

March 10, 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 10, 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 issue on Cline is probably going to go more towards the  
2 witnesses that, in a sense, Mr. Rose is calling. I may  
3 be wrong. There may be some overlap. But usually  
4 exclusion of witnesses is for the issue that people don't  
5 mirror each other's testimony rather than confront it, so  
6 to speak.

7 So I could at least deal with the witnesses that we  
8 have today and questioning them whether they discussed  
9 their test -- whether Mr. Cline discussed his testimony  
10 with them, and I can do that for any of the witnesses  
11 after that if that's an issue.

12 But in the meantime, certainly in regards to -- and I  
13 don't have the number of witnesses, or I don't have  
14 the -- at least on me right now who discussed -- who  
15 testified the first three days of witnesses before we  
16 started giving the admonishment. But certainly I can --  
17 Mr. Rose, if you can have at least an e-mail sent out to  
18 the witnesses not to discuss their testimony with any  
19 other witnesses.

20 So anything else, Mr. Messing?

21 MR. MESSING: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I  
23 think with -- anything on behalf of the Employer? I  
24 shouldn't --

25 MS. TRUONG: No, your Honor.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On behalf of the  
2 Petitioner any preliminary?

3 MR. ROSE: No. I don't know if we have a witness  
4 list handed out. I know we e-mailed one. Bob Orange is  
5 our first witness. Michael Lilly. L-I-L-L-Y.

6 MR. MESSING: We got a copy of a witness list before.

7 MR. ROSE: You did? I don't know that the Judge did.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I didn't.

9 MS. TRUONG: No, we didn't.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But that's good  
11 enough. If you just give me it, I'll --

12 MR. ROSE: There's four. Mr. Barcelona and then Tim  
13 Fries.

14 MR. MESSING: Yeah.

15 MR. ROSE: Okay.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Good  
17 enough.

18 MR. ROSE: And I'm calling Bob Orange.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Let's go  
20 off the record while we get the witness. Off the record.

21 (Off the record.)

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
23 We're back on the record. This is, again, day five of  
24 our Unit 7 severance. Our first witness called. I'm  
25 going to ask you to raise your right hand.

1 (Witness sworn by the Judge.)

2 THE WITNESS: Yes.

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

5 THE WITNESS: My name is Bob Allen Orange. Last name  
6 is spelled O-R-A-N-G-E.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir,  
8 I'm going to ask you a couple preliminary questions  
9 before we get to your Declaration. And those preliminary  
10 questions is that did you ever receive an e-mail  
11 regarding the transcripts of the -- or containing the  
12 transcripts of the first two days of these proceedings?

13 THE WITNESS: Receive an e-mail? I'm trying to  
14 think. The only e-mail I may have received, I believe,  
15 was a e-mail put out by CSLEA regarding the testimony of  
16 Warden Jerry Karnow and another officer at the time, and  
17 they talk about -- it was from CSLEA. I have not  
18 received any e-mail regarding anything else I can  
19 remember.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
21 Let's just skip the e-mail for a second and just ask you,  
22 did you ever receive any transcripts --

23 THE WITNESS: No.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- regarding the  
25 first two days? Okay.

1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's make it  
3 easy. All right. So, and additionally, do you know who  
4 Mr. James Cline is?

5 THE WITNESS: No.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did I get the  
7 first name right?

8 MR. MESSING: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
10 right. Well, that takes care of that one. I am going to  
11 hand you what I'm marking as Petitioner's Exhibit Z, what  
12 appears to be a Declaration of Bob Orange in Lieu of  
13 Testimony.

14 (Petitioner's Exhibit Z marked for  
15 identification.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
17 provide that to you, sir.

18 THE WITNESS: Okay.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And ask you if  
20 you can review that document. And when you're done  
21 reviewing it, let me know, and I have a couple  
22 preliminary questions.

23 THE WITNESS: Okay, sir.

24 MR. MESSING: While the witness is looking at the  
25 document, I believe I have just a continuing global

1 objection that I want to again note.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I  
3 actually took a look at Mr. Jasmine's objections, and I  
4 think they were not specific to any witness.

5 MR. MESSING: Right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think they  
7 were actually -- I think he covered you in that sense.

8 MR. MESSING: He usually does.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I tend to agree  
10 with you.

11 THE WITNESS: Okay, sir.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right, sir.  
13 And do you recognize those documents?

14 THE WITNESS: Yes, I do.

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

17 THE WITNESS: As a Declaration that was provided to  
18 me to fill out, and I made comments and wrote on for the  
19 attorney from Mr. Rose's law firm for purposes of this  
20 hearing.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And then  
22 turning to the signature page of that Declaration, which  
23 is page 12 of the Declaration, is that your signature,  
24 sir?

25 THE WITNESS: Yes, sir.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you sign it  
2 on the date set forth and place set forth?

3 THE WITNESS: Yes, I did.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And are the  
5 matters contained therein true and correct to the best of  
6 your knowledge?

7 THE WITNESS: That's correct.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is there any  
9 corrections after reviewing it that you saw that you  
10 needed to make at all?

11 THE WITNESS: It appears to be an accurate copy of  
12 what I did several months ago.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Very  
14 good. Any additional matters on your part, Mr. Rose?

15 MR. ROSE: Yes. Thank you.

16 TESTIMONY OF

17 ROBERT A. ORANGE,

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

20 DIRECT EXAMINATION

21 BY MR. ROSE:

22 Q. Good morning, Warden Orange. Thank you for your  
23 patience. We've read your -- received your Declaration  
24 and read it. And I believe one of the duties you state  
25 you perform is citations.

1 A. Yes.

2 Q. Writing citations. How many citations have you  
3 issued in your career with the State of California as a  
4 Game Warden?

5 A. Probably somewhere around close to 2,000. I  
6 don't have any specific records on it, but that's my best  
7 recollection, somewhere in that neighborhood.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm  
9 marking this Petitioner double A, what appears to be a  
10 single-page document. It is entitled Law Enforcement  
11 Division Citation Summary for the year 2006.

12 (Petitioner's Exhibit AA marked for  
13 identification.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And witness --  
15 okay. I'm going to mark another document here. Or  
16 should I -- do you prefer I keep these together or  
17 separate?

18 MR. ROSE: They're separate.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.  
20 Petitioner double B, what appears to be a two-page  
21 document in a spreadsheet format specifically including  
22 citation data. Then we have some years. We also have  
23 various appears to be categories of activity, numbers of  
24 citation, percentages, et cetera.

25 (Petitioner's Exhibit BB marked for

1 identification.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has --

3 I'm going to mark those just so we don't get --

4 THE WITNESS: Yes, sir.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- confused.

6 Just go do this. And then I'm going to mark the other  
7 one. So witness has double A and double B before him as  
8 well as his --

9 MR. MESSING: Double A is the one with the --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: 2006. And the  
11 witness has all three documents in front of him, sir.

12 MR. ROSE: Thank you.

13 BY MR. ROSE:

14 Q. Would you say that the -- how, if it all, has the  
15 frequency of your issuance of citations changed or  
16 remained the same over the last two, three years?

17 A. The last two years my personal issuance of  
18 citations has dropped substantially. Almost two years  
19 ago my wife was bucked off a horse and she broke her back  
20 in several locations and she's paralyzed. I have close  
21 to 2,000 hours worth of sick leave, and I'm down to a  
22 couple hundred hours. I've taken off a lot of the last 2  
23 years in taking care of my wife. And I'm anticipating  
24 retirement here in -- prior to the end of the year, and  
25 vacation time. I've used a lot of time in the last two

1 years off.

2 Q. I see. Now, when we look -- if you take a look  
3 at the first document I handed you, which is the one-page  
4 document marked for identification as Petitioner's double  
5 A, 2006 in the top right corner, do you see that  
6 document?

7 A. Yes.

8 Q. Do you recognize that document?

9 A. Yes. That is a document that came off the  
10 California Fish and Game -- the official California  
11 Department of Fish and Game website under citation  
12 statistics for the Enforcement Division.

13 Q. And can you explain to us, looking at the top  
14 left column where it says activity, and then there are a  
15 variety of descriptors underneath that column, do you see  
16 that?

17 A. Yes.

18 Q. Could you describe for us what that -- what those  
19 descriptors are? And you don't have to go through each  
20 one specifically, but generally what are we looking at  
21 there?

22 A. Basically, that is a breakdown of the citations  
23 issued by the Wardens in the State of California. And  
24 like for the first one it says abalone, that would be  
25 citations number of -- like 650 violations, that'd be 650

1 citations issued for -- related to abalone violations,  
2 angling the license. It breaks down salmon. Like it  
3 says 687 violations. That is the number of citations,  
4 and then it has totals, subtotals, and it has -- it's got  
5 a breakdown, the Department has, according to  
6 classification of citations that we write.

7 Q. I see. Are these -- are any of these violations  
8 felonies?

9 A. Yes.

10 Q. Are any of these violations misdemeanors?

11 A. Yes.

12 Q. And are any of them infractions?

13 A. Yes.

14 Q. Could you describe looking down below under  
15 the -- I'm still on the left side of the page under total  
16 citations. Now we're looking at contacts, warnings,  
17 assist other LE. Are you with me? Do you follow me --

18 A. Yes.

19 Q. -- where I am now? Okay. So tell me what --  
20 starting with the top under total citations with the word  
21 contacts, what does that mean? And then continue on down  
22 the list until you hit other, if you know.

23 A. Under total citations it says 15,710. That would  
24 be the number of citations issued by Game Wardens in  
25 2006. Contacts meant that we contacted 390,000 people in

1 the state of California. Assist other -- assist other LE  
2 means 3,800 assistance, incidents of assistance to other  
3 law enforcement agencies, law enforcement officers.  
4 Penal Code, 1,005 citations issued for violations of  
5 Penal Code. And felonies, you see 111 felonies,  
6 et cetera, et cetera.

7 Q. When it says federal cases 63, can you describe  
8 for us what a federal case might -- a typical federal  
9 case might involve involving Game Wardens?

10 A. That would be black market. Primarily that'd be  
11 the black market of wildlife in California. It'd be the  
12 Lacey Act violations. We have illegal importation of  
13 let's say it could be elephant tusks, ivory trade, bear  
14 parts where it comes from other states. I'm a federally  
15 deputized officer. And when it says felony being under  
16 federal cases, we're authorized to enforce federal law.  
17 And officers have gone to other states like Alaska  
18 working undercover with that outfit and other folks to do  
19 that kind of stuff.

20 Q. When you say officers have gone to other states  
21 working undercover, are you referring to Wardens?

22 A. Yes.

23 Q. Okay. What does it involve, or how did you  
24 become a federally deputized officer?

25 A. Upon the date of hire, that's a condition of my

1 employment with the State of California. All California  
2 Fish and Game Wardens are federally deputized. Any  
3 migratory wildlife is covered underneath federal laws,  
4 and so any duck regulations are federal laws, waterfowl  
5 regulations, because they migrate to and from in and out  
6 of California. So we must be federally deputized in  
7 order to enforce migratory laws.

8 When it comes to federal cases, that's where those  
9 are filed, in federal court. But federal laws regarding  
10 waterfowl are incorporated within the State Code of  
11 Regulations and it's a state violation also. So we're  
12 enforcing those laws.

13 Q. I see. Now, moving down to the left lower corner  
14 where it says percent of contacts warned, do you see  
15 that? Just briefly tell us what that -- actually the --  
16 what that represents, those three columns.

17 A. Those are months of the year and it's a breakdown  
18 of how many citations are issued during each month of the  
19 year for this particular year. And then it has  
20 percentage on the right, what percentage of total  
21 citations are issued during that time period. As you can  
22 see, in the fall there was a jump, and during the summer  
23 there was a jump. That's what that -- that's what that  
24 means.

25 Q. I see. And then following over to the right

1 about maybe two-thirds down the middle of the page where  
2 it says district summaries and then below that, do you  
3 see that?

4 A. Yes, I do.

5 Q. Could you tell us what series of columns starting  
6 with OSPR and on down to DBEEP HQ means?

7 A. Okay.

8 Q. And then the two columns to the right of that.

9 A. OSPR stands for the Office of Oil Spill  
10 Prevention and Response. Those are the Wardens that are  
11 assigned to pollution, pollution cases, monitoring  
12 chemical refineries, oil tankers, marine, and so Office  
13 of Oil Spill Prevention and Response would have issued  
14 713 pollution violations northern region, northern  
15 district, northern part of the state, north coast  
16 district, central, central part of the state, southern.

17 DB Headquarters is our undercover unit, work in black  
18 market and undercover clients. And DB stands for Bay  
19 Delta [sic] Enhanced Enforcement Project. This is  
20 specific Wardens assigned to work in the delta area  
21 regarding -- because that's a special high priority area.

22 Q. How do -- have you ever worked undercover  
23 yourself?

24 A. Yes, I have.

25 Q. And could you tell us what's involved in working

1 undercover as a Game Warden?

2 A. Assumed identity, unmarked vehicles, long-term  
3 surveillance. When I worked undercover for close to a  
4 year was the black market abalone trade, the commercial  
5 sales of abalone on the north coast. Do long-term  
6 surveillance of fishermen, abalone divers, urchin divers.  
7 Follow them after they take their catch into  
8 San Francisco to restaurants. Illegal sales. I also  
9 sold -- not sold. Purchased bear parts undercover.

10 Long-term surveillance working with the Coast Guard.  
11 I did -- I was detailed out to the Farallon Islands off  
12 of San Francisco and did long-term surveillance of  
13 abalone divers, watching for over limits. Coast Guard  
14 flew me out there. Then I stayed out there. That was a  
15 long-term undercover assignment also.

16 Q. When you say long-term, can you give us an idea  
17 of how long in terms of the time?

18 A. In abalone, I think that was -- that was a nine-  
19 month detail. Farallons was a couple of weeks. And  
20 then, of course, under the bear parts, that's just --  
21 that's a very short time period. When something pops up,  
22 we would do that. And that was very, very different  
23 times on that.

24 Q. I see. Now, then, let's take a look please at  
25 the two-page document that I handed you that's been

1 marked for identification as Petitioner's double B.

2 A. Yes.

3 Q. Do you recognize that document? If so, what is  
4 it?

5 A. That also came off the official Department of  
6 Fish and Game website, and that is the enforcement  
7 information for the year 1990 -- double A, I'm sorry,  
8 that was -- I want to let you know that was 2006. Double  
9 BB was enforcement summary for 1990 off the Department  
10 website.

11 Q. I see. And did you -- who pulled these documents  
12 up, if you know?

13 A. Yes, I did.

14 Q. Why -- was there any reason you selected 1990 and  
15 2006?

16 A. Yes. The reason was to show -- if you -- on the  
17 second page of BB, if you look at the total citations on  
18 the right-hand side, top right, see there's 23,000  
19 citations issued in 1990. And on double A there was  
20 15,000 citations issued then.

21 What this kind of -- what this represents to me was  
22 Game Wardens from that time period 'til now, we've lost  
23 approximately a third of our officers that we've had in  
24 the State of California. And this shows how we are not  
25 out there protecting the natural resources in the state

1 of California and the pollution, and that we're not out  
2 there as effective.

3 I mean that has not gone down. The violation rate's  
4 not gone down. The population of the state of California  
5 has gone up during that time period. Our officer numbers  
6 have gone down. And this reflects the caseloads going  
7 down from -- during this time period.

8 Q. Now, in addition to being a Game Warden, have you  
9 held any other official offices or titles associated with  
10 your work?

11 A. Yes.

12 Q. What are those?

13 A. I've been a Board member with California Fish and  
14 Game Warden Association. I was also Vice President of  
15 the Warden Association. Then I was also President of the  
16 Warden Association.

17 Q. How long were you involved in any of those  
18 capacities, total time on the --

19 A. Full time four years, approximately.

20 Q. Are you aware how long the Game Wardens  
21 Association has been in existence?

22 A. Since 1932. Game Wardens came into existence in  
23 1871. That was nine years -- I believe it was either  
24 nine or ten years before the gunfight at the OK Corral.  
25 Wardens came into existence because of the hydraulic

1 mining that was taking place in the gold fields, and the  
2 State said we got to stop this because of what was  
3 happening to the rivers, and so they created Game  
4 Wardens. And Game Wardens were armed and carrying guns  
5 50 years before the Highway Patrol was ever created.

6 MR. MESSING: I'm going to --

7 THE WITNESS: We're the oldest State law enforcement  
8 agency.

9 MR. MESSING: Object. It's not responsive.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
11 strike it, but your objection is sustained as to the  
12 flavor, I'll call it. So next question.

13 BY MR. ROSE:

14 Q. Okay. So, then, as a Board member, President,  
15 Vice President and Board member of the Game Wardens  
16 Association, have you had interaction with CSLEA or its  
17 former moniker CAUSE?

18 A. Yes.

19 Q. What was your involvement with that organization?

20 A. I attended trainings as a Job Steward with CAUSE.  
21 Helped represent officers in CAUSE. And then I really  
22 became involved in CAUSE when our previous Warden  
23 Association President, Joe Mello, was suspended by CAUSE.  
24 And when he was suspended I was Vice President, so then I  
25 automatically moved up to his position as President of

1 the Wardens Association.

2 Q. Okay. Do you recall when Joe Mello was suspended  
3 by CAUSE?

4 MR. MESSING: I'm going to object. We're getting  
5 into internal politics it sounds like.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: When did you  
7 get -- when did you become President? Let's make it  
8 neutral.

9 MR. ROSE: May I? We -- there are some issues on  
10 adequacy of representation with regards to the  
11 affiliate's relationship with the organization.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm glad to  
13 get there.

14 MR. ROSE: Okay.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But for this  
16 purpose, for the suspensions and stuff -- you'll be able  
17 to get your adequacy of representation in. I can't see  
18 how it won't come in.

19 But regardless of that, when did you become  
20 President?

21 THE WITNESS: I've been late 2006.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Good enough.

23 BY MR. ROSE:

24 Q. When you were President of the Game Wardens  
25 Association did you have any capacity with CAUSE or

1 CSLEA?

2 A. By being President of the affiliate, then I was  
3 automatically a Board member of CAUSE.

4 Q. Did you ever attend any Board meetings?

5 A. No.

6 Q. How long were you on the Board of CAUSE?

7 A. I guess I was (unintelligible) and on paper until  
8 we were suspended by CAUSE in April. Probably like five  
9 months.

10 Q. You said "we were suspended." What do you mean?  
11 Who was suspended?

12 A. California Fish and Game Wardens Association, the  
13 entire Board.

14 Q. And that happened in April of what year?

15 A. Of -- going to have to refresh my memory on that.  
16 Let's see, that would have been -- I have a document that  
17 would give me that approximate date. I'm sorry. I'm  
18 drawing a blank on the year right now.

19 Q. All right. Allow me to show you something.

20 Actually, I'll just introduce a new exhibit.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.  
22 All right. Marking as double C, Petitioner's double C,  
23 what appears to be a letter dated March 19th, 2007,  
24 from -- it's four pages in length. Third page appears to  
25 be it was from Mr. Alan Barcelona to the -- this witness.

1 Decision of Executive Committee on proposed appointment  
2 of Trustee.

3 (Petitioner's Exhibit CC marked for  
4 identification.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has  
6 double C.

7 BY MR. ROSE:

8 Q. Now, having looked at that document, does that  
9 refresh your recollection as to which year in April the  
10 Game Wardens Association was suspended?

11 A. Yes.

12 Q. And the answer is?

13 A. 2007.

14 Q. Okay. When the Game Wardens Association was  
15 suspended by CAUSE, how did that affect, if at all, the  
16 representation of the Game Wardens Association on the  
17 Board of Directors for CAUSE?

18 A. We had no representation on the Board at all.

19 Q. I see. And prior to the suspension of the Game  
20 Wardens Association by CAUSE, as a Board member --

21 A. Uh-hmm.

22 Q. -- did you ever make any inquiries about -- did  
23 you ever make any requests for financial records of  
24 CAUSE?

25 A. Yes, I did. I request --

1 MR. MESSING: I'm going to object. This goes to the  
2 internal Union issues.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.  
4 Unless you can lay some offer of proof that --

5 MR. ROSE: Yeah. The offer of proof is as follows:  
6 That as a Board member this witness requested financial  
7 records from the leadership of CAUSE and was refused  
8 access to those records, and that it adversely affected  
9 his ability to participate in the governing of the  
10 organization for the benefit of the members as a whole,  
11 and of his constituents in the Game Wardens Association.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Same objection?

13 MR. MESSING: Same objection.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. Next  
15 question.

16 BY MR. ROSE:

17 Q. If you look at the letter dated March 19, 2007,  
18 to you, Mr. Orange, dated -- or excuse me, marked for  
19 identification as Petitioner's double C, do you recognize  
20 that document?

21 A. Yes, I do.

22 Q. Tell me what that is.

23 A. That is a document that was sent to myself and to  
24 the Wardens Association Board demanding that an order to  
25 keep the Game Wardens Association from being suspended

1 for place in trusteeship that we must adhere to these 10  
2 conditions that they sent to us. If we did not adhere to  
3 these conditions set above (unintelligible) convene to  
4 determine whether trustees will be appointed. We -- here  
5 we go. That we did not agree to these 10 conditions, and  
6 the Wardens Association therefore was being suspended  
7 from being on the Board and having a voice on the Board  
8 of CAUSE.

9 MR. MESSING: I'm going to object again, move to  
10 strike all of this testimony regarding this document. It  
11 goes to the internal Union political issues.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any response,  
13 Mr. Rose?

14 MR. ROSE: Yeah. This goes to an affiliate --

15 THE WITNESS: Failure representation.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Hold on.

17 MR. MESSING: Object.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know you're  
19 used to being a representative, but right now you're a  
20 witness.

21 THE WITNESS: Okay.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So that's kind  
23 of where you're stuck at.

24 THE WITNESS: Okay.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead.

1 MR. ROSE: It goes to the adequacy of representation  
2 and for the Game Wardens on the Board, and the fact that  
3 they were placed in trusteeship deprived them of that  
4 adequacy of representation and a voice at the -- in the  
5 collective bargaining process.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you  
7 want to respond to anything?

8 MR. MESSING: Yeah. This document deals with  
9 internal Union political issues and financial issues. It  
10 doesn't deal with whether somebody was represented or not  
11 represented or represented well nor not well in any  
12 particular situation. Doesn't even purport to refer to  
13 such matters. So they're just trying to litigate this  
14 political issue in the trusteeship.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And does the  
16 Employer want to bring -- stay in this one, or do you  
17 want to stay out?

18 MS. TRUONG: I'll stay out.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. The  
20 fact -- here's my take on this. In regards to double C,  
21 that issue, I agree with Mr. Messing. In regards to that  
22 the Association was suspended, and after that point what  
23 happened to the representation of the Wardens, were they  
24 adequately represented after that time, just like you  
25 said, in regards to at the table, or individually in

1 regards to disciplinary actions, or whatever, I'm all for  
2 hearing that aspect. Once there was a suspension of the  
3 Association, now what was the representation of CSLEA to  
4 those -- that individual class.

5 So in regards to double C, I agree with Mr. Messing.  
6 But the next step you're going to take, I'm going to  
7 agree with you, Mr. Rose, which is the impact of the  
8 suspension on the corpus that the Association  
9 represented.

10 BY MR. ROSE:

11 Q. Okay. Well, let me ask a couple of other  
12 questions. While you were affiliated with the Game  
13 Wardens Association in a leadership role, did you attempt  
14 to advance the interests of the Game Wardens Association?

15 A. Yes. With the permission of CAUSE and full  
16 knowledge of CAUSE, we engaged the Legislature. Myself  
17 and other members of the Fish and Game Wardens  
18 Association educated the Legislature and the  
19 administration regarding the steady decline of the  
20 officers in the State of California, where we were  
21 headed, our compensation issues, and our total inadequacy  
22 to protect the fish and wildlife resources of the state  
23 of California.

24 During that process we were able to get the  
25 Legislature to appropriate substantial funds for

1 compensation for Game Wardens to bring them up to parity  
2 of the California Highway Patrol.

3 Q. When did you do that?

4 A. That was during the spring of -- that would have  
5 been the -- let me see. That would have been the '06-07  
6 budget year.

7 Q. And what specific actions did you take in  
8 conjunction with other leaders or members of the Wardens  
9 Association to influence the outcome in the Legislature  
10 that you just described?

11 A. We prepared a approximately 100-page document and  
12 presented that. Gave a copy of that to every single  
13 Legislator. We testified at budget hearings,  
14 appropriation hearings, and followed the process through  
15 and shepherded, and met individually with Legislators.  
16 We did that throughout that spring nearly every week.  
17 What we'd do is we'd meet over at the CAUSE office in the  
18 morning and then go over to the State Capitol and then  
19 lobby. Not lobby. Educate.

20 Q. And at the conclusion of that process, once you  
21 mentioned there was additional appropriations for  
22 Wardens, what was --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry. He  
24 nodded his head. So is that a yes? I just need a  
25 verbal -- you nodded your head. So that's --

1 THE WITNESS: As I understand what he was telling me,  
2 I guess. Repeat, please.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

4 BY MR. ROSE:

5 Q. Well, I'm not trying to tell you. I'm just  
6 trying to paraphrase what you earlier testified to. But  
7 just tell what the result -- and it's a little redundant  
8 perhaps, but what was the result of the activities that  
9 you undertook at the Legislature with respect to Game  
10 Wardens' pay?

11 A. Ten million dollars from one side of the  
12 Legislature was appropriated for increase to Game  
13 Wardens' pay. Senate appropriated \$17 million in  
14 appropriations for enhancing the Game Warden pay. At the  
15 end of -- during the final budget, \$30 million was  
16 appropriated for recruitment and retention, of which the  
17 Legislature specifically intended that the Wardens were  
18 going to get approximately 18 million.

19 Q. How do you know that the Legislature intended  
20 that?

21 A. Through I attended their hearings, and also I  
22 have copies of the legislative action, of the legislative  
23 record of the appropriations as it worked its way through  
24 committees.

25 Q. And was there any reaction by the leadership

1 CAUSE to the activities of the Game Wardens Association  
2 in procuring those funds?

3 A. They were supportive of those actions.

4 Q. And then did ultimately -- did they remain  
5 supportive?

6 A. In the end, no.

7 Q. What happened in the end that caused them to no  
8 longer be supported?

9 A. Money was appropriated that went to DPA, and then  
10 this was mid-contract negotiations. We were not open  
11 for -- this was not the end of a contract. The contract  
12 was not open to negotiations. This was mid-contract  
13 openings. Because of the concern of the lack of funding  
14 for the officers and our declining recruitment, our  
15 declining officers in the State and the impact upon the  
16 resources of the State, they reopened the contract. It  
17 was reopened. DPA and CAUSE entered into negotiations.  
18 At the conclusion of those negotiations and when the  
19 contract was finalized, Game Wardens received  
20 approximately two million of that amount.

21 Q. What was your reaction personally to the adequacy  
22 of CSLEA's representation in connection with the receipt  
23 of that two million of the thirty million for Wardens?

24 A. Disheartening. Disappointment. Realizing got a  
25 lot more work to do again. That our problems for the

1 Wardens and the filling of the vacancies and stuff is not  
2 going to be -- it wasn't fixed. The problem's not fixed.  
3 We're going to have to continue on the battle.

4 Q. Did you ever come to understand what happened to  
5 the other \$28 million then?

6 A. It was appropriated throughout the rest of  
7 Bargaining Unit No. 7, non-sworn personnel and other  
8 sworn officers.

9 Q. Did you ever have any conversation with any  
10 leadership at CSLEA or CAUSE regarding the outcome to  
11 distribute the 30 million throughout the peace officers  
12 and the non-peace officers in Bargaining Unit 7?

13 A. The conversation, yes, we did. That conversation  
14 only resulted -- I didn't have any direct conversations  
15 that resulted, because we had a own internal -- the  
16 green -- the Wardens Association has a document called  
17 The Green Line, and in that Green Line we told our  
18 Wardens Association Members that -- to let them know  
19 that, you know, hey, we got these pay raises, and we did  
20 good. But it never would have happened if it hadn't been  
21 for the intervention of the Wardens Association going and  
22 working the Legislature, and that's why we have these pay  
23 increases.

24 When CAUSE saw that document, they put us on notice,  
25 the Wardens Association on notice, that be placed under

1       trusteeship, and the demands were placed upon us in this  
2       letter number CC.  If we did not adhere to these demands  
3       in letter CC, that we were going to be placed in  
4       trusteeship and kicked off the Board.

5           Q.  Did you ever have -- or do you know a gentleman  
6       by the name of Joe Mello?

7           A.  Yes.

8           Q.  M-E-L-L-O?

9           A.  Yes.

10          Q.  First name is actually Joseph?

11          A.  Okay.

12          Q.  Well --

13          A.  I'm assuming.

14          Q.  Okay.  In any case, you mentioned Joe Mello  
15       earlier as being the former President of the Wardens  
16       Association.

17          A.  That's correct.

18          Q.  And the -- did you ever have any conversation  
19       with Joe Mello about whether or not he was involved in  
20       the allocation of the \$30 million to Bargaining Unit 7?

21          A.  Yes, I did.

22          Q.  Can you describe for us the substance of those --  
23       that conversation, or those conversations?

24          A.  He stated that he was not at the bargaining table  
25       or was a part of the process of the bargaining

1 negotiation for the appropriations of that \$30 million.

2 Q. I'm sorry. Did you say he was not at the  
3 bargaining --

4 A. He said he was not involved in the internal --  
5 the disposition of how the \$30 million was going to be  
6 allocated in the -- at the bargaining table, I believe,  
7 yeah. Yeah. That basically he was not involved in the  
8 internal stuff.

9 Q. Did he express to you any opinion about the  
10 distribution of those funds as a Board member at CSLEA  
11 and as the President of the Wardens Association?

12 A. He was disappointed with the amount. That the  
13 two million of the appropriated amount by the Legislature  
14 was far, far less than what had been intended by the  
15 Legislature to go to fixing the Warden situation. He was  
16 disappointed with the amount that we ended up having, you  
17 know.

18 Q. Now, you -- I think you testified a moment ago  
19 that the CAUSE leadership wanted you to pose some sort of  
20 retraction about -- from the Green Line regarding your  
21 involvement in obtaining those funds from the Legislature  
22 designated to the Wardens?

23 A. That's correct.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I got to hold  
25 you off on this, Mr. Rose, because I got to skip this

1 issue in regards to -- I mean up to the suspension and  
2 after the suspension I'm cool. But getting into the  
3 Green Line, Green Line causing the suspension I got to  
4 stay out of.

5 MR. ROSE: I'm just not understanding why. I  
6 understand with respect to individual members'  
7 discipline. But in a case where this not a situation  
8 where these -- that this affiliate is advocating for the  
9 creation of any competing labor organization. They're  
10 just speaking on matters that are of interest and concern  
11 to their membership as an affiliate of the organization,  
12 which is what the letter reflects if you take a moment to  
13 read it.

14 That it's -- that it isn't internal Union politics.  
15 What it is is an inappropriate assertion of censorship by  
16 the labor organization when there was no legitimate  
17 reason for doing that. And so if we don't have a jury  
18 here, if you could hear the testimony and then give it  
19 the weight that it's -- that it deserves.

20 But we have a situation where the Game Wardens were  
21 essentially -- it advocated for a position in the  
22 Legislature, succeeded, and then announced what they  
23 believe their success was on -- in their newsletter. And  
24 without -- and were -- and they were told as one  
25 condition of remaining out of trusteeship and being

1 stripped of the right to representation on the Board that  
2 they would have to make a retraction and say that that  
3 was false.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm okay up to  
5 the Green Line. That's where my line is. And in a  
6 sense, the first day of hearing I said I am not getting  
7 into this trusteeship. And I'm not. And what you're  
8 asking me to do is is judge the trusteeship, the merits  
9 of it or lack of merits of it. First day of hearing I  
10 said I'm not getting into it, and I don't see any need  
11 further to get into it. But the Green Line is the line,  
12 and we'll go from there. So further questions?

13 MR. ROSE: Yes.

14 BY MR. ROSE:

15 Q. So, then, are you familiar -- moving on, are you  
16 familiar with a Senate Bill 695?

17 A. Yes.

18 Q. What is Senate Bill -- or what was Senate Bill  
19 695?

20 A. Senate Bill 695 was a bill introduced, a  
21 bipartisan bill. When the Wardens did not receive the  
22 compensation that the Legislature intended for us to  
23 receive as a result of the bargaining process, the  
24 Legislators decided to take it upon themselves to  
25 introduce a Senate Bill to make sure we would receive

1 adequate compensation, and to bring our levels up to  
2 protect the resources of the State.

3 This bill was to bring Wardens within parity of  
4 sheriff's departments along the coast, along the  
5 shoreline of the ocean where we have our largest shortage  
6 of officers and the marine patrol and our patrol boats.  
7 That was introduced by the California Fish and Game  
8 Warden Supervisors and Managers Association, in no way  
9 associated with the Wardens Association. It's been  
10 working its way through Senate Bill 695. CAUSE  
11 specifically told the Wardens Association that we could  
12 not support that legislation.

13 Q. Was the Wardens Association in support of that  
14 legislation or opposed to it or neutral?

15 A. Oh, we're absolutely in support of.

16 Q. Why?

17 A. It would have brought our compensation up to  
18 normal acceptable levels, like pay for like work. Sworn  
19 officers working side by side with other sworn officers.  
20 In this case, like sheriff's departments along the  
21 coastline, who I work with probably as much as anybody  
22 else, receiving much higher compensation, it would have  
23 brought us within levels of those people there. CAUSE  
24 ordered us not to support it. If we did not [sic]  
25 support it, we were going to be kicked out.

1 Q. Did you -- did Senate Bill 695 ultimately  
2 succeed?

3 A. No, it did not. CAUSE wrote a letter, President  
4 Barcelona wrote a letter to the authors of that  
5 legislation stating that they would not support that bill  
6 unless all members of Bargaining Unit 7 received the  
7 same.

8 Q. And when you say all members, are you including  
9 sworn and non-sworn?

10 A. That's correct.

11 Q. Did the Wardens Association take a formal or  
12 official position on Senate Bill 695?

13 A. We never wrote a letter in support. I know we  
14 met with the Legislators and talked with the Legislators  
15 and let them know that we did support it. But we never  
16 wrote a letter in support, no. It was like the  
17 Supervisors and Managers Association, that was their bill  
18 and they were the authors and they were working on it,  
19 and it moved its way through. And then it died for -- in  
20 my opinion and the Wardens Association opinion, it died  
21 because of lack of support from our bargaining unit.

22 Q. Did Mr. Barcelona's letter, to your knowledge,  
23 advance or impede or have no effect on the ability -- the  
24 failure of Senate Bill 695?

25 A. Oh, impeded it and highly contributed to the

1 failure.

2 MR. MESSING: Object. Lack of foundation.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean how do  
4 you know, sir? And I'm -- this is subject to a motion to  
5 strike. How are you saying that you know what the impact  
6 is?

7 THE WITNESS: Talked with the Legislators afterwards.  
8 You don't have support. Your bargaining unit isn't  
9 supporting it. Don't have -- you don't have your  
10 bargaining unit support.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
12 this was said to you by the Legislators?

13 THE WITNESS: Yeah.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just give me a  
15 smattering of who said this to you.

16 THE WITNESS: Senator Cogdill.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Anybody  
18 else?

19 THE WITNESS: Yes. It would have been, I believe,  
20 Ducheny, Denise Ducheny, when there was the bipartisan  
21 bill.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. So  
23 objection is overruled.

24 BY MR. ROSE:

25 Q. In the last two years are you aware how many

1 grievances CSLEA has advanced on behalf of Game Wardens  
2 Assoc -- Game Warden -- members of the Game Wardens  
3 Association?

4 A. No.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's just make  
6 it easy and just say Warden -- on behalf of Game Wardens,  
7 so that we don't get into --

8 MR. ROSE: Right.

9 THE WITNESS: Okay. No, I'm not aware of any.

10 BY MR. ROSE:

11 Q. Are you aware of any instances where there were  
12 grievances denied to Wardens by CSLEA, meaning the  
13 prosecution of those grievances?

14 A. No.

15 Q. One second.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

17 (Off the record.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are back on  
19 the record ready for further questions for this witness.

20 BY MR. ROSE:

21 Q. Okay. So Senator Cogdill, was it?

22 A. Yes.

23 Q. And did Senator Cogdill have any other  
24 involvement other than as you've testified already with  
25 respect to Senate Bill 695?

1           A. Yes. He was a co-author of Senate Bill 695. He  
2 also was the author of a Letter of Support for the Game  
3 Wardens who receive more compensation that went --  
4 received the support, a signed support, of a super  
5 majority of the California State Legislature. And we  
6 worked with the State Legislature and they signed -- a  
7 super majority would have been like let's say if the  
8 Governor was to veto it, that would have meant that over  
9 two-thirds of the members of the State Legislature wanted  
10 to see us receive adequate compensation to bring us up  
11 with other State law enforcement, specifically meaning to  
12 us in conversations with them Highway Patrol.

13           Q. Let me ask you to take a look at the Declaration  
14 of Jerry Karnow. Not the Declaration itself, but just an  
15 exhibit that was attached to it.

16           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I got it  
17 right here.

18           MR. ROSE: Twenty? Exhibit 20?

19           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I'm sorry.  
20 You don't want the Declaration of -- Petitioner's A I  
21 have it as.

22           MR. ROSE: Karnow.

23           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or  
24 Petitioner's --

25           MR. MESSING: Oh, is it Petitioner's A? But I mean

1 there was a tab 20 to it is what I mean.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Sir,  
3 you've got Petitioner's A. And you've got to go all the  
4 way near the bottom.

5 THE WITNESS: Okay. For the letter?

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

7 THE WITNESS: We're looking for the letter we're  
8 talking about? Okay.

9 MR. ROSE: Yeah. But go to the very back.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're looking  
11 for whatever Mr. Rose wants you to look at.

12 MR. ROSE: Tab 20.

13 THE WITNESS: Yes, it's right here.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
15 second. Let me get it right. This letter is what he's  
16 talking about. Okay. We have to do a little bit of --

17 THE WITNESS: No, I'm not referring to this letter.

18 BY MR. ROSE:

19 Q. That is not the letter you're referring to?

20 A. No.

21 Q. Okay. Maybe tab 19, is that -- is it in there?

22 A. It would be in the California Expose Update. I  
23 will come up with it in just a moment. It would be right  
24 towards the beginning of this. (Unintelligible) itself,  
25 I pull it right up. Pages six and seven of Exhibit 19.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Nineteen? Okay.

2 Tab 19.

3 BY MR. ROSE:

4 Q. Tab 19 of the Declaration of Jerry Karnow.

5 A. Yes.

6 Q. That's the letter you're referring to?

7 A. Yes, it is.

8 Q. Now, then, recently have you become aware of any  
9 stated intention by the State Employer to lay off Game  
10 Wardens?

11 A. Yes.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Yes.

13 Next question.

14 THE WITNESS: Okay. Thank you.

15 BY MR. ROSE:

16 Q. What have you learned?

17 A. I'm sorry?

18 Q. What have you learned with respect to the layoff  
19 of Game Wardens?

20 A. A week and a half ago 98 State Game Wardens out  
21 of 200 in the State received layoff notices. And as of  
22 yesterday I received notice from my Chief of Patrol that  
23 those layoff notices have been rescinded to the Game  
24 Wardens. We are still all being furloughed, though.

25 Q. Have you participated in any events as a member

1 of the Wardens Association with respect to advocacy  
2 regarding the layoffs?

3 A. Absolutely, yes.

4 Q. What have you done?

5 A. I contacted -- two weeks ago there was a --  
6 because of the Game Wardens' crisis, the lack of Game  
7 Wardens and what's happening in the State, starting a  
8 couple years ago -- I'm sorry. A Warden DVD was created  
9 after two years. We made -- Game Wardens Association  
10 made copies of that DVD. I went to the Capitol two weeks  
11 ago and gave at least one copy, most of the time two  
12 copies, of each DVD along with a cover letter to every  
13 State Legislator. Went to their offices and delivered  
14 those. Talking about requesting letting them know that  
15 we have layoffs coming, over nearly half, 45 percent of  
16 the officers are going to be laid off. We're all  
17 furloughed. And please watch this DVD. Please educate  
18 yourself. And please work to stop the layoffs of Game  
19 Wardens in California.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Marking  
21 as -- at least I'll mark -- marking as double D what  
22 appears to be a package of a CD -- I'm sorry, a DVD with  
23 a -- entitled Endangered Species. And hold on a second,  
24 sir. And California Fish and Game Wardens, The Thin  
25 Green Line in Action by Snow Goose Production. And let's

1 just see if there's any identifiers here. I do have a  
2 2009 copyright on the back.

3 (Petitioner's Exhibit DD marked for  
4 identification.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has  
6 double D before him.

7 BY MR. ROSE:

8 Q. Okay. Let's look at double D, and then we'll  
9 circle back to ask you some questions on another topic.  
10 But with respect to the DVD I've just handed to you --

11 A. Yes.

12 Q. -- or the package I've handed you, do you  
13 recognize that?

14 A. Yes, I do.

15 Q. What is it?

16 A. It is a 66-minute documentary regarding what --  
17 accurately portraying the job of Fish and Game, of a Fish  
18 and Game Warden in the state of California. It includes  
19 in there testimony of me before the Senate Budget  
20 Committee in one part in its entirety as an outtake. And  
21 it chronicles a little bit about what I myself did last  
22 year, the administration, with opposing the elimination  
23 of 38 Game Warden jobs last year, and no one else is  
24 looking out for us. So I went into the Capitol and we  
25 advocated to stop the loss of 38 Game Warden positions

1 and succeeded. That did not work.

2 But this video chronicles and shows -- talks about  
3 the number of Game Wardens in the state, how they've  
4 declined. How we are the worst per capita for the  
5 general population in the United States and Canada. Not  
6 by a little bit. By a long shot. And this is -- that's  
7 what this is all about.

8 Q. What other -- are there any showings of your job  
9 duties on that DVD?

10 A. Any showing of job, what's that?

11 Q. Of the Warden's job duties.

12 A. Yes. It shows Wardens doing bear poaching  
13 arrests, pollution cases, (unintelligible) the oil spill  
14 in the San Francisco Bay. It shows night flight. It  
15 shows a typical day on the job of a Game Warden, in this  
16 case Warden Karnow, out in the field. It shows me in the  
17 State Legislature. It shows me out contacting hunters in  
18 the field. It shows marine patrol in the marine  
19 environment, patrol boats.

20 And then there's an extended section in marijuana  
21 eradication raids, of Game Wardens doing a marijuana  
22 eradication raids, and reenacts the shooting of a Game  
23 Warden a few years ago during a marijuana raid.

24 It also shows where a Game Warden down South  
25 contacted prior to 9-11 out in the field working two of

1 the terrorists that flew an airliner into the Pentagon.  
2 It was dealing with they were doing firearms training  
3 where they had fully automatic weapons. And there was  
4 approximately -- it was a terrorist cell approximately 20  
5 to 21 people. Border Patrol was involved. He was  
6 involved. And it reenacts and has an interview with that  
7 officer talking about basically the wide variety of what  
8 we do, and in this case direct interaction with the  
9 people prior to 9-11.

10 Q. So --

11 A. Showing security.

12 Q. So, in addition to being in it, you've watched  
13 the DVD?

14 A. Yes, I have.

15 Q. Do you consider its contents to be accurate, an  
16 accurate portrayal of the job duties of you and your  
17 fellow Wardens?

18 A. I do. James Swan [phonetic] is a Ph.D. and he  
19 did a nationwide survey of the Warden staffing levels of  
20 all the wildlife agencies in the United States and  
21 Canada, and he incorporated that study within it. And it  
22 also shows Wardens going through our academy.

23 MR. MESSING: I'm going to object. This is  
24 nonresponsive to the question.

25 THE WITNESS: I'm sorry.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So it is  
2 accurate?

3 THE WITNESS: Yes. Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

5 MR. ROSE: Okay.

6 THE WITNESS: I'll try and keep it short.

7 BY MR. ROSE:

8 Q. Thank you. Now, then, let's go back. I wanted  
9 to ask you about going back to tab 19 and Mr. Karnow's  
10 Declaration, the letter from Senator Cogdill.

11 A. Yes. In that if you look --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You got to wait  
13 for the question.

14 THE WITNESS: Okay.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He's just  
16 directing you there.

17 BY MR. ROSE:

18 Q. Is there anything else significant about this  
19 letter?

20 A. Super majority of the State Legislature supported  
21 that \$17.5 million was to go into Warden compensation.  
22 After negotiations with CAUSE and DPA, Wardens received 2  
23 million.

24 Q. Why is it significant in your mind that a super  
25 majority had signed in support of Fish and Game Warden

1 funding recruitment and retention?

2 A. It clearly shows the intent of the legislature.  
3 And a super majority, even if that was say a bill to be  
4 signed by the Governor, that was enough to override a  
5 veto of the Governor.

6 Q. Is there anything else significant about this  
7 letter?

8 A. No.

9 Q. Okay. Now, you mentioned earlier that not the  
10 most recent wave of layoff notices, but back in the 2007-  
11 2008 year a proposal to lay off 38 Wardens. Do you  
12 remember that --

13 A. That's correct.

14 Q. -- series of questions? When you -- when that  
15 occurred, did you have any involvement other than what  
16 you've already described, the handing -- talking to the  
17 Legislators individually and handing out the DVD and so  
18 forth -- or actually, you did that recently.

19 A. The DVD was two weeks ago.

20 Q. Okay. So did you have any involvement at that  
21 time in the proposed layoff or advocating on behalf of  
22 the Wardens regarding those layoffs, proposed layoffs?

23 A. You're talking a year ago?

24 Q. I'm talking 2007-2008 for the 38 Wardens.

25 A. Yes. Yes.

1 Q. What was your involvement at that time?

2 A. I testified at budget hearings, and met with  
3 Legislators, and just letting them know we -- what we did  
4 is prepared a second -- no, the document for that was  
5 before. But I worked with the Legislators, let them know  
6 our staffing crisis, our numbers were still continuing to  
7 go down. And it was apparent to me that Warden  
8 Association had to do some work because they were not  
9 aware of what was taking place with the Game Wardens, how  
10 our numbers were still going down, and our compensation  
11 levels. And it was very clear they did not -- they were  
12 not aware of what was taking place. No one was  
13 advocating for us. If we didn't advocate for ourselves,  
14 they weren't going to know.

15 Q. Did you -- at the time that you testified before  
16 the Legislature, did you -- were you -- did you have any  
17 official capacity with CAUSE or CSLEA at that time?

18 A. No. I was -- I was suspended, kicked out, their  
19 trusteeship.

20 Q. Are you aware of whether or to what extent -- did  
21 you see any CAUSE representatives testifying at the  
22 Legislature?

23 A. When I testified on behalf of the Warden  
24 situation for salary and our lowering numbers, I never  
25 once saw a CSLEA/CAUSE representative advocating on

1     behalf of Game Wardens. Even though I was at the  
2     hearings that were specifically designed to address the  
3     issue. And that would have been the year before also.

4           Q. So not only in 1007 --

5           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just hold on a  
6     second, Mr. Rose. So just so I have the right years  
7     right, when you said that you're talking about 2007-2008  
8     and 2006-2007?

9           THE WITNESS: That's correct.

10          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

11          THE WITNESS: I'm talking both years.

12          MR. ROSE: That was my question.

13          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Sorry  
14     about that, Mr. Rose.

15          MR. ROSE: That's okay.

16          THE WITNESS: That's fine.

17     BY MR. ROSE:

18           Q. Okay. So -- and in each of those two years you  
19     did not see anyone from CAUSE at the Legislature  
20     testifying?

21           A. That is correct.

22           Q. What percentage of time would you estimate you  
23     were present during the hearings that that topic was  
24     discussed?

25          MR. MESSING: I'm going to object. Vague and

1       ambiguous.  What percentage of time?

2               ADMINISTRATIVE LAW JUDGE CLOUGHESY:  I got to agree.

3               MR. ROSE:  Well, what I'm trying to get to is you  
4       didn't see anyone there.  Perhaps -- and this calls for  
5       speculation.  We'll get that in a moment.  But perhaps  
6       they were there when you weren't there.  I'm trying to  
7       find out how much time did you actually spend at the  
8       hearing.

9               THE WITNESS:  At the key meetings?

10              MR. MESSING:  Object.  Still no foundation.  That  
11       hearing?  What hearing?

12              ADMINISTRATIVE LAW JUDGE CLOUGHESY:  I think we're  
13       talking about the -- we're talking about the Budget  
14       Subcommittee?  Are we talking about --

15              MR. ROSE:  Right.

16              ADMINISTRATIVE LAW JUDGE CLOUGHESY:  -- the after?

17              MR. ROSE:  Let's backtrack.

18              ADMINISTRATIVE LAW JUDGE CLOUGHESY:  Yeah.

19       BY MR. ROSE:

20              Q.  You said in 2007-2008 you testified before the  
21       Legislature, correct?

22              A.  Correct.

23              Q.  And that you testified regarding layoff of 38  
24       Wardens.  You said that already.

25              A.  That's correct.

1 Q. And where specifically did you testify?

2 A. Senate Budget Committee, Sub-budget Committee. I  
3 think the number -- I'd have to look at the number. I'm  
4 sorry.

5 Q. And did you show up for every day of the Senate  
6 Budget Committee hearing?

7 A. Not every day, but at the key hearings where we  
8 knew the Wardens were going to be brought up.

9 Q. How did you know the Wardens were going to be  
10 brought up on certain days?

11 A. Through Department of Fish and Game  
12 administration.

13 Q. And of the -- what you consider to be the key  
14 days, those days where the Wardens were going to be  
15 brought up, how many of those days did you attend?

16 A. All of them. Administration, but also from  
17 staffers would let us know. Budget staffers would let me  
18 know or Jerry Karnow know that this going to be coming up  
19 also. It was a combination of the two.

20 Q. And now the same question with respect to 2000 --  
21 or series of questions with respect to the previous year,  
22 2006-2007. Where did you -- where did you testify  
23 specifically?

24 A. I testified at budget hearings regarding Game  
25 Warden levels and compensation, budget hearings for the

1 Department of Fish and Game.

2 Q. Did you testify every -- or did you appear every  
3 day for the -- every day of budget hearings in that prior  
4 year, 2006-2007?

5 A. Not every day, but key committee days.

6 Q. And how did you decide in that prior year, 2006-  
7 2007, that they were key committee days?

8 A. By contacts within the Legislature and from the  
9 Department of Fish and Game.

10 Q. And what were your -- what information were you  
11 using to identify a day as a key day?

12 A. I myself received my information from Warden  
13 Jerry Karnow, who was our legislative liaison. And he  
14 would obtain the information and pass it on to me. So  
15 when he received specific information on those days, he  
16 would let me know.

17 Q. And what were -- what were the topics of  
18 discussion on the key days?

19 A. Warden staffing levels. Not specific Fish and  
20 Game. These would be Resource Committee days, Parks,  
21 Wildlife Committee days, Resource Committee. So on those  
22 days would also be California Department of Forestry,  
23 Department of Conservation, California Department of Fish  
24 and Game. Those subjects come underneath the Resource  
25 Committee. And we could look and see what was on the

1 schedule, when they're going to be discussing Game  
2 Wardens, and the comment periods. Appropriately we would  
3 stand and give a comment, a brief comment of two to three  
4 minutes discussing our issue.

5 Q. And in 2006-2007 of the days, the Resource  
6 Committee days where Wardens would be discussed, how many  
7 of those days did you attend?

8 A. I was in the Capitol approximately roughly 30  
9 times in the spring. Not all of them were committee  
10 days. Other times I'd work with Legislators. I probably  
11 attended half a dozen hearings.

12 Q. And during those instances --

13 A. About four -- I'll say four to six hearings. It  
14 all flows together. I'm sorry.

15 Q. During those instances, how many times did you  
16 encounter a CSLEA representative advocating on behalf of  
17 Wardens.

18 A. Advocating on behalf of the Wardens zero.

19 Q. Did you ever receive any information from CAUSE  
20 concerning your efforts in testifying at the  
21 subcommittee --

22 A. Did I receive --

23 Q. -- in 2007-2008?

24 A. Did I ever receive any?

25 Q. Information from CAUSE about your testifying, the

1 Wardens.

2 A. No.

3 MR. MESSING: Object. Okay. First of all, it's  
4 vague and ambiguous. And he answered the question and he  
5 was going to go on and respond further. How I don't know  
6 because the question is so vague and ambiguous.

7 THE WITNESS: Okay.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I mean  
9 he -- I'll sustain the second objection as to --

10 MR. ROSE: What was the objection?

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He answered the  
12 question. He was going to go on.

13 MR. ROSE: Oh, okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So I'll let you  
15 take it from there.

16 THE WITNESS: I was going to make a correction.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, sure, go  
18 ahead.

19 THE WITNESS: In this video you will see Craig Brown,  
20 who is a lobbyist for CAUSE, when I gave testimony, he  
21 was in the audience. He saw me walking in the Capitol  
22 along with Jerry Karnow, looked around, found us, stayed  
23 there, watched. I gave testimony, the testimony that's  
24 in this video. He watched while in the audience. He  
25 could have had an opportunity, as he's a lobbyist for

1 CAUSE and they're taking our Wardens Association --

2 MR. MESSING: Object.

3 THE WITNESS: I'm sorry.

4 MR. MESSING: Object.

5 THE WITNESS: He never said something.

6 MR. MESSING: Speculation.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

8 MR. MESSING: And it's not responsive.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's cut down  
10 the editorial and just say, so during that time you spoke  
11 with him?

12 THE WITNESS: Waved.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I'll give  
14 you that one. You waved at him. And you didn't see him  
15 testify during that time?

16 THE WITNESS: He did not testify.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next question.

18 BY MR. ROSE:

19 Q. Were you satisfied with Mr. Brown's performance  
20 as an advocate on behalf of CSLEA and indirectly Wardens  
21 at that time?

22 A. During that budget hearing he did not give any  
23 testimony or any support to Game Wardens, even though we  
24 were there fighting for the 38 Warden positions.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So

1 this is 2007-2008, then?

2 THE WITNESS: This would have been --

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's the 38.  
4 That's what I have down.

5 THE WITNESS: Yeah. Well, you say 2007-2008. It  
6 would have been a year ago, sir. Yeah. So budget  
7 hearings of 2008.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

9 THE WITNESS: The date is actually in there.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is in the double  
11 D?

12 THE WITNESS: Yes, it is.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you.

14 BY MR. ROSE:

15 Q. Okay. Did you ever read any articles put out by  
16 CAUSE concerning Wardens and your involvement in the  
17 layoff hearings or the budget hearings in 2008?

18 A. I read one article about CAUSE last year. This  
19 is going on where it is stated that we were on our own,  
20 meaning the Wardens and the Park Rangers. It was on  
21 their website.

22 Q. And at the time of that statement -- do you have  
23 that with you?

24 A. If I might look in here, sir? I do have the  
25 statement. It's either in this or in my vehicle.

1 Q. Oh, okay.

2 A. The website, yes.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you want to  
4 take a look at this -- these documents, I mean go ahead.

5 MR. ROSE: I just -- I think if you've got -- if  
6 you've got the article with you, I'd like to --

7 THE WITNESS: I have a copy of that statement that I  
8 made off the CAUSE website where they were talking about  
9 the Warden layoffs, laying off 38 people, where Barcelona  
10 stated they're on their own. The Wardens are on their  
11 own. Words to "on their own," which --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'd rather have  
13 the actual statement than a characterization of it. So  
14 if it's --

15 MR. ROSE: Well, can we take a moment?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Let's go  
17 off the record. And off the record.

18 (Off the record.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on  
20 the record. Marking as Petitioner's double E what  
21 appears to be -- pass this one over to you -- single-page  
22 document. Appears to be from a California Statewide Law  
23 Enforcement Association web page. I'm going to call it  
24 an article, for lack of a better term, dated January 10th  
25 of 2008, in regards to the State budget.

1 (Petitioner's Exhibit EE marked for  
2 identification.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has  
4 double E before him, and is awaiting your question, sir.  
5 BY MR. ROSE:

6 Q. Mr. Orange, I've handed you this document. After  
7 we were off the record you searched for this in a stack  
8 of papers. Did -- what is this document?

9 A. Yes, I did search for that.

10 Q. And what is it?

11 A. It -- I -- this -- actually, last night -- this  
12 morning, early this morning, I went back and looked at  
13 this document. I pulled it off this morning off the  
14 CSLEA website.

15 Q. And you were earlier describing a statement. Was  
16 it -- was it a statement contained in this document?

17 A. Yes.

18 Q. Could you please read allow for us into the  
19 record the paragraph or paragraphs that you were  
20 referring to?

21 A. Paragraph six going down states, "The biggest  
22 lesson to draw from the Governor's budget is what happens  
23 to those seeking to go it alone instead of part of a more  
24 unified powerful whole. The spending plan calls for  
25 closing 48 State Parks, and by logical extension the

1 decimation of the Park Rangers. Fish and Game Wardens  
2 were also not spared as elimination of 38 Wardens is  
3 being proposed. Neither of these groups has done a thing  
4 to elevate themselves with the State's Chief Executive,  
5 and they also hurt themselves with State Legislators who  
6 might have sheltered them from the worst the budget  
7 crisis has to offer," said Barcelona.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Next  
9 question.

10 BY MR. ROSE:

11 Q. Could you continue reading the entire paragraph,  
12 the part that --

13 MR. MESSING: Well, the document speaks for itself.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I -- now that  
15 he's answered that question, sustained. You asked him to  
16 identify which portions he was referring to. He's done  
17 that.

18 BY MR. ROSE:

19 Q. Okay. Do you agree with this statement? Or do  
20 you agree that the Game Wardens Association was seeking  
21 to go it alone prior to January 2008?

22 A. No. To clarify that --

23 MR. MESSING: Object.

24 THE WITNESS: -- the Legislature --

25 MR. MESSING: Object. The question was asked and

1 answered.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

3 Further questions.

4 BY MR. ROSE:

5 Q. Well, did you want to clarify your answer?

6 A. Yes.

7 MR. MESSING: Well, I'm going to object.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me ask this  
9 question.

10 THE WITNESS: Sure.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Not a clarifying  
12 question. But did you testify incorrectly?

13 THE WITNESS: Yes.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what did you  
15 testify incorrectly as?

16 THE WITNESS: Interpreting as going it alone, alone  
17 that we, the Wardens Association by themselves, was going  
18 it alone in the Legislature. We had support from the  
19 Legislators. We were going it alone from the viewpoint  
20 of we did not have CAUSE helping us, our parent Union  
21 helping us in this and getting the 38 Game Warden  
22 positions back.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And that's what  
24 I understood your testimony was the first time.

25 MR. MESSING: Right. I don't see how that

1 contradicts it or clarifies it.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't either.  
3 I'm not going to strike it. But go ahead, next question.

4 BY MR. ROSE:

5 Q. At the time of the publication of this article,  
6 January 10, 2008, what was the status of the Game Wardens  
7 Association.

8 A. We were in trusteeship receivership by CAUSE.

9 Q. And had you -- had the Game Wardens Association  
10 requested to be placed into trusteeship or receivership?

11 A. No, we did not.

12 MR. MESSING: I'm going to object. It's irrelevant.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

14 BY MR. ROSE:

15 Q. Are you aware how many affiliates CAUSE has  
16 currently?

17 A. I can't -- around 17, I think.

18 Q. Are you aware currently how many of those  
19 affiliates are in trusteeship or receivership?

20 MR. MESSING: Object. Irrelevant.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know,  
22 without --

23 THE WITNESS: Sure.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
25 second. You got to remember you're a witness now.

1 THE WITNESS: Yes, sir.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If  
3 you can just give me an offer of proof. I don't want to  
4 get into the trusteeship except for a period of time  
5 there was a trusteeship. That's all I want.

6 MR. ROSE: I'm asking him the current period of time,  
7 today, how many of their affiliates are in trusteeship  
8 without regard to the reason.

9 MR. MESSING: It's irrelevant.

10 MR. ROSE: That affects their status of  
11 representation.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As long as  
13 there's a follow-up question as to when -- a time that  
14 they became and who it -- I mean who it is, I mean it's  
15 meaningless for me.

16 MR. ROSE: Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, all right,  
18 sir, go ahead. Are you aware of any others?

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

21 BY MR. ROSE:

22 Q. How many others?

23 A. Two, which would make for a total of nineteen.

24 Q. Oh, I see.

25 MR. MESSING: Object.

1 MR. ROSE: Go ahead. What's the objection, Gary?

2 THE WITNESS: I'll try to clarify.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

4 MR. MESSING: Never mind. I withdraw the objection.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, good. All  
6 right. Two for a total of nineteen. Next question.

7 BY MR. ROSE:

8 Q. So I'm trying to understand your earlier  
9 question. My intention was to ask you how many total  
10 affiliates there are regardless of whether or not their  
11 status was trusteeship. You answered 17. So could you  
12 please explain what your most recent answer is when you  
13 say 19.

14 A. I know of 19 total affiliates. Two in  
15 trusteeship means 17 being -- have representation on the  
16 Board.

17 Q. Okay. And of the -- one of them is the Game  
18 Wardens Association. We've established that.

19 A. Yes.

20 Q. The other one, do you know what other affiliate  
21 is in trusteeship?

22 A. Yes.

23 MR. MESSING: I'm going to still object as to  
24 relevance.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know,

1 overruled. As far as -- I mean if there's -- I mean as  
2 far as his case in chief for allowing that there's a part  
3 in time that there's a trusteeship, but there still has  
4 to be proof that they were represented as far as those  
5 Park Rangers or Lifeguards weren't represented during  
6 that time.

7 MR. MESSING: And is the -- is the representation by  
8 counsel that this witness can testify as to the adequacy  
9 of representation --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He may not,  
11 but --

12 MR. MESSING: -- of some other affiliate?

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- but we have  
14 three more witnesses, and maybe he can do it through  
15 them. So go ahead, sir.

16 BY MR. ROSE:

17 Q. Do you remember the question?

18 A. Yes. The other was the State Park Peace Officers  
19 Association in California.

20 Q. Do you recall how long ago the State Park Peace  
21 Officers Association of California was placed in  
22 trusteeship?

23 A. Approximately two years ago.

24 Q. Do you recall whether that was before or after  
25 the Game Wardens Association?

1 A. After the Game Wardens were.

2 Q. Now, do you have any interaction with any of the  
3 leadership of the State Park Peace Officers Association?

4 A. Yes.

5 Q. And in the course of that inter -- well, who  
6 specifically do you have interaction with?

7 A. Richard Bergstresser, President of their  
8 Association.

9 Q. And in connection with your -- or in your  
10 dealings with Mr. Bergstresser, have you come to learn  
11 what effect the trusteeship has had on the State Park  
12 Peace Officer Association's representation on the CAUSE  
13 Board of Directors?

14 MR. MESSING: Object. Lack of foundation.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm trying not  
16 to get in trouble here on the -- and what I mean in  
17 trouble, I mean trouble with myself in regards to this,  
18 not with necessarily any of the parties.

19 Well, let me just ask it this way. You were  
20 President at the time of the Fish and Game Wardens  
21 Association when it was placed into trusteeship?

22 THE WITNESS: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Did  
24 you -- were you allowed to sit on the CSLEA Board  
25 subsequent to that?

1 THE WITNESS: I never -- they did not notify me of  
2 any CSLEA Board meetings. I never attended a CSLEA Board  
3 meeting. It was a short time period I was on the Board,  
4 and I never attended one.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Were you --

6 THE WITNESS: I attended others.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Were  
8 you told that you were removed from the Board?

9 THE WITNESS: Yes, I was told I was removed from the  
10 Board.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next question.

12 BY MR. ROSE:

13 Q. Did you tell Richard Bergstresser that?

14 A. At that time, no. I did not know him. There was  
15 a different President of the State Park Peace Officers  
16 Association of California then.

17 Q. Have you ever told Richard Bergstresser that?

18 A. Yes.

19 Q. Has Richard Bergstresser ever told you whether he  
20 holds a seat on the CAUSE Board of Directors currently?

21 MR. MESSING: I'm going to object. Foundation.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Now I'm going to  
23 get into it. I mean if it was -- if he was the sitting  
24 guy at the time, I would -- I could see going there. But  
25 now I'm getting into whether there's -- what's the real

1 SPPOAC and what's not the real SPPOAC, and I don't want  
2 to get into that.

3 MR. ROSE: Who was the --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead.

5 MR. ROSE: So sustained.

6 BY MR. ROSE:

7 Q. Who was the object -- excuse me. I'm just  
8 objecting to my own questions now. I'm sorry.

9 MR. MESSING: I'll agree with that objection.

10 BY MR. ROSE:

11 Q. Who was the President, if you know, at the time  
12 that the State Parks Peace Officers Association of  
13 California was placed in trusteeship?

14 A. Last name escapes me right now. First name is  
15 Sal. I'm sorry. I can't think of his last name right  
16 now.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's all you  
18 can do.

19 BY MR. ROSE:

20 Q. Okay. Did you have conversations with Sal? I  
21 can't remember whether --

22 A. No, I did not.

23 Q. You did not. All right. Do you have -- have you  
24 reached a conclusion about whether the -- whether the  
25 California Fish and Game Wardens Association status in

1       trusteeship has in any way affected the adequacy of  
2       representation of Game Wardens by CSLEA with the State  
3       Employer?

4           MR. MESSING: I'm going to object. Lack of  
5       foundation.

6           MR. ROSE: He was the President, the Vice President.  
7       He's a member. He's been before the Legislature. He's  
8       testified over the years. He created an expose. He  
9       appeared in a DVD. He has -- I don't know what more  
10      foundation can be provided for that kind of --

11          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware of  
12      the current -- since the trusteeship, are you aware of  
13      what representation CSLEA has provided to the Game  
14      Wardens?

15          THE WITNESS: I'm not of any -- I'm not aware of any  
16      representation or any advocacy they have provided for the  
17      Game Wardens since we have been put into trusteeship.

18          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. So you're  
19      saying you're aware that there is no representation?

20          THE WITNESS: That is my opinion.

21          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I don't  
22      need an opinion.

23          THE WITNESS: Okay.

24          ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm trying to --  
25      you know, what you know.

1 THE WITNESS: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What are you  
3 aware of in regards to CSLEA's representation of Game  
4 Wardens since the trusteeship?

5 THE WITNESS: In conversations with the Legislature,  
6 with our Director of the Department of Fish and Game,  
7 with my Chief of Patrol there has been no advocacy that I  
8 have been aware of they have done on behalf of the Game  
9 Wardens in the State of California.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And based  
11 on those sources?

12 THE WITNESS: Legislature, media, my own Department,  
13 personal experience.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean I'm not  
15 saying that's not enough.

16 THE WITNESS: Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But I'm just  
18 trying to get an answer.

19 Okay. Mr. Rose, anything further?

20 MR. ROSE: One second. I think we're --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir. Off  
22 the record.

23 (Off the record.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the  
25 record, sir.

1 MR. ROSE: Okay. Nothing further at this time.

2 THE WITNESS: Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
4 Mr. Messing.

5 MR. MESSING: One sec.

6 MR. ROSE: Oh, I'd move admission of all of the  
7 exhibits that were marked for identification.

8 MR. MESSING: Object to Exhibit CC.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Right.  
10 Any objection to the others?

11 MR. MESSING: No.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So I  
13 agree with you in regards to CC. The witness did use it  
14 to refresh his recollection as to a date, but I mean  
15 that's -- that can be used for any exhibit, admitted or  
16 not. So AA, BB, DD and EE, as well as the Declaration Z.  
17 And, you know, Gary Schales, I can't remember whether I  
18 did move that in. Did we get that in the last time?

19 MS. SABONIS: I don't have it.

20 MS. MAYHEW: I think at the very last.

21 MR. ROSE: We don't have it in. And we don't have a  
22 Z on our sheet.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Z is orange.

24 MR. ROSE: Oh, Z is the Declaration of Orange. Okay.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. So

1 Schales is in also, which is Y.

2 (Petitioner's Exhibits Y, Z, AA, BB, DD and EE  
3 received in evidence.)

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So  
5 CC is outstanding. I think with that, Mr. Messing --

6 MR. MESSING: Okay.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- I think we're  
8 ready.

9 CROSS-EXAMINATION

10 BY MR. MESSING:

11 Q. So I see you brought a packet of materials with  
12 you on the right-hand -- your right-hand side there.

13 A. Uh-hmm.

14 Q. Okay. Did you -- you have to answer yes or no.

15 A. Yeah.

16 Q. Yes. Okay.

17 A. Yes. I have a packet of materials there.

18 Q. You reviewed those documents before testifying  
19 today?

20 A. There's a couple papers I was grabbing. I went  
21 to the truck, I just grabbed a stack of them out of my  
22 truck and brought them in, because I knew one of them was  
23 going to be -- that paper there. I don't know what all  
24 is included in there except for this large envelope. I  
25 know what's in that large envelope. And the other is the

1 number of officers in the State of -- in the nation.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why  
3 don't we make it easier. Go through that and tell us  
4 what you reviewed in order for your testimony today.  
5 Make a pile of that. And then we can have the Exclusive  
6 Rep and the Employer, if they want to review it prior to  
7 further testimony.

8 So if you can take this pile. And now, the  
9 instructions are this: Whatever you reviewed for  
10 testifying today, that's the pile that I need you to  
11 make. Then put a separate -- another pile that you  
12 didn't review, but you just high jacked with you --

13 THE WITNESS: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- and decided  
15 to bring.

16 THE WITNESS: Yes, I have reviewed all these  
17 documents. this large packet I have not completely  
18 reviewed. It would be to refresh my memory.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are any of these  
20 documents attorney-client privilege? I don't know who  
21 the attorney would be, and I'm just asking it out in the  
22 air.

23 MR. ROSE: The attorney would be us.

24 THE WITNESS: Yes.

25 MR. ROSE: You're an officer of POC, so --

1 THE WITNESS: Yes. One would be attorney-client  
2 privilege.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And which one  
4 would that be? Just so I could see it and review it and  
5 confirm you're correct. Yeah, I could see that would be.  
6 And where did that come in? What is that missing, or was  
7 that outside of there?

8 THE WITNESS: So this is the study by --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

10 THE WITNESS: -- done by the State of California.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's put that  
12 over there.

13 THE WITNESS: Talking about how many officers we need  
14 in the State.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair  
16 enough. All right. So is the document that you reviewed  
17 before coming to this hearing all that that you contained  
18 over here or -- I'm just going to have it so -- I'm going  
19 to present it before all of you so that you know he gets  
20 it back. And some of it's a Declaration. Are you going  
21 to be interested in that, Mr. Messing?

22 MR. MESSING: Sure.

23 THE WITNESS: It's a copy of --

24 MR. MESSING: I'll look at it all.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

1 THE WITNESS: It's a copy of that there.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

3 THE WITNESS: I'm sorry. I don't have it stapled  
4 together.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's all  
6 right.

7 THE WITNESS: This is --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't need to  
9 know what it is. Alls I need to know is you reviewed it.  
10 And okay. Very good. And very good. All right. Okay.

11 THE WITNESS: It's not refreshing my memory. Should  
12 I put it there? You just want to see them all?

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It looks like  
14 your testimony before the Committee; is that right?  
15 That's what is?

16 THE WITNESS: Yes.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

18 THE WITNESS: And a couple of these.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Those are the  
20 exhibits, so we don't need to see those. You can just  
21 put that right over there. And we'll go off the record.

22 (Off the record.)

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right . Back  
24 on the record. We've done our review, which included  
25 excluding from review and attorney-client document, and

1 which resulted -- I mean not the attorney-client  
2 document. But the review resulted in now what we are  
3 marking as Exclusive Representative N, which appears to  
4 be a single-page document dated March 6 of '07. Appears  
5 to be from Alan Barcelona to Patricia Wiggins, Senator  
6 Wiggins and Senator Cogdill, specifically regarding SB  
7 695. It says support if amended.

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

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The witness has  
11 it already. Witness has Exclusive Rep N before him ready  
12 for examination.

13 BY MR. MESSING:

14 Q. Yeah. Just a couple of questions about this.  
15 First of all -- this meaning Exhibit N.

16 A. Okay.

17 Q. Okay? The underlining in this wasn't with the  
18 original, correct?

19 A. No. I did that myself --

20 Q. Okay.

21 A. -- some time ago.

22 Q. All right. And let's see. Now, you noted in  
23 here the concern by CSLEA that giving a differential only  
24 to Fish and Game Wardens could cause problems with  
25 retention of peace officers in other State departments,

1 correct?

2 A. I see where it's written there, yes.

3 Q. Okay. And would you have been okay with this  
4 letter if it proposed that the SB 695 would cover all  
5 peace officers represented by CAUSE?

6 MR. ROSE: Objection. Calls for speculation.  
7 Relevance.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He can ask him  
9 what in regards to what --

10 MR. ROSE: Improper hypothetical.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, at the  
12 time he reviewed -- that's what I'm trying to get at, the  
13 time that he reviewed this, he may have had a certain  
14 opinion in regards to what he would have -- or not -- we  
15 don't know. So I'll let you take it from there,  
16 Mr. Messing.

17 BY MR. MESSING:

18 Q. So did you have an opinion at the time whether or  
19 not this would have been okay if CAUSE had extended 695  
20 to cover all peace officers in the bargaining unit?

21 MR. ROSE: Objection. Improper hypothetical.  
22 Assumes facts not in evidence. Relevance.

23 MR. MESSING: I'm asking if he had an opinion then.  
24 That's the question, if he can answer yes or no to that.

25 MR. ROSE: The question was if the letter said

1 something that it doesn't say, what would his opinion  
2 have been. It assumes -- it's a hypothetical. It lacks  
3 foundation. It lacks relevance. And it assumes facts  
4 not in evidence. The letter doesn't say that.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just aside from  
6 the letter, during the time period that the letter --

7 THE WITNESS: Uh-hmm.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- came out did  
9 you have an opinion about whether it would be acceptable  
10 to you, or the Wardens that you represented at the time,  
11 you were the President, I believe --

12 THE WITNESS: Yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- that if the  
14 support was limited to peace officers only, that it would  
15 be acceptable on behalf of you as the President of the  
16 Wardens --

17 THE WITNESS: Yes, I did.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, you did?  
19 Okay. And what was that opinion?

20 THE WITNESS: If it was to cover all peace officers,  
21 I don't see any way that that bill would have passed  
22 because it was oriented like pay for like duty with the  
23 sheriff's departments along the coast that had  
24 familiarity, who have similar job duties and pay. We  
25 were looking for the same pay as sheriff's officers. I

1 don't see how other sworn officers that were not badge  
2 carrying, had totally different job, I didn't see how  
3 that would possibly pass in the Legislature.

4 BY MR. MESSING:

5 Q. So you didn't think, for example, that Park  
6 Rangers were entitled to like pay for like work when they  
7 work along the same coastlines that you were describing  
8 in your prior testimony?

9 A. If they were included, absolutely. But not all  
10 people.

11 Q. Okay. But --

12 A. If it -- yeah.

13 Q. Okay. Now, I think you testified earlier you  
14 were aware of the statement that was put up on the CSLEA  
15 website about Jerry Karnow's testimony here.

16 A. Yes.

17 Q. Okay. And that indicated that Jerry Karnow  
18 testified that he expected a 43 percent pay increase for  
19 Fish and Game Wardens based upon the money that had been  
20 set aside or sought in the Legislature; is that right?

21 A. Yes.

22 Q. Okay. And he also was referenced in that website  
23 as stating that he would be fine with the 43 percent pay  
24 increase going to Fish and Game Wardens even if no other  
25 peace officers in the bargaining unit got any pay

1 increase at the same time. Did you agree with -- do you  
2 agree with that statement?

3 MR. ROSE: Objection. Assumes facts not in evidence.  
4 Best evidence. He's describing the contents of a website  
5 characterizing the testimony of a witness published by  
6 CSLEA.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember  
8 reading --

9 THE WITNESS: I remember the 43 percent. That's the  
10 first time I ever heard the 43 percent.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And I'll  
12 just let you ask it from there.

13 BY MR. MESSING:

14 Q. Okay. Would you agree that -- or do you agree  
15 that the 43 percent pay increase for Fish and Game  
16 Wardens is fine even if no other peace officers in the  
17 bargaining unit get a pay increase?

18 A. All I have ever advocated or ever used was like  
19 pay for like work. I've never used percentages. Like  
20 pay for like work.

21 Q. Okay. Are you okay with Fish and Game Wardens  
22 getting whatever you think like pay for like work is for  
23 them, even if the other peace officers in the bargaining  
24 are not getting like pay for like work at the same time?

25 A. Other officers should also get like pay for like

1 work.

2 Q. All right. Now, just going back for a moment,  
3 you talked about the trusteeship. And I have just one  
4 question on the SPPOAC trusteeship. Do you know if  
5 Mr. Bergstresser agrees that SPPOAC is in a trusteeship?

6 A. Again? If I could --

7 Q. Do you know if Mr. Berg --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I can't  
9 even get in that. Just go to the next question.

10 MR. MESSING: I don't object.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sure you  
12 don't, Mr. Rose.

13 MR. MESSING: I think it opens up the door for a lot  
14 of other questions.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't want to  
16 open that. I'm trying to shut these doors. Okay. Next  
17 question.

18 BY MR. MESSING:

19 Q. All right. I'm going to look at -- looking at  
20 page four of your Declaration, it lists under paragraph  
21 20 various codes that you are required to enforce. Do  
22 you see that list? Page four?

23 A. Yes, I do.

24 Q. Okay.

25 A. Okay.

1 Q. So your job ordinarily entails enforcing criminal  
2 laws, correct?

3 A. That's correct.

4 Q. And also regulations and administrative codes,  
5 correct?

6 A. You say administrative code. I don't see  
7 administrative code on there, and I'm not aware of what  
8 you mean by administrative code.

9 Q. How about regulations?

10 A. Okay. Regulations.

11 Q. Okay. Many of which are not necessarily  
12 criminal, correct?

13 A. I only enforce criminal.

14 Q. Okay. So --

15 A. No. You know what? Excuse me. There are some  
16 civil ones that I have filed cases on. I apologize.

17 Q. Okay. And let's -- for example, on page six you  
18 refer -- you reference fishery regulations. Can you give  
19 me some examples of fishery regulations?

20 A. Job duties?

21 (Cell phone ringing.)

22 MR. MESSING: I turned it off. It was off. No idea  
23 why that happened.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

25 Next.

1 (Cell phone ringing.)

2 MR. MESSING: Sorry.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
4 Fishery regulations. What's that mean? Give us an  
5 example.

6 THE WITNESS: Jiminy Christmas. Salmon enforcement,  
7 snagging enforcement, trout limits, fishing regulations,  
8 commercial fisheries, abalone, sturgeon, multi-day  
9 patrols on patrol boat out of Eureka.

10 BY MR. MESSING:

11 Q. Okay. Now, I want to look at Exhibit AA and BB.

12 A. Yes.

13 Q. Okay. Now, approximately how many Fish and Game  
14 Wardens were there in 2006?

15 A. Can I refresh my memory with the numbers of  
16 officers we had?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But do you need  
18 to refresh your memory, or can -- do you need --

19 THE WITNESS: Oh, in 2006?

20 MR. MESSING: Yeah.

21 THE WITNESS: One ninety-two.

22 BY MR. MESSING:

23 Q. Okay. One ninety-two. Okay. And in 1990 --

24 A. Within 10 or so.

25 Q. So maybe -- roughly 200?

1 A. Yes.

2 Q. Okay. And in 1990, when Exhibit BB was -- is  
3 reflecting, about how many?

4 A. I would say there was probably approximately --  
5 without refreshing my memory, I'll say probably 275, 280.

6 Q. Okay. Now, let's turn to the Exhibit AA for a  
7 moment, where for 2006 there are 15,710 citations. So  
8 out of -- out of all of those citations, there were only  
9 111 felonies; is that right?

10 A. Yes. Felony -- that would be felony wildlife  
11 violations.

12 Q. Okay. So that means one felony for every other  
13 Fish and Game Warden; is that right?

14 A. If I could quantify what a felony violation is  
15 with Fish and Game? Felonies would be black market bear.  
16 Like I said, a person has seven, eight gall bladders.  
17 Gill netting for the illegal commercial take of salmon.  
18 We have a few -- those would be felony violations of  
19 actual Fish and Game Codes, not Penal Codes, to my  
20 understanding.

21 Q. Were there a total of 111 felonies?

22 A. According to this document, yes.

23 Q. Okay. And is that in fact only one felony per  
24 every other officer?

25 A. Yes.

1 Q. Okay.

2 A. Not including Penal Code.

3 Q. Well, are you saying that there are -- that  
4 felonies are included under the Penal Code line here  
5 where it says 1,005?

6 A. That's correct. You look above it says, "Penal  
7 Code, other Code sections, 1,005, that would include  
8 felonies of the Penal Code. Felonies registered here  
9 are for felony Fish and Game violations under Fish and  
10 Game Code.

11 Q. Okay. Well, now, the total number of felonies --  
12 the total number of arrests here -- one second.

13 Okay. Based on this document, you don't know how  
14 many of the Penal Code violations are felonies, correct?

15 A. No, I don't.

16 Q. Okay. And, in fact, according to this document,  
17 based upon your calculation of about 200 Fish and Game  
18 Wardens, this amounts to approximately what, 60 total  
19 citations per year per Fish and Game Warden, 60 or 60; is  
20 that right?

21 A. I would have to calculate out, calculate or  
22 divide that up. I -- without my numbers, I can't figure  
23 it out.

24 Q. Well, let me ask you this: Does it sound right  
25 to you that Fish and Game Wardens in 2006 were making --

1 were making five -- giving out five to six citations per  
2 month? Does that sound right? I'm asking without  
3 reference to the document, sir.

4 A. I'm just trying to --

5 Q. I'm asking you from your experience. From your  
6 experience, does it sound right that Fish and Game  
7 Wardens were having about five to six citations per month  
8 back in 2006?

9 A. I don't know.

10 Q. You don't know?

11 A. Per -- it depends on the specific assignment of  
12 the officers. There's a very wide variety of duties that  
13 officers do. And if I just had a calculator and divide  
14 that out, I could actually -- I could answer your  
15 question accurately.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 Well, that's not the question he's asking you.

18 THE WITNESS: Okay.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So next  
20 question.

21 THE WITNESS: Okay. Go ahead again.

22 BY MR. MESSING:

23 Q. Do you believe that let's say from 2000 and --  
24 from 1990 to the present, let's go with that --

25 A. Okay.

1 Q. -- that your duties are typical of what all other  
2 Fish and Game Wardens' duties are?

3 A. Job duties vary tremendously based upon the  
4 geographic and -- geographic area where the officer is  
5 working, and depending on what assignments they are  
6 working on. We can all do the same job. Throughout the  
7 course of the career we all have similarity. But some  
8 people are assigned specifically say to the refineries,  
9 to inspecting the refineries, inspection of the oil  
10 tankers on the coast. Others are assigned specifically  
11 to dairy farms. Others are specifically assigned to  
12 streambed alteration violations. Other are general  
13 patrol. We have a squad that's specifically assigned to  
14 undercover. The caseload depends -- is very wide  
15 depending on what they're assigned to do.

16 Q. Okay. So is it your testimony that you do not  
17 know the typical number of arrests that would be made by  
18 Fish and Game Wardens in those other assignments?

19 A. Yeah, I know what it is, you know, approximate  
20 numbers of what other officers do and based on experience  
21 what -- it depends if you're working deer, if you're  
22 working -- I'm sorry. I'm confused. But it just -- it  
23 depends on what you're doing. If you're undercover,  
24 you're not going to write that many citations. You're a  
25 witness. If you're working pollution inspection, you're

1 not going to make those cases. Those cases would be  
2 felonies, felony pollution cases. If you're working the  
3 Bay Delta where you're checking fishing licenses all day,  
4 your caseload is going to skyrocket with -- because of  
5 the vast numbers of the people you're going to contact.  
6 It's a -- it's a correlation between how many people you  
7 contact how many citations you issue.

8 Q. Okay. What was your assignment over the past  
9 year?

10 A. I was -- I worked Plumas County and Lake Davis  
11 when I was working. I have to quantify, I used a lot of  
12 sick leave -- sick leave the past year.

13 Q. All right. How about the year before that?

14 A. I used a lot of sick leave that same year. I  
15 worked Plumas County, the rural area of Plumas County,  
16 and Lake Davis also.

17 Q. Okay. Well, you did work during the past two  
18 years, did you not?

19 A. Yes, I did.

20 Q. Okay. So in your assignment working Plumas  
21 County and Lake Davis, in the past year how many felony  
22 arrests did you make?

23 A. Lake Davis, none. That was a monitoring of the  
24 lake. It's a very unique duty.

25 Q. Just -- sir, I'm just asking you --

1 A. Okay.

2 Q. -- in the last year in the assignment that you  
3 had --

4 A. Okay.

5 Q. -- how many felony arrests did you make?

6 A. One felony arrest.

7 Q. One. Okay. And in the assignment that you had  
8 the year before that, how many felony arrests did you  
9 make?

10 A. Zero.

11 Q. Zero. Okay. How many misdemeanor arrests did  
12 you make last year?

13 A. Oh, maybe 20, 25.

14 Q. Okay. And how many the year before that?

15 A. I would have to say just a little bit more than  
16 that. Same number.

17 Q. Okay. Now, would you -- do you believe that  
18 those numbers are representative of the average numbers  
19 of arrests for misdemeanors and felonies by Fish and Game  
20 Wardens statewide?

21 A. No. I was off on sick leave assisting my wife,  
22 who was paralyzed, for the majority of both of those  
23 years.

24 Q. Okay. So you're saying that your stats were low  
25 for those two years as compared to the average?

1           A. On that assignment for Lake Davis, which I was  
2 assigned to Lake Davis because we had to treat the lake  
3 because of the Northern Pike invasion, an invasive  
4 species came there, what we did is monitored the lake  
5 constantly with nearly a 24-hour patrol to make sure that  
6 invasive species did not spread throughout the lake. So,  
7 consequently, it was a custodial patrol of that lake all  
8 the time on a very specific situation that was unique to  
9 California. And that had been existing for the previous  
10 10 years.

11           Q. Okay. So that -- you wouldn't characterize that  
12 custodial patrol as criminal enforcement?

13           A. Oh, absolutely.

14           Q. Well, weren't you looking at the issue of the --  
15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Pike.

16 BY MR. MESSING:

17           Q. -- the pike? I mean were the pike committing  
18 crimes in the lake? Or why don't you explain to me  
19 how --

20           MR. ROSE: Objection. Argumentative.

21 BY MR. MESSING:

22           Q. -- the number of pike in the lake --

23           ADMINISTRATIVE LAW JUDGE CLOUGHESY: He has a second  
24 question.

25           /////

1 BY MR. MESSING:

2 Q. -- could -- is -- monitoring that, how that is  
3 criminal enforcement.

4 A. Pike were illegally introduced into Lake Davis.  
5 If they escaped, they would threaten the multi-million  
6 dollar industry of the salmon in the rivers of  
7 California, the striped bass in the rivers of California.  
8 Pike are the top-rated predatory fish in North America.  
9 And if they escaped from Lake Davis and got into the  
10 Sacramento River system, San Joaquin River system,  
11 Klamath River, it would absolutely decimate the salmon  
12 fisheries that we have.

13 They were introduced illegally. First of all, they  
14 were introduced into Frenchman Lake, which is in my  
15 patrol district, illegally. Prior to that time  
16 Department of Fish and Game treated that lake, got rid of  
17 them. Individuals took fish out of Frenchman, fed them  
18 into Lake Davis, which is a water supply for Portola.

19 And to eradicate those fish cost the State of  
20 California \$12 million. And then this last treatment  
21 took approximately \$15 million. The Department did not  
22 want those fish to be taken out by fishermen again and  
23 put in other waters of the state, so we went to nearly  
24 24-hour patrols to do that.

25 Q. Are you saying that every time a fish escapes

1 it's criminal?

2 MR. ROSE: Objection. Argumentative and belittling,  
3 and mischaracterizes the witness' testimony.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

5 MR. MESSING: It's a perfectly good question.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ask the last.

7 BY MR. MESSING:

8 Q. Okay. Do you believe that every time a fish  
9 escapes that that's a criminal incident?

10 A. A person catching Northern Pike and transporting  
11 it to another body of water is not an escape.

12 MR. MESSING: Move to strike as nonresponsive.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. We're  
14 only asking you in regard -- part of your job in  
15 monitoring the lake --

16 THE WITNESS: Yes.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- I mean -- I  
18 mean you're monitoring to see whether that eradication  
19 worked or not?

20 THE WITNESS: That's correct. That's what I do.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean --

22 THE WITNESS: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean you're  
24 just trying to make sure that all those things are dead,  
25 as well -- I mean that's part of your job, wouldn't you

1 agree?

2 THE WITNESS: Yes. For the last 10 years pike have  
3 been in the lake, and we're assigned to keep them from  
4 being taken out of the lake by the people, by people  
5 catching them and transporting them to other bodies of  
6 water.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right. Now, so  
8 I'm going to say two issues. One is making sure those  
9 pike are dead, correct?

10 THE WITNESS: Correct.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: One is making  
12 sure other people don't bring pike back into that lake;  
13 is that correct?

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You consider  
16 both of those things your job?

17 THE WITNESS: Yes.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Job during the  
19 time. Next.

20 BY MR. MESSING:

21 Q. It says here that you've served as an incident  
22 commander and an initial response for investigating oil,  
23 chemical and pollution spills within your assigned patrol  
24 district.

25 A. Yes.

1 Q. Is that right? Okay. What was the last incident  
2 that falls into that category that you can recall? I'm  
3 just asking for the year.

4 A. Oh, last year.

5 Q. Last year. And what was the type of incident?

6 A. Semi -- semi-truck accidents, Feather River  
7 Canyon.

8 Q. Okay. Was -- okay. So when you say accident, is  
9 it fair to say that sometimes a spill may be intentional  
10 and might have criminal implications?

11 A. I'm certainly not saying intentional. But it's  
12 absolutely criminal implications because of the  
13 negligence.

14 Q. Okay. And would you also say that there are  
15 times where there are spills where it's not criminal,  
16 there's an accident?

17 A. Sure.

18 Q. And would it be fair to say that you're  
19 responsible for dealing with both types of incidents?

20 A. Yes.

21 Q. And you're also involved in the management of  
22 cleanup of spills, correct?

23 A. Correct.

24 Q. Okay. And when you're involved in the management  
25 and cleanup of pollution or oil spills, are you involved

1 with the folks from OSPR?

2 A. Yes.

3 Q. Now, I noticed in your Declaration that you  
4 state, "The non-peace officer personnel I work with are  
5 or not a part of Bargaining Unit 7." What do you mean  
6 are or --

7 A. Could you reference the page, please, sir?

8 Q. Page 11, line 2. Could you tell me what it means  
9 that they are or not a part of Bargaining Unit 7?

10 A. I work with -- you know what? That was a  
11 question that it looks like I did not answer. That  
12 doesn't make sense. That the non-peace officer personnel  
13 I work with are or are not part of Bargaining Unit 7.  
14 That would be a question if you stated yes or no, I  
15 guess. I'm sorry. But that sentence does not make  
16 sense.

17 Q. Well, you do work with Unit 7 personnel who  
18 are -- who are not peace officers, correct?

19 A. Yes.

20 Q. Okay. And one of those would be Oil Spill  
21 Prevention Specialists, correct?

22 A. If they are part of Bargaining Unit 7, I was not  
23 aware of that.

24 Q. Okay. And I presume that -- are there any others  
25 that you can think of that you work with who are not

1 peace officers who are in Bargaining Unit 7?

2 A. CHP Dispatchers.

3 Q. Okay. They dispatch Fish and Game Wardens?

4 A. Used to. No longer.

5 Q. Well, then how do you work with them now?

6 A. We had a transition this past year from all of  
7 our Dispatchers. I worked out of Sacramento. In Plumas  
8 County I was with -- Lassen County Highway Patrol  
9 dispatched the Game Wardens in Lassen County. In Plumas  
10 County I was dispatched by OSPR Dispatchers. And my  
11 squad was the Plumas-Lassen squad. I'd go to Lassen  
12 County, we were dispatched out of Lassen County. Now  
13 it's Plumas County. The transition now is no CHP  
14 Dispatchers dispatch for Game Wardens anymore. We are  
15 all centralized underneath State Parks and Fish and Game.

16 Q. And so you're now being dispatched by Parks comm.  
17 operators, correct?

18 A. That's correct.

19 Q. And they're in Bargaining Unit 7, aren't they?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
21 know.

22 THE WITNESS: I don't know.

23 BY MR. MESSING:

24 Q. You don't know. Okay. Is there anybody else  
25 that you might work with who are non-sworn members of

1 Bargaining Unit 7?

2 A. If Brand Inspectors are part of Bargaining Unit  
3 7, yes.

4 Q. Okay. They're non-sworn, correct?

5 A. Yes.

6 Q. Okay. What about Lifeguards?

7 A. I don't work with them.

8 Q. Okay. And how do you work with Brand Inspectors?

9 A. Our work with Brand Inspectors is when I've had  
10 cattle rustling cases in the past, I've contacted them  
11 for the information on that. I know they've done  
12 inspections. I've come across them in the field. That's  
13 basically the extent of that.

14 Q. Okay. Moving along here, it says here that you  
15 participate in search and rescue operations for lost,  
16 stranded and injured citizens, correct?

17 A. Correct.

18 Q. I assume that that's a very important duty when  
19 it has to be carried out?

20 A. When I part -- that I participate in, if it's in  
21 my local area and I happen to be on shift and it's  
22 happening in the area, on that I will assist.

23 Q. Okay. Does it happen often?

24 A. Seasonally, yes. During hunting season,  
25 particularly around there. And if I come across a wreck,

1 a person's down in the canyon, overturned vehicle, I will  
2 assist with it.

3 Q. Okay. And I presume that that is not criminal  
4 enforcement?

5 A. Correct.

6 Q. Okay.

7 A. It's protection of the public, public safety.

8 Q. Okay. It says that you investigate the  
9 destruction of wildlife habitat. Now, I assume that that  
10 can happen by way of a criminal act, the destruction of  
11 wildlife habitat?

12 A. Yes.

13 Q. Okay. But it also can occur by natural causes,  
14 correct?

15 A. Yeah. But I don't -- you know, as far as forest  
16 fires, which comes to my mind immediately because of what  
17 all this last year, I mean I didn't analyze the impact  
18 really of the habitat destruction of the forest fires. I  
19 assisted in evacuating people, road closures, that sort  
20 of thing.

21 Q. Okay.

22 A. But as far as analysis of doing studies, no.  
23 Except for bear that had been wounded, taking them down  
24 afterwards.

25 Q. What about other types of animal counts, isn't

1 that something that is of concern to you if you're  
2 observing, for example, a depletion of a certain species?

3 A. Yes. Where there's a fish kill in relation to a  
4 pollution incident, I will document, photograph and  
5 collect evidence for criminal prosecution and submission  
6 to the lab.

7 Q. And since you're the -- well, let me ask you  
8 this: You're familiar with the arrest powers of a  
9 Highway Patrol officer?

10 A. Yes.

11 Q. Okay. Would you describe it?

12 A. Their primary focus is enforcement of the traffic  
13 laws of the State of California Vehicle Code and  
14 executive protection of the Capitol, the State  
15 Legislature, and protection of State buildings.

16 Q. Okay. And do you know what their search powers  
17 are?

18 A. Not completely.

19 Q. Not completely. Okay. Well --

20 A. Search incidental to arrest.

21 Q. And is it your belief that that's the only search  
22 power that Highway Patrol --

23 A. No, absolutely not. No. They have a regulatory  
24 authority over vessels. Not vessels. Excuse me. Strike  
25 that. Correction. Thinking about myself. Semi-trucks,

1 vehicles primarily.

2 Q. So is it your belief that Highway Patrol officers  
3 don't have the power to search a residence if, you know,  
4 there's been a crime committed or --

5 A. Under a valid search warrant, absolutely.

6 Q. Okay. All right. So tell me about your  
7 understanding of the search powers of a Fish and Game  
8 Warden.

9 A. We have regulatory and discretionary authority of  
10 vessels of the State, any commercial vessels, inspection  
11 authority of the holds, records, captain's logs. All  
12 restaurants, we have regulatory authority to inspect  
13 restaurants to see if there's any illegal species -- a  
14 common one is abalone -- in the freezers of restaurants.  
15 Stores, commercial stores that are out there, authority  
16 to inspect those.

17 Vehicles, it's been ruled that we have -- when it  
18 comes to inspection authority of vehicles, that wherever  
19 game or fish may commonly be found by a hunter or  
20 fisherman, you may inspect that vehicle. That includes  
21 trunks. That includes underneath the seats, et cetera,  
22 et cetera.

23 Q. Okay.

24 A. In campgrounds, in camps, we have inspection  
25 authority to check ice chests for fish commonly found in

1       campgrounds.

2           Q.   Now, you work together with other local law  
3       enforcement and Highway Patrol officers, correct?

4           A.   Yes.

5           Q.   And when you're working together with a local  
6       police officer, sheriff or a Highway Patrol officer, do  
7       they have the same ability to search the areas that you  
8       just outlines as you do?

9           A.   Not always.

10          Q.   Why is that?

11          A.   Just it is ruled that we may commonly search --  
12       we may search areas where fish and game may commonly be  
13       found as a regulatory authority.  Other peace officers  
14       can only search the area based upon the arrest.  They  
15       have to have probable cause to search incident to arrest.  
16       Where us, like we can -- if a person's hunting, I can  
17       look underneath the feet, back seat, back of a truck, a  
18       vessel.  I can inspect all of a vessel as a regulatory  
19       authority, where other peace officers, sheriffs, Highway  
20       Patrol could not do that.

21          Q.   Can you just tell me where that power is located,  
22       the source of that power?

23          A.   It's case law.  And if you were to look I think  
24       Fish and Game Code -- I'd have to look.  I think it's  
25       1005.  If you check it, that is vessels.  But it's also a

1 case law. My father was a Game Warden for 37 years. And  
2 in Appellate Court there's a very -- there's an important  
3 Appellate Court decision where he was able to open up  
4 bait count bags underneath a seat checking for game, and  
5 it contained cocaine. And that was affirmed.

6 Q. Okay. If you're going to stop a car, don't you  
7 have to have probable cause to make a stop?

8 A. Sure.

9 Q. Okay. And once you have probable cause, then you  
10 can search the vehicle. And how is that any different  
11 than a Highway Patrol officer? Cannot a Highway Patrol  
12 officer also stop a vehicle for the same violation that a  
13 Fish and Game Warden would stop a vehicle for?

14 A. If it appears a person is hunting, I can stop the  
15 vehicle --

16 Q. Same thing for --

17 A. -- and check it.

18 Q. Isn't that true for a Highway Patrol officer?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
20 know.

21 THE WITNESS: I'm not aware of any policy where a  
22 Highway Patrol is allowed to do that under policy. I've  
23 not experienced that.

24 MR. MESSING: Okay.

25 THE WITNESS: Them doing that.

1 BY MR. MESSING:

2 Q. I'm asking you whether they have the power to do  
3 that. I'm not asking you if there's a policy. Put it a  
4 different way, sir. Are you -- are you saying that there  
5 are situations where you have the power to -- based on  
6 probable cause to stop a vehicle when a Highway Patrol  
7 officer would not have that power?

8 A. I'm not sure about the power. Under policy they  
9 certainly do not. And I don't know the answer to that.  
10 But let's say my experience is when they come across a  
11 hunter in the field or on the road, they don't stop that  
12 person, where I can. And I do as a matter of policy for  
13 inspection.

14 MR. MESSING: Okay. I ask to strike that answer as  
15 nonresponsive after --

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, everything  
17 after I don't know.

18 MR. MESSING: -- after I don't know.

19 THE WITNESS: Okay.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

21 BY MR. MESSING:

22 Q. Okay. I'm just going to direct your attention to  
23 paragraph 55 in your Declaration, page eight. Okay. Do  
24 you recall writing as a Fish and Game Warden, "I have  
25 broader search powers than police, sheriff or Highway

1 Patrol officers"? Do you remember writing that?

2 A. Yes.

3 Q. Okay. Okay. It says here that you were put on  
4 the condition and collect information on the condition of  
5 fish, wildlife and their habitat.

6 A. What page, sir?

7 Q. Paragraph 65 on page 8.

8 A. Sure.

9 Q. Okay. So this goes back to a question I asked  
10 earlier about the wildlife. You can look at -- or  
11 collect information about wildlife where it's not  
12 necessarily a criminal situation, correct?

13 A. Public safety.

14 Q. Okay. And the same for fish?

15 A. That would be in relation basically to pollution  
16 incidents.

17 Q. Okay. And not all pollution incidents are  
18 criminal, correct?

19 A. Not all pollution incidents are prosecuted.

20 Q. And not all are criminal --

21 A. Accidents.

22 Q. -- right?

23 A. Right.

24 Q. Okay.

25 A. Accidents.

1 Q. All right. What's a streambed alteration  
2 agreement?

3 A. If anybody is going to do any substantial work  
4 within the high water mark of any lake or stream in the  
5 state of California, they need to have a streambed  
6 alteration permit issued by Department of Fish and Game.

7 Q. And you're responsible for making sure that those  
8 agreements are in -- that folks are in compliance with  
9 those agreements?

10 A. Yes.

11 Q. Okay. And what are the -- isn't it -- well,  
12 strike that.

13 What are the various -- what's the various range of  
14 actions that you can take if somebody is not in  
15 compliance with an agreement, from the least to the most?

16 A. Making recommendations to them, to giving  
17 suggestions on how to proceed with that particular  
18 permit, to shutting them down, to issuing a citation. Or  
19 if after warning if they continue, to go -- proceed  
20 forward to physically arresting them and taking them in.

21 Q. Okay. So it sounds like there are a variety of  
22 actions that you can take that are not criminal  
23 enforcement?

24 A. I am acting under a criminal violation. My  
25 enforcement is underneath a criminal violation. And I

1 can -- I can opt to not proceed with issuing a citation  
2 or make an arrest, or working with them on the -- on the  
3 project.

4 Q. Are you -- are you saying that every time there's  
5 not compliance with a streambed alteration agreement it's  
6 a criminal act?

7 A. Say again, please?

8 Q. Is it your testimony --

9 A. Uh-hmm.

10 Q. -- that every time there's a failure of  
11 compliance with a streambed alteration agreement that  
12 that's a criminal act?

13 A. No.

14 Q. Okay.

15 A. It's a very -- streambed alteration permits are  
16 very subjective. I mean they range from installing a  
17 culvert on a non-flowing stream to building a dam on a  
18 river.

19 Q. Okay. It says that you assist in the planning of  
20 controlled hunts. How often do you do that?

21 A. Control of hunts?

22 Q. Controlled hunts, yes.

23 A. Every year. Every deer season that opens up.

24 Q. Okay. And so the planning of the controlled hunt  
25 is not -- you wouldn't characterize that as criminal

1 enforcement, correct?

2 A. Planning, no.

3 Q. Okay. And it says that you participated in the  
4 wild -- in the wild animal capture for placing telemetry  
5 radio equipment for monitoring wild animal populations.  
6 You wouldn't characterize that as criminal enforcement  
7 either, would you?

8 A. No.

9 Q. Okay.

10 A. It's very limited.

11 Q. All right. And does that happen on a regular  
12 basis?

13 A. No, not at all.

14 Q. No? Okay. Just a couple more on this and we'll  
15 move on. It says here that you've testified as an expert  
16 witness in state and federal courts. Have you been  
17 qualified by a judge as an expert witness in a particular  
18 area?

19 A. Yes.

20 Q. Okay. What was the area that you were qualified  
21 as an expert in?

22 A. Hound behavior.

23 Q. Hound behavior?

24 A. Hound behavior, yes.

25 Q. H-O-U-N-D?

1           A. Yes. Dog behavior regarding in -- in regards to  
2 bear hunts, bear hunting.

3           Q. I didn't know that there was an area of expertise  
4 of hound behavior.

5           MR. ROSE: Objection. Argumentative.

6           ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

7 BY MR. MESSING:

8           Q. My question was -- is this: Was that a state or  
9 federal court?

10          A. State.

11          Q. Okay. So, first of all, you've not been  
12 qualified as an expert witness in a federal court?

13          A. I've handled prosecutions in federal court, so  
14 I -- yes. Because when I prosecute a person in federal  
15 court, we're talking waterfowl regulations. My  
16 interpretation is I am the expert witness on that case  
17 regarding the identification of the bird species --

18          Q. Okay.

19          A. -- et cetera.

20          Q. Is that -- is that your interpretation as to how  
21 you became an expert on hound behavior?

22          A. No. I was specifically asked by the judge to be  
23 in on that. It was -- had to do with a separate case.

24          Q. Okay. Did you -- do you under -- did you have a  
25 voir dire where there was a separate set of questions

1 that were asked of you about your expertise in hound  
2 behavior, after which the judge said, this witness is an  
3 expert on hound behavior?

4 A. That's correct.

5 Q. Okay. But nothing like that has happened in  
6 federal court to you, correct?

7 A. No. You're correct.

8 Q. Okay. So when you swore in your Declaration that  
9 you testify as an expert witness in state and federal  
10 courts, that's actually an incorrect statement?

11 MR. ROSE: Objection. Argumentative.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Would you agree  
13 as far as clarified by Mr. Messing that that's incorrect?  
14 Where a judge --

15 THE WITNESS: Asked with the judge specifically, yes.  
16 That was a misinterpretation on my part of what he meant  
17 by an expert witness on that. Thank you.

18 BY MR. MESSING:

19 Q. Okay. Let's talk a little bit about  
20 representational issues. Now, you testified about what  
21 occurred in 2006, and you -- I'm going to take you to  
22 your testimony about Joe Mello. You said he was not  
23 involved with the decisions that ended up distributing  
24 the money to the bargaining unit, or words to that  
25 effect.

1 A. I stated he was not at the bargaining table.

2 Q. Okay. But Joe Mello was in fact -- isn't it true  
3 that Joe Mello was in fact a member of the bargaining  
4 team during 2006?

5 A. I know he was in previous years. In 2006, I  
6 believe he was a member of the bargaining team. When he  
7 talked to me, my understanding was that he was not  
8 present at the actual negotiations of the contract.

9 Q. You seem --

10 A. But I can't testify in fact that's what he told  
11 me.

12 Q. Well, you said -- you said -- first you said it  
13 was your understanding, then you said that's what he told  
14 you. Okay. Was it what you understood? Let me rephrase  
15 that.

16 What exactly did Joe Mello tell you about whether he  
17 was at the bargaining table or not in 2006?

18 A. I recall a statement where he told me, he said,  
19 "Hey, they've come up with a contract. Negotiations are  
20 done. I don't know how they came up with the contract  
21 because I was not part of the negotiation of that  
22 contract. But we're going to go into a meeting to vote  
23 on it."

24 Q. Okay. Have you reviewed any materials published  
25 by CSLEA or on their website that indicated that in fact

1 Joe Mello was at the bargaining table throughout the  
2 negotiations of 2006?

3 A. I remember a charge or a statement, and it might  
4 be in this letter, an internal Union statement to the  
5 Warden Association saying he was at the bargaining table,  
6 and an accusation in the internal stuff. That's the only  
7 place I remember seeing it.

8 Q. Okay. And you don't have any personal knowledge  
9 as to whether he was there or not?

10 A. No, I don't.

11 Q. Okay. Okay. Now, by the way, are you familiar  
12 with the Legislative Analyst Office report that concluded  
13 that money was not the cause of the retention/recruitment  
14 problem for Fish and Game Wardens?

15 A. Correct. Yeah.

16 Q. Okay.

17 A. A little bit. Not fully.

18 Q. All right. Back to Joe Mello. Do you know if  
19 Joe Mello advocated for more money going to the Fish and  
20 Game Wardens when he was at the bargaining table?

21 A. I know he voted no on the contract of his  
22 position representing us.

23 MR. MESSING: Move to strike as nonresponsive.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is that all you  
25 know?

1 THE WITNESS: Say again, please?

2 MR. MESSING: Do you know if --

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So I'm going to  
4 strike --

5 MR. MESSING: -- Joe Mello advocated --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Obviously I'm  
7 going to strike it. Go ahead.

8 BY MR. MESSING:

9 Q. Do you know if Joe Mello advocated more money for  
10 the Fish and Game Wardens through the 2006 negotiations?

11 A. No.

12 Q. No, you don't know?

13 A. I don't know.

14 Q. Okay. Now, I want to direct your attention to  
15 695 for a moment. Now, first of all, you don't know all  
16 of the reasons why -- strike that.

17 Do you have personal knowledge of all of the reasons  
18 why all of the Legislators voted against this?

19 A. I don't think the Legislators ever voted against  
20 it. It died, as far as I know.

21 Q. Okay. So if it died, then, isn't --

22 A. They didn't vote against it. There was no action  
23 taken.

24 Q. Okay. So do you -- do you have personal  
25 knowledge as to the reasons why Legislators allowed

1 the -- all of the reasons why the Legislators allowed  
2 this bill to die?

3 A. I don't know what was totally in their minds.

4 Q. Okay. Okay. Now, you said that -- at one point  
5 in your testimony that two-thirds of the Legislature  
6 approved or were in favor of distributing \$18 million for  
7 Fish and Game Warden raises; is that right?

8 A. I think it was 17.5 million.

9 Q. All right. Seventeen point five million; is that  
10 correct?

11 A. Yes.

12 MR. ROSE: Objection.

13 MR. MESSING: Okay.

14 MR. ROSE: Vague as to Legislature.

15 MR. MESSING: Now -- what?

16 THE WITNESS: I'm sorry.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Agreed. So was  
18 this -- but I -- was this both sides when you said super  
19 majority, or just one or the other?

20 THE WITNESS: Oh, that was both Houses, yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

22 BY MR. MESSING:

23 Q. Okay. But the Legislature in fact -- isn't it  
24 true that the Legislature passed the MOU bill that  
25 contained a 25 percent increase for Fish and Game

1 Wardens?

2 A. That's correct.

3 Q. Okay. And I want to talk about the 38 layoffs.

4 Let me bring you back to that. And you testified that  
5 nobody jumped up from CSLEA to testify on behalf of Fish  
6 and Game Wardens, correct?

7 A. I never saw that.

8 Q. Okay. Did you write a letter or an e-mail to  
9 CSLEA requesting their assistance in testimony before the  
10 Legislature on that matter? Did you put anything in  
11 writing?

12 A. No.

13 Q. Okay. Did you call anybody at CSLEA and ask them  
14 for help in your testimony or in the presentation to the  
15 Legislature on the 38 layoffs?

16 A. No.

17 Q. Okay. When you saw Craig Brown in the audience  
18 there, did you go up to him and -- in person and say,  
19 hey, we'd really like your help, would you assist us?

20 A. No.

21 Q. Okay. Or words to that -- any words to that  
22 effect?

23 A. No.

24 Q. Okay. And now, you testified that nobody was in  
25 fact laid off, correct?

1 A. That year, no.

2 Q. Okay. Now, you have -- you testified to all of  
3 the support that you have from Legislators. Did you make  
4 an effort to have Fish and Game Wardens exempted from the  
5 furloughs?

6 A. Yes.

7 Q. Okay. But you're not exempted from the  
8 furloughs, correct?

9 A. That's correct.

10 Q. So I take it that your friends in the Legislature  
11 didn't support you in exempting you from the bill?

12 MR. ROSE: Objection. Argumentative. Calls for  
13 speculation. Lacks foundation.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know one  
15 way or another?

16 THE WITNESS: We're talking a week ago we started  
17 working on this. Week and a half ago, two weeks ago when  
18 we gave the DVD and started talking to the folks.  
19 They're very concerned. A lot of people said we thought  
20 we were exempted. They were surprised we -- they didn't  
21 know we were furloughed. And he said, no, we're no  
22 furlough. We didn't know anything about that. As far as  
23 I know, today they're working on it, trying to get us off  
24 the furlough.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But

1 you don't know one way or another whether they're working  
2 on it? I mean did they tell you -- did they give you --

3 THE WITNESS: The Legislature staffers told me  
4 they're going to work on trying to get us exempted.

5 MR. MESSING: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

7 BY MR. MESSING:

8 Q. When did you first become aware of the fact that  
9 State employees were going to be furloughed?

10 A. Newspaper.

11 Q. Okay. How long ago? Not how.

12 A. Jeez, I don't know. Two months ago, month and a  
13 half ago, maybe, somewhere around there. I'm not sure.

14 Q. Okay. Did you personally contact any Legislators  
15 to ask them to exempt Fish and Game Wardens from the  
16 furloughs?

17 A. Legislative staffers, yes.

18 Q. Okay.

19 A. Week and a half ago.

20 Q. A week and a half ago?

21 A. Yeah.

22 Q. Now, CSLEA has never restricted you from  
23 educating Legislators on Fish and Game Warden issues,  
24 correct?

25 A. Oh, absolutely.

1 Q. Well, isn't it true --

2 A. That's the condition or the reason why we were  
3 kicked out. We couldn't unless we had direct permission  
4 from President Barcelona to contact any Legislators.

5 Q. Okay. Regarding 695, okay, there was never any  
6 effort by CSLEA to restrict your ability to talk to  
7 Legislators about that bill, correct?

8 A. Yes. He told us we could not support that bill.

9 MR. ROSE: I move admission --

10 MR. MESSING: Let me -- let me --

11 THE WITNESS: They abandoned it. They did not  
12 support it.

13 MR. ROSE: -- of that Exhibit double C.

14 MR. MESSING: I'm going to --

15 MR. ROSE: I think the door is open on that exhibit.

16 MR. MESSING: Okay. I'm going to -- I'm going to --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on. You're  
18 moving it to be admitted?

19 MR. ROSE: I'm asking for reconsideration of your  
20 prior decision not to admit it. It's being discussed  
21 right now.

22 MR. MESSING: Oh, I'm in favor of admitting Exhibit  
23 N.

24 MR. ROSE: Exhibit double C.

25 MR. MESSING: Oh, double C has --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's the  
2 trusteeship.

3 MR. MESSING: This has nothing to do with the  
4 trusteeship.

5 MR. ROSE: It absolutely does. Look at page two. It  
6 speaks to exactly what Mr. Messing is questioning this  
7 witness about with absolutely specificity, pinpoint  
8 specificity.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

10 MR. ROSE: The door is open.

11 MR. MESSING: I'm going to -- I'm going to rephrase  
12 the question.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, first of  
14 all, I'm denying it.

15 MR. MESSING: Yeah.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
17 be admitting it. So let's get another question.

18 BY MR. MESSING:

19 Q. Okay. Up until the point of your testimony about  
20 trusteeship, so up until the point of trusteeship, did  
21 CSLEA make any effort to restrict your activities in  
22 educating the Legislators on Fish and Game Wardens'  
23 issues?

24 A. No.

25 Q. Okay. And isn't it true that CSLEA issued press

1 releases supporting Fish and Game Wardens' issues?

2 A. What timeframe you talking about?

3 Q. Prior to the trusteeship.

4 A. Yes. They did not support issuing press releases  
5 on behalf of our organization. In fact, in conversation  
6 with Alan Barcelona, I requested a press release be done,  
7 and he refused to talk to me and hung up.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not sure you  
9 answered the question. The question is whether CSLEA  
10 issued a press release in support --

11 THE WITNESS: It did issue press releases. Yes, they  
12 did.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Before the  
14 trusteeship in support of the Wardens?

15 THE WITNESS: They stopped issuing press releases on  
16 our behalf prior to the trusteeship.

17 MR. MESSING: Still unresponsive. Isn't the question  
18 whether or not CSLEA issued press releases on behalf of  
19 the Wardens before trusteeship? It's yes or no.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But  
21 he --

22 THE WITNESS: Yes and no.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

24 MR. MESSING: Before the trusteeship.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He's correct.

1 He's correct. He's not being inconsistent.

2 BY MR. MESSING:

3 Q. Well, let's move on to a different area for a  
4 moment. You said you're not aware of any -- oh, yeah,  
5 one other thing that was of interest. You said in 2006  
6 you did a lot of work educating Legislators to the point  
7 where you had a super majority in favor of your position,  
8 correct?

9 A. Yes.

10 Q. Okay. I believe you testified that in 2007, when  
11 you first approached the Legislature about the 38  
12 layoffs, no one knew about the plight of the Fish and  
13 Game Wardens; is that right?

14 A. No one knew about the plight of the Fish and Game  
15 Wardens?

16 Q. No one -- none of the Legislators -- I thought  
17 you testified that you said that nobody knew about the  
18 plight of the Fish and Game Wardens in 2007.

19 A. We started an education program before that, so  
20 they would have --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think it's  
22 because of the broadness --

23 THE WITNESS: Before that, no.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- of the  
25 question of the plight. But no one knew that they were

1 going to be laid off --

2 THE WITNESS: Yeah.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- I think is  
4 the testimony. That that was in the works.

5 THE WITNESS: Was not well aware that 38 additional  
6 Game Wardens were going to be laid off.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That was the  
8 testimony, as I recall.

9 MR. MESSING: The record will speak for itself.

10 BY MR. MESSING:

11 Q. Let's talk about your testimony about  
12 representation. First of all, you were -- you say you're  
13 currently represented by the California Fish and Game  
14 Wardens Association.

15 A. You mean represented by?

16 Q. It's your testimony, is it not?

17 MR. ROSE: Objection. Argumentative.

18 BY MR. MESSING:

19 Q. I'm going to direct your attention to page 11 --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
21 overrule the objection.

22 MR. MESSING: Yeah.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead.

24 BY MR. MESSING:

25 Q. Are you -- are you currently represented by the

1 California Fish and Game Wardens Association?

2 A. I'm on the Board of Directors of the Warden  
3 Association.

4 MR. MESSING: Object. I'm going to move to strike.  
5 The question is is whether you're represented by  
6 California Fish and Game Wardens Association.

7 MR. ROSE: Objection. Vague as to represented by.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have to agree.

9 BY MR. MESSING:

10 Q. Okay. I'm going to turn your attention to your  
11 Declaration, page 11 --

12 A. Okay.

13 Q. -- paragraph 121, where it says, "I'm currently  
14 represented by the California Fish and Game Wardens  
15 Association." Can you please tell me if that is a  
16 correct statement?

17 MR. ROSE: Objection. Misstates the entirety of the  
18 witness' testimony, which says, "I am currently  
19 represented by the California Fish and Game Wardens  
20 Association (CFGWA), which has been in existence since  
21 1932, which is an affiliate of the California Statewide  
22 Law Enforcement Association (CSLEA)," period. That's the  
23 entirety of paragraph 121.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Let's  
25 just take the entirety of the paragraph. We'll go from

1 there. What do you mean by represented in that  
2 paragraph?

3 BY MR. MESSING:

4 Q. What do you mean by represented?

5 A. Represented as in bargaining -- in bargaining  
6 issues right now at the table, CAUSE/CSLEA represents the  
7 Game Wardens Association, even though we are in  
8 trusteeship. We have no -- we're not -- we don't have  
9 anybody on the Board, so we're not represented by -- in  
10 my opinion, we're not being represented because we didn't  
11 have any voice or a member on the Board. However, in  
12 legal negotiations and legal dealings with DPA, we are  
13 represented by CAUSE.

14 Q. Okay. Now, look --

15 A. I hope I'm making that clear.

16 Q. You're not.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll find out.  
18 Next.

19 MR. MESSING: So I'm going to --

20 MR. ROSE: Objection.

21 MR. MESSING: I'm going to ask some questions.

22 MR. ROSE: Argumentative.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as you're  
24 not.

25 MR. ROSE: Belittling the witness.

1 BY MR. MESSING:

2 Q. So look at paragraph 121.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's get to the  
4 next question. Go ahead.

5 BY MR. MESSING:

6 Q. Look at paragraph 121, okay? First it says, "I'm  
7 currently represented by the California Fish and Game  
8 Wardens Association." Okay? Now, put that aside for a  
9 second. CFGWA is merely an abbreviation for the  
10 Association, correct?

11 A. Yes.

12 Q. Okay. The next words, "which has been in  
13 existence since 1932," simply talks about the history of  
14 the organization, correct?

15 A. Correct.

16 Q. Okay. And the next statement, "which is an  
17 affiliate of California Statewide Law Enforcement  
18 Association," talks about its relationship to another  
19 body, CSLEA, correct?

20 A. Talking about CAUSE? I mean I don't recognize  
21 CSLEA in the title because that's an illegal title by the  
22 Penal Code. I recognize CSLEA by CAUSE.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 MR. MESSING: Move to strike as nonresponsive.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. He's

1 focusing on your Declaration, so --

2 THE WITNESS: Okay. I'm sorry.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- what it says  
4 is what it says. And so he's asking you doesn't it say  
5 that it's an affiliate of the California Statewide Law --

6 THE WITNESS: Yes, it is.

7 BY MR. MESSING:

8 Q. Okay. So, now, let's go back -- so none of those  
9 things have to do really with the issue of who you're  
10 currently represented by as set forth in this  
11 Declaration. So I'm going to ask you --

12 MR. ROSE: Objection. Vague as to "none of those  
13 things."

14 BY MR. MESSING:

15 Q. -- when you say I'm currently rep --

16 MR. MESSING: I'm not done with my question. You  
17 can't object.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I  
19 actually --

20 MR. ROSE: And argumentative.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The preface  
22 is --

23 MR. ROSE: And a compound question.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- is  
25 objectionable and it's sustained.

1 BY MR. MESSING:

2 Q. "I am currently represented by the California  
3 Fish and Game Wardens Association." What -- in what ways  
4 does California Fish and Game Wardens Association  
5 represent you?

6 A. In educating the Legislature by my fellow Board  
7 members and Association members. We represent ourselves.  
8 I -- when Mr. Karnow deals with the Legislature, he's  
9 helping to represent me by the California Fish and Game  
10 Warden Association, educating the public about the lack  
11 of Wardens and staffing levels. And also, we represent  
12 to the public the plight of the natural resources in the  
13 state of California, and the decline in numbers in  
14 wildlife protection. So we -- I am represented myself by  
15 the Fish and Game Wardens Association by a whole.

16 Q. So you're not represented in grievances by the  
17 Fish and Game Wardens Association --

18 A. No.

19 Q. -- correct?

20 A. Correct.

21 Q. You're not represented in collective bargaining  
22 with the Fish and Game Wardens Association, correct?

23 A. Correct.

24 Q. Okay. And when you were a Job Steward and a Vice  
25 President and President of Fish and Game Wardens

1 Association, did you do a good job of representing your  
2 members?

3 MR. ROSE: Objection. Vague as to time. Compound  
4 question.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He actually said  
6 when he was a Job Steward, President --

7 MR. ROSE: And a President and a --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And Vice  
9 President.

10 MR. ROSE: -- Vice President.

11 BY MR. MESSING:

12 Q. Yes. During that period of time did you do a  
13 good job representing your members?

14 A. Yes, I think so. To the best of my ability.

15 Q. Okay. Now, after the trusteeship, do you know if  
16 Fish and Game Wardens' proposals were presented across  
17 the bargaining table by CSLEA?

18 A. Do I know if CSLEA proposals were drafted at the  
19 bargaining table on behalf of CSLEA?

20 Q. Fish and Game Wardens.

21 A. I was not at the bargaining table. I do not know  
22 what was said.

23 Q. Okay. Now, you testified that you're not aware  
24 of grievances -- of representation -- let me rephrase  
25 that -- representation by CSLEA of Fish and Game Wardens

1 since the trusteeship.

2 A. I'm not aware of any advocacy for Game Wardens  
3 since the trusteeship.

4 Q. Okay. So you're not aware of any grievances that  
5 have been pursued by CSLEA on behalf of Fish and Game  
6 Wardens?

7 A. Through the Legal Defense Fund I know there have  
8 been officers represented by attorneys within CSLEA.

9 Q. Okay.

10 A. As part of the Legal Defense Fund.

11 Q. Okay. So now let's go back for a second. You  
12 said you're not aware of advocacy. Were you aware of in  
13 2007 Kasey Clark meeting and conferring with -- along  
14 with Rick Coelho regarding the hiring of lateral peace  
15 officers into Warden positions?

16 A. Objection. Assumes facts not in evidence.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah, I agree  
18 with you. But are you aware of that issue at all,  
19 whether it occurred or not?

20 THE WITNESS: I don't know. No. I'm trying to think  
21 where I heard it, but I'm not familiar with the details  
22 of it.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember  
24 any issue about lateral transfers from other peace  
25 officer associations?

1 THE WITNESS: No, I'm not aware of it.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

3 BY MR. MESSING:

4 Q. Okay. Were you ever aware of an issue of the  
5 lateral hires being sought to fill positions that were  
6 considered plum positions for Fish and Game Wardens?

7 MR. ROSE: Objection. Vague.

8 THE WITNESS: No.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: This is since  
10 the trusteeship, I take it?

11 MR. MESSING: Since the trusteeship.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

13 THE WITNESS: No, I'm not aware of it.

14 BY MR. MESSING:

15 Q. Okay. Were you aware of -- well, you mentioned  
16 two Wardens who were involved in a shooting in Santa  
17 Cruz. You testified to --

18 A. Oh, yes.

19 Q. Okay. And there was a grand jury proceeding  
20 dealing with those two Fish and Game Wardens, correct?

21 A. I do not know of any grand jury.

22 Q. You're not aware that CSLEA represented these two  
23 Fish and Game Wardens in grand jury proceedings?

24 MR. ROSE: Objection. Lacks foundation.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It does.

1 MR. ROSE: Asked and answered.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you -- are  
3 you aware whether or not they were represented by CSLEA  
4 in those proceedings?

5 THE WITNESS: Santa Cruz. Are you talking -- there's  
6 been a number of shootings, and I'm -- you say Santa  
7 Cruz.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What are you  
9 aware of? How about that?

10 THE WITNESS: I know of shootings. I don't know what  
11 incidence this one is. I'm sorry. I don't know. I know  
12 of other shootings. I don't know of Santa Cruz  
13 specifically. I'm sorry.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know if  
15 you're -- if this is what was being referred to in the  
16 DVD or not. But anyway, I'll let you take it from there.

17 BY MR. MESSING:

18 Q. Well, you did -- you testified about --

19 A. Are you talking about -- yes, please. Is that  
20 the one in the DVD you're talking -- well, I'm sorry.

21 You haven't seen the DVD. Marijuana raid?

22 Q. You testified --

23 A. Was it the dope raid?

24 Q. Let me -- let's go back for a moment.

25 A. Okay.

1 Q. You testified that there were a number of  
2 shootings involving Fish and Game Wardens.

3 A. Sure.

4 Q. Okay. How many shooting incidents that you can  
5 think of?

6 A. In my squad, year before last my adjoining Warden  
7 shot and called a -- a fellow fired a shotgun at him in  
8 a -- when he went to arrest him on a warrant out of  
9 Hawaii. A fellow squad mate. And that was in Butte  
10 County.

11 And then we've also had several shootings this past  
12 year in marijuana groves in the central part of the  
13 state.

14 And then, like I say, two years ago, which is  
15 probably put it here, a Warden was shot through both legs  
16 by an AK-47. And there's been other shooting incidents,  
17 too.

18 I don't receive the reports of those through the  
19 Department. That is more word of mouth what I found out  
20 about them.

21 Q. Okay. So you don't know that CSLEA represented  
22 all of those officers?

23 A. I don't know. Yes, I do know they're represented  
24 under the LDF, the warden that shot and killed a fellow.  
25 But I know -- I also know there was another attorney that

1 assisted in representing him that was not a CSLEA  
2 appointee.

3 Q. Okay. And were you aware of two disciplinary  
4 cases, one a termination and one a six-month suspension,  
5 where CSLEA represented the Fish and Game Wardens?

6 MR. ROSE: Objection. Assumes facts not in evidence.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, are you  
8 aware of any -- of a six-month -- six-month suspension  
9 and termination of a Fish and Game Warden since the  
10 trusteeship?

11 THE WITNESS: I know of one that was not represented  
12 by CSLEA. And then I know of one that was terminated  
13 from a case that went on for several years that was  
14 represented. But it dated back prior to trusteeship, I  
15 believe.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

17 BY MR. MESSING:

18 Q. Okay. And let's talk about grievances. You said  
19 that you're not aware of any grievances handled by CSLEA  
20 on behalf of Fish and Game Wardens?

21 MR. ROSE: Objection. Asked and answered.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, you  
23 did answer that you're aware of grievances represented by  
24 LDF. I'm not sure how that can happen. But let me ask  
25 this question: What were you referring to in regards to

1 that answer when it was a grievance and --

2 THE WITNESS: You know, grievance, I -- you know  
3 what, I -- excuse that answer. Grievance and LDF, I was  
4 assuming that -- during the case of that grievance, I was  
5 throwing in that the L -- I threw the LDF in. I'm trying  
6 to think of any legal activity that CSLEA was involved in  
7 in representing our members, and I was trying to draw  
8 that all into one of any legal activities where they were  
9 trying to help out a Game Warden.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember  
11 any -- so then I'll ask the question -- ask the question  
12 that Mr. Messing asked before, which is are you aware of  
13 any representation by CSLEA of Wardens regarding  
14 grievances?

15 THE WITNESS: Not right now, no.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

17 BY MR. MESSING:

18 Q. Okay. So in 2007-2008 were you aware of any  
19 complaints by Fish and Game Wardens that their payment of  
20 Travel Expense Claims were being delayed by the  
21 Department?

22 A. No. I know CSLEA denied Travel Expense Claims  
23 that were filed by the Wardens Association.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well,  
25 let's --

1 MR. MESSING: Object. Strike. Nonresponsive.

2 THE WITNESS: Sorry.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So struck.

4 THE WITNESS: Okay.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We're --

6 MR. MESSING: So you --

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're talking  
8 about Wardens putting in with the State for  
9 reimbursement.

10 THE WITNESS: No, I'm not aware of it.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

12 BY MR. MESSING:

13 Q. You're not aware of any grievance that was filed  
14 by CSLEA concerning the delay or failure to pay timely  
15 travel expenses?

16 A. No.

17 Q. Okay. Oh, just one other thing. One second.  
18 You were talking about issues of pay parity. Let me take  
19 you back to that for a moment. Were you aware of the  
20 Court of Appeal decision that ruled that Fish and Game  
21 Wardens do not perform the same type of job as Highway  
22 Patrol officers?

23 A. Yes.

24 MR. MESSING: Okay. Okay. Nothing further at this  
25 time.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

2 MS. TRUONG: Nothing from us.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

4 MR. ROSE: We do. I'm not sure -- how are you doing,  
5 Mr. Orange? Do you need a break?

6 THE WITNESS: Oh, sure. I'm fine.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Your choice is  
8 whether you want to get on the road quicker is the real  
9 question. So you ready -- you okay to roll through, or  
10 do you need to take a bathroom break?

11 THE WITNESS: If I can take a break for a minute?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's do that.  
13 Off the record.

14 (Off the record.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
16 We're back on the record. Ready for redirect, sir.

17 MR. ROSE: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. ROSE:

20 Q. Mr. Orange, you testified about Joe Mello's  
21 conversation with you regarding the allocation of the \$30  
22 million with respect to the contract for Game Wardens and  
23 CSLEA. Do you remember that series of questions on  
24 cross?

25 A. Yes.

1 Q. Did you ever learn whether Joe Mello supported  
2 that contract, the ratification of that contract?

3 MR. MESSING: Object. Leading. No found --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, that  
5 one I'm actually going to -- did you ever learn it? It  
6 was kind of a foundational question. Go ahead.

7 THE WITNESS: I learned that he did not support it,  
8 yes.

9 BY MR. ROSE:

10 Q. How did you learn that?

11 A. He told me.

12 Q. What specifically did he tell you other than --  
13 well, what specifically did he tell you that led you to  
14 conclude he did not support the contract?

15 A. He said he voted no on the contract in the Board  
16 meeting, or in the -- he told me -- he said he voted no  
17 on the contract. And that was not in the general  
18 ratification contract.

19 Q. I see. We -- there was a number of questions  
20 about your search capabilities. Do you recall that line  
21 of questioning?

22 A. Yes.

23 Q. And there were questions about comparing your  
24 search capabilities to that of a Highway Patrol officer.  
25 Do you remember that series of questions?

1           A. Yes.

2           Q. Please look at page eight of your Declaration,  
3 paragraph fifty-five, and line four. You've written  
4 here, "As a Fish and Game Warden, I have broader search  
5 powers than police, sheriff or Highway Patrol officers."  
6 What did you mean in saying, "I have broader search  
7 powers," with respect to Highway Patrol officers?

8           A. There are 66,000 fish businesses in the state of  
9 California. We have the authority to go into the  
10 facilities, inspect the freezers, inspect the records,  
11 inspect the tax records of those facilities to make sure  
12 they're paying their taxes. I'm talking ports of  
13 landing, bills of lading at canneries, at ports of  
14 embarkation where they offload their product. We can  
15 search the holds of the vessels, those are regulatory  
16 authority, for any illegal species. Making sure that  
17 they're complying with the tax laws.

18           There's also animal welfare permits, of which there  
19 are thousands of those. We have search authority,  
20 inspection authority to check on the condition of the  
21 animals. Critters. That's animals like lions. If a  
22 person doesn't have proper -- meet the proper caging  
23 requirements for a lion, I'll make arrest. Charge people  
24 for that. If they're not having, for example, double  
25 door lock going into a cage, you can't go into the cage

1 unless one door closes behind you before you get to the  
2 next one, that falls into my jurisdiction. Chimpanzees.  
3 You may have read where the chimpanzees have ripped off  
4 people's faces and stuff.

5 That's our jurisdiction. We have carte blanche  
6 authority to go into those places and inspect those  
7 places to make sure they're meeting proper caging  
8 requirements. I'm not aware of anybody else that can do  
9 those type of searches.

10 I have supermarkets. Go into the supermarkets in the  
11 area and inspect supermarkets, their products. I don't  
12 know of anybody else that has the authority to go in  
13 there and do that type of search.

14 Vessels. It's law, if there's a boat out on the  
15 water for fishing, I can check the holds. I can check  
16 the live wells. On the ocean, I mean home security  
17 becomes a big part of it because we check all sorts of  
18 vessels on the ocean. And when we're looking for fish  
19 and that kind of stuff, we come up with dope and those  
20 sorts of things.

21 Q. When you, for example, are searching a boat on  
22 the water, are you referring only to commercial vessels,  
23 or are you including private vessels as well?

24 A. Both.

25 Q. And with respect to the search of a private

1 vessel on the water, do you agree or disagree that you  
2 must have some indicia of criminal activity before you  
3 can search the hold of a private vessel on the water?

4 A. No.

5 MR. MESSING: I'm going to object. That is leading.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Agreed.

7 MR. ROSE: He said he didn't agree with me, but okay.

8 BY MR. ROSE:

9 Q. So I led you to the opposite conclusion. So let  
10 me try and ask --

11 MR. MESSING: I object to that.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Agreed.

13 MR. MESSING: That is --

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Agreed.

15 MR. MESSING: -- improper --

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 MR. MESSING: -- prompting of the witness.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

19 MR. MESSING: The editorializing --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's just get a  
21 question.

22 MR. MESSING: -- is prompting the witness.

23 BY MR. ROSE:

24 Q. Let me ask you this question, since the objection  
25 was sustained. Do you have -- what do you have to see to

1 search the hold of a private vessel on the water?

2 A. If I believe there's any fishing activity taking  
3 place, there's a fishing pole, I can -- I can search the  
4 vessel for -- the holds for any -- I can -- I can inspect  
5 the gear. I can inspect the holds for fish. I can  
6 inspect the bait. Sturgeon. If there's any live fish on  
7 board. Because you -- if you take fish, you got to  
8 immediately reduce to the bag. And situations over  
9 limits, et cetera. I cannot do my job unless I have the  
10 regulatory authority to inspect those vessels for  
11 compliance with the law.

12 Q. Okay. So is, in your mind, fishing, just  
13 fishing, a criminal activity?

14 MR. MESSING: Object.

15 THE WITNESS: No.

16 MR. MESSING: Leading.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

18 BY MR. ROSE:

19 Q. How would you characterize the act of fishing  
20 with respect to compliance with the law?

21 A. With the regular -- it's -- how would I  
22 characterize the act of fishing?

23 Q. I withdraw the question. Are you aware of CHP  
24 officers searching private vessels on the water when they  
25 observe someone fishing, in your experience?

1 A. No. They don't have the authority to do that.

2 Q. You testified about your work with Oil Spill  
3 Prevention Specialists. Do you remember that line of  
4 questioning?

5 A. Yes.

6 Q. You also testified that you work with Brand  
7 Inspectors?

8 A. Yes.

9 Q. Are you aware of any Brand Inspectors that were  
10 involved in any shootings in your 29 years with the State  
11 of California?

12 A. No.

13 Q. Or that have been shot?

14 A. No.

15 Q. Or that were represented by the Legal Defense  
16 Fund?

17 A. No.

18 Q. Are you aware of any Oil Spill Prevention  
19 Specialists who were shot in the legs by an AK-47 in your  
20 29 years with the State of California as a Game Warden?

21 MR. MESSING: Object. Relevance.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to  
23 allow it. Go ahead. Yes, go.

24 THE WITNESS: No, I'm not aware.

25 /////

1 BY MR. ROSE:

2 Q. How about Oil Spill Prevention Specialists who  
3 have ever been in any shooting whatsoever in their  
4 employment by the State, in your experience?

5 A. I don't know of any.

6 Q. Now, going back to your search capabilities, are  
7 you permitted to make vehicle stops?

8 A. Yes.

9 Q. And when would you be permitted to make a vehicle  
10 stop?

11 A. Under policy, if I feel there's a threat to  
12 public safety, a threat to -- immediate threat to  
13 property and life under policy, I would make stops. An  
14 example, there was a DUI, driving under the influence,  
15 reckless driving, running stop signs, simple speeder  
16 going over the speed limit, not going to go there, not to  
17 deal with it. Alcohol in a container probably not. But  
18 when I feel that there is a threat to public safety or  
19 disregard that could -- then my policy react on that.

20 Q. Are you -- are you -- do you ever -- once you  
21 make a vehicle stop, is there an occasion where then you  
22 have the power to search the vehicle?

23 A. Yes.

24 Q. is that similar, from your experience, to CHP  
25 officers?

1 A. Yes.

2 Q. Once -- do you ever arrest people?

3 A. Yes.

4 Q. And when you make an arrest, once you've arrested  
5 them -- well, strike that.

6 Have you ever heard of the term protective sweep?

7 A. Yes.

8 Q. What is a protective sweep?

9 A. Where a person -- you can -- well, frisk, you  
10 know, a person to check him for any weapons on their body  
11 that might be a threat to myself. If a person is in  
12 violation of the law and they're -- and they're running,  
13 they go into a house, I can check that area which they  
14 had access to. And in a vehicle. Anything that'd be a  
15 threat to myself.

16 Q. Okay. Well --

17 A. Personal safety.

18 Q. -- with respect to the first thing you said,  
19 which is frisking someone --

20 A. Uh-hmm.

21 Q. -- are you aware whether that -- the power that  
22 you have to frisk someone is similar or dissimilar, in  
23 your experience, than a CHP officer?

24 A. It's similar.

25 Q. And are you aware whether or not you can search

1 someone if they give you the consent to search them?

2 A. Yes.

3 Q. Are you aware whether that's similar or  
4 dissimilar --

5 MR. MESSING: Okay. I'm going to object. This is a  
6 series of leading questions.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware  
8 whether or not? Overruled. Go ahead, sir.

9 BY MR. ROSE:

10 Q. Is that similar, sir, or dissimilar, in your  
11 experience, to the power of a CHP officer to search given  
12 the consent to search?

13 A. Similar.

14 Q. Are you -- you mentioned that following a felon  
15 or a criminal into an area just a moment ago in your  
16 testimony. If that felon goes into a dwelling house, are  
17 you permitted to enter the dwelling house or not based on  
18 your experience as a Warden?

19 A. Yes.

20 Q. Okay.

21 A. I'm permitted to enter the building.

22 Q. I see. And are you aware whether that's similar  
23 or dissimilar to a CHP officer?

24 A. Similar.

25 Q. Have you ever heard anything -- are you familiar

1 with the term evanescent evidence.

2 A. Say again?

3 Q. Evanescent evidence. Are you familiar with that  
4 term?

5 A. No.

6 Q. Okay. Would there ever be an occasion that you  
7 could conduct a search without a warrant under exigent  
8 circumstances?

9 A. Yes. Yeah.

10 Q. And have you done that?

11 A. yes.

12 Q. And is -- in your experience, do CHP officers  
13 have a similar power to search under exigent  
14 circumstances --

15 A. Yes.

16 Q. -- without a warrant?

17 A. Yes.

18 Q. You were asked why -- whether or not you had  
19 contacted CSLEA for assistance on the layoffs of a  
20 proposed 38 layoffs, or proposed layoffs of 38 Wardens.

21 A. Yes.

22 Q. Why didn't you ask for CSLEA assistance?

23 A. We'd been excommunicated. They did not recognize  
24 us as a group or association. They did not recognize any  
25 of the Board members. They did not recognize me as being

1 a member of the Wardens Association. And they had  
2 withheld our funds. I -- there was nothing -- there was  
3 absolutely nothing that I could think of where I did not  
4 think -- they weren't going to help us. It was very  
5 clear they were not going to help us. I did not receive  
6 any offers of help for our Association.

7 Q. Page eight of your Declaration, paragraph  
8 seventy, you were asked about this paragraph. "I assist  
9 in the planning of controlled hunts. I participate in  
10 the wild animal capture for placing telemetry radio  
11 equipment for monitoring wild animal populations."

12 A. Yes.

13 Q. With respect to the first sentence, how many  
14 controlled hunts have you assisted in the planning of in  
15 your 29 years as a Warden with the State of California?

16 A. Five. You say -- let me clarify. You say 29  
17 years. It's actually over 30. I'd say 30. I was a  
18 Deputy Game Warden prior to that. Wore a badge, a gun.  
19 But it said Deputy. That was part of the Warden  
20 reclassification. They did Warden. So that's another  
21 two years of experience onto that actually.

22 Q. So when you answer five controlled hunts in that  
23 period, are you including your time as a Deputy Warden?

24 A. Yes.

25 Q. And how many times during the same period have

1 you participated in the wild animal capture for placing  
2 telemetry radio equipment for monitoring wild animal  
3 populations?

4 A. Three.

5 Q. How long does it take to plan a controlled hunt,  
6 typically?

7 A. Two years. By the time it goes through the  
8 Legislature. It has to be -- not the Legislature. It  
9 has to be -- I'm talking about special hunts. I'm  
10 talking about doe hunts, which is a political hot topic.  
11 You have to get a county -- the county's permission to  
12 have a doe hunt in the county. And so with help, the  
13 county board of supervisors have to approve it. And I've  
14 been requested to assist in contacting board of  
15 supervisors when they have their hearings, my local input  
16 on that. That's only a couple times that's taken place.

17 Q. Okay. During that period of time, how many man  
18 hours would you estimate you personally dedicate to that  
19 function on a --

20 A. Less than a day.

21 Q. And that would be per controlled hunt?

22 MR. MESSING: Object. Leading.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

24 BY MR. ROSE:

25 Q. I -- are you saying less than a day -- can you --

1 can you tell us less than a day with respect to how many  
2 controlled hunts?

3 A. Two hours of testimony before the board of  
4 supervisors. So I put that -- when I meant a day, total  
5 time of like eight hours, ten hours or so put into it.

6 Q. Okay. But trying to get to are you including  
7 eight hours for your entire career, or something less  
8 than that?

9 A. In the actual planning of a hunt, yes. But I  
10 enforce regulations within that hunt. When that hunt  
11 takes place, I go out and work it and enforce  
12 regulations. During that time period inspect the  
13 firearms, inspect the weapons, inspect the deer tags. I  
14 need to distinguish between the planning. I work the  
15 hunt and enforce the hunt and all the regulations that  
16 are put in force in the hunt. But as far as actually  
17 writing the hunt and putting out the conditions of the  
18 hunt, working through the Legislature, I don't  
19 participate in that.

20 Q. Okay. And how many hours -- man hours do you  
21 dedicate per -- to your function of wild animal capture  
22 for placing of telemetry? And I mean per event.

23 A. For telemetry, I've only put a couple days into  
24 that. Wild animal capture, if you want to call it  
25 capture, killing an animal with my firearms, that happens

1 a lot. I've probably killed over 100 lions. Well, if  
2 you want to call that capture. I know I'm doing  
3 semantics here. Capturing an animal, when I capture an  
4 animal and kill it. If we have a deprivation bear, a  
5 deprivation lion, that animal is killed. And so no other  
6 department person will do that, because I'm the only  
7 person issued the firearms. So capture -- you capture  
8 it, but you also kill it. And public safety or  
9 destruction of private property, that's a capturing of an  
10 animal in my way, because I capture it and kill the  
11 thing.

12 Q. You were asked by counsel for CSLEA whether CSLEA  
13 ever directed you not to lobby in support of Senate Bill  
14 695, or that line of questioning. Do you remember that?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Educate was the  
16 question.

17 BY MR. ROSE:

18 Q. Educate the Legislature.

19 A. Yes.

20 Q. And your answer was what?

21 A. Yes, they prohibited us from doing that.

22 Q. And when --

23 A. They demanded we do that. Not do that.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Actually, the  
25 answer is yes and no.

1 THE WITNESS: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You answered  
3 (inaudible).

4 BY MR. ROSE:

5 Q. And how did they -- how did CSLEA do that?

6 A. By writing a letter to us of demand that we do  
7 not support that bill. Otherwise, we would be placed in  
8 trusteeship.

9 Q. And is that the letter that's marked as  
10 Petitioner's double C?

11 A. Let me find the letter. That's correct.

12 MR. ROSE: I move admission of Petitioner's double C.

13 MR. MESSING: Object.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Not going in.

15 BY MR. ROSE:

16 Q. You said you were aware of a Warden that was  
17 terminated. Do you remember that line of questioning?

18 A. Yes.

19 Q. And was it -- and then you also mentioned a six-  
20 month suspension for a Warden.

21 A. Correct.

22 Q. You mentioned that there was a Warden who was  
23 being disciplined who had two attorneys, one from the  
24 Legal Defense Fund and one other.

25 A. Correct.

1 Q. Can you match those up for us with -- if you  
2 know, which of the -- was it one of those two, the six-  
3 month or the termination employee that --

4 MR. MESSING: Object. He's leading, and vague and  
5 ambiguous.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you match up  
7 those?

8 THE WITNESS: Yeah.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

10 BY MR. ROSE:

11 Q. Tell us which had two attorneys.

12 A. Would have been Warden J.B., who was --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't need to  
14 know the name.

15 THE WITNESS: Oh, okay. I'm sorry.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just need  
17 termination versus --

18 MR. ROSE: And I'd like to move to strike the name  
19 from the record since this is an open --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I'm  
21 afraid I'm not sure I can do that except to give an  
22 instruction to the transcription to just use the first  
23 initial of the last name and the first initial of the  
24 first name.

25 THE WITNESS: J.B. Okay.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

2 BY MR. ROSE:

3 Q. And was that the termination or the six-month  
4 suspension, or some other?

5 A. No, no. That was where he killed the marijuana  
6 grower that was -- fired on him, and for his hearing  
7 legal defense from CSLEA participated, and then also  
8 another attorney from another firm participated in  
9 talking with him.

10 Q. How do you know that?

11 A. He told me.

12 Q. Did he tell you why the other attorney  
13 participated?

14 A. CYA. Just to make sure that everything was going  
15 to be okay on it. Just for -- he wanted to make sure  
16 that he was going to be well-represented. Wanted to make  
17 sure he got the best representation possible.

18 Q. Did he tell you whether or not the other attorney  
19 was also provided by CSLEA's -- or at CSLEA's expense?

20 A. One attorney was not represented. The other  
21 one -- one was provided by CSLEA. The other one was not.

22 Q. Did you ever learn from him who paid for the  
23 other attorney?

24 A. Conway Soares [phonetic]. I forget the last name  
25 of the -- of the attorney firm.

1 Q. Not the name of the firm.

2 MR. MESSING: Object. Move to strike.

3 THE WITNESS: Oh, I'm sorry.

4 MR. ROSE: I have no objection.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The question was  
6 who paid. But I mean do you know who paid?

7 THE WITNESS: Pardon, sir?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know who  
9 paid for his private attorney?

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

12 BY MR. ROSE:

13 Q. Are you aware whether the termination was upheld  
14 for the Warden that was terminated?

15 A. Yes.

16 Q. It was upheld?

17 A. It was upheld. And he was represented by CSLEA.

18 MR. ROSE: Nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

20 MR. MESSING: A couple of things.

21 THE WITNESS: You'd asked about -- I'm sorry.

22 MR. MESSING: Wait a minute.

23 THE WITNESS: You said there was a six-month  
24 suspension.

25 MR. MESSING: There's no question pending.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know what, I  
2 will admit, there was a -- you asked him to match up, and  
3 we got to one of the match-ups. Is there another match-  
4 up?

5 THE WITNESS: Yes.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what's that?

7 THE WITNESS: The Warden in Southern California, who  
8 is currently on a six-month suspension, who was not  
9 represented by CSLEA, that occurred last year.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next. Okay.  
11 Any follow-up on that, sir?

12 MR. ROSE: Nothing. Thank you.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

14 RE CROSS-EXAMINATION

15 BY MR. MESSING:

16 Q. First of all, I saw that you wrote down notes.

17 A. Uh-hmm.

18 Q. Okay. I'd like to look at the notes that you  
19 have there at your -- at your desk.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On the back of  
21 his own -- here it is.

22 THE WITNESS: You want me to read my writing? That's  
23 animal welfare permit. That's fish business.

24 MR. MESSING: Here, let me -- let me just see if I  
25 can make it out, please.

1 THE WITNESS: Sure. These items I just testified to  
2 to jog my memory.

3 MR. MESSING: Okay. Just one second. Okay.

4 THE WITNESS: Scribbling, you saw the scribbling at  
5 the top, and I tried to clarify my writing clear down  
6 below so I can read my own handwriting.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Better shut up  
8 before I get too sarcastic. All right. Next.

9 MR. ROSE: Oh, may I see?

10 MR. MESSING: Certainly.

11 MR. ROSE: Thank you.

12 THE WITNESS: I could read them if you'd like me to.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You can -- you  
14 can sell it on E-Bay.

15 MR. MESSING: Yeah. I'm going to actually -- I'm  
16 going to actually have him read it into the record.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right, sir.  
18 You have that document before you. Can you translate  
19 that handwriting?

20 THE WITNESS: Yes, sir, your Honor. Animal welfare  
21 permit, fish businesses, canneries, vessels, ships,  
22 boats. You know, I think that's a duck. I was talking  
23 about duck lines, being able to inspect duck lines, that  
24 kind of stuff, which I didn't go into, talk about.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Is that

1 all the items?

2 THE WITNESS: That's it.

3 MR. MESSING: Okay.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

5 BY MR. MESSING:

6 Q. I just want to know, so did you feel that you  
7 were unable to recollect these things in your testimony,  
8 so you had to write them down?

9 A. No. I remembered. I just wanted to make sure I  
10 covered those different things.

11 Q. How many -- you were comparing peace -- Highway  
12 Patrol officers to Fish and Game Wardens. Well,  
13 actually, let me back up for a second.

14 Are you aware of non-sworn CSLEA members who have  
15 been shot in the line of duty?

16 A. No. I'm trying to think. I know of a couple of  
17 people that were an inspector that were shot in the line  
18 of duty, but I don't -- I don't know if they were covered  
19 by the bargaining unit. An inspection of a cannery, or a  
20 meat packing plant.

21 Q. Are you referring to the Sausage King shooting in  
22 San Leandro where a CSLEA member was killed?

23 A. Like I said, I don't know if he was a CSLEA  
24 member, but I'm jogging my memory to figure out what it  
25 was.

1 Q. Are you aware of non-sworn -- other non-sworn  
2 members of the bargaining unit who were involved in any  
3 shootings?

4 A. No.

5 Q. Are you familiar with museum security officers  
6 who were involved in a shooting incident?

7 A. No.

8 Q. Now, you were comparing CHP officers to Fish and  
9 Game Wardens. And by the way, how many line of duty  
10 deaths have we had for Fish and Game Wardens?

11 A. I think we're 16.

12 Q. Sixteen? Do you happen to know how many Highway  
13 Patrol officers have been killed in the line of duty?

14 A. Last I knew it was probably approximately 230.

15 Q. Okay. When was the last -- I'm sorry. When was  
16 the last time a Fish and Game Warden was killed in the  
17 line of duty?

18 A. Late '90s, I think. No, no. Let me think.  
19 Excuse me. I'm going to say late '80s.

20 Q. Late '80s. Okay. When you were at the  
21 Legislature you said that you saw Craig Brown sitting out  
22 there.

23 A. Uh-hmm.

24 Q. Is it your testimony that you believe that if you  
25 went up to Craig Brown and asked him for assistance that

1 he would have denied it?

2 A. I don't know what he would have done. But he was  
3 there as a lobbyist. I would have felt that he would  
4 have supported our position, but he did not.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'll  
6 strike the second part.

7 MR. MESSING: Move to strike the second part. Thank  
8 you.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's go.

10 BY MR. MESSING:

11 Q. Couple more questions. Fish and Game Wardens  
12 Association never agreed to the conditions of the  
13 trusteeship, correct?

14 A. We did not agree to the conditions that were set  
15 upon is in that demand letter.

16 Q. So you were free to lobby the Legislature on pay  
17 issues, correct?

18 A. After we --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm  
20 not going to --

21 MR. MESSING: On 695.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
23 get into the legality --

24 MR. MESSING: Okay.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- of that or

1 not, because I have no idea.

2 MR. MESSING: All right.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I wouldn't  
4 expect this witness to either.

5 MR. MESSING: I'll withdraw the question.

6 BY MR. MESSING:

7 Q. Let's go back to the issue of Mr. Joe Mello. You  
8 said he voted no on the contract. Do you know that if he  
9 voted no as a Board member, or if he voted no as a member  
10 of the negotiating team?

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or if you don't  
12 know either?

13 THE WITNESS: I don't know.

14 BY MR. MESSING:

15 Q. Okay. Do you know if prior to the no vote that  
16 you referred to in your testimony, do you have any  
17 knowledge that Mello opposed the deal?

18 A. No.

19 MR. MESSING: Okay. Nothing further.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

21 MS. TRUONG: Nothing from us.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,  
23 anything further?

24 MR. ROSE: Nothing.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, thank you

1 very much.

2 THE WITNESS: Okay. Thank you.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The items that  
4 are marked in red are mine.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think the rest  
7 are yours. And we'll be back let's just say in an hour.  
8 Off the record.

9 (Off the record.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

11 We're back on the record. And we do have Mr. Orange  
12 here. I just wanted to admonish you not to discuss your  
13 testimony with any other of the witnesses in this case.  
14 Do you understand the admonishment, sir?

15 THE WITNESS: Yes, I do. Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
17 that, off the record.

18 (Lunch recess taken.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are back on  
20 the record. We have another witness called by the  
21 Petitioner. I'm going to ask this witness to raise your  
22 right hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: I do.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state

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

2 THE WITNESS: It's Michael Lillie. L-I-L-L-I-E.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you. I  
4 got a couple preliminary questions for you, Mr. Lillie.  
5 First of all, did you ever receive a transcript of the  
6 first two days of this proceeding?

7 THE WITNESS: No.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not saying  
9 that you should have.

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm just --

12 THE WITNESS: Yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Some of  
14 the questions that I ask doesn't mean I'm expecting a yes  
15 answer or not.

16 THE WITNESS: Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So don't worry  
18 about it. Have you ever met an individual by the name of  
19 James Cline?

20 THE WITNESS: No.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. That  
22 answers two. Lastly, I'm going to be -- looks like you  
23 have it already. You have that Declaration in front of  
24 you. I'm going to go ahead and mark that as Petitioner's  
25 Exhibit double F, what appears to be the Declaration of

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 10, 2009, and that the  
13 foregoing pages 1 through 304 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 25th day of March, 2009, at Dixon,  
17 California.

18  
19  
20 \_\_\_\_\_  
21 Leisa M. Miller, Transcriber  
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