

March 11, 2009

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BEFORE THE STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

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

MARCH 11, 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

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1 time.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

3 MS. TRUONG: No.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or I'm sorry.  
5 Mr. Rose?

6 MR. ROSE: Nothing.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I got my  
8 directional finder. Thank you very much, sir. And I'm  
9 going to give you --

10 THE WITNESS: Nothing from the State?

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I'm going  
12 to give you an admonishment, so hold on a second.  
13 Actually, P is admitted.

14 (Exclusive Representative's Exhibit P received  
15 in evidence.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And sir, I want  
17 to admonish you not to discuss your testimony with any of  
18 the other witnesses. Do you have any questions regarding  
19 that admonishment?

20 THE WITNESS: No, sir.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
22 that, we are off the record.

23 (Off the record.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

25 We're back on the record. We have another witness called

1 by the Exclusive Representative. But first, before  
2 swearing in the witness, I'm going to mark as Exclusive  
3 Representative Q what appears to be a Declaration of  
4 Kenneth Ehrman.

5 (Exclusive Representative's Exhibit Q marked  
6 for identification.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And sir, I'm  
8 going to ask you to raise your right hand.

9 (Witness sworn by the Judge.)

10 THE WITNESS: I do.

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

13 THE WITNESS: Kenneth Frank Ehrman. E-H-R-M-A-N.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I  
15 have a couple preliminary questions for you, sir. If you  
16 can tell me whether you ever received any transcripts in  
17 regards to these proceedings.

18 THE WITNESS: No, no transcripts.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
20 additionally, do you know who a James Cline is?

21 THE WITNESS: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
23 now, passing now to you -- looks like you have it  
24 already. And this one has the Specs. If you have a  
25 question regards to Specs, I'll pass this on to you.

1 That's an unsigned version. I'm going to give you a  
2 signed version.

3 THE WITNESS: Thanks.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Put  
5 that one over here. And I'm going to ask you to review  
6 that document and tell me what it is.

7 THE WITNESS: It's my Declaration of basically my  
8 experience at my Department and with the Union.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
10 if I could turn you to your signature page? And sir, is  
11 that your signature?

12 THE WITNESS: Yes, it is.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
14 it on or about the date set forth and at the place set  
15 forth?

16 THE WITNESS: Yes, I did.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
18 are the contents of that document true and correct to the  
19 best of your recollection?

20 THE WITNESS: Yes, they are.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

22 Mr. Messing, further questions?

23 MR. MESSING: Just a few.

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TESTIMONY OF

KENNETH EHRMAN,

Having been duly and regularly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MESSING:

Q. Now, you indicate that you were first employed by the State in what year?

A. 1994.

Q. And then you first became involved in CAUSE/CSLEA, CAUSE, now known as CSLEA, when?

A. June of 1999.

Q. And in 1999 what was the position that you had with CAUSE?

A. I was a Senior Special Investigator with the Department of Motor Vehicles Investigations.

Q. Okay. And in the CAUSE organization?

A. I was just a member.

Q. Oh, okay. Okay. But when did you -- okay. And when did you become active in AMVIC?

A. I became an Area Rep approximately, I think, three years ago.

Q. Okay.

A. I became just an Area Rep.

Q. And then what happened?

1           A. And then I ran for office and was elected Vice  
2 President of AMVIC, which is my current position.

3           Q. Okay. And when did that occur?

4           A. Approximately a year and four months ago.

5           Q. Okay. Now, you -- excuse me one second here.  
6 Directing your attention to paragraph seven, you  
7 reference your having received professional and competent  
8 representation from CSLEA and AMVIC. Have you had  
9 occasion to get any feedback from people that you work  
10 with as to their view of the representation that they've  
11 received?

12          A. Yes. In my current position as Vice President I  
13 travel around the state and I go to areas to seek out  
14 feedback from the members. And I know the members were  
15 very, very, very excited when we went to 3.0 at 50 when  
16 our retirement enhancement came through, and we received  
17 the pay enhancement when they extended the contract  
18 approximately a year and a half ago. That was very well  
19 received. And most recently one of the -- probably the  
20 highlights of the last few years is when the lawsuit  
21 stopped the minimum wage, and the members were really,  
22 really down in the dumps about the prospect of receiving  
23 minimum wage.

24          Q. Okay. Are you aware of any particular individual  
25 representation that has garnered an opinion one way or

1 the other by your members?

2 A. Yeah. There was a case approximately I think a  
3 year ago, a year and a half ago, that actually involved  
4 an Investigator from ABC who has got dismissed from --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just make  
6 sure that if you can just use -- if you ask for the  
7 initials --

8 THE WITNESS: Oh, I'm sorry.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just use the  
10 initials versus the name to preserve the privacy, you  
11 know.

12 THE WITNESS: Oh, yeah. I'll just mention the  
13 agency.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

15 THE WITNESS: It was an Investigator from the  
16 Alcoholic Beverage Control who was terminated from the  
17 academy, then reinstated. And it was one of our members  
18 who contacted that individual and recommended that he  
19 seek assistance from CSLEA. And when he was reinstated,  
20 I got a lot of feedback from the membership that they  
21 were proud that the Union was able to defend him and get  
22 him his job back.

23 BY MR. MESSING:

24 Q. And how is it that your members were involved  
25 with somebody from ABC?



1 Q. And Licensing Registration Examiners?

2 A. Correct.

3 Q. Would it be fair for me to describe an  
4 Occupational License Inspector as an OLI?

5 A. Correct.

6 Q. And a License Registration Examiner as an LRE?

7 A. Correct.

8 Q. Okay. Those are both not peace officers,  
9 correct?

10 A. Correct.

11 Q. Now, in your dealings with them at work, and have  
12 you considered reorganizing AMVIC to include them in your  
13 affiliate organization?

14 A. Have I personally considered it? No.

15 Q. Have you had discussions with members -- have you  
16 heard discussions from Board members about the idea that  
17 your organization would be stronger by including them in  
18 your organization, the affiliate?

19 A. No, not to my knowledge.

20 Q. Do you feel as though the organization, AMVIC, is  
21 appropriately constituted with just peace officers in the  
22 organization?

23 A. Yes.

24 Q. I see that -- well, you earlier testified that  
25 you began State employment in 1994. But then you said it

1 wasn't until June '99 you became a member of CSLEA.

2 A. Correct.

3 Q. So is it true, then, you worked in a  
4 classification not in Bargaining Unit 7 from '94 'til  
5 June of '99?

6 A. Correct. I was employed with the California  
7 Department of Corrections.

8 Q. And what was your occupation there? Is it in  
9 your Declaration?

10 A. Yes. I was --

11 Q. Oh, you were a Correctional Officer?

12 A. Correct.

13 Q. I didn't mean to interrupt you. I'm sorry. You  
14 were a Correctional Officer for five years and two  
15 months?

16 A. Correct.

17 Q. And in that -- in the course of that work, did  
18 you work with non-sworn employees?

19 A. Yes, we did.

20 Q. What types of non-sworn employees as a  
21 Correctional Officer did you work with?

22 A. Medical staff at lots of different variations,  
23 nurses, doctors, site techs, psychologists, lots of  
24 different types of teachers. We have what's called The  
25 Canteen, which is a store that's manned by a non-sworn

1 employees. We have clothing distribution, laundry,  
2 cooks. Cooks work in the prison just like an officer do,  
3 alongside of us. Just actually quite a bit.

4 Q. Were any of those classifications that you just  
5 listed, the non-sworn, in the same bargaining unit as you  
6 when you were a Correctional Officer?

7 A. I'm going to say no, because I wasn't very  
8 involved at the time. I'll say no, to the best of my  
9 knowledge.

10 Q. Were you represented by CCPOA?

11 A. Yes.

12 Q. Bargaining Unit 5?

13 A. I think it's seven.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think it's  
15 six.

16 BY MR. ROSE:

17 Q. Or Unit 6.

18 A. I'm sorry. You're right. I got seven on my  
19 brain. It's six.

20 MR. MESSING: Can we hear three?

21 THE WITNESS: I was a young man then.

22 BY MR. ROSE:

23 Q. Okay. Did you consider the -- did you have  
24 extensive interaction with medical staff as a  
25 Correctional Officer?

1 A. Oh, yes.

2 Q. And were they there to provide treatment to you  
3 if you were injured on the job?

4 A. No.

5 Q. What would happen if you were injured as a  
6 Correctional Officer say by an inmate, where would you  
7 receive medical treatment?

8 A. We would get -- if it was life-threatening, they  
9 would provide preliminary -- they would usually take us  
10 to a facility within the grounds off the -- off the  
11 prison itself, and there's a medical facility they would  
12 transport us to.

13 Q. Okay. So the medical staff on the premises would  
14 do preliminary medical care?

15 A. We had a -- we had a position that was a sworn  
16 position that was like a -- like a EMT, and then the  
17 nurses and all that were non-sworn.

18 Q. But the nurses would provide -- or could provide  
19 the life-threatening circumstance preliminary care?

20 A. Only in a life-threatening situation.

21 Q. And also assist with transporting you off site to  
22 the medical facility?

23 A. Correct.

24 Q. Would you consider that to be a critical function  
25 if you were in a life-threatening situation to have that

1 nurse available to provide preliminary medical care?

2 A. Yes.

3 Q. And would the doctors also provide similar care?

4 A. We rarely ever saw a doctor on the facility.

5 They were there, but they were -- they were away from

6 where the inmates were, so we never saw them.

7 Q. The teachers, did you ever receive training from  
8 those teaches?

9 A. Training, no. No training.

10 Q. Or any classroom instruction whatsoever?

11 A. No.

12 Q. Did you interact with the teachers at work?

13 A. Yes. All day long.

14 Q. How -- so was it extensive interaction at work?

15 A. We had common functions during the day when we  
16 would strip out the inmates, or when we would process  
17 them, they would -- we would actually do the exact same  
18 function in the morning and in the afternoon, process  
19 inmates in and out of the work area.

20 Q. I see. You and the teachers were performing the  
21 exact same function when you were processing?

22 A. Yes.

23 Q. Okay. And site techs, did you work site techs as  
24 a Correctional Officer?

25 A. I didn't, no.

1 Q. Did you work -- did other Correctional Officers  
2 work extensively with site techs, if you know?

3 A. Yeah. If they were in the assigned area where  
4 they were. They worked -- they would walk the buildings  
5 just like the officers did.

6 Q. Did you work extensively with the people that  
7 were in charge of the canteen?

8 A. No. I wouldn't say extensively, no.

9 Q. How about the cooks?

10 A. Yes.

11 Q. Did you eat the food the cooks made?

12 A. We weren't allowed to eat the food.

13 Q. Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you wouldn't  
15 want to either.

16 THE WITNESS: I beg to differ. It could be pretty  
17 good at times.

18 BY MR. ROSE:

19 Q. Okay. But just to be clear, none of those were  
20 in your bargaining unit?

21 A. The cooks, no.

22 Q. All right.

23 A. The sworn -- the sworn -- I don't remember the  
24 term for them, but there was an EMT on the yard that was  
25 a sworn person. I believe they were in our bargaining

1 unit.

2 Q. Okay. All right. Now let's switch gears and go  
3 to -- well, I'd like to go to your transition from  
4 Correctional Officer to what you now do within Bargaining  
5 Unit 7 in June of 1999. How did that come to pass?

6 A. What was the process?

7 Q. Well, what did you -- did you make a decision to  
8 leave the Department? I don't want a lot of detail and I  
9 don't want to get into your private life. I'm just  
10 asking you left becoming -- left a Correctional Officer  
11 position to become an Investigator. Did you consider  
12 that to be a lateral move?

13 A. Yeah, it's considered a lateral transfer what I  
14 did.

15 Q. Had you contemplated in '99 that instead -- that  
16 you might make a move to OLI?

17 A. No. I didn't even know what OLI was then.

18 Q. Did you possibly consider that you might  
19 become -- go from Correctional Officer to LRE?

20 A. I didn't even know what that position was either.

21 Q. Now knowing what an OLI is, would that have been  
22 a suitable career change for you in 1999?

23 A. No.

24 Q. Why not?

25 A. Because I had a degree in criminal justice and I

1 was more suited to what I do now.

2 Q. How is what you now do more suited to your degree  
3 in -- you and your degree in criminal justice than an  
4 OLI?

5 A. Because they don't -- they don't do the actual  
6 criminal investigations. They more -- they suit us --  
7 they serve us as assisting us, but they don't do the  
8 actual criminal investigation.

9 Q. I see. And knowing what you now know about LREs,  
10 would you have considered it to be a favorable move to go  
11 from Correctional Officer to LRE?

12 A. No.

13 Q. Do you -- why not?

14 A. For the same reasons. They're a -- they are a  
15 similar classification, but they're not what I was  
16 looking for in my career.

17 Q. Okay. Now, you're satisfied with CSLEA's  
18 representation?

19 A. Yes.

20 Q. And you have heard from others that they are  
21 satisfied as well?

22 A. And that -- would you say it's fair that you're  
23 basing that on your experience from becoming an Area Rep  
24 for CSLEA three years ago and forward?

25 A. I also have -- my wife and brother are both

1 members of CSLEA as well, so it actually comes closer to  
2 home to me than many other people.

3 Q. Okay. When you -- are your wife and brother  
4 peace officers?

5 A. Yes.

6 Q. What positions do they hold?

7 A. Special Agent at DOJ. And my wife's a DMV  
8 Investigator.

9 Q. Now, then, prior to becoming an Area Rep three  
10 years ago, did you have any knowledge -- did people  
11 contact you about Union issues?

12 A. Contact me personally?

13 Q. Yes.

14 A. No.

15 Q. Or did they contact you if they had a complaint  
16 about the Union?

17 A. No.

18 Q. But they do now?

19 A. Yes.

20 Q. Because of your role?

21 A. Correct.

22 Q. And that began about three years ago?

23 A. Correct.

24 Q. All right. You mentioned a lawsuit stopping  
25 minimum wage, the minimum wage imposition a moment ago.

1 Do you remember that?

2 A. Yes.

3 Q. Did CSLEA file that lawsuit?

4 A. I was -- I was led to believe from what I've read  
5 that they were the group that filed the lawsuit.

6 Q. Okay. And it's your belief also that that  
7 lawsuit was the reason that the minimum wage was not  
8 imposed on State --

9 A. Was held up for court reasons, yeah.

10 Q. All right.

11 A. Yes.

12 Q. All right. So let's focus now solely on your job  
13 as an Investigator for the Department of Motor Vehicles.  
14 How many OLIs are -- well, you're on the Auto Theft Task  
15 Force --

16 A. Correct.

17 Q. -- in Ventura County?

18 A. Correct.

19 Q. My hometown. Are you -- are you on that task  
20 force with OLIs?

21 A. No.

22 Q. Are there any OLIs on the task force?

23 A. No.

24 Q. Are there any LREs on that task force?

25 A. I'm the only DMV employee on the task force.

1 Q. You're a one-man task force?

2 A. No. I'm assigned to a task force.

3 Q. I understand. But it's multi-agency?

4 A. It's CHP.

5 Q. Okay. Are you aware of any OLIs or LREs on any  
6 auto theft task force anywhere in the state of  
7 California?

8 A. I'm not aware of that, no.

9 Q. Based on your experience in the DMV, would you be  
10 surprised if there was an OLI or LRE on an auto theft  
11 task force anywhere?

12 A. Yes, I'd be surprised.

13 Q. And why would you be surprised?

14 A. Because we don't -- we don't usually -- we don't  
15 usually have people on a task force who's non-sworn. We  
16 consult them on a daily basis, the LREs, but we don't  
17 actually have them assigned. I don't know if there's a  
18 mechanism in place to have an MOU between an LRE and a  
19 task force.

20 Q. I see. You were certi -- you say in paragraph  
21 three of your Declaration on page two that you have been  
22 certified as an expert on numerous occasions for various  
23 subjects relating to the DMV. What subjects have you  
24 been certified in?

25 A. Counterfeit documents, driver's license

1 processing, counterfeit investigations. Mostly  
2 counterfeit-related items.

3 Q. How many times have you testified as an expert  
4 witness in any of those areas of expertise?

5 A. Approximately seven.

6 Q. Is that in state court only, or have you ever  
7 testified in federal court as well?

8 A. Never federal.

9 Q. Oh, by the way, did you make any of your own  
10 notes on the Declaration that you brought with you?

11 A. That I brought with me?

12 Q. Yes.

13 A. I don't believe so, no.

14 Q. Okay.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't see  
16 anything.

17 BY MR. ROSE:

18 Q. All right. Are you aware, in your experience,  
19 whether OLIs have been certified to testify as expert  
20 witnesses in court?

21 A. You know, I believe so. We've -- they -- it's  
22 not uncommon for them to be subpoenaed for different  
23 types of trials.

24 Q. Okay. But I'm -- you understand the difference  
25 between being certified as an expert witness in a

1 particular field of expertise and being a percipient  
2 witness --

3 A. Right.

4 Q. -- right?

5 A. Correct.

6 Q. And so when you speak to them being subpoenaed  
7 for trial, you're referring to them appearing as a  
8 percipient witness, correct?

9 A. I believe I had -- would have been in court on a  
10 case when it was specific to dealer licensing, and I  
11 believe that the OLI Inspector was brought in as an  
12 expert on licensing.

13 Q. Okay. And how many times -- was that the one  
14 occasion that you remember?

15 A. That I've been involved, one.

16 Q. Have you heard of any other situations?

17 A. Not specifically as an expert. I know that they  
18 assist us a great deal in preparing for court. But from  
19 my personal knowledge, I can only think of the one.

20 Q. Now, the same question with regard -- with regard  
21 to expert witness testimony for LREs. Have you ever  
22 experienced or seen or heard of an LRE testifying as an  
23 expert in any court?

24 A. Yes.

25 Q. When was the last time you saw that happen?

1           A. It's been some years. When I used to work more  
2 the field investigation. When they're the first line --  
3 when they're the person who identifies a document being  
4 counterfeited, they'll be the one that comes in and  
5 testifies as to how the crime occurred and what documents  
6 were submitted.

7           Q. How many times has that happened, to your  
8 knowledge?

9           A. Primarily in those kind of cases they never make  
10 it to that far. They usually cut a deal before we ever  
11 get to court. But it's not uncommon for them to be  
12 subpoenaed.

13          Q. I see. Are you -- when you're including -- when  
14 we're using the term court, are you including or  
15 excluding the administrative hearings?

16          A. I'm talking about actual criminal court.

17          Q. Okay. So would you say that LREs testifying in  
18 court, it could happen, but it's infrequent? Would you  
19 agree with that statement?

20          A. I wouldn't -- I can only speak to what I've been  
21 involved in, and it's been infrequent.

22          Q. Okay. Now, let me ask you -- I'm looking at  
23 paragraph four of your Declaration, and you speak to the  
24 duties that you perform as part of the Ventura County  
25 Auto Theft Task Force, or VenCAT. One of the things you

1 say is that you conduct stationary surveillance, yes?

2 A. Yes.

3 Q. And do OLIs or LREs conduct stationary  
4 surveillance?

5 A. No.

6 Q. You also conduct moving surveillance.

7 A. Correct.

8 Q. Do OLIs or LREs conduct moving surveillance?

9 A. No.

10 Q. You also conduct buy/sell -- excuse me, buy/bust  
11 operations.

12 A. Correct.

13 Q. What are -- what is a buy/bust operation?

14 A. Typically, a buy/bust operation is a --  
15 difference between a buy/walk and a buy/bust is you  
16 conduct a buy for some type of contraband, and when the  
17 buy is completed you have identified the suspect and the  
18 transaction, then you make an arrest. Whereas a  
19 buy/walk, you allow the person to walk away.

20 Q. Do you also do buy/walk operations?

21 A. Yes.

22 Q. Now, are you aware whether or not OLIs or LREs  
23 conduct buy/bust operations?

24 A. Not to my knowledge, no.

25 Q. They do not?

1 A. No.

2 Q. And they do not conduct buy/walk operations  
3 either?

4 A. No.

5 Q. Neither of those classifications?

6 A. Correct. Neither.

7 Q. Okay. And you operate in an undercover capacity?

8 A. Correct.

9 Q. OLIs and LREs, do they operate in undercover  
10 capacity?

11 A. No.

12 Q. You effect probable cause arrests, correct?

13 A. Right.

14 Q. Do OLIs or LREs effect probable cause arrests?

15 A. No.

16 Q. And you effect arrests pursuant to a -- to an  
17 arrest warrant, correct?

18 A. Correct.

19 Q. Do OLIs or LREs effect arrests pursuant to a  
20 warrant?

21 A. No.

22 Q. I'm looking at page three of your Declaration,  
23 top of the page, and you're further describing your --  
24 this is paragraph five, but it's continuing on to page  
25 three. And it says that you teach classes for both sworn

1 and non-sworn employees of the DMV.

2 A. Correct.

3 Q. One of the classes you teach is DMV  
4 investigation -- Investigators orientation course.

5 A. Correct.

6 Q. Do LREs attend that course?

7 A. No. That's Investigator only.

8 Q. And do OLIs attend that course?

9 A. No.

10 Q. You also teach classes on department-issued  
11 equipment.

12 A. Correct.

13 Q. What kind of department-issued equipment? If you  
14 could give us maybe a summary list of the kind of  
15 equipment the department would issue you?

16 A. Firearms, tactical gear, radios, recognition  
17 lights, flashlights, all departmental-issued equipment.

18 Q. All right. I'm writing as you're talking, so let  
19 me see if I've got it. Firearms was one. Radios,  
20 tactical gear.

21 A. Correct.

22 Q. Recognition gear?

23 A. Recognition lights.

24 Q. Recognition lights. And that's all I got. What  
25 were the other that you listed?

1 A. Flashlights, expandable batons.

2 Q. Okay. That's a pretty comprehensive list? Could  
3 be missing one --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're nodding,  
5 so --

6 THE WITNESS: I'm sorry. Yes. Yes, it is.

7 BY MR. ROSE:

8 Q. Okay. Are the OLIs or LREs issued firearms?

9 A. No.

10 Q. Are the OLIs or LREs issued radios?

11 A. No.

12 Q. Are the OLIs or LREs issued tactical gear?

13 A. No.

14 Q. Or the OLIs or LREs issued recognition lights?

15 A. No.

16 Q. Or the OLIs or LREs issued flashlights?

17 A. No.

18 Q. Or the OLIs or LREs issued expandable batons?

19 MR. MESSING: You know, I'm going to --

20 THE WITNESS: No.

21 MR. MESSING: -- object and say this is cumulative.

22 Because I believe that the MOU is in evidence and that

23 there's a section that shows what these various groups

24 carry. So it's kind of cumulative. We don't contend

25 that any of the non-sworn at DMV carry out peace officer

1 functions or are armed and wearing vests with guns.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: How many more  
3 questions do you have in that area, Mr. Rose?

4 MR. ROSE: Well, I have -- this is the heart of our  
5 case. So if Mr. Messing's objection is that I'm asking  
6 questions about information that's contained in an  
7 exhibit, I think I'm entitled to question on this.

8 MR. MESSING: So the heart of your case is is that  
9 the non-sworn people are not peace officers? Is that --  
10 if that's the case, I guess --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
12 right, Mr. Messing.

13 MR. MESSING: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But anyway,  
15 regardless of that, proceed, sir.

16 MR. ROSE: All right. So --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean I know  
18 that we have one more DMV Investigator's Declaration, and  
19 I just hope we don't have to have the same questions for  
20 him in that area, so --

21 MR. ROSE: Understood. Thank you, sir.

22 BY MR. ROSE:

23 Q. Now, so they don't attend classes that you teach  
24 on -- OLI's and LRE's don't attend classes that you teach  
25 on department-issued equipment either?

1 A. No, they do not.

2 Q. And you teach classes on surveillance techniques?

3 A. Correct.

4 Q. And they don't attend those classes either?

5 A. It's the same academy.

6 Q. Oh, it's a combined class?

7 A. Well, two different -- two different modules I  
8 teach.

9 Q. I see. And you teach defensive tactics as well?

10 A. Correct.

11 Q. OLIs and LREs do not attend those classes,  
12 correct?

13 A. No, they do not.

14 Q. So what classes do you teach to OLIs and LREs?

15 A. Fraud document detection training.

16 Q. Any others?

17 A. No.

18 Q. How often have you taught fraud document  
19 detection training to an OLI or an LRE in the last year?

20 A. I teach that class approximately two days a  
21 month -- two days a month every month. It's primarily  
22 for LREs and other non-sworn employees.

23 Q. Have you ever been trained by an OLI or LRE?

24 A. Yes. Oh, yes.

25 Q. How often has that happened?

1           A. Formal training not very often. On a continual  
2 basis I have to seek out their knowledge to do my job.

3           Q. Okay. Formal training not very often. Can you  
4 give an estimate the number of times in the last year?

5           A. In the last year, I've not attended a class in  
6 the last year, a formal classroom setting of training by  
7 an OLI.

8           Q. How about in the last five years?

9           A. In the last five years, I believe I've had one  
10 class, a formal classroom setting by an OLI, or LRE, for  
11 that matter.

12          Q. Do you recall what that class was?

13          A. Occupational licensing.

14          Q. Do OLIs and LREs conduct interviews?

15          A. Yes.

16          Q. Do they conduct interrogations?

17          A. I don't think they use that phrase for it.

18          Q. Do you view --

19          A. They do conduct interviews.

20          Q. Do you view there as being a distinction between  
21 an interview and an interrogation in your line of work as  
22 an Investigator?

23          A. That's a phrase people use to distinguish one  
24 style from the other. Some people don't ever use the  
25 interrogation phrase in law enforcement. It's more of a

1 style.

2 Q. Do you give suspects or witnesses Miranda  
3 admonitions before you question them ever as an  
4 Investigator?

5 A. Yes.

6 Q. Do OLIs or LREs ever give suspects or witnesses  
7 Miranda admonitions before they interview them?

8 A. No. They're not required to.

9 Q. Do they ever do it whether or not they're  
10 required to?

11 A. I don't think so.

12 Q. Are they authorized to do that?

13 A. I would have no idea.

14 Q. Have you ever seen them do that?

15 A. I've never been in the room when an OLI's  
16 interviewed somebody.

17 Q. Do OLIs or LREs ever interview criminal suspects?

18 A. They interview licensees at the -- when they  
19 submit a license application. If they find a discrepancy  
20 when they're trying to determine if it was fact, fiction,  
21 or was done intentionally, they will interview that  
22 person to try to determine why the mistake was made.

23 Q. And if it --

24 A. If it was done on purpose or not.

25 Q. And if it was not done on purpose, that wouldn't

1 initiate a criminal investigation, correct?

2 A. If it was not on purpose?

3 Q. Correct.

4 A. More than -- well, if it was not on purpose, but  
5 it was still something that's factually wrong, it could  
6 escalate into a criminal investigation.

7 Q. And do they continue to carry forward in that  
8 criminal investigation after they've determined that  
9 there might be a crime committed?

10 A. They wouldn't continue as like a lead or an  
11 Investigator in Charge, no.

12 Q. They would refer that to you, or someone like  
13 you, correct?

14 A. Correct.

15 Q. And then you would carry the investigation  
16 forward from that point?

17 A. Correct.

18 Q. Do OLIs or LREs conduct internal affairs  
19 investigations?

20 A. No. We have our own Internal Affairs Division.

21 Q. Do OLIs or LREs have -- is it required that you  
22 must have POST basic training, or intermediate or  
23 advanced training?

24 A. No.

25 Q. Do you know any OLIs or LREs that have such

1 training?

2 A. Yes.

3 Q. How many?

4 A. Two maybe. One for sure.

5 Q. Are those employees that are aspiring to become  
6 peace officers?

7 A. They were formerly peace officers and are now  
8 LREs.

9 Q. Are they retired annuitants?

10 A. No.

11 Q. Who -- could you identify those people by name?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't --

13 THE WITNESS: I don't know them by name.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It may be for  
15 punitive reasons, so I'd rather not.

16 MR. ROSE: Oh, okay.

17 BY MR. ROSE:

18 Q. Well, then, you know two in your office?

19 A. I know one for sure. I think there's another  
20 one. But I know one for sure.

21 Q. Hmm. Have you ever requested to see the minutes  
22 of the Board meetings of CSLEA?

23 A. Have I requested? No.

24 Q. Have you ever seen any minutes of the Board  
25 meetings of --

1 A. Yes.

2 Q. How many minutes -- how many versions of minutes  
3 of Board meetings have you seen?

4 A. Well, I go to the -- I go to the annual Board  
5 meeting every year, and they usually have minutes from  
6 the previous meeting. And I review them there when I'm  
7 at the meeting. And I attend the annual meeting every  
8 year as well.

9 Q. In addition to that annual meeting are there  
10 other Board meetings that are convened?

11 A. I believe so. I'm not invited, so I'm not really  
12 sure. I believe there's a quarterly meeting as well.

13 Q. Have you ever requested or seen the financial  
14 records of CSLEA?

15 A. Yes. They're read aloud at the -- at the  
16 meeting.

17 Q. Have you ever seen them on paper form?

18 A. I don't believe I have, no.

19 Q. Have you --

20 A. Possibly. I mean I might have. There's a lot of  
21 documents. But I can't say for sure, no.

22 Q. Now, just so that I'm clear in the organizational  
23 structure of the DMV, is it fair to say that DMV  
24 Investigators are in a different division of the  
25 Department of Motor Vehicles than OLIs?

1 A. Correct.

2 Q. And it is also fair to say that DMV Investigators  
3 are in a different division of the Department of Motor  
4 Vehicles than LREs?

5 A. Correct.

6 Q. OLIs are under the Division of Occupational  
7 Licensing, correct?

8 A. Correct.

9 Q. And LREs are in the Division of Licensing,  
10 correct?

11 A. Correct.

12 Q. What division are DMV Investigators in?

13 A. Investigations.

14 Q. Makes sense. Do OLIs or LREs assist in the  
15 identification of known terrorist organizations?

16 A. They come across information, or they can pull up  
17 certain information. They -- all OLIs circulate out in  
18 the public. They know all the dealers. A lot of  
19 information is sent to them so it'll get to different  
20 areas. So they're very knowledgeable of the area.

21 Q. So the answer is yes?

22 A. They can be, yes. LREs as well come across  
23 documents, questionable documents that are used to hide  
24 somebody's identity. So they would be the one to  
25 determine it was fraudulent, to pass it on for

1 Investigations.

2 Q. Now, the LREs are the -- that's the  
3 classification that performs the drive tests?

4 A. They also -- some of them work in the field  
5 office as well processing applications.

6 Q. How many -- what percentage of LREs perform the  
7 drive tests, if you know?

8 A. Perform it? I believe they all do.

9 Q. Okay. And do you know, of those that are  
10 assigned that responsibility, how many drive tests they  
11 perform on a given day?

12 A. It would -- it would have to go by office and  
13 what their schedule is.

14 Q. Okay. Do you perform drive tests?

15 A. No.

16 Q. Do -- okay.

17 A. It's too dangerous.

18 Q. So you're advocating for the LREs to be on it,  
19 right?

20 A. At least safety retirement.

21 Q. All right. You're called to various crime scenes  
22 to assist in the gathering of physical evidence, true?

23 A. Yes.

24 Q. OLIs do not gather physical evidence, correct?

25 A. They're not called to crime scenes to gather

1 evidence, no.

2 Q. And LREs don't do that either?

3 A. Not at crime scenes, no.

4 Q. Now, I'm looking at page seven of your  
5 Declaration, paragraph twenty-three, and you describe for  
6 us the -- how your work is not a traditional patrol  
7 function, it's more akin to a police detective or police  
8 investigator or police inspector or federal agent. Is  
9 that a fair summary --

10 A. Yes.

11 Q. -- of that paragraph? Would you say that OLIs  
12 work in a patrol function as do police officers or  
13 sheriff's deputies?

14 A. No.

15 Q. Or LREs?

16 A. No.

17 Q. Would you say that OLIs or LREs work in a  
18 capacity that is similar to police detectives, police  
19 investigators, or federal agents?

20 A. I wouldn't say it's similar, no.

21 Q. You receive case assignments, correct?

22 A. Yes.

23 Q. But sometimes you initiate kind of in a proactive  
24 way a law enforcement activity, correct?

25 A. Correct.

1 Q. Would you say that OLIs initiate law enforcement  
2 activities?

3 A. I think some of them do. As they come across it  
4 they'll -- they follow up on it, or they generate  
5 something so it can be referred for a further  
6 investigation.

7 Q. Would you say that LREs initiate law enforcement  
8 activities?

9 A. If they -- if they -- we have a process at the  
10 DMV, if a document is considered to be fraudulent, they  
11 literally put into the computer F8, and that freezes that  
12 record so it can be investigated. So they are actually  
13 the point of contact and they initiate the process.

14 Q. Do you consider initiating that a law enforcement  
15 activity?

16 A. It's the -- it's the -- it's ground zero of  
17 that -- of that case. That's where the document was  
18 first seen and determined to be counterfeit or  
19 fraudulent.

20 Q. So that would be like a referral?

21 A. Well, it's a referral in a sense. They write up  
22 a statement, and then it goes on, and they become -- it's  
23 their starting point and our witness for the crime.

24 Q. They're the first percipient witness in your  
25 case, correct?

1 A. Correct.

2 Q. Now, in paragraph 22 on page 7 you say you work  
3 in a -- that the investigations that you perform, and  
4 other DMV Investigators, occur both in the office and in  
5 a variety of settings. Would you -- would you agree or  
6 disagree that OLIs and LREs also work in a variety of  
7 settings?

8 A. Primarily OLIs.

9 Q. Primarily OLIs?

10 A. More so than an LRE.

11 Q. Where would -- where is -- tell me where you  
12 would -- I would most likely encounter an LRE?

13 A. Anywhere where there's a licensee that they're  
14 required to regulate or inspect, they get out in the  
15 field in their car just like we do. They go do site  
16 inspections. They do random what we call a drive by.  
17 They'll drive by a business to make sure that they're  
18 open when they're supposed to be. That what's going on  
19 there is supposed to be what's going on.

20 A lot of our cases, the first contact we get is when  
21 the OLI calls us and says, there's a business here that's  
22 not licensed and they're selling cars, or there's this  
23 and this going on, I just observed it.

24 Q. Oh, so that answer was relating to OLIs?

25 A. Correct.

1 Q. Oh, I'm sorry. I meant to ask you for LREs.

2 Where would I most likely encounter an LRE at work?

3 A. You will see them in the testing area of the -- of  
4 the DMV, in the testing area or in the drive test area  
5 primarily.

6 Q. You use confidential informants?

7 A. Correct.

8 Q. Do OLIs use confidential informants?

9 A. I don't think so, no.

10 Q. Do LREs use confidential informants?

11 A. No.

12 Q. Based on your knowledge of the minimum  
13 requirements to become an OLI or an LRE, are they the  
14 same minimum requirements as for a DMV Investigator?

15 A. No.

16 Q. They're lower?

17 A. I don't know if they're lower. They're  
18 different.

19 Q. Well, if you could look for me on page eight of  
20 your Declaration, and the last sentence on page eight  
21 under paragraph twenty-eight. It says, "The DMV hires  
22 LREs and OLIs who meet the minimum qualifications as an  
23 Investigator. What did you mean by that?

24 A. Well, when they've already been in that class,  
25 some of them continue to acquire the remaining

1 qualifications, and they're able to move up into the  
2 Investigator. I actually work with an Investigator who  
3 was an LRE before she was an Investigator.

4 Q. Okay. So what you're meaning is that the DMV  
5 hires as Investigators LREs --

6 A. Right.

7 Q. -- and OLIs who meet the minimum qualifications?

8 A. Right.

9 Q. Okay. All right. One minute. Do you deal with  
10 the chain of custody of evidence?

11 A. I'm not an Evidence Custodian. I deal with the  
12 chain of custody when it applies to my evidence, yes.

13 Q. Do you observe special procedures regarding  
14 custody -- the chain of custody for evidence that you  
15 collect?

16 A. Yes.

17 Q. What procedures do you adhere to?

18 A. Whenever I collect evidence I make sure I log it  
19 in correctly and make sure it's stored correctly and it's  
20 submitted to the Evidence Custodian to be stored in our  
21 evidence room.

22 Q. Now, when an LRE has a document that'll become  
23 evidence in a criminal case, does the LRE do the same  
24 process?

25 A. No.

1 Q. When an OLI has a document that will become  
2 evidence in a criminal case, does the OLI do the same  
3 process?

4 A. It's a different process all together.

5 Q. What -- how is the process different?

6 A. The LR -- the documentation that's evidence from  
7 the field office has to be sent to headquarters to be  
8 entered into microfiche so it can be part of the  
9 permanent record before it comes to Investigations.

10 Q. So do you end up retrieving that evidence from  
11 the OLI or LRE via the microfiche?

12 A. No. It comes from headquarters once it's  
13 certified.

14 Q. So you don't actually receive the evidence person  
15 to person from the OLI --

16 A. I usually --

17 Q. -- or LRE?

18 A. I'm sorry.

19 Q. Go ahead.

20 A. I usually get a photocopy of it, and they give me  
21 their written synopsis of what took place. And then when  
22 it's available, I retrieve what's the certified best  
23 evidence from headquarters.

24 Q. But what I mean to say is, are you actually  
25 having an in-person contact with the LRI [sic] or OLI --

1 excuse me, with the LRE or OLI who is handing you the  
2 evidence?

3 A. It goes to the Manager.

4 Q. So it's an indirect route?

5 A. Correct.

6 MR. ROSE: Okay. Thank you very much.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

8 MS. TRUONG: Yes, just a couple quick questions.

9 CROSS-EXAMINATION

10 BY MS. TRUONG:

11 Q. Earlier you stated in your testimony that you  
12 worked for CDCR as a Correctional Officer; is that  
13 correct?

14 A. It was CDC at the time, yes.

15 Q. Excuse me. CDC. And while you were a  
16 Correctional Officer you stated you were a member of  
17 CCPOA?

18 A. Correct.

19 Q. And that would be Unit 6?

20 A. Yes.

21 Q. While you were a member of CCPOA, were you aware  
22 of non-sworn members that were also in Unit 6?

23 A. I didn't really know that much about what was --  
24 the only time I ever had contact with the Union is when I  
25 needed assistance for a personal matter. I had no idea

1 what was going on with the Union when I was there.

2 MS. TRUONG: Okay. No further questions.

3 REDIRECT EXAMINATION

4 BY MR. MESSING:

5 Q. Do you know what a Parole Service Assistant is?

6 A. No.

7 MR. MESSING: Okay. Actually, can we request the ALJ  
8 take notice of the fact that Parole Service Assistants  
9 are in Bargaining Unit 6?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't think  
11 they list the classifications on the back of that unit.  
12 But I think there's two classifications. One's Parole  
13 Service Associate and one's Parole Service Assistant,  
14 which are non-peace officer positions. So I'm trying  
15 to --

16 MR. MESSING: Both?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Both are non-  
18 peace officers.

19 MR. MESSING: Non-peace officers. Okay.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And --

21 MR. ROSE: I object.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, the unit  
23 is the unit. I just got to find a way how to get a  
24 printing of the unit and go from there. But they don't  
25 do it the same way in regards to -- maybe I can get a

1 printout off of the -- I think DPA has that database that  
2 you can print something out by bargaining units. I can't  
3 remember what it's called.

4 MS. MAYHEW: PIE.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: PIE. Yeah,  
6 that's it. And I think that works off of the  
7 Controller's database or something. And maybe we can get  
8 a printout of Bargaining Unit 6 from that. I think  
9 there's some other classifications. Casework Specialist.  
10 There's a couple other --

11 MR. ROSE: I have no objection to the PERB taking  
12 notice of --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

14 MR. ROSE: -- the composition of Bargaining Unit 6.  
15 And I would make the same request for five.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, five is  
17 going to be the shortest list around.

18 MR. ROSE: Right.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, yeah. If we  
20 get the same form regards to Unit 5, I think it's only  
21 the cadets and the -- and the officers.

22 MR. MESSING: That's right.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's about as  
24 quick as it's going to come. So once I get those, we can  
25 go ahead and mark it and go from there. Go ahead,

1 Mr. Messing.

2 BY MR. MESSING:

3 Q. You talk about your transition from the  
4 Department of Corrections to DMV. At the time that you  
5 made the transition, did LREs or OLIs make as much money  
6 as DMV Investigators?

7 A. No.

8 Q. Okay. Did that have any impact on your decision  
9 as to which job you wanted to apply for?

10 A. Oh, yeah. Yes.

11 Q. Okay. You were asked questions about formal  
12 training and informal training by OLIs or LREs. But I  
13 didn't hear a follow-up on the informal training by OLIs.  
14 How often has that occurred in the last couple of years?

15 A. Well, when you say occurred, it's not uncommon  
16 for me -- I'll pull an OL record and I won't understand  
17 it. And so what I do is I e-mail our Inspector, and  
18 she'll decipher it all to me, like break it all down to  
19 me, so I can include that information in my report.

20 Or I'll say, "I have this dealer. Have you heard  
21 anything about them?" And she'll go out in the field and  
22 try to figure out what's going on with this person, and  
23 she'll come back and give me a synopsis of what she's  
24 determined.

25 Q. Okay. Has that occurred in the last two years?

1 A. Yes.

2 Q. How often?

3 A. In my office?

4 Q. Yes.

5 A. It happens all the time.

6 Q. Okay. One last thing. You mentioned in your  
7 testimony that it was too dangerous to become an LRE.  
8 What'd you mean by that?

9 A. I would never take people on a drive test.

10 Q. Do you -- do you know what classification in  
11 State service has the highest rate of injuries for any  
12 State classification?

13 A. Probably an LRE.

14 MR. ROSE: Objection. Calls -- lacks foundation.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean do you  
16 know, sir?

17 THE WITNESS: I know that we had one killed in a  
18 fatal doing a drive test when I was in San Diego.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
20 Well, let's just keep that as the answer rather than the  
21 other.

22 MR. MESSING: Okay. Nothing further.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 Mr. Rose.

25 MR. ROSE: Nothing further.

1 MS. TRUONG: Nothing from us.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. In  
3 regards to -- let me swap you there. In regards to Q, it  
4 is admitted.

5 (Exclusive Representative's Exhibit Q received  
6 in evidence.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And sir, I have  
8 one final admonition for you. I'm going to admonish you  
9 not to discuss your testimony with any of the other  
10 witnesses in the case. Of course, you're free to discuss  
11 your testimony with anybody at these three tables right  
12 here. Do you have any questions in regards to the  
13 admonition?

14 THE WITNESS: No, sir.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
16 Thank you very much.

17 THE WITNESS: Thank you.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we are off  
19 the record.

20 (Noon recess taken.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
22 We're back on the record. We do have another witness  
23 ready to be sworn in. But before I do that, I handed out  
24 to the parties some documents I got off the Personnel  
25 Information Exchange on the DPA website. The first

CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

1  
2  
3  
4 I, Leisa M. Miller, a duly designated transcriber of  
5 Vine, McKinnon & Hall, do hereby declare and certify  
6 under penalty of perjury that I have transcribed from a  
7 CD recording the proceedings in the matter of STATE OF  
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
9 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT  
10 ASSOCIATION, Exclusive Representative, Unfair Practice  
11 Charge No. SA-SV-171-S, which recording was duly recorded  
12 at Sacramento, California on March 11, 2009, and that the  
13 foregoing pages 1 through 294 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 27th day of March, 2009, at Dixon,  
17 California.

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