

March 24, 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 24, 2009

SHAWN CLOUGHESY  
Administrative Law Judge

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

Transcribed by: Leisa M. Miller

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APPEARANCES

Administrative Law Judge

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1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you  
2 very much, sir.

3 THE WITNESS: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.  
5 (Off the record.)

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on  
7 the record. We have another witness called by the  
8 Exclusive Representative. I'm going to ask you to raise  
9 your right hand.

10 (Witness sworn by the Judge.)

11 THE WITNESS: Yes.

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

14 THE WITNESS: Lillian Hayek. H-A-Y-E-K.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
16 I have a couple of preliminary questions. First of all,  
17 have you read any of the transcripts of the previous days  
18 of hearing in this case?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you know  
21 an individual by the name of James Cline?

22 THE WITNESS: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Marking as  
24 Exclusive Representative double H what appears to be the  
25 Declaration of this witness.

1 (Exclusive Representative's Exhibit HH marked  
2 for identification.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Which I'm  
4 passing on to her. If you could take a quick review of  
5 that and then let me know what it is?

6 THE WITNESS: It's the Declaration that I wrote.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If  
8 you can turn to the last -- the signature page of that  
9 document? And is that your signature?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
12 did you sign it on or about that date and that location  
13 set forth in there?

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
16 Mr. Messing.

17 TESTIMONY OF

18 LILLIAN HAYEK,

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

21 DIRECT EXAMINATION

22 BY MR. MESSING:

23 Q. A couple of preliminary things. You mentioned on  
24 page two of your Declaration that you are currently  
25 serving as a Vice President of CARI.

1 A. Yes.

2 Q. Okay. First of all, about how many members does  
3 CARI have?

4 A. I think approximately 400 to 450.

5 Q. Okay. And as affiliate -- does your affiliate  
6 have a President who sits on the Board of CSLEA?

7 A. Yes.

8 Q. Okay. And is your unit composed of sworn or non-  
9 sworn employees, or both?

10 A. Both.

11 Q. Okay. Do you have any idea what the relative  
12 numbers would be of the sworn versus the non-sworn?

13 A. I couldn't give you an exact number, no.

14 Q. How about an estimation?

15 A. I think less than 10.

16 Q. Less than 10 are?

17 A. Are sworn.

18 Q. Okay.

19 A. I'm sorry.

20 Q. And what classifications are the sworn in?

21 A. State Contractors, I believe, Licensing Board.

22 Q. Okay. By the way, I forgot to ask you, is there  
23 anything that you wanted to change in your Declaration  
24 or --

25 A. No. It looks fine.

1 Q. Okay. All right. Let's see. You used to be a  
2 non-sworn DMV Inspector; is that right?

3 A. Correct.

4 Q. One more thing before I go to this. Before  
5 becoming a Vice President -- well, when did you first  
6 become Vice President of CARI?

7 A. I believe it was approximately four or five years  
8 ago.

9 Q. Okay. Before that did you have any position  
10 within CARI or CSLEA?

11 A. I think I became a Job Steward at the same time.

12 Q. Okay. Are you still a Job Steward?

13 A. Yes.

14 Q. Okay. Do you have any other position within  
15 CSLEA since you first became involved?

16 A. Not a position, per se, but I've worked on  
17 various committees organizing things for the Union or its  
18 functions.

19 Q. Okay. Back to the DMV Inspector position. You  
20 say that when -- that when you were a non-sworn, this is  
21 back in the late '90s; is that right?

22 A. Yes.

23 Q. Okay. You worked closely with DMV Investigators?

24 A. Yes.

25 Q. Can you explain briefly how you would work

1 together with the Investigators in that capacity?

2 A. As an Inspector we were licensing and preliminary  
3 regulating the dealer, dismantler, driving school,  
4 traffic violator school industries. And in doing those  
5 processes, we would come across evidence of unlicensed  
6 activity or evidence of other code sections that were  
7 being violated and pass that information on to  
8 Investigators in one form or another to be pursued.

9 Q. Okay. Now, on page two of your Declaration,  
10 paragraph six, you make reference to something happening  
11 in 1997 where occupational licensing portion of  
12 Investigations Division was moved to a new division. So  
13 what are you saying with reference to the duties that you  
14 were performing as a DMV Investigator? Inspector.  
15 Pardon me. What happened to those duties?

16 A. Well, the Inspectors were directly supervised by  
17 the Supervising Investigator and in the same division  
18 office, et cetera, as the Investigators. And then they  
19 split the Inspectors away from the Investigations  
20 Division to a new division. So the Supervising  
21 Investigator was no longer the Supervisor over the  
22 inspectors. And therefore, having a separate division  
23 and making things sort of separate.

24 Q. And did that affect how much you were working --  
25 Inspectors were working with the Investigators?

1           A. I would say in some cases it did. Because the  
2 Supervisor for the Inspectors would be in a different  
3 physical location than the Supervising Investigator,  
4 which was near the Inspector's physical location. So you  
5 were having to go to a Supervisor who was no longer there  
6 with you physically and let the two divisions has it out  
7 sometimes.

8           Q. Okay. Now, before the split, if you discovered a  
9 forgery --

10          A. Uh-hmm.

11          Q. -- what would -- what would you do with that  
12 information?

13          A. Bring it to my Supervisor's attention, who was  
14 the Supervising Investigator.

15          Q. And what would happen?

16          A. The Investigator would work with us as far as  
17 what evidence we have or knowledge of what was going on  
18 to build a case.

19          Q. Would the same be true of false information or  
20 false identities?

21          A. Correct. Yes.

22          Q. Okay. Now, after the split, if you had  
23 information about discrepancies and forgeries, false  
24 information or false identities, would -- what role, if  
25 any, would DMV Investigators have upon your reporting

1 that?

2 A. Again, it could vary from office to office. But  
3 since I was physically still in the same office as the  
4 Investigators, I would still have the same relationship  
5 with them, but I would have to keep my Supervising  
6 Inspector posted on what information I was giving them.

7 Q. Okay. Are there situations -- would you know if  
8 there were situations where Inspectors would find a  
9 forgery and not end up having that go to an Investigator?

10 A. Yes. Where an Inspector didn't work in the same  
11 physical location as an -- as an Investigator, they would  
12 be giving that information to the Supervising Inspector.  
13 And what they did with it may not be our knowledge.

14 Q. Okay. But if it would -- after a Supervisor got  
15 that information, would they turn that over to an  
16 Investigator somewhere?

17 A. Normally it would go up the chain and back over  
18 to Investigations and down the chain.

19 Q. Okay. And when it went back to an Investigator  
20 down the chain somewhere else --

21 A. Yes.

22 Q. -- would the Inspector have occasion to talk to  
23 the Investigator about what had occurred?

24 A. Yes.

25 Q. Okay. So you would still end up working with an

1 Investigator?

2 A. Yes.

3 Q. Okay. And the Inspectors, did they work in the  
4 field or the office, or both?

5 A. The Inspectors?

6 Q. Inspectors.

7 A. Both. Mostly in the field.

8 Q. Mostly in the field. Okay. And the field  
9 activities, would that include questioning witnesses?

10 MR. ROSE: Objection. Leading.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

12 BY MR. MESSING:

13 Q. What would be included in the activities that you  
14 would have in the field?

15 A. And we're talking about DMV Inspectors, right?

16 Q. DMV Inspectors.

17 A. The activity could range. We had -- we had 10  
18 different licensees that we dealt with. So any from  
19 licensing the actual business to shutting down the  
20 business to completing inspections to make sure that a  
21 business met the requirements to hold the license,  
22 performing audits on traffic violator schools and driving  
23 schools, and then formulating administrative action cases  
24 to take appropriate action against those schools.

25 Q. Okay. Now, after you were a DMV Inspector, you

1 ended up at the Department of Consumer Affairs?

2 A. Yes.

3 Q. Okay. As a Barber and Cosmetology Inspector  
4 II --

5 A. Yes.

6 Q. -- is that correct? Okay. And can you briefly  
7 characterize what your responsibilities were or are as  
8 a -- you're still an Inspector II, right?

9 A. Yes.

10 Q. So characterize your activities now and your  
11 responsibilities.

12 A. Now the responsibilities focus on an  
13 investigative-type inspection as opposed to a licensing  
14 inspection. So we can investigate salons, spas,  
15 barbershops, electrolysis, places of business, either at  
16 a point of a complaint from the public, routine  
17 inspections, initial inspections. I think that's it.

18 Q. Okay. Now, in the -- are any of the activities  
19 that you investigate, do they result in criminal charges  
20 against the people you're investigating?

21 A. They can, yes.

22 Q. Okay. And which of the categories that you  
23 listed could end up with a criminal charge?

24 A. Okay. Investing -- well, investigating an  
25 initial routine or a complaint could end up with a

1 criminal charge as far as public harm, drugs, illegal  
2 prostitution, identity theft. Those are just a few ways  
3 I can think of.

4 Q. Okay. Now, do you have power of arrest?

5 A. No, we do not.

6 Q. Okay. So in the event that you uncover criminal  
7 activity, what do you do?

8 A. Well, you would -- if they -- if they're in  
9 immediate danger, you would call for law enforcement  
10 backup. And if there's no immediate physical danger,  
11 then it would be a matter of gathering evidence, taking  
12 witnesses' statements. Photos are part of our evidence  
13 chain, and completing reports.

14 Q. Okay. So what are the -- what different law  
15 enforcement agencies will you work with in enforcing  
16 criminal violations?

17 A. Depends on the nature of the violation. But, for  
18 instance, if it was fraud ID, I would work with the DMV  
19 Investigators, because they have expertise knowledge in  
20 that area. It might be a local sheriff or police  
21 department as far as drugs or prostitution. And it might  
22 be Immigration.

23 Q. Okay. Now, I think you mentioned you're -- that  
24 you do audits.

25 A. I did audits at DMV.

1 Q. Okay. So how about periodic inspections, do you  
2 do those?

3 A. At which?

4 Q. In your current job.

5 A. Current job? Yes.

6 Q. Okay. And can you explain what a periodic  
7 inspection is?

8 A. Well, my --

9 Q. Go ahead.

10 A. -- interpretation of a periodic inspection would  
11 be routine inspections, if that's what you're talking  
12 about.

13 Q. I think that's what I'm talking about.

14 A. Okay. The Board of Barbering and Cosmetology had  
15 less than 15 Inspectors for the last 20 years that I know  
16 of. So routine inspections occurred maybe in a 4-to-8-  
17 year span. But now the new goal, since they've hired  
18 more Inspectors, is that they want routine inspections to  
19 happen once a year. I don't know that we can meet those  
20 goals right away, but that is the goal of the Department.

21 Q. Okay. Would you explain to the ALJ what a  
22 routine inspection is?

23 A. A routine inspection would be going out to the  
24 facility and looking for violations of the Health and  
25 Safety Codes and Title 13 regulations that we enforce or

1 cite for.

2 Q. Are the licensees notified in advance of these  
3 inspections?

4 A. No. We pop in unannounced.

5 Q. Okay. Now, are you -- can you explain what an  
6 inspection consists of? What are you looking for?

7 A. Without being specific, we go in and look for  
8 requirements of the establishment itself as far as, you  
9 know, restroom facilities, cleanliness. Then we look at  
10 each station for Health and Safety Code violations as far  
11 as sanitization processes and public health and safety on  
12 foot spa/pedicure issues, illegal instruments.

13 Q. Okay.

14 A. I think that's it.

15 Q. Do you need a search warrant to conduct these  
16 inspections?

17 A. No, we do not.

18 Q. Okay. Now, how, if at all, can a law enforcement  
19 officer, sworn officer, utilize this information to  
20 proceed against the licensee, let's say if there's a  
21 criminal violation?

22 A. I'm not sure I understand your question.

23 Q. Okay. If there's a criminal violation you --

24 A. Yes.

25 Q. -- you turn that over to a law enforcement

1 agency?

2 A. Yes. I would turn over my evidence and probably  
3 a copy of my report.

4 Q. Okay. And the question is can they use that  
5 evidence since it's been obtained without a search  
6 warrant?

7 A. To my knowledge, yes.

8 Q. Okay. Now, I think you mentioned that some of  
9 the results that could occur from your inspections and  
10 investigations are that the licenses can be revoked?

11 A. They could be.

12 Q. Okay. Have you -- have you heard of anyone ever  
13 being threatened by licensees when they may have had a  
14 situation where their license could be revoked?

15 A. That is a huge issue right now, yes.

16 Q. Okay. Can you elaborate that -- these for the  
17 Law Judge?

18 A. You may have heard recently of a case down south  
19 where an aesthetician was refusing to let the Inspector  
20 inspect a room because she claimed that her next client  
21 was J-Lo. And when the Inspector tried to open the door  
22 and go in the room, she had a physical altercation with  
23 that aesthetician.

24 Q. How long ago did that happen?

25 A. I'm guessing within six months, I think.

1 Q. Is this something that's come up -- how often  
2 does this come up?

3 A. I would say it probably comes up around the state  
4 maybe four to ten times a year.

5 Q. Okay. Now, you said that you have sworn  
6 individuals in CARI.

7 A. Yes.

8 Q. Okay. Have those individuals -- now I'm  
9 referring to the sworn folks. Have they talked to you  
10 about wanting to split off of CSLEA and have a bargaining  
11 unit only of peace officers?

12 A. Not at all.

13 Q. Okay. In your position as a Vice President of  
14 CARI, if people had complaints about CSLEA, are you  
15 somebody that they'd be apt to come to, or are you  
16 somebody that would hear about that?

17 A. Yes, I am.

18 Q. Okay. So since you've been a Job Steward, so  
19 that goes back what, about five years now?

20 A. Yes.

21 Q. Okay. Can you characterize the -- how your  
22 members view the responsiveness of CSLEA when they call  
23 in for help?

24 A. Characterize the members' responsiveness?

25 Q. Yes. Do they think -- no.

1 A. Or --

2 Q. When the members call in, okay, do they -- how  
3 would you characterize their view of whether CSLEA has  
4 been responsive to their requests?

5 A. I would say that they all think that we respond  
6 in a timely manner.

7 Q. Okay. And then in dealing with staff, have you  
8 dealt with staff over the past four or five years?

9 A. Yes.

10 Q. Okay. And how would you characterize the staff's  
11 responsiveness to your inquiries?

12 A. Always helpful.

13 Q. Okay. Do you deal with the staff frequently?

14 A. Yes.

15 MR. MESSING: Okay. Okay. I have nothing further at  
16 this time. I'm going to pass you over to Mr. Rose, who  
17 has some questions for you no doubt.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir?

19 CROSS-EXAMINATION

20 BY MR. ROSE:

21 Q. Hello, Ms. Hayek. How are you?

22 A. Fine, thank you.

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

25 A. Uh-hmm.

1 Q. I'm going to ask you a few questions about what  
2 you just spoke about, and also what's in your  
3 Declaration.

4 A. Okay.

5 Q. Let me first start with the incident that you  
6 described involving the aesthetician who refused to allow  
7 the Inspector to go into the room and then there was a  
8 physical altercation. You remember that testimony?

9 A. Yes.

10 Q. When you go to an inspection, do you -- is it  
11 common practice for you to announce yourself to the  
12 business owner as soon as you --

13 A. You mean as I come in?

14 Q. When you arrive, do you locate the business  
15 owner?

16 A. We always ask if the owner's present --

17 Q. And then --

18 A. -- to let them know we're there. And if they're  
19 not, then whoever is at the front desk or greeting us, we  
20 let them know we're with State Board and we're here to do  
21 an inspection.

22 Q. Now, if someone who's in a -- either the owner or  
23 someone who appears to be responsible for the business  
24 tells you that you're not permitted to conduct the  
25 inspection, would that be a violation of the licensing

1 requirements for that establishment?

2 A. Yes, it would.

3 Q. Would you nonetheless be authorized to by force  
4 conduct the inspection?

5 A. Well, I wouldn't do anything by force, but I  
6 would conduct an inspection.

7 Q. Even if the owner asked you to leave the  
8 premises?

9 A. Yeah.

10 Q. Have you ever done that?

11 A. No. I haven't had that happen.

12 Q. Okay. Have you ever heard of an inspection  
13 warrant?

14 A. No.

15 Q. Okay. So you've never used an inspection  
16 warrant, I would imagine?

17 A. No.

18 MR. MESSING: Object.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. We  
20 don't know whether --

21 MR. ROSE: Okay.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- she would or  
23 not.

24 BY MR. ROSE:

25 Q. Have you ever involved anyone in a legal sense to

1     comply -- compel the licensee to allow an inspection to  
2     happen?

3           A.   Can you repeat that?

4           Q.   Yes.  Have you ever used -- employed legal  
5     mechanisms to compel a licensee to allow an inspection to  
6     happen?

7           A.   If I think I understand the question, I would  
8     provide them with a code section that says we're allowed  
9     to do an inspection.

10          Q.   I guess what I'm saying is, have you ever gone  
11     and -- gone to court, for example, to get a judge to  
12     order the licensee to allow you on the premises to  
13     inspect it?

14          A.   No, I've never done that.

15          Q.   You mentioned that you have about 10 sworn peace  
16     officers in your affiliate.

17          A.   I said less than 10 --

18          Q.   Okay.

19          A.   -- I believe.

20          Q.   Who are those?

21          A.   I don't know them individually.

22          Q.   Do you know any of them?

23          A.   I know that they work for the State Contractor's  
24     Board.

25          Q.   Do you know any of them by name?

1 A. No, I don't know them personally.

2 Q. Have you ever spoken to any one of them?

3 A. I probably have. I spoke to a lot of people in  
4 our affiliate and don't recall all of them.

5 Q. When do you believe that you probably spoke to  
6 one of the sworn members of your affiliate?

7 A. At a membership meeting probably in 2007. We had  
8 some State Contractors Board people there.

9 Q. And you were certain they were sworn peace  
10 officers?

11 A. I'm pretty certain one of them was at least.

12 Q. Did they say anything at the meeting?

13 A. No. Other than the usual concerns with all of  
14 our members. You know, what's happening with  
15 negotiations.

16 Q. Did they identify themselves as peace officers?

17 A. I don't remember.

18 Q. So when you say you haven't heard anything, any  
19 complaints about or any expression of a desire to spin  
20 off from CSLEA by the peace officers, are you basing it  
21 on the interaction that you just described?

22 A. Partly.

23 Q. What other bases are you answering that question  
24 with?

25 A. One of our other Board members is also a State

1 Contractors Licensing Board employee.

2 Q. Is that person a sworn peace officer?

3 A. No, he's not.

4 Q. and so what is it about that other person on your  
5 Board who's not a peace officer that informs your answer  
6 regarding whether peace officers in your affiliate have  
7 concerns?

8 A. Because he interacts with his members quite  
9 extensively.

10 Q. And you've discussed with him the peace officers  
11 in his -- at the Contractors State License Board?

12 A. He's discussed it with us as a Board.

13 Q. Oh. And what has he said?

14 A. Can't give you exact.

15 Q. Well, did he raise specifically the issue of  
16 peace officers at the Contractors State License Board?

17 A. No.

18 Q. How many -- you mentioned that your -- all of  
19 your members in the affiliate are satisfied with CSLEA's  
20 representation. Do you remember that?

21 MR. MESSING: Object. I think that mischaracterizes  
22 the witness' testimony.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know  
24 whether it does or not. But is that what you stated?

25 THE WITNESS: No, I don't think I stated that

1 exactly.

2 BY MR. ROSE:

3 Q. Well, let me -- let me ask you again. You were  
4 asked since you've been a Job Steward can you  
5 characterize how your members view the responsiveness  
6 when you call CSLEA for help. And I believe your answer  
7 was they all think we respond in a timely manner.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're right. I  
9 have the same notes.

10 THE WITNESS: Right. On responsiveness, yes.

11 BY MR. ROSE:

12 Q. And so when you all, you're referring to all 400  
13 to 450 members believe that?

14 A. All of the ones that I've talked to have never  
15 had a complaint with responsiveness.

16 Q. All right. Have you ever had any complaints from  
17 any members about anything related to CSLEA's  
18 representation?

19 A. I would say no. Not about representation  
20 specifically, no.

21 Q. What about representation generally?

22 A. Well, generally every member always wants things  
23 that they're not going to get.

24 Q. What kind of things do the members want -- you've  
25 heard them say they want that you don't believe they'll

1 get?

2 A. Money.

3 Q. All right. Would say that -- you were asked  
4 about paragraph six, page two, of your Declaration. And  
5 this paragraphs speaks to the separate divisions,  
6 Investigations and Inspections, at the DMV, right?

7 A. Yes.

8 Q. Would you say that there's been a change over  
9 time in the separateness of the Investigations and  
10 Inspection Divisions of the DMV?

11 A. I'm sorry. Can you say that again?

12 Q. Sure. Would you say that there has been a change  
13 over time in the separateness of the Inspect --  
14 Investigations and Inspections functions of the DMV?

15 A. Yes. A change in the --

16 Q. Separateness.

17 A. To make it different divisions, yes.

18 Q. And they're more separate now?

19 A. Yeah.

20 Q. All right. And the --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, whatever  
22 answer you have. Next question.

23 BY MR. ROSE:

24 Q. So you agree with that statement, correct?

25 A. It's separate in that there are separate managers

1 in each division instead of one management team over both  
2 positions.

3 Q. And would you also agree that the functions of  
4 the Inspections -- excuse me, the Investigations Division  
5 has become more focused on investigations?

6 A. That's asking for my opinion?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, do you  
8 know the answer without giving an opinion?

9 THE WITNESS: Well, I have an opinion.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
11 have you give an opinion.

12 MR. ROSE: I'm asking -- I'm sorry, sir.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You can -- you  
14 can give an answer based on your observations.

15 THE WITNESS: On my observations, the Investigations  
16 Division of DMV still has the same functions.

17 BY MR. ROSE:

18 Q. All right. Now, you mentioned -- oh, how many  
19 criminal cases have you been involved in the prosecution  
20 of in the last year while working for the Cosmetology  
21 Board?

22 A. None.

23 Q. And how long have you been with the Cosmetology  
24 Board?

25 A. I transferred September of last year.

1 Q. All right. How about in your office how many  
2 criminal cases are you aware of since coming to the  
3 Cosmetology Board, if any?

4 A. I don't have an office.

5 Q. Oh, you work at home?

6 A. I'm a home office and I work three counties by  
7 myself.

8 Q. Based on your experience as a CSLEA official, or  
9 the President -- Vice President, rather of your  
10 affiliate --

11 A. Yeah.

12 Q. -- how many criminal cases, if you know, have  
13 Cosmetology Board Inspectors been involved in the  
14 prosecution of?

15 A. I don't know.

16 Q. Now, you mentioned, for example, that fraud  
17 identifi -- or fraud ID would be one of the instances  
18 where your inspection could turn into a crime. Do you  
19 remember that?

20 A. Yes.

21 Q. When you get a fraud ID case, you turn that over  
22 to the DMV Investigator, correct?

23 A. Not exactly. I would work with the DMV  
24 Investigator. I would turn over the evidence or reports  
25 that an Investigator would need to pursue that case.

1 Q. And then from that point you would continue with  
2 your inspections?

3 A. Yes.

4 Q. Your other caseload, right?

5 A. Yes.

6 Q. Your complaint inspections, your routine  
7 inspections, and your initial inspections, right?

8 A. Right.

9 Q. And especially considering you are trying to move  
10 from a four-to-eight-year span for routine inspections to  
11 a once-per-year span for routine inspections, right?

12 A. We're trying to do that, yes.

13 Q. So the Department's mission is to have you  
14 focusing on inspections, not doing fraud ID cases, true?

15 A. True.

16 Q. And let me ask you this: When you have a case  
17 involving Immigration, do you enforce immigration law?

18 A. No.

19 Q. Have you -- you would make that referral to the  
20 federal government, true?

21 A. True.

22 Q. And then they would take the case from that  
23 point, right?

24 A. True.

25 Q. And when you have -- you mentioned some other

1 things. You said public harm.

2 A. Yes.

3 Q. What did you mean when you said public harm would  
4 be one thing that might be a criminal case?

5 A. Disease, infestation, a client dying.

6 Q. Okay. And if there were those circumstances?

7 A. Our Department would pursue it.

8 Q. Your Department would pursue that, then?

9 A. Yes.

10 Q. How many cases have you done involving disease,  
11 infestation, or a client dying in the last year that were  
12 criminal?

13 A. Personally, I have done none.

14 Q. You mentioned also drugs as a possible criminal  
15 violation that you might observe.

16 A. yes.

17 Q. That would be something that you would refer to  
18 the local law enforcement agency, correct?

19 A. Yes.

20 Q. And then they would investigate that and  
21 prosecute that, true?

22 A. True. But our Department may choose to pursue it  
23 also.

24 Q. Okay. Under what circumstances would the  
25 Cosmetology Board pursue a crime involving drugs?

1           A. I don't know. That decision is made in  
2 headquarters. I'm not privy to that information.

3           Q. Have you done any cases involving drugs that were  
4 criminally related in the last year?

5           A. No, I have not.

6           Q. And you mentioned illegal prostitution as a  
7 possible criminal violation that you might observe while  
8 conducting your inspections.

9           A. Yes.

10          Q. And if that was an observation you made, you  
11 would report that observation to local police  
12 authorities, true?

13          A. As well as report it to my own Department.

14          Q. And your Department would view the prostitution  
15 from an aspect of whether that licensee should continue  
16 to operate under its license, correct?

17          A. Correct. But it also may pursue criminal.

18          Q. The Board of Cosmetology pursues criminal cases  
19 for prostitution?

20          A. You know, I don't know, to tell you the truth.  
21 But I know that those -- if it involves our licensee,  
22 then they have access to criminal, civil and  
23 administrative.

24          Q. Who's they?

25          A. Our Department, DC.

1 Q. What do you mean they have access to criminal,  
2 civil and administrative?

3 A. They have access to pursue it.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: When you say DC,  
5 do you mean Consumer Affairs?

6 THE WITNESS: Yes. DCA, Consumer Affairs. I'm  
7 sorry.

8 BY MR. ROSE:

9 Q. All right. Okay. Now looking at your  
10 Declaration, page three --

11 A. Uh-hmm.

12 Q. -- and paragraph eight, you speak to the  
13 application process for an occupational license at the  
14 DMV. Now we're moving back in your earlier career,  
15 right?

16 A. Yes.

17 Q. And you say in your -- in your Declaration, "When  
18 we discover discrepancies such as forgeries, false  
19 information or false identities, we worked with the DMV  
20 Investigators for further administrative, criminal and/or  
21 civil actions." When you make that statement, are --  
22 what position are you referring to that you held at the  
23 time?

24 A. Occupational Licensing Inspector with DMV.

25 Q. Okay. And having held that position, when you

1 came across those, you would refer that information to  
2 the Investigator, true?

3 A. I would gather as much evidence as possible and  
4 refer that to Investigations and/or my Supervisor.

5 Q. And then the Investigator would carry the case  
6 forward from that point, right?

7 A. If there was substantial evidence to do so, yes.

8 Q. But your responsibility as an Occupational  
9 License Inspector was not to conduct a criminal  
10 investigation regarding any of those things, true?

11 A. True.

12 Q. In fact, you performed initial and routine  
13 inspections rather than criminal investigations, correct?

14 A. At DMV they weren't really initial and routine  
15 inspections like at BBC. It was -- it was a licensing  
16 inspection and a -- what did we call it? Well, I guess  
17 you would say a routine inspection for dealers to have  
18 all their necessarily paperwork and be completing  
19 transactions in a timely manner, et cetera.

20 Q. Okay. And then what do you mean at paragraph  
21 nine, line nine of page three when you write, "We  
22 performed initial and routine inspections of the  
23 occupational licenses to identify," and it continues? Do  
24 you see that?

25 A. Yes.

1 Q. Should the word "initial" be something different?

2 A. No. I'm sorry. I'm trying to keep two jobs  
3 separate. But initial means initially licensing a  
4 licensee.

5 Q. And when you were conducting those inspections,  
6 you came across a criminal violation, those too were  
7 referred to the DMV Investigator for further  
8 investigation?

9 A. And/or Supervisor, yes.

10 MR. ROSE: Okay. Thank you. 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: Just a few things.

15 REDIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. So you were just asked if you came across a  
18 criminal violation you'd refer it to an Investigator. So  
19 if you saw something that was a potential criminal  
20 violation, wouldn't you simply drop it there and call an  
21 Investigator, or was there something that you had to do  
22 at that point?

23 A. I believe that would fall under the gathering  
24 evidence rules. Depending on the nature of the act, what  
25 evidence that I could find that correlates that

1 violation, and making copies, documenting dates and times  
2 and people, et cetera.

3 Q. And would you say that the more routine  
4 investigations that can be conducted, that that would  
5 have some -- would effect would that have on how many  
6 referrals there would be made to Investigators?

7 A. We're talking DMV now?

8 Q. Now we're talking DCA.

9 A. The DC?

10 Q. Yeah.

11 A. Okay. I'm sorry. Say that again.

12 Q. Yeah. So if you -- if you're conducting more  
13 routine investigation -- routine inspections --

14 A. Yes.

15 Q. -- what impact would that have on the number of  
16 referrals that you would have to law enforcement  
17 agencies?

18 A. Well, routine is where you find a lot of the  
19 violations because we haven't been out there in a long  
20 time in the routine capacity. It's been five or more  
21 years. So you're going to have more evidence of  
22 unlicensed persons working, and Health and Safety Code  
23 violations, et cetera.

24 Q. Okay. And a similar question that I asked about  
25 your duties as an Inspector at DMV. When you're at DCA,

1 when you uncover a possible violation, do you drop it  
2 there and call up a law enforcement officer, or do you  
3 have other duties expected of you at that point?

4 A. Again, it depends on the nature. As long as  
5 there's no potential physical harm, you continue with the  
6 evidence gathering methods that we use, and write the  
7 report, and then call in somebody if it's necessary. I  
8 mean if there's a drug deal going down there and you see  
9 that you may be in harm's way, you're going to go out of  
10 the shop and call law enforcement right away.

11 Q. Do you get any training in evidence gathering?

12 A. Minimal.

13 Q. Do you have policies on evidence gathering?  
14 Policies or procedures?

15 A. We have procedures, departmental procedures.

16 Q. Okay. Now, still dealing with DCA, if you  
17 uncover something that gets referred to an Investigator,  
18 is that the end of it, or is it possible that you might  
19 be involved at a later time?

20 A. It's possible that I might be involved at a later  
21 time.

22 Q. Okay. And what sort of involvement could you  
23 have at a later point in an investigation?

24 A. I believe that I would have to testify to my  
25 evidence and the gathering of that evidence, how and

1 where it was taken.

2 Q. Okay. Is there ever -- are there ever times  
3 where you're asked to do further evidence gathering once  
4 a matter has been turned over to an Investigator?

5 MR. ROSE: Objection. Leading.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Overruled. Go  
7 ahead.

8 THE WITNESS: Yes. In the cases where it was extreme  
9 violations or repeat violations, we will get another  
10 inspection sent to us to perform another inspection.

11 BY MR. MESSING:

12 Q. Okay. Now, you were asked a series of questions  
13 about your last -- the last year that you -- or the year  
14 that you've been working at DCA. But when did you say  
15 that you were first hired by DCA?

16 A. September 15th of last year.

17 Q. September 15th of 2008?

18 A. Yes.

19 Q. So you've only been there some six months?

20 A. Yes.

21 Q. So some of the things that you were asked about,  
22 whether you had personally been involved in, like  
23 criminal investigations, contamination issues or that,  
24 you said that you had not been involved with. Are you  
25 aware of other folks in your affiliate who have been

1 involved in such matters?

2 A. Yes, I am.

3 MR. MESSING: Okay. Nothing further.

4 /////

5 RE-CROSS-EXAMINATION

6 BY MR. ROSE:

7 Q. Who's been involved in those other matters?

8 A. Other Inspectors in BBC.

9 Q. Who specifically?

10 A. Are you wanting names?

11 Q. Yes.

12 A. I'm blanking. I can't give you names right now.

13 I'm sorry.

14 Q. Can you give an event?

15 A. Yeah. I can give an event where a gal down in LA  
16 right now is involved with another physical altercation  
17 case. Actually, two girls. One a black girl and one a  
18 Hispanic girl that are down south that are both involved  
19 in physical altercation cases.

20 Q. And how are they involved in those cases? Are  
21 they --

22 A. They were physically attacked by the licensees.

23 Q. So they were involved as victims --

24 A. Yes.

25 Q. -- in those cases?

1 A. Yes.

2 Q. Okay. Any cases other that you were referring  
3 to?

4 A. There was another one with a gal down south  
5 that -- where she photographed rock cocaine in the drawer  
6 of a manicurist.

7 Q. And when did that happen?

8 A. Again, sometime in the last six months, but I  
9 don't know the date.

10 Q. And who is prosecuting -- which law enforcement  
11 agency is handling that investigation?

12 A. I don't know. It's in the LA area somewhere.

13 Q. Are you aware whether they've asked her to go  
14 back out and gather further evidence for a criminal  
15 prosecution?

16 A. I'm aware that our Department would send her back  
17 out, but I don't know about the other agency.

18 Q. Your Department would send her back out?

19 A. Yes.

20 Q. Or has?

21 A. Yes. Whenever there's -- I don't know what the  
22 criteria they use, but when there's substantial  
23 violations or serious violations, they send us out for  
24 two -- a second and sometimes a third inspection.

25 Q. Okay. But I want to make sure I understand your

1 answer. You're saying that she did go back out there?  
2 You're aware of that?

3 A. I don't know if she's went yet.

4 Q. Okay. And the purpose of that revisit would be  
5 to evaluate her compliance with the licensing  
6 requirements, correct?

7 A. Yes.

8 Q. Not to investigate the crime of rock cocaine?

9 A. No.

10 Q. All right.

11 A. But there were also needles present, and that's  
12 an illegal instrument.

13 Q. Under the regulations?

14 A. Yes.

15 Q. Okay. And that would affect the license for --

16 A. Yes.

17 Q. -- the Barbering and Cosmetology Board. Okay.  
18 How many times have you testified in your entire career  
19 in a criminal case?

20 A. None. Only administratively.

21 Q. How many times in your entire career have you  
22 been asked to gather evidence in a criminal case by a  
23 peace officer?

24 A. In my career with Investigations as an Inspector,  
25 that was -- the Inspectors were used as a gathering tool

1 without the licensee knowing that they were being  
2 investigated. So I don't know. An answer, over 10, but  
3 less than 50.

4 Q. So the peace officer after the criminal  
5 investigation was open would then ask you to go back out  
6 and further gather evidence from the subject of the  
7 investigation?

8 MR. MESSING: Object. Mischaracterizes the witness'  
9 testimony.

10 MR. ROSE: I'm asking the question on cross.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I do not --  
12 seems a fair question to me. But is that --

13 THE WITNESS: Okay. Say it again?

14 BY MR. ROSE:

15 Q. Are you saying -- are you -- are you testifying  
16 or not that the peace officer, after the criminal  
17 investigation is open, would send you as an Inspector out  
18 to gather further evidence for their criminal  
19 investigation?

20 A. The way it worked is that if they had an ongoing  
21 criminal investigation and my job duties would cross over  
22 into a licensee, then they would let me know what the  
23 specifics of their case were. So that if I found  
24 evidence or information that was relevant to that case,  
25 then I could bring it back for them.

1 Q. And so is that what you mean when you say you've  
2 done that more than 10 but less than 50 times?

3 A. Yes.

4 MR. ROSE: One minute, please.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Certainly.

6 MR. ROSE: Oh, yes. Are we on the record?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're on.

8 BY MR. ROSE:

9 Q. You mentioned that you have procedures on  
10 evidence gathering. Are those procedures --

11 A. Policies, I believe was the word that -- or  
12 procedures.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, you said  
14 procedures.

15 THE WITNESS: Procedures, yeah.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, regardless.

17 THE WITNESS: He had asked policies and procedures,  
18 yes.

19 BY MR. ROSE:

20 Q. Do you see a distinction between the two,  
21 policies versus procedures?

22 A. Procedures I see as a written training for the  
23 classification. Policies I see as something that  
24 changes.

25 Q. And do you believe you have one or the other or

1 both with respect to evidence gathering in your current  
2 position?

3 A. Yes.

4 Q. Which of those do you have?

5 A. Probably both.

6 Q. All right. So there are written -- where would I  
7 go to find the written policies or procedures on evidence  
8 gathering for your -- for your classification?

9 A. In the DCA's BBC Inspector Manual.

10 Q. And are you generally familiar with the policy or  
11 procedure for evidence gathering that's in the manual?

12 A. Generally, yes.

13 Q. What's your understanding of -- based on your  
14 general understanding of the policy or procedure in the  
15 manual regarding evidence gathering?

16 A. My understanding is that you take a picture of  
17 everything that you can that's a violation.

18 Q. Any other aspects of the procedure or policy that  
19 you're familiar with other than take a picture?

20 A. Noting dates and times and people's names.

21 Q. Any others?

22 A. The chain of evidence as far as our photos,  
23 reports and evidence.

24 Q. What about the chain of evidence do you -- are  
25 you aware of?

1           A. The documentation process of how we complete our  
2 paperwork and forward it to headquarters for further  
3 review.

4           Q. Okay. So let's talk about that. Is there an  
5 evidence locker somewhere that you can turn your evidence  
6 into?

7           A. Not that I would use, no.

8           Q. Is there an evidence locker that anyone would use  
9 that is in your job classification?

10          A. I don't know. I don't work in headquarters, so I  
11 don't know how that works. I know how I gather my stuff  
12 and send it to them. I don't know what happens after  
13 that.

14          Q. Tell me what -- how do you send your evidence to  
15 headquarters?

16          A. We fill out an evidence log and we put it in a  
17 sealed envelope and we overnight mail it to our  
18 Headquarters Division.

19          Q. I see. And the evidence log in the sealed  
20 envelope, what kind of sealed envelope do you use?

21          A. What do you mean?

22          Q. Well, do you have evidence envelopes?

23          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you describe  
24 what the envelope looks like?

25          THE WITNESS: Yeah. It looks like a mailing envelope

1 with a log sheet stuck on it with a clip and glue and  
2 tape.

3 BY MR. ROSE:

4 Q. Does it say evidence on the outside?

5 A. Yes.

6 Q. And is that visible from the outside of the  
7 package when it's being transmitted overnight?

8 A. No.

9 Q. So does that evidence go inside of another --

10 A. Yes.

11 Q. That envelope goes inside of another envelope?

12 A. Yes, it does.

13 MR. ROSE: All right. I get it. All right. Thank  
14 you. Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

16 MS. TRUONG: Nothing from us.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

18 MR. MESSING: Nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very  
20 much. I need to admonish you not to discuss your  
21 testimony with any other witnesses except those that are  
22 at these counsel tables. And with that, Exhibit  
23 Exclusive Rep HH is admitted.

24 (Exclusive Representative's Exhibit HH received  
25 in evidence.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you  
2 very much.

3 THE WITNESS: Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.  
5 (Off the record.)

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on  
7 the record. WE have another witness called by the  
8 Exclusive Representative. I'm going to ask this witness  
9 to raise your right hand.

10 (Witness sworn by the Judge.)

11 THE WITNESS: Yes, I do.

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

14 THE WITNESS: Lyle Curry. C-U-R-R-Y.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. A  
16 couple preliminary questions. First, have you reviewed  
17 any of the transcripts of the previous proceedings in  
18 this matter?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Second, do you  
21 know an individual by the name of James Cline?

22 THE WITNESS: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Marking as  
24 Exclusive Representative II what appears to be a  
25 Declaration of this witness.

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  
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8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
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10 ASSOCIATION, Exclusive Representative, Unfair Practice  
11 Charge No. SA-SV-171-S, which recording was duly recorded  
12 at Sacramento, California on March 24, 2009, and that the  
13 foregoing pages 1 through 189 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 14th day of April, 2009, at Dixon,  
17 California.

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