

March 11, 2009

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BEFORE THE STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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

Exclusive Representative.)
)

_____)

MARCH 11, 2009

SHAWN CLOUGHESY
Administrative Law Judge

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

Transcribed by: Leisa M. Miller

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APPEARANCES

Administrative Law Judge

SHAWN CLOUGHESY

Representing Employer:

SHANNAN TRUONG
Labor Relations Counsel

Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95811

Representing CSLEA:

GARY MESSING, Esq.
Carroll, Burdick & McDonough, LLP
1007 7th Street, Suite 200
Sacramento, CA 95814-3409

Representing Peace Offices of California (POC):

JOE ROSE, Esq.
Peace Officers of California
2240 East Bidwell Street
Folsom, CA 95630

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1 in evidence.)

2 (Off the record.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

4 We're back on the record. As I said, Exclusive Rep S is
5 admitted.

6 I want to give you an admonishment not to discuss
7 your testimony with any other witnesses. You're free to
8 discuss your testimony with anyone at the counsel table
9 here. Do you understand the admonition?

10 THE WITNESS: Yes, I do.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any
12 questions you have with regards to it?

13 THE WITNESS: No.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

15 Thank you very much.

16 THE WITNESS: Thank you.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

18 (Off the record.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

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

21 by the Exclusive Representative. I'm going to ask this
22 witness to raise your right hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: Yes, I do.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state

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

2 THE WITNESS: My name is Richard Carrillo. C-A-R-R-

3 I-L-L-O.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

5 Mr. Carrillo, a couple preliminary questions. Did you
6 ever receive any transcripts of these proceedings?

7 THE WITNESS: No.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know who
9 James Cline is?

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Showing the
12 witness what I'm marking as Exclusive Representative T,
13 to be a -- appears to be a Declaration of this witness.

14 (Exclusive Representative's Exhibit T marked
15 for identification.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you can
17 quickly review that, and then tell me what that is, sir?

18 THE WITNESS: This is a Declaration I prepared for
19 this proceeding.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If
21 you can turn to your signature page? And I ask you, sir,
22 if you recognize that signature, a copy of that signature
23 that's on that page.

24 THE WITNESS: Yes, that is my mark.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign

1 it on or about the date and location set forth in that
2 Declaration?

3 THE WITNESS: Yes, I did.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And the contents
5 of that Declaration true and correct to the best of your
6 knowledge?

7 THE WITNESS: Yes, they are.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I
9 think, Mr. Messing, the witness is passed.

10 MR. MESSING: Okay.

11 TESTIMONY OF

12 RICHARD CARRILLO,

13 Having been duly and regularly sworn, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. Now, in your Declaration you say you have been
18 with DMV since 1984?

19 A. That's correct.

20 Q. Okay.

21 A. November of 1984.

22 Q. And did you become a peace officer in that year?

23 A. Yes.

24 Q. Now, we don't want to rehash your Declaration
25 here, so let me ask you this: Have you -- well, first

1 this. You've had an office in CAUSE or CSLEA for
2 approximately how long?

3 A. I've held several offices. Which -- you're
4 talking about the Director?

5 Q. Well, how long have you been either a Director or
6 an officer of CAUSE or CSLEA?

7 A. I'd say about 10 years.

8 Q. Okay. And so your current position is?

9 A. I'm Senior Vice President of CSLEA. I'm the Unit
10 A Vice President of CSLEA and the AMVIC Director of
11 CSLEA, and the AMVIC President. Association of Motor
12 Vehicle Investigators of California is AMVIC. And I sit
13 on various committees and chair a couple.

14 Q. And how long have you been President of AMVIC?

15 A. That's a tough question. I've been in AMVIC
16 since 1984-85. I've served President, Vice President.
17 The only thing -- the only title I haven't served is
18 Secretary and on and off --

19 Q. What's the last office that you've held?

20 A. President. I'm President now. That's current.

21 Q. And when did you become President?

22 A. I've been President approximately nine years.

23 Q. All right. Now, I want to ask you a few
24 questions about representation issues. As President of
25 AMVIC are you -- do you receive feedback from members as

1 to the representation that they're receiving from CSLEA?

2 A. Yes, I do.

3 Q. Okay. Let's start with what we'll call individual
4 representation issues. Have you been aware of recent
5 cases where individuals in your organization -- in your
6 affiliate have asked for representation from CSLEA?

7 A. To answer your question, representation being
8 legal representation, like LDF, as well as contract
9 representation, grievances?

10 Q. Grievances, disciplinary, Internal Affairs
11 investigations where individuals need assistance.

12 A. For legal and labor, yes.

13 Q. Okay. Can you tell us -- give us some examples
14 of those, and with each tell us whether or not the
15 individual was satisfied with the services he or she
16 received.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're not
18 looking at names.

19 MR. MESSING: Yeah.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right. We may
21 later, and we'll figure out how to deal with that.

22 BY MR. MESSING:

23 Q. Let me -- let me -- let me say this. We don't
24 need significant details about the incidents, nor do we
25 want the names. We just want to know the -- sort of the

1 category of case that was handled and the reaction of the
2 individual to the representation.

3 A. Okay. Now, there was a shooting recently in
4 Fresno where an officer terminated the individual, and
5 CSLEA had representation within hours. My understanding,
6 the -- our individual was very happy with that.

7 We've had -- my problem is I can't remember the exact
8 event. It was in San Diego. But we did have -- I
9 received several phone calls over an event in San Diego
10 where they called me and told me that the -- that that
11 individual was represented by a very high-class, very,
12 very highly rated PORAC attorney that we had contracted.

13 I have an individual -- how do I phrase it? There's
14 an individual that is -- I just talked to the other day
15 is having -- is totally satisfied with -- can I talk
16 ongoing cases or -- but anyways, the conversation
17 yesterday, the individual was extremely happy with
18 representation. As well as minor issues. That one was a
19 job term, they termed the individual for an assaultive
20 act.

21 Also -- then we have the standard stuff, issues
22 concerning overtime. The standard stuff. And I don't
23 know if you want to get into minutiae, from what I've
24 been told.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll let you

1 take it from there, Mr. Messing.

2 BY MR. MESSING:

3 Q. A couple of things. Did you say job termination?

4 A. I have an individual who was served papers
5 yesterday, and he's been working with CSLEA and he's
6 very, very happy. We're looking at a positive outcome.

7 Q. Okay. And you mentioned a PORAC attorney who was
8 contracted for. Who paid for that attorney?

9 A. CSLEA. The LDF.

10 Q. Okay. Now, as your position as President let's
11 say over the last nine years of AMVIC, if people have
12 complaints about representation, are you somebody who
13 they would tend to go to?

14 A. I am, as well as my officers and my area reps.

15 Q. Okay. Have you had -- let's -- dealing with
16 individual representation issues, can you tell me if
17 you've had complaints about the representation that's
18 been afforded to your members?

19 A. I've had complaints with -- mostly about money
20 and that kind of stuff. But as services go, I have an --
21 I have an -- I have an AMVIC person sitting on the LDF,
22 and we -- we're very well-represented in our function, as
23 well as my titles. I have two officers. Secretary of
24 CSLEA is an AMVIC officer. So we're very happy with
25 CSLEA.

1 Q. Okay. Okay. Were you at a 2008 -- were you at a
2 convention in 2008 where you made any comments about
3 the --

4 MR. ROSE: Objection. Leading.

5 MR. MESSING: The --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
7 actually going to let you get to the location, get to the
8 setting, and then take it from there. I'm -- it's coming
9 back to me.

10 BY MR. MESSING:

11 Q. In fact, I'm going to rephrase it. Have you ever
12 told any CSLEA members at any time that there was an
13 exchange of money between sworn and non-sworn employees
14 during the bargaining process?

15 MR. ROSE: Objection. Leading.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 THE WITNESS: I -- when you say --

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

19 (Inaudible.)

20 THE WITNESS: -- exchange of money, I'm not clear.

21 I'm not clear with your term.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. You may
23 still not be clear, so --

24 MR. MESSING: Okay. Then we need to get a new
25 question.

1 BY MR. MESSING:

2 Q. Have you addressed to CSLEA members bargaining
3 issues concerning the distribution of money between sworn
4 and non-sworn members of the bargaining unit?

5 A. Okay. I'm -- forgive me, but I'm also the
6 Chairman of the Contract Negotiation Committee, and I
7 talk. And during my time doing that, I met a lot of
8 members. I met with Unit A for over six months
9 negotiating contracts, bringing in all the Presidents and
10 trying to get their issues on the table. You're --

11 Q. Okay.

12 A. Being that I've lost your question --

13 Q. Let me rephrase my question.

14 A. -- we do discuss negotiation.

15 Q. Let's --

16 A. I was trying to get money.

17 Q. Let me rephrase the question. So you've been the
18 Chairman -- you say you've been the Chairman of the
19 Negotiations Committee. In your experience, has money
20 ever been redistributed that's been offered by the State,
21 taken from sworn officers and given to non-sworn --

22 A. No.

23 Q. -- folks in the bargaining unit?

24 MR. ROSE: Objection. Leading.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It doesn't

1 suggest the answer, so objection's overruled.

2 MR. MESSING: Okay.

3 THE WITNESS: No. No, we don't.

4 BY MR. MESSING:

5 Q. Okay. Have you ever told anybody that you've --
6 that you did such a thing?

7 A. No.

8 MR. MESSING: Okay. I pass the witness on to
9 Mr. Rose.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

11 CROSS-EXAMINATION

12 BY MR. ROSE:

13 Q. Good afternoon, Mr. Carrillo.

14 A. Good afternoon, Mr. Rose.

15 Q. My name is Joe Rose. I'm the attorney
16 representing Peace Officers of California. I appreciate
17 your patience as you've waited for all of us here today.

18 A. Thank you.

19 Q. I've read your Declaration. I have a couple of
20 questions. With respect to your affiliate organization,
21 AMVIC, that consists solely of peace officers?

22 A. That's correct.

23 Q. And have you -- has your organization ever
24 considered the possibility of reorganizing to include
25 Occupational Licensing Inspectors?

1 A. Have we considered?

2 Q. Correct. Has AMVIC, the leadership of AMVIC
3 during your involvement in its leadership, ever
4 considered reorganizing that affiliate to add
5 Occupational Licensing Inspectors?

6 A. No.

7 Q. Have you ever done that with respect to LREs?

8 A. No.

9 Q. Are you -- why not?

10 A. Occupational Licensing Inspectors at one time
11 were part of AMVIC.

12 Q. Oh, they were? When was that?

13 A. Exact date I don't recall. That was prior to my
14 taking leadership. It would have been maybe 10, 11 years
15 ago.

16 Q. Do you know why the LR -- excuse me, the -- is it
17 okay if I use the term OLI for Occupational Licensing --

18 A. That's what I use for them.

19 Q. Okay.

20 A. That's correct.

21 Q. Great. So is there -- can you give us at least
22 an estimate of time as to when the OLIs were departed
23 from AMVIC?

24 A. Approximately 10 years ago.

25 Q. And do you recall, if you know, why that

1 occurred?

2 A. The members voted to remove the OL Inspectors.

3 Q. The members of AMVIC voted?

4 A. The members of AMVIC.

5 Q. And they did that because OLIs are not peace
6 officers, true?

7 A. They did it because we're not peace officers,
8 correct?

9 Q. Because the OLIs are not peace officers, and that
10 was the reason, correct?

11 A. That's correct.

12 Q. And were LREs ever in AMVIC?

13 A. No.

14 Q. Were they -- have you ever considered adding the
15 LREs into your organization?

16 A. No.

17 Q. Now, then, let me ask you some questions about
18 your Declaration. I'm looking at page five of the
19 Declaration. And let me just first -- before I ask you
20 questions about page five, let me ask you generally about
21 the structure of the DMV with respect to Investigators,
22 OLIs and LREs. Is it true that OLIs and Investigators
23 like yourself are in a separate division of the DMV? And
24 I'm not looking at page five necessarily, so I don't want
25 to trip you up.

1 A. Okay. That's what I was looking for.

2 Q. I'm actually looking, by the way, at page three,
3 if you want to -- I'm not going to question you about the
4 Declaration, but you speak to the organization of the
5 DMV. I want to just confirm, OLIs and DMV investigators,
6 different divisions?

7 A. That's correct.

8 Q. And LREs and DMV Investigators, different
9 divisions?

10 A. Correct.

11 Q. And the supervision for OLIs is different than
12 the supervision for Investigators?

13 A. Correct.

14 Q. And the supervision for LREs different than the
15 supervision for Investigators?

16 A. That's correct.

17 Q. Okay. Now page five. We are looking at -- I'm
18 looking at paragraph 13, which is a continuation from
19 page four, at lines 4 through 8. And you categorize a
20 series of -- well, some things that you do in your job as
21 a Investigator, I believe. Is that a fair summary?

22 A. Yes. I'm an Investigator for the DMV.

23 Q. But I mean this paragraph -- you work as part of
24 an investigative team, correct?

25 A. I'm an Investigator assigned to a team of

1 Investigators in the district office.

2 Q. Okay. And in doing that, do you access
3 databases?

4 A. Yes.

5 Q. How frequently do you access databases?

6 A. Most all my work. Almost all my work.

7 Q. Almost all your work is accessing databases?

8 A. Part of my work I conduct investigations. I'm
9 required to access databases, correct.

10 Q. Well, we're trying to understand, you know, the
11 breakdown of a typical day or week or month. And so how
12 much time would you spend in a typical day accessing
13 databases?

14 A. It depends on the case I'm working that day.
15 It's very much -- I hate to be difficult, but I'm not --
16 I'm not trying to satisfy the perjury piece here.

17 Q. Sure.

18 A. I get to work --

19 Q. We definitely don't want you --

20 A. If I'm doing a licensing investigation -- if
21 I'm -- if I'm doing a licensing investigation, I'll do a
22 database. I have to go find out the licensees, the
23 ownership. I'll have to access the OL databases. I have
24 to access the DCS, the DMV database. Then I access
25 Choice Point to find where people live, addresses. I

1 mean there's different databases we use for different
2 functions.

3 Q. Okay. That's a fair answer. And so what
4 percentage of your time, if you could give us some sort
5 of estimate, overall, let's say in a year, do you
6 actually spend -- of your working hours do you actually
7 spend sitting at a computer accessing databases?

8 A. Well, the -- okay. It depends on the case.
9 There's a preparatory phase, and then you go out and do
10 your work. You interview, see people, you know, that
11 kind of thing, surveillances, writing reports. You got
12 to -- we write our reports on the computer, too, so
13 that's part of the -- we use the same computer to access
14 our databases. I'm having a difficult time trying to
15 figure out --

16 Q. All right.

17 A. -- how to answer this.

18 Q. Let's take it a different way. Would you -- are
19 you familiar with -- you state in your Declaration you're
20 familiar with the job duties of LREs.

21 A. That's correct.

22 Q. And OLIs.

23 A. That's correct.

24 Q. Now, comparing your job duties as an Investigator
25 to the job duties of LRES --

1 A. Right.

2 Q. -- how much -- how would you compare the amount
3 of time you spend in access data -- you spend accessing
4 databases as compared to LREs?

5 A. Okay. Okay. An LRE issues -- goes through the
6 process of assisting an applicant to get a driver's
7 license. The data they collect is put into the computer.
8 Okay. Then I would access it via my side to do the work
9 I do. I don't know if I'm answering your question. But
10 I touch on the data that way. I don't know if they sit
11 there and spend an hour putting data in, but I do know
12 that I can take data out very quickly. But depending on
13 how much information's in that base, it may take me an
14 hour to digest the information, or it can take ten
15 minutes. And there may be nothing there in that -- in
16 that retrieval. So I don't know if that's helpful.
17 So --

18 Q. Okay. LREs, would you say they enter information
19 into databases substantially more often than you do?

20 A. No. I spend a lot of -- well, again, I don't --
21 an LRE does certain things within the system. Okay.
22 Peace officers do a lot of stuff. We have a system
23 called IWID. We have a system called DAD. Okay. Okay.
24 IWID is a system where we sit and input case closures,
25 case updates. Then we also have DAD, which we input

1 driver's license record information to correct a record.
2 If we're conducting -- if we complete an investigation, a
3 person's a fraud, individual, we're going to do something
4 administratively, that database is touched. IWIDs is
5 used to upgrade the OL part of the database. So that's
6 why I'm having a difficulty. I can't turn around and say
7 this case is going to end up with two hours accessing a
8 computer. It could take me a lot longer. That's why I'm
9 having a problem here.

10 Q. All right. Well, then I --

11 A. You should see my files. It's pretty thick.

12 Q. I bet. All right. Well, then let's move on.

13 A. Okay.

14 Q. Well, I want to ask you the same question. Can
15 you quantify or compare for us the quantity of database
16 entry that an OLI performs as compared to you, or do
17 you -- do you have the same problem in terms of the
18 comparison?

19 A. Well, again, I access OLI records. I also -- we
20 have the capability of actually reproducing the hand
21 applications that are completed by the licensee to get a
22 driver's -- I mean to get a dealer's license. So we also
23 bring those down, and we have to analyze that to conduct
24 our work.

25 So what I see of the material that they use to put

1 into the system to create the electronic information,
2 they must do a lot, because there's a lot of papers that
3 they download that we also have to analyze. So I don't
4 know that answer to your question. I just know that I
5 sit -- I do spend a lot of time understanding their
6 material, their paper.

7 Q. Okay. Fair enough. Same page, paragraph 15, we
8 have at lines 23 and 24 and 25 a series of -- well, and
9 at line 18 a series of items where we're describing --
10 you're describing in your Declaration what DMV
11 Investigators, including yourself, do.

12 A. Correct.

13 Q. All right. And let me ask you with respect to
14 line 18, investigations of known terrorist organizations,
15 do you see that?

16 A. Right.

17 Q. Do OLIs do that as well?

18 A. We have -- do they actively seek known terrorist
19 groups? It is not --

20 Q. Do OLIs investigate -- conduct investigations of
21 known terrorist organizations like you do?

22 A. No. But the databases -- the licensees -- after
23 9-11 the FBI was -- came and was very interested in a lot
24 of our licensees. And we had to assist in abstracting
25 data on various individuals with various -- they were

1 looking at certain names. And subsequently, we kind of
2 like -- when certain names or patterns come out, we
3 assist.

4 Q. And when you say we, you mean the DMV as a whole?

5 A. The Department of Motor Vehicles, correct.

6 Q. Okay. So let me ask you with respect to LREs, do
7 LREs conduct investigations of known terrorist
8 organizations?

9 A. LREs as well as OLIs provide consumer protection
10 safety to the California residents in their licensing
11 function. Applicants apply for driver's licenses or
12 applicants apply for a license. For a license, for
13 example, we do a background on the applicant to make sure
14 that individual is not wanted or has done criminal acts.
15 A person who comes in for a driver's license may or may
16 not be who he claims to be, so they're kind of like the
17 first line of defense. They -- well, actually, the first
18 line of defense is the person who takes the application
19 originally. Then the LRE does the driving test.

20 And they also -- they'll report to us if there's
21 something wrong, there's something -- individuals may
22 tell them -- I've had cases -- I've worked cases where
23 the LREs will tell me an individual has told them that
24 they were born in some country, and then they'll be
25 looking at the paperwork that they also have as they do

1 as they do the drive test and they'll say, well, this
2 person said he was born in the U.S. According to this
3 paper, they declared under penalty of perjury they're
4 American born, where in fact the person is now telling me
5 verbally they're not. And that is a fraud act, so
6 they'll turn that over to us for further work.

7 Now, that may or may not end up as a terrorist, but
8 it may end up as a individual who has an interest in
9 concealing their identification. Which may or may not be
10 terrorist level, but may be forger or someone else.

11 Q. So when an LRE or an OLI turns over that
12 application with that information --

13 A. Right.

14 Q. -- would you consider that to be a referral?

15 A. That's -- a referral in the sense of?

16 Q. Well, referring a matter to you for
17 investigation.

18 A. Yeah. If you want to use that word, yeah.

19 Q. Because the LRE wouldn't investigate that any
20 further. They would refer it to you, correct?

21 A. They would collect the evidence and as well as
22 make statements. That's part of investigation.

23 Investigation includes witness testimony and collection
24 of evidence. So they would be doing a preliminary
25 investigation to -- first con -- investigation is a slur

1 word I mean in the sense that they are collecting data
2 that goes over to us to assist us in our -- in our work.

3 Q. Investigation is a slur word? Is that what you
4 just said?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's what he
6 said. Next question.

7 THE WITNESS: That's what I meant.

8 BY MR. ROSE:

9 Q. How is it that an investigation is a slur word?
10 What is it about investigation that is a slur?

11 A. An individual comes to the Department of Motor
12 Vehicles to apply for a driver's license, they're
13 submitting a lot of information to us. And that
14 information we use. And the Technicians are trained that
15 if there's something wrong, because we are here to
16 protect the public, if they uncover something wrong, they
17 are to turn it over to us. And that's what we do.
18 That's what we exist to do. And the reason I use the
19 slur word, an LRE may not like saying that that's what
20 they collect information for.

21 Q. But you --

22 A. The public -- the public -- the public may or may
23 not be sensitive to providing information. For example,
24 fingerprints, for a long time -- when I first came to the
25 Department of Motor Vehicles, the collection of a

1 thumbprint was not -- was not something the public wanted
2 to do. We had to have it established in law to collect a
3 thumbprint.

4 Social Security cards, Social Security information,
5 when we first started collecting Social Security
6 information, the public did not want to give that to us,
7 and we had to get that into law.

8 So my term slur investigation perhaps is not a --
9 it's a Richard Carrillo word. However, they are
10 providing information. The goal is they're getting --
11 they collect information. People give information. If
12 the information turns out to be possibly leading to a
13 crime, they collect that information and deliver it to
14 us, and then we follow it up. And that is a preliminary
15 investigation.

16 Q. Okay. And you said actually the first line of
17 defense is another person and not the LRE or OLI that
18 receives the application. Do you remember saying that?

19 A. Right.

20 Q. That's -- that person would be which job
21 classification?

22 A. That would be I believe the -- it's the -- and
23 again, I'm going to slur the title. It's a Motor
24 Vehicle --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Field

1 Representative. Next.

2 THE WITNESS: Thank you.

3 BY MR. ROSE:

4 Q. And is that person in Bargaining Unit 7?

5 A. No.

6 Q. Do you believe that that person is also engaged
7 in conducting an investigation when receiving the
8 application?

9 A. They're the preliminary contact, and they're
10 collecting information. They're actually a witness if
11 money is collected, and as well as the application
12 information, yes.

13 Q. Okay. And so when I go into the DMV to renew my
14 driver's license, and I meet with the person at the
15 window, am I the subject of an investigation in your
16 mind?

17 A. In my mind you're an applicant. You submitted
18 for renewal or for a driver's license. And if the
19 application appears to be questionable, then you become
20 subject to an investigation. And our Technicians are
21 trained to collect the information appropriately.

22 Q. All right.

23 MR. MESSING: Perhaps we should --

24 MR. ROSE: Excuse me.

25 MR. MESSING: I'm going to make --

1 MR. ROSE: Excuse me. What's --

2 MR. MESSING: I think I'm entitled to make an
3 object -- a point here.

4 MR. ROSE: What's the objection?

5 MR. MESSING: Well, I'm going to --

6 MR. ROSE: I have a question and answer, and I'm --

7 MR. MESSING: I'm going to tell you what it is. Is
8 if you're going to get any further into your own issue of
9 getting licenses and investigations of it, I think we
10 should probably close the record on that.

11 MR. ROSE: This is sarcasm, Judge, and it's a time
12 waster. And I moving on to another question.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't think
14 investigative techniques of agencies are -- is sarcasm at
15 all. I mean if it's a public record issue.

16 MR. ROSE: He said if I'm going to get into anymore
17 of my DMV. Because I said that if I go to the DMV. He's
18 trying to --

19 MR. MESSING: Well, if it's anything more personal
20 that goes into this, because he's using himself as an
21 example, I think that the record ought to be closed off.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

23 Well --

24 MR. MESSING: I'm suggesting it.

25 MR. ROSE: Well, I appreciate Mr. Messing's concern

1 for my privacy.

2 MR. MESSING: Okay.

3 MR. ROSE: Thank you, Gary. And --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

5 Regardless of that, I mean it just depends. Let me --

6 let me just say, and I think you would actually handle

7 this anyway, we're not asking you to expose any

8 investigative training you've received in regards to, you

9 know, how you protect the borders of this country.

10 THE WITNESS: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

12 BY MR. ROSE:

13 Q. All right. You haven't run my DMV records, have
14 you?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

16 MR. ROSE: Seriously.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

18 THE WITNESS: Are you serious?

19 MR. ROSE: Oh, I'm sorry.

20 BY MR. ROSE:

21 Q. Going to page five, line twenty-three.

22 A. Okay.

23 Q. Do you conduct surveillance?

24 A. Yes, I have.

25 Q. Do OLIs conduct surveillance?

1 A. Yes, they do.

2 Q. Do LREs conduct surveillance?

3 A. No.

4 Q. Do OLIs conduct electronic surveillance?

5 A. OLIs?

6 Q. Yes.

7 A. No.

8 Q. Do OLIs conduct conventional surveillance?

9 A. Yes.

10 Q. Do OLIs conduct interrogations?

11 A. They conduct interviews and they have question-
12 and-answer phases. The interview interrogation --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, would you
14 characterize it as an interrogation?

15 THE WITNESS: Depending on the OLI. I know some OLI
16 people that I think they do. I really would.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

18 Next.

19 BY MR. ROSE:

20 Q. Do you -- do LREs conduct interrogations?

21 A. Again, I know some LREs that I would definitely
22 say --

23 Q. You're laughing, right? What's funny about the
24 question?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What's your

1 understanding of interrogation? When you're -- when
2 you're saying that "I know that" --

3 THE WITNESS: They challenge the document. They
4 challenge the individual. If an individual, for
5 instance, they'll actually challenge the individual and
6 start saying, well, you know, I need to prove this,
7 please. And it's polite, professional, but they do
8 interrogate the individuals to -- they don't take -- they
9 don't take something as yes, sir, no, sir. They'll
10 engage the individuals to extract and get clarification.
11 And I do know some that may go beyond collect.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

13 BY MR. ROSE:

14 Q. Do LRIs [sic] or OLIs write search warrants?

15 Excuse me. Do OLIs or LREs write search warrants?

16 A. No. They assist in providing information to
17 obtain a search warrant.

18 Q. Do OLIs or LREs execute search warrants?

19 A. No.

20 Q. Do OLIs -- all right. Strike that.

21 Moving to page six of your Declaration, paragraph
22 sixteen.

23 A. Okay.

24 Q. Line five. Actually, the entire paragraph you're
25 describing how you are a peace officer but not a

1 traditional patrol as in the case of a police officer of
2 sheriff deputy, right?

3 A. That's correct.

4 Q. Are -- would you say OLIs or LREs are -- perform
5 a traditional patrol function like a police officer or
6 sheriff's deputy?

7 A. No.

8 Q. Would you say that LRIs [sic] or O -- excuse me,
9 OLIs or LREs perform investigative tasks working much
10 like police detectives?

11 A. OLIs and LREs?

12 Q. Yes.

13 A. Do not function as detectives, no.

14 Q. Would you say that OLIs or LREs perform as
15 similar to a police investigator?

16 A. No.

17 Q. But you do?

18 A. Yes.

19 Q. And would you say that OLIs or LREs perform in a
20 similar manner as a federal investigative agent?

21 A. Agent being? There's still -- the Agent
22 classification -- I'm not sure what you mean by Agent.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean a peace
24 officer?

25 MR. ROSE: Yes. I mean --

1 THE WITNESS: Okay.

2 BY MR. ROSE:

3 Q. I believe you were -- tell me if I'm incorrect
4 when on line six of your Declaration, page six, you're
5 referring to federal investigative agencies being federal
6 peace officers, correct?

7 A. Correct. But when I heard your question, I heard
8 Agent. And --

9 Q. So with respect --

10 A. And so I just corrected.

11 Q. -- to how you described it in your Declaration at
12 line six, do OLIs and LREs perform as similar to a
13 federal investigative agent that is a peace officer?

14 A. No.

15 Q. But you do?

16 A. Yes.

17 Q. Do you -- you work undercover, correct?

18 A. Yes, I have several times.

19 Q. Do OLIs or LREs work undercover?

20 A. OLIs do.

21 Q. How do OLIs work undercover?

22 A. OLIs conduct investigations on traffic violator
23 schools. They enter into the facilities in an undercover
24 mode, act as students, and collect information, then
25 report it to us for administrative as well as criminal

1 investigations.

2 Q. In doing that, does the OLI use an assumed name?

3 A. Yes. They also assist --

4 Q. How often has that happened, to your knowledge,
5 in the last year?

6 A. To my knowledge in this last year? I would be
7 stretching the perjury piece because I don't account for
8 their time.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know.

10 THE WITNESS: I couldn't give you an accurate number.

11 BY MR. ROSE:

12 Q. All right. How do you know that that happens?

13 A. Because they've assisted in preparing search
14 warrants. They help us in getting search warrants. They
15 help us administratively. We've taken licensees on for
16 this activity.

17 Q. How many times have you personally assisted or
18 gotten a search warrant in connection with an undercover
19 operation as you've described involving an OLI at a
20 traffic school?

21 A. Me? None.

22 Q. Do you -- looking at paragraph 19 of your
23 Declaration on page 6, when you collect -- you collect
24 physical evidence, correct?

25 A. That's correct.

1 Q. When you do collect it, what do you do with it?

2 A. I store it in our evidence container, our
3 evidence room. As well as if I collect it with an allied
4 agency, it may be collected and stored in their
5 facilities.

6 Q. All right. And how does the evidence get from
7 you to the evidence room?

8 A. I don't understand your question.

9 Q. Well, do you personally take the evidence into
10 the evidence room?

11 A. Yes. That was -- that was going to be my answer,
12 but I didn't want to sound funny.

13 Q. The -- you have access to the evidence room?

14 A. No. We have an evidence officer that will
15 secure -- you take it to the evidence officer. You
16 package it. You begin the processing of it. They assign
17 numbers. Then you apply those numbers. And then it's
18 stored. They store it in a database. And depending on
19 what the evidence is, you may physically take the
20 evidence and store it, or they take it from you and store
21 it. If it's a small item, they take it from you. If
22 it's a large item, then it's up to you to get it in
23 there.

24 Q. The evidence officer is a peace officer or not?

25 A. Peace officer, correct. Another Investigator.

1 Q. Oh, okay. Now, if the OLI collects physical --
2 do OLIs collect physical evidence other than documents?

3 A. Yes.

4 Q. If an OLI has evidence --

5 A. Now, when you say other -- okay. When you say
6 other -- you added the word documents. They -- generally
7 they collect -- it's just documents.

8 Q. Oh, okay. Do you collect evidence other than
9 documents?

10 A. Yes.

11 Q. What kind of evidence, physical evidence, do you
12 collect that's not a document?

13 A. Vehicle parts, license plates, paper mills,
14 counterfeit devices, computer parts, devices used to make
15 counterfeit documents, the cameras, prints, inks,
16 scissors. Keep going?

17 Q. No. I think we get the idea. The -- when an
18 OLI -- so there wouldn't be an occasion for an OLI to
19 interface with the evidence officer?

20 A. Yes. The evidence has to be stored for future
21 use. You can't have the -- if the OLI had -- it's a
22 certified record that we can collect again from
23 Sacramento, we don't need to take a document from the OLI
24 Inspector as well as an LRE person. But if it's a
25 document that cannot be reproduced by that means, then we

1 take it and we seal it in our evidence. We put it in --

2 Q. We being the DMV as a whole?

3 A. The Investigators will take that evidence and
4 take it from the witness and then record it, and then
5 have it placed into our storage.

6 Q. Okay. But I'm asking about OLIs, not
7 Investigators.

8 A. I said OLIs. OLIs as well as LREs. For example,
9 if somebody comes over with a fraudulent document and the
10 LRE collected it and she -- and they hand it over to one
11 of us, when would take it from her, because that is
12 evidence, and that document may not be able to be -- it's
13 not a document that's retrievable via our certified
14 records. Certified record could be reproduced via -- for
15 court purposes can be reproduced. So that document will
16 probably be reproduced any time we need it again.

17 However, we're talking about an actual counterfeit
18 document that's not going to be reproduced like that. We
19 would collect it from the LRE. And then we would take it
20 and then record, and then have it recorded and placed
21 into our evidence room.

22 LRE is the same. The LRE has evidence -- for
23 example, when an LRE goes in to do this undercover work
24 that I was talking to, traffic violator school, there's a
25 certificate that's issued from the traffic violator

1 school saying, I certify under penalty of perjury that
2 this person attended this class. That document is
3 physical evidence, so we collect that from the OLI
4 inspector. And that cannot be reproduced because it's
5 not going to go -- once it leaves and it goes to
6 Sacramento and comes back that way, it's not -- it's not
7 the same. We have to have the actual document for
8 purposes of the criminal work. So we take that, and then
9 we'll book that into our system, and then reproduce it
10 later for criminal prosecution.

11 Q. The peace officer books it into the system?

12 A. Right. But we collect it from the -- your
13 question was do we collect it from the OL -- the OL --
14 the OL Inspector is the initial person that collects it
15 from the suspect, who issues it to her in perfecting the
16 crime.

17 Q. Actually, my question was, do OLIs or LREs have
18 direct contact with the evidence officer. And I believe
19 what you just described is no, correct?

20 A. Yeah. They give it to the Investigator. By
21 extension. They give it to the Investigator, and the
22 Investigator gives it to the evidence officer.

23 Q. And by extension means indirect contact, correct?

24 A. Correct.

25 Q. So the OLIs and LREs are engaged in a different

1 process of getting evidence to the locker than you are,
2 right?

3 MR. MESSING: Object. Vague and ambiguous.

4 MR. ROSE: I withdraw the question.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

6 BY MR. ROSE:

7 Q. Now, page seven of your Declaration, top of the
8 page -- and before we get there, was this Declaration
9 drafted for you by the law firm of Carroll, Burdick and
10 McDonough?

11 A. No.

12 Q. You drafted it yourself?

13 A. This is my hand.

14 Q. Did you --

15 A. Well, being a peace officer, I will tell you that
16 peace officers -- this form -- this form I borrowed.
17 This --

18 Q. But the substance of it --

19 A. The DMV does not -- or I don't have the means to
20 reproduce this type of document, so I borrowed Vitko's,
21 and then I erased Vitko's and then put mine on there.

22 Q. You borrowed Vitko's Declaration?

23 A. Yeah. And the cut in -- cut it all out, put mine
24 on here.

25 Q. Did you --

1 A. Because the Department doesn't have this type
2 of -- does not have the -- our Word system doesn't -- or
3 I couldn't find the Word template for this --

4 Q. You mean pleading paper?

5 A. Pleading paper, correct.

6 Q. Okay. Did you borrow any of the actual text of
7 the Declaration --

8 A. That's --

9 Q. -- from Vitko?

10 A. That's -- okay.

11 Q. The substance?

12 A. Okay. I hate to sound stupid. But when you say
13 actual text, like when it says all employees and that
14 text obviously is mine. Or who uses the word department
15 and all that, that's copied. I mean --

16 Q. Well --

17 A. -- it's my language. It's my testimony, my deal.

18 Q. But I mean did you borrow any of the substance of
19 it from anyone else?

20 A. No. No. But the facts, again, it says
21 Investigator. He uses the word Investigator. He used
22 the word the. I used the word the.

23 Q. Do you know a person by the name Kenneth Ehrman?

24 A. Yes.

25 Q. Do you and Mr. Ehrman work in the -- work

1 together?

2 A. Yes, we do.

3 Q. Did you and Mr. Ehrman collaborate on your
4 Declarations?

5 A. No.

6 Q. One second, please. Okay. Okay. Looking at the
7 top of page seven, you speak to the idea that electronic
8 records of the DMV may be testified to by an LRE in the
9 context of a case.

10 A. Correct.

11 Q. Isn't it true that most of the documents that
12 appear -- come into a civil or -- excuse me, into any
13 court proceedings by way of a certified copy of the
14 document?

15 A. The amazing thing about DMV documents, DMV
16 documents are very -- they're very different than -- our
17 data is -- we testify on documents for the local
18 authorities a lot because our -- the way we produce our
19 documents are not easily readable. So they have us come
20 in on cases to try to interpret our database, our data.

21 Q. All right. Look at page eight of your
22 Declaration, lines four through six. Actually, on line
23 six there's a blank line.

24 A. Which page?

25 Q. Page six. Excuse me. Page eight, line six.

1 A. Yes.

2 Q. And so what was your intention when you wrote a
3 blank line on line six on page eight of your Declaration?

4 A. Well, it's --

5 MR. MESSING: Sorry. Hang on a second. I don't know
6 what he's referring to. I don't have a blank line on my
7 document.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know what?
9 Mine's different, too. Hold on a second. I have the --
10 and maybe this was the rendition that we got that was
11 added as a 2001. His does have it, too.

12 MR. ROSE: All right.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So let me show
14 you mine.

15 THE WITNESS: Maybe that's why I'm all confused.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 Witness has that. And you're right, this one does have a
18 blank line like that, or a line.

19 THE WITNESS: Thank you.

20 BY MR. ROSE:

21 Q. It looks like you omitted the date, 2001, after
22 the words DMV Investigator in.

23 A. That's correct. My intention for filling this --

24 Q. No. That's okay. I understand. We've got a
25 corrected copy. It was an oversight, apparently.

1 THE WITNESS: Do you want to see that?

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Might as well
3 keep that one in case we've got anymore of those.

4 THE WITNESS: Okay. But the words were a little
5 (inaudible).

6 BY MR. ROSE:

7 Q. When you say at page eight, paragraph twenty-
8 four, that there are separate manuals for DMV
9 Investigators, OLIs and LREs --

10 A. Yes.

11 Q. -- what do you mean there are separate manuals?

12 A. Department of Motor Vehicles -- I'm sorry. I'm
13 always -- my Department has manuals for everything.
14 OL -- OLI has a specific manual for Occupational
15 Licensing. Investigations has manuals. We have a
16 complete manual. We have how to access a computer
17 manual. We have this manual, that manual, that manual.
18 So we all have our manuals. We're a bureaucracy.

19 Q. Do the manuals speak to your job functions?

20 A. Yes. Each one of them, yes. To what function we
21 are looking at.

22 Q. I see. And so the separate manuals for each job
23 classification is because each job does different things,
24 correct?

25 A. But they all interrelate.

1 Q. But they all do different things?

2 A. Do different things.

3 Q. Yes?

4 A. Yeah. Yeah. Yeah.

5 MR. ROSE: Nothing further.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

7 MS. TRUONG: Nothing from us.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

9 MR. MESSING: I have just one thing. A couple of
10 things.

11 REDIRECT EXAMINATION

12 BY MR. MESSING:

13 Q. How many DMV Investigators are there?

14 A. Again, under penalty of perjury, our numbers
15 fluctuate. The last I looked we were about approximately
16 175 with --

17 Q. Okay.

18 A. -- retirements coming up and --

19 Q. Are -- do some DMV Investigators get specialized
20 into certain assignments or --

21 A. Oh, yes.

22 Q. Okay. And the work that you're currently doing,
23 are you considered specialized in some assignment?

24 A. No. I'm back to the general area.

25 Q. Okay. And you gave some testimony about search

1 warrants at traffic schools. I believe your testimony
2 was that you hadn't worked with an OLI on one of those,
3 correct?

4 A. I have not in years.

5 Q. In years. Okay. Are you aware of other DMV
6 Investigators --

7 A. Yes.

8 Q. And how are you aware of other Investigators
9 performing that function?

10 A. I'm President of the Union. I meet a lot of --
11 President of AMVIC, and I meet a lot of my members, and
12 we cross talk.

13 MR. MESSING: Okay. Nothing further . Thank you.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

15 MR. ROSE: Nothing.

16 MS. TRUONG: Nothing.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
18 that, hold on a second.

19 THE WITNESS: Sure.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We've got an
21 admonishment for you before someone else reminds me. And
22 so Exclusive Rep T is admitted.

23 (Exclusive Representative's Exhibit T received
24 in evidence.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, I want to

1 admonish you not to discuss your testimony with any of
2 the other witnesses. Of course, you're free to discuss
3 it with anyone at these counsel tables. Do you
4 understand the admonishment?

5 THE WITNESS: Yes, I do.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any
7 questions regarding it?

8 THE WITNESS: No.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
10 that, off the record.

11 (Off the record.)

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

16 (Witness sworn by the Judge.)

17 THE WITNESS: I do.

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

20 THE WITNESS: My name is James Vitko. The last name
21 is spelled V-I-T-K-O.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
23 Marking as Exclusive Representative U what appears to be
24 a Declaration of this witness.

25 (Exclusive Representative's Exhibit U marked

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