

March 12, 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 12, 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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1 PROCEEDINGS - MARCH 12, 2009

2 --oOo--

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
4 We're back on the record. The date is March 12th, 2009.  
5 Time is approximately 9:15 a.m.

6 We are at the Public Employment Relations Board at  
7 1031 18th Street, Sacramento, California.

8 This is day seven of the proceedings of PERB case  
9 No. SA-SV-171-S. It is the State Bargaining Unit 7  
10 severance.

11 The Petitioner, Peace Officers of California. The  
12 Employer, State of California. The Exclusive  
13 Representative, California Statewide Law Enforcement  
14 Association.

15 My name is Shawn Cloughesy. I'm the Administrative  
16 Law Judge assigned to hear this case on behalf of the  
17 PERB.

18 On channel one will be both the ALJ and the witness.  
19 Channel two will be the Exclusive Representative.  
20 Channel three the Employer. And channel four the  
21 Petitioner.

22 Where we left off, we are on the Exclusive  
23 Representative's case in chief. We were in the midst --  
24 or going to be beginning the cross-examination of  
25 Mr. James Vitko. But we do have a preliminary matter.

1           So, Mr. Messing, should I excuse this witness while  
2 we do the preliminary matter or --

3           MR. MESSING: No, I don't think that's necessary.

4           MR. ROSE: No objection.

5           MS. TRUONG: No.

6           MR. MESSING: Okay. Should we identify ourselves?

7           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,  
8 you're on target. Go.

9           MR. MESSING: Carroll, Burdick and McDonough by Gary  
10 Messing. And with me is Kasey Clark, the Chief Counsel  
11 for CSLEA.

12          ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. On  
13 behalf of the Employer.

14          MS. TRUONG: Shannan Truong, Legal Counsel for  
15 Department of Personnel Administration. With me is Linda  
16 Mayhew, Assistant Chief Counsel for Department of  
17 Personnel Administration, and Kristine Rodrigues, Labor  
18 Relations Officer for Department of Personnel  
19 Administration.

20          ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf  
21 of the Exclusive Rep [sic].

22          MR. ROSE: Good morning, Judge. Joe Rose  
23 representing Peace Officers of California. Seated at  
24 counsel table with me is attorney Diane Sabonis.

25          ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Now,

1 Mr. Messing, you have a preliminary matter.

2 MR. MESSING: Yes, we have one issue I discussed  
3 briefly with Mr. Rose. We had somebody who was sitting  
4 in the room who was not anticipated to be a witness for  
5 this hearing. And at some point about -- well, in the  
6 last round of hearings, we determined that he would -- we  
7 would need his testimony. We then excluded him, so he  
8 hasn't been here. So this is Coby Pizzotti. So you'll  
9 notice he hasn't been in the room this week.

10 So we would -- we served a Declaration of Pizzotti.  
11 And we wanted to bring this to your attention and to  
12 Mr. Rose's attention, deal with it at this point.  
13 Because I believe Mr. Rose has a problem with that.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
15 Mr. Rose?

16 MR. ROSE: Yes. We've received the Declaration of  
17 Mr. Pizzotti. I brought to Mr. Messing's attention this  
18 morning the fact that Mr. Pizzotti had been present I  
19 thought on several days of hearing, and not just during  
20 the preliminaries, but also during live witness  
21 testimony, and I believe was actually identified by one  
22 of the witnesses from the witness table. I don't  
23 specifically remember who it was. My memory at this  
24 point in time is perhaps it was Chris Lewis, but I'm not  
25 100 percent sure of that.

1 But in any case, Mr. Pizzotti's testimony concerns --  
2 at least the Declaration testimony concerns -- it's  
3 essentially rebuttal testimony, I think, to Chris Lewis'  
4 testimony. So we're objecting to the admission of  
5 Mr. Pizzotti's Declaration. And we would move that,  
6 considering all of the witnesses who are either actual or  
7 anticipated witnesses be sequestered from the hearing  
8 room, that Mr. Pizzotti's testimony be prevented as a  
9 remedy to that problem.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
11 the Employer, you want in or you want out or --

12 MS. TRUONG: No. I'll stay out.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
14 any response, Mr. Messing?

15 MR. MESSING: Just we anticipated that Mr. Lewis was  
16 going to testify accurately to the representation that he  
17 had received; and therefore, we didn't think we were  
18 going to need any witness on that issue. Unfortunately,  
19 things didn't turn out that way from our perspective, so  
20 that's where we are at this point.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything  
22 further, Mr. Rose?

23 MR. ROSE: Mr. Lewis was identified both as our case  
24 manager at the outset of the proceedings on day one, and  
25 also we identified quite early that he would be a witness

1 in the case. And so we think that it was entirely  
2 foreseeable that Mr. Lewis would be testifying about his  
3 interactions with Mr. Pizzotti. And therefore, the  
4 prudent measure would have been to sequester him, as was  
5 ordered, from the hearing room at the outset.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
7 Anything final, Mr. Messing/

8 MR. MESSING: Well, in hindsight it would have been  
9 prudent. But as I said, we didn't anticipate there would  
10 be any conflict in the testimony. And we've also, you  
11 know, been unable to send out transcripts of testimony,  
12 obviously. So, you know, that means that, you know, it's  
13 very difficult for witnesses to know whether somebody  
14 has -- or witnesses or other individuals to know whether  
15 there's something that arises that needs to be testified  
16 to.

17 But in any event -- yeah. I would also -- you know,  
18 I'd also like to point out that we've had a variety of  
19 witnesses, particularly from Mr. Rose's group, who have  
20 been exposed to transcripts in this case and then  
21 testified. There were several witnesses who testified  
22 that they had seen the transcripts of other witnesses.  
23 This was before we confirmed the ruling to exclude the  
24 witnesses when we raised this issue. It was after the  
25 first day of hearing. And several of their witnesses

1 testified that they had seen --

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know if  
3 anyone said they read any transcripts on the POC side.

4 MR. MESSING: Oh, I believe --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: This didn't --

6 MR. MESSING: I believe the first day that --

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The flare didn't  
8 come up until your witnesses in regards to saying they  
9 got the transcript and they read --

10 MR. MESSING: Well, the --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- they read  
12 Brown and they read Miller.

13 MR. MESSING: Okay. Well, no. Actually, that -- let  
14 me correct what I -- what I'm saying. They certainly --  
15 I would certainly suppose that they did because those are  
16 the witnesses who testified are in charge of POC, and  
17 obviously somebody put that up on their website. So I  
18 seem to recollect that Mr. Rose testified that his Board  
19 and Mr. Fries were sent the transcripts, and I think  
20 Mr. Fries testified that he -- that he --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. There  
22 was -- before he got out the gate.

23 MR. MESSING: Right, before he got out --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I do agree. I  
25 mean, actually, he didn't got out the gate, but --

1 MR. MESSING: Before he got out of the gate.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. So, all  
3 right. I don't remember -- other than Fries, who didn't  
4 get out the gate, I don't remember any of the witnesses  
5 on the POC side testifying to reading any of the  
6 transcripts, except probably maybe Mr. Lewis, which  
7 wouldn't matter on that part.

8 But I'm going to be looking through the Declaration  
9 of Pizzotti, and I'm going to be screening it on this  
10 sort of a criteria of, one, what in this Declaration is  
11 something that in my mind would have been normal to be  
12 brought up on the Exclusive Rep's case in chief versus  
13 what is just rebuttal. And that's going to be the  
14 screening mechanism.

15 I've already looked through some of it, and some of  
16 it I see as case in chief material, to be honest with  
17 you. And there may be a couple of rebuttal issues as far  
18 as testimony. I'll take a look at it. But that's going  
19 to be some of the filter that I'm going to be looking at  
20 is whether it's truly case in chief, or whether it's  
21 rebuttal, that sort of a thing.

22 So anything further?

23 MR. MESSING: Can we anticipate a ruling today on  
24 that?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can probably

1 take a look at it and can give you an idea today as to  
2 certain paragraphs. It's not a long one. I don't see  
3 it's a long Declaration at all. So I probably can take a  
4 look at it over the lunch period and see what I can  
5 splice in regards to that.

6 MR. MESSING: We'd appreciate that.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any final  
8 response in regards to that, Mr. Rose?

9 MR. ROSE: No. We still stand by my original  
10 position, but I understand the ruling.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. So,  
12 anyway, let me put this aside.

13 Other preliminary matters on behalf of the Exclusive  
14 Rep, Mr. Messing?

15 MR. MESSING: No. That would be it.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Employer?

17 MS. TRUONG: No.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,  
19 anything on your part?

20 MR. ROSE: No.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, ask you to  
22 raise your right hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: Yes.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state

1 your name for the record, spelling your last name.

2 THE WITNESS: My name is James Vitko. Spelled V-I-T-  
3 K-O.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
5 witness has Exclusive Rep U before him and is ready for  
6 your examination, Mr. Rose.

7 MR. ROSE: Okay.

8 TESTIMONY OF

9 JAMES VITKO,

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

12 CROSS-EXAMINATION

13 BY MR. ROSE:

14 Q. Good morning again, Mr. Vitko.

15 A. Good morning, sir.

16 Q. As you I'm sure know, I'm Joe Rose. I'm  
17 representing Peace Officers of California.

18 A. Yes.

19 Q. And first let me turn to your Declaration. You  
20 state in your Declaration at page two, lines three and  
21 four, that you were a California Highway Patrol Officer  
22 for nine years, correct?

23 A. Yes, sir.

24 Q. What office did you work out of, or offices,  
25 during that period?

1           A. I worked out of the South Los Angeles office,  
2           which was located in Torrance.

3           Q. During your period of employment with the  
4           California Highway Patrol as a Traffic Officer, did you  
5           interact with Dispatchers?

6           A. Yes, sir.

7           Q. And how often would you do that?

8           A. Daily.

9           Q. Could you estimate on a usual day how many radio  
10          communications in terms of the number of communications  
11          you might have with a Dispatcher?

12          A. I don't even want to venture a guess on that.  
13          There were a number. I mean depending what you did,  
14          obviously. But there were quite a few.

15          Q. Could you give us a range that would be an  
16          accurate estimate? More than 10?

17          A. Yes, sir.

18          Q. More than 20?

19          A. Yes, sir.

20          Q. More than 50?

21          A. No, sir.

22          Q. So somewhere between 20 and 50 radio  
23          transmissions with the Dispatchers per day?

24          A. That would be a fair estimate, yes.

25          Q. Okay. And one of the things you did when you

1 contacted them is notify them when you were making a  
2 vehicle stop, correct?

3 A. Normally, yes.

4 Q. And you would also notify them when you were  
5 clearing a stop, true?

6 A. Normally, yes.

7 Q. And also you would interact with them during the  
8 period of the traffic stop for the purposes of obtaining  
9 information about the person you stopped?

10 A. Yes, sir.

11 Q. And also the vehicle?

12 A. Yes, sir.

13 Q. And that was a very important part of your  
14 ability to perform your job as a peace officer, was it  
15 not, to communicate with the Dispatchers?

16 A. As a Traffic Officer, yes. But I also had  
17 experience working as an Investigator where there would  
18 be long periods of times where I would not speak with  
19 them.

20 Q. Okay. Good. Well, let's get to that in a  
21 minute. How much time did you spend during your nine  
22 years with the California Highway Patrol as a Traffic  
23 Officer?

24 A. I would say about seven, more or less.

25 Q. Seven years. And then would it be a fair

1 assumption on my part to say that the other two years  
2 were as an Investigator?

3 A. Correct. As a -- I was still classified as a  
4 State Traffic Officer. However, my primary duties  
5 involved investigations, and I was also a Court Liaison  
6 officer.

7 Q. And as an Investigator, still titled a Traffic  
8 Officer, where was your assignment? Was it in the same  
9 office in South Los Angeles?

10 A. Yes, sir.

11 Q. And did you report to a supervisor that was the  
12 same or different than when you were a Traffic Officer?

13 A. Different.

14 Q. And I should use the term when you were Traffic  
15 Officer on patrol.

16 A. Yes, sir.

17 Q. All right. And did you have any non-sworn  
18 coworkers when you were working as an Investigator?

19 A. Yes, sir.

20 Q. Could you give us a summary list of some of the  
21 people that were not sworn that you worked with regularly  
22 while an Investigator with the California Highway Patrol?

23 A. Are you referring to California Highway Patrol  
24 employees or court employees?

25 Q. Well --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: State employees.

2 I mean you want State employees, right?

3 BY MR. ROSE:

4 Q. Right. I'm looking just for State employees, not  
5 for superior court employees.

6 A. Okay. As far as State employees, I generally  
7 worked with a Subpoena Control Clerk, who would be  
8 responsible for issuing Subpoenas when the court needed  
9 participation. I would work with the clerical staff in  
10 securing a Subpoena Duces Tecum, things like that, when  
11 the court required it. And I would work with clerical  
12 having to deal with reports that were being prepared for  
13 filing, things like making copies, putting together  
14 files, things like that.

15 Q. Okay. And are you including -- we're talking  
16 about -- help me understand, was there a different  
17 assignment with you as an Investigator versus you as a  
18 Court Liaison Officer during that two-year period?

19 A. No, sir. It was primarily the same thing.

20 Q. Okay. And were there any Analysts with the State  
21 employer during that time that you worked with?

22 A. No, sir.

23 Q. Were there any other non-sworn employees of the  
24 State that you haven't listed already other than Subpoena  
25 Control Clerk, clerical staff, and other clerical?

1           A. That I had day-to-day contact with with regards  
2 to my duties as a -- as a Court Liaison, things like  
3 that?

4           Q. Right.

5           A. No.

6           Q. All right. Now, the Subpoena Control Clerk you  
7 mentioned issued Subpoenas. Did the Subpoena Control  
8 Clerk also draft the Subpoenas?

9           A. No, sir.

10          Q. Who drafted those?

11          A. They came from the court.

12          Q. All right. And did the clerical staff -- what  
13 function did they have with respect to the Subpoena Duces  
14 Tecum?

15          A. They would obtain the reports. In other words,  
16 if they were looking for an investigative report  
17 involving a particular incident as part of the Subpoena,  
18 I would have them pull the reports and put the package  
19 together for me, and then I would take care of the  
20 processing of it.

21          Q. I see. Who did you report to while you were  
22 Court Liaison Officer?

23          A. The Administrative Sergeant.

24          Q. And who did the Subpoena Control Clerk report to  
25 during that period?

1           A. They reported to -- I believe at the time that  
2 there was an Office Supervisor who ultimately reported to  
3 the Administrative Sergeant.

4           Q. Would you say that it's a fair statement to say  
5 that the Subpoena Control Clerk and you ultimately were  
6 in the same chain of command in the Highway Patrol?

7           A. Yes.

8           Q. And with respect to the clerical staff, did  
9 that -- did those employees also report to the Office  
10 Supervisor?

11          A. Yes.

12          Q. Who ultimate -- who then, in turn, reported to  
13 your Administrative Sergeant?

14          A. Correct.

15          Q. Now, were you a member of the CCPOA? Or you were  
16 certainly in a classification represented by them during  
17 your tenure with CHP, correct?

18          A. CAHP. You said CCPOA.

19          Q. I'm sorry. CAHP.

20          A. Yes, sir.

21          Q. And you were a member there of that employee  
22 organization?

23          A. Yes.

24          Q. And while -- are you familiar with the  
25 composition of that employee organization in terms of the

1 classifications that were in it?

2 A. CAHP?

3 Q. Correct.

4 A. Loosely, yes. I didn't have a whole lot of  
5 contact during that time period.

6 Q. Do you know that -- whether or not there were any  
7 sworn employees in the CAHP during your tenure there?

8 A. That were sworn? Yes.

9 Q. Do you know whether there were any non-sworn  
10 employees?

11 A. I do not.

12 Q. Do you know whether the Subpoena Control Clerk  
13 was in your bargaining unit?

14 A. I don't believe so. I'm sorry. Yes, I know  
15 that, and I don't believe that she was.

16 Q. All right. And the same question with respect to  
17 the other clerical staff that you worked with.

18 A. As far as I know, she was not.

19 Q. Okay. Would you say that you and the Subpoena  
20 Control Clerk worked hand in hand while you were a Court  
21 Liaison Officer?

22 A. Yes, sir.

23 Q. And would you say the same with respect to the  
24 clerical staff?

25 A. Yes, sir.

1 Q. All right. Did it seem logical to you at the  
2 time that neither the Subpoena Control Clerk or the  
3 clerical staff were in the same bargaining unit as you?

4 A. Yes.

5 Q. And you also knew, did you not, that the  
6 Dispatchers you worked with while you were a Traffic  
7 Officer were not in your bargaining unit, correct?

8 A. Actually, at the time I did not know that.

9 Q. But you now know that that --

10 A. I do know it now, yes.

11 Q. Okay. And it seems logical to you that they're  
12 not in your bargaining -- that the Dispatchers for the  
13 California Highway Patrol are not in the same bargaining  
14 unit as Traffic Officers?

15 A. Actually, that always kind of puzzled me, because  
16 they were working for the same organization, and there  
17 was a very close liaison in terms of the way we did -- we  
18 worked together. They in a lot of ways were responsible  
19 for our safety at the time, and they were the conduit to  
20 assistance when we needed it. So, to answer your  
21 question, that actually did surprise me.

22 Q. Would you say that in your view the California  
23 Highway Patrol Dispatchers would more appropriately be  
24 assigned to the bargaining unit representing Traffic  
25 Officers?

1 A. Yeah, I would think that would make sense.

2 Q. Would you say in your view, based on your  
3 knowledge of the overall membership of Bargaining Unit 7,  
4 that CHP Dispatchers actually have more direct and day-  
5 to-day contact with CHP employees than they do with  
6 Bargaining Unit 7 employees?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
8 know.

9 THE WITNESS: I do not.

10 BY MR. ROSE:

11 Q. All right. Now, as a Senior -- let me move  
12 forward in time when you were Senior Investigator for  
13 Department of Consumer Affairs.

14 A. Yes, sir.

15 Q. Did you -- that's a sworn position?

16 A. It was.

17 Q. And that was a -- was that -- did you consider  
18 that to be a lateral move from CHP, or was it a promotion  
19 in your mind?

20 A. The position actually paid better than the  
21 position when I was with the Highway Patrol, so in that  
22 regard it would have been promotional. However, the  
23 process was almost like a lateral.

24 Q. I see. Did you consider that that was a natural  
25 career progression for you to go from Traffic Officer to

1 Senior Investigator at the Department of Consumer  
2 Affairs?

3 A. Yes.

4 Q. And why was it a natural career progression in  
5 your mind?

6 A. There were actually several reasons. One is it  
7 allowed me to expand my investigative abilities.  
8 Secondly, at the time I was in the process of going  
9 through law school, and my interest went towards medical  
10 malpractice and things like that, and I felt that would  
11 have given me a little bit better ability.

12 Q. I see. When you were a Senior Investigator in  
13 the Department of Consumer Affairs, you worked with non-  
14 sworn employees as well?

15 A. Yes.

16 Q. And did you work with non-sworn employees  
17 assigned to Bargaining Unit 7?

18 A. I don't believe so.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean do you  
20 know?

21 THE WITNESS: I don't know.

22 BY MR. ROSE:

23 Q. Now, then, let's move forward to your most recent  
24 employment other than your current employment as an  
25 attorney with the CSLEA, that being a Special Agent and

1 Special Agent Supervisor for the Department of Justice.

2 A. Yes, sir.

3 Q. Twelve years there, correct?

4 A. Yes.

5 Q. And during that time -- well, did you consider it  
6 to be a natural -- strike that.

7 Did you consider it to be a lateral move from Senior  
8 Investigator at the Department of Consumer Affairs to  
9 Special Agent for Department of Justice or a promotion?

10 A. I consider that more promotional because of the  
11 difference in money. I did make a little bit more moving  
12 over to the Department of Justice. However, as I stated  
13 earlier, the process was almost a lateral process.

14 Q. Okay. And same question with respect to did you  
15 consider that also to be a natural progression for your  
16 law enforcement career?

17 A. Yes.

18 Q. Working as a Special Agent, you worked with  
19 Criminal Intelligence Specialists who were non-sworn,  
20 true?

21 A. That is very true.

22 Q. Did you ever consider that perhaps you would  
23 accept employment as a Criminal Intelligence Specialist  
24 instead of a Special Agent?

25 A. No, sir.

1 Q. And why did you not consider that to be an option  
2 for you?

3 A. The pay and benefits were better as a Special  
4 Agent, and I wished to continue as a sworn officer.

5 Q. Why did you wish to continue as a sworn officer?

6 A. The pay and benefits were better. The retirement  
7 benefits were better.

8 Q. Was there anything about the job duties of a  
9 sworn officer that appealed to you more so than that of a  
10 non-sworn position in the Department of Justice?

11 A. I think as a sworn officer with the Department of  
12 Justice there is probably more of an ability to move  
13 around.

14 Q. Are there any other aspects of the job duties of  
15 a peace officer in the Department of Justice that you  
16 consider to be advantageous as compared to non-sworn  
17 positions such as the CIS?

18 A. I've always enjoyed the positions that I worked  
19 with in the Department. However, if I had become a  
20 Criminal Intelligence Specialist, I would have been  
21 exposed to many of the same. So beyond that, probably  
22 not.

23 Q. Okay. Now, in your experience with the  
24 Department of Justice working alongside Criminal  
25 Intelligence Specialists, as you've said in your

1 Declaration, did you become familiar with whether the  
2 Criminal Intelligence Specialists are covered by the  
3 Public Safety Officers Procedural Bill of Rights, or  
4 POBOR, P-O-B-R [sic]?

5 A. My understanding is that the Department of  
6 Justice affords them that protection.

7 Q. And they do that by way of contract, not by  
8 statute, correct?

9 A. Correct.

10 Q. So getting back to my question, were they covered  
11 by POBOR?

12 MR. MESSING: Object. Asked and answered.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean  
14 determined by the statute, are they listed as a covered  
15 position or employee in the statute. Do you know, sir?

16 THE WITNESS: Are they covered by the -- by the  
17 statute? No.

18 BY MR. ROSE:

19 Q. And do you know whether CISes were required or  
20 are required to pass psychological examinations prior to  
21 employment?

22 A. I do not believe so.

23 Q. You were, however, correct?

24 A. Yes.

25 Q. And are you aware whether CISes were required to

1 pass a peace officer pre-employment physical examination  
2 prior to employment?

3 A. No.

4 Q. You don't know one way or the other?

5 A. I'm sorry. Yes, I know. And no, they are not.

6 Q. But you were as a Special Agent, true?

7 A. Yes.

8 Q. And you earlier mentioned some of the benefits  
9 that you thought were beneficial. One of those was that  
10 you received firefighter -- excuse me, POFF, or peace  
11 officer/firefighter retirement, true?

12 A. It's three fifty retirement, yes.

13 Q. And CISes do not receive that, correct?

14 A. Correct.

15 Q. And also, you were eligible as a Special Agent  
16 for physical fitness incentive pay, true?

17 A. Yes.

18 Q. And CISes are not eligible for that, correct?

19 A. No, sir.

20 Q. One of the reasons for that is because CISes  
21 don't do as much field work as you did as a Special  
22 Agent, true?

23 A. CISes don't make arrests as peace officers do,  
24 generally don't get into physical confrontations as peace  
25 officers do. As far as field work goes, there are CISes

1 that spend an awful lot of time in the field.

2 Q. If we were to say generally speaking the Special  
3 Agents as a classification spend more time in the field  
4 than the CISes as a classification, would you agree with  
5 that statement or disagree with it?

6 A. Generally I would agree with that. However, it  
7 would be dependent on assignment. For instance, during  
8 the latter part of my career at Department of Justice  
9 working in the Executive Unit, I did not spend a lot of  
10 time in the field doing enforcement activities. However,  
11 there are a number of CISes that do spend time in the  
12 field. So, as I said, it would be dependent on the  
13 assignment.

14 Q. Also, you were required to have probably far more  
15 than a POST basic course when you became a Special Agent  
16 with the Department of Justice, correct?

17 A. I don't believe that there's a specific  
18 requirement for the Department of Justice for anything  
19 beyond a basic POST certificate.

20 Q. Oh, okay. So you at least had to have the basic?

21 A. Yes, sir.

22 Q. And what about POST basic investigator course, or  
23 PIC, was that also required for a Special Agent?

24 A. No, sir.

25 Q. Is a POST basic course required for CIS

1 employees, if you know?

2 A. No. I mean, yes, I know. And I don't believe  
3 so, no.

4 Q. All right. Now, in your Declaration you  
5 mentioned -- you've actually given us some helpful  
6 information regarding the breakdown of the number of  
7 Special Agents and the number of CISes assigned to the  
8 various bureaus in the Department of Justice on pages  
9 three and four. Do you see where I'm referring to?

10 A. Yes, sir.

11 Q. Now, looking at page three at line twenty-one,  
12 you revealed to us that there are approximately twenty-  
13 eight Special Agents in the Bureau of Firearms. That's  
14 true, correct?

15 A. Yes, sir.

16 Q. In that Bureau there's only one CIS, correct?

17 A. Yes, sir.

18 Q. So would you agree with me or disagree with me  
19 that the 28 Special Agents in the Bureau of Firearms,  
20 each of them has a very limited interaction with that one  
21 CIS?

22 A. That is correct. They primarily use Auditors  
23 over there. So if we were to look at those, it would  
24 be -- the numbers would be different, yes.

25 Q. Now, the Auditors, are those peace officers?

1 A. No, sir.

2 Q. Are the Auditors in --

3 A. Actually -- excuse me. I believe that there are  
4 some limited peace officer powers that were afforded to  
5 Auditors recently, if I remember correctly.

6 Q. Okay. Do you know whether the Auditors are in  
7 Bargaining Unit 7?

8 A. They are not.

9 Q. Do you know what bargaining unit the Auditors are  
10 in?

11 A. I can't speculate to that. I don't know.

12 Q. All right. Now, also you've informed us that  
13 item B at line 23 and line 24, that there are 39 Special  
14 Agents in the Bureau of Gambling Control.

15 A. Yes, sir.

16 Q. There are only two CISEs in that Bureau?

17 A. Yes, sir.

18 Q. So would you agree with me that the 39 Special  
19 Agents in the Bureau of Gambling Control have very  
20 limited interaction with the two CISEs in that Bureau?

21 A. I don't know, sir. I don't know what their  
22 interaction is with those two CISEs.

23 Q. Are there Auditors in the Bureau of Gambling  
24 Control?

25 A. I believe so.

1 Q. Do you know approximately how many Auditors are  
2 in that Bureau?

3 A. No, sir.

4 Q. Do you know that if in either the Bureau of  
5 Firearms or the Bureau of Gambling Control -- strike  
6 that. Let me -- let me ask another question.

7 Let's move down to item D. And in this case you  
8 inform us there are 195 Special Agents in the Bureau of  
9 Narcotic Enforcement.

10 A. Yes, sir.

11 Q. Agree with me, then that there's only -- well, do  
12 you know that there are only 18 CISEs in that Bureau?

13 A. Yes, sir.

14 Q. And would you agree with me that the 195 Special  
15 Agents in the Bureau of Narcotic Enforcement must then  
16 have very limited interaction with the 18 CISEs in that  
17 Bureau?

18 A. No, sir, I don't agree with that.

19 Q. Okay. Are there Auditors in the Bureau of  
20 Narcotic Enforcement?

21 A. Yes, sir.

22 Q. Do you know how many?

23 A. No, sir.

24 Q. Turning the page, line one, item E, looking at  
25 the Director's Office, there are no CISEs in that office,

1 true?

2 A. That is correct.

3 Q. So the 15 Special Agents in the Director's Office  
4 don't work with CISes routinely, correct?

5 A. That is not true.

6 Q. Do they work with CISes over the phone?

7 A. Often.

8 Q. Are they working in the same work area as CISes?

9 A. Often, yes. You're referring to the Director's  
10 Office, correct?

11 Q. Yes, sir.

12 A. Yes.

13 Q. All right. Do the 15 Special Agents in the  
14 Director's Office have a different chain of command than  
15 the CISes they work with?

16 A. No, sir.

17 Q. And then looking at item F, of the -- in the  
18 Bureau of Medi-Cal Fraud and Elder Abuse, there's 69  
19 Special Agents but only 5 CISes, true?

20 A. Yes, sir.

21 Q. Are there any Auditors in the Bureau of Medi-Cal  
22 Fraud and Elder Abuse?

23 A. Yes, sir.

24 Q. Would you say there are more Auditors in that  
25 Bureau than there are CISes?

1 A. I don't have that information.

2 Q. All right. Now looking down to -- continuing on  
3 page four, paragraph ten A, lines thirteen and fourteen.

4 A. Yes, sir.

5 Q. There are 22 Criminal Intelligence Specialists in  
6 the Bureau of Criminal Information Analysis, but no  
7 Special Agents in that Bureau, correct?

8 A. That is correct.

9 Q. And looking at item G, there are 37 Criminal  
10 Intelligence Specialists in the Western States  
11 Information Network, but no Special Agents in that  
12 network, true?

13 A. That is true. However, in both the Western  
14 States Information Network and in the Bureau of Criminal  
15 Information and Analysis, the structure is such where  
16 they relate very closely both to the Bureau of  
17 Investigation and Intelligence, and also the Bureau of  
18 Narcotics Enforcement. And, in fact, for the Criminal  
19 Intelligence Specialists that may be assigned, for  
20 instance, to the Western States Information Network, what  
21 we refer to as WSIN, they may on occasion be supervised  
22 by Special Agent Supervisors.

23 Q. Okay. And the Special Agent Supervisor that  
24 would supervise WSIN, CISEs are in another bureau; is  
25 that true?

1 A. Yes, sir. It has to do with funding.

2 Q. Do you know who the 22 Criminal Intelligence  
3 Specialists in the Bureau of Criminal Information and  
4 Analysis report to?

5 A. Ultimately?

6 Q. Not ultimately. Directly.

7 A. No, sir, I don't.

8 Q. All right. Do CISEs engage in undercover  
9 activities?

10 A. Not normally, no.

11 Q. Do CISEs interrogate criminal suspects?

12 A. No, sir, not normally.

13 Q. Do CISEs execute search warrants?

14 A. I'm unsure what you mean by the word execute.

15 Q. Okay. Do CISEs serve search warrants?

16 A. Again, I'm having a little trouble with the word  
17 serve. May I explain?

18 Q. Well, let me ask it this way: Do the CISEs have  
19 the power to serve a search warrant under the law?

20 A. If they are written into the warrant, yes. If  
21 not, no.

22 Q. What authority grants a CIS the ability to serve  
23 a search warrant if they're written into the warrant?

24 A. Again, that's why going back to your definition  
25 of search warrant.

1 Q. Okay. Go ahead and I'll let you explain.

2 A. Thank you. Normally speaking, a search warrant  
3 when somebody enters into a residence, you're absolutely  
4 correct, you need a peace officer to be able to do that.  
5 However, on a number of our search warrants, particularly  
6 those search warrants that are involving, for instance,  
7 fraud or large-scale investigations, we would oftentimes  
8 ask the court for permission to allow them to enter  
9 crime -- enter the scene of the search warrant for the  
10 purpose of gathering evidence and assisting with  
11 cataloging.

12 Q. Okay. So they would accompany a peace officer?  
13 Is that what you're saying?

14 A. Yes.

15 Q. Okay. Let me show you -- just to confirm, I'm  
16 showing you a copy of Penal Code section 1530. Just read  
17 it silently to yourself, and then I'll take it back from  
18 you.

19 A. Yes. Thank you.

20 Q. So you would agree with me, would you not, that  
21 what you just described in terms of the CISes aiding the  
22 peace officer is actually required by 1530, correct?

23 A. Yes.

24 Q. Meaning that if a Special Agent didn't come to  
25 work one day, the CIS, although having been written into

1 the warrant, couldn't go to the location and conduct the  
2 search independently, correct?

3 A. Correct.

4 Q. So in that respect a CIS cannot substitute for a  
5 Special Agent?

6 A. Correct.

7 Q. Would you say that CISes conduct traditional  
8 police patrol activities? And by patrol I'm referring to  
9 as you did when you were a Traffic Officer on the street  
10 in CHP.

11 A. No, they don't. But neither do DOJ Agents.

12 Q. Okay. And would you say that CISes gather  
13 physical evidence?

14 A. You need to be more specific.

15 Q. Okay. Would you say that CISes collect physical  
16 evidence from crime scenes?

17 A. They may.

18 Q. What type of physical evidence may CIS collect  
19 from a crime scene?

20 A. Documentary evidence found at a scene. As I  
21 said, we had in the past utilized Criminal Intelligence  
22 Specialists to assist us with evidence collection and  
23 documentation.

24 Q. Would it be permissible under the Department of  
25 Justice policies to -- for a CIS to collect blood

1 evidence?

2 A. I don't believe it's addressed in the policy  
3 manual.

4 Q. Would it be typical for a CIS to collect blood  
5 evidence?

6 A. No.

7 Q. Would it be typical for a CIS to collect  
8 fingerprint evidence?

9 A. No.

10 Q. Would it be typical for a CIS to collect a weapon  
11 from a crime scene?

12 A. No.

13 Q. Of the three things I just mentioned, blood,  
14 fingerprints and weapons, you as a Special Agent have  
15 been trained to collect that evidence, correct?

16 A. We -- in a normal academy setting you do receive  
17 training in that area. However, the Department of  
18 Justice blood evidence, fingerprint evidence would not be  
19 collected by a Special Agent.

20 Q. The preference would be to have an Evidence  
21 Technician collect evidence, correct?

22 A. Yes.

23 Q. But you could nevertheless, with an Evidence  
24 Technician not available, collect that evidence if you  
25 needed to, correct?

1           A. I would be very surprised if one of my Agents  
2 would be knowledgeable as to how to lift a fingerprint at  
3 the scene of a crime.

4           Q. Do you ever submit evidence to a crime lab --

5           A. Yes.

6           Q. -- as a Special Agent?

7           A. Yes, sir.

8           Q. And do CISes submit evidence directly to the  
9 crime lab?

10          A. No, sir.

11          Q. They do that through Special Agents?

12          A. Yes.

13          Q. Now, you mentioned in your Declaration, and I'm  
14 looking, sir, at page nine, lines one through nine, and  
15 specifically a more pinpoint location would be four and  
16 five, lines four and five.

17          A. Yes.

18          Q. You mentioned that CISes enter information into a  
19 deconfliction database, correct?

20          A. Yes.

21          Q. Do you also enter information into a  
22 deconfliction database as a Special Agent?

23          A. It has been done.

24          Q. How often have you entered information into a  
25 deconfliction database while you were a Special Agent?

1           A. Personally, I have never ever entered information  
2 into a deconfliction database. However, many of our  
3 agents have.

4           Q. Would you agree with me that it's very infrequent  
5 that a Special Agent enters information into a  
6 deconfliction database?

7           A. It would depend on assignment.

8           Q. So that's no?

9           ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's what he  
10 just testified, it would depend on assignment. Next.

11 BY MR. ROSE:

12           Q. You mention on page 10 at line 17 that CISes  
13 prepare charts.

14           A. Yes.

15           Q. Do you -- did you ever prepare a chart while you  
16 were a Special Agent?

17           A. Yes.

18           Q. How many charts did you prepare?

19           A. I don't have an exact number for you. I mean I  
20 couldn't tell you specifically how many I've done, but  
21 there have been times.

22           Q. Was it infrequent?

23           A. Yes.

24           Q. You mentioned that -- at line 19 that CISes  
25 prepare PowerPoint presentations for included --

1 inclusion in Megan's Law database training.

2 A. Yes.

3 Q. Have you ever prepared a PowerPoint presentation  
4 for inclusion in a Megan's Law database training while  
5 you were Special Agent?

6 A. Yes.

7 Q. How many times did you do that?

8 A. I conducted the training for approximately four  
9 years while attached to the Bureau of Investigation  
10 Intelligence. I co-taught the class with a Criminal  
11 Intelligence Specialist. Prepared probably two or three  
12 different versions that I could recall of the Megan's Law  
13 PowerPoint.

14 Q. You mention at page 11, lines 6 and 7, that  
15 Special Agents perform investigative tasks working much  
16 like Detectives or Federal (FBI/DEA) Agents.

17 A. Yes.

18 Q. Would you say that CISEs also perform  
19 investigative tasks working much like Detectives or  
20 Federal FBI/DEA Agents?

21 A. Working in the Bureau of Intelligence -- I'm  
22 sorry, Bureau of Investigation and Intelligence, the  
23 Criminal Intelligence Specialist might be assigned to  
24 task forces and work alongside DEA Agents doing pretty  
25 much the same duties.

1 Q. How many of those CISEs are assigned to task  
2 forces?

3 A. I don't have that information for you.

4 Q. CISEs, do they initiate law enforcement  
5 activities?

6 MR. MESSING: I'm going to object. Vague and  
7 ambiguous.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean can you  
9 answer that as it's phrased?

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Next  
12 question.

13 BY MR. ROSE:

14 Q. All right. Look at 11 -- page 11, line 7 and 8,  
15 of your Declaration. You wrote, "As Investigators,  
16 Special Agents either initiate activities or are referred  
17 investigations." Do you see that?

18 A. Yes, sir.

19 Q. Okay. What did you mean when you said Special  
20 Agents initiate activities?

21 A. In certain contexts, Special Agents might be  
22 tasked with dealing with crime problem in a particular  
23 area. An example of that might be some of our narcotics  
24 agents, where they would initiate -- or they would go and  
25 make undercover buys, or they would -- they would be

1 involved with street narcotics, things like that, where  
2 they would initiate activities.

3 Q. Okay. And with that meaning in mind, do CISes  
4 also do those things?

5 A. With the -- with the Bureau of Narcotics, no.  
6 However, there are instances, for instance, within the  
7 Bureau -- well, actually, within the Bureau of Narcotics  
8 that could occur as well involved with, for instance,  
9 dealing with precursors and things like that, where a  
10 Special Agent -- I'm sorry, where a Criminal Intelligence  
11 Specialist might be involved with looking at statistical  
12 things, reviewing documentation and, as such, might  
13 initiate an investigation based on what they found.

14 Q. But that would be done from the office, right?

15 A. Not necessarily. We have individuals that might  
16 go into the field and deal with, for instance,  
17 manufacturers of precursors for narcotics, for instance.

18 Q. Well, once the CIS identifies something that  
19 seems suspicious or potentially criminal, then that is  
20 referred to a Special Agent for criminal investigation,  
21 correct?

22 A. As a general rule, yes.

23 Q. You mention on page 13 of your Declaration that  
24 CISes and Special Agents -- one moment. Okay. You  
25 mention at page 13 of your Declaration at lines 8 through

1 10, I believe, that Special Agents and CISes are both  
2 allowed to join certain law enforcement-related  
3 associations. Do you see --

4 A. Yes.

5 Q. Do you see that? California Narcotics Officers  
6 Association being one of them.

7 A. Yes.

8 Q. Is that a labor organization?

9 A. No, sir.

10 Q. Is that a State of California organization? Or  
11 strike that.

12 Is that associated with the State of California?

13 MR. MESSING: I'm going to object. Vague and  
14 ambiguous.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're not  
16 talking about just filing an incorporation with the  
17 State?

18 MR. ROSE: No.

19 BY MR. ROSE:

20 Q. Let me -- let me ask it this way: Is that  
21 incorporated with the State Employer? Is that associated  
22 with the State Employer?

23 A. I can't -- I don't understand what you mean by  
24 the word associated.

25 Q. Well, isn't the California Narcotics Officers

1 Association a private organization?

2 A. It is a private organization composed of  
3 narcotics officers from pretty much every agency in the  
4 state of California.

5 Q. And you're not required to be a member of the  
6 Narcotics -- California Narcotics Officers Association as  
7 a condition of your employment with the State, are you?

8 A. No, sir.

9 Q. And a question with respect to the California  
10 Sexual Assault Investigators Association. That's another  
11 one that you mention in your Declaration.

12 A. Yes.

13 Q. That is also a private organization, correct?

14 A. Yes.

15 Q. And it's not an employee organization, correct?

16 A. No, sir.

17 Q. And it's not a condition of your employment  
18 whether as a CIS or a Special Agent to belong to that  
19 organization, true?

20 A. It is not in the job specs. However, once again,  
21 participation in CNOA and participation in CSAIA are  
22 generally considered to be necessary components because  
23 of the training issues that are involved and the  
24 networking issues that are involved.

25 Q. But now, the CNOA, are there membership dues?

1 A. Yes, sir.

2 Q. And CSAIA, are there membership dues?

3 A. Yes.

4 Q. Are those paid by you personally, or by the State  
5 of California?

6 A. CNOA, I believe I pay my own dues. CSAIA was  
7 paid for by the State of California.

8 Q. Do you know whether the State of California pays  
9 for the membership dues of CISes who join CSAIA or CNOA?

10 A. I have no knowledge in that area.

11 Q. At page 14 you mention the duties of  
12 Criminalists.

13 A. Yes.

14 Q. As a Special Agent do you, like Criminalists,  
15 compare hair fibers?

16 A. No.

17 Q. Do you compare soil?

18 A. No.

19 Q. Do you compare paint?

20 A. Personally, no. But I know that has been done  
21 before.

22 Q. All right. Do you compare glass?

23 A. No.

24 Q. Do you compare building materials?

25 A. No, sir.

1 Q. Do you use a microscope?

2 A. Generally, no.

3 Q. Specifically, have you ever used a microscope  
4 during your career as a Special Agent?

5 A. Not directly. I've been there when microscopes  
6 were used and I have viewed that before.

7 Q. Now, what is the device used to evaluate shell  
8 casing, the impression made by a hammer or a firearm  
9 shell casing? What is that device called?

10 A. I have no knowledge in that area.

11 Q. Oh. Now, Criminalists, you mention in page 15,  
12 line 2, work exclusively at laboratories. Do you see  
13 that?

14 A. Yes, sir.

15 Q. And do Special Agents work exclusively at  
16 laboratories?

17 A. No, sir. We have had teams that have been housed  
18 at laboratories. But do all Special Agents work  
19 exclusively at laboratories? No.

20 Q. In fact, the vast majority of Special Agents  
21 spend very little time in laboratories; isn't that true?

22 A. I can't generalize in that regard. Agents spend  
23 time in laboratories all the time involved with evidence  
24 collection.

25 Q. You testified about your role as Chair of the

1 Legal Defense Fund.

2 A. Yes.

3 Q. Approximately how many number of cases come into  
4 the Legal Defense Fund on a given year?

5 A. I was Chair for a very short time of LDF, and I  
6 don't have that information for you.

7 Q. Okay. During your period of chairmanship --  
8 because you testified that there were seven cases between  
9 2007 and 2009 involving Special Agents. Do you remember  
10 that testimony?

11 A. Yes, sir.

12 Q. So you're familiar with the number of cases that  
13 came into the LDF between 2007 and 2009?

14 A. Yes, sir.

15 Q. How many cases came in total to LDF between 2007  
16 and 2009?

17 A. I don't have that information. I asked for the  
18 information specific to my affiliate. So I don't have  
19 the total number for you.

20 Q. Okay. Who did you ask?

21 A. I had asked the individual who handles the  
22 clerical duties for LDF for CSLEA.

23 Q. Well, you also mention that during 2007 and 2009  
24 approximately 76 investigations occurred at the  
25 Department of Justice. Do you remember that testimony?

1 A. Yes, sir.

2 Q. And you testified that more than half involved  
3 Special Agents or Special Agent Supervisors.

4 A. Yes, sir.

5 Q. What was the source of that information?

6 A. I had spoken with Special Agent in Charge Jeff  
7 Wall [phonetic], who is the individual responsible for  
8 the PSG Unit, which is the DOJ equivalent of Internal  
9 Affairs for the Department of Justice, and he queried his  
10 database.

11 Q. Did you get any information about the other --  
12 the remaining investigations, the composition of those?

13 A. No, sir.

14 Q. I believe, tell me if I'm wrong, that you  
15 mentioned that the vast majority of LDF cases involve  
16 sworn peace officers; is that true?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know, or  
18 did you testify to that? Either one.

19 THE WITNESS: I don't recall testifying to that, but  
20 that would not surprise me.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

22 BY MR. ROSE:

23 Q. And why would that not surprise you?

24 A. Because as a general rule peace officers that are  
25 involved in things like entries, that are involved in

1 making arrests are going to have issues that would expose  
2 them to LDF coverage.

3 Q. Okay. And the same could not be said for CISEs,  
4 true?

5 A. I'm going to ask you to clarify your question. I  
6 don't understand what it is you're asking me.

7 Q. Well, would it surprise you if -- to learn that  
8 CISEs were a very high user of LDF?

9 A. CISEs, I don't know. I have no knowledge as to  
10 how often CISEs use LDF. Is it -- is it potentially --  
11 is it something that's potentially there? Yes, it is.

12 Q. Would it surprise you to -- if you learned that  
13 Criminalists were a high user of LDF?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't want you  
15 to guess. I mean if you don't know, just say that and  
16 we'll just move on.

17 THE WITNESS: I don't know.

18 MR. MESSING: For the record, we're going to be  
19 introducing the records of what usage there was of LDF.  
20 And Mr. Rose have an ample opportunity to cross-examine  
21 the person who introduces that into evidence. I think  
22 it'll be a lot easier.

23 MR. ROSE: Who's going to be doing that?

24 MR. MESSING: It'll be the best evidence of usage.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Clark just

1 raised his hand, so --

2 MR. ROSE: Okay.

3 BY MR. ROSE:

4 Q. Now, you mentioned in your direct testimony that  
5 you received some comments about parity issues, pay  
6 parity issues, from members of your affiliate?

7 A. Yes.

8 Q. And what specifically were you told with respect  
9 to those pay parity issues?

10 A. I don't know if I can give you specifically what  
11 I was told. There have been comments on occasion that  
12 the individual -- well, Special Agents should be paid  
13 what Agents at CDC -- I'm sorry, the Department of  
14 Corrections should be paid, or with the Inspector General  
15 should be paid.

16 Q. Do you agree or disagree that Special Agents  
17 should be paid the same as what their counterparts make  
18 at CDC?

19 A. I think Special Agents, like most investigative  
20 classes, most classes involved with Unit 7, should be  
21 paid as much as they could possibly get.

22 Q. But you mentioned on your direct testimony that  
23 in some cases the comparisons between Special Agents and  
24 Agents at the CDC are not appropriate.

25 A. Correct.

1 Q. So do you think that it's not appropriate to  
2 compare the pay of Special Agents at the CDC to -- or  
3 excuse me, Special Agents at DOJ to Agents at the CDC?

4 A. I think what you have is two different  
5 structures. When you're dealing with individuals that  
6 are non-represented, the playing field is not the same.  
7 So comparisons are not necessarily justifiable.

8 Q. How is it -- how do you believe that the fact  
9 that the CDC Agents are not represented has caused them  
10 to be paid more rather than less?

11 A. My understanding is that the bargaining process  
12 is not the same. They are basically given what they're  
13 given.

14 Q. Okay. But if CSLEA is advocating on behalf of  
15 Special Agents at the bargaining table, wouldn't it stand  
16 to reason that Special Agents who were being advocated  
17 for at the bargaining table would actually be paid more  
18 than the folks who were given what they were given?

19 MR. MESSING: I'm going to object. Lack of  
20 foundation. I mean, you know --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you even  
22 answer that?

23 THE WITNESS: No.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Next  
25 question.

1 BY MR. ROSE:

2 Q. You mentioned with respect to LDF that a high  
3 percentage settled in favor of the employee. Do you  
4 remember that testimony?

5 A. Yes. To the best of my knowledge, yes.

6 Q. What percentage was that?

7 A. I can tell you that, based on the comments that I  
8 heard as an affiliate President and based on my  
9 knowledge, again, based on my role as an affiliate  
10 President, that the majority favored -- or settled  
11 favorably. I can't give you a percentage. And if I  
12 testified to that, then I didn't intend on going there.

13 Q. Okay. So you don't know what percentage one  
14 would -- settled favorably?

15 A. No, sir.

16 Q. And when you said --

17 A. Specific numbers, no.

18 Q. Say again?

19 A. Specific numbers, no.

20 Q. All right. And then when you said settled  
21 favorably, did you -- how did you -- what do you mean by  
22 settled favorably? What would be a favorable outcome, or  
23 the categories of favorable outcomes that you would  
24 incorporate into that answer?

25 A. For LDF?

1 Q. For the employees, yes, and for LDF.

2 A. That they received representation necessary when  
3 they needed that. That their rights were upheld. That  
4 they -- strike that. That's pretty much what I mean.

5 Q. All right. And so even in the case of an  
6 employee who was terminated ultimately successfully by  
7 the State Employer, that could be a favorable outcome  
8 based on your description?

9 A. Yes, sir. Actually, yes, sir.

10 Q. All right. Now, did you assist in the  
11 preparation of any other Declarations other than your  
12 own?

13 A. No.

14 MR. ROSE: Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

16 MS. TRUONG: Just a couple quick questions.

17 CROSS-EXAMINATION

18 BY MS. TRUONG:

19 Q. I believe you testified earlier that Criminal  
20 Intelligence Specialists do not go through psychological  
21 testing; is that true?

22 A. That's correct.

23 Q. Do Criminal Intelligence Specialists go through a  
24 background check?

25 A. Yes, ma'am.

1 Q. Would you call that background check extensive?

2 A. Yes, ma'am.

3 Q. Can you describe to us what an extensive  
4 background would consist of for Criminal Intelligence  
5 Specialists?

6 A. Yes. For -- a background for Criminal  
7 Intelligence Specialists would be almost identical to  
8 what a Special Agent would go through. They would be --  
9 they're interviewed personally. They're required to fill  
10 out a form that basically breaks down their personal  
11 life, their employment history. They're asked a series  
12 of questions with regards to drug use and various other  
13 criminal activities.

14 That information would then go to a background  
15 investigator who would, in essence, go line by line  
16 through that Declaration that they had filled out, and  
17 verify with family, with friends, with employers, with  
18 various databases in terms of criminal histories and  
19 fingerprints and things like that. Put together a rather  
20 extensive report that would then go to the Chief for  
21 approval.

22 Q. And do you know about how long it takes to do one  
23 of these extensive background checks for Criminal  
24 Intelligence Specialists?

25 A. Based on my experience as a Special Agent

1 Supervisor working in the Background Unit, I would say  
2 probably it could be as little as four weeks. It could  
3 be as much as two or three months, depending on the  
4 degree and the answers that were given.

5 Q. And is that the same timeline that it would take  
6 for a background check on a Special Agent?

7 A. Generally, yes.

8 Q. And do Criminalists go through a background check  
9 to work for Department of Justice?

10 A. Yes, they do.

11 Q. And would you call the background check  
12 extensive?

13 MR. ROSE: Objection. Leading.

14 MS. TRUONG: I'm on --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Actually --

16 MS. TRUONG: I'm on cross.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree. Go.

18 THE WITNESS: It would be pretty much the same  
19 process as I just described to you. But, yes, it would  
20 be just as extensive.

21 BY MS. TRUONG:

22 Q. Okay. And it would be the same -- the same items  
23 that would have to be gone through that you stated for  
24 the Criminal Intelligence Specialist as for the  
25 Criminalists?

1 A. Correct.

2 Q. Same with the timeline, it could be anywhere from  
3 four weeks to three to -- two to three months?

4 A. Yes.

5 MS. TRUONG: And I believe that's it. No further  
6 questions.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

8 MR. MESSING: No further questions.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,  
10 anything else?

11 MR. ROSE: Yes.

12 FURTHER CROSS-EXAMINATION

13 BY MR. ROSE:

14 Q. You mentioned you worked in the Background  
15 Unit --

16 A. Yes.

17 Q. -- as a Special Agent Supervisor?

18 A. Yes.

19 Q. Were there any CISEs conducting background  
20 investigations in that unit?

21 A. No, sir.

22 Q. Were there any Criminalists conducting background  
23 investigations in that unit?

24 A. No, sir.

25 MR. ROSE: Thank you. Nothing further.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

2 MS. TRUONG: Nothing.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very  
4 much, sir. With that, I'll take this. You've got that.  
5 U is -- Exclusive Rep U is admitted.

6 (Exclusive Representative's Exhibit U received  
7 in evidence.)

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we'll take a  
9 break. Off the record. Oh, wait a minute, Mr. Vitko,  
10 I've got to admonish you. I actually remembered that on  
11 my own. All right, sir. I'm going to ask you, just like  
12 I admonished you yesterday, not to discuss your testimony  
13 with any of the witnesses involved. Do you understand  
14 the admonishment?

15 THE WITNESS: I do, sir.

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

18 THE WITNESS: Thank you.

19 (Off the record.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
21 We're back on the record. We have another witness called  
22 by the Exclusive Representative. I'm going to ask you to  
23 raise your right hand.

24 (Witness sworn by the Judge.)

25 THE WITNESS: Yes, I do.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please spell  
2 your name for the record, including your first name.

3 THE WITNESS: Karlyne Amaral. K-A-R-L-Y-N-E. Last  
4 name Amaral, A-M-A-R-A-L.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you. And  
6 I'm going to be marking as Exclusive Representative V  
7 what appears to be a Declaration of this witness.

8 (Exclusive Representative's Exhibit V marked  
9 for identification.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have a  
11 couple preliminary questions for you. Did you ever  
12 receive copies of any of the transcripts in these  
13 proceedings?

14 THE WITNESS: Yes, I did.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And did  
16 you read any of those transcripts?

17 THE WITNESS: No, not really.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, we're  
19 not -- you don't get a demerit for not reading it. It's  
20 actually a plus. But anyway, regardless of that, so you  
21 didn't read any of those transcripts?

22 THE WITNESS: I may have glanced maybe the first  
23 page, but --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well --

25 THE WITNESS: -- it was not -- it was not very much

1 in interest to me, so I didn't go really into it.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. You were  
3 just -- what do you remember that first page being about?  
4 Just if you can remember.

5 THE WITNESS: It was an e-mail that I believe it said  
6 something about testimony, or something about a person.  
7 And I'm sorry, I cannot remember the names of the people.  
8 And it started talking about what they -- what they said  
9 in the hearing.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me back up  
11 just for a second.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean you  
14 understand that a transcript is like this monster right  
15 here, where you've got like a court reporter, testimony.  
16 And I don't want you to read it. That's what I'm trying  
17 to stay away from. But regardless of that, I mean did  
18 you receive anything of that sort of nature?

19 THE WITNESS: It was an e-mail and it was like an  
20 excerpt taken.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
22 right. I think we know what that is. And then let me  
23 ask you this question. Do you know an individual by the  
24 name of James Cline?

25 THE WITNESS: No. I'm better at faces than I am at

1 names, so I might recognize the face.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Good enough.

3 I'm going to hand you Exclusive Representative V. And if  
4 you can just take a quick look at that and tell me what  
5 it is.

6 THE WITNESS: This is a Declaration that I prepared  
7 in regards to today.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Very good. And  
9 if you could turn to your signature page? And is that  
10 your signature?

11 THE WITNESS: Sure is.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
13 did you sign it on or about the date and times -- I'm  
14 sorry, date and time and the location set forth?

15 THE WITNESS: Yes, I did.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
17 are the contents of that Declaration true and correct to  
18 the best of your knowledge?

19 THE WITNESS: There is a change here. On the first  
20 page, Bureau of Investigations, our office or  
21 Investigations is no longer a Bureau. We're a Branch.  
22 Investigations Branch.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. So that's  
24 actually a good thing for you guys probably as far as  
25 investigator. So why don't you go ahead and make that

1 substitution and initial and date it. It's still  
2 referred to as BOI; is that right?

3 THE WITNESS: No. Now we're called IB.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, all right.

5 THE WITNESS: Sounds like Motrin or something.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I had a case  
7 when it was BOI.

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But anyway,  
10 regardless of that. And, yeah, if you can initial it and  
11 date it. All right. And any other corrections?

12 THE WITNESS: No. I believe that's it.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,  
14 pass the witness to you.

15 MR. MESSING: Just a couple of things.

16 TESTIMONY OF

17 KARLYNE AMARAL,

18 Having been duly and regularly sworn, testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. MESSING:

22 Q. First of all, you've been on the Board of  
23 Directors of CAFI for -- well, first of all, CAFI is an  
24 affiliate of CSLEA?

25 A. Yes, it is.

1 Q. Okay. And you've been on the Board of Directors  
2 since 1991; is that right?

3 A. Yes.

4 Q. Okay. And you've served several terms as  
5 President of CAFI?

6 A. Two terms. I'm currently in my second term.

7 Q. Okay. So how far into your second term are you?  
8 When did it start?

9 A. Approximately the end of February 2008.

10 Q. Okay. And CAFI represents what kind of  
11 employees? Who are the members?

12 A. We're a combination of a number of CSLEA members.  
13 We have approximately 13 departments that are grouped  
14 together under our umbrella ranging anywhere from  
15 Employment Development Department, Department of Horse  
16 Racing Board, Department of Insurance, Food and  
17 Agriculture for some of the marketing enforcement people,  
18 Public Employees Retirement System, Department of  
19 Transportation. Like I said, a variety.

20 Q. The members, are they sworn or non-sworn?

21 A. A mixture.

22 Q. And in your capacity as a member of the Board of  
23 Directors and as President, if there were members who had  
24 complaints about their individual representation in  
25 grievances and discipline, is that the sort of thing that

1 would come to your attention?

2 A. Yes, it would.

3 Q. Okay. Have you -- are you aware of members of  
4 CAFI who have received representation in grievances and  
5 disciplines who have complained about the lack of  
6 responsiveness of CSLEA?

7 A. Yes, I have.

8 Q. Okay. Would you explain?

9 A. As I mentioned before, I've been on the Board of  
10 CAFI for almost 20 years. During that time, as being the  
11 representative for my Department, there was an out-of-  
12 class concern, or a grievant's working out-of-class  
13 concern for some of our Special Investigators who wanted  
14 to become Senior Special Investigators and doing the  
15 work. And there was concern that they were not having  
16 their grievance heard or having it acted upon. This was  
17 a number of years ago.

18 And then after that there was a switchover in our  
19 Union representation from one rep to Kasey Clark being  
20 our representative. And within a week of Kasey being our  
21 representative, that issue was resolved, and favorably  
22 for our members.

23 Q. Okay. Now, are you aware of other members who  
24 have been represented in Internal Affairs investigations,  
25 disciplinary matters or grievances?

1 A. Yes.

2 Q. Okay. And out of -- out of those, can you  
3 characterize the reactions of your members to the  
4 responsiveness of the -- of CSLEA and whether they were  
5 satisfied with their representation?

6 A. They were sat -- from the feedback that I've  
7 received is that they were satisfied with the  
8 representation.

9 Q. Now, are there situations that may arise where  
10 you might request assistance from CSLEA informally as  
11 opposed to formal representation of members?

12 A. Yes.

13 Q. Okay. And on those occasions, have you been  
14 involved yourself with such issues?

15 A. Yes.

16 Q. Okay. And who have you worked with at CSLEA on  
17 matters of that sort?

18 A. Mostly it would be Kasey Clark.

19 Q. Okay. And have you been -- how would you  
20 characterize your success at dealing with such matters on  
21 an informal basis?

22 A. Excellent.

23 Q. Okay. Okay. Now, have you -- strike that.

24 Have you had occasion to receive feedback from your  
25 members, both sworn -- well, let's deal with the sworn

1 members. Have you had occasion to receive feedback from  
2 your sworn members o how CSLEA, formerly CAUSE, has done  
3 at bargaining on behalf of your members?

4 A. Yes, I have.

5 Q. Okay. Would you explain what kind of feedback  
6 you've received?

7 A. As a result of some of the bargaining, I don't  
8 know how to really characterize it, but it was almost  
9 like Christmastime. Some of the issues that we had in  
10 specifics to educational pay, longevity pay, an increase  
11 in salary, people were so happy and calling me up just  
12 within my Department alone and they were saying how happy  
13 they were at work that this came through for them. And  
14 we joked about look for the Union label, you know, that  
15 little song that came out. But I've received very  
16 positive responses from how are Union was able to  
17 negotiate such positive contracts for our members.

18 Q. Did your sworn membership receive the increase in  
19 retirement to three percent at fifty plan?

20 A. Yes.

21 Q. Okay. And was there any reaction to that from  
22 your membership?

23 A. Again, they were saying this is just like  
24 Christmas, you know. I don't want to say Santa Claus.  
25 But they were extremely pleased. And as it made a huge

1 difference for some of our members in retirement  
2 formulas. They were able to retire a little bit earlier  
3 and at a higher percentage. Quite pleased with it.

4 MR. MESSING: Okay. I'll pass the witness on to  
5 Mr. Rose.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

7 CROSS-EXAMINATION

8 BY MR. ROSE:

9 Q. Good afternoon, Ms. Amaral. My name is Joe Rose,  
10 and I'm the attorney representing Peace Officers of  
11 California. How are you today?

12 A. Just fine, sir.

13 Q. Good. Let me get back to the e-mail you received  
14 that you believe was perhaps a transcript or an excerpt  
15 of the proceedings.

16 A. Yes.

17 Q. When did you receive that e-mail?

18 A. It was either the end of January, the beginning  
19 of February.

20 Q. And do you recall the sender of the e-mail?

21 A. No, I don't.

22 Q. Do you recall whether it was another State  
23 employee, or was it someone not employed by the State?

24 A. I believe that it was someone from CSLEA. But  
25 I'd like to say that during this time I was just getting

1 back from bereavement leave, and my father had passed  
2 away, and so there were things that were of more pressing  
3 issue. That was not something that for me was a pressing  
4 issue because it didn't deal with one of our members that  
5 had a concern. So I had to focus my energies on what was  
6 important and, you know, delete, delete. I'm sorry. I  
7 can't really remember more than that.

8 Q. I'm sorry to hear about the passing of your  
9 father. The e-mail, was it sent just to you or to  
10 multiple members of recipients?

11 A. I believe that I was on a list.

12 Q. Do you recall how many others were on the list?

13 A. No.

14 Q. Do you recall any single name other than yourself  
15 on the list?

16 A. No. I think it was probably about an inch on the  
17 e-mail, you know, names that would go on an inch length.

18 Q. Can you give me an estimate based on your  
19 experience using your e-mail system how many names would  
20 be contained in an inch?

21 A. Probably 12, or at least 12.

22 Q. All right. Was there an attachment to the  
23 e-mail?

24 A. I think that was the attachment.

25 Q. Did you delete that e-mail?

1 A. Yes.

2 Q. All right. So you mentioned about how your  
3 members felt it was Christmastime after bargaining with  
4 the State. And so let me ask you, did you have anyone  
5 express anything to the contrary about CSLEA's  
6 representation other than the issue you described  
7 concerning the out-of-class pay for the Investigators?

8 A. No. Even the supervisors were happy with the --  
9 with the bargaining contractor because it was like the  
10 trickle up theory. You know, what we would get, they  
11 would get. Everybody was happy in the office. And not  
12 just my office. Northern region, southern region, LA,  
13 they were all happy.

14 Q. So is it -- is it true, then, that of the 198  
15 members of CAFI, the affiliate which you're the  
16 President, that nobody, other than the one issue you  
17 described, has ever expressed any criticism of CSLEA  
18 about their efforts on your behalf?

19 A. There was some time that -- now, I was the  
20 Director or the President. Now I'm currently the  
21 President. And I was a President in like '93 to -- oh,  
22 no, '95, '94, '96 around there. As a Board, people are  
23 always trying to improve the situations for the members.  
24 So there's always concerns what they'd like to see  
25 better. But on a whole, very, very pleased with the

1 contracts, very pleased with how they are represented,  
2 and very pleased with how they get the response back from  
3 CSLEA.

4 Q. Now, with -- other than the grievance that you  
5 described about the Investigators' pay, what other  
6 grievances has CSLEA prosecuted on behalf of members of  
7 the CAFI affiliate since Mr. Clark has come on board?

8 A. I can mostly speak for Department of Social  
9 Services as being the Grievant, because most of those  
10 cases are handled -- a majority of the cases that we have  
11 end up being handled very informally, where they send an  
12 e-mail or make a telephone call. And it doesn't even get  
13 to the grievant level. I don't believe that we have very  
14 many if they've been to -- to go through the grievant  
15 level. We've been very fortunate.

16 Q. So is there -- is it fair to say that other than  
17 the one formal grievance that -- or the one matter that  
18 was resolved by Kasey Clark within a week of him coming  
19 on board that you can't recall any formal grievances that  
20 have been filed by CSLEA on behalf of the members of  
21 CAFI?

22 A. Oh, I'm sure that there are some other grievants,  
23 but this is one that sticks out --

24 Q. But do you have --

25 A. -- for CAFI.

1 Q. -- a specific memory of any --

2 MR. MESSING: Well, hang on a second. She was in the  
3 middle of a sentence --

4 MR. ROSE: I'm sorry.

5 MR. MESSING: -- when you interrupted.

6 MR. ROSE: I didn't realize that.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Go ahead.

8 MR. ROSE: I didn't mean to interrupt you. Continue.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything  
10 further?

11 THE WITNESS: Now you got me discombobulated. This  
12 is -- this is one that really particularly sticks out.  
13 We did have an issue regarding reassignment for our  
14 Department, and we did meet with management, Labor  
15 Relations. But that did not result in a grievance level  
16 situation. I believe that there were some issues  
17 regarding for another agency dealing with time, overtime  
18 issues. Safety equipment is always, you know, out there  
19 because we want to protect our members.

20 BY MR. ROSE:

21 Q. Okay. Now, I note that your Exhibit A to your  
22 Declaration, the Senior Special Investigators Series  
23 Specification --

24 A. Yes.

25 Q. -- includes a Senior Special Investigator, class

1 code 8550, and then a non-peace officer version of that  
2 class, 8551. Do you see that?

3 A. Can you point me to the page?

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll point it to  
5 you. One more page. And you see how there's a -- on the  
6 Specifications there's a non-peace officer?

7 THE WITNESS: Okay. Yes, sir.

8 BY MR. ROSE:

9 Q. Do you work with any Senior Special Investigators  
10 who are non-peace officers?

11 A. Not within my Department.

12 Q. Do you know of any Senior Special Investigators  
13 who are non-peace officers?

14 A. Yes.

15 Q. Who are they?

16 A. That would be most likely Department of Insurance  
17 would have those for our affiliate. EDD is sworn. Horse  
18 Racing is sworn. I believe Insurance would be the non-  
19 sworn for a Senior.

20 Q. And do you know how many of the Department of  
21 Insurance -- excuse me, how many there are of the non-  
22 sworn Department of Insurance Senior Special  
23 Investigators?

24 A. At this time, no. And also, that number is  
25 changing and it's being reduced. Because those

1 Investigators are now starting to merge into the -- when  
2 they take the specialized investigator basic course, the  
3 SIBC, or the regular basic course, they're being put into  
4 a sworn status. And so, with that, then they're starting  
5 to merge into a different affiliate of CSLEA, which is --  
6 I believe it's C-A-C-I, CACI.

7 Q. Are they phasing out the Senior Special  
8 Investigator non-peace officer, then?

9 A. From what I understand, they're looking at doing  
10 that and having them move into the sworn status.

11 Q. I see. Is there an expected timeline as to how  
12 soon that transition will occur, if you know?

13 A. As far as I know, no. And such -- this  
14 information was also discussed at our Law Enforcement  
15 Trainers Management Association, which I was a member of.

16 Q. How many -- you mentioned that the CAFI is a  
17 mixture of sworn and non-sworn. Could you estimate for  
18 me what percentage or fraction of the 198 members of CAFI  
19 are non-sworn?

20 A. I would hate to make a guesstimate on that.

21 Q. Would it be fair to say that -- well, are the  
22 Investigative Assistants in CAFI?

23 A. Yes.

24 Q. All right. Other than Special Investigators and  
25 Senior Special -- well, you said there were 13

1 departments that you represent in your affiliate,  
2 correct?

3 A. Approximately, yes.

4 Q. Would you say that your duties as a Senior  
5 Special Investigator are very similar to the duties --  
6 job duties of the Investigative Assistant at DSS?

7 A. Could you repeat that, please?

8 Q. Sure. Would you say that your job duties as a  
9 Senior Special Investigator at DSS are very similar to  
10 the job duties of DSS Investigative Assistants?

11 A. There are some similarities. But for the sworn  
12 Investigators, they're going to be more complex,  
13 especially if you're a Senior Special Investigator versus  
14 a Special Investigator versus an Investigative Assistant.

15 Q. Are the Investigative Assistants also in the --  
16 in IB?

17 A. Yes.

18 Q. Do you report to the same supervisor of different  
19 supervisor?

20 A. They would report to the same supervisor.

21 Q. Okay. Do the -- do the DSS Investigative  
22 Assistants report -- they report to the same supervisor  
23 as Special Investigators?

24 A. Yes, they would.

25 Q. All right. You mention in your Declaration on

1 page four that -- paragraph 10, that DSS Investigative  
2 Assistants, that that position is a stepping stone to  
3 sworn positions within Bargaining Unit 7.

4 A. Sworn positions within our Department.

5 Q. Okay. Within DSS?

6 A. DSS. Which is also Bargaining Unit 7.

7 Q. Now, are DSS Investigative Assistants required to  
8 pass a pre-employment psychological evaluation?

9 A. No, they're not.

10 Q. Are pre-employment Investigative Assistants  
11 required to -- disqualified from the job if they are --  
12 have been convicted of a felony?

13 MR. MESSING: Objection. I think you misstated. You  
14 said pre-employment --

15 MR. ROSE: What did I say?

16 MR. MESSING: -- at the beginning of your sentence.

17 MR. ROSE: I'll rephrase.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Scratch the pre-  
19 employment. I mean do you know whether they're  
20 disqualified from holding their position, the  
21 Investigative Assistants, if they have a felony  
22 disqualification?

23 THE WITNESS: Possibly.

24 BY MR. ROSE:

25 Q. How about are they required to engage in a pre-

1 employment peace officer medical examination?

2 A. No, they are not.

3 Q. Are the DSS Investigative Assistants required to  
4 complete PC 832?

5 A. No.

6 Q. Do all DSS Investigative Assistants eventually  
7 advance or promote into the Special Investigator series?

8 A. No.

9 Q. What percentage of DSS Investigative Assistants,  
10 in your experience, have actually elevated themselves to  
11 Special Investigator?

12 A. More than 50 percent.

13 Q. Is that considered a -- when the DSS  
14 Investigative Assistant applies for Special Investigator,  
15 is that considered a promotional opportunity or an open  
16 examination? Do you know?

17 A. They would be -- they would take a test.  
18 Depending upon what their salary range is and if they  
19 could lateral into that position. In some instances they  
20 were able to lateral. But I believe now, because of the  
21 pay difference, they have to test on that. And it  
22 depends on if they lateraled once, can they lateral  
23 again. They can't do two laterals. They would have to  
24 take a test.

25 Q. When they take that test, are they competing with

1 applicants who are not employees of the State?

2 A. Sometimes and sometimes not. It depends whether  
3 it's an open test, or whether it's a closed agency test.

4 MR. ROSE: Okay. Nothing further.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

6 MS. MAYHEW: One moment, please.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Go off the  
8 record.

9 (Off the record.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the  
11 record.

12 CROSS-EXAMINATION

13 BY MS. TRUONG:

14 Q. Mr. Rose was asking you some questions about the  
15 Investigator Assistant. Are you aware of Investigator  
16 Assistants that are sworn peace officers?

17 A. Yes, I am.

18 Q. Are you aware of Investigator Assistants that are  
19 non-sworn peace officers?

20 A. Yes, I am.

21 MS. TRUONG: That's it.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

23 MR. MESSING: Just a clarification.

24 THE WITNESS: Okay.

25 /////

1 REDIRECT EXAMINATION

2 BY MR. MESSING:

3 Q. I think that the question -- the last question  
4 was whether you knew of non-sworn peace officers.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Knew of  
6 Investigative Assistants that were peace officers.

7 MR. MESSING: Who are non-sworn peace officers.

8 MS. TRUONG: I'm sorry. Yes.

9 MR. MESSING: So I --

10 MS. TRUONG: That was --

11 BY MR. MESSING:

12 Q. Just to clarify the record, and I think you  
13 agreed.

14 A. There are Investigative Assistants who are sworn  
15 within the State. There are Investigative Assistants who  
16 are non-sworn within the State. It depends upon which --  
17 if the agency wants to use them as sworn or non-sworn.

18 MS. TRUONG: May I -- may I continue my questioning,  
19 then?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please.

21 RECROSS-EXAMINATION

22 BY MS. TRUONG:

23 Q. So at DSS, do -- does the Department utilize  
24 Investigative Assistants that are sworn police -- sworn  
25 peace officers? Excuse me.



1           A. Well, some of the job duties also deal with the  
2 requirements for the job. Investigative Assistants are  
3 not sent to the 832 arrest and control class. They do --  
4 they are not required to go through the academy, regular  
5 or specialized academy. They're utilized as supportive  
6 for our Department. They may be -- and in doing so, they  
7 may conduct some interviews with witnesses. They may  
8 conduct some interviews with victims.

9           They would not be doing suspect interviews. They  
10 would be doing some preliminary casework, requesting and  
11 obtaining some documents, medical records, court records,  
12 start -- initiating the process on some of the  
13 investigations. We do have our Investigative Assistants  
14 running the telecommunications system, the CLETS machine,  
15 which we do have to have people fingerprint cleared to  
16 do. Again, this is an entry level phase, and it's up to  
17 the individual as to whether or not they want to pursue a  
18 career, a further career, in law enforcement.

19           MR. ROSE: Okay. Nothing further.

20           ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21           Ms. Truong?

22           MS. TRUONG: Nothing further.

23           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

24           MR. MESSING: Nothing further.

25           ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll take that

1 from you right here. And I need to admonish you not to  
2 discuss your testimony with any witnesses, but you're  
3 free to discuss it with anyone at these three tables  
4 here.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you  
7 understand the admonishment?

8 THE WITNESS: Yes, I do, sir.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And with that,  
10 Exclusive Rep V is admitted.

11 (Exclusive Representative's Exhibit V received  
12 in evidence.)

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are off the  
14 record.

15 (Off the record.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 We're back on the record. We have the next witness  
18 called by the Exclusive Representative. Can I ask you to  
19 raise your right hand?

20 (Witness sworn by the Judge.)

21 THE WITNESS: I do.

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

24 THE WITNESS: Shelley Bishop. B-I-S-H-O-P.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And

1 Shelley is with an E-Y at the end, I take it?

2 THE WITNESS: It is with an E-Y, sir.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I  
4 have a couple preliminary questions. But before that,  
5 I'm going to be marking as Exclusive Representative W  
6 what appears to be a Declaration of this witness.

7 (Exclusive Representative's Exhibit W marked  
8 for identification.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Let  
10 me get to those questions. Did you ever remember  
11 receiving transcripts of any of these proceedings?

12 THE WITNESS: Receiving them?

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

14 THE WITNESS: No.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well, do  
16 you remember reading them?

17 THE WITNESS: I read a part of a transcript from our  
18 website, CSLEA website.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you  
20 remember how long ago that was?

21 THE WITNESS: Honestly, it's -- no, I don't. It's  
22 maybe a month ago or so. I'm not really sure.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. But you  
24 don't remember reading the transcripts -- I put that back  
25 already -- such as -- such as this, anything like that?

1 THE WITNESS: Oh, no, nothing like that.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

3 THE WITNESS: I would remember that, yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, most  
5 people don't like to read them. But anyway, regardless,  
6 additionally, do you know who James Cline is?

7 THE WITNESS: It's taking too long to remember, so  
8 not that I can recall of now.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
10 Passing to you Exclusive Representative W.

11 THE WITNESS: Uh-hmm.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm going to  
13 be asking you, do you recognize that document?

14 THE WITNESS: Yes, I do, sir.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what do you  
16 recognize it as?

17 THE WITNESS: It's my Declaration.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And if you could  
19 turn to your signature page?

20 THE WITNESS: Yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is that your  
22 signature?

23 THE WITNESS: Yes, it is.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
25 it on the date and location set forth?

1 THE WITNESS: Yes, I did.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
3 are the contents of that Declaration true and accurate to  
4 the best of your recollection?

5 THE WITNESS: I did find one typo mistake.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
7 where is that?

8 THE WITNESS: It's on page three. For some reason  
9 right here on number nine, it says there are  
10 approximately 16 Investigator positions. It should be  
11 146. It's a big difference.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That is. Okay.  
13 Why don't you scratch out the 16 and then put in the  
14 number and initial and date it. All right. And witness  
15 has done so. And did everyone get that number? Hundred  
16 and forty-six instead of 16.

17 All right. Any other corrections?

18 THE WITNESS: Not that I've noticed, sir.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,  
20 pass the witness.

21 MR. MESSING: Okay.

22 TESTIMONY OF

23 SHELLEY BISHOP,

24 Having been duly and regularly sworn, testified as  
25 follows:

1 DIRECT EXAMINATION

2 BY MR. MESSING:

3 Q. So how long have you been employed in positions  
4 that are within Bargaining Unit 7?

5 A. Approximately 24 years. A little over.

6 Q. Okay. And how many years have you been active --  
7 pardon me. CASI is an affiliate of CSLEA?

8 A. Yes.

9 Q. Okay. And how long have you been active in CASI?

10 A. That would be for a little over 24 years.

11 Q. Okay. And how long over -- during that 24-year  
12 period did you hold positions on the Board of Directors  
13 or as an officer?

14 A. With CASI as an officer, I started as Director at  
15 Large in I want to say probably 2004. That's an  
16 approximate date.

17 Q. I'm sorry?

18 A. Approximately 2004 I believe it was when I was a  
19 Director at Large.

20 Q. Okay. And your current position is?

21 A. As a President.

22 Q. Okay. Now, in your position on the Board of  
23 Directors and as President, if there were complaints  
24 about individual representation in grievances,  
25 disciplines, IAs, is that something that would normally

1       come to your attention?

2           A.   Some of them would.

3           Q.   Okay.  Can you characterize -- I'm talking now  
4       about individual representation issues.  That would be  
5       grievances, disciplines and the like.  Can you  
6       characterize the feedback that you've gotten from your  
7       members on how CSLEA has done in those areas?

8           A.   The one that -- incident that comes to mind was a  
9       new higher, and he was said to have been cheating in the  
10      academy, and he was let go from even being on probation.  
11      He was just let go.  And CSLEA picked up the case.  It  
12      went to hearing.  And he was reinstated with full  
13      benefits and back pay.  And he's happily employed with  
14      ABC right now.

15          Q.   Okay.  Do you recall since let's say 2004, when  
16      you became a Director, do you recall any complaints about  
17      the nonresponsiveness of CSLEA when people called in for  
18      grievances, disciplines or IAs?

19          A.   No.  I have not had any negative in that area.

20          Q.   Okay.  Now, let's move over to the area of  
21      bargaining.  Can you tell us since 2004 what kind of  
22      feedback you've received from your members regarding how  
23      CSLEA has done with bargaining?

24          A.   With our members, the object of getting more  
25      money has always been a goal.  And for some reason, ABC

1 Investigators have been in competition with Department of  
2 Justice, and they always think they should get the same,  
3 even though the job is different. So that would have  
4 been the only complaint through the last contract was  
5 they wanted more money.

6 Q. Now, in 2006 there were some adjustments that  
7 were made which gave different increases to different  
8 levels.

9 A. Yes.

10 Q. Did you receive some complaints from any of your  
11 members regarding the level of pay that ABC Investigators  
12 was afforded?

13 A. That was what I was referring to. They felt they  
14 should have had the 25 percent instead of, I believe, the  
15 17.

16 Q. Okay. Okay. I think I will pass the witness  
17 over to Mr. Rose.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir?

19 MR. ROSE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. ROSE:

22 Q. Good morning, Ms. Bishop.

23 A. Good morning, sir.

24 Q. My name is Joe Rose. I'm attorney for Peace  
25 Officers of California.

1 A. Uh-hmm.

2 Q. Were you on the CSLEA Board in 2003?

3 A. No.

4 Q. All right. Other than the -- well, tell me again  
5 who it is in Bargaining Unit 7 that you work with that is  
6 not sworn at the ABC?

7 A. The Licensing Reps.

8 Q. Okay.

9 A. Well, Licensing Representatives is the full  
10 title.

11 Q. And are there any other non-sworn employees at  
12 the ABC that you work with regularly?

13 A. Not in our bargaining unit. We have other  
14 employees.

15 Q. How about outside of your bargaining unit?

16 A. I'm not sure what you're asking.

17 Q. Do you work with other non-sworn employees that  
18 are not in Bargaining Unit 7?

19 A. Oh, like clerical? Yes.

20 Q. Okay. Clerical would be one?

21 A. Yes.

22 Q. Do you work with any others?

23 A. Supervisors aren't represented, so it would just  
24 be the clerical.

25 Q. Okay. And so just clerical, supervisors and

1 Licensing Representatives is the --

2 A. That are non-sworn, yes, sir.

3 Q. Okay. Now --

4 A. Well, supervisors are sworn.

5 Q. Okay.

6 A. But they're not represented.

7 Q. So the only other category of non-sworn employees  
8 you work with at ABC are clerical?

9 A. Correct.

10 Q. All right.

11 A. And LRs, Licensing Reps.

12 Q. Okay. Very good. Now, you describe in your --  
13 in your Declaration at page three that the ABC  
14 Investigators are skilled undercover officers.

15 A. That is correct.

16 Q. Would you say the same is true with respect to  
17 Licensing Representatives, that they are skilled  
18 undercover officers?

19 A. They are not peace officers, sir. No.

20 Q. Okay. And would -- you mention that the  
21 Investigators at ABC buy drugs from dealers in your  
22 Declaration.

23 A. At times, yes.

24 Q. Would you say the same is true with respect to  
25 Licensing Representatives, they also buy drugs from

1 dealers?

2 A. They are non-sworn, so it would be no.

3 Q. All right. And do Licensing Representatives  
4 arrest prostitutes?

5 A. No, sir.

6 Q. Do they arrest intoxicated patrons?

7 A. Again, they are non-sworn. They don't.

8 Q. And do they -- how do the Investigators of the  
9 ABC prevent alcohol sales and consumption to or by  
10 minors?

11 A. You mean the programs that we run? Well, we do a  
12 couple things. We run decoy programs, which is a  
13 undercover minor.

14 Q. I'm sorry. I can't hear you. Can you --

15 A. Okay. I'm sorry. We run decoy operations. And  
16 with the decoy operations, they are like an arm of law  
17 enforcement, but they're minors. But they're under our  
18 care. And we'd put them in a position to go into  
19 licensed locations and attempt to purchase alcohol.

20 We also do a program called shoulder tap, and it  
21 would be using those same decoys, but they would approach  
22 citizens to see if they would go and get alcohol from a  
23 store for them.

24 And then the old regular way of doing enforcement is  
25 sitting outside and watching minors try to go in and buy

1 alcohol. Or if we're in a licensed premises, to see if  
2 somebody would go and furnish, be it a waitress, cocktail  
3 server, bartender.

4 Q. Okay. And so the decoy operation that you  
5 described, that involves the minors and the  
6 Investigators?

7 A. Yes.

8 Q. But the Licensing Representatives are not  
9 participating in that decoy operation?

10 A. Once again, they're not sworn, so they would not.

11 Q. Okay. And then shoulder tap that you described,  
12 that also involves the minor decoys and the  
13 Investigators, but not the Licensing Representatives?

14 A. That's correct.

15 Q. And sitting outside and watching for minors going  
16 in and out of the store or service to by a wait staff,  
17 that also just involves Investigators, not Licensing  
18 Representatives?

19 A. Yes. Only sworn personnel, sir, correct.

20 Q. All right. Licensing Representatives do not  
21 write search warrants?

22 A. I have to stop and think. Not that I'm aware of,  
23 so no. If they ever did, it would be for searching  
24 records of someone trying to get a license. But usually  
25 it gets passed to the sworn.

1 Q. Okay. And they never execute a search warrant?

2 A. No.

3 Q. And the Licensing Representatives do not conduct  
4 interrogations of suspects in criminal cases?

5 A. No, not in criminal.

6 Q. And they do not conduct interrogations of  
7 witnesses in criminal cases?

8 A. That's correct, they don't.

9 Q. The Licensing Representatives have contact with  
10 the public?

11 A. Yes.

12 Q. And the contact is in the -- in the context of  
13 either applying for or renewing a ABC license, correct?

14 A. That's one aspect of it. They also answer  
15 general questions of ABC laws and procedures.

16 Q. All right. Now, the -- you mention in your  
17 Declaration on page three at the bottom of the page,  
18 paragraph sixteen, that there are assignments -- certain  
19 Investigators have been assigned to various task forces  
20 throughout the state.

21 A. That is correct.

22 Q. Are Licensing Representatives assigned to task  
23 forces?

24 A. Not law enforcement task forces, no.

25 Q. All right. And you mention at page four of your

1 Declaration, paragraph eighteen, that Investigators like  
2 yourself do not perform traditional police patrol  
3 functions like a sheriff or police agency might.

4 A. That is correct.

5 Q. And would it be also fair to say that Licensing  
6 Representatives do not perform traditional patrol police  
7 functions like sheriffs or police?

8 A. That would be a correct statement, yes.

9 Q. All right. And would it -- you mention in your  
10 Declaration Investigators perform investigative tasks,  
11 much like Detectives or State or Federal Agents, such as  
12 the DEA.

13 A. That is correct. At times we do, yes.

14 Q. Licensing Representatives do not perform tasks  
15 working much like Detectives or Federal Agents, do they?

16 A. I'm giving a minute here. Because there have  
17 been times not the same. But when we get an application,  
18 they do financial investigations, and that could be  
19 construed just like an Investigator would. Because they  
20 look for signs of money laundering, false ownerships. So  
21 when -- so it kind of overlaps. So I can't say a  
22 complete yes or no to that.

23 Q. And those financial reviews are made in  
24 connection with an application for renewal --

25 A. That is --

1 Q. -- or an initial application for an Alcoholic  
2 Beverage Control license?

3 A. That is correct, sir.

4 Q. But once they identify something suspicious or  
5 criminal, they would refer it to a peace officer,  
6 correct?

7 A. It would really depend on the district office on  
8 how that was handled. Sometimes it goes directly to a  
9 supervisor and they'll handle it. If they want us to do  
10 further investigations -- because these people aren't  
11 licensed yet, so we would have to go through the formal  
12 route. But if they wanted a license, they would have to  
13 provide more documents. So it's -- it could go either  
14 way, depending on how the supervisor would like it to go.

15 Q. Is the supervisor a peace officer?

16 A. Yes, they are.

17 Q. Now, do the Licensing Representatives -- their  
18 field work consists of visiting the sites of applicants  
19 for ABC licenses?

20 A. Yes.

21 Q. And also notifying persons within proximity to  
22 the establishment that's applying for a license?

23 A. Correct.

24 Q. Other than that, would it be fair to say that the  
25 Licensing Representative's work is conducted in the

1 office?

2 A. Well, they also -- when they're doing the  
3 investigation, they're doing a little bit more. So  
4 they're going to the county or the city planning  
5 departments and talking to them. They may even have to  
6 go to the local sheriff or police departments and talk to  
7 them to see if they have any objections or concerns. It  
8 could go either way. It could be through phone, or it  
9 could be done in person. But that's all part of their  
10 role.

11 Q. All right. And then other than what you've just  
12 described and in addition to what I mentioned, would it  
13 be fair to say, then, that all the additional duties they  
14 perform are in the office?

15 A. Yes.

16 Q. Now, do you as a Investigator have much interface  
17 with local building departments?

18 A. It depends on the case, sir. We can. And  
19 sometimes we work jointly with the local planning  
20 commissions or departments because of conditional use  
21 permits and some problems they may have in like a  
22 disorderly house, and we may want to go in that direction  
23 to get other city or county agencies involved with it  
24 also. So it can happen.

25 Q. Is that an infrequent occurrence?

1           A. It depends on the area and the cases. Some  
2 cases, like in bigger cities, you'll have it more  
3 frequently because of more problems. Smaller  
4 communities, like in the desert area, it would be not as  
5 frequent.

6           Q. All right. And you mention in your Declaration  
7 at page four, line twelve, that you are issued standard  
8 peace officer protective gear?

9           A. Yes, we are, sir.

10          Q. And also --

11          MR. MESSING: We're going to stipulate that Licensing  
12 Representatives are not issued peace officer protective  
13 gear.

14          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I'll take  
15 that stipulation.

16          MR. MESSING: So we don't have to go through item by  
17 item.

18          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Then let's get  
19 the next question.

20          MR. ROSE: All right. And so I accept the  
21 stipulation, by the way.

22          BY MR. ROSE:

23          Q. Would you say that if an Investigator at the ABC  
24 does not come to work some day, that the Licensing  
25 Representative could fill in for the shoes of the

1 Investigator?

2 A. No, they could not.

3 Q. Would you say that if a Licensing Representative  
4 didn't come to work one day that the Investigator could  
5 fill in for the shoes of the Licensing Representative?

6 A. They can always work out of class under out of  
7 class, yes, like that.

8 Q. All right. Is that a routine occurrence that a  
9 special -- that an Investigator at ABC would fulfill the  
10 role of a Licensing Representative when a Licensing  
11 Representative is out on vacation or sick leave?

12 A. I hate to keep going back to this, but it's -- it  
13 depends on the district office, the number of employees  
14 that they have there, the casework, what's coming in. We  
15 hope not to, but there have been many times in smaller  
16 offices Investigators do the interviews and they fill in  
17 for the Licensing Reps when they're on vacation.

18 Q. How often have you filled in for a Licensing Rep  
19 absent from work in the last two years?

20 A. I'm on a task force, so I'm not even in a  
21 district office.

22 Q. All right.

23 A. I have a desk there, but I'm not assigned to it.

24 Q. Okay. Do Licensing Representatives pass -- or  
25 must they pass a pre-employment psychological evaluation?

1 A. Not that I'm aware of.

2 Q. Are they required to pass a pre-employment peace  
3 officer medical examination?

4 A. No. Not that I'm aware of, sir.

5 Q. In your role as a Union official, are you aware  
6 whether Licensing Representatives have coverage by the  
7 Peace Officers Procedural Bill of Rights?

8 A. No.

9 Q. You're not aware?

10 A. No, I don't believe they do.

11 Q. All right. Are Licensing Representatives  
12 required to pass the POST basic course before employment?

13 A. No, sir.

14 Q. Or the POST basic investigator course?

15 A. No, sir.

16 Q. All right. Are seniority lists for Licensing  
17 Representatives different than the seniority lists for  
18 Investigators?

19 A. When you say different, they're two different  
20 lists, yes.

21 Q. All right. So --

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

23 BY MR. ROSE:

24 Q. And there are different promotions processes for  
25 Licensing Representatives as compared to Investigators?

1 A. Yes, sir.

2 MR. ROSE: All right. Thank you very much.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong.

4 THE WITNESS: Thank you.

5 MS. TRUONG: No questions for us.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

7 MR. MESSING: Yes, I have a couple of questions. But  
8 first, if we could go off the record? I'd like to look  
9 at some -- an exhibit.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

11 MR. MESSING: We haven't brought all of the exhibits  
12 with us, so --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Off  
14 the record.

15 MR. MESSING: -- if we could look at the ALJ's?

16 (Off the record.)

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
18 We're back on the record. And Mr. Messing.

19 MR. MESSING: Yeah. Just a few questions.

20 REDIRECT EXAMINATION

21 BY MR. MESSING:

22 Q. Do you know approximately when the classification  
23 of Licensing Representatives was created?

24 A. I have to think on that one. It's been  
25 approximately 10 years, I want to say, but I'm not sure.

1 Q. Okay. And do you know what the purpose of  
2 creating the new classification was?

3 A. The purpose was to bifurcate our agency so we  
4 could work both Licensing and then have an Enforcement  
5 Section.

6 Q. Okay. Do you know if Licensing Representatives  
7 do work that was previously performed by ABC  
8 Investigators?

9 A. Yes, they did.

10 MR. ROSE: Objection. Leading.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

12 BY MR. MESSING:

13 Q. Can you characterize what kind of duties the  
14 Licensing Representatives were supposed to take on at the  
15 time of the creation of the class?

16 A. What they were going to be doing is doing all the  
17 licensing that the Investigators used to do, and they  
18 would do complete from a new license to a transfer  
19 license, everything in between.

20 Q. By the way, do Licensing Representatives ever  
21 become Investigators?

22 A. Yes, they do.

23 Q. Okay. Do you know -- do you have any idea how  
24 many Licensing Reps have become Investigators?

25 A. Not off the top of my head I don't.

1 Q. Okay. One last thing, area. Did CASI always  
2 represent sworn and non-sworn employees?

3 A. Since the development of the Licensing Rep we  
4 have always represented them.

5 Q. Okay. Before the Licensing Rep did you represent  
6 non-sworn?

7 A. No. We only had Investigators.

8 Q. Okay. And did the Investigators in CASI take a  
9 vote to include -- or what action did -- was taken by the  
10 Investigators in CASI that resulted in the inclusion of  
11 the non-sworn?

12 A. To the best of my memory, it was a vote and to  
13 include the Licensing Reps.

14 Q. Okay. And the vote was -- okay. I think that's  
15 it. No further questions.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

17 MR. ROSE: Yeah. Well, now that we've got Exhibit L  
18 on the table, I'll ask the witness to look at it.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The witness has  
20 it.

21 RE-CROSS-EXAMINATION

22 BY MR. ROSE:

23 Q. Take a moment -- take a moment, Ms. Bishop, if  
24 you would, please, and just review that document silently  
25 to yourself. And then when you're ready, let me know.

1 A. Okay.

2 Q. I'll ask you some questions.

3 (Pause on the record.)

4 THE WITNESS: All right, sir.

5 BY MR. ROSE:

6 Q. Now, then, we have a three-page document. The  
7 first two pages are a memo dated February 16, 2001?

8 A. Correct.

9 Q. And the third page is an e-mail dated  
10 December 19, 2001?

11 A. Yes.

12 Q. Do you recall having received either or both of  
13 these documents?

14 A. I can't remember. We receive a lot of memos.

15 Q. I mean it's only been eight years ago.

16 A. Oh, yes, it's only -- yes. No. I remember when  
17 it happened.

18 Q. Okay.

19 A. But I don't remember the specific memo that we  
20 received.

21 Q. And when you say "it happened," are you referring  
22 to the bifurcation process --

23 A. Yes.

24 Q. -- that you mentioned earlier?

25 A. Yes.

1 Q. All right. And that's bifurcating the Department  
2 so that some employees are focused mostly on licensing,  
3 or almost exclusively, correct?

4 A. Correct.

5 Q. And some employees are focused almost exclusively  
6 on enforcement?

7 A. Correct.

8 Q. And so when we look at the Licensing  
9 Representatives, those would be in the enforcement -- or  
10 excuse me, the licensing category?

11 A. Yes.

12 Q. And the Investigators would be in the other  
13 category, being enforcement?

14 A. Most of the -- that would be their primary job.  
15 But remember, Investigators may go and become  
16 licensing -- active licensing people, too. They do do  
17 licensing occasionally.

18 MR. ROSE: Okay. Thank you. Nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

20 MS. TRUONG: Nothing.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

22 MR. MESSING: Just one more thing.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MESSING:

25 Q. Do Licensing Representatives participate in

1 hearings?

2 A. Yes, they do.

3 Q. Okay. Are those hearings in the same offices  
4 where you work or in different offices?

5 A. I'm not sure I'm clear. They're held in the area  
6 in which they're -- as example, it would be like the  
7 biggest city next to it. In Rancho Mirage it would be  
8 Riverside.

9 Q. Okay. But I guess what I'm asking is, are those  
10 offices ABC offices, or are they offices -- other State  
11 offices or local offices?

12 A. Where the hearings are at?

13 Q. Yes.

14 A. They're usually in conference rooms where we can  
15 get -- an administrative law judge hears it. But it  
16 depends on the area. Usually we like it in a State  
17 building, if possible.

18 MR. MESSING: Okay. Nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

20 MR. ROSE: Thank you. No, nothing.

21 MS. TRUONG: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Let  
23 me give you an admonishment not to discuss your testimony  
24 with any of the other witnesses. You're free to discuss  
25 your testimony with anyone at these three tables.

1 THE WITNESS: All right.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you  
3 understand the admonishment?

4 THE WITNESS: Yes, sir, I do.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
6 I'm going to be also admitting Exclusive Representative  
7 W.

8 (Exclusive Representative's Exhibit W received  
9 in evidence.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we are off  
11 the record.

12 (Off the record.)

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
14 We're back on the record. And we have another witness  
15 called by the Exclusive Representative. Sir, I'm going  
16 to ask you to raise your right hand.

17 (Witness sworn.)

18 THE WITNESS: I do.

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

21 THE WITNESS: Allan Widmeyer. W-I-D-M-E-Y-E-R.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. A  
23 couple of preliminary questions, Mr. Widmeyer. Have you  
24 received copies of or received copies or the transcripts  
25 of any of the days of these proceedings?

1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
3 additionally, do you know who James Cline is?

4 THE WITNESS: No.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm  
6 going to be marking as Exclusive Representative X what  
7 appears to be the Declaration of this witness.

8 (Exclusive Representative's Exhibit X marked  
9 for identification.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And  
11 specifically, I'm going to ask this witness if you can  
12 review that document and then tell me what it is.

13 THE WITNESS: This is my Declaration.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If  
15 you can you turn to the signature page of that document?  
16 And is that your signature, sir?

17 THE WITNESS: Yes, it is.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
19 it on the date and location set forth on there?

20 THE WITNESS: Yes, I did.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is the  
22 contents of that Declaration true and correct to the best  
23 of your knowledge?

24 THE WITNESS: Yes.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

1 Mr. Messing.

2 TESTIMONY OF  
3 ALLAN WIDMEYER,  
4 Having been duly and regularly sworn, testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. MESSING:

8 Q. Okay. Have you been in Unit 7 positions since  
9 1990?

10 A. Yes, I have.

11 Q. Okay. And how long have you been at -- well,  
12 strike that.

13 CARI, is that an affiliate of CSLEA?

14 A. Yes.

15 Q. Okay. How long have you been active in the CARI  
16 organization? By active I mean more than just a member.  
17 Director or other position, officer.

18 A. I became a Board member approximately in 2001. I  
19 mean I was a Board member actually in 2000, but I became  
20 the treasurer in 2001.

21 Q. Okay. Did you hold any position like Site Rep,  
22 or anything of that sort, before 2000?

23 A. I think it was about that same time.

24 Q. And you're in a non-sworn position?

25 A. Yes.

1 Q. Okay. But your affiliate represents both sworn  
2 and non-sworn?

3 A. Yes.

4 Q. Okay. Okay. Just a couple of -- who are the  
5 sworn members of your affiliate?

6 A. We have three. And I think there are four  
7 allotted positions, but there are three currently peace  
8 officers, two in Southern California and one in Northern  
9 California. They used to have two up north, but I  
10 believe there's three now.

11 Q. What's the classification?

12 A. It's the -- they recently split it. Because if  
13 it hadn't been split about a year ago, they would have --  
14 the entire classification would have received a pay  
15 increase. And the State was able to split the position  
16 of peace officer away from the other non-peace officer  
17 Enforcement Representatives. In that way the peace  
18 officer Enforcement Representatives got the pay raise and  
19 we didn't.

20 Q. Okay.

21 A. Which is --

22 Q. Oh, I'm sorry. Go ahead.

23 A. There's approximately 120 or so Enforcement  
24 Representatives that -- right now there's -- anyway, the  
25 large majority did not get a pay raise, and the three

1 peace officers did.

2 Q. Okay. Now, excuse me. Have you -- would you  
3 have occasion as a -- well, one second.

4 You were also elected to an officer position in  
5 CARI; is that right?

6 A. Yes.

7 Q. Okay. When was that and what was the position?

8 A. About in 2001 I was elected to be the Treasurer.

9 Q. Okay.

10 A. And I've been the Treasurer since then.

11 Q. Okay. And as the -- as a Board member, Site Rep,  
12 Treasurer, were you in a position where you would hear of  
13 complaints about representation by CSLEA?

14 A. Yes.

15 Q. Okay. And can you tell us what sort of  
16 experience you had or feedback that you received  
17 regarding CSLEA representation in terms of its  
18 responsiveness?

19 A. CSLEA's responsiveness has always been very fast.  
20 People always want more money and they're always asking,  
21 you know, why couldn't we get a bigger raise or, you  
22 know, that's the main issue.

23 Q. That's the main source of complaint that you  
24 hear?

25 A. Yes.

1 Q. Okay. Have you, by the way, personally used the  
2 services of CSLEA for representation?

3 A. Yes.

4 Q. Okay. Can you tell me approximately when that  
5 occurred?

6 A. Very recently.

7 Q. Okay. And who -- can you -- without giving us  
8 too much specifics, what kind of a representation was it?

9 A. It was a CSLEA attorney in Southern California  
10 helped to represent me and did a very good job.

11 Q. In what kind of matter: discipline, Internal  
12 Affairs, grievance?

13 A. It was -- it was an adverse action.

14 Q. Okay. And was that before the State Personnel  
15 Board?

16 A. Yes.

17 Q. Okay. All right. And you were satisfied with  
18 your representation?

19 A. Yes, very satisfied.

20 Q. Okay. Now, have you heard -- you talk about the  
21 peace officers that were created in the Enforcement Rep  
22 classification. Have any of those peace officers  
23 complained to you about their representation?

24 A. No, they have not.

25 MR. MESSING: Okay. I have nothing further at this

1 time.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir?

3 MR. ROSE: Yes.

4 CROSS-EXAMINATION

5 BY MR. ROSE:

6 Q. Good afternoon, Mr. Widmeyer.

7 A. Good afternoon.

8 Q. My name's Joe Rose. I'm the attorney for Peace  
9 Officers of California. Thank you for your patience.  
10 The incident you described, or the -- not the incident,  
11 but the occurrence where the three peace officers  
12 received reclassification --

13 A. Yes.

14 Q. -- and then they also received a pay raise that  
15 was not also given to the non-sworn --

16 A. Yes.

17 Q. -- version of the -- of that classification, that  
18 was the Enforcement Representative I and II, correct?

19 A. No. It was a split where they made a separate  
20 peace officer -- Enforcement Representative peace  
21 officer, whereas before they were all just Enforcement  
22 Representatives.

23 Q. Could you --

24 A. And they split it into Enforcement Representative  
25 non-sworn and Enforcement Representative sworn.

1 Q. Okay. If you could look at your Declaration?  
2 Turn to Exhibit A and the first page. Tell me when  
3 you're there.

4 A. Yes.

5 Q. This is the Enforcement Representative Class  
6 Spec, right?

7 A. Yes.

8 Q. Is this reflective of what you're describing?

9 A. Yes, it is.

10 Q. Which of the class codes do you see that, if you  
11 know, and I'm not trying to put you on the spot, but  
12 which of those are the peace officer versions?

13 A. Would be the first -- I believe it's 8793 and  
14 8795.

15 Q. Are there any -- you mentioned there are four  
16 allocated positions and three filled positions in those  
17 classifications, right?

18 A. That's my understanding, yes.

19 Q. Do you know whether any of the positions  
20 allocated or filled are in class code 8793, Enforcement  
21 Rep I?

22 A. I'm sorry, I don't really know which codes  
23 they're in.

24 Q. All right. You mentioned that you hadn't  
25 received any complaints from the peace officers -- the

1 Enforcement Reps who are peace officers.

2 A. Yes.

3 Q. Do you have contact with them?

4 A. Yes, I do.

5 Q. When is the last time you spoke to one of them?

6 A. I spoke to the one in Northern California about a  
7 week and a half ago or so. And then about the same time  
8 I spoke to one in -- actually, just this week I spoke to  
9 one of the two in Southern California. And then about  
10 two weeks before that I spoke to the other peace officer  
11 in Southern California.

12 Q. Did you discuss with them the concept of a peace  
13 officer only bargaining unit?

14 A. I discussed it with the one in Northern  
15 California.

16 Q. Was the -- and who was that?

17 A. Carl Vega.

18 Q. Carl Fagin?

19 A. Vega.

20 Q. Vega.

21 A. V-E-G-A.

22 Q. Is Mr. Vega supportive of the concept of a peace  
23 officer only bargaining unit?

24 A. I don't think so.

25 Q. All right. The situation where this

1 reclassification occurred, how recent was that in time?

2 A. Which conversation?

3 Q. Reclassification. The reclassification of the  
4 Enforcement Reps to create four allocated peace officers,  
5 when did that happen?

6 A. It might say in this document.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What's the --  
8 what's the question again, Mr. Rose?

9 BY MR. ROSE:

10 Q. When did they make -- when did they make some of  
11 those jobs peace offices?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, very good.

13 THE WITNESS: It looks like title changed -- most  
14 recently title changed looks like 11-30-07.

15 BY MR. ROSE:

16 Q. Okay. And we're looking at --

17 A. Possibly, yeah. That's --

18 Q. We're looking at this last page of that Class  
19 Spec, correct?

20 A. I believe it's the third to last page of the --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Third to last  
22 page of the exhibit.

23 THE WITNESS: Of the exhibit.

24 BY MR. ROSE:

25 Q. There's an -- there's an attachment behind that

1 that says Proof of Service, right?

2 A. Yes. It's the page prior to the Proof of  
3 Service.

4 Q. Okay. Very good. Now, what happened when the --  
5 did you receive any feedback from the non-sworn members  
6 of your affiliate about the fact that these three  
7 employees had received pay raises?

8 A. Yes. Everybody was looking forward to getting a  
9 pay raise, but it didn't materialize.

10 Q. Was it -- was there anything they said? Were  
11 they unhappy about the fact that they didn't get the pay  
12 raise that they were looking for?

13 A. Yes.

14 Q. Did it create tension, the fact that there were  
15 some classifications -- peace officers who had received a  
16 pay raise and the other classifications did not?

17 MR. MESSING: I'm going to object. Vague and  
18 ambiguous. No foundation. Tension as to who?  
19 Individuals with --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Actually, as to  
21 attention at least, were you able to tell whether there's  
22 some tension, or probably disgruntledness is probably the  
23 best word, among the non-peace officers that they were  
24 the have nots and the others were the haves?

25 THE WITNESS: I don't think there was tension between

1 the sworn and the non-sworn. There was disappointment at  
2 not getting more money.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

4 BY MR. ROSE:

5 Q. Did you hear from your affiliate members, the  
6 non-sworn Enforcement Reps, that it was unfair that they  
7 didn't get a pay raise, and that the peace officers did?

8 A. No, I didn't hear that.

9 Q. Is it your belief that the pay raise that the  
10 peace officers got should have been applied uniformly  
11 across the board to all Enforcement Representatives?

12 A. It would have been nice, but the agreement was  
13 made and it was executed and it was proper. It was  
14 accomplished -- the State -- I'm sorry. I don't really  
15 understand your question.

16 Q. Okay. I'll ask it a different way. Were you  
17 involved in the collective bargaining process for the --  
18 for the -- for that process, the bifurcation, if you  
19 will, of those class -- the classification into peace  
20 officer or non-peace officer?

21 A. No.

22 Q. Did CSLEA solicit your input in 2007 as to  
23 whether that would be a good idea?

24 A. What specifically would be a good idea?

25 Q. The bifurcation of the classifications from --

1 the classification of Enforcement Representative into  
2 peace officer and non-peace officer versions.

3 A. No.

4 Q. All right. And you were on -- you said you've  
5 been on the affiliate Board for -- since 2000, correct?

6 A. Yes.

7 Q. And you've been the Treasurer since 2001?

8 A. Yes.

9 Q. Were you surprised after this change occurred  
10 having not been -- having not had your input solicited  
11 from CSLEA's leadership?

12 A. I believe at that time it was not within the --  
13 that was at the -- the time you're speaking of is the  
14 time period in which the State took action, the way I'm  
15 interpreting it. The State had a certain time period to  
16 take action. I am not -- when I'm giving you the  
17 answers, I'm not speaking of the bargaining process prior  
18 to that.

19 Q. But the State took action to change someone's  
20 wages, correct?

21 A. Yes.

22 Q. And took action to change the job duties of an  
23 employee -- or a classification of employees represented  
24 by your affiliate, or at least by CSLEA, right?

25 A. Yes.

1 Q. And that's a matter within the scope of  
2 representation for CSLEA, correct?

3 MR. MESSING: Object. Calls for a legal conclusion.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

5 BY MR. ROSE:

6 Q. Well, you are -- you've been an officer of your  
7 affiliate, a labor organization, for nine years, correct?

8 MR. MESSING: Object. That mischaracterizes the  
9 testimony. It's vague and ambiguous.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, he's a  
11 member of the Board I think he said since 2000.

12 MR. ROSE: Yes.

13 THE WITNESS: 2001.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, all right.

15 THE WITNESS: Is when I became a member of the Board.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I thought you  
17 said 2000.

18 THE WITNESS: It was 2000, but I wasn't the Treasurer  
19 since 2000.

20 BY MR. ROSE:

21 Q. Is a Board member considered an officer of the  
22 affiliate organization?

23 A. Yes.

24 Q. Okay. So you've been an officer of the affiliate  
25 organization for nearly nine years, correct?

1 A. Yes.

2 Q. And during that time you've received training on  
3 labor relations from CSLEA?

4 A. Yes.

5 Q. How many training sessions have you attended?

6 A. I'd say about nine or ten.

7 Q. have you studied on your own anything relating to  
8 labor relations to help fulfill your duties as an offer  
9 of the affiliate?

10 A. Mostly the contract and provisions affecting how  
11 a person could defend themselves in various actions that  
12 might be taken against them.

13 Q. So you're familiar that the State Employer has an  
14 obligation to meet and confer about changes to wages,  
15 hours, terms and conditions of employment under the Dills  
16 Act, correct?

17 A. I've not studied that, no. But yes, I'm aware of  
18 that.

19 Q. You are aware of it. So when -- getting back to  
20 my earlier question, when you learned that there had been  
21 a change in both job duties and salary of a  
22 classification of employees within your affiliate and you  
23 hadn't been contacted by CSLEA about that in advance,  
24 were you surprised?

25 A. Would you please clarify what you mean that I was

1 surprised about? What are --

2 Q. Okay. You mentioned that you were not -- let me  
3 break this down into a few parts. You mentioned you  
4 hadn't been contacted in advance about the change,  
5 correct?

6 A. That's correct.

7 Q. And I believe you mentioned that your non-sworn  
8 employees that you represent had wished they had also  
9 received a pay raise, correct?

10 A. Yes.

11 Q. And it wasn't until, correct me if I'm wrong,  
12 after the change was implemented that you learned about  
13 it, true?

14 A. It was about that same time.

15 Q. After the agreement had already been reached?

16 A. I don't know if it was after or right before, but  
17 I believe you're probably correct. It was probably  
18 after.

19 Q. And did you --

20 A. But I'm not sure.

21 Q. Okay. And did you object to the change at the  
22 time that you learned of it?

23 A. I was unhappy about it. But no, I -- it was  
24 beyond my control. It was not a point in time where I  
25 could -- it was already in process. It wasn't -- I

1 wasn't part of the bargaining team that reached the  
2 bargaining agreement with the State, and I -- as not --  
3 as I was not part of the bargaining team, once the  
4 agreement's been made, I don't think I have a way to  
5 affect it after it's been agreed to.

6 Q. Is that why you didn't object? I'll withdraw the  
7 question.

8 Did you -- did you voice concern at any time to CSLEA  
9 about that change? And we're talking about the same  
10 change we've been talking about, the bifurcation of  
11 Enforcement Rep into peace officers and non-peace  
12 officers.

13 A. I let them know that there -- the Enforcement  
14 Representatives which did not get that step increase were  
15 unhappy.

16 Q. And who did you let know?

17 A. People within the CARI Board.

18 Q. Within the CARI Board?

19 A. Correct.

20 Q. Do you know whether there was any further action  
21 taken by anyone on the CARI Board to communicate that  
22 unhappiness to CSLEA's leadership?

23 A. Yes, I believe so.

24 Q. Who communicated it, if you know, to CSLEA's  
25 leadership?

1 A. Bruce Hotchkiss.

2 Q. And who did Bruce speak to?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you know.

4 THE WITNESS: I really don't know.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

6 BY MR. ROSE:

7 Q. How do you know Bruce Hotchkiss communicated  
8 that?

9 A. I don't know for sure if he did. I believe he  
10 did, but I don't know.

11 Q. Okay. Now, the peace officer Enforcement  
12 Representatives, where are they, the three of those  
13 individuals, assigned to work?

14 A. One is assigned to work out of Northern  
15 California Regional Headquarters, and the other two out  
16 of the Southern California Regional Headquarters.

17 Q. If one of those peace officer employees didn't  
18 come to work one day for whatever reason, would you be  
19 able to fill in in that employee's shoes for the day?

20 A. It's not that type of a job. We have -- we have  
21 assigned caseload, and it's not like I would for one day  
22 go try to make myself familiar with all the cases  
23 assigned to that Investigator to fill in for him.  
24 It's -- when you go on vacation, they don't reassign your  
25 cases. You keep your same cases. But if I had to, I

1 could fulfill the non-peace officer functions and  
2 basically, yes, I could perform whatever it is they  
3 perform. However, I would not be able to make arrests,  
4 and I couldn't serve search warrants.

5 Q. When the employees -- when the Enforcement  
6 Representative classification was split into a peace  
7 officer version and non-peace officer version in November  
8 2007, were the existing -- were there existing employees  
9 who were then moved into those positions?

10 A. Yes.

11 Q. And did those employees have to undergo  
12 additional requirements in order to meet the standards  
13 for peace officer?

14 A. No. They were already peace officers.

15 Q. Oh, I see. They were already peace officers in  
16 other State agencies?

17 A. No. Within our agency they were already peace  
18 officers.

19 Q. Okay.

20 A. We had sworn and non-sworn Enforcement  
21 Representatives. They were simply -- the classification  
22 was the same for both. Then they separated the peace  
23 officers from the non-peace officers.

24 Q. I see. So then the classification actually --  
25 the change was actually a catch-up for what was already

1 actually happening. Is that a fair statement?

2 A. No. No. It wasn't a catch-up. We both do the  
3 same job. However, the agency has been allotted a  
4 certain number of peace officer positions. The functions  
5 and duties are the same with the exceptions I've  
6 mentioned. And the way it was set up in the contract was  
7 that this classification got the pay raise. And the  
8 State was able to reclassify the people to move them out  
9 of the class which got the pay raise.

10 Q. Do those peace officer Enforcement  
11 Representatives carry a firearm?

12 A. I have not seen them carrying a firearm.

13 Q. Do they wear a badge?

14 A. No, not that I've seen. They usually -- when  
15 I -- when I see them they're not -- they're usually in  
16 the office.

17 Q. Okay.

18 A. I don't usually see them at the stings. But at  
19 the stings they probably -- they -- some of them wear  
20 coats to identify themselves.

21 Q. Do the coats say police on them?

22 A. It would usually say SWIFT, the name of the unit.  
23 And I believe that it's possible some may or may not.  
24 Honestly, not having been there, I don't know. I've seen  
25 photos and I've seen, you know, the SWIFT logo and I've

1 seen people with other vests from other agencies in the  
2 photos. Because we do conduct joint operations.

3 Q. Do the -- do they drive -- do you know what code  
4 three lights are? Are you familiar with that term?

5 A. I'm not familiar with that term, no.

6 Q. Do you know whether the peace officers at the --  
7 Enforcement Representatives drive vehicles equipped with  
8 lights and sirens?

9 A. I don't think they do.

10 Q. All right.

11 A. In Northern California there may be, but I don't  
12 know. In Southern California I don't believe they do.

13 Q. Prior to the November 2007 change in the class  
14 spec, how long had peace officers existed in the  
15 Department, if you know?

16 A. They've existed since I started with the agency  
17 back in, you know, 18 and a half years ago. They've been  
18 there all along. When they first became peace officers,  
19 or if they were always peace officers, I'm sorry, but I  
20 don't know.

21 Q. Okay. Fair enough. The duties of those peace  
22 officer Enforcement Representatives, how do they differ,  
23 if at all, from the job duties of a non-peace officer  
24 Enforcement Representative?

25 A. They don't.

1 Q. The only difference is that they can make arrests  
2 and serve search warrants. They actually perform the  
3 same tasks. However, because they can make arrests and  
4 when we conduct the sting operations we need somebody  
5 that can make arrests, they are basically assigned to the  
6 SWIFT Unit, which is the unit which conducts stings and  
7 would be in the position to need to make arrests.

8 Q. Is it fair to say because of the peace officers'  
9 powers of arrest it would be extremely difficult for the  
10 SWIFT Unit to function effectively without a peace  
11 officer?

12 A. They do function at times without a peace officer  
13 in which they enlist the services of a local police or  
14 sheriff. Because we do on occasion have to take somebody  
15 into custody.

16 MR. ROSE: All right. Nothing further. Thank you.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

18 MS. TRUONG: I just have a couple quick questions.

19 CROSS-EXAMINATION

20 BY MS. TRUONG:

21 Q. You stated that in the past year the peace  
22 officers -- Enforcement Representative peace officers got  
23 a pay raise which the non-sworn peace -- non-sworn  
24 Enforcement Representatives did not receive; is that  
25 correct?

1 A. That's correct.

2 Q. Did you receive a pay raise prior to last year in  
3 2007?

4 A. We did receive a pay raise prior to that, yes.

5 Q. Did you receive a pay raise in 2006?

6 A. I believe so, yes.

7 Q. Do you know the cumulative amount of those pay  
8 raises?

9 A. Not offhand. But it was more than the pay raise  
10 that we missed. The cumulative amount was more than the  
11 two and a half percent which we missed.

12 MS. TRUONG: Okay. No further questions.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

14 MR. MESSING: No questions.

15 MR. ROSE: Just a couple more.

16 FURTHER CROSS-EXAMINATION

17 BY MR. ROSE:

18 Q. The pay raises in 2007 and 2006 applied across  
19 the board to both sworn and non-sworn versions of  
20 Enforcement Representatives?

21 A. Yes.

22 MR. ROSE: Okay. Thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 Nothing from Mr. Messing. And sir, I need to admonish  
25 you not to discuss your testimony with any of the

1 witnesses. You're free to discuss your testimony with  
2 anyone at these three tables. Do you understand the  
3 admonishment?

4 THE WITNESS: Yes, I do.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you  
6 very much. With that, Exclusive Rep X is admitted.

7 (Exclusive Representative's Exhibit X received  
8 in evidence.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

10 (Off the record.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

12 We're back on the record. We have another witness called  
13 by the Exclusive Representative. I'm going to ask this  
14 witness to raise your right hand.

15 (Witness sworn.)

16 THE WITNESS: I do.

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

19 THE WITNESS: John Knight. K-N-I-G-H-T.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21 Mr. Knight, have you reviewed any transcripts of these  
22 proceedings?

23 THE WITNESS: Just what was on the internet. I  
24 mean --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So we're talking

1 about on a -- on a website?

2 THE WITNESS: Yeah. Yeah.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. But are  
4 we talking about a transcript like this?

5 THE WITNESS: No, not at all.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or are we  
7 talking --

8 THE WITNESS: No. Just it was like just a short  
9 little announcement that was posted on our Union website.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: CSLEA's?

11 THE WITNESS: Yes.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And then,  
13 secondly, do you know James Cline?

14 THE WITNESS: No.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Next  
16 I'm marking as Exclusive Representative Y what appears to  
17 be a Declaration of John Knight.

18 (Exclusive Representative's Exhibit Y marked for  
19 identification.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm going to  
21 pass Y to you and, sir, have you take a look at that and  
22 see if you can identify what that is.

23 THE WITNESS: Yes. This is what I wrote.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
25 turn -- why don't you turn to that signature page there.

1 One page left. Opposite way. There you go. Is that  
2 your signature, sir?

3 THE WITNESS: Yes, it is.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you sign it  
5 on or about the date and location set forth therein?

6 THE WITNESS: I did.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
8 is the contents of that Declaration true and correct to  
9 the best of your knowledge?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

12 TESTIMONY OF

13 JOHN KNIGHT,

14 Having been duly and regularly sworn, testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. MESSING:

18 Q. Is there any part of your Declaration that you  
19 would like to change?

20 A. No.

21 Q. Okay. Now, you've been employed as a Lifeguard,  
22 a seasonal Lifeguard, with the State of California since  
23 1982?

24 A. That's correct.

25 Q. Okay. And you indicate in your Declaration that

1 you've been an active member of CSLEA since 1999.

2 A. Correct.

3 Q. Okay. Which used to be called CAUSE.

4 A. CAUSE.

5 Q. Okay. Now, it says here that you were  
6 participating in the negotiation process in 2002 through  
7 the last contract; is that right?

8 A. Yes.

9 Q. Okay. What was your participation? In what way  
10 did you participate?

11 A. I would develop ideas for contract changes,  
12 present them to the CSLEA, and then make demonstration --  
13 or presentations to -- at the negotiations table.

14 Q. Okay. Now, from 1999 through 2002 did you have  
15 any other activities on behalf of CSLEA? For example,  
16 were you a Site Rep or anything like that?

17 A. Yeah, I've been a Site Rep.

18 Q. How long have you been a Site Rep?

19 A. I'm not exactly sure, but probably around 10  
20 years or 8 years. I'm not exactly sure.

21 Q. Okay. So it says here that you work on a day --  
22 you have a lot of paragraphs dealing with your daily work  
23 with State Park peace officers. But what I want to know  
24 is do the -- are you somebody who Lifeguards, seasonal or  
25 permanent Lifeguards, State Park peace officers, whether

1 they would be likely to bring complaints to you if they  
2 had problems with CSLEA?

3 A. Oh, yeah, certainly.

4 Q. Okay. Now, in the area of what I would call  
5 individual representation, meaning Internal Affairs  
6 investigations, grievances, disciplinary matters, have  
7 you had feedback from either Lifeguards, either seasonals  
8 or permanent Lifeguards, as to the responsiveness of  
9 CSLEA to their issues?

10 A. Yeah. People are generally happy with the way  
11 that CSLEA has represented them.

12 Q. Okay. Have you heard of any -- has anybody  
13 brought to you any specific complaint about a particular  
14 case that they feel was mishandled?

15 A. No.

16 Q. And that includes both peace officers and the  
17 non-peace officers?

18 A. That's correct.

19 Q. Okay. Now, given your role in bargaining, were  
20 you likely to receive -- are you someone who was likely  
21 to receive input from your members, both seasonals and  
22 permanents, regarding the bargaining process?

23 A. Yes. Yeah.

24 Q. Okay. So let's focus on 2002 through the present  
25 when you were involved in the bargaining process. Can

1 you characterize how people felt about the adequacy of  
2 the representation by CSLEA?

3 A. Well, I think it -- one of the big jobs is just  
4 to educate the members as far as the difficulties  
5 involved in negotiating a contract. And so once they can  
6 understand the process, they can understand a little bit  
7 better as far as what steps it takes to try to attempt to  
8 change the contract. So it's kind of a continuing  
9 process, an educational process that you have to go  
10 through.

11 Q. Okay. Now, were you aware of any issues that  
12 were raised regarding getting health benefits for  
13 permanent intermittent Lifeguards?

14 A. Yeah. I was involved in that.

15 Q. Okay. Did the peace officers have any complaints  
16 about the actions of CSLEA with respect to that benefit?

17 A. Some did.

18 Q. Okay. Okay. What about general pay increases?  
19 Have you heard any specific complaints about that?

20 A. Never enough. I mean that's the complaint.

21 MR. MESSING: All right. I have nothing further. I  
22 pass the witness to Joe Rose.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir.

24 MR. ROSE: Thank you.

25 /////

1 CROSS-EXAMINATION

2 BY MR. ROSE:

3 Q. Good afternoon, Mr. Knight. My name is Joe Rose.  
4 I'm the attorney for Peace Officers of California. And  
5 I'm going to ask you about what you just testified to  
6 concerning the complaints you've heard from employees in  
7 Bargaining Unit 7.

8 But first let me ask, are you a member of an  
9 affiliate organization?

10 A. Yes.

11 Q. Perhaps I missed that. What affiliate  
12 organization are you a member of?

13 A. Of CALEE, I think.

14 Q. CA?

15 A. CALEE. I believe that's what it is.

16 Q. And could you -- could you extrapolate that out?  
17 What does that stand for?

18 A. Yeah.

19 Q. California Association of?

20 A. California Association of Law Enforcement, I  
21 believe is what it is.

22 Q. Okay. Is that a -- do all, to your knowledge,  
23 seasonal Lifeguards participate in membership of that  
24 organization?

25 A. Can you repeat the question? I'm sorry. I

1 didn't understand it.

2 Q. Is it typical for seasonal Lifeguards to be  
3 members of that affiliate organization?

4 A. Yeah, definitely.

5 Q. Okay. And is that also the organization in which  
6 the Lifeguard peace officers are a member?

7 A. No. They're in a different affiliate.

8 Q. Okay. Are there any sworn employees in that  
9 affiliate, the one that you belong to?

10 A. Yes.

11 Q. Which are those?

12 A. I don't know.

13 Q. Okay. Now, are the State Parks peace officers in  
14 that affiliate, the one that you're in?

15 A. No.

16 Q. Do you work with any of the sworn employees that  
17 are in the affiliate you're in?

18 A. No.

19 Q. Okay. So earlier when you were asked about  
20 whether you had heard complaints from peace officers,  
21 specific complaints, when your first answer was no, are  
22 you referring to peace officers in the affiliate CALEE?

23 A. No.

24 Q. You're referring to peace officers that you work  
25 with?

1 A. Correct.

2 Q. And do the peace officers that you work with seek  
3 you out as a source of assistance with respect to Union  
4 matters?

5 A. I think they seek me out for a source of  
6 information.

7 Q. Don't they have their own representation?

8 A. Yes.

9 Q. So you're not an official line of communication  
10 for the peace officers you work with, are you?

11 A. No.

12 Q. Okay. But you have heard complaints from peace  
13 officers you work with about the effort you were involved  
14 in to get health benefits for permanent intermittent  
15 Lifeguards, correct?

16 A. Correct.

17 Q. Quite a loud series of complaints from many peace  
18 officers, true?

19 A. I wouldn't characterize it that way. I would say  
20 it was loud from a minority of peace officer Lifeguards.

21 Q. And the complaint was what?

22 A. The complaint was that by giving health benefits  
23 to non-peace officer Lifeguards, it might jeopardize the  
24 peace officers' work. Because the State could then look  
25 at them and replace them with somebody that doesn't have

1 peace officer powers.

2 Q. Was part of that complaint that they felt that  
3 the interests of non-sworn seasonal Lifeguards were not  
4 aligned with the interests of the peace officers that  
5 were complaining?

6 A. No, I don't think that that was -- no.

7 Q. Did you communicate that concern to CSLEA?

8 A. Certainly.

9 Q. Who did you speak to about it?

10 A. Everybody. I've talked to Kasey about it.

11 Ricardo Sanchez.

12 Q. Did you agree with that concern?

13 A. What -- I'm not sure what concern you're --

14 Q. The concern voiced by the peace officers who were  
15 concerned that if health benefits were conferred upon  
16 permanent intermittent Lifeguards that that would  
17 jeopardize the functions of the peace officer Lifeguards.

18 A. No, I don't agree with that.

19 Q. And did you tell the people who complained to you  
20 about it that you didn't agree?

21 A. Yes.

22 Q. And did you take any steps to address their  
23 concerns in connection with your relationship with  
24 CSLEA's leadership?

25 A. Just by communicating their concerns.

1 Q. Were you actually at the bargaining table to  
2 negotiate the provisions of the Memorandum of  
3 Understanding relating to health benefits for permanent  
4 intermittent Lifeguards?

5 A. No.

6 Q. Did you have any influence on the language  
7 contained in the Collective Bargaining Agreement?

8 MR. MESSING: Object. Calls for speculation.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, if  
10 some of his proposals ended up going up the chain and  
11 getting through -- I mean you said you presented ideas?

12 THE WITNESS: You bet, yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know  
14 whether any of those got presented at the table by CSLEA?

15 THE WITNESS: Yes. I presented some.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

17 BY MR. ROSE:

18 Q. You presented some proposals in what manner?  
19 What method did you use to get the proposals before -- at  
20 the barg -- to the bargaining table?

21 A. Sure. Well, you know, you have an idea of a  
22 contract change, and you develop it. You run it by the  
23 Union. And then you make a presentation of why you think  
24 it's a good idea.

25 Q. Did you submit that in writing?

1 A. Yes.

2 Q. Did you include in your written proposal the  
3 converse view that you didn't agree with about from the  
4 peace officers' point of view that you worked on?

5 A. No.

6 Q. And let me ask you -- did we mark Bargaining Unit  
7 MOU as anything?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. I know we  
9 did.

10 MR. ROSE: Maybe a --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did we mark it  
12 as --

13 MR. ROSE: -- judicially or officially noticed  
14 document, perhaps?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know I took  
16 official notice of Units 5, 6 and 7. But --

17 MR. ROSE: And we didn't -- we didn't have a  
18 designation.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
20 second. I do think I might have -- well, I have this  
21 binder right --

22 MR. ROSE: I have one as well, Judge.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
24 second, sir. All right. Digging deep here for seven.  
25 All right. Witness has seven in front of him.

1 BY MR. ROSE:

2 Q. Okay. Sir, do you recognize that as being the  
3 most recent Memorandum of Understanding for your  
4 bargaining unit?

5 A. Yes.

6 Q. Are you familiar with that document?

7 A. Fairly.

8 Q. It's voluminous, so I wouldn't --

9 A. Yes.

10 Q. -- expect you to know it intimately. But please  
11 turn to page 76. Now, then, at the top of the page  
12 there's -- above the section 10.2, Counseling Services,  
13 there are two paragraphs. The first paragraph begins,  
14 "After ratification of the agreement." Do you see that?

15 A. Yes.

16 Q. Is that the language that applies to -- or that  
17 was ultimately incorporated into the MOU flowing from  
18 your proposals?

19 A. Yes.

20 Q. And is that the language of the MOU that the  
21 peace officers you spoke with were in disagreement with?

22 A. The peace officers that -- it wasn't necessarily  
23 the language that they had the problem with. They just  
24 had the problem with the concept. So --

25 Q. Is the concept that they had a problem with

1 contained in the language that we just referred to in the  
2 MOU on page 76?

3 A. I would -- I would gather so, sure.

4 Q. All right. Now, during your -- what are the --  
5 I've been told this before and I've -- it's escaped me.  
6 The season for you as a seasonal Lifeguard runs from what  
7 period to what period?

8 A. I'm limited to 1500 hours. And so what happens  
9 is I will work my 1500 hours, and then they will lay me  
10 off, and somebody else will take my place. So there is  
11 year-round lifeguarding going on. It's just that, due to  
12 my classification, I can only work 1500 hours a year.

13 Q. Do you have a typical range of months that you  
14 work during the year?

15 A. Me personally or the --

16 Q. yes, sir.

17 A. Yeah. I usually work from February for about  
18 eight or nine months, depending on how much -- how many  
19 hours I can cram in that time period.

20 Q. Do you do any work outside of your employment as  
21 a seasonal Lifeguard?

22 A. No.

23 Q. Now, did -- are you a recipient of the provision  
24 or the benefit that's contained at page 76 in the MOU?

25 A. No.

1 Q. Why not?

2 A. Well, it's been through -- it's not for trying,  
3 you know. There's a -- there's been an interview  
4 process, and I haven't been selected.

5 Q. Have not been selected as a permanent  
6 intermittent?

7 A. That's correct.

8 Q. I see. Now, do you have any desire to be a peace  
9 officer Lifeguard?

10 A. None.

11 Q. Have you ever applied for that job?

12 A. I think I did. Yes, I did probably 15 years ago.

13 Q. How many times --

14 A. Twenty years ago.

15 Q. I'm sorry. I didn't mean to interrupt. Go  
16 ahead.

17 A. I'm done. Fifteen years ago or something like  
18 that.

19 Q. Now, did you apply just once, or multiple times?

20 A. Just once.

21 Q. And you were not selected?

22 A. No. I opted out.

23 Q. What is it about the peace officer Lifeguard  
24 position that you find -- well, I don't know if you find  
25 it undesirable, but I'll say undesirable. You can

1 correct me. Since you don't want that job.

2 MR. MESSING: Object. Assumes facts not in evidence.  
3 He applied 15 years ago, and he's asking him why he  
4 doesn't find it desirable now?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree. But I  
6 think it can be straightened out. You also testified  
7 that you're not interested in becoming a Lifeguard peace  
8 officer currently.

9 THE WITNESS: That's true.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Why not?

11 THE WITNESS: I don't like guns.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next question.

13 BY MR. ROSE:

14 Q. And what is it about guns you don't like?

15 A. I think they're dangerous.

16 Q. Do you believe guns are dangerous even in the  
17 hands of peace officers?

18 A. They can be.

19 Q. Do you -- you work alongside of peace officers  
20 who carry guns?

21 A. I do.

22 Q. In your Declaration you state that you back them  
23 up.

24 A. I do.

25 Q. Are you concerned about your safety in the

1 presence of a peace officer armed with a gun?

2 A. Not particularly. I mean there's times when I'm  
3 involved in a situation that can be scary.

4 Q. Do you --

5 A. And it's not necessarily because of the peace  
6 officer's weapon. It's because of the situation that  
7 we're in, like a riot or something.

8 Q. Have you been involved in many riots in your  
9 career as a seasonal Lifeguard?

10 A. Close to riots, you know. We're able to quell  
11 them before they get out of control.

12 Q. And how many close to riots have you been  
13 involved in?

14 A. Two or three.

15 Q. And when you say that those were close to riots,  
16 could you estimate for us in each of the two or three  
17 occasions how many human beings were involved that were  
18 not State employees?

19 A. Twenty, thirty.

20 Q. Now, because you don't like guns, do you avoid  
21 situations where there might be a gun present other than  
22 with an armed -- one of your coworkers being armed with a  
23 gun?

24 A. I don't understand the question.

25 Q. Well, you don't like guns. Does that cause you

1 to avoid, for example, situations where you suspect maybe  
2 a citizen has a gun?

3 A. Absolutely.

4 Q. Have you been trained to deal with citizens with  
5 guns?

6 A. No.

7 Q. have you been trained to deal with citizens with  
8 edged weapons?

9 A. No.

10 Q. Have you been trained to deal with citizens in  
11 fistfights?

12 A. No.

13 Q. Have you received any training in the use of  
14 pepper spray?

15 A. No.

16 Q. In the use of batons?

17 A. No.

18 Q. In the use of handcuffs?

19 A. No.

20 Q. And so if, for example, you are, as you mentioned  
21 in your Declaration, backing up a peace officer and that  
22 peace officer becomes involved in a altercation with a  
23 citizen, what would you do?

24 A. Well, I can -- I have my radio, so I can  
25 certainly make sure that the Dispatcher is -- knows

1 what's going on in that situation. A lot of times just  
2 the presence of somebody else there. Because the public  
3 isn't aware that, you know, I'm not a peace officer. And  
4 I have my vehicle, so I can get on the PA and be very  
5 loud and hopefully distract them. But you're right,  
6 there's not a whole lot I can do.

7 Q. And you wear as a -- at work you wear shorts,  
8 correct?

9 A. That's part of my uniform, yeah. I mean I have  
10 long pants, too.

11 Q. Most of the time, though, I think I heard you  
12 before we went on the record, you want to get out of your  
13 shoes, so you're --

14 A. I do.

15 Q. -- you're typically wearing flip-flops or you're  
16 barefoot?

17 A. Typically.

18 Q. And -- lucky you. And you're also wearing a tee  
19 shirt?

20 A. No. A collared shirt.

21 Q. Okay. And that collared shirt, does it have a  
22 badge on it?

23 A. No. It has the State Parks logo on it.

24 Q. I see. Now, the Lifeguard peace officers  
25 typically wear long pants, right? Unless they're

1 performing an aquatics function.

2 A. They have short pants that they wear also.

3 Q. But they also wear -- their uniform is distinctly  
4 different from yours, true?

5 A. True.

6 Q. It looks much more like a patrol police officer?

7 A. But they don't -- they're not wearing their  
8 uniform all the time. I mean many times they'll go down  
9 to their reds is what they call it, which is the exact  
10 same uniform that I have.

11 Q. Now, in your Declaration you gave us a couple of  
12 helpful examples. On page three at paragraph eleven  
13 where you said -- and I'm looking -- go ahead and let me  
14 know when you're there so that I can have you --

15 A. I'm there.

16 Q. I'm looking at page three, paragraph eleven,  
17 beginning at line seven.

18 A. Uh-hmm.

19 Q. You write, "For example, just a few days prior to  
20 writing this Declaration I alerted a peace officer of a  
21 car break-in, allowed her to use my portable radio to  
22 communicate with our common dispatch," and so on. Do you  
23 see that?

24 A. Yes.

25 Q. In that instance, was the peace officer that you

1 worked with wearing a different uniform than you were?

2 A. Yes.

3 Q. And the radio that you allowed her to use was  
4 your aquatics radio?

5 A. They're the same radio. It's identical radio to  
6 hers. It's just that hers died. The battery died.

7 Q. Oh, I see. So I was under the impression that  
8 there were two systems of radios, one for aquatics  
9 functions and also peace officer radio. Am I correct in  
10 that thinking?

11 A. Yes, you are correct. But that's only during the  
12 summer months. So the only time that we will be on an  
13 aquatics frequency is when we have an aquatics  
14 dispatcher. And that occurs, you know, June, July,  
15 August.

16 Q. Do you have an aquatics dispatcher -- strike  
17 that. Do you have peace officer -- do you have the  
18 capability of speaking to other law enforcement agencies  
19 on your radio?

20 A. Yes.

21 Q. And do you do that often?

22 A. On occasion.

23 Q. Which agencies have you spoken to?

24 A. You know what? I don't -- well, I'll speak to  
25 other lifeguarding agencies certainly. City of San

1 Diego, City of Solana Beach, City of Encinitas, City of  
2 Oceanside.

3 Q. You speak to the lifeguards in those agencies?

4 A. Yes.

5 Q. Do you -- have you --

6 A. And fire.

7 Q. Fire department?

8 A. Yeah.

9 Q. Have you had occasion to speak to deputy sheriffs  
10 on your radio?

11 A. No.

12 Q. City police officers?

13 A. No.

14 Q. Federal agents?

15 A. No.

16 Q. Have you had occasion to speak to Highway Patrol  
17 officers?

18 A. No.

19 Q. Based on your experience in working with peace  
20 officer Lifeguards, would you say that they have had  
21 experiences speaking to those law enforcement agencies I  
22 just listed on their radios?

23 A. Not that I can recall. I don't ever recall them  
24 speaking -- using their radios to speak to other police  
25 agencies. I'm sure it's happened, but I don't really

1 recall it.

2 Q. What's your -- which beach are you assigned to?

3 A. I work in San Diego, so there's three or four  
4 beaches there that I work at.

5 Q. Do you work in any State beaches that are  
6 either -- that are adjoined by a city?

7 A. Yes.

8 Q. Which cities?

9 A. City of San Diego and City of Del Mar, City of  
10 Solana Beach, City of Encinitas, City of Oceanside.

11 Q. Now, do any of the police departments from those  
12 cities provide backup assistance to the peace officer  
13 Lifeguards that work at the beaches you work at?

14 A. Yes.

15 Q. That happens quite often, correct?

16 A. Yes.

17 Q. And similarly, the peace officer Lifeguards  
18 provide backup to those agencies on occasion as well,  
19 don't they?

20 A. I would imagine so. I'm trying to think. You  
21 know, because normally what happens is that something  
22 will happen inside the park and the sheriffs or another  
23 outside agency will come in to assist. And it's not that  
24 the State Park peace officer is going to go outside of  
25 the park and assist.

1 Q. Okay. Now, have you ever provided backup -- you  
2 mentioned you provided backup to Lifeguard peace  
3 officers. Have you provided backup to any of the city  
4 police officers?

5 A. No.

6 Q. Is it expected of you to provide backup to peace  
7 officer Lifeguards as part of your job duties?

8 A. I think that that's a gray area. I don't know.  
9 We do it because they're our friends.

10 Q. Now, you mention on page four of your Declaration  
11 that you know Brian Haskins, Ken Harvey and Leonard Ortiz  
12 as being peace officers who changed and became non-sworn  
13 Lifeguards, yes?

14 A. That's correct.

15 Q. Are those retired annuitants?

16 A. One of them is.

17 Q. Which one?

18 A. Leonard Ortiz.

19 Q. So Mr. Ortiz became a seasonal Lifeguard because  
20 he retired?

21 A. That's correct.

22 Q. And wanted to continue the aquatics function?

23 A. That's correct.

24 Q. Do you know the circumstances under which  
25 Mr. Haskins became a Lifeguard generally, if you know? A

1 non-sworn Lifeguard?

2 A. No, I don't. No, I don't know.

3 Q. Would you -- is that -- is that considered to be  
4 a lateral transfer to go from peace officer Lifeguard to  
5 non-sworn Lifeguard?

6 A. No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He's a retired  
8 annuitant. I mean it's not a lateral anywhere.

9 MR. ROSE: No. Ortiz is a retired annuitant.  
10 Haskins is not.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ah, thank you.

12 BY MR. ROSE:

13 Q. Right?

14 A. Correct.

15 Q. That's a demotion, isn't it?

16 A. I wouldn't characterize it that way.

17 Q. It's less pay?

18 A. Yes.

19 Q. Was Mr. Haskins a Lifeguard peace officer, or  
20 peace officer somewhere else?

21 A. He was a permanent intermittent Lifeguard.

22 Q. And so when he became a non-sworn Lifeguard, did  
23 he remain a permanent intermittent?

24 A. No.

25 Q. He went to seasonal status?

1 A. Yes. Yes.

2 Q. Did he get another job as well?

3 A. He had another job before.

4 Q. What was that job?

5 A. He's a M.D.

6 Q. He's a medical doctor?

7 A. Yes.

8 Q. So is it fair to say that Mr. Haskins' medical  
9 practice was interfering with his ability to work as a  
10 permanent intermittent Lifeguard and that's why he became  
11 a seasonal Lifeguard?

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

14 THE WITNESS: I don't know.

15 BY MR. ROSE:

16 Q. Did Mr. Haskins tell you why he made that choice?

17 A. No.

18 Q. Mr. Harvey, what were the circumstances under  
19 which he became a non-sworn Lifeguard?

20 A. He was able to get one of the permanent  
21 intermittent non-peace officer positions.

22 Q. And previously he was a seasonal?

23 A. Previously he was a -- I believe he was a  
24 permanent intermittent peace officer Lifeguard.

25 Q. Did he explain why he made that change?

1 A. No.

2 Q. How do you know that happened? Do you work with  
3 him?

4 A. Yeah.

5 Q. Well, not closely. He's up in Ventura. But I've  
6 chatted with him.

7 Q. Okay. You mention in paragraph 15 on page 4 that  
8 you testified in court on a lewd conduct charge, correct?

9 A. Correct.

10 Q. Is that the only time you've ever testified in  
11 court as a seasonal Lifeguard for the State of  
12 California?

13 A. Yes.

14 Q. And you said that also the arresting office [sic]  
15 of State Park peace officer, and you met with the  
16 prosecutor, correct?

17 A. That's correct.

18 Q. What was the substance of your testimony that day  
19 without -- I don't need facts, but what were you there to  
20 testify about?

21 A. What I witnessed.

22 Q. Did you write a report in that case?

23 A. Yes, I did.

24 Q. How long was your report?

25 A. I don't recall.

1 Q. Did you put your hands on the suspect that was  
2 arrested for lewd conduct?

3 A. No.

4 Q. Do you enforce any laws in your job as a seasonal  
5 Lifeguard?

6 A. I advise. I don't enforce.

7 Q. All right. What laws do you advise about?

8 A. Any, you know, State Park rule and regulation. I  
9 mean --

10 Q. And if you -- if you come up -- excuse me. Let  
11 me rephrase.

12 Do you ever report to peace officers situations where  
13 your advisement of a break -- a violation of law has not  
14 resulted in compliance?

15 A. Yes.

16 Q. And then they do the law enforcement, correct?

17 A. Correct.

18 Q. Now, you mention in paragraph 12 of your  
19 Declaration at page 3 that there are similar training  
20 obligations for both sworn and non-sworn. Do you see  
21 that?

22 A. Yes.

23 Q. Those similar training obligations have to do  
24 with your aquatics function, correct?

25 A. And first aid.

1 Q. But they do not have to do with the law  
2 enforcement function, correct?

3 A. Correct.

4 Q. Because the law enforcement training obligations  
5 for peace officer Lifeguards are different than or much  
6 different than seasonal Lifeguards, right?

7 A. I wouldn't know.

8 MR. ROSE: All right. Nothing further. Thank you.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

10 MS. TRUONG: Nothing from us.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

12 MR. MESSING: Yes, just one thing.

13 REDIRECT EXAMINATION

14 BY MR. MESSING:

15 Q. You say on page three, line twenty, you taught  
16 several classes to the sworn with non-sworn in  
17 attendance. What kind of classes were those?

18 A. Emergency medical responder classes, so first  
19 aid.

20 MR. MESSING: Very good. Nothing further.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

22 MR. ROSE: No, thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

24 MS. TRUONG: Nothing.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very

1 much, sir. And let me give you a quick admonishment not  
2 to discuss your testimony with any other witnesses.  
3 You're free to discuss your testimony with anyone at  
4 these three tables here. Do you understand the  
5 admonishment?

6 THE WITNESS: I do.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
8 that Y is admitted.

9 (Exclusive Representative's Exhibit Y received  
10 in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you  
12 very much.

13 THE WITNESS: Okay.

14 (Off the record.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the  
16 record. We have a -- well, I don't know if it's called a  
17 preliminary matter, extraneous matter. And Mr. Messing,  
18 why don't -- why don't you go ahead and just restate it  
19 on the record.

20 MR. MESSING: Yes. We have a witness, Tina Brazil,  
21 who has been out of state and will continue to be out of  
22 state through the next hearing dates, through the end of  
23 March. We would like her to be taken as a witness by  
24 telephone. And we have a date and time that she would be  
25 available to call in if we can have that courtesy.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
2 any objection on behalf of the Employer?

3 MS. TRUONG: No.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On behalf of the  
5 Petitioner?

6 MR. ROSE: I would -- I'm inclined to say okay. I  
7 just would like to understand it more clearly. And you  
8 mentioned a little bit, Gary, but what -- or Mr. Messing,  
9 what was the nature of the testimony again? My main  
10 concern is if there's serious issues of credibility  
11 determinations if she's not present.

12 MR. MESSING: You'll have -- you'll get a Declaration  
13 which outlines her testimony. She's a Radio Dispatcher.

14 MR. CLARK: CHP.

15 MR. MESSING: CHP.

16 MR. ROSE: Okay. In fact, I think we may have  
17 received it today.

18 MR. MESSING: Okay. In which case you know, then,  
19 the --

20 MR. ROSE: Well, I haven't looked at it.

21 MR. MESSING: Okay.

22 MR. ROSE: I just -- I got an e-mail from --

23 MR. MESSING: Well, you can look at it and you'll  
24 know the areas. I don't think we have any credibility  
25 issues with any of our witnesses, but not with this one,

1       anyhow, in particular.

2           ADMINISTRATIVE LAW JUDGE CLOUGHESY:  Is she a --  
3       what's the word for it?  I haven't seen it -- I have seen  
4       the name on a Declaration upstairs.  But is she also like  
5       a -- someone who's on the bargaining team, or anything in  
6       regards to that?

7           MR. MESSING:  No.  She's been President of the  
8       Dispatchers Association, so -- oh, she's now on the  
9       bargaining team.

10          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  Okay.  All  
11       right.

12          MR. MESSING:  But historically she was not, correct?

13          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  Okay.

14          MR. ROSE:  Well, could we -- if the -- if the  
15       Declaration's here, could I read it before we --

16          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  Yeah.  I can --  
17       well, it's upstairs.  I can bring it downstairs to you  
18       and have you take a look at it.  And then you can decide  
19       what you want to do on it.  So --

20          MR. MESSING:  Okay.

21          ADMINISTRATIVE LAW JUDGE CLOUGHESY:  After you read  
22       it, you can give us your input.

23          MR. ROSE:  All right.

24          MR. MESSING:  Okay.  And the time that she's  
25       available, by the way, is on March 24th at 11:00 a.m.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're scheduled  
2 that day?

3 MR. MESSING: Yes, we are.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Yeah. I  
5 would just need to bring a -- you know, there's a recent  
6 PERB decision on telephone testimony. And it wouldn't  
7 necessarily even apply to this case. But City of  
8 Torrance. But it basically leaves up to the ALJ to make  
9 a decision. Usually the APA says to ask the parties  
10 whether they oppose or don't oppose.

11 But the large part of it is that the witness has in  
12 front of her whatever documents that she's going to be  
13 asked about. So, in other words, if there's -- in a  
14 sense, if there's some -- a document that you wanted to  
15 present on cross-examination, we would need to get that  
16 to her so that whatever documents that are being  
17 discussed her that witness has in front of her. And  
18 that's kind of the security -- or the integrity issue  
19 that's involved in that.

20 But so I can get that -- let me deal with this  
21 Pizzotti issue, you know, just real quick.

22 MR. MESSING: Okay.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm just  
24 going to make a tentative ruling on this because I'd like  
25 to see the transcript of Lewis just to make sure. And

1 I'm somewhat going off memory of what he testified to.  
2 Declaration of Coby Pizzotti.

3 MR. MESSING: We don't have a copy of it with us,  
4 so --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh. Do you have  
6 it with you?

7 MR. ROSE: I do.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
9 Well, all right. Well, it's actually fairly easy,  
10 Mr. Messing. And what I'm going to do is just --

11 MR. MESSING: Thank you.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- I'm going to  
13 make a tentative ruling. And then if by the time the  
14 next day of hearing when we all have transcripts, if  
15 either party wants to dispute that in regards to the  
16 issues of whether it's rebuttal testimony or case in  
17 chief testimony, I'm going to pretty make it like this is  
18 that for the Declaration of Coby Pizzotti, paragraphs one  
19 through ten, at least as I see it now, are rebuttal  
20 testimony. Right now it seems like eleven through  
21 fourteen would not be rebuttal testimony.

22 But if we get our transcripts, if you want to dispute  
23 that, I'm happy to review it. But at least for the way  
24 that I look at it right now, my memory of what Lewis  
25 says. So one through ten in. Eleven through fourteen

1 tentatively out.

2 MR. ROSE: One through ten in?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In.

4 MR. ROSE: So, for example, testimony about --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As rebuttal.

6 MR. ROSE: -- "I believe I met Chris Lewis for the  
7 first time" on paragraph five is in?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Well,  
9 it's foundation. I mean I don't see any prejudicial  
10 impact to that testimony. It's leading up to the issues  
11 of what they were talking about as to, you know, this DOI  
12 issue. But seems like after paragraph 11 deals with  
13 issues, I'm going to call it, post Chris Lewis.

14 MR. ROSE: Okay.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So --

16 MR. MESSING: Post what?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Post -- did I  
18 get the name right? Is it Chris Lewis?

19 MR. MESSING: Yeah. Okay.

20 MR. ROSE: Yeah.

21 MR. MESSING: I just didn't hear what you said.

22 MR. ROSE: Right. And I was a little confused  
23 because you said -- I thought you had originally said one  
24 through ten you considered rebuttal. And it's the  
25 opposite.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. No. No.

2 One through ten I consider as admissible --

3 MR. ROSE: Case in chief.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

5 Admissible -- I'm allowing Pizzotti to testify as to  
6 rebuttal testimony versus -- the issue's this. If he's  
7 sitting in the back of the room, and if there's something  
8 that he could have been called on in case in chief, and  
9 it's an issue in regards to that, then Exclusive Rep  
10 should have kept him out. However, if it was something  
11 that's been brought up that they want to rebut, that's  
12 coming in.

13 So that's why I'm viewing one through -- paragraphs  
14 one through ten as something that would be rebuttal to --  
15 or actually, addressing the same testimony that Lewis  
16 brought up in regards to his dealings with Pizzotti and  
17 his dealings with those issues. Whereas everything --  
18 there's a demarcation which I view as paragraph 11, which  
19 is post Chris Lewis issues, which I do not view to be  
20 rebuttal. And so -- but my warning on this is that, you  
21 know, let the buyer beware. Because on cross-examination  
22 I see almost all these issues come in anyway. So --

23 MR. ROSE: Well, if that -- if that's the tentative  
24 ruling, Judge, would -- and because of the issue of the  
25 oral testimony having, you know, almost an impractical --

1 it'd be impractical to try to sever that, can we say that  
2 without it we would -- we don't have an objection to the  
3 tentative ruling on the condition that Mr. Pizzotti  
4 doesn't testify in the case orally?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you decide  
6 not to do any cross-exam on him, that's up to you. And  
7 any additional issue that Mr. Messing would have to ask  
8 him would have to be a rebuttal-type testimony. In other  
9 words, if there's something that --

10 MR. ROSE: Well, that is exactly why you're admitting  
11 one through ten as rebuttal, right?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's exactly  
13 right.

14 MR. ROSE: So what I'm saying is he shouldn't be able  
15 to testify at all. He's got his rebuttal in paragraphs  
16 one through ten.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you're going  
18 to waive cross, that's up to you.

19 MR. ROSE: Right. But I --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And it would  
21 come in as -- it would come in as direct. So that's --

22 MR. ROSE: Right. But Mr. Messing would not be able  
23 to call Mr. Pizzotti to testify further about anything  
24 beyond paragraphs one through ten in his Declaration,  
25 regardless of --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If there's --  
2 like I've -- like I've allowed for further Declarations,  
3 if there has been an issue I'm going to say within the  
4 ambit of one through ten that he wants to ask an  
5 additional question, such question would be fair game. I  
6 mean in a sense --

7 MR. ROSE: All right. Well, that won't work. What I  
8 was envisioning was getting rid of a live witness by  
9 agreeing to that. You know, or not opposing that.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You may still be  
11 getting rid of a live witness. You don't know. It just  
12 all depends on --

13 MR. ROSE: All right. Well, at this -- let me ask  
14 this, then. Can we show the Declaration of  
15 Mr. Pizzotti -- oh, Mr. Lewis is our case manager, so he  
16 can look at the Declaration, correct?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Absolutely.

18 MR. ROSE: All right. Then we --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And certainly,  
20 if there's -- I mean I'm making this without looking at  
21 the transcript of Lewis. And that's why I'm kind of  
22 making it tentatively is because I want to take a look at  
23 what Lewis says just to see if it lines up in the -- in  
24 the crosshairs here. So --

25 MR. ROSE: All right. Well, at this point I'd like

1 to just reserve all right to -- subject to your final  
2 ruling, to cross-examine Mr. Pizzotti.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Absolutely.

4 MR. ROSE: All right.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
6 that, let's go off the record. And let's just take a  
7 quick break. And then we'll get that Tina Brazil  
8 Declaration, and we'll go with the next witness. Off the  
9 record.

10 (Off the record.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

12 We're back on the record. We do have another witness.

13 But Mr. Rose off the record you didn't have any objection  
14 to Tina Brazil being called by telephone?

15 MR. ROSE: That's correct.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Did  
17 you get that, Mr. Messing?

18 MR. MESSING: No.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Brazil by  
20 telephone is a thumbs up.

21 MR. MESSING: Oh, great. Thank you. Thank you,  
22 Mr. Rose.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 MR. ROSE: I hope you will return the favor,  
25 Mr. Messing, some day.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. Telephone  
2 witnesses is --

3 MR. MESSING: In spades.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- very often  
5 done, actually. There is an exchange that goes that way.

6 MR. MESSING: Well, we have, you know, made every  
7 effort to get everybody here. You know, out of 18 or 20  
8 witnesses, this is 1 witness who is not available. So --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir,  
10 raise your right hand.

11 (Witness sworn by the Judge.)

12 THE WITNESS: I do.

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

15 THE WITNESS: It's Bruce Donald Hotchkiss. Last name  
16 is H-O-T-C-H-K-I-S-S.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
18 Marking as Exclusive Representative Z what appears to be  
19 a Declaration of this witness.

20 (Exclusive Representative's Exhibit Z marked  
21 for identification.)

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple  
23 preliminary questions, sir. First of all, did you  
24 receive copies of transcripts of these prior proceedings  
25 in this case? What I mean by transcripts is real

1 transcripts?

2 THE WITNESS: No.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Something like  
4 this.

5 THE WITNESS: I did not receive a copy of the  
6 transcript, no.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Do  
8 you know James Cline?

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, passing to  
11 you. It looks like you already have it. Why don't you  
12 take this one. And turn that one upside down.

13 THE WITNESS: Sure.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And go through  
15 it quickly and let me know if you can identify what it  
16 is.

17 THE WITNESS: It's a statement I prepared, I wrote  
18 for this case describing my duties as a State employee,  
19 my duties as the affiliate President, and other duties on  
20 the CSLEA Board, as well as a copy of the Job  
21 Description.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If  
23 you'd turn to your signature page? And sir, is that your  
24 signature?

25 THE WITNESS: Yes, it is.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
2 it on or about the date and at the location set forth?

3 THE WITNESS: Yes, I did.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And are the  
5 contents of that Declaration true and correct to the best  
6 of your knowledge?

7 THE WITNESS: Yes, they are.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,  
9 pass the witness.

10 MR. MESSING: Thank you.

11 TESTIMONY OF

12 BRUCE D. HOTCHKISS,

13 Having been duly and regularly sworn, testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. So you have been employed in Bargaining Unit 7  
18 positions since about what year?

19 A. 1991.

20 Q. Okay. And when did you become active -- well,  
21 CARI -- you're a member of CARI?

22 A. That's correct.

23 Q. Okay. And CARI is an affiliate of CSLEA,  
24 correct?

25 A. Correct.

1 Q. Okay. How long have you been active in CARII?

2 A. I believe I joined the CARII Board in either mid  
3 '96 or early '97.

4 Q. Okay.

5 A. Became President in '98.

6 Q. And are you still the President?

7 A. Yes, I am.

8 Q. Okay. And CARII has both peace officers and non-  
9 sworn?

10 A. That's correct.

11 Q. Okay. Now, you said in your Declaration that you  
12 participated in the MOU negotiation process in 2001, 2003  
13 and spring/summer of 2008. What is the nature of your  
14 involvement in the negotiation process?

15 A. All three times I was one of the bargaining team  
16 members.

17 Q. Okay. Now, were you -- were you familiar with  
18 the split that occurred with Code Enforcement folks  
19 between sworn and non-sworn positions?

20 A. You mean the Enforcement Rep? Yes.

21 Q. I'm sorry. What did I say?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Code  
23 Enforcement.

24 THE WITNESS: Code Enforcement.

25 /////

1 BY MR. MESSING:

2 Q. Enforcement Reps.

3 A. Yes.

4 Q. Yes. Okay. Would you please explain your  
5 recollection of what occurred in that regard?

6 A. Yeah. Originally, I mean because there was  
7 the -- when we got the multi-layered step increases, the  
8 sworn people got more step increases and larger step  
9 increases, I think, than -- and because the Enforcement  
10 Reps at Contractors State License Board, there are three  
11 sworn positions statutorily, but they all have the  
12 same -- they shared a classification code with the non-  
13 sworn. So there was no differentiation that way.

14 And originally, if I remember correctly, all of them,  
15 they were -- all the positions that were the sworn ones  
16 were listed by classification code. So, which meant all  
17 the Enforcement Reps would have got the 25 percent step  
18 increases that the sworn got.

19 And then I gather DPA realized that they were  
20 actually giving the sworn raises to a bunch of non-sworn  
21 people, and they tried to make some changes. And we, you  
22 know, argued that they were the ones that had listed the  
23 classification codes. And so it stayed as it is up until  
24 a certain date, and then it was -- I guess it was  
25 basically that if DPA could do new classification codes

1 for the sworn positions before the next step increase  
2 went in, then only the sworn ones would get the step  
3 increase.

4 It happened. They -- DPA fast tracked it. And the  
5 three sworn will get -- you know, have gotten the sworn  
6 increases, and the rest of the Enforcement Reps got a  
7 couple of the -- I think they got one more step increase  
8 than the rest of the non-sworn people in CSLEA. But they  
9 didn't get as many step increases as they had been  
10 anticipating.

11 Q. Okay. Now, in your position as President of  
12 CARII, do you have occasion to -- would you have occasion  
13 to learn if people had complaints about individual  
14 representation by CSLEA? And by individual  
15 representation I mean grievances, disciplines, IAs, that  
16 sort of thing.

17 A. Yes. I mean I've made it a point of my position  
18 as President that if anybody, any of our members, the  
19 CARII members, had problems, they would -- you know, they  
20 could come to me. So --

21 Q. Okay.

22 A. I would say I have a pretty vocal membership. So  
23 if there were problems, I would hear about them.

24 Q. Okay. Have you ever heard anybody complain about  
25 the responsiveness of CSLEA? By that I mean how quickly

1 people respond to requests for service?

2 A. I'd say not recent. Not over the last five  
3 years.

4 Q. Okay. And over the last five years have you had  
5 anybody complain -- and I'm talking now about individual  
6 representation -- about the quality of the service that  
7 they obtained from CSLEA?

8 A. No, not at all.

9 Q. Okay. Now, the testimony that you gave regarding  
10 the split of this sworn and the non-sworn  
11 classifications, was there some consternation in the --  
12 in your membership over that issue?

13 A. There was some. I don't think it was -- it  
14 wasn't real bad. I mean, you know, obviously there was  
15 some of the Enforcement Reps who weren't sworn that were  
16 a little unhappy that they didn't get all the steps. You  
17 know, it was explained to them that they lucked out and  
18 got some that the rest of us didn't get. I didn't get.  
19 So, you know, most of them were pretty understanding  
20 about it.

21 Q. Okay. And how about the general bargaining  
22 process? Since you've been involved in it since I  
23 believe you said 2001, have you had input from your  
24 membership in terms of how people feel about the quality  
25 of their representation at the bargaining table?

1 A. Yes.

2 Q. Okay.

3 A. Because I'm the one that's there for them, yeah,  
4 I hear from them. You know, obviously, I mean not  
5 everybody's always, you know, excited about everything.  
6 But I think generally they've been pretty happy. And  
7 they -- as I say, I have tried to make sure that I'm open  
8 to the membership. So, you know, that I think most of  
9 them realize that they have a voice there.

10 It's been difficult to try to explain the bargaining  
11 process sometimes. It's, you know -- the majority of my  
12 members are ex-mechanics. I mean the people at the  
13 Bureau of Automotive Repair. And a lot of those people  
14 used to be in unions, you know, in auto repair shops.  
15 And they can't quite sometimes grasp that State  
16 negotiations are done differently than, you know, private  
17 party. So --

18 MR. MESSING: I pass the witness to Mr. Rose.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir.

20 MR. ROSE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. ROSE:

23 Q. Good afternoon, Mr. Hotchkiss. I'm Joe Rose,  
24 attorney for Peace Officers of California. Did you ever  
25 work in the Rancho Cordova office?

1 A. No.

2 Q. Oh, okay.

3 A. No.

4 Q. I thought maybe you had helped me with a matter,  
5 but --

6 A. No.

7 Q. Your name sounds familiar. Nonetheless, so let's  
8 go back to the composition of your affiliate  
9 organization, California Association of Regulatory  
10 Inspectors and Investigators, CARII.

11 A. Uh-hmm.

12 Q. That you said is consisting of both sworn and  
13 non-sworn members?

14 A. Correct.

15 Q. There are three sworn members, correct?

16 A. Statutorily there are three, yes.

17 Q. Are there more allocated that are not filled?

18 A. No. I mean that's all that's allocated. We  
19 have -- because there are two class codes for the sworn,  
20 both Enforcement Rep I and Enforcement Rep II, and I  
21 gather that someone at CSLB has assigned people into the  
22 wrong classifications. Because when -- you know, we get  
23 a monthly list from the Controller's Office. And the  
24 last time I got it there were five people in sworn  
25 positions. And when I checked, you know, with our -- the

1 Department of Consumer Affairs Personnel, they said,  
2 well, no, that, you know, those aren't. So it's --  
3 there's clerical errors, so that's why I'm hedging on it.

4 Q. Understood. Okay. So you think there's three  
5 allocated. And do you think there's at least three  
6 filled?

7 A. Right. There are -- statutorily there are three  
8 positions. So that's -- there are only three real sworn  
9 people.

10 Q. And of the -- how many other members do you --  
11 oh, you said you have 600 members. No, no. Oh, is that  
12 right, 600 members?

13 A. There's -- total within CARII there's  
14 approximately 600 members.

15 Q. Okay. And three sworn?

16 A. Correct.

17 Q. Got it. Now, are you the representative for the  
18 three sworn at the bargaining table in CARII?

19 A. Yes.

20 Q. What kinds of issues have you heard from the  
21 sworn officers in your affiliate that concerns them?

22 A. I haven't heard anything specifically from the  
23 three CSLB sworn people that would be any different than  
24 the problems that any -- you know, the other CSLB people  
25 have been having at bargaining. I mean they have not --

1 they haven't asked for anything special.

2 So, you know, and I'll say, I mean generally the  
3 majority of things that -- you know, before we go into  
4 bargaining, we ask for input from all the members. You  
5 know, we do it all the time. But you have a push just  
6 before bargaining. And most of the members, what they  
7 want is money. So, you know, it's -- and that's what  
8 they all ask for.

9 Q. How long -- setting aside -- now -- well, strike  
10 that.

11 The class spec was revised in November of 2007. Does  
12 that sound -- does that sound right?

13 A. I believe that's correct, yes.

14 Q. And prior to that time there were -- there were  
15 nonetheless peace officers in the CSLB?

16 A. Correct.

17 Q. And how many years had there been peace officers  
18 in that organization?

19 A. I don't know for sure. It's been longer -- as  
20 far as I know, it's been -- it's longer than I've been  
21 President of CARI, so more than, you know, 10 years, I  
22 would think.

23 Q. And during that entire time was CAUSE then, or  
24 CSLEA now, the Exclusive Representative for those  
25 employees?

1 A. Yes.

2 Q. During that entire time were you aware whether  
3 those peace officer employees received any differential  
4 pay for the fact that they were peace officers?

5 A. I'm not aware. I mean I would imagine that they  
6 were -- they might have gotten like longevity pay, things  
7 like that. But there was nothing -- they never came  
8 forward and said that they wanted anything special.

9 Q. But to your knowledge, this is the first instance  
10 in which their pay salaries are higher than non-sworn in  
11 your affiliate, correct?

12 A. Oh, yeah, that's --

13 Q. By two and a half percent?

14 A. I --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know?

16 THE WITNESS: I don't know for sure.

17 BY MR. ROSE:

18 Q. Okay.

19 A. It was an extra step increase they got. That's  
20 all I know. And so it could have been up to -- up to  
21 five percent, I guess, but --

22 Q. You mentioned that most of your affiliate members  
23 are ex-mechanics and are used to working in unions in  
24 auto repair shops. Is that the same -- is that also true  
25 with respect to the peace officers?

1           A. No. Because I represent that work in -- well,  
2 most of the people I represent work at Consumer Affairs,  
3 but they work in different -- the Bureau of Automotive  
4 Repair, Contractors State License Board. Those are the  
5 two largest. But I have -- the majority of the members  
6 work at the Bureau of Automotive Repair. And in order to  
7 work at the Bureau of Automotive Repair as a Program  
8 Representative, you have to have journey level auto  
9 repair experience.

10          Q. And what kind of backgrounds do the CSLB Program  
11 Representatives typically have, if you could summarize?

12          A. It depends on basically how long they've been  
13 there. It used to be that they had to have been a  
14 contract -- a licensed contractor. And that was changed  
15 I'm not sure how many years ago. But still, the majority  
16 of them have experience in some contracting field.

17          Q. Is the same true for the peace officers in -- at  
18 the CSLB?

19          A. I mean the minimum requirements were the same.  
20 And I believe that most of the peace officers -- I've  
21 been there for a long time, so I would think that they  
22 fell under the prerequisite of having to have been a  
23 contractor before they came on.

24          Q. Who are the peace officers by name at the CSLB?

25          A. The only name that I can remember is Carl Vega.

1 Q. Okay. And which office does he work at?

2 A. I'm not sure.

3 Q. You mentioned in your Declaration that you were  
4 elected as Unit B Vice President of CSLEA in October  
5 2007. I'm looking at page two, paragraph four of your  
6 Declaration, at lines fifteen through sixteen. And you  
7 mention in that Declaration that Unit B represents five  
8 affiliates. Are there other units in CSLEA?

9 A. Yes. There's A, B and C.

10 Q. And what are the Unit A affiliates? Do you know?

11 A. They're -- I think those are primarily sworn  
12 units, sworn affiliates. I can't remember them off the  
13 top of my head.

14 Q. Okay. and then do you know whether Unit C is  
15 primarily non-sworn?

16 A. I believe are.

17 Q. And would you say Unit B is primarily non-sworn?

18 A. Primarily, yes. But there are sworn -- you know,  
19 there are some sworn Fire Marshals, so --

20 Q. When you -- you mention in your Declaration at  
21 paragraph six at the bottom of page two that the majority  
22 of cases are accepted by -- excuse me, "The majority of  
23 cases accepted by LDF are from the sworn side of CSLEA."  
24 How do you know that?

25 A. Well, both as a member of the Legal Defense Fund

1 and as a Board member, we get to review -- at every Board  
2 meeting we get a list of the ongoing cases, so -- and  
3 it's done by affiliate. You know, it doesn't always say  
4 the name of the person, but it says affiliate. And I  
5 mean you can tell by the affiliate which ones are sworn  
6 and which ones aren't. And you look down and if there's  
7 20 active cases and 19 of them are from a sworn  
8 affiliate, it's pretty clear that, you know, they get the  
9 majority. You know, I've been -- I've been reviewing  
10 these -- you know, I've been on the Board since '98, so,  
11 you know, I've reviewed a fair number of them. And --

12 Q. Do you have any impression, based on your  
13 experience having been on the Board since 1998, as to why  
14 the sworn affiliates are substantially higher uses of the  
15 LDF?

16 A. Well, I would -- it's not necessarily that they  
17 get in trouble more often, but the are -- you know,  
18 they're -- I think they're held to a higher standard,  
19 one. If you're sworn and if you -- you know, if you fire  
20 your weapon, you have to be defended. So I mean there  
21 is -- it's the nature of the job, I believe, that -- at  
22 least partly.

23 Q. So would you agree with me that the sworn  
24 employees are -- their jobs are different with respect to  
25 the expectations of their work performance in that regard

1 than non-sworn?

2 A. I'm not sure I follow exactly the question.

3 Q. All right. Would you say that the complexity of  
4 the sworn employees' jobs is greater than that of the  
5 non-sworn?

6 A. No, I wouldn't.

7 Q. Would you say that the opportunity for the sworn  
8 employees to get into a unsafe situation is greater than  
9 that of a non-sworn?

10 A. No, not at all.

11 Q. Would you say that the likelihood of a sworn  
12 employee being involved in a use of force situation is  
13 greater than that of a non-sworn?

14 A. You know, I really couldn't say. I mean I know a  
15 lot of my non-sworn people who end up in situations like  
16 that. And not necessarily where they have to use force,  
17 but where force is used against them. So I don't know.  
18 I mean I'm not out there, you know, counting the number  
19 of times.

20 And I know that a lot -- a lot of the sworn people  
21 don't necessarily do jobs where they are -- you know,  
22 they're Investigators, not necessarily beat cops, or  
23 whatever, you know. So they're not -- they're not out  
24 there using force to do the job. They're investigating  
25 things. And in that aspect, I don't -- there's not much

1 difference between them and what a lot of the people in  
2 my affiliate do.

3 Q. Do you know whether the CSLB peace officers  
4 Program Representatives that you represent through your  
5 affiliate have been trained in the use of force?

6 A. I do not know for sure.

7 Q. Do you know whether they've been trained in  
8 defensive tactics?

9 A. Not 100 percent. I believe they have been, but I  
10 couldn't say definitely.

11 Q. Do you know whether there are additional minimum  
12 requirements for those employees than a non-sworn Program  
13 Representative, minimum requirements for either --

14 A. There are different minimum requirements, yes.

15 Q. There are additional minimum requirements?

16 A. Right.

17 Q. You wrote in your Declaration beginning on page  
18 two at the last line this sentence. I'll read it and  
19 then I'll ask you what you meant by it. "In some  
20 instances, sworn cases are referred to outside counsel,  
21 even though they do not meet the normal criteria." And  
22 then let me read the next sentence because I think they  
23 go together. You can tell me whether you agree. "This  
24 is sometimes done for internal political reasons." So  
25 what did you mean by those two sentences?

1           A. Well, the legal defense, we have turned down  
2 cases that -- and if we deny a case when it comes before  
3 the Legal, and if we deny the case, the person who wanted  
4 representation then has a right to appeal to the  
5 Executive Committee. And if the Executive Committee  
6 turns it down, they have a right to appeal to the Board,  
7 the full Board of Directors.

8           And at some point sometimes, even though the LDF may  
9 feel that the case didn't merit us spending the money on  
10 it, for whatever reason, whether it was -- it might not  
11 have been really in the course and scope of the person's  
12 job, or there might not, you know, have been an  
13 expectation of winning, or whatever, I mean there's a  
14 whole variety of things that we look at, if the -- if the  
15 Board or the Exec feels that there is internal political  
16 reasons to go ahead, i.e., that somebody feels that it's  
17 a -- one affiliate feels that they're not getting -- you  
18 know, that their member is being hung out to dry, the  
19 Board may overrule us and say, you know, for -- to keep  
20 this other affiliate happy, we have to defend this  
21 person. And it has happened.

22           Q. But you mentioned it in your Declaration with  
23 respect to sworn cases in particular, right?

24           A. Right. And it's -- those are the only times I've  
25 seen it happen.

1 Q. What -- you mentioned two things you look at, and  
2 you said you look at a variety of things. One thing you  
3 said you look at was whether it's not in the scope of the  
4 job, and whether the likelihood of success, I guess is  
5 how I've written down, I don't know if those were your  
6 words, but those two criteria are -- are those two among  
7 many that you look at in determining whether to approve  
8 LDF coverage for individual --

9 A. Yeah. I mean I think, you know, within the  
10 course and scope of a job is primary. I mean if somebody  
11 has done something off in their personal life, that has  
12 absolutely nothing to do with the job, you know, we have  
13 a -- we have an obligation, you know, we are -- we're  
14 looking at we not only have to, you know, make sure our  
15 members are defended, but we also have to make sure that  
16 we properly manage the finances of the LDF. And if  
17 somebody has done something stupid in their private life,  
18 you know, do we have an obligation to defend them. And  
19 that's what we have to decide. You know, was it -- was  
20 it in an area that we can -- we can say, yes, that is --  
21 it's reasonable that we defend this person, or not. And  
22 I mean that is something we decide for everybody, whether  
23 it's sworn or non-sworn.

24 Q. Okay. Now, other than those two things, what  
25 other criteria are the normal criteria that you use to

1 evaluate a case for LDF coverage?

2 MR. MESSING: Okay. I'm going to object. It  
3 mischaracterizes the witness' testimony. He just  
4 discussed other criteria other than the two that he  
5 referenced. So --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, okay.  
7 Other than you've testified already, is there -- is there  
8 anything else?

9 THE WITNESS: I don't think so. I think those really  
10 are the criteria we look at, and the primary one being  
11 course and scope.

12 BY MR. ROSE:

13 Q. Okay. Now, what about peace officers that are  
14 engaged in some sort of use of force situation off duty,  
15 how would that -- how would you evaluate that  
16 circumstance and LDF coverage?

17 A. Again, well, one, I mean you have to look at each  
18 individual case. We had a case where --

19 Q. Don't mention any names, but --

20 A. No, I won't mention any names. I mean it was  
21 probably a couple years ago that it came to the LDF.  
22 But, excuse me, where the LDF didn't feel that it should  
23 have been handled. It was appealed. And I think it was  
24 the executive that overruled the LDF, which was kind of  
25 strange because I was on the Executive. But I vote -- I

1 voted against, you know, taking it. But the -- there  
2 were four of us on the Exec, the President and all three  
3 Vice Presidents, and it was -- it was overturned, and we  
4 defended the person. I didn't --

5 Q. You didn't agree with that decision?

6 A. No. I -- well, I voted against it. Once we --  
7 it was decided to go ahead, I agreed with -- you know,  
8 it's a democracy and, you know, majority rules. So there  
9 was a vote. I was on the losing side. And you say,  
10 okay, fine, let's move forward.

11 Q. How many -- was that a use of force situation  
12 involving a peace officer away from work?

13 A. Yes.

14 Q. What about when you mention in your -- in your  
15 Declaration on page three that -- line twenty-four, "Non-  
16 sworn classifications cause to be taken" is part of what  
17 you wrote, what do you mean by "cause to be taken actions  
18 again alleged criminals"?

19 A. Well, as non-sworn we can't arrest people. I  
20 mean I can give you an example. I mean I am deskbound  
21 right now in my job. But before I got to this position,  
22 I worked in the field. I did undercover operations on a  
23 smog check program. The last one I worked on, there were  
24 four people arrested. Obviously I didn't arrest them. I  
25 don't have that power. I caused them to be arrested

1 because did the investigation, I filed the reports, I  
2 took it to the district attorney, and I went out with the  
3 district attorney's lead investigator, who arrested the  
4 people. That's what I mean.

5 Q. You need the district attorney's lead  
6 investigator because of the peace officer status to make  
7 the arrest?

8 A. I need somebody who was sworn, and that was -- we  
9 use -- it depends on -- it would depend on the case how  
10 we did it at Bureau of Automotive Repair. I mean there  
11 was some that would go administratively, in which case  
12 you would -- you might use the Consumer Affairs Division  
13 of Investigation. Or if you're going criminally or  
14 civilly, you use the District Attorney.

15 Q. All right. And if you go to page four of your  
16 Declaration, paragraph eleven, line eight, you mention  
17 that you instigated investigation of a smog station in  
18 Palo Alto. What do you mean by instigated the  
19 investigation?

20 A. Okay. I caused the investigation to be started.

21 Q. Who did the investigation after you instigated  
22 it?

23 A. I did part of the investigation, and another  
24 Program Representative did another part of it.

25 Q. Was the other Program Representative a peace

1 officer?

2 A. No. There are no peace officer Program  
3 Representatives.

4 Q. All right. And the -- ultimately was there a  
5 conviction in that case, or a criminal conviction?

6 A. Yes, there were.

7 Q. And which law enforcement agency handled that?

8 A. It was the Palo -- the Santa Clara District  
9 Attorney's Office.

10 Q. Were there any arrests made in that case?

11 A. Yes.

12 Q. And the District Attorney's Office Investigator  
13 made the arrest?

14 A. That's correct.

15 Q. If you could look at line 10 of the same page,  
16 same paragraph? It says surveillance was performed on  
17 the station. Do you see that?

18 A. Yes.

19 Q. Did you perform the surveillance?

20 A. No, I did not.

21 Q. Did the other Program Representative perform the  
22 surveillance?

23 A. Yes, he did.

24 Q. All right. Now, when you go to line 13 in the  
25 same paragraph, it says you participated in the arrest of

1 the smog technician. Were you physically present for the  
2 arrest?

3 A. Yes.

4 Q. Did you lay hands on the smog technician?

5 A. No.

6 Q. Did you read that technician his or her Miranda  
7 rights?

8 A. No.

9 Q. Have you ever read anyone their Miranda rights?

10 A. I've never read anyone their Miranda rights. I  
11 have advised people when I've been questioning them that  
12 they, you know, do have certain constitutional rights. I  
13 have been advised both through training that I've taken  
14 at Department of Justice and through district attorneys  
15 that, you know, I'm not required to tell people that  
16 because I'm not sworn. But I have always felt that it  
17 would probably be wise for me to make sure that people  
18 know, you know.

19 Q. You mention in paragraph 14 of your Declaration  
20 on page 5 the composition of the -- or in part anyway you  
21 describe the work of the SWIFT Unit, S-W-I-F-T. Have you  
22 ever worked on the SWIFT Unit yourself?

23 A. No, I haven't.

24 Q. Are there any non-sworn Enforcement  
25 Representatives on the SWIFT Unit?

1 A. Yes, there are.

2 Q. How many?

3 A. I don't know for sure.

4 Q. How do you know that there are non-sworn  
5 Enforcement Representatives on the SWIFT Unit?

6 A. I've talked to them.

7 Q. Who are they?

8 A. Off the top of my head, I can't remember the  
9 names of the people that -- but I mean the SWIFT is made  
10 up of more than the three Enforcement Reps, so -- that  
11 are sworn, so --

12 Q. Now, do you enforce any laws?

13 A. I would say I do. I mean I may not right now  
14 because, like I say, I'm -- although I do review  
15 paperwork. I don't -- I don't issue any citations or  
16 anything. But I, you know, have to review documents from  
17 automotive repair shops as, you know, to whether they're  
18 legal or not. When I worked in the field, and a majority  
19 of the Program Representatives do work in the field, I  
20 would say we do enforce the laws. They do enforce the  
21 laws.

22 MR. ROSE: All right. Nothing further at this time.  
23 Thank you, Mr. Hotchkiss.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

25 MS. TRUONG: No, nothing from us.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

2 MR. MESSING: I don't have anything.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, I need to  
4 admonish you not to discuss your testimony with any of  
5 the witnesses. You're free to discuss it with anybody at  
6 these counsel tables.

7 And with that, Exhibit Z of Exclusive Rep is  
8 admitted.

9 (Exclusive Representative's Exhibit Z received  
10 in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll take that.  
12 I think that's yours.

13 THE WITNESS: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we are off  
15 the record.

16 THE WITNESS: Thank you.

17 (Off the record.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
19 We're back on the record. We have another witness called  
20 by the Exclusive Representative. I'm going to ask this  
21 witness to raise your right hand.

22 (Witness sworn by the Judge.)

23 THE WITNESS: I do.

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

1 THE WITNESS: Laura Campos. C-A-M-P-O-S.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple  
3 preliminary questions. One is that, have you ever  
4 received transcripts of this proceeding? And I'm talking  
5 about transcripts like such as this.

6 THE WITNESS: I received a few pages in an e-mail.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In an e-mail.

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Can you  
10 kind of describe that real quickly, what you received?

11 THE WITNESS: It was a partial transcript, as I said,  
12 of Mr. Karnow's, Karnow, K-A-R-N-O-W, I believe --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

14 THE WITNESS: -- was the witness' name.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And can you kind  
16 of -- when you say a partial transcript, I mean are we  
17 talking about pages, we talking about lines? What are we  
18 talking about?

19 THE WITNESS: I believe it was a few pages. I  
20 received it on my Blackberry and found that the pages  
21 were sort of distorted for me, and I couldn't tell  
22 exactly how many.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well, let  
24 me ask this question. Just for purposes -- do you recall  
25 who sent you the e-mail?

1 THE WITNESS: Yes. Kasey Clark.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

3 THE WITNESS: Chief Counsel for CSLEA?

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you  
5 recall what -- when you say a partial transcript from  
6 Karnow, what do you remember seeing as far as his  
7 testimony?

8 THE WITNESS: There was testimony regarding a raise  
9 in question, the percentage of raise that Fish and Game  
10 was supposed to receive, or had anticipated receiving.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
12 was this in an e-mail? Is that what you said?

13 THE WITNESS: Yes, sir.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you  
15 remember seeing similar I'll use the word -- well, I'll  
16 just leave it at that.

17 Anyway, do you know James Cline?

18 THE WITNESS: No, sir.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to be  
20 passing you Exclusive Representative double A.

21 (Exclusive Representative's Exhibit AA marked  
22 for identification.)

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And let me ask  
24 you if you recognize that document.

25 THE WITNESS: Yes. It's a Declaration that I wrote

1 and e-mailed to a law firm.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If  
3 you could turn to the last page, the signature page? And  
4 is that your signature on that page?

5 THE WITNESS: Yes, it is.

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

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is the  
10 contents of that Declaration true and correct to the best  
11 of your knowledge?

12 THE WITNESS: I do have to make one correction --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

14 THE WITNESS: -- if I may, please.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What would you  
16 like?

17 THE WITNESS: On page nine, line thirteen, I  
18 apologize, I was using a cut and paste and --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

20 THE WITNESS: -- I did not make this correction.  
21 Instead of receiving routine physical therapy treatments,  
22 it should read receiving routine optometric treatments.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why  
24 don't you do whatever you need to do to clarify that.

25 And you already initialed it. And why don't you date it

1 also.

2 THE WITNESS: What's today's date?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It is the 12th.

4 THE WITNESS: Thank you.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: March 12th. All  
6 right. Any other corrections?

7 THE WITNESS: No.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

9 Mr. Messing.

10 TESTIMONY OF

11 LAURA CAMPOS,

12 Having been duly and regularly sworn, testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. MESSING:

16 Q. Okay. So you've been employed with the State for  
17 29 years?

18 A. Twenty-nine and a half years, yes.

19 Q. And a half. Okay. And out of that how many  
20 years were spent as an Investigator?

21 A. All of them.

22 Q. Okay. And you are a member of an affiliate  
23 called CACI?

24 A. Yes. The California Association of Criminal  
25 Investigators.

1 Q. Okay. And that is an organization of both sworn  
2 and non-sworn employees?

3 A. Yes, that's right.

4 Q. Okay. About how many members of CACI are there?  
5 Do you know?

6 A. About 400 at any given time.

7 Q. Okay. Do you know approximately the ratio of  
8 sworn to non-sworn in that organization?

9 A. Right now I believe we have nine or ten non-  
10 sworn. The remainder are sworn.

11 Q. All right. And do you know what classes the nine  
12 or ten occupy?

13 A. They are two different classes. One is  
14 Investigator assigned to the Department of Industrial  
15 Relations, CalOSHA Unit. And the other -- and they have  
16 about six Investigators. And the other non-sworn are  
17 from the Emergency -- EMSA. I'm sorry. I always think  
18 of acronyms. Emergency Medical Services Authority. And  
19 they regulate EMTs, emergency medical technicians.

20 Q. Okay. Who represents the Investigators in the  
21 Department of Insurance?

22 A. CACI represents the Fraud Investigators of the  
23 Department of Insurance.

24 Q. Okay. And what about the Insurance  
25 Investigators, who represents them?

1           A. I believe that they are represented by CAFI,  
2 California Association of Fraud Investigators.

3           Q. Okay. All right. Now, you have had -- how long  
4 have you been active in CACI? And by active I mean not  
5 just a member, but having some duties like Site  
6 Representative, a Board member, or an officer.

7           A. I've been President since 2001. And I became  
8 active, an elected member to the Board, about four years  
9 prior to that. So I was not only Director, but also  
10 elected as Secretary.

11          Q. Okay. And so as a President of CACI, you're  
12 active in CSLEA?

13          A. Yes.

14          Q. Okay. Was that true also when you were a Board  
15 member?

16          A. To attend some meetings, but that's all.

17          Q. Okay. And let's focus on your term from 2001 to  
18 the present. When members have issues and involving  
19 individual representation, by that I mean IAs,  
20 grievances, disciplinary matters, are you generally aware  
21 of that?

22          A. It depends on the particular situation. There  
23 are times when if someone calls me -- someone may call to  
24 find out what the process is, who should I talk to at  
25 CSLEA, and I'll explain who they should be contacting,

1 Northern or Southern California, who should -- you know,  
2 who they should ask for. And some may ask for advice and  
3 start presenting a situation to me and just ask for --  
4 it's like, how may I handle this informally. And so  
5 we've received multiple types of contacts, or I have.

6 Q. Okay. Is that on -- multiple contacts on an  
7 annual basis?

8 A. Yes.

9 Q. Okay. And if people have a problem with let's  
10 say the responsiveness of CSLEA, would you be someone  
11 that they would go to and complain?

12 A. Yes, I might be.

13 Q. Okay. Now, regarding back to the individual-type  
14 issues, grievance, disciplines, IAs, have you received  
15 complaints about the lack of responsiveness of  
16 individuals in the CSLEA office who are supposed to  
17 provide those services?

18 A. Not in the recent past. We have in our -- in  
19 CSLEA's past history.

20 Q. How far back?

21 A. Four or five years and beyond.

22 Q. Okay. So in the last four or five years you  
23 haven't had complaints about responsiveness?

24 A. No.

25 Q. By no, do you agree with what I'm saying, or

1 disagree?

2 A. I agree with what you're saying.

3 Q. Okay. And did something change in CSLEA four or  
4 five years ago that brought about this change in the  
5 perception of responsiveness of CSLEA?

6 A. Yes.

7 Q. What was that change?

8 A. Significant change from my perspective. Our  
9 Chief Counsel was changed and a new computer automated  
10 system was put into place to track -- where there was no  
11 system in place to track cases before one was put into  
12 place. And so that there was an automatic system of  
13 tracking and updating cases or complaints.

14 Q. Okay. And prior to four or five years ago, what  
15 kind of representative would you be assigned if you had a  
16 problem and you were a CACI member?

17 A. A Labor Rep. A Labor Representative.

18 Q. Okay. And has there been any change in that over  
19 the past four or five years?

20 A. Yes, a significant one. We moved from a Labor  
21 Rep program to an attorney representative-type program.

22 Q. And how do your members feel about the change  
23 of -- from speaking to a Labor Rep to speaking to an  
24 attorney?

25 A. Most of CACI members are peace officers and,

1       thus, are very used to working with attorneys, and pretty  
2       quickly develop a working relationship. And so my  
3       members, the feedback that I've had has been very  
4       positive.

5           Q. Okay. Now let's turn to the issue of collective  
6       bargaining. As President of CACI, did you have occasion  
7       to -- strike that.

8           Would people in your capacity as President of CACI,  
9       would they have the -- would they tend to come to you if  
10      they had problems with issues concerning -- issues that  
11      arose in negotiations?

12          A. They may, yes.

13          Q. Okay.

14          A. Can I -- I hesitate for a particular reason. May  
15      I explain that?

16          Q. All right. Why don't you explain the reason why  
17      you hesitate.

18          A. Just very briefly, CACI is constructed of -- the  
19      membership is comprised of 12 different departments, 15  
20      employing agencies. And the way our Board is  
21      constructed, a Director represents the particular  
22      employing agency department, as well as they may have  
23      others as well. And so the member tends to go to that  
24      Director first because that is -- that is who represents  
25      their department. And then secondarily they might report

1 to me, or we may have met in the past like through our  
2 conferences or other communications, and they might  
3 communicate with me directly.

4 Q. Okay.

5 A. And so we have a --

6 Q. Okay. But so if somebody had -- if there were  
7 problems with -- and one particular part of CACI and  
8 people brought issues to a Director there, would you  
9 expect that you would hear about those problems as  
10 President of CACI?

11 A. It depends on the problems.

12 Q. Okay. If there's a big issue regarding  
13 negotiations.

14 A. Oh, those are always brought to my attention,  
15 yes.

16 Q. Okay. Now, do you know -- can you state from  
17 your experience what the reactions have been by members  
18 of CACI to the negotiations conducted by CSLEA? And by  
19 that I'm looking at whether or not they've expressed  
20 opinions as to the adequacy of their representation.

21 A. Directly I've received during this past  
22 negotiations period a lot of active positive support.  
23 Our members were very active in this past negotiations  
24 series.

25 Q. Okay. Actually, back to the individual

1 representation. I asked you about responsiveness. Let  
2 me ask you the same question as to the quality of  
3 services rendered by CSLEA. Have you had any complaints  
4 in the last four or five years about the quality of  
5 representation afforded to your members?

6 A. Not complaints, no.

7 Q. Okay. Any other input that you've received?

8 A. Generally the comments that I've received, if I  
9 get feedback, is that they're -- it's been very good.

10 MR. MESSING: Okay. I'll pass the witness to  
11 Mr. Rose.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir.

13 MR. ROSE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. ROSE:

16 Q. Good afternoon, Ms. Campos.

17 A. Good afternoon.

18 Q. Joe Rose. I'm the attorney for Peace Officers of  
19 California.

20 A. How do you do.

21 Q. Very good. Thank you. With respect to the  
22 questions you were just most recently being asked about,  
23 the quality of services provided by CSLEA, you said  
24 generally they've been good. Have you had specific  
25 complaints in the last four or five years from anyone

1 about adequacy of representation?

2 A. I can recall one specific issue where a member  
3 didn't like the response. But CSLEA continued to work  
4 with the member, and he is satisfied currently. But his  
5 issue is still ongoing. And he is fine working with  
6 CSLEA and the work that they're providing to him.

7 MR. ROSE: I'd like to get the member's name off the  
8 record, if that's possible. Do you agree that we should  
9 go off the record for that?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
11 second. I'm just -- I was trying to ferret this through.  
12 Is there any response, Mr. Messing?

13 MR. MESSING: Well, yeah. We don't know what the  
14 nature of the representation was, so --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Why don't --

16 MR. MESSING: -- we have concerns about whether  
17 there's a privacy issue.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If she --

19 MR. MESSING: Can we -- can we consult with the  
20 witness first?

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, not  
22 necessarily in the middle of the examination. But let me  
23 ask you this, is that can you give us an idea? Are we  
24 talking about disciplinary, grievance?

25 THE WITNESS: Disciplinary.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Dispute with  
2 supervisor, or what can you -- so we're talking about  
3 discipline?

4 THE WITNESS: It was a medical and psychiatric  
5 confidentiality issue.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We're  
7 going to -- we're going to get in trouble. All right.  
8 I'm just going to say let's -- I'm not going to ask you  
9 to disclose the name, because then I have to deal with  
10 even more issues with the medical. So I'll let you just  
11 take it from there, Mr. Rose. If you want to refer to  
12 the person as A or B, or whoever you want it, I mean  
13 that's fine.

14 MR. ROSE: Well, I don't necessarily want that. I  
15 would like to know the identity of the person without  
16 having --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can't. I  
18 just -- no way. Once you -- once I hit that medical,  
19 there is -- especially in light of all our HIPAA stuff  
20 going on, I just cannot even go there.

21 MR. ROSE: Okay. Let me move on.

22 BY MR. ROSE:

23 Q. Now, this person contacted you with a complaint  
24 how recent ago?

25 A. The member was referred to me through his

1 Director.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

3 THE WITNESS: Okay. And it has been over a year. I  
4 believe his issue started in late 2006.

5 BY MR. ROSE:

6 Q. And what specifically was it that -- about the  
7 responsiveness, or was the response you said from CSLEA  
8 that the member was unhappy about?

9 A. He didn't like some of the responses. It wasn't  
10 the lack of response, because he had been working with  
11 the CSLEA representative from the very beginning, and he  
12 had some questions that he wanted to discuss.

13 Q. Now, what did you do after speaking with this  
14 member who was unhappy?

15 A. Got a little bit of detail. I say that because I  
16 don't have confidentiality as the President or the  
17 Director, so I have to be careful on what information I  
18 can receive. Talked to his assigned representative. See  
19 if perhaps the way I phrase the concern may facilitate an  
20 answer, or a better understanding of how, you know,  
21 things are in play. And then refer the member back to  
22 the assigned representative, the assigned CSLEA  
23 representative. Then they work through the question and  
24 answer and continue the representation.

25 Q. All right. And you believe now this person's

1 completely satisfied?

2 A. I've not talked to the person recently. I can  
3 only say that his issue is ongoing.

4 Q. All right. Any other -- without divulging names,  
5 are there any other complaints that you've received,  
6 specific complaints about CSLEA's representation?

7 A. None that I can remember in the recent past,  
8 meaning, you know, two, three, four years.

9 Q. Okay. When you -- help me understand. How many  
10 members are there on the Board of CSLEA?

11 A. Oh, gosh. There are 19 affiliates. Then there  
12 are our President, Controller, Secretary.

13 Q. And so as an -- is it that the affiliate --

14 A. I believe Sergeant at Arms.

15 Q. Oh, I'm sorry.

16 A. Sorry. I'm sorry.

17 Q. I didn't mean to interrupt you. I thought --

18 A. I thought I had finished, too. I'm sorry.

19 Q. All right. So when you say there are 19  
20 affiliates, am I correct in my thinking that the  
21 President of each affiliate has got a post on the CSLEA  
22 Board?

23 A. We construct the Board of Directors on the CSLEA  
24 Board.

25 Q. So you as President of your affiliate are also a

1 Board member on the CSLEA Board?

2 A. Yes.

3 Q. Do you know whether that's true with respect to  
4 the other 18 affiliates?

5 A. Yes.

6 Q. Now, you have been the President of your  
7 affiliate since 2001?

8 A. Yes.

9 Q. And so, therefore, you've been a Board member  
10 since 2001 on the CSLEA Board as well?

11 A. Yes.

12 Q. And one of the functions you have on the CSLEA  
13 Board is to approve Collective Bargaining Agreements or  
14 Memorandums of Understanding, Labor Contracts?

15 A. I -- what do you mean by approve?

16 Q. Well, ultimately the MOU will go out for a member  
17 ratification vote, correct?

18 A. Yes.

19 Q. But prior to the matter going out for a vote  
20 there has to be a tentative agreement, correct?

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just ask  
22 it a little bit easier.

23 THE WITNESS: Please.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What role do you  
25 take, if any, as a Board member in regards to the

1 approval process of the Memorandum of Understanding?

2 THE WITNESS: I'm not sure if I would use the word  
3 approval, but let me explain.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I used it as  
5 broad as possible because I didn't want to use the word  
6 ratification. But --

7 THE WITNESS: Well, let me tell you what I mean by  
8 it. The negotiations team, however it is constructed for  
9 that period, negotiates, achieves an understanding and  
10 agreement with DPA. That agreement is brought to the  
11 Board, and the Board votes on whether to send it out to  
12 the members for ratification --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Very good.

14 THE WITNESS: -- or to not send it out. So I don't  
15 know if that means an approval, but --

16 BY MR. ROSE:

17 Q. That's very helpful. That's exactly what I  
18 was --

19 A. Okay.

20 Q. -- information I was seeking, so thank you.

21 Now, have you ever been on the negotiations team?

22 A. No. Well, I'm sorry. In this past period, in  
23 the most recent negotiations period, I did make a  
24 presentation of CACI's proposals to the -- to DPA.

25 Q. Okay. And when you were on the Board in 2003, do

1 you recall reviewing a -- do you recall having  
2 information brought forward by CSLEA's staff concerning a  
3 pay parity proposal that would have pay based on the  
4 Highway Patrol calculation for peace officers?

5 A. Yes.

6 Q. What do you recall about that information being  
7 brought to you as a Board member?

8 A. It's my recall that it was negotiated between  
9 the -- our negotiations team and DPA. And the Board did  
10 vote to send that out to the members. And the members  
11 did ratify it. And it was not funded by the Legislature.

12 Q. How did you learn that it was not funded by the  
13 Legislature?

14 A. I was told that by members of CSLEA.

15 Q. Did you --

16 A. I couldn't say exactly who.

17 Q. Was it someone on the staff of CSLEA who told you  
18 that?

19 A. It would have been a CSLEA Board member or  
20 officer.

21 Q. Now, in conjunction with that, did you learn  
22 about -- are you familiar with the Professional Engineers  
23 bargaining unit?

24 A. No, sir.

25 Q. PECG?

1 A. No.

2 Q. Did you hear any discussion about PEEG and their  
3 labor negotiations in that year, 2003, being connected to  
4 CAUSE's labor negotiations?

5 A. No.

6 Q. Were you told -- were you ever told any  
7 information about a subsequent offer that was available  
8 to CAUSE to have the -- that pay parity calculation  
9 revived in another piece of legislation?

10 A. I don't recall ever hearing that.

11 Q. Okay. I'm going to look at your Declaration on  
12 page four. And you've got several classifications  
13 beginning at paragraph nine that you were describing for  
14 us. The Investigators, Senior Investigators, Cosmetology  
15 Examiners, Enforcement Reps, and so on. Do you see at  
16 paragraph nine where I'm reading from?

17 A. Yes.

18 Q. Is it -- are you familiar with all of these  
19 classifications listed in paragraph nine because of your  
20 role as a CSLEA Board member?

21 A. No. Comes from working for DCA for 29 years.

22 Q. Okay. So you're familiar for -- excuse me. You  
23 are familiar, for example, with the Cosmetology  
24 Examiners?

25 A. Yes.

1 Q. And their job duties?

2 A. Yes. Not all of their job duties, but how it  
3 impacts Division of Investigation.

4 Q. Now, would you say the Cosmetology Examiners  
5 are -- their job duties are very similar to your job  
6 duties?

7 A. No.

8 Q. Would you say that -- how would you compare the  
9 Cosmetology Examiner's job duties to the job duties of a  
10 Enforcement Representative, non-sworn, in the CSLB?

11 A. I don't know that I've ever read them to compare  
12 them to each other.

13 Q. Do you work alongside of the Cosmetology  
14 Examiners?

15 A. On a case-by-case basis.

16 Q. How frequently do you do that?

17 A. When the Board of Barbering and Cosmetology sends  
18 a case over to the Division of Investigation which  
19 alleges some type of examination fraud, then on that  
20 case-by-case basis the Division assigns an Investigator  
21 to work that case.

22 Q. Okay. I see -- I'm looking at paragraph 11 on  
23 page 4. It says -- it talks about Cosmetology Examiners,  
24 and then the last sentence says, "They work alongside  
25 Investigators and Senior Investigators in investigation

1 of examination fraud."

2 A. Yes.

3 Q. Is that what you're referring to?

4 A. Yes.

5 Q. Now, the -- and so, therefore, it's logical for  
6 Cosmetology Examiners to be in Bargaining Unit 7 with  
7 Senior Investigators, correct?

8 MR. MESSING: I'm going to object. That assumes  
9 facts not in evidence. In fact, it misstates the record.  
10 The record is is that --

11 MR. ROSE: Objection. He's leading the witness.

12 MR. MESSING: Wait a minute. I'm finishing my  
13 objection.

14 MR. ROSE: He's leading the witness.

15 MR. MESSING: Cosmetology --

16 MR. ROSE: And coaching the witness.

17 MR. MESSING: -- Examiners --

18 MR. ROSE: He's coaching the witness, Judge.

19 MR. MESSING: I'm not.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just want to  
21 hear the objection. Go ahead.

22 MR. MESSING: The record reflects that Cosmetology  
23 Examiners are not in the bargaining unit.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

25 Next.

1 MR. ROSE: Well, Judge, all right.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: They're in Unit  
3 1. I mean I don't want to waste my time with people who  
4 are out.

5 MR. ROSE: But this -- all right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean it may be  
7 in this Declaration, but I have a Unit Mod Order here,  
8 the only Employer's exhibit. And with that, it's  
9 irrelevant. So next question.

10 MR. ROSE: Nothing further.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong.

12 MS. TRUONG: Nothing from us.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

14 MR. MESSING: Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Campos, I do  
16 admonish you not to discuss your testimony with any other  
17 witnesses. You're free to discuss it with anyone at  
18 these counsel tables.

19 THE WITNESS: Yes, sir.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And with that,  
21 double A is admitted.

22 (Exclusive Representative's Exhibit AA received  
23 in evidence.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any other  
25 witnesses for today?

1 MR. MESSING: Not for today.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So we're set for  
3 whatever our next day is.

4 MR. MESSING: I believe it's the 24th. Isn't it the  
5 24th and 5th and 6th?

6 MR. CLARK: A week from -- a week from Tuesday.

7 MR. MESSING: A week from Tuesday.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And so  
9 whenever -- Mr. Rose, whenever you need to paste in your  
10 witness.

11 MR. ROSE: We have it, Judge. We've got it scheduled  
12 for what day and time?

13 MS. SABONIS: The 24th at 9:00 a.m.

14 MR. ROSE: Twenty-fourth at 9:00 a.m.

15 MR. MESSING: Okay.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Couldn't be any  
17 better. All right.

18 MR. MESSING: Wait a second. A couple of -- are we  
19 still on the record?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are.

21 MR. MESSING: Oh, okay. Could we get the name of the  
22 witness?

23 MR. ROSE: Sure.

24 MS. SABONIS: Trisha Hunter.

25 MR. MESSING: I'm sorry?

1 MS. SABONIS: Trisha Hunter.

2 MR. ROSE: Trisha Hunter.

3 MR. MESSING: Trisha Hunter. Okay.

4 MR. ROSE: H-U-N-T-E-R.

5 MR. MESSING: All right. And then the other piece of  
6 cleanup is, what sort of instructions do we give to  
7 Ms. Brazil about calling in, telephone number, et cetera?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I'll have  
9 to bring in -- just make -- just have her telephone where  
10 she's reachable during that time.

11 MR. MESSING: Okay.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll bring in  
13 a -- and then -- so it's at 11 o'clock? Is that what you  
14 plan to -- or whatever time that you want her there. If  
15 Mr. Rose, you have any -- you plan on any exhibits that  
16 need to be gotten to her, you can just forward them to  
17 Mr. Messing and Mr. -- or Mr. Clark, and they can send  
18 them to her, and then we can go from there. So --

19 MR. MESSING: Great.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And she needs to  
21 have her Declaration with her --

22 MR. MESSING: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- obviously.  
24 So anything else on your part, Mr. Rose?

25 MR. ROSE: No.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On the part of  
2 the Employer, Ms. Truong?

3 MS. TRUONG: I'm sorry. Excuse me.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything  
5 further --

6 MS. TRUONG: No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- for day  
8 seven, I believe?

9 MS. TRUONG: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

11 MR. MESSING: I think we're good.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Day seven is  
13 concluded. Let me make a copy of these discs. Off the  
14 record.

15 (Proceedings concluded.)

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CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

1  
2  
3  
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7 CD recording the proceedings in the matter of STATE OF  
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
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11 Charge No. SA-SV-171-S, which recording was duly recorded  
12 at Sacramento, California on March 12, 2009, and that the  
13 foregoing pages 1 through 218 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 29th day of March, 2009, at Dixon,  
17 California.

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20 \_\_\_\_\_  
21 Leisa M. Miller, Transcriber  
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