

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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Administrative Law Judge

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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.

CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

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

18  
19  
20 \_\_\_\_\_  
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