A. Yes.

22 Q. Any deletions with respect to that paragraph from  
23 what you -- as compared to what you actually do?

24 A. I would delete the words "and contractors," and  
25 the percentage is incorrect.

1 Q. What is the percentage correct?

2 A. Two and a half.

3 Q. Looking now to five percent below that, "Assist  
4 with internal and new employee background," and so on, do  
5 you see that?

6 A. Yes.

7 Q. Any deletions from that paragraph with respect to  
8 what you actually do?

9 A. There would be several changes. I would delete  
10 in the first line internal -- the words "internal and."  
11 The second line I would delete "schedule and conduct  
12 fingerprinting on new Lottery retailers, contractors and  
13 employees."

14 Q. With those deletions what would the -- would the  
15 percentage remain five percent or would it --

16 A. No. I would change it to one.

17 Q. Looking to the next five percent category  
18 beginning with, "Properly maintain issued," do you see  
19 that?

20 A. Yes.

21 Q. Would you leave the same or change in any way  
22 that paragraph with respect to your actual job duties?

23 A. The paragraph -- or the sentence is okay. The  
24 percentage would be incorrect. I would change that to  
25 one percent.

1 Q. And finally, the last paragraph under essential  
2 functions, section A, testify accurately, with a three  
3 percent number, do you see that?

4 A. Yes.

5 Q. Would you change or leave the same that sentence  
6 with respect to your actual job duties?

7 A. I would leave it the same, but I would change the  
8 percentage to 10.

9 Q. Looking at section B, marginal functions,  
10 underneath that there's a two percent percentage and then  
11 a sentence that begins with the words "other special  
12 assignments." Do you see that?

13 A. Yes.

14 Q. Would you change that sentence or leave it the  
15 same with respect to your actual job duties?

16 A. The Lottery has changed the titles of a lot of  
17 these positions, but -- like our Chief -- or the Deputy  
18 Director uses the title Chief. The Chief Lottery Agent  
19 now uses the title Deputy Chief. And the Supervising  
20 Lottery Agents now use the title Lieutenant.

21 Q. How long ago were those changes made, if you  
22 know?

23 A. When I started they were that way. My badge says  
24 Investigator. It doesn't say agent. My credentials say  
25 Investigator. My business cards say Investigator. The

1 sign hanging on my office door says investigator. We  
2 write our reports and sign them as Investigator.

3 Q. And what percentage would you ascribe to that  
4 if -- would it be two or something different?

5 A. I would say it's three. So it would bring it to  
6 a hundred percent.

7 Q. Looking at the second page of Exclusive  
8 Representative's Exhibit K, do you see the date at the  
9 top right corner, February 19th, 2009?

10 A. Yes.

11 Q. Having examined this document and its contents,  
12 do you -- would you agree or disagree that this document  
13 was current as of six days ago, February 19th --

14 MR. MESSING: Object.

15 MR. ROSE: -- 2009?

16 MR. MESSING: Object.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just don't  
18 know how he --

19 MR. MESSING: Lack of foundation.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- could say for  
21 San Francisco District Office.

22 MR. MESSING: Correct.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But could you  
24 say, sir? Based on your prior testimony, I doubt it.

25 THE WITNESS: I don't think I can.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

2 THE WITNESS: I mean I would say the information  
3 contained that we've gone through that I've deleted is  
4 old.

5 BY MR. ROSE:

6 Q. Well, with respect to the marginal functions and  
7 the job title changes that you mentioned --

8 A. That's correct.

9 Q. -- were those only made in your area or were  
10 they --

11 A. No. They were made statewide.

12 Q. So having that information in mind, would you  
13 agree or disagree that February 19th, 2009, is a current  
14 date for this document?

15 A. No. And there's issues with it, too.  
16 Supervision. I am not directly supervised by anybody.  
17 My supervisor is in San Francisco and she was -- or I'm  
18 sorry.

19 MR. MESSING: I'm going to object. This is --  
20 there's no question pending.

21 THE WITNESS: I thought we were talking about the  
22 whole document. I'm sorry.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. But I  
24 mean -- but I don't follow how who you're supervised by  
25 would be in here.

1 THE WITNESS: Well, this says direct -- a  
2 supervising -- I'm reading from C where it says  
3 "supervision received" on the second page. "A  
4 Supervising Lottery Agent directly supervises the Lottery  
5 Agent." My supervisor was promoted about six, seven  
6 months ago. She has been to my office about three times  
7 since that promotion.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I see.

9 THE WITNESS: Promotion is via cell phone and e-mail.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can see -- you  
11 mean supervision is via cell phone and e-mail?

12 THE WITNESS: That's correct.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

14 THE WITNESS: So to say --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I see what  
16 you're saying.

17 THE WITNESS: As a prior supervisor, if I'm  
18 supervising you, I'm involved in your daily operations  
19 and see you.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as  
21 directly supervising.

22 THE WITNESS: Exactly.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair  
24 enough. Mr. Rose?

25 /////

1 BY MR. ROSE:

2 Q. Page two under section E, administrative  
3 responsibility, none, do you see that?

4 A. Yes.

5 Q. With respect to that category, is that accurate  
6 or inaccurate as to your current job duties?

7 A. I would say it's inaccurate. As well as D.

8 Q. D is inaccurate?

9 A. I would say it's inaccurate because I have --  
10 being the agency's terrorism liaison officer coordinator,  
11 I coordinate with three other what we call TLOs in  
12 various regions in the state through the JTTFs and the  
13 ARTACs. I'm the senior range master in the State of  
14 California for the Lottery. I'm responsible for all in  
15 service and tactical firearms training, the scheduling of  
16 the training, the development of the courses of fire, the  
17 approval of those, making sure the appropriate  
18 documentation is maintained to meet POST standards,  
19 making sure it gets to the appropriate people, all the  
20 way up to our chief and our training coordinator.

21 So I would say when I'm on the range and I say it's  
22 time to shoot and people shoot, and when I say it's time  
23 for them not to shoot and they don't, or if there's --  
24 somebody is -- needs remedial training. I had to write a  
25 memo recently on one of our investigators who is just not

1 meeting the standards. So I would say that involves  
2 supervision, because the management has put that -- given  
3 that to me as a collateral duty and asked me to report  
4 those issues back to them.

5 Q. You testified that there was not just the \$280  
6 pay deficit that you're suffering that causes you to be  
7 unhappy with CSLEA. Do you remember that answer?

8 A. Yes.

9 Q. What other issues cause you to be unhappy with  
10 CSLEA's representation?

11 A. There's a lack of, I think, information from the  
12 union. In the three years I've been with the State there  
13 has been one actual union meeting in the central valley.  
14 I know there's been a barbecue or two at the state  
15 hospital in Coalinga, but I don't consider that a union  
16 meeting.

17 Very little input is solicited from the membership  
18 over issues. I have several friends who are in State  
19 service that as recently a couple weeks ago have  
20 expressed concerns over how issues were handled -- how  
21 issues were handled by the -- I'll say the union for lack  
22 of a better term.

23 I don't like the lack of transparency when it comes  
24 to finances involving the union. I've never -- in the  
25 almost three years I've worked for the State, I've never

1 been able to vote for -- I know I can't vote for a  
2 president because that's not allowed by the general  
3 membership, which I don't agree with. I've never been  
4 afforded the opportunity to vote for -- when I was a  
5 member of CSLEA and an affiliate of CACI --

6 MR. MESSING: I'm going to object. He's going into  
7 the internal union issues and that's --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He is, but he  
9 doesn't know that. That's --

10 MR. MESSING: True.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's  
12 prohibition. So I mean that's nothing on your part. I  
13 can't go into -- I have to deal with representation  
14 issues more than your --

15 THE WITNESS: Okay.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- internal  
17 conflicts, your --

18 THE WITNESS: That's all I --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- transparency  
20 sort of --

21 THE WITNESS: Right.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- issues  
23 that -- some of the transparency issues you're bringing  
24 up.

25 THE WITNESS: I've never been able to -- is voting

1 one of those issues?

2 MR. MESSING: yes.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as the  
4 way that the -- we already have the rules or the  
5 Constitution in the record as far as how --

6 THE WITNESS: Okay.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- the president  
8 is voted for.

9 THE WITNESS: Well, I'm not worried -- okay. Even  
10 the CACI affiliate, which I was a member of for years,  
11 I've never been afforded the opportunity to vote for a  
12 president or to --

13 MR. MESSING: Object.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

15 MR. MESSING: Move to strike.

16 THE WITNESS: Sorry.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So  
18 struck. Next question.

19 BY MR. ROSE:

20 Q. You said you had several friends in State service  
21 who were unhappy with how issues were handled. How many  
22 friends do you have that are in Bargaining Unit 7?

23 MR. MESSING: Object. Relevance.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: How many friends  
25 do you have in Bargaining Unit 7? That one I got to

1 sustain.

2 MR. ROSE: How many -- well, obviously I was  
3 referring to the people that are unhappy.

4 BY MR. ROSE:

5 Q. So how many friends do you have who have  
6 expressed dissatisfaction to you about CSLEA who are in  
7 Bargaining Unit 7?

8 A. I would say probably eight or ten.

9 Q. Of the eight or ten people in Bargaining Unit 7  
10 who have expressed dissatisfaction to you about CSLEA,  
11 how many of those are non-sworn non-peace officers?

12 A. Zero.

13 Q. Explain to me, please, the kinds of things you  
14 hear from the eight or ten people in Bargaining Unit 7  
15 who are peace officers, what they've told you about their  
16 unhappiness with CSLEA?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I got to  
18 frame you a little bit. I can't deal with the PAC  
19 choices.

20 THE WITNESS: Let me get my -- let me get my --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can't deal  
22 with financial disclosures and things of that nature.  
23 But I'm talking about representational issues. Such as  
24 the one that you brought up about, you know, the pay  
25 parity for Lottery Agent and things that have to deal

1 with representing the membership.

2 THE WITNESS: I've only ever heard, I would say, of  
3 the two issues you're discussing from one person. So I  
4 would say probably whatever number we agree upon minus  
5 one. So of those eight or ten, I would say it's seven or  
6 nine.

7 BY MR. ROSE:

8 Q. Seven or nine that what? I didn't follow that.

9 MR. MESSING: I didn't either.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Seven or nine  
11 that had complaints concerning these representational  
12 issues or these --

13 THE WITNESS: The ones that you're not talking about.  
14 So I would say of the things that I can't talk about, of  
15 the -- if it were eight or ten, I would say only one  
16 pertains to one of the protected issues that I can't  
17 discuss. So the majority would be not of these two  
18 issues. Either --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

20 THE WITNESS: Either PAC or financial.

21 BY MR. ROSE:

22 Q. The majority would not be of those issues?

23 A. That's correct.

24 Q. Okay. So what are those issues? Setting aside  
25 the PAC, setting aside the manner in which you elect

1 officers, and setting aside financial transparency. And  
2 I think it's -- just for the purposes of eliciting an  
3 objection from opposing counsel, number one, but number  
4 two, to help frame the discussion, I think it's fair game  
5 to say that trans -- lack of information from the union  
6 regarding bargaining, dissipation in the bargaining  
7 process, and effectiveness at the bargaining table are  
8 representational issues. Those kinds of things. Is  
9 that --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Fair game.

11 BY MR. ROSE:

12 Q. Okay. Based on that framework, tell us what  
13 you've heard.

14 A. Lack of representation I would say. A friend of  
15 mine recently approached me who actually I had no clue is  
16 working for the State and he is -- we played football  
17 together in high school. Described an incident to me  
18 where he asked for representation on an overtime issue  
19 involving travel, and the agency refused to pay the  
20 travel. It was after his normal work hours. CSLEA took  
21 a grievance, provided representation to him. It was -- I  
22 was told it was a no-brainer when they went into the  
23 meeting to resolve it. And when he came out, that the  
24 representative from CSLEA had taken the side of the union  
25 [sic] and said, yeah, they don't have to pay you the

1 overtime under those circumstances.

2 Q. CSLEA had taken -- representative had taken the  
3 side of the union?

4 A. Yeah, exactly. Instead of the -- or not taken  
5 the side of the union, but taken the side of the agency  
6 in agreeing with them that they did not have to pay the  
7 employee, or compensate him in any manner for the  
8 overtime.

9 Q. What else?

10 A. People have complained about the lack of being  
11 notified of the widow to drop from fair share to objector  
12 status.

13 MR. MESSING: Okay. I'm going to object to this.  
14 This goes into the internal union --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have to agree.

16 MR. MESSING: -- issue of that, so that doesn't --

17 THE WITNESS: I didn't see that as one of them.  
18 Nonetheless --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sorry. We don't  
20 have something up on the --

21 THE WITNESS: There's not a list on the wall?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- on the white  
23 board there, yeah.

24 THE WITNESS: Okay.

25 /////

1 BY MR. ROSE:

2 Q. Keep going. What else? Gary will tell you when  
3 you're out of line.

4 A. Okay. I'll keep -- I'll keep an eye on him. A  
5 lack --

6 MR. MESSING: You're out of line.

7 THE WITNESS: Okay. A lack of information coming out  
8 to the membership. That if -- for updates with the  
9 bargaining process. Another friend, who is a retired  
10 annuitant, being treated very discourteously when he  
11 called CSLEA asking why as a retired annuitant he was  
12 going to have to pay dues, and then potentially full  
13 membership. And what he was told was -- his question  
14 was, if you want to know what --

15 MR. MESSING: Object. This is again in the same  
16 issue.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What he -- what  
18 he was told is PERB told them that they got to do it. So  
19 let's get on to the next question.

20 THE WITNESS: No, that's not what he was told.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well,  
22 regardless.

23 THE WITNESS: Okay.

24 MR. MESSING: Well, setting --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We just had a

1 decision --

2 THE WITNESS: Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- come down  
4 that said that, so --

5 BY MR. ROSE:

6 Q. Well, setting aside what the -- he made an  
7 inquiry about something, and the response was -- the tone  
8 of response was what?

9 A. The response from CSLEA, what he told me, was the  
10 person at CSLEA said, "If you want to know what you're  
11 going to get, read your fucking contract." And this is  
12 a -- this is a --

13 Q. Is that a quote?

14 A. Yeah. This is a guy who's been in State service  
15 32 years whose wife just recently passed away, so it was  
16 not received --

17 MR. MESSING: Object. Relevance.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well,  
19 regardless of the wife --

20 THE WITNESS: Okay. Sorry.

21 MR. ROSE: What else?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- anything  
23 else?

24 THE WITNESS: Another guy that I know voiced some  
25 concerns in writing -- well, I don't even know if I can

1 bring this up -- over something that was posted on the  
2 CSLEA website in reference to the severance.

3 MR. MESSING: Object.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's please go  
7 past that one.

8 THE WITNESS: Sorry. Sorry.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything else?

10 THE WITNESS: It wasn't on my list.

11 MR. ROSE: Okay.

12 THE WITNESS: It seems like everything I say is going  
13 to come up on the list, so --

14 BY MR. ROSE:

15 Q. All right. By the way, in assembling these  
16 documents, just so that we're clear, what -- how did  
17 you -- what filter did you use, so to speak, in  
18 determining which documents to compile?

19 A. I used the -- I did a title search for the title  
20 of, quote, "investigator," unquote, and then did a second  
21 search with the -- just using the single word of agent in  
22 quotes.

23 MR. ROSE: And for the record, I said these  
24 documents, and I was holding up --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Petitioner W.

1 MR. ROSE: -- Petitioner's W.

2 THE WITNESS: W, right.

3 MR. ROSE: Nothing further.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

5 MR. MESSING: Yes.

6 THE WITNESS: Do I need the list again?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

8 THE WITNESS: Okay.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Alls you got to  
10 do is answer his questions.

11 RE-CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. Starting with this. Regarding the percentages  
14 that are listed here -- well, first of all, this appears  
15 to be to you a current document from the San Francisco  
16 office, correct?

17 A. It's dated I think -- well, it says page two of  
18 three. I don't see a page three on here. But it says  
19 February 19th, 2009.

20 Q. Okay.

21 A. I've never seen it before that.

22 Q. So that appears to be a current document to you?

23 A. Okay.

24 Q. All right. And you don't know -- you don't have  
25 any reason to believe that these percentages as they're

1 listed here are incorrect for people working in the  
2 San Francisco office?

3 A. Again, I don't work in the San Francisco office.  
4 I mean this is something we did, I think, once a year for  
5 some reason. I have no clue really why. The last one I  
6 got was from -- it had somebody else's name on it. I  
7 think it was from our office in Santa Ana.

8 Q. The question, though, is is you don't have any  
9 reason to believe that these percentages are not  
10 reflective of what Lottery Agents do in the San Francisco  
11 office, do you?

12 A. Yeah. Again, I think I've answered that. I  
13 don't know what the percentages would be for them.

14 Q. Okay. Do you have reason to believe that  
15 San Francisco Lottery Agents perform different job  
16 functions than their counterparts in the Fresno office?

17 A. I would say it could be different percentages.

18 Q. Okay. Is there a Duty Statement that you're  
19 aware for the Lottery Agents in the Fresno office?

20 A. I think there is. I think there's one that is  
21 titled Operations Investigator, as this one is titled  
22 Field Investigations at the top. As an example, I would  
23 say an Operations Investigator does zero criminal. And  
24 then, again, I've seen them, like I say, for Fresno, for  
25 Santa Ana, and now this one. So I think there is one

1 specific to each office.

2 Q. Okay. So your -- let me understand this. Your  
3 recollection is that there are Lottery Agents in the  
4 Fresno -- in the Fresno office who do zero criminal  
5 investigations?

6 A. No, I don't think that's what I said at all. I  
7 said I think in --

8 Q. I thought -- I thought so.

9 A. I'm sorry. If I said that I meant Sacramento.  
10 An Operations Agent.

11 Q. Oh, I'm sorry.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you. You  
13 did say the wrong thing.

14 THE WITNESS: Okay. An Operations Agent in  
15 Sacramento who does not leave the building, I would say  
16 is not out knocking on doors and hunting people down.

17 BY MR. MESSING:

18 Q. Okay. And when you say an Operations Agent,  
19 there may be more than one?

20 A. I believe there is more than one.

21 Q. Okay. Now, you were concerned about the lack of  
22 information about activities in CSLEA. How often do you  
23 visit the CSLEA website?

24 A. Do I or did I?

25 Q. How often do you?

1 A. Oh, maybe once a week.

2 Q. Once a week?

3 A. You're aware I've been expelled from CSLEA,  
4 right?

5 Q. Does that --

6 A. Well, that's not really my --

7 Q. -- interfere with your ability to go visit the  
8 website?

9 A. No. But I would say --

10 Q. Okay. So --

11 A. -- as a union member, if you'll let me finish,  
12 that would be my primary point of information for union  
13 issues would be the website. But I'm not a member of the  
14 union anymore, so that's not --

15 Q. Okay.

16 A. -- a good source of information.

17 Q. Okay. And in the past how often did you visit  
18 the website?

19 A. When I was a member I'd say probably a couple  
20 times a week --

21 Q. Okay.

22 A. -- looking at that and grievance status and some  
23 other things.

24 Q. And you are aware that the website posts  
25 information about bargaining with the State?

1 A. Yes.

2 Q. Okay. And -- okay. Are you aware of a process  
3 to log onto the CSLEA website if you're a member that  
4 allows you to track grievances filed by CSLEA against the  
5 State?

6 A. I wouldn't say it allows you to track. I mean it  
7 says what grievances are out there and at what point  
8 they're at. And so I guess if that's tracking, that's  
9 tracking. They'll say there was a hearing this day.  
10 Here's what was said. Here's our next hearing. It's  
11 just kind of so and so, Joe Blow, ABC, overtime, and  
12 who's doing the representation.

13 Q. Okay. And it informs you what step of the  
14 grievance process the grievance is at, correct?

15 A. It does. And my experience would be is a lot of  
16 times it is not up to date.

17 Q. Okay. And by the way, this allows any member to  
18 view the status of any of the grievances filed by CSLEA,  
19 correct?

20 A. I don't think I could say yes or no, because I  
21 think that depends on if CSLEA is posting 100 percent of  
22 the grievances on that site.

23 Q. My point is is that the site doesn't restrict you  
24 solely to, let's say, grievances by Lottery Agents?

25 A. That's correct.

1 Q. Okay.

2 A. That's correct.

3 Q. You can find out the progress of grievances filed  
4 by park rangers, Fish and --

5 A. Department of Justice agency.

6 Q. DOJ.

7 A. Everybody and their brother.

8 Q. Okay. Now, the people who have complained to you  
9 about CSLEA that you referred to, is the timeframe of  
10 that from 2006 to the present?

11 A. Yes.

12 Q. Okay. So that's almost three years, correct?

13 A. Yes.

14 Q. Okay. The -- so let's deal with the ones that  
15 had specific complaints. Now, you indicated that there  
16 was one individual who was concerned about representation  
17 on an overtime issue.

18 A. Yes.

19 Q. Was that Mr. Cline?

20 A. I don't know anybody named Cline.

21 Q. Okay. Who was that individual?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sorry. You  
23 brought it up, you got to say. They got to be able to  
24 rebut it if it's true.

25 THE WITNESS: Eric Maddox.

1 BY MR. MESSING:

2 Q. Maddox? Okay. Who does he work for?

3 A. Sorry. He's a Food and Drug Investigator.

4 Q. Okay. And you said that he had an issue with a  
5 grievance about overtime issues?

6 A. Yes.

7 Q. Okay. Can you tell me specifically what the  
8 issues were that he raised?

9 A. His issue was that Food and Drug Investigators  
10 primarily --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Don't worry  
12 about them. Just keep going.

13 THE WITNESS: Okay. Food and Drug Investigators work  
14 primarily from their home. He was assigned to range in  
15 Sacramento. They got done by I think a half hour, he  
16 said, before the end of his shift, so he had a three and  
17 a half hour drive home, because the agency would not  
18 authorize an overnight stay, even though he was within  
19 the mileage requirements.

20 He put in for the overtime. It was denied. He was  
21 told by the agency that they did not have any  
22 responsibility to pay him for the overtime. He filed a  
23 grievance. Was represented by a female from CSLEA. I  
24 didn't bother to ask a name. He didn't tell me. She  
25 came down and met with him before they went into the

1 meeting to try and resolve it. And he said when he came  
2 out of the meeting, that she agreed and sided with  
3 management. And says that since then he's been under  
4 pressure from management over that.

5 BY MR. MESSING:

6 Q. Okay. Do you know who John Spencer is?

7 A. Not a clue.

8 Q. Okay. So you wouldn't -- you wouldn't know  
9 whether he was the president of the affiliate that  
10 Mr. Maddox was in at the time of this grievance?

11 A. Again, I don't --

12 MR. ROSE: Objection. Lacks foundation.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

14 BY MR. MESSING:

15 Q. Okay. Did Mr. Maddox tell you that his affiliate  
16 president requested that a grievance not be filed after  
17 attempts to resolve this issue?

18 A. No.

19 Q. He didn't. Okay. Did he tell you -- did he tell  
20 you why the grievance did not proceed?

21 A. I -- he told me that he did have a grievance, and  
22 I remember seeing it listed on the CSLEA website. So the  
23 grievance was on there.

24 Q. I said why it didn't go forward. Did he tell you  
25 the reason why?

1           A.   Okay.  My assumption is when you say why the  
2 grievance didn't go forward that there was not a  
3 grievance on there.

4           ADMINISTRATIVE LAW JUDGE CLOUGHESY:  That was a fair  
5 assumption.

6 BY MR. MESSING:

7           Q.  Wasn't pursued.

8           A.  I think if CSLEA is sending -- or take CSLEA out.  
9 Any union is sending somebody to represent you and  
10 there's meetings going on and dialog, that obviously a  
11 grievance is proceeding at some speed to some degree of  
12 finality.

13          Q.  At some point the grievance stopped progressing  
14 before there was a resolution, correct?

15          A.  I don't know.  My -- his --

16          Q.  Okay.  You don't know.  Okay.

17          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  If you don't  
18 know, that's fine.

19          THE WITNESS:  Yeah.

20          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  He'll go on to  
21 the next one.

22          THE WITNESS:  I'm just going -- you asked me what  
23 Eric told me and --

24          MR. MESSING:  I'm moving --

25          THE WITNESS:  -- I'm telling you I don't know.

1 MR. MESSING: I'm moving on the question.

2 THE WITNESS: Okay.

3 BY MR. MESSING:

4 Q. That's fine if you don't know what happened to  
5 it.

6 A. I mean I know what happened to it. He told me he  
7 wasn't paid for the overtime.

8 Q. Okay. But you don't know exactly what steps  
9 CSLEA took with respect to processing and -- processing  
10 and pursuing that grievance, do you?

11 A. Right. That's correct.

12 Q. Okay. All right. Now, you said that there were  
13 people who had problems -- actually, let me go back for a  
14 second.

15 Do you know what proposals were made for Lottery  
16 Agents at the bargaining table in the last round of  
17 bargaining?

18 A. I don't know specifically. I remember getting an  
19 e-mail from I think Al Lewis again at one point saying  
20 that the salary, I think his term was a priority during  
21 bargaining. Salary was not the only thing I put down on  
22 my list of suggestions.

23 Q. The question is do you know -- let me put it a  
24 different way -- what proposals were made by CSLEA to DPA  
25 for bargaining on behalf of Lottery Agents in the last

1 round of bargaining?

2 A. Okay. Again, I think I already answered that.  
3 And I said specific -- what specific things were asked  
4 for on behalf of agents, no.

5 Q. Okay. You said that there were people who  
6 complained about not getting information about  
7 bargaining. That's the other specific complaint that I  
8 believe you made other than the overtime situation.

9 A. Right.

10 Q. Okay. Who were the people who complained about  
11 not getting information about bargaining?

12 A. Oh, at the State Medical Board Todd Baker, Norm  
13 Jorgensen.

14 Q. Wait a minute. Let me write these down. Okay.  
15 Go ahead.

16 A. Todd Baker, Norm Jorgensen, John Grayson, Jesse  
17 Townsend. With the Lottery Jack Gregory. With DMV Roger  
18 Wilbanks. Another guy at DMV in Fresno. His name  
19 escapes me. Lars Okander [phonetic] with ABC. Laurie  
20 Koman [phonetic] with ABC. Art Longoria with Department  
21 of Justice.

22 Q. Okay. I'm really confused. Your prior testimony  
23 was that there was seven to nine people who made  
24 complaints, and we're already way past that.

25 A. You're way past seven to nine?

1 Q. Well, absolutely.

2 A. How many you got?

3 Q. Including Mr. Maddox.

4 A. Well, you --

5 Q. I'm aware we're --

6 A. Even with him how many you got right now?

7 Q. Okay. Let's see.

8 A. I don't know. You went to public school as well.

9 Q. Okay. How many -- are there any additional ones?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Anymore?

11 THE WITNESS: Well, you know I --

12 MR. MESSING: Go ahead.

13 THE WITNESS: I need to go back. I think if you're  
14 saying, you know, how many specifically --

15 MR. MESSING: Right.

16 THE WITNESS: -- those are the people I specifically  
17 remember. So if it's --

18 MR. MESSING: Oh, I see. So --

19 THE WITNESS: How many -- how many do you have right  
20 now?

21 MR. MESSING: Well, let me explain to you.

22 THE WITNESS: Well, wait a minute.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

24 MR. MESSING: Just a moment.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there --

1 THE WITNESS: Okay.

2 MR. MESSING: Are there any others?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are there any  
4 others?

5 THE WITNESS: I'm sure there are. I would say right  
6 now their names escape me.

7 BY MR. MESSING:

8 Q. Okay. Because, you know, your testimony was that  
9 some of these people had complaints about internal  
10 issues.

11 A. Well, just because somebody complains --

12 Q. So is it true that every single person who  
13 complained to you complained about a lack of information  
14 about bargaining?

15 A. Yeah, that's probably correct.

16 Q. Okay. Then that explains it. All right. Now,  
17 of these people who complained about the lack of  
18 information over bargaining, over what period of time did  
19 you get these complaints? Was this over three years?

20 A. I think it probably came to a head usually close  
21 to bargaining. When the -- probably right around the  
22 time, you know, people were solicited for ideas for  
23 bargaining.

24 Q. Okay. Do you know how many of these people  
25 visited the CSLEA website?

1 A. You'd have to ask them. I have no idea.

2 Q. You didn't ask them?

3 A. Did I ask them if they visited --

4 Q. Yes.

5 A. No.

6 Q. Okay. Did you ask them what efforts they made to  
7 get information about bargaining?

8 A. Yeah.

9 Q. Okay. What did they say, each one of them?  
10 Obviously they didn't -- you didn't ask them about the  
11 website, so what did you ask them?

12 A. I would say in the majority of cases they  
13 would -- the answer would be that they talked to the  
14 agency's union rep. So at the Medical Board it would  
15 have been Al -- sorry, Alan Irish. With the Lottery it  
16 would have been Al Lewis. The others, I can't -- I can't  
17 tell you who their people were.

18 Q. Okay. But which ones of these people told you  
19 specifically that they talked to their representative and  
20 didn't get information about bargaining?

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you remember.

22 THE WITNESS: I couldn't tell you.

23 MR. MESSING: Okay.

24 THE WITNESS: I was -- go ahead.

25 /////

1 BY MR. MESSING:

2 Q. These people that they spoke to, were these job  
3 stewards, or were they CSLEA paid representatives?

4 A. What is Alan Irish's title?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you  
6 know? If you don't know, you don't know.

7 BY MR. MESSING:

8 Q. Do you know?

9 A. All I know is that when I started at the Medical  
10 Board I was told with union issues you talk to Alan  
11 Irish. So I don't know if he's a site rep, a job  
12 steward, a union rep. Whatever title you want to put on  
13 it. There is a designee at each agency.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So is he an  
15 employee?

16 THE WITNESS: Yes. Yes. Allen Irish is a Senior  
17 Investigator with the Medical Board. Kasey I'm sure can  
18 you tell his title.

19 BY MR. MESSING:

20 Q. And he's not employed by CSLEA?

21 A. I know if he gets a stipend. I know they go on  
22 the trips. And so I don't know what financial position  
23 they have with CSLEA, if any.

24 Q. Are you aware that Kasey Clark is currently  
25 working with Joe -- and I don't know how to pronounce his

1 last name -- Ahula [phonetic] regarding various personnel  
2 issues at the Lottery?

3 A. Ahuna [phonetic]?

4 Q. Ahuna.

5 MR. ROSE: Objection. Assumes facts not in --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. Are  
7 you aware of whether or not he is working --

8 MR. MESSING: Whether or not.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- with Joe  
10 [sic]?

11 THE WITNESS: No, I don't know.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

13 MR. MESSING: You don't know. Nothing further.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

15 MS. TRUONG: Nothing.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,  
17 anything further, or are you going to be merciful to  
18 this --

19 THE WITNESS: Please.

20 MR. ROSE: I am being merciful.

21 THE WITNESS: Please be merciful.

22 MR. ROSE: I have nothing further.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 Mr. Shoemaker, thank you very much. And with that, I  
25 think Exhibit D, the Declaration, is admitted. We'll go

1 off the record.

2 (Petitioner's Exhibit D received in  
3 evidence.)

4 MR. ROSE: Oh, we move admission of Exhibit W. Oh,  
5 did we already get that in? Yeah, we did.

6 (Off the record.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. We  
8 are back on the record. We have another witness called  
9 by the Petitioner. I'm going to ask this witness to  
10 raise your right hand.

11 (Witness sworn by the Judge.)

12 THE WITNESS: Yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
14 your name for the record, spelling your last name.

15 THE WITNESS: Jesse Townsend. T-O-W-N-S-E-N-D.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 Marking as Petitioner's Exhibit X what appears to be a  
18 Declaration of this witness.

19 (Petitioner's Exhibit X marked for  
20 identification.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have a  
22 couple of preliminary questions before handing this over  
23 to you. Did you receive an e-mail containing the  
24 transcripts of the first two days of hearing in this  
25 matter?

1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Have  
3 you reviewed any transcripts regarding the first two days  
4 of this matter?

5 THE WITNESS: No.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Handing  
7 you Petitioner's Exhibit X, sir. If you can take a quick  
8 look at that and then tell me what it is.

9 THE WITNESS: It's a Declaration and a Petition that  
10 I had offered and sent to CSLEA representatives.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
12 And --

13 THE WITNESS: Regarding my job description and  
14 duties.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you would  
16 turn to the -- your signature page?

17 THE WITNESS: I have the signature page.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
19 is that your signature, sir?

20 THE WITNESS: Yes. Original.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
22 it on or about the date set forth in the Declaration and  
23 at the place?

24 THE WITNESS: January 28th, 2009, in Sanger,  
25 California.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any  
2 further issues for -- other than that, any further issues  
3 for Mr. Townsend?

4 MR. ROSE: Yes.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
6 Proceed.

7 TESTIMONY OF

8 JESSE TOWNSEND,

9 Having been duly and regularly sworn, testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. ROSE:

13 Q. Mr. Townsend, good afternoon. Thank you for your  
14 patience. How long have you been in a classification  
15 that is represented by CSLEA?

16 A. Since January 2003. Although I've held two  
17 different -- two different classifications with two  
18 different departments. The classification I'm currently  
19 in now was in February 2007.

20 Q. I see. Are you satisfied with CSLEA's adequacy  
21 of representation?

22 A. No.

23 Q. When did you -- have you always been dissatisfied  
24 with CSLEA's representation?

25 A. I've been dissatisfied with CSLEA's

1 representation since I've come to learn the manner in  
2 which they represent the peace officers, and they try to  
3 convolute or dilute the bargaining power of the peace  
4 officers by trying to distribute the money in which I  
5 believe that we're qualified to retain.

6 MR. MESSING: Object.

7 THE WITNESS: Or qualified to get.

8 MR. MESSING: This goes to the issue of internal --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. I think  
10 it --

11 MR. MESSING: -- financial issues.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I disagree. I  
13 think this is dealing with Karnow's --

14 MR. MESSING: Oh, is he -- is he talking about  
15 bargaining?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

17 MR. MESSING: Oh, I see. Okay. In that case I'll  
18 withdraw the objection.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think this  
20 goes to our very first day of hearing, but --

21 MR. MESSING: Withdraw the objection.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm  
23 sorry, but you might have got cut off, sir. Did -- was  
24 there anything else?

25 THE WITNESS: I've lost the thought. Sorry.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
2 right.

3 MR. ROSE: Well, I'll ask you --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're sorry.

5 MR. ROSE: -- as you some more questions about that.

6 THE WITNESS: Sure.

7 BY MR. ROSE:

8 Q. So when did you first become dissatisfied with  
9 CSLEA's representation of you as a peace officer?

10 A. When I understand that moneys that were  
11 entitled -- that moneys that were authored -- I said that  
12 were authored -- authorized to be coming to peace  
13 officers were rejected because they weren't distributed  
14 amongst all the bargaining units within CSLEA.

15 Q. Well, when did you first -- I mean what time  
16 period did you first acquire that information that you're  
17 describing now?

18 A. 2005, I believe. 2006. Somewhere in that  
19 neighborhood. It's real fuzzy. But it was specifically  
20 ingrained and kind of confirmed in 2008.

21 Q. And how did you acquire that information?

22 A. It was attending a conference.

23 Q. What conference?

24 A. Or the informational conference.

25 Q. What conference did you attend?

1           A. It was in January 2008. There was a membership  
2 informational meeting, and this information was  
3 distributed to me, or I heard it. It was said to  
4 everybody.

5           Q. Who said this information to you at the  
6 conference?

7           A. Not to me specifically, but to the group. It was  
8 Richard Carrillo.

9           Q. What did Mr. Carrillo say?

10          A. As I recall, he was -- Mr. Carrillo said that  
11 there was money that we were supposed to get, or there  
12 was money authorized -- that peace officers were  
13 authorized to receive some sort of raise, and the reason  
14 we rejected the raise was because the money was not --  
15 none of the money was going to be evenly distributed  
16 through all the bargaining units between sworn and non-  
17 sworn.

18          Q. When you say all the bargaining units, are you  
19 referring to employees outside of Bargaining Unit 7?

20          A. No. What I'm referring to is Bargaining Unit 7.  
21 Bargaining Unit 7 is distributed into three different  
22 subunits, A, B and C.

23          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I see.  
24 Okay.

25          THE WITNESS: The -- well, okay.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That helps. I  
2 got a little bit confused on that, too.

3 THE WITNESS: Okay.

4 BY MR. ROSE:

5 Q. Okay. Do you know how many affiliates of CSLEA  
6 there are?

7 A. I can only guess.

8 Q. Well, don't guess. These subunits A, B and C,  
9 how do they -- how are they organized as far as you know?

10 A. As far -- as I understand it, Bargaining Unit A  
11 is with peace officers, which has peace officer  
12 affiliates. Bargaining Unit B and C is the other  
13 classifications, which are not peace officers, and they  
14 have those affiliates which are not peace officers just  
15 as well.

16 Q. Okay. Are there any other reasons why you are  
17 dissatisfied with CSLEA's adequacy of representation?

18 A. In talking to a labor representative from CSLEA,  
19 he was unwilling or unmatched to engage in meaningful  
20 conversation regarding a severance or a POC, or any type  
21 of idea of a peace officer only union. The reasons he  
22 would offer to me weren't substantiated, they weren't  
23 articulated, and he would just -- generally just say it's  
24 a bad idea because of the political outcomes and the lack  
25 of political influence that a peace officer only union

1 would have with the State of California and the  
2 Legislature.

3 MR. ROSE: All right. Nothing further.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
5 Mr. Messing.

6 MR. MESSING: Sure.

7 CROSS-EXAMINATION

8 BY MR. MESSING:

9 Q. First of all, did you review any other documents  
10 before coming to testify here, other than your  
11 Declaration?

12 MR. ROSE: Vague as to time.

13 THE WITNESS: I don't understand the question. Other  
14 documents --

15 BY MR. MESSING:

16 Q. Did you review any documents to help you prepare  
17 for your testimony here other than the Declaration  
18 sitting in front of you?

19 A. Prior to knowing to testify, the answer's no.

20 Q. Okay. On page four of your Declaration, could  
21 you have a look at that for a moment?

22 A. Yes.

23 Q. I see the laws that you are called upon to  
24 enforce. Okay. Now, it is true that -- is it not, that  
25 you enforce -- you investigate -- you conduct and

1 supervise investigations of administrative and civil  
2 matters as well as criminal?

3 A. Yes. Yes, that's correct.

4 Q. Okay.

5 A. Civil matters, yes.

6 Q. Civil matters. What about administrative  
7 matters?

8 A. Yes.

9 Q. Okay. And out of these laws that are listed on  
10 page four, is it fair to say that most of the provisions  
11 that you deal with in the Business and Professions Code  
12 deal with civil and administrative enforcement as opposed  
13 to criminal?

14 A. No, that's not the approach I take,  
15 interpretation of my position.

16 Q. That's -- I'm not asking you about the  
17 interpretation of your -- of your position. I'm asking  
18 you if most of the provisions that you actually enforce  
19 in the Business and Professions Code deal with  
20 administrative and civil violations as opposed to  
21 criminal.

22 MR. ROSE: Objection. Asked and answered.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I disagree.

24 THE WITNESS: I take -- I take the approach  
25 investigating my -- investigating any cases that I have

1 as looking for any violations of these codes, including  
2 administrative and civil violations.

3 BY MR. MESSING:

4 Q. Okay. Specifically with respect to the Business  
5 and Professions Code.

6 A. Okay. Business and Professions Code, yes.

7 Q. Yes, we're dealing with that.

8 A. Okay.

9 Q. You commence an investigation.

10 A. Uh-hmm.

11 Q. Most of those investigations dealing with B&P  
12 Code violations end up as civil issues or administrative  
13 issues and not criminal; isn't that true?

14 A. They may.

15 Q. Okay. What about the California Code of  
16 Regulations, aren't those predominantly administrative  
17 and civil violations that you're dealing with?

18 A. They may as well.

19 Q. Okay. The same with the Government Code?

20 A. No. The Government Code deals with criminal  
21 violations that I've dealt with mostly.

22 Q. Mostly --

23 A. Yes.

24 Q. -- criminal violations? Okay. All right. Now,  
25 let's talk about some of your duties as listed on page

1 five of your Declaration.

2 A. Okay.

3 Q. Okay. Now, you say that you conduct and  
4 supervise complex investigations that are administrative,  
5 civil and criminal related to alleged violations against  
6 vocational and professional licensees of the Department  
7 of Consumer Affairs. You say as well as criminal  
8 unlicensed activity. So the portion dealing with  
9 vocational professional licensees, is that part  
10 predominantly administrative as opposed to the criminal  
11 unlicensed activity?

12 A. No. I believe they're a nexus.

13 Q. Okay. But the administrative and civil issues  
14 arise when you're dealing with vocational or professional  
15 licensees; is that correct?

16 A. Yes.

17 Q. Okay. And it says in here that -- you understand  
18 that the job -- the job duties that are listed here are  
19 representative of -- representative that duties that you  
20 actually engage in; is that right?

21 A. I may, yes.

22 Q. Okay. Are there some items here that you may  
23 engage in, but you haven't actually engaged in?

24 A. Are you asking me there's something listed that I  
25 may engage in that I have not?

1 Q. Yes.

2 A. No.

3 Q. No? Okay. So, for example, felony arrests, how  
4 many felony arrests have you made since assuming the  
5 classification that you're now in?

6 A. Oh, the classification I'm currently in?

7 Q. Yes. What is your current classification?

8 A. A Senior Investigator, Department of Consumer  
9 Affairs.

10 Q. Okay. How many felony arrests have you made as a  
11 Senior Investigator?

12 A. None yet.

13 Q. Okay. Well, I was asking you, how many of these  
14 have you actually -- have you actually not performed in  
15 your current classification? Do you want to look at the  
16 list and give me another answer?

17 A. Oh, I see what you're saying now. I understand  
18 the question. Oh, there may be several. But I'm  
19 authorized and obligated and trained to conduct all of  
20 them.

21 Q. I said that as a premise --

22 A. Okay.

23 Q. -- that you're authorized to do it. What I'm  
24 asking you is, which of these items have you not done --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yet.

1 MR. MESSING: -- in your current classification.

2 THE WITNESS: Oh, yet?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. What  
4 haven't you done yet that's on that list.

5 THE WITNESS: Well, I haven't made a felony vehicle  
6 stop in my current classification. Felony arrest, not  
7 yet. Is there any other questions as far as what --

8 BY MR. MESSING:

9 Q. Well, you have the whole list here that goes all  
10 the way down to number 59.

11 A. Well, for brevity --

12 Q. I'd like you to go through them one by one and  
13 tell us which of these items you do not -- you have not  
14 actually performed --

15 A. Okay.

16 Q. -- in your current classification.

17 A. I supervise -- I've conducted and supervised --

18 Q. No. Hold on.

19 A. Okay.

20 Q. I'm not asking you which ones you did perform.

21 I'm asking you which ones you haven't performed.

22 A. Okay. I haven't taken a deposition. And in this  
23 department I have not yet testified as an expert witness  
24 in a state or federal court.

25 Q. Okay. Is that it?

1 A. Yes.

2 Q. Okay. I just want to go back over this list for  
3 a moment and talk about some of the things on this list.  
4 In particular, for example, investigating the financial  
5 moral character of applicants for licenses. That's  
6 number 30.

7 A. Okay.

8 Q. For licenses. Now, isn't it true that that would  
9 be administrative -- an administrative function as  
10 opposed to a criminal investigation?

11 A. It may. The reason I say that is because they  
12 have a probation monitor in order to do that. But in  
13 case there's a criminal violation that is detected and  
14 needs to be investigated, they have an officer do it.

15 Q. Okay. How many investigations have you done of  
16 the financial moral character of applicants for licenses?

17 A. One.

18 Q. One? Okay. Did that one result in a criminal  
19 investigation or criminal action?

20 A. No, no criminal action.

21 Q. Okay. You said that you haven't made any felony  
22 arrests. How many misdemeanor arrests have you made?

23 A. My department -- my agency prohibits me from  
24 doing that.

25 Q. So the answer is none?

1 A. None.

2 Q. Okay. You investigate --

3 A. Can I clarify that -- can I clarify that answer  
4 just as well?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry. You  
6 can't.

7 THE WITNESS: Okay.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We've got to  
9 just -- we've go to --

10 THE WITNESS: Answer the question they ask, fine.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yep.

12 BY MR. MESSING:

13 Q. You investigate suspected misuse of license  
14 privileges. Okay. Now, that can be administrative?

15 A. That can be administrative or both.

16 Q. Okay. And the remedy often for a misuse of a  
17 license privilege is the revocation of the license?

18 A. I'm not part of that.

19 Q. Okay. Is the same true of violations  
20 probationary licensees, is that generally administrative?

21 A. It's both. It can be administrative and --

22 Q. It's both?

23 A. Right.

24 Q. Okay. It says in 37 that you interpret and  
25 explain the laws, rules and regulations of the boards and

1 bureaus. To whom do you explain them?

2 A. Local agencies, local district attorneys,  
3 local -- specific drug enforcement units with the local  
4 police departments or sheriffs.

5 Q. Okay. So you certainly wouldn't characterize  
6 that as participating in a criminal investigation or law  
7 enforcement action?

8 A. It would -- it would be a law enforcement action  
9 because it deals with specific law enforcement and  
10 specific criminal codes and how to deal with a case in a  
11 criminal aspect.

12 Q. Would you call this pertaining to criminal  
13 investigation?

14 A. Yes.

15 Q. Oh, okay. Participating in community forums, how  
16 often do you do that?

17 A. I've done it twice.

18 Q. Okay. Was there any criminal investigation  
19 involved in those activities?

20 A. No. But there's technical questions regarding  
21 criminal investigative matters.

22 Q. But no criminal enforcement action taken?

23 A. Not necessary in a community forum.

24 Q. Okay. It says under 41 you prepare, author and  
25 serve search warrants, subpoenas, et cetera. Let's start

1 with search warrants. How many search warrants have you  
2 served?

3 A. With this department?

4 Q. In your current classification.

5 A. No, I haven't served any. I've assisted in  
6 serving search warrants.

7 Q. It says you prepare, author and serve. So that's  
8 not a correct statement?

9 A. I've assisted. It's a correct statement inasmuch  
10 as I've assisted, but I wasn't the primary.

11 Q. Okay. How about subpoenas, have you prepared,  
12 authored and served subpoenas?

13 A. Yes.

14 Q. Okay. How many?

15 A. I don't -- I don't -- I don't have a tally sheet.  
16 I can't give you an accurate count. But it's more than  
17 one.

18 Q. More than one, less than ten?

19 A. No. More than ten.

20 Q. Okay. What kind of proceedings were those for?

21 A. A criminal matter and administrative matters.

22 Q. Okay. You said a criminal matter and  
23 administrative matters. So there were -- there was one  
24 criminal matter?

25 A. Yes.

1 Q. And all the other subpoenas -- how many subpoenas  
2 were involved in the criminal matter?

3 A. The one I'm thinking about is two.

4 Q. Okay. And how many subpoenas -- you said  
5 administrative matters. How many administrative matters?

6 A. I couldn't give you an accurate number.

7 Q. More than 10?

8 A. More than 10.

9 Q. Okay. And were there at least one subpoena  
10 issued for each of those administrative actions?

11 A. No. Ask the question again.

12 Q. Well, you said you've served them in  
13 administrative matters. You said there were more than  
14 administrative -- 10 administrative matters, correct?

15 A. Yes.

16 Q. Were there more than one subpoenas issued in  
17 those administrative matters, or were they only one per  
18 matter?

19 A. No. There's multiples.

20 Q. Multiples. Okay. You say here that you serve  
21 temporary restraining orders, prepare, author and serve  
22 them. How many temporary restraining orders have you  
23 prepared?

24 A. I missed that one. I didn't serve -- I haven't  
25 served one yet with this department.

1 Q. Okay. So that would be an incorrect statement  
2 that you prepare, author and serve them; is that correct?

3 A. It's a matter of semantics, but yes. I  
4 wouldn't -- it's a matter of semantics.

5 Q. It's a matter of seman -- is there some semantic  
6 way that you can tell me --

7 A. The way I read it, I prepare, meaning that if an  
8 occasion arrived as necessary in order to prepare a  
9 restraining order, I would then go ahead and author it  
10 and serve it.

11 Q. Okay. What about civil injunctions, how many of  
12 those have you prepared, authored and served?

13 A. Again, I prepare -- again, the manner in which  
14 the statement is written, I prepare meaning if the  
15 situation would arise, I would need to go ahead and  
16 perform those functions because there's nobody else to  
17 call.

18 Q. So you mean it's more correct to say you might  
19 prepare and author and serve a civil injunction, but you  
20 haven't done one?

21 A. Again, matter of semantics, yes.

22 Q. Well, am I correct?

23 A. No, I haven't done one yet.

24 Q. Okay. What about asset forfeiture documents,  
25 have you done those?

1 A. Current investigation, yes.

2 Q. Current investigation? Okay. Now, can you tell  
3 me what a drug audit is?

4 A. A drug audit? The way I interpret it is I go  
5 into a pharmacy and then I run a specific audit on a  
6 specific prescription.

7 Q. Okay. Why would you be interpreting this?  
8 Didn't you write, "I conduct drug audits"?

9 A. Well, I conduct drug audits, that's the way I  
10 handle that drug audit is I will go to a pharmacy and I  
11 look in there as far as --

12 Q. I'm not asking you how you handle it. I'm asking  
13 you what do you -- what does this mean, I conduct drug  
14 audits?

15 A. That's what it means.

16 MR. ROSE: Objection.

17 MR. MESSING: Okay.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

19 MR. ROSE: Argumentative.

20 BY MR. MESSING:

21 Q. All right. It says you issue administrative  
22 citations, referral to licensee citations, and enforce  
23 levied fines. Do you do all of those things?

24 A. I would if the situation arise that I needed to  
25 take action.

1 Q. Have you done them?

2 A. I've issued administrative citations. I've  
3 referraled -- referred licensees to citations. I have  
4 not yet to enforce a levied fine.

5 Q. Okay. And as to the administrative citations and  
6 the licensee citations, those are all administrative  
7 actions, correct?

8 A. Yes.

9 Q. Okay. In 44 you say you develop program  
10 investigation policies and procedures which require  
11 investigative or law enforcement expertise.

12 A. Uh-hmm.

13 Q. Okay. How many procedures -- programs, I'm  
14 sorry, have you developed since you've been in the  
15 current classification?

16 A. One. It has not specifically been adopted by the  
17 complete department, but adopted by my specific office.

18 Q. Okay. And what kind of program was that?

19 A. Medical marijuana.

20 Q. Okay. What kind of program regarding medical  
21 marijuana?

22 A. The manner in which the investigation should be  
23 conducted.

24 Q. Okay. It says on number 54 that you make high-  
25 risk entry. Okay. How many high-risk entry did you

1 make --

2 A. I overlooked that because I saw felony car stops.

3 Q. So you don't make any?

4 A. I could.

5 Q. You may, but you haven't made any?

6 A. Not necessary. But I would be the one when the  
7 situation arises to make that entry.

8 Q. Okay. It's not true to say that you make high-  
9 risk entry. You may, but you don't -- you haven't done  
10 it, correct?

11 MR. ROSE: Objection. Argumentative. Compound.  
12 Asked and answered.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, we just  
14 have the question of have you made it yet?

15 THE WITNESS: No.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Have you made  
17 one? Next.

18 BY MR. MESSING:

19 Q. Okay. Do you have -- currently have any  
20 confidential informants?

21 A. Yes.

22 Q. Okay. Now -- oh, I need a second. In your  
23 position of Senior Investigator at DCA, has your job  
24 changed very much in the last two years?

25 A. I think it has.

1 Q. Okay. In what regard?

2 A. The manner in which the department has directed  
3 me.

4 Q. Okay. In terms of your performance of your job  
5 functions, have your job functions changed in the last  
6 two years?

7 A. No.

8 MR. MESSING: Okay. I'd like to mark for  
9 identification -- and I can't tell you what our next  
10 exhibit number is.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hang on.

12 MR. MESSING: Or not a number. It's a letter, I  
13 think.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, it is. All  
15 right. Marking -- let me grab this for a second.  
16 Marking as Exclusive Rep L what appears to be a single-  
17 page document, specifically a Position Duty Statement for  
18 Senior Investigator, DCA, Medical Board of California,  
19 Enforcement, Fresno.

20 (Exclusive Representative's Exhibit L  
21 marked for identification.)

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
23 show that to the witness. And if you can just start  
24 reviewing that? And when you're done reviewing it, just  
25 let us know when you're ready to respond to questions.

1 THE WITNESS: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

3 Mr. Messing.

4 THE WITNESS: I'm done -- I'm done reviewing it.

5 BY MR. MESSING:

6 Q. Okay. Does this look familiar to you?

7 A. Yes.

8 Q. Okay. Is this a Duty Statement for your  
9 position?

10 A. It looks like it, yes.

11 Q. Okay. Does this generally represent what you  
12 believe to be the range of duties that you have with the  
13 percentages listed on the left-hand side of the document?

14 A. It's a -- it's a specific general -- it's a  
15 general format is what it is. It's a matrix.

16 Q. Well, I know what it is. I'm asking you if the  
17 percentages on the left-hand side generally represent the  
18 range of duties that you now perform.

19 A. No. I disagree with them.

20 Q. Okay. What part do you disagree with?

21 A. Seventy-five percent of driving, sitting,  
22 balance, carrying required. I mean --

23 Q. So you don't believe that you do 75 percent of  
24 your time with investigations?

25 A. I do -- I do a lot -- I do a lot of time with

1 investigations.

2 Q. Okay. I'm asking you about the percentages on  
3 the left-hand side.

4 A. Okay.

5 Q. Which one of those percentages do you disagree  
6 with, and what do you think it should be?

7 A. I disagree with them specifically as it pertains  
8 to me.

9 Q. I'm asking you which ones of these percentages do  
10 you disagree with, and what percentage would you put in  
11 place of the one that was there?

12 A. I would do 80 percent investigations. That  
13 includes -- that includes 25 percent of local -- locates  
14 and interviews people. Okay. I see now. I understand  
15 now. It's the bold types, right?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right.

17 THE WITNESS: Okay. I'm going to say 80 percent  
18 investigations, and it would be 15 percent investigative  
19 reports, and then 5 percent training administrative.

20 BY MR. MESSING:

21 Q. Okay. And do you agree that your investigations  
22 include a good deal of administrative and civil  
23 investigations as well as criminal?

24 A. Both, yes.

25 Q. Okay. And down in the portion that now says 20

1 percent --

2 A. Uh-hmm.

3 Q. -- the investigative reports, you would agree  
4 that a good deal of your time is spent with  
5 administrative disciplinary action?

6 A. Okay. Explain that to me, a good deal of  
7 disciplinary action.

8 Q. Okay. It says administrative disciplinary action  
9 in the second line under E, investigative reports.

10 MR. ROSE: Object. Vague as to "good deal of time."

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree with  
12 that, so sustained. But in regards to the question, what  
13 are you asking him in regards to the investigative report  
14 section?

15 BY MR. MESSING:

16 Q. What percentage of the 20 percent that -- well,  
17 you now say that that should be 15 percent, correct?

18 A. Right.

19 Q. What percentage of the 15 percent would you say  
20 is involved in dealing with administrative disciplinary  
21 actions?

22 A. A small percentage in my -- in my case.

23 Q. I'm going to ask the question again. What  
24 percentage of the 15 percent would you say is involved  
25 with administrative disciplinary actions?

1 A. Seven point five percent.

2 Q. Okay. Thank you. In the -- under A there's a  
3 reference to complex issues involving the standard of  
4 medical care.

5 A. Uh-hmm.

6 Q. Of your 80 percent, what portion of your -- of  
7 your time is spent dealing with the standard of medical  
8 care?

9 A. Twenty-five percent.

10 Q. Okay. And out of that 25 percent, what  
11 percentage would be spent in regards to administrative or  
12 civil investigation and action?

13 A. Probably all 25 percent. It's --

14 Q. Thank you. Okay. Now I'm going to move on to  
15 the area of representation. You referred to a contract  
16 that Richard Carrillo spoke about at a conference. Okay.  
17 You remember that testimony?

18 A. Yes.

19 Q. Okay. What contract was this in reference to?  
20 Do you know the years or the timeframe that covered the  
21 time of that contract?

22 A. No.

23 Q. Okay. Did Richard Carrillo indicate what  
24 percentages of salary were allocated under the contract  
25 that he was referring to for peace officers as opposed to

1 non-peace officers?

2 A. As far as the distribution?

3 Q. Yes.

4 A. I don't remember him saying anything about  
5 distribution.

6 Q. Okay. Did anybody else at that time tell you  
7 what percentages there were distributed between peace  
8 officers and non-peace officers for the contract that  
9 Mr. Carrillo was referring to?

10 A. No, nobody else told me about the distribution  
11 rate.

12 Q. Nobody told you at any time?

13 A. Well, there was no reason for me to ask, no. I  
14 didn't -- no, no one told me.

15 Q. So you actually have no knowledge as to whether  
16 or not percentages were actually different between peace  
17 officers and non-peace officers and pay increases under  
18 whatever contract Mr. Carrillo was referring to?

19 A. Well, it's going to be a percentage distribution.

20 Q. And you don't know as you sit here today --

21 A. No, I don't.

22 Q. -- whether -- let me finish the question.

23 A. Okay.

24 Q. Whether a percentage of salary was moved from  
25 peace officer to non-peace officer in the contract that

1 Mr. Carrillo was supposedly discussing?

2 A. No, I don't -- I can't answer your question. I  
3 do not know the percentage distribution.

4 Q. Okay. Oh, give me one second. Okay. Did you --  
5 you indicate in your Declaration that during the regular  
6 performance of your duties you work with non-peace  
7 officer personnel such as administrative staff and  
8 probation monitor employees.

9 A. Yes.

10 Q. Do you work with any non-peace officers in Unit  
11 7?

12 A. Yes. Probation monitor.

13 Q. Okay. Probation monitors are in Unit 7. Okay.  
14 Now, is that -- do you know what an investigative  
15 assistant is?

16 A. They've been -- I know what it is, but they're no  
17 longer existing.

18 Q. Okay. Is that currently what they call a  
19 probation monitor?

20 A. It's been reclassified. Yeah, it's been reclassified  
21 or whatever.

22 Q. But those two are the same thing?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Okay. Did the class that used to be  
2 investigative assistant get reclassified into probation  
3 monitor, to your knowledge?

4 A. Those that were in the classification, yes.

5 Q. Okay. Now, let's see. When you -- okay. One  
6 second. Okay. Can you just briefly state what is --  
7 what is entailed in probation monitoring?

8 A. Probation monitors monitor those physicians who  
9 are close to -- they've already been convicted of their  
10 violation, and they're being monitored by the department.

11 Q. Okay. And is it -- is it true that previously  
12 those duties used to be performed by investigators?

13 A. Yes.

14 Q. Okay. And so they were reallocated to the  
15 probation monitors?

16 MR. ROSE: Objection. Asked and answered.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm  
18 still not completely clear on how this happened, but is  
19 that your understanding?

20 THE WITNESS: That Investigator I's supervise the  
21 probationers. That responsibility shifted to a probation  
22 monitor.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 BY MR. MESSING:

25 Q. And so what used to be an investigative assistant

1 now took on probation monitoring duties and became known  
2 as probation monitor?

3 A. Yes.

4 MR. ROSE: Objection. Asked, asked and answered.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
6 overrule the objection. Next question.

7 BY MR. MESSING:

8 Q. Okay. All right. Now, give me one second here.  
9 We're almost done. So what did you do -- what was your  
10 job before February of 2007?

11 A. State Park Ranger.

12 Q. And how long were you a State Park Ranger?

13 A. Four years.

14 Q. Okay. So you were there -- you were a park  
15 ranger when CSLEA secured the three percent at fifty plan  
16 for peace officers in the bargaining unit?

17 A. Yes.

18 Q. Okay. And did you know one way or the other  
19 whether that three percent at fifty plan was conferred on  
20 Unit 7 employees before --

21 A. No, I --

22 Q. -- correctional officers or firefighters in the  
23 state?

24 A. I don't know when it was conferred.

25 Q. Okay. Were you aware that starting in January of

1 2007 all peace officers in the bargaining unit attained  
2 nearly -- at least 17 percent increase between COLAs and  
3 additional steps added on to the pay ranges?

4 MR. ROSE: Objection. Assumes facts not in evidence.  
5 Lacks foundation.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know  
7 whether that -- did you see that, sir?

8 THE WITNESS: Did I see it?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: See it in your  
10 paycheck.

11 THE WITNESS: Relative -- yes.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

13 MR. MESSING: Nothing further at this time.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

15 MS. TRUONG: Nothing for us.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

17 MR. ROSE: Nothing further.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any  
19 objection to Exclusive Rep L on behalf of Petitioner or  
20 the Employer?

21 MR. ROSE: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. On  
23 behalf of the Employer?

24 MS. TRUONG: No.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: L is admitted.

1 (Exclusive Representative's Exhibit L  
2 received in evidence.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.  
4 (Off the record.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
6 We're back on the record. We have another witness called  
7 by the Petitioner. I'm going to ask this witness to  
8 raise your right hand.

9 (Witness sworn by the Judge.)

10 THE WITNESS: Yes, I do.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
12 your name for the record, spelling your last name.

13 THE WITNESS: Gary Schales. S-C-H-A-L-E-S.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And I've  
15 got a couple preliminary questions for you.

16 But first, I am marking as Petitioner Exhibit Y what  
17 appears to be a Declaration of Gary Schales.

18 (Petitioner's Exhibit Y marked for  
19 identification.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And by the way,  
21 I'm admitting the Declaration of Jesse Townsend, X.

22 (Petitioner's Exhibit X received in  
23 evidence.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Petitioner Y.  
25 And I have a couple preliminary questions for you, sir.

1 It looks like you already have the Declaration in front  
2 of you. But did you ever receive a copy or an e-mail  
3 containing the transcripts of the first two days of  
4 hearing in this matter?

5 THE WITNESS: No, I didn't. Well, not that I'm aware  
6 of.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
8 Well, then we ask the second question. Did you review  
9 any of the transcripts? Maybe that'll be the easier  
10 question to answer. Or the first two days of this --

11 THE WITNESS: I did not look at transcripts. I did  
12 see something on the web.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well, let  
14 me ask this question. What'd you see on the web?

15 THE WITNESS: I looked at CSLEA's website.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
17 right. I know what you're talking about, then. So are  
18 you talking about somewhat of an encapsulation of what  
19 happened during the hearing?

20 THE WITNESS: Yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Very  
22 good. All right. You have Petitioner Y before you, sir.  
23 If you can review that and/or take a look at it and tell  
24 me what it is?

25 THE WITNESS: I'm sorry.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What do you  
2 recognize this document -- is this your Declaration?

3 THE WITNESS: Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
5 turning to the signature page of this document, is that  
6 your signature on page 10?

7 THE WITNESS: Yes, it is.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
9 it on the date and in the location set forth in the  
10 Declaration?

11 THE WITNESS: Yes, I did.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
13 is what is contained in this Declaration true and correct  
14 to the best of your knowledge?

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
17 I think with that -- and you are a Fish and Game Warden  
18 Pilot?

19 THE WITNESS: That is correct.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You've probably  
21 got the job that most people would love to have, I would  
22 imagine. So you might be one of the lucky ones.

23 THE WITNESS: It's a lot of work.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With that,  
25 Mr. Rose, go ahead.

1 MR. ROSE: Thank you.

2 TESTIMONY OF

3 GARY SCHALES,

4 Having been duly and regularly sworn, testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. ROSE:

8 Q. Good afternoon, sir. Thank you for your  
9 patience. And in my next life I'd like to come back and  
10 do your job. But presently I'm in the seat here, and  
11 have the privilege of asking you a few additional  
12 questions.

13 Looking at your Declaration, page seven, under job  
14 duties, paragraph 40 begins with, "As a Warden Pilot,  
15 Department of Fish and Game, I pilot an airplane and  
16 perform the following duties," colon, and then there's a  
17 list. Do you see that?

18 A. Yes. Yes, I do.

19 Q. Other than the list A through I there, are there  
20 any additional activities that you have engaged in as a  
21 Warden Pilot for the Department of Fish and Game?

22 A. I -- nothing comes to mind other than what's  
23 written. I did review it.

24 Q. Do you engage in any -- well, then, let me ask  
25 you this: Have you ever had any unusual occurrences

1 while piloting your airplane for the State of --  
2 Department of Fish and Game?

3 A. Yes, I have.

4 MR. MESSING: Object. Vague and ambiguous.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean as far  
6 as enforcement?

7 MR. ROSE: Well, if it's specific and not ambiguous,  
8 then it's leading. I'm trying to ask an open --

9 MR. MESSING: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right, sir,  
11 go ahead.

12 THE WITNESS: Well --

13 BY MR. ROSE:

14 Q. Did you see any -- have you experienced anything  
15 that you consider to be unusual while piloting your  
16 airplane for the State of California?

17 A. Yes, I have.

18 MR. MESSING: What, a UFO?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No, we're not  
20 talking about UFOs. We're talking about something within  
21 your duties. Go ahead.

22 BY MR. ROSE:

23 Q. I think it's a pretty standard question for a  
24 peace officer.

25 A. Sure.

1 Q. Okay.

2 A. While landing at Bishop not even six months ago I  
3 had an individual run right across -- right in front of  
4 me while I was 75 feet off the ground. And I --  
5 actually, once I got on the ground, I detained that  
6 subject and actually ran his information to check him for  
7 wants and warrants. So, yeah, that's pretty unusual.

8 Q. Any others than you can think of?

9 A. Not at this time.

10 Q. Okay. Are you -- your classification is  
11 represented by CSLEA?

12 A. That is correct.

13 Q. How long have you been in a classification that  
14 has -- that is represented by CSLEA and Bargaining Unit  
15 7?

16 A. Nine -- it's been over nine years. About nine  
17 years, two months.

18 Q. Are you currently satisfied with CSLEA's  
19 representation, the adequacy of it?

20 A. No.

21 Q. Have you always been dissatisfied, or is that a  
22 recent change, or when did you first become dissatisfied?  
23 Let me ask you that.

24 A. After the ratification of the last contract.

25 Q. And why were you dissatisfied with CSLEA's

1 representation after ratification of the last contract?

2 A. I called Personnel and talked to them about the  
3 Warden Pilot classification and the Warden  
4 classification, and I said -- talking about actually pay.  
5 And they said, "You are not included." And I said, "What  
6 do you mean I was not included, or my classification was  
7 not included?" "You're -- you did get a increase in pay,  
8 but you will not get the increase in pay like the wardens  
9 that you work with. You will get a three percent  
10 increase in pay."

11 And I called -- I called then president of the Fish  
12 and Game Warden's Association, Joe Mello, and he did call  
13 CAUSE. And we -- I think there was some conversations  
14 that, oh, that was a -- that was an oversight. It was a  
15 mistake. We'll take care of it. We called back about a  
16 hour later and they said DPA had stated that it was going  
17 to be that way, and that was the end of it. And that DOJ  
18 pilots need to make more money. And that's where we're  
19 at.

20 Q. Why are you dissatisfied with that?

21 A. Well, I just think that, you know, that's great  
22 for DOJ pilots. But, you know, I'm not talking about  
23 that classification. I'm talking about Warden Pilots and  
24 all the work that they do and what is deserving of them.

25 Q. Do you know whether or not DOJ pilots are in

1 Bargaining Unit 7?

2 A. I am told that they are.

3 Q. Do you know whether or not DOJ pilots are peace  
4 officers?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you don't  
6 know, say you don't know. But if you know --

7 THE WITNESS: Actually, I've met some that are  
8 non-sworn, and then they do have sworn peace officers at  
9 DOJ. So they have -- I think they have two different  
10 classifications.

11 BY MR. ROSE:

12 Q. Look at page five, please, of your Declaration,  
13 paragraph 31. It says, "As a Warden Pilot, Department of  
14 Fish and Game, I cooperate with State Police, California  
15 Highway Patrol and local police when they require sworn  
16 backup assistance throughout the state." Do you see  
17 that?

18 A. Yes.

19 Q. How often have you performed that activity during  
20 your career as a Fish and Game pilot, Warden Pilot?

21 A. Probably anywhere from 10 times, maybe 20 times.  
22 I don't know. It's an everyday thing. I'm always  
23 monitoring the radio, always in communication with the  
24 other agencies, whether it's the sheriff's office, CHP.  
25 It's just an everyday thing.

1 Q. When you do that, what types of agencies are you  
2 working with? Can you identify some?

3 A. Fresno --

4 Q. Law enforcement agencies.

5 A. Fresno County Sheriff's Office if there's missing  
6 persons, BOLs, or be on the lookout for individuals,  
7 cars, while on patrol myself, either on the river or on  
8 the coastline while working low tide patrols.

9 CHP -- we were doing a low tide patrol three weeks  
10 ago, four weeks ago, and CHP and I were talking. They  
11 were going up Highway 1. And we were down at the  
12 coastline looking for people. And, hey, we're looking  
13 for a Honda, or, you know, with a suicidal individual.

14 I called our officers, advised them. We had five or  
15 six officers. And because we're not hooked up  
16 communication-wise other than a Victor airway or a air  
17 radio through the different air units, CHP, the local  
18 sheriff's office, some PD offices, we actually all  
19 communicate.

20 Q. Now, on that paragraph I see -- I don't see any  
21 reference to federal law enforcement agencies. Is that a  
22 deliberate omission, or have you worked with federal law  
23 enforcement agencies?

24 A. Occasionally. Mostly on the ground. There is --  
25 actually, yeah, I need to correct that. BLM. Search and

1 rescue working with BLM.

2 Q. What do you do with BLM search and rescue?

3 A. Well, generally when I fly, I fly over a lot of  
4 BLM land. It's usually the land that is not owned by  
5 private individuals that, you know, you can't really put  
6 a building on and that sort of thing. And so they are  
7 patrolling in their own area and looking for lost  
8 persons, lost hunters, and have communicated with BLM  
9 officers in the past.

10 Q. Other than BLM do you have any other interaction  
11 or work with any other federal entities?

12 A. I can't think of any. I really don't think about  
13 it after the task. I -- if they're there, I work with  
14 them.

15 MR. ROSE: Okay. Nothing further.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 Ready for cross?

18 MR. MESSING: Sure.

19 CROSS-EXAMINATION

20 BY MR. MESSING:

21 Q. Now, going to your Declaration here, paragraph 30  
22 says as a Warden Pilot you may cooperate with the  
23 California Department of Parks to enforce Fish and Game  
24 violations. Do you see that?

25 A. Yes.

1 Q. Are all of those violations criminal violations,  
2 or are some of them non-criminal?

3 A. Well, it could be an infraction. There could be  
4 poachers, so, yes, that's criminal.

5 Q. Okay. And are there some that are not criminal?

6 A. I do not know that because I'm not down there  
7 checking them.

8 Q. Well, it says that you cooperate with them in  
9 enforcing Fish and Game violations. How do you cooperate  
10 with them if you're not down there dealing with the  
11 violations?

12 A. Patrolling the waterway with the airplane, and  
13 advising them of any fishermen, or if there's any  
14 streambed alterations, if there is anything, pollution,  
15 anything.

16 Q. Okay.

17 A. Anything of suspicion

18 Q. So you --

19 A. Reasonable suspicion.

20 Q. Okay. So you wouldn't know if, for example,  
21 there's a degradation of property, that could be from  
22 natural causes, or that could be a criminal issue, but  
23 you report it and somebody on the ground looks into it?

24 A. I think I'd know if it was criminal. But if all  
25 the elements are there, then I could call it criminal. I

1 only have a reasonable suspicion if part of the element  
2 is there.

3 Q. Right. But as part -- as your -- part of your  
4 duties with Fish and Game, you're concerned about also  
5 preserving the natural resources even if there is not a  
6 criminal violation, right?

7 A. Absolutely.

8 Q. Okay. And it says here, by the way, that you  
9 receive cooperation when you require sworn backup  
10 assistance throughout the state.

11 A. Uh-hmm.

12 Q. What kind -- what's an example of when you  
13 require backup assistance?

14 A. While patrolling. The example that I just used.  
15 Cooperating with another agency, CHP. I do the same  
16 thing. Hey, we're looking for this person that was back  
17 here. It was a hunter trespass issue. I'd like to  
18 question that individual, or our officers would like to  
19 question that individual.

20 Q. But you're in the air? You're not actually on  
21 the ground dealing with that situation?

22 A. Sure. But I can tell if somebody is trespassing.  
23 That is -- that is an example.

24 Q. Now, you work a fixed wing?

25 A. Yes.

1 Q. Okay. Now, it says here that you patrol -- this  
2 is on page seven. So when you're in the air, you're --  
3 is your time essentially patrolling?

4 A. It is -- it is patrolling, biological science  
5 surveys. I am -- basically, I am looking because we do  
6 not have the personnel to be at every place at all times,  
7 so we actually utilize the airplane even when I'm doing  
8 non-enforcement issues at that time.

9 Q. You do a lot of important non-enforcement --

10 A. Uh-hmm.

11 Q. -- functions, correct?

12 A. Right.

13 Q. So, for example, the biological surveys are not a  
14 criminal enforcement issue, right?

15 A. It could lead to it.

16 Q. But predominantly it's for other purposes,  
17 correct?

18 A. Studies, environmental impacts, possible crimes  
19 that could manifest later.

20 Q. Okay. Biological surveys also serve to alert the  
21 department as to where game needs to be protected or  
22 increased, or there are problems with other natural  
23 resources, correct?

24 A. That's correct. I am support for the biological  
25 services for our surveys and such. And I do not -- I

1 don't know exactly -- I'm told the telemetry and I do it.

2 Q. Okay.

3 A. And I do it for them.

4 Q. Now, do you make aerial surveys?

5 A. Yes.

6 Q. Okay. And what is the purpose of an aerial  
7 survey?

8 A. Either to take a statistical count or -- which  
9 could be taking a sample of a population and the  
10 scientists are studying that sample to figure out what  
11 the outcome is of that population.

12 Q. You wouldn't consider that undertaking a criminal  
13 enforcement action, would you?

14 A. No.

15 Q. Okay. Let's see. The same with making physical  
16 counts of herds of game animals, you wouldn't consider  
17 that to be a criminal enforcement action, would you?

18 A. Not at that time. If you mean like a hot call,  
19 no. But if it's leading to a poaching problem, sure.

20 Q. Okay. And the same with physical counts of  
21 plants and fish?

22 A. Plants. I don't look at plants.

23 Q. Well, it says in your Declaration, page seven,  
24 sub 40(i), "I make physical counts of plants and fish."

25 So did you write that?

1 A. I have reviewed it. It depends on what you mean  
2 as far as plants. What are you talking about?

3 Q. Well, when --

4 A. Are we talking about illicit plants?

5 Q. When you said you reviewed it, what I asked you  
6 is did you -- did you write this Declaration?

7 A. No. I reviewed it and corrected it.

8 Q. Well, who wrote the Declaration?

9 A. It came to me, and I went through and I corrected  
10 where it needed to be corrected.

11 Q. So you don't know who wrote this Declaration?

12 A. I -- no. No, I don't. No, I do not.

13 Q. Who sent it to you for correction?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
15 know.

16 THE WITNESS: I don't -- I cannot recall.

17 BY MR. MESSING:

18 Q. Did it come to you via e-mail or mail? Do you  
19 recollect?

20 A. It came to me --

21 MR. ROSE: Objection. Relevance. Evidence Code  
22 section 352.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That question  
24 [sic] is sustained.

25 MR. ROSE: And Rose Law from PC is on every page, by

1 the way.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But  
3 the question I -- getting back to the real question that  
4 had to do with plants.

5 THE WITNESS: Right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what do you  
7 do, if anything, in regards to plants?

8 THE WITNESS: Marijuana plants. Other than that,  
9 I -- when you said plants, I am thinking, you know -- I  
10 thought you meant poppies on the side of the hill.  
11 Obviously, I -- that was something that I may have  
12 overlooked. If it's Cannabis, that's fine. I -- you  
13 know, sure.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, don't  
15 worry what Mr. Messing thinks. We don't.

16 BY MR. MESSING:

17 Q. It's not what I think. I'm asking you what you  
18 wrote and what you meant.

19 A. Uh-hmm.

20 Q. So this is your Declaration.

21 MR. ROSE: Objection. Argumentative.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

23 BY MR. MESSING:

24 Q. As a Warden Pilot it says that you make airline  
25 inspections, correct?

1 A. Correct.

2 Q. That's a very important part of your job,  
3 correct?

4 A. I make -- I am the only inspector in the state.

5 Q. And how many Warden Pilots are there?

6 A. There are six.

7 Q. There's six Warden Pilots. How many Senior  
8 Warden Pilots are there?

9 A. There is one.

10 Q. Who is that?

11 A. That is Ran Van Venthusen [phonetic].

12 Q. Okay. So isn't it true that you may spend up to  
13 half of your time performing airline inspections,  
14 maintenance, repair work to the engines, and that sort of  
15 thing?

16 A. I -- no. No. I wouldn't say half of my time.  
17 It's -- it depends. If I have a lot of flying and a lot  
18 of missions, a lot of law enforcement, then I'll go  
19 through a stretch where I'm working quite a bit. If I  
20 have a oil change, a hundred hour inspection, I'll go  
21 ahead and take care of it. That's usually if there's no  
22 problems. Takes four or five hours to do that. Because  
23 I know my airplane. If I'm called upon to do an  
24 inspection up here at Sacramento, that's a couple of days  
25 to do that.

1 Q. So about how much of the time -- what percentage  
2 of the time on the average do you believe that you  
3 perform airline -- airplane inspections, necessary  
4 maintenance and repair work to airplanes and engines,  
5 update flight manuals, and perform other related work?

6 A. I'd say a third of my -- of my time.

7 Q. A third?

8 A. I would say a third of my time on that.

9 Q. Okay. Well, have you ever seen a Duty Statement  
10 for your position?

11 A. I may have reviewed parts of one.

12 Q. Okay. Well, I'm going to give you a document.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

14 MR. MESSING: I'm going to mark it for  
15 identification.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are on  
17 Exclusive Rep -- thank you, sir. Thank you. We're on  
18 Exclusive Rep M, what appears to be a Duty Statement for  
19 the position of Warden Pilot. It appears to -- let's see  
20 if I can see any identifiers here. (Unintelligible)  
21 Services, Riverside. Single page in length. We have a  
22 supervisor's name in regards to Senior Warden Pilot.

23 (Exclusive Representative's Exhibit M  
24 marked for identification.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And witness has

1 M before him.

2 BY MR. MESSING:

3 Q. Okay. Does this look like the Position Statement  
4 that you've previously seen?

5 A. I have not seen this document before.

6 Q. Do you believe that you saw a different Position  
7 Statement that was not the same as this one?

8 A. When I interviewed for the position, there was  
9 a -- there was a flier and it talked about this. But it  
10 went into great length as to what was required. This is  
11 only -- this is a general of what I do.

12 Q. Well, this indicates 50 percent for the portion  
13 that I --

14 A. Sure.

15 Q. -- indicated to you before.

16 A. Uh-hmm.

17 Q. You believe that it's only a third of what you  
18 do? Is that what you said?

19 A. For me. It might be different for somebody else.

20 Q. Didn't you say that you are the person who does  
21 most of the airplane inspections and maintenance?

22 A. On my airplane. And then I perform a annual  
23 inspection --

24 Q. Okay.

25 A. -- on the other airplanes. But with my airplane,

1 I maintain that airplane all the -- all the time. It's  
2 something that I just do. But I wouldn't say for me it's  
3 50 percent. I'd say more of a 30 -- between 30 and 35  
4 percent.

5 Q. Okay. So do you -- do you have any reason to  
6 know whether or not this would be inaccurate for other  
7 Warden Pilots in the state?

8 A. I have no idea.

9 Q. Okay.

10 A. They do -- they do not work for me.

11 Q. Okay. Just looking at the other half of this,  
12 where it says, "Perform law enforcement day and night by  
13 patrol to spot violators," et cetera, that -- you see  
14 that half of it?

15 A. Uh-hmm.

16 Q. It says, "Assist in biological surveys, fish  
17 planting and conservation work through aerial  
18 observation, photographing wildlife, or taking physical  
19 game herd counts."

20 A. Uh-hmm.

21 Q. Those are predominantly non-criminal enforcement  
22 actions, correct?

23 A. That I would say yes.

24 Q. Okay. And would you say that out of the  
25 remaining two-thirds or so of the time that you spend on

1 the activities that would be listed in the top half of  
2 this, the long paragraph, I should say --

3 A. Uh-hmm.

4 Q. -- that also part of that time is devoted to the  
5 things which I just indicated which are non-criminal  
6 enforcement matters; is that true?

7 A. I wouldn't agree with that. I would not agree  
8 with the way you explained it.

9 Q. Well, you said -- let me do it this way.

10 A. You said non-criminal, and it says, "Perform law  
11 enforcement day or night," and the other.

12 Q. And I'm pointing to the part that says, "Assist  
13 in biological surveys, fish planting," et cetera.

14 A. Sure.

15 Q. Now, so you would put two-thirds --

16 A. Uh-hmm.

17 Q. -- as a percentage next to this large paragraph?  
18 What I'm saying is, isn't it true that part of that two-  
19 thirds --

20 A. Uh-hmm.

21 Q. -- is involved with biological surveys, fish  
22 planting, and other matters that are non-criminal  
23 enforcement in nature?

24 A. Sure.

25 Q. Okay. That was the question. Thank you. Okay.

1 Let me -- a couple more questions on that. Actually, let  
2 me just move along. You inspect commercial fishing  
3 operations, canneries, processors and fish markets and  
4 fish landings?

5 A. Yes, I do.

6 Q. Okay. And those inspections are not all  
7 involving criminal investigation, correct?

8 A. When I get involved, generally it is. They're  
9 asking for my help because they need bodies.

10 Q. Okay. Well, who's they?

11 A. The wardens.

12 Q. Okay.

13 A. My coworkers.

14 Q. Okay. So you are actually assisting in those  
15 investigations?

16 A. And sometimes taking on a caseload.

17 Q. Okay. So it says here that you serve arrest  
18 warrants.

19 A. Yes.

20 Q. Okay. About how many a year do you serve?

21 A. Again, as needed. Or I can't give you a  
22 specific. I do not know. Sometimes I don't -- I do not  
23 do one for a year, and sometimes I knock out three or  
24 four, so there you go.

25 Q. Okay. So would you say zero to three or four

1 would be accurate?

2 A. Okay.

3 Q. All right. Do you write search warrants?

4 A. No, I do not.

5 Q. It says in your Declaration on page eight, "I" --  
6 okay. I'm sorry. I'll withdraw that question.

7 Have you been involved in controlling riots?

8 A. No.

9 Q. Okay. You say that you -- have you ever  
10 testified in court as an expert witness?

11 A. No.

12 Q. You do assist in developing fishing and hunting  
13 regulations, laws, rules and policies?

14 A. I assist with the airplane, to get the  
15 policymakers up there so that they can do their job.

16 Q. Okay. You respond to and assist in investigating  
17 suspected pollution, oil and hazardous material spills?

18 A. Yes.

19 Q. Okay. And those issues may not necessarily be  
20 criminal, right?

21 A. I think just about all pollution is criminal.

22 Q. Well, are there accidents that occur where  
23 they're not -- there's not criminal conduct?

24 MR. ROSE: Objection. Vague. Calls for a legal  
25 conclusion.

1 MR. MESSING: Based on his prior answer.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me ask this  
3 question. What sort of pollutions issues do you enforce?

4 THE WITNESS: Oil spills. Could be something as  
5 simple as cow manure going into a community's drink  
6 water. Milk going into water and killing thousands of  
7 fish and the habitat around it. Diesel spills from car  
8 accidents and trucks.

9 BY MR. MESSING:

10 Q. And not all of these items are necessarily  
11 criminal, correct?

12 A. You know, again, I'm not there to say it is  
13 criminal. I'm there to report it as part of the element.

14 Q. So you don't know if it's criminal or not?

15 MR. ROSE: Objection. Asked and answered.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. But  
17 when you say reported as part of the element, are you  
18 referring to that it actually happened or that --

19 THE WITNESS: Yes. I'm reporting that it happened,  
20 and I do not know if it's criminal. It could be an  
21 accident. But that's not for me to --

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

23 THE WITNESS: -- to judge.

24 BY MR. MESSING:

25 Q. Okay. So you don't actually do anything past the

1 initial reporting in terms of further the  
2 investigation --

3 A. No.

4 Q. -- of these spills?

5 A. No, I do not.

6 Q. Okay. All right. A few more questions here.

7 You indicate that the Unit 7 non-peace officer employees  
8 you work with are dispatchers employed by the Department  
9 of Parks and Recreation, correct?

10 A. Yes.

11 Q. Okay. Do you ever have occasion to work with  
12 lifeguards in the Unit 7 bargaining unit?

13 A. I did one time.

14 Q. Okay. Was it a seasonal lifeguard?

15 A. I do not know.

16 Q. Do you ever have occasion to work with the Office  
17 of Emergency Services?

18 A. Yes.

19 Q. Okay. Do you know that OES has -- do you know  
20 whether OES has something called OES Coordinators?

21 A. Yes.

22 Q. Okay. Have you had occasion to work with OES  
23 Coordinators?

24 A. Through my chain of command.

25 Q. Okay. And let's get to your complaints about

1 your salary. Now, okay. So, first of all, you  
2 indicated -- did you indicate that you brought this  
3 salary issue to the attention of Joe Mello?

4 A. Yes, I did.

5 Q. Okay. And Joe Mello was the representative of  
6 the Fish and Game Wardens Association on the bargaining  
7 team?

8 A. He was the president at the time.

9 Q. And he was on the bargaining team for CSLEA?

10 A. That's what I was told.

11 Q. Okay. And do you -- are you -- strike that.

12 Isn't it true that you were aware that Joe Mello had  
13 failed to raise the issue of the additional salary  
14 adjustment for the Fish and Game Warden Pilots at the  
15 bargaining table?

16 A. He didn't state that he failed, no.

17 Q. Okay. But did you learn that?

18 A. I did not.

19 Q. Okay. At any time?

20 A. Only after we made a phone call to CSLEA.

21 Q. Okay. And CSLEA informed --

22 A. But they didn't say --

23 Q. Wait a minute. Let me finish my question. And  
24 you were informed by CSLEA that Mr. Mello had not raised  
25 that issue at the bargaining table for the Warden Pilots,

1 correct?

2 A. I was told that.

3 Q. Okay. Do you remember who told you that?

4 A. I do not.

5 Q. Okay. And despite the fact that you did not get  
6 the 25 percent increase -- well, let me break that down.  
7 You're aware that Fish and Game Wardens got up to a 25  
8 percent increase between COLAs and additional step  
9 increases?

10 A. We don't receive COLAs. I wish we did.

11 Q. Well --

12 A. That would be nice.

13 Q. Let me put it to you this way. Well, you are  
14 aware that Fish and Game Wardens were going to get up to  
15 25 percent of a combination of various types of  
16 increases?

17 A. Including step increases, which it would take you  
18 eight years to get to a top step.

19 Q. Are you at top step?

20 A. I am now.

21 Q. Okay.

22 A. But I had to do two more steps to get where I'm  
23 at in the last contract.

24 Q. Okay. And so now you're at top step.

25 A. Yes.

1 Q. Do you have additional steps, or are you done  
2 with the increases?

3 A. No. I am done with the increases.

4 Q. Okay.

5 A. I do have educational.

6 Q. Okay.

7 A. But that's it. It's not very much.

8 Q. Okay. But it didn't take you eight years to get  
9 the benefit of the step increases that you got?

10 A. I think -- I think it took six or seven. I do  
11 not know exactly how long it took. It took six or seven.

12 Q. Okay. The increases were negotiated in --  
13 starting with January of 2007.

14 A. Uh-hmm.

15 Q. Right? So between 2007 and 2009, you attained a  
16 nearly 17 percent pay increase between all of the  
17 different type of increases, including step increases,  
18 correct?

19 A. I think it was 17, somewhere around there.

20 Q. Okay. And that was over a period of two years,  
21 correct?

22 A. It was two years, and that includes the two step  
23 increases that I received.

24 Q. Okay. Okay. Now, you were upset about the eight  
25 percent additional increases that other Fish and Game

1 Wardens got on top of that, correct?

2 A. I was upset to the fact that not that they got  
3 it, but that we did not receive it.

4 Q. Okay. Now, after raising this issue to the  
5 attention of CSLEA, did you find out whether CSLEA went  
6 to DPA to try and seek the additional adjustment for the  
7 Warden Pilots?

8 A. Yes, I did.

9 Q. Okay. And who informed you of that effort?

10 A. It was -- you know, I went through -- I'm going  
11 to tell you that I went through my proper channels, and  
12 that was Joe Mello, my Association president, and he  
13 dealt with them. You'll have to ask him. I was -- it  
14 was -- I went through the proper channels and told it  
15 would go nowhere.

16 Q. Okay. The question was, who informed you that  
17 CSLEA went to DPA and asked to have the Warden Pilots'  
18 pay adjusted to reflect the same increases as the Fish  
19 and Game Wardens, if you remember?

20 A. If I -- if I recall, I called Personnel, then I  
21 called Joe. So I do recall now that I did call Personnel  
22 and asked. And they said, you are not included in  
23 that -- in the Wardens' -- Warden Pilots did get an  
24 increase, and -- but did not get the full package that  
25 Wardens did.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
2 strike it. But you got to listen to the question.

3 THE WITNESS: I'm not quite understanding it.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know. Because  
5 it's (inaudible).

6 BY MR. MESSING:

7 Q. Okay. You said that you learned that CSLEA went  
8 to DPA --

9 A. Uh-hmm.

10 Q. -- to ask for an additional increase. Who told  
11 you that CSLEA went to DPA and tried to get an additional  
12 increase?

13 A. That was Joe.

14 Q. Okay.

15 A. And I think he did talk to either Kasey or  
16 Christine or somebody like that.

17 Q. And then when Joe told you that, was he still the  
18 President of the Fish and Game Wardens Association?

19 A. I do not know.

20 Q. Was it in the same time period as he -- you're  
21 reporting?

22 A. I think it was -- it was in the same time period.

23 Q. Okay. And did Joe tell you that DPA said that  
24 they were not going to give an increase to the Fish and  
25 Game Warden Pilots?

1           A. It was about a year later. And we kind of  
2           figured it out.

3           Q. Okay. And did he tell you that DPA had indicated  
4           that the reason -- one reason for this was that there was  
5           no retention and recruitment problem with the Fish and  
6           Game Warden pilots?

7           A. No. No. Not that I am aware of.

8           Q. Did anybody tell you that DPA --

9           A. I'd heard --

10          Q. Let me finish the question. That DPA indicated  
11          that there was no increase necessary because there was no  
12          retention and recruitment problem for Fish and Game  
13          Warden Pilots?

14          A. I did not hear that directly from anybody. I've  
15          heard that through the mill, so to speak, rumors and  
16          such. But I did not hear that directly that there was --  
17          that DPA had stated that.

18          Q. Okay. You are aware that the Fish and Game  
19          Wardens Association was taking the position that there  
20          was a large retention and recruitment problem for the  
21          rank-and-file Fish and Game Wardens, correct?

22          A. Uh-hmm. Right.

23          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is that a yes?  
24          Okay.

25          THE WITNESS: Yes.

1 BY MR. MESSING:

2 Q. Okay. Now, at the time that you brought this  
3 issue to the attention of Joe Mello and he went to  
4 CSLEA --

5 A. Uh-hmm.

6 Q. -- how many vacancies were there of Fish and Game  
7 Warden Pilots?

8 A. I think three of our eight positions.

9 Q. You think?

10 A. I can't recall specific times, but that's where  
11 we're at now.

12 Q. Okay. I'm talking -- I'm not talking about now.  
13 I'm talking about at the time that this issue was brought  
14 to the attention of DPA.

15 A. Yeah, we tried -- we tried to hire a couple. We  
16 couldn't even hire a couple because of -- you know, I --  
17 we were just vacant.

18 Q. Okay.

19 A. We're vacant. So I can't give you specific  
20 numbers.

21 Q. You can't give me a number. Okay. And isn't it  
22 true also that Warden -- Fish and Game Warden Pilots  
23 don't make the same amount of money as Fish and Game  
24 Wardens?

25 A. That is correct.

1 Q. In fact, isn't it true that the -- or do you know  
2 if the top step for a Fish and Game Warden Pilot is  
3 \$6,891?

4 A. I'm not sure exactly what it is, but that sounds  
5 familiar.

6 Q. Okay. And does it sound familiar that a Senior  
7 Warden Pilot of the Department of Fish and Game makes top  
8 step \$7,575?

9 A. That's all?

10 Q. Per month.

11 A. Okay. I don't -- I don't know. I don't know.

12 Q. I'm sorry. Those were both monthly figures. Did  
13 you understand that?

14 A. Oh, okay. Yes, I do now.

15 Q. Does that sound familiar?

16 A. It sounds familiar.

17 Q. Okay. Do you happen to know how much more  
18 monthly Warden Pilots make than Fish and Game Wardens at  
19 the top step of each?

20 A. No, I do not.

21 Q. Okay. I just want to make one thing clear, if I  
22 may, with this next -- the last question. It's your  
23 testimony that Fish and Game Warden Pilots make a lot  
24 more than the Fish and Game Wardens; is that right?

25 A. I would not say a lot more. They make more.

1 Q. More. Okay. That's all I wanted.

2 MR. MESSING: And I'd like to move the Job

3 Description into evidence.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any objection on  
5 the Employer?

6 MS. TRUONG: No.

7 MR. ROSE: None.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: M is admitted.

9 (Exclusive Representative's Exhibit M  
10 received in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Further  
12 questions, Mr. Messing?

13 MR. MESSING: No. I think that'll do it.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Pass the  
15 witness. Ms. Truong?

16 MS. TRUONG: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

18 MR. ROSE: Yes, I do.

19 REDIRECT EXAMINATION

20 BY MR. ROSE:

21 Q. Do you need a break or some water?

22 A. No. Let's get it done.

23 Q. All right, Mr. Schales. Looking at Exhibit M by  
24 the Exclusive Rep, which is the Duty Statement.

25 A. Yes.

1 Q. Looking at the large -- the larger paragraph on  
2 top there, beginning with, "Performed law enforcement day  
3 and night," do you see that?

4 A. Yes.

5 Q. Going to the last sentence, full sentence in that  
6 paragraph, beginning with, "Assist in biological surveys,  
7 fish planting," and continuing on to herd counts at the  
8 end, do you see that?

9 A. Yes.

10 Q. What percentage out of 100 percent would you  
11 estimate you do that function, assist in biological  
12 surveys, fish planting, and going on through to physical  
13 game herd counts?

14 A. Of my flying duties, I would say half. It  
15 depends on the year. I'm in the air -- I'm in the  
16 airplane at night, a twin engine airplane over the  
17 Sierras, and looking for poachers or possibly illegal  
18 hunting activity. And sometimes I do that 80 percent of  
19 the time during those seasons. And then this time of  
20 year I'm doing surveys when there's not a lot of hunting  
21 going on, but maybe ducks or that sort of thing. And  
22 then I might see some other things going on. And I can  
23 see a lot from the airplane. So it just depends on the  
24 time of year.

25 Q. What if we were to say throughout a typical year

1 so that we can capture all the seasons in the year?

2 A. I'd say in the last -- I'm sorry. I interrupted  
3 you.

4 Q. Go ahead and -- go ahead and -- but in order for  
5 us -- I think it might be easier if we use 100 percent.  
6 That way we're not saying a percentage of a percentage.  
7 Follow what I'm saying?

8 A. Sure. Of my flying duties and which includes  
9 biological surveys, fish planting, conservation, law  
10 enforcement, herd counts, I would say at this time it's  
11 about half, half and half of my flying duties. So of my  
12 total time of that -- of that time in the air, half the  
13 time is spent with -- on enforcement, and then I'm on  
14 duty on the ground, too. So --

15 Q. Okay. Of your total time in the air, what  
16 percentage of that time would you say you're performing  
17 law enforcement duties? Or strike that.

18 When you're doing biological surveys, fish  
19 planting -- no.

20 When you're doing biological surveys and doing game  
21 herd counts, are you exclusively dedicated to that  
22 function, or are you performing any other functions at  
23 the same time?

24 A. No. I'm --

25 MR. MESSING: Object.

1 THE WITNESS: -- performing all --

2 MR. MESSING: Object. Leading.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

4 BY MR. ROSE:

5 Q. Okay. While you're performing those functions,  
6 are you -- are you doing anything else?

7 A. Yes. I'm working all the time looking and for  
8 violations, either streambed alterations, illegal hunting  
9 activity. My -- I am always working while I'm working  
10 doing radio telemetry at the -- the original mission  
11 might be to do radio telemetry or surveys. But if I see  
12 a animal lying on the ground and it's a elk and it's not  
13 elk season and there's not a hunter around, I think we  
14 might have an issue here with poaching, and there might  
15 be a vehicle in the area. So I am continuously looking.  
16 I'm always working as a law enforcement officer whether  
17 I'm working as a -- as a -- as an assistant to the  
18 scientists. I'm always continuously working as a law  
19 enforcement officer.

20 Q. You were asked when -- whether you've worked with  
21 an OES Coordinator. Do you remember that?

22 A. Yes.

23 Q. And you answered, yes, through your chain of  
24 command. Do you remember?

25 A. Yes.

1 Q. What did you mean by that?

2 A. Through training, preparing for any national  
3 emergency, being able to communicate and not have the  
4 problems that were inherent in 2001. It was really a  
5 mess in '01.

6 Q. When you work with OES Coordinators through your  
7 chain of command, do you have direct contact with them?

8 A. Yes, I do.

9 Q. How many times in the last year have you worked  
10 with an OES Coordinator?

11 A. That's not correct. Actually, I do not have  
12 direct contact with OES Coordinators other than I think  
13 it was the captain. I think he was a coordinator for the  
14 department, and I would get it through e-mail during  
15 training and working at the local level. So if there is  
16 an issue, if we were called to go out, then we're going  
17 to go, and through the chain of command and to assist, if  
18 needed.

19 Q. How often do you have interaction -- have you had  
20 interaction in the last year with an OES Coordinator  
21 direct?

22 A. I haven't had any in the last year.

23 Q. How about in the last five years direct contact  
24 with an OES Coordinator?

25 A. I think I recall probably maybe a half dozen

1 times. I can't give you a specific number. I -- just  
2 thinking back, and that includes e-mail, too. So we  
3 would get e-mails, training bulletins, information. I  
4 still get information via e-mail about terrorist  
5 suspects, goings on with -- in the general public, what  
6 to look out for if there is an issue with sabotage from  
7 terrorists. And I'm always looking while I'm flying  
8 doing that, too. So it's always in the back of my mind.  
9 So if that's what you mean, sure.

10 Q. You mentioned that you look at marijuana plants.

11 A. Yes.

12 Q. What are you -- explain for us what your duties  
13 are with respect to looking at marijuana plants.

14 A. Well, based on my training and experience, I've  
15 coordinated with the federal government, the local, the  
16 state government, assisting the military with  
17 communications, security while the U.S. drug czar was in  
18 the area. And when the UH-60's and the 58's were down  
19 below radio coverage, we were up there watching for them  
20 and communing -- communicating back to the base while we  
21 have had illegal activities going on and during that  
22 time.

23 Q. Okay. By the way, just for the record, you're  
24 wearing a polo shirt with a embroidered badge, your name  
25 on the right breast and a badge on the left. Wearing a

1 green hat with a badge embroidered on it. Looks like  
2 you're wearing some duty boots, black leather, and some  
3 green pants. And could you stand up, please?

4 A. Yes.

5 Q. You're wearing a badge on your belt. You're  
6 wearing a basket weave black belt. You've got a firearm  
7 in your right side. And what do you -- what's on the  
8 left?

9 A. A magazine and cuffs.

10 Q. All right. What are you -- how does what you're  
11 wearing today compare to what you would typically wear at  
12 work?

13 A. Yes, this is what I wear in the airplane, or I'll  
14 wear a Nomex jumpsuit with a shoulder holster and firearm  
15 and cuffs and spare magazines.

16 MR. ROSE: Okay. Thank you. Nothing further. And  
17 that leaves you six minutes, Gary.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

19 RE CROSS-EXAMINATION

20 BY MR. MESSING:

21 Q. You don't wear a badge?

22 A. I do have a badge.

23 Q. No. I asked you do you wear -- you don't wear a  
24 badge, do you?

25 A. I am wearing a badge.

1 Q. You don't display it on your shirt?

2 A. This is -- according to our standard operating  
3 procedures, this is acceptable. But I do wear this badge  
4 next to my gun in case there's any question.

5 Q. Is that also acceptable procedure for Fish and  
6 Game Wardens who are in the field?

7 A. Yes.

8 MR. MESSING: Okay. No further questions.

9 MS. TRUONG: Nothing.

10 MR. ROSE: Nothing.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.

12 MR. MESSING: I beat you by five minutes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll go off the  
14 record. And we've concluded day four of these  
15 proceedings. Off the record.

16 (Off the record.)

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

18 We're back on the record. I have the presence of  
19 Mr. Shoemaker and I have the presence -- I don't have  
20 Townsend, but -- is he here?

21 MR. CLARK: Yeah.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah, bring him  
23 on in.

24 (Off the record.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We're

1 back on the record. I need to give an admonition in  
2 regards to I have the witnesses Mr. Schales,  
3 Mr. Townsend, Mr. Shoemaker not to discuss your testimony  
4 with any other witnesses in this case. Of course, you're  
5 free to discuss your testimony with anybody at this  
6 counsel table here, including Mr. Lewis. And do you  
7 understand the admonition?

8 (Several voices said, "Yes.")

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Of course, once  
10 the case is over, you can talk it over with as much or  
11 little as you want. So, other than that --

12 MR. ROSE: I'd move admission of Petitioner's Y,  
13 Declaration of Gary Schales.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And so admitted.

15 (Petitioner's Exhibit Y received in  
16 evidence.)

17 MR. MESSING: And was my last exhibit also admitted?  
18 I think it was.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
20 second. If I haven't, it is.

21 MR. MESSING: Thank you.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: How's that? So,  
23 with that, we're off the record.

24 (Proceedings concluded.)

25

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2 DECLARATION OF TRANSCRIBER

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