

February 27, 2009

Page 1

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 INDEX OF WITNESSES

2 --oOo--

3 Petitioner's Witnesses Page

4 CHRISTOPHER P. LEWIS

5 Direct Examination by Mr. Rose 21

6 Cross-Examination by Mr. Messing 35

7 Redirect Examination by Mr. Rose 76

8 Recross-Examination by Mr. Messing 82

9 DIEGO BUSATTO

10 Direct Examination by Mr. Rose 90

11 Cross-Examination by Mr. Messing 95

12 Redirect Examination by Mr. Rose 109

13 Recross-Examination by Mr. Messing 111

14 Further Redirect Examination by Mr. Rose 112

15 BRANDON SHOEMAKER

16 Direct Examination by Mr. Rose 117

17 Cross-Examination by Mr. Messing 122

18 Redirect Examination by Mr. Rose 138

19 Recross-Examination by Mr. Messing 159

20 JESSE TOWNSEND

21 Direct Examination by Mr. Rose 177

22 Cross-Examination by Mr. Messing 182

23

24

25

1 Index of Witnesses (Continued):

2 Petitioner's Witnesses Page

3 GARY SCHALES

4 Direct Examination by Mr. Rose 210

5 Cross-Examination by Mr. Messing 216

6 Redirect Examination by Mr. Rose 240

7 Recross-Examination by Mr. Messing 246

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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 CERTIFICATION AND  
2 DECLARATION OF TRANSCRIBER

3 I, Leisa M. Miller, a duly designated transcriber of  
4 Vine, McKinnon & Hall, do hereby declare and certify  
5 under penalty of perjury that I have transcribed from a  
6 CD recording the proceedings in the matter of STATE OF  
7 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
8 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT  
9 ASSOCIATION, Exclusive Representative, Unfair Practice  
10 Charge No. SA-SV-171-S, which recording was duly recorded  
11 at Sacramento, California on February 27, 2009, and that  
12 the foregoing pages 1 through 249 constitute a true,  
13 complete and accurate transcription of the aforementioned  
14 recording to the best of my ability.

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16 Dated this 16th day of March, 2009, at Dixon,  
17 California.

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