

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE THIRD APPELLATE DISTRICT

DAVID GENTRY; JAMES PARKER;  
MARK MIDLAM; JAMES BASS; AND  
CALGUNS SHOOTING SPORTS  
ASSOCIATION,

Case No. C089655

PLAINTIFFS AND APPELLANTS,

v.

XAVIER BECERRA, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL FOR  
THE STATE OF CALIFORNIA; STEPHEN  
LINDLEY, IN HIS OFFICIAL CAPACITY AS  
ACTING CHIEF OF THE CALIFORNIA  
DEPARTMENT OF JUSTICE; BETTY T.  
YEE, IN HER OFFICIAL CAPACITY AS  
STATE CONTROLLER; AND DOES 1-10,

DEFENDANTS AND RESPONDENTS.

**APPELLANTS' APPENDIX  
VOLUME VII OF XVI  
(Pages 1638 to 1867 of 4059)**

Superior Court of California, County of Sacramento  
Case No. 34-2013-80001667  
Honorable Judge Richard K. Sueyoshi

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# **EXHIBIT M**

CONDENSED

**In the Matter Of:**

**DAVID GENTRY vs KAMALA HARRIS**

34-2013-80001667

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**STEPHEN J. LINDLEY**

*May 24, 2017*

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Page 1

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SACRAMENTO  
3 --oOo--  
4  
5 DAVID GENTRY, JAMES  
6 PARKER, MARK MIDLAM,  
7 JAMES BASS, and CALGUNS  
8 SHOOTING SPORTS  
9 ASSOCIATION,  
10  
11 Plaintiffs and  
12 Petitioners,  
13 vs. Case No. 34-2013-80001667  
14 KAMALA HARRIS, in Her  
15 Official Capacity as  
16 Attorney General for the  
17 State of California;  
18 STEPHEN LINDLEY, in His  
19 Official Capacity as  
20 Acting Chief for the  
21 California Department of  
22 Justice, BETTY YEE, in  
23 Her Official Capacity as  
24 State Controller for the  
25 State of California and  
DOES 1-10,  
Defendants and  
Respondents.

DEPOSITION OF  
STEPHEN J. LINDLEY  
May 24, 2017  
9:52 a.m.  
1300 I Street  
Sacramento, California  
LAURIE D. LERDA, CSR No. 3649

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1 APPEARANCES OF COUNSEL  
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22  
23  
24  
25 --cOo--

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1 A. No.

2 Q. If you need a break at any time just let me

3 know. It shouldn't be a problem. The only thing I

4 would ask is that we don't have any breaks if a

5 specific question is pending.

6 Does that make sense?

7 A. Yes.

8 Q. As you see we have a reporter recording the

9 transcript. You will have a chance to review the

10 transcript when your deposition is complete, but any

11 changes are subject to comment or further inquiry at

12 trial. Does that make sense?

13 A. Yes.

14 Q. And I know you're very familiar with these

15 admonitions. I'll just go through them as quickly as

16 possible, but if you have any questions, certainly

17 ask.

18 That is in fact the next topic is that

19 understanding is key. I want to get your best

20 testimony today. So, if you think something is

21 unclear as the way I ask -- as to the way I ask it,

22 please feel free to ask for a clarification.

23 We are looking for accurate answers today

24 but no guesses. Estimates are acceptable and best

25 recollections are okay. Does that make sense?

Page 6

1 DEPOSITION OF STEPHEN J. LINDLEY

2 May 24, 2017

3 STEPHEN J. LINDLEY

4 having been first duly sworn testifies as follows:

5 ---oOo---

6 (Exhibit No. 1 was premarked)

7 EXAMINATION

8 BY MR. FRANKLIN:

9 Q. Good morning, Director Lindley.

10 My name is Scott Franklin.

11 I'll be taking the deposition today. It's

12 for the matter Gentry v. Harris.

13 The first question I have for you is:

14 Have you seen the document in front of you

15 marked as Exhibit 1?

16 A. Yes.

17 Q. Are you here today to give deposition

18 testimony in response to that deposition notice?

19 A. Yes.

20 Q. Okay. Are you taking any medications that

21 will prevent you from giving your best testimony

22 today?

23 A. No.

24 Q. Is there any other reason that would prevent

25 you from giving your best testimony today?

Page 8

1 A. Yes.

2 Q. Also, if you have secondhand knowledge of

3 something, I would still need to know that

4 information.

5 For example, if you had heard what happened

6 at a particular meeting but you weren't actually at

7 that meeting and I had asked what happened at the

8 meeting, I would like you to tell me what you had

9 heard. Does that make sense?

10 A. Yes.

11 Q. Okay. I will do my best not to step on your

12 answers or questions and if you could do the same and

13 let me finish my questions so the reporter can get a

14 clear transcript.

15 Does that make sense?

16 A. Yes.

17 Q. Okay. Did you review any documents in

18 preparation for this deposition?

19 A. Yes.

20 Q. What documents did you review?

21 A. I reviewed my testimony on the Bauer case.

22 Q. Okay. And that's a deposition transcript

23 from I think the case is Bauer v. Harris?

24 A. Yes. With you I believe.

25 Q. It was. Okay. I think it's helpful to

Page 9

1 identify definitions from the beginning for certain  
2 terms that will come up again and again.  
3 I'll propose them to you, but if there's a  
4 problem or it doesn't make sense to you, maybe we'll  
5 be able to work something else out.  
6 First off, the -- when I use the acronym  
7 DROS or DROS, I'm referring to the Dealer Record of  
8 Sale that phrase. And then more generally the  
9 DROS is often used as a term to refer to the actual  
10 form that's used in the DROS process.  
11 Does that make sense?  
12 A. Yes.  
13 Q. And when I say "DROS fee", I'm referring to  
14 the \$19 charge that's charged on a normal single  
15 firearm transfer.  
16 Does that make sense?  
17 A. Yes.  
18 Q. When I refer to the DROS Special Account,  
19 I'm referring to a segregated fund within the  
20 State's General Fund which is where DROS fees are  
21 deposited.  
22 Does that make sense?  
23 A. Yes.  
24 Q. And I may also inadvertently refer to the  
25 DROS Special Account as the DROS Fund. Will that be

Page 10

1 confusing?  
2 A. No.  
3 Q. And then "DROS surplus" and that's just a  
4 general phrase I'll use for the amount of balance  
5 carried over in the DROS Special Fund from one year  
6 to the next. It's not any particular surplus.  
7 Does that make sense?  
8 A. Yes.  
9 Q. Okay. When I refer to "the department", I'm  
10 referring to the Department of Justice including  
11 subentities.  
12 Does that make sense?  
13 A. Yes.  
14 Q. Okay. When I refer to the term the acronym  
15 "APPS", I'm referring to the Armed Prohibitive Person  
16 System. Does that make sense?  
17 A. Yes.  
18 Q. When I'm referring to the "APPS list", I  
19 mean to refer to the list created by APPS that  
20 includes DROS fee payers who are prohibited from  
21 possessing firearms but for which there is no record  
22 of their having legally transferred all weapons DROS  
23 to them.  
24 Does that make sense?  
25 A. Yes. But there's more to it than that.

Page 11

1 Q. Okay. Help me clarify APPS list.  
2 A. So, when you talk about DROS fees, not  
3 everybody who is in the APPS list has actually paid  
4 DROS fees.  
5 So there's other ways to get your name into  
6 the automated firearm system as compared to just  
7 purchasing a gun from a dealer or having a private  
8 party transfer.  
9 Q. My memory is that there's one way that can  
10 happen is registration of a so-called assault weapon;  
11 is that right?  
12 A. That's one way, yes.  
13 Q. Can you think of any other ways that this  
14 can happen?  
15 A. You can do a Firearm Ownership Record. You  
16 can do a New Resident Form. You can also do an  
17 Intrafamilial Transfer.  
18 MR. HAKL: It's intra, i-n-t-r-a.  
19 BY MR. FRANKLIN:  
20 Q. As a general principal is it -- do you have  
21 an understanding of whether or not the majority of  
22 the APPS list, people's names on the APPS list come  
23 from DROS payers?  
24 A. That would be an assumption just by economy  
25 of scale. More people purchase firearms from a

Page 12

1 dealer or from a transfer compared to those other  
2 ways of doing it.  
3 Q. Okay. And when I refer to SB 819, I'm  
4 referring to the 2011 Senate Bill authored by  
5 Senator Mark Leno regarding the use of the DROS at  
6 that time DROS surplus.  
7 Does that make sense?  
8 A. Well, I wouldn't characterize it as a DROS  
9 surplus at the time. 819 it gave the department the  
10 ability to use DROS fees for other areas.  
11 Q. Okay.  
12 A. But I roughly understand what you're  
13 referring to.  
14 Q. Yeah. My -- I can even -- the  
15 characterization is probably not going to be an  
16 issue. So, we'll just say that you're aware of  
17 SB 819 the 2011 Senate Bill offered by  
18 Senator Mark Leno?  
19 A. Yes, sir.  
20 Q. Okay. And then any reference I make to  
21 Senator Mark Leno I'm also including his staff  
22 members. Does that make sense?  
23 A. Yes.  
24 Q. Okay. Now, this is important.  
25 When I refer to Penal Code Section 28225,

Page 13

1 I'm also referring to it as it existed in the  
2 past when I believe it was numbered  
3 Penal Code Section 12076.  
4 Does that make sense?  
5 A. Yes.  
6 Q. Okay. I'm going to use the term 2005  
7 rulemaking to refer to a rulemaking that increased  
8 the DROS fee from \$14 to \$19.  
9 Does that make sense?  
10 A. Yeah. I thought it was 2004.  
11 MR. HAKL: Yeah, that was my recollection,  
12 too.  
13 MR. FRANKLIN: I think it actually ended the  
14 final -- it is not --  
15 MR. HAKL: Material.  
16 BY MR. FRANKLIN:  
17 Q. -- going to be determinative here, but,  
18 yeah, I think it started and mostly was in 2004, but  
19 I think the final file was 2005.  
20 So, in any event, either 2004 or 2005 you  
21 would know what I was talking about when I said 2005  
22 rulemaking?  
23 A. Yes.  
24 Q. Okay. And then I'm also going to use the  
25 term 2010 rulemaking to refer to a proposed

Page 14

1 rulemaking that would have reduced the DROS fee from  
2 \$19 to \$14 had it been completed.  
3 Does that make sense?  
4 A. No.  
5 Q. Okay.  
6 A. Because I don't think there was an intent to  
7 lower it to \$14. I think there was an intent to  
8 lower it or to look at the prospects of lowering it  
9 in 2010.  
10 Q. Okay. So, setting off that part.  
11 If I said 2010 rulemaking was the rulemaking  
12 primarily I think in 2010 that was intended to reduce  
13 the DROS fee, would that make sense to you?  
14 A. Yes, sir.  
15 Q. Just for context, it's probably going to be  
16 helpful for you to tell us your title and position  
17 within the department from let's say 2009 forward if  
18 you could do that for us.  
19 A. Before we get into that, do we want to talk  
20 about the recent change in the last few months?  
21 Q. Yeah, we can do it that way.  
22 Start with that.  
23 A. So, for the majority of 2009 I was the  
24 Assistant Chief in the Bureau of Firearms.  
25 In December of 2009 I became the

Page 15

1 Acting Chief for the Bureau of Firearms.  
2 I remained as the Acting Chief until  
3 July of 2011 where I assumed the position  
4 permanently.  
5 In December of 2016 I left the Bureau of  
6 Firearms to be the Interim Director for the Division  
7 of Law Enforcement between the transition from the  
8 Harris Administration and now the Becerra  
9 Administration.  
10 During that time frame AG Becerra changed  
11 the titles of the Division of Law Enforcement.  
12 So what was used to be the Director of the  
13 Division of Law Enforcement is now the Chief of the  
14 Division of Law Enforcement and the Bureau  
15 Directors -- I'm sorry -- the Bureau Chiefs are now  
16 Bureau Directors. So I'm currently the Interim Chief  
17 for the Division of Law Enforcement.  
18 Q. That's quite a mouthful.  
19 A. Yes, it is.  
20 Q. And just to help me.  
21 Do you know if there's a new published  
22 organizational tree with these new titles?  
23 A. I believe it's actually on the AG's  
24 Web site.  
25 MR. FRANKLIN: Okay. Just so I -- because

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1 I'm probably going to need to refer to it in the  
2 future. Okay. If I could have you look at what  
3 we'll be marking as Exhibit 2.  
4 And I will represent that it is a section  
5 out of the Department of Justice Biennial Report  
6 Major Activities 2013 - 2014 that I got off the  
7 Internet.  
8 (Exhibit No. 2 was marked)  
9 MR. FRANKLIN: Okay. And I'll give you a  
10 second to review it.  
11 MR. HAKL: Is this for me to like keep and  
12 write on and stuff?  
13 MR. FRANKLIN: Yeah.  
14 MR. HAKL: Okay. Thanks.  
15 BY MR. FRANKLIN:  
16 Q. So the pages should be serial that is to say  
17 there's only one section that's been excerpted.  
18 There's not multiple excerpts.  
19 A. Okay.  
20 Q. Have you had a chance to review the  
21 document?  
22 A. Yes. Briefly.  
23 Q. Okay. So what I've selected here is what I  
24 believe to be a section of this report that's headed  
25 "Bureau of Firearms". Does that appear correct?

Page 17

1 A. Yes.  
2 Q. Do you believe you were involved in the  
3 drafting of this section?  
4 A. I at least reviewed it.  
5 Q. Okay. If I could have you turn to page --  
6 I'm sorry. It's the bottom of page 18 the line that  
7 says: "Significant APPS cases include the  
8 following:" Do you see that line?  
9 A. Yes, sir.  
10 Q. When you at least reviewed this document,  
11 did you have an understanding of what the phrase  
12 APPS cases was intended to mean?  
13 A. I have my reference to what I believe APPS  
14 means, yes.  
15 Q. Okay. But specifically APPS cases that  
16 phrase, do you have an understanding of what that  
17 phrase means?  
18 A. Yes.  
19 Q. And what is that understanding?  
20 A. So APPS cases are individuals who have been  
21 identified as being prohibited and then identified as  
22 having firearms. They're both armed and prohibited.  
23 Q. And would those people have necessarily  
24 appeared on the APPS list?  
25 A. I would say a vast majority of them are

Page 18

1 identified through the APPS system and then go  
2 through our analytical work before the agents go out  
3 into the field, but that's not the sole manner in  
4 which people can be identified as being armed or  
5 prohibited.  
6 Q. Okay. So, not as to a specific case or  
7 incident, but can you give me an example of an APPS  
8 case that is not from the APPS list?  
9 A. We get a call from a citizen, an ex-wife,  
10 sometimes, you know, family members about an  
11 individual who is now prohibited for one reason or  
12 another and that they have firearms that the  
13 department might not necessarily know about.  
14 Q. And then the department in that instance  
15 may take steps to determine if that person should  
16 have the firearm removed from that person's  
17 possession?  
18 A. Yes. And we have a duty for public safety.  
19 MR. FRANKLIN: I believe that's the only  
20 question I have for that document.  
21 And then this is going to be marked as  
22 Exhibit 3. And I will represent it is a  
23 press release that I obtained from the  
24 Attorney General's Web site.  
25 (Exhibit No. 3 was marked)

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1 MR. FRANKLIN: And, Mr. Haki, anything I  
2 hand to you is a copy for you.  
3 MR. HAKL: Okay. Thanks.  
4 BY MR. FRANKLIN:  
5 Q. And I'll give you a chance to review this  
6 document. You've had a chance to review the  
7 document?  
8 A. Yes.  
9 Q. Okay. It's largely the same questions as  
10 the prior document. Do you think you were at least a  
11 reviewer of this document?  
12 A. I was not.  
13 Q. And how do you know that?  
14 A. Um, it was rare for me to see press releases  
15 so... And I don't remember seeing this.  
16 I've seen this document in print, but I  
17 don't believe I saw this document in its draft form  
18 before it went out onto the Web site.  
19 MR. FRANKLIN: Okay. Then I don't have any  
20 further questions about that document.  
21 This will be marked as Exhibit 4.  
22 And to the extent that there is any gray  
23 highlighting, I don't believe that was original to  
24 the document. I just want to note that for the  
25 record.

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1 (Exhibit No. 4 was marked)  
2 BY MR. FRANKLIN:  
3 Q. This is a portion of what I understand to be  
4 a Budget Change Proposal and the document was or at  
5 least the pages you're looking at are -- were  
6 produced in discovery in this action.  
7 And there's a few pages here so I'll give  
8 you a chance to go through it.  
9 A. Okay.  
10 MR. HAKL: I'm just going to object -- make  
11 an objection to the document. It may not be  
12 material, but I think -- I see that it's stamped.  
13 This is a document we produced I know.  
14 Well, first, with respect to the  
15 highlighting, I think that is your office's  
16 highlighting.  
17 MR. FRANKLIN: I do, too.  
18 MR. HAKL: I recently looked at this and  
19 that wasn't on the copy that we produced.  
20 But typically there would be like a cover  
21 page for Budget Change Proposals that have numbers  
22 and signatures and, you know, it's like a standard  
23 form.  
24 MR. FRANKLIN: Uh-huh.  
25 MR. HAKL: So, just to the extent that I



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1 mean I think this is probably an incomplete copy of a  
2 Budget Change Proposal document that we produced.  
3 MR. FRANKLIN: Yeah. If it becomes  
4 material, I'm sure we could locate the --  
5 MR. HAKL: Okay.  
6 MR. FRANKLIN: -- extra pages.  
7 It's a little bit hard for us to tell when  
8 they're produced where one document begins and  
9 another one ends when they're kind of separate in  
10 structure. But, like you said, I don't see that as  
11 being material.  
12 MR. HAKL: All right.  
13 BY MR. FRANKLIN:  
14 Q. We'll play it as it lays.  
15 So, have you had a chance to review the  
16 document?  
17 A. Yes.  
18 So, let me just -- it doesn't even list what  
19 fiscal year this was being proposed for.  
20 I know we have numbers here for resource  
21 history and workload history, but it's not telling us  
22 exactly what fiscal year we're actually asking for  
23 this money or this proposal.  
24 Q. I think I -- well, you are obviously much  
25 more of an expert in this area than I am.

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1 I'm looking at the first paragraph.  
2 There's a reference to BOF requesting  
3 1.6 million starting in fiscal year --  
4 A. Yeah.  
5 Q. -- 2012-2013 so that's what I would think.  
6 A. Yeah. But I don't know when it -- I'm just  
7 trying to make it clear that it's kind of an  
8 incomplete document.  
9 Q. Okay.  
10 A. But I from -- for the most part I understand  
11 the document.  
12 Q. Do you think this is a document you would  
13 have had a hand in drafting?  
14 A. Yes.  
15 Q. And so in the second paragraph there's a  
16 reference to APPS investigations.  
17 Do you see that?  
18 A. Page 1, second paragraph from the top?  
19 Q. Yes.  
20 A. Currently, the number of APPS  
21 investigations?  
22 Q. Yeah.  
23 A. Okay.  
24 Q. Does the phrase APPS investigations as used  
25 here mean something different than the phrase

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1 APPS case we were discussing earlier?  
2 A. So we're talking about for the context of  
3 this Budget Change Proposal a lot of what they're  
4 looking at is just the annual increase in the number  
5 of APPS subjects in the database. So that's what  
6 we're referring to here is that the staff that we  
7 have can't keep up with the yearly increase.  
8 So, APPS is still a little more broader, but  
9 a majority of our cases that are worked as you would  
10 dictate as the APPS cases come through the APPS  
11 system. It's not a hundred percent, but it's close  
12 to.  
13 Q. Okay. And then on page 4 of the document,  
14 that first paragraph, there's a reference to the  
15 term APPS cases. And I just want to understand if  
16 that usage of APPS cases has the same definition as  
17 what you've already given us?  
18 A. Yes.  
19 Q. Okay.  
20 A. So, again, the majority of the cases that we  
21 investigate reference the APPS system come to the  
22 APPS system, but not all of them. We have a duty to  
23 investigate anything that comes to our attention.  
24 Q. Okay. That's all I have for that document.  
25 Okay. Switch gears a little bit.

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1 After the passage of SB 819 there was  
2 special agent field work regarding illegal firearm  
3 possession and that field work was funded out of the  
4 DROS Special Account; is that correct?  
5 A. I lost you a little bit on that. Apologies.  
6 Q. Yeah, let's make it a little bit clear.  
7 So, we're talking about the time frame after  
8 SB 819 became law. After that point, was special  
9 agent field work regarding illegal firearm possession  
10 funded from the DROS Special Account?  
11 MR. HAKL: Objection as to vague. What do  
12 you mean by special agent field work? But you can go  
13 ahead and answer the question.  
14 BY MR. FRANKLIN:  
15 Q. So, if helps clarify my understanding, for  
16 example, it would be a special agent finding out one  
17 way or another that a person is believed to have  
18 firearms illegally and the special agent going out  
19 and attempting to obtain the firearm.  
20 A. Yes. But there's more to the answer than  
21 just a "yes" or "no".  
22 Q. Okay. Can you provide the additional  
23 response?  
24 A. So, one of the other things that happened in  
25 late 2011 is there was a cut to the Division of Law

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1 Enforcement's budget. I believe it was either 72 or  
2 79 million dollar cut.  
3 Part of the restructuring of the Division of  
4 Law Enforcement's budget included the Bureau of  
5 Firearm's budget where money that was paid to the  
6 bureau for APPS work that came out of the  
7 General Fund was switched in the Governor's budget to  
8 come out of the DROS Fund.  
9 Q. Okay. So the cut 72 or 79 million was that  
10 all in the Bureau of Firearms or was it spread  
11 through the department of the Division of Law  
12 Enforcement?  
13 A. So, it actually centered on two other  
14 bureaus; the Bureau of Narcotics Enforcement, which  
15 no longer exists, and the Bureau of Investigation,  
16 which was downsized and took over some of the  
17 functions of the Bureau of Narcotics Enforcement.  
18 There is no actual budget cut to the  
19 Bureau of Firearms, but there was a restructuring by  
20 the Governor's office of the funding source.  
21 Q. I know you've answered this in a general  
22 sense, but I'll ask if you can give a percentage,  
23 Can you estimate the percentage of APPS list  
24 and specifically APPS list-related investigations to  
25 non APPS list-related investigations of illegal

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1 firearms possession?  
2 MR. HAKL: Objection, vague, just in terms  
3 of I think I know what you mean by APPS list and  
4 non APPS list based on your view of, you know, the  
5 case, but to the extent you can clarify that, I would  
6 appreciate it.  
7 MR. FRANKLIN: So, my view of an APPS list  
8 case is someone who their name actually appears on  
9 the APPS list and part of that is implicitly that  
10 they are at least indicated on the APPS list to be in  
11 possession of a firearm that they are not legally  
12 able to possess, and then based on that information,  
13 special agents investigate further and potentially  
14 remove the property.  
15 Contrary to that would be, for example, that  
16 what Mr. Lindley testified to today about the  
17 possibility of getting a report from a  
18 domestic partner saying that this person is dangerous  
19 and has a firearm. That's outside of the APPS list  
20 system.  
21 I hope that clarifies it.  
22 MR. HAKL: Yeah, yeah. Thank you.  
23 THE WITNESS: So, we don't have any  
24 empirical data so that this would be a very  
25 experienced estimate, but 95% of the cases that we

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1 work would be system-generated cases.  
2 BY MR. FRANKLIN:  
3 Q. And just to clarify the record,  
4 system-generated means?  
5 A. The APPS system generated the hit --  
6 Q. Uh-huh.  
7 A. -- identifying the person as being armed  
8 prohibited. Analysts confirm that, agents confirm  
9 that, and they go out into the field and investigate  
10 that individual.  
11 Q. To the best of your knowledge after SB 819  
12 became effective, do you know if the department has  
13 used DROS Special Account money to reimburse local  
14 law enforcement of APPS based activities?  
15 A. We have not as of yet.  
16 Q. Is that something that's on the horizon?  
17 A. I believe in the 2016-17 state budget it  
18 authorized the department \$5 million to  
19 reimburse local law enforcement agencies for  
20 their assistance to the Bureau of Firearms in  
21 their APPS work.  
22 The criteria for that has not been set yet.  
23 Q. Does the department fund the cost of defense  
24 attorneys out of the DROS Special Account?  
25 MR. HAKL: Vague as to the phrase

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1 "defense attorneys".  
2 MR. FRANKLIN: I can tell you generally my  
3 understanding would be these would be internal  
4 attorneys for matters brought against the department  
5 or department employees, but I don't actually know --  
6 MR. HAKL: Okay.  
7 MR. FRANKLIN: -- what kind of defense.  
8 You know, for all I know there's outside  
9 counsel being brought in as well so that's why I'm  
10 starting broad.  
11 MR. HAKL: Okay.  
12 You can answer the question.  
13 THE WITNESS: So, the department does use  
14 DROS money in defense of firearm-related lawsuits  
15 against the department.  
16 BY MR. FRANKLIN:  
17 Q. And how if you -- strike that.  
18 How is it determined whether or not a  
19 particular case would be considered firearms-related  
20 in this context?  
21 A. It would be a lawsuit against the bureau  
22 itself, employees for some type of action, or any  
23 type of enforcement regulation or defense of the  
24 Second Amendment.  
25 Q. And I guess it's implied but I'll ask.

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1 The funding of attorneys from the  
2 DROS Special Account is not limited to matters that  
3 are directly related to the DROS fee?  
4 A. I think you need to break that down a little  
5 bit more. I'm pretty sure what you're referring to,  
6 but not a hundred percent.  
7 Q. I'll try to rephrase it.  
8 Maybe an example is better and this is a  
9 hypothetical. So, let's say, for example, that there  
10 is a lawsuit challenging the department's activities  
11 at gun shows investigatory activities at gun shows.  
12 Would that be the kind of lawsuit that would  
13 be funded out of the DROS Special Account defending  
14 that lawsuit?  
15 A. Yes.  
16 Q. Okay. How many cases are you aware of where  
17 the money from the DROS Special Account was used to  
18 pay for the defense of a firearm-related matter?  
19 A. I could not give you that number. A lot.  
20 Q. Would you be comfortable in estimating?  
21 You know, we normally do the -- you know,  
22 set the range. Would you say it's over 25?  
23 A. I think you'd have to look at in what time  
24 frame.  
25 Q. Let's say the time frame that I gave which I

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1 think was from 2009.  
2 MR. HAKL: If you can. I mean he's entitled  
3 to your best estimate.  
4 THE WITNESS: Yeah.  
5 MR. FRANKLIN: Yeah.  
6 THE WITNESS: I would estimate around 50.  
7 BY MR. FRANKLIN:  
8 Q. This is similar to a previous question.  
9 Is there a specific protocol for determining  
10 whether or not a case is considered a firearm-related  
11 case in this context?  
12 A. If you can just make it a little bit clearer  
13 for me.  
14 Q. Okay. So, we've been discussing about how  
15 the defense of some firearm-related cases are funded  
16 from the DROS Special Account.  
17 And my question is:  
18 Is there a particular way in which the  
19 department determines a new case that is brought  
20 whether or not it is firearms-related and should be  
21 funded out of the DROS Special Account versus is not?  
22 A. Maybe this seems a simple answer, but if it  
23 deals with the Bureau of Firearms for the most part  
24 we're funded through the, you know, the DROS account  
25 and two other funds so it would -- it would be paid

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1 for out of the Bureau of Firearms budget.  
2 Q. And at least in your time from 2009 on,  
3 who would make those kind of decisions?  
4 A. I would say it's -- it's kind of a  
5 three-fold decision. The attorney that's the head  
6 of our Government Law Section, the Chief of the  
7 Bureau or now Director of the Bureau and our  
8 in-house counsel to see if that is an appropriate  
9 case to be handled and paid for by the Bureau of  
10 Firearms.  
11 Q. And you referred to the in-house counsel.  
12 What -- what department or division is the  
13 in-house counsel in?  
14 A. So, they are actually an attorney from our  
15 Government Law Section that is assigned to the Bureau  
16 of Firearms. They're supervised from the Government  
17 Law Section not from the Bureau of Firearms.  
18 Q. I have a recollection in my mind and I don't  
19 know if it's correct.  
20 Was it the case -- and it might have even  
21 been before 2009 and before the prior  
22 reorganization -- that the Firearms Division had its  
23 own attorney internally?  
24 A. Yes. So the Firearm Division did have its  
25 own attorney and it hired its own attorney. It

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1 didn't go through the regular process of the  
2 department. That was changed in 2009 where we  
3 started working with the Government Law Section to  
4 have an attorney assigned from them and go through  
5 the regular command structure from the Government Law  
6 Section and the department.  
7 Q. In terms of workload were these two  
8 positions roughly equivalent?  
9 A. Yes.  
10 Q. Do you know how these two positions were  
11 funded?  
12 A. I don't know exactly what line item they  
13 come out of, but they come out of the Bureau's  
14 budget, and then prior to that out of the  
15 Division's budget.  
16 Q. And do you know if it is in any way  
17 accounted for from funds taken from the DROS Special  
18 Account in terms of the current relationship?  
19 A. I'm sure there are funds from the DROS  
20 account that pays for that attorney.  
21 Q. Are you aware of the department ever  
22 specifically performing the calculation looking at  
23 how much DROS Special Account money is spent on  
24 attorney services?  
25 A. Not specifically, no.

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1 Q. So, do you have any understanding as to how  
2 much DROS Special Account money has been spent  
3 defending firearm-related litigation in say the last  
4 ten years?  
5 A. Off the top of my head I don't. That's --  
6 we probably have that documented someplace.  
7 Q. Do you think it's reasonable to estimate  
8 it's, you know, somewhere in the millions?  
9 A. It's in the millions.  
10 Q. You say that definitively.  
11 A. Yes.  
12 MR. HAKL: You guys bring a lot of lawsuits.  
13 BY MR. FRANKLIN:  
14 Q. I don't know who guys you're referring to.  
15 Do you have an understanding as to whether  
16 or not there's a way, a specific way for someone  
17 reviewing department financial records to calculate  
18 how much DROS Special Account money is spent on  
19 attorneys in a given year?  
20 A. Yes.  
21 Q. Can you explain to me how that would be  
22 done?  
23 A. So there would be at least two ways.  
24 The bureau has different line items in each  
25 of our what we call our cost codes.

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1 One of the cost codes is a DROS cost code.  
2 It will itemize out certain services. We also have,  
3 you know, through the legal side a billing account  
4 about what they're billing their time to in  
5 particular cases.  
6 Q. So, I don't remember the number off the top  
7 of my head. I want to say it's either Cost Code 505  
8 or 509 is the right cost code for what we're talking  
9 about.  
10 A. I should know that. It's one of those two.  
11 Q. It's one of those two?  
12 A. Yeah.  
13 Q. Okay.  
14 A. I have a lot more numbers in my head so...  
15 Q. Than the last deposition for sure.  
16 Okay. So, when -- so the department gets  
17 invoices from Division of Legal Services for legal  
18 work; is that correct?  
19 MR. HAKL: Just objection as to terms.  
20 I mean we don't really have a Division of  
21 Legal Services.  
22 MR. FRANKLIN: Government Law is that --  
23 MR. HAKL: You can ask Steve.  
24 MR. FRANKLIN: -- more accurate?  
25 MR. HAKL: I'm not sure how all the billing

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1 and coding works.  
2 THE WITNESS: I wouldn't necessarily call it  
3 billing, but it's more identifying the number of  
4 hours that are worked on a particular case. Not all  
5 those cases are contained within Government Law.  
6 And we also seek advice from other areas,  
7 other department, maybe a specialization in criminal  
8 law, you know, public rights, what have you, and then  
9 they need a cost code in order to bill that time to.  
10 And we get a copy of that those billings on a monthly  
11 basis I believe.  
12 BY MR. FRANKLIN:  
13 Q. And those billing statements they actually  
14 include the cost code on the billing statement?  
15 A. Yes. Because they're -- they're by cost  
16 code I believe.  
17 Q. And I know part of the difficulty in this  
18 discussion is that if I understand correctly the way  
19 in which all of this type of work is accounted for  
20 has changed within the last ten years from a -- from  
21 a like I think it's called a charge back system to a  
22 fee based system.  
23 Maybe I'm getting the terminology wrong  
24 about the manner in which legal services are  
25 accounted for to internal -- internal customers or

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1 clients rather like the Bureau of Firearms.  
2 But I don't think there's actually a  
3 question there.  
4 How are the attorney services provided to  
5 the bureau identified? And specifically I'm asking  
6 for are they identified as consultant services?  
7 A. That would be one of the ways it's in the  
8 bureau's line item budget that they would be  
9 identified.  
10 Q. Can you think of any other ways in which  
11 they'd be identified in this context?  
12 A. There are times where it's just straight  
13 legal services.  
14 Q. And then when they are referred to as  
15 consultant services, are they internal or external  
16 services?  
17 A. Almost exclusively internal.  
18 If you give me a second to think.  
19 Q. Please.  
20 A. I can't remember the bureau paying for  
21 external attorney work.  
22 Q. And I guess I should be clear.  
23 When I'm referring to the bureau in this  
24 context, I'm also referring to the extent that there  
25 are bureau employees who are defendants as well.

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1 Would that change any of your answers?  
2 MR. HAKL: Objection.  
3 I don't understand the question.  
4 THE WITNESS: Yeah.  
5 BY MR. FRANKLIN:  
6 Q. So, for example, a lawsuit could be brought  
7 against the department, the bureau, and a bureau  
8 employee, and I'm considering all of those entities  
9 as for the purpose of this lawsuit -- not this  
10 lawsuit -- a lawsuit, a firearms-related lawsuit it's  
11 all the same defense.  
12 Does that make sense?  
13 MR. HAKL: If you understand it you can  
14 answer it. It might depend on the case. I don't  
15 know.  
16 THE WITNESS: It does depend on the case.  
17 And if a department employee is being sued  
18 and that lawsuit deals with the course of their work  
19 as a bureau employee, the department has an  
20 obligation to assign an attorney.  
21 That does not mean that that employee has to  
22 accept that attorney. If they don't accept that  
23 attorney, then they're on their own and they'll have  
24 to pay for their own attorney.  
25 MR. FRANKLIN: Okay.

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1 MR. HAKL: Can we take a quick break? I  
2 just want to talk to him just so I understand.  
3 MR. FRANKLIN: Sure.  
4 MR. HAKL: We'll step out.  
5 (Whereupon, a brief recess was taken)  
6 BY MR. FRANKLIN:  
7 Q. In the department there is a subentity  
8 that's titled the Office of Legislative Affairs.  
9 A. Yes.  
10 Q. Do you know if any Office of Legislative  
11 Affairs employees is paid from the DROS Special  
12 Account?  
13 A. They are not.  
14 Q. And I guess I'll ask one more question just  
15 broadly. To the extent that the department has  
16 employees who work on proposed legislation, do you  
17 know whether or not that type of work would be --  
18 ever be funded out of the DROS Special Account?  
19 A. Yes.  
20 Q. When would that be?  
21 A. Bills dealing with, you know, Dealer Record  
22 of Sale. Dealers that would be covered under the  
23 Dealer Record of Sale account. Questions about  
24 legislation regarding the Dealer Record of Sale  
25 account.

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1 Q. So, for example, would work on SB 819 by the  
2 Office of Legislative Affairs have been paid for  
3 through the DROS Special Account?  
4 A. Work by the attorneys in our leg office?  
5 Q. Yes.  
6 A. No. Should not have been.  
7 Q. Okay. So, and I think I understand the  
8 distinction. So, is it correct to say that outside  
9 of the Office of Legislative Affairs there are  
10 employees within the department who worked on  
11 legislation and their time was paid for out of the  
12 DROS Special Account?  
13 A. So, I'll explain that a little bit.  
14 Two entities that draw money out of the DROS  
15 account is the Bureau of Firearms and our CJIS  
16 Division.  
17 So, if there's a legislation that comes  
18 through, we have to produce a bill analysis for  
19 both entities or both bureau and the division.  
20 So, in the Bureau of Firearms we have staff  
21 that would work on that and analyze the impact to the  
22 department as it relates to the Bureau of Firearms  
23 and their work is paid for out of the DROS account.  
24 Q. Okay. And that's on the bureau side?  
25 A. That would be --

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1 Q. Or both?  
2 A. That would be on the bureau side.  
3 CJIS works very similar to that, but I can't  
4 guarantee where they're -- what they're using that  
5 money. They might have a different account just for  
6 legislative analysis.  
7 Q. Okay. Can you walk me through how -- again,  
8 this is general and not as to any specific  
9 investigation -- can you walk me through how a  
10 special agent would use the time code we talked about  
11 whether it's 509 or 505 to record its time on  
12 projects?  
13 MR. HAKL: Just objection. Assumes facts  
14 not in evidence. I'm not sure how agents record  
15 their time. I mean --  
16 MR. FRANKLIN: Then I'll ask the question.  
17 MR. HAKL: Yeah.  
18 BY MR. FRANKLIN:  
19 Q. Based on the preceding question, do agents  
20 record their time in such a fashion?  
21 A. We have a time management system for the  
22 agents, yes.  
23 Q. And can you walk me through how that time  
24 management system is used?  
25 A. Yes. So, depending on where the agent is

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1 being funded from. And some agents are funded from  
2 other parts of the bureau's budget. So some might be  
3 out of DROS which is actually 510 we discovered or  
4 505 or 509. They would record their daily activity  
5 in a system called TRS. I do not know what that  
6 stands for. Which records their activity by case  
7 number, location, and then depending on where they're  
8 funded from on their basically every state employee  
9 has a number, I think it's 12 to 15 digits, and part  
10 of that will code it to a certain cost code which  
11 comes out of a certain fund. The agents would not  
12 necessarily know where they're being funded from.  
13 Q. In the example of specifically agent work  
14 funded out of the DROS Special Account, do the agents  
15 have just one -- the multi digit number you just  
16 referred to, would they have more than one of those?  
17 A. That multi -- that 12 to 15 digit employee  
18 number, no. But let's say that I'm paid for out of  
19 the -- out of the Firearm Safety Enforcement account  
20 but I'm going to assist agents that are doing a gun  
21 show investigation this weekend. We have codes in  
22 there that list it as a gun show investigation and  
23 then that will code it to the gun show program which  
24 is 823 which is tied to 510.  
25 Q. Okay. I think I understand.

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1 Let's just say for an example that someone  
2 has the 510 DROS number in their personal  
3 identification number. That doesn't necessarily mean  
4 that every single cost incurred related to their work  
5 is going to be billed to the DROS Special Account?  
6 A. Correct. It depends on the nature of that  
7 work of that day.  
8 Q. Is the TRS system entirely computerized?  
9 A. I believe that it is.  
10 Q. So, for example, do special agents have a  
11 physical sheet they fill out at the beginning of the  
12 process we've been discussing?  
13 A. No.  
14 Q. And do you know how far back the records in  
15 the TRS system go?  
16 A. I'm thinking. I would say at least six  
17 years. That would be best guess.  
18 Q. I guess I should say it's a best estimate?  
19 A. Best estimate.  
20 Q. Is it your understanding that the department  
21 would consider the TRS system documents confidential?  
22 A. Yes.  
23 Q. Can you tell me why they would be considered  
24 confidential?  
25 A. It lists the type of investigations that

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1 we're doing, where the agents are at, and also will  
2 detail there's notes that the agents put into the  
3 TRS system and details some of our tactics as far as  
4 investigations.  
5 Q. Okay. And just to clarify.  
6 It's not like an attorney-client or a, you  
7 know, deliberative process. It's things relating to  
8 the process of law enforcement?  
9 MR. HAKL: Just objection. I mean the  
10 nature of protections entitled to those things is  
11 ultimately going to be a legal determination. It's  
12 a, you know, legal conclusion, legal argument, but I  
13 mean he can offer his understanding --  
14 MR. FRANKLIN: Sure.  
15 MR. HAKL: -- if that's what you're asking.  
16 MR. FRANKLIN: I just want to make sure it's  
17 for his personal understanding the reason he views  
18 them as confidential is because they are related to  
19 law enforcement activities not for some other reason.  
20 MR. HAKL: Yeah. And I'm saying they may be  
21 protected under other reasons depending on what's in  
22 them and how it's made out.  
23 MR. FRANKLIN: Understood that other  
24 privileges may apply. I just want to understand how  
25 Chief Lindley views the issue.

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1 MR. HAKL: That's fine.  
2 THE WITNESS: So the agents put notes in  
3 there about how we conduct things.  
4 If it comes just to the raw number data, I  
5 don't think that would be protected. It would be the  
6 notes that they're taking about how we're getting  
7 certain things done.  
8 MR. HAKL: And, Scott, just I mean and  
9 maybe it's worth putting on the record, too. I mean  
10 we produced a bunch of expenditure reports to you  
11 guys over the last, you know, for maybe like the last  
12 ten years or so and I mean if you're looking for  
13 numbers of expenditures, that's the best place to go  
14 for amounts.  
15 MR. FRANKLIN: Yeah, I don't dispute that  
16 it's a -- it's a macro versus micro issue.  
17 My recollection is that -- so what I'm  
18 envisioning in my mind is that there is some level of  
19 document where a particular special agent says,  
20 you know, I spent "X" hours on cost code 510. I  
21 spent "X" hours on cost code 509, you know, those  
22 kind of records without any further detail.  
23 And that's something that if it exists and  
24 it's, you know, there's no undue burden or no  
25 confidentiality issue as to that very narrow

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1 information, again, the cost code and the total  
2 numbers, that's something we would probably be  
3 looking for. Something we I assume will discuss  
4 after the deposition. You know, I'm not asking  
5 Mr. Lindley to be responsible for this issue, but  
6 it's something I think you and I will have to  
7 discuss.  
8 MR. HAKL: And I think the expenditure  
9 reports contain a lot of that detail broken down by  
10 505, 509, 510, personnel stuff.  
11 MR. FRANKLIN: So, are you talking about the  
12 documents that are titled whatever the activity is  
13 funded from the DROS Fund that were created for this  
14 litigation?  
15 MR. HAKL: And all the printouts behind  
16 them, because that's the next level of detail.  
17 BY MR. FRANKLIN:  
18 Q. Yeah. Yeah, the printouts are again they're  
19 the macro thing. It's not -- it's not agent by  
20 agent. So that would be a detail that may or may not  
21 be relevant.  
22 Now, based on Mr. Lindley's deposition  
23 testimony today, I'm not sure that there is a  
24 distinction that we care about now only after hearing  
25 his deposition testimony.

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1 So, I'm going to ask another question which  
2 will further help me answer that and that is:  
3 You recall we've talked earlier today about  
4 the distinction I've made about what I consider to be  
5 APPS list cases and other cases that may be similar  
6 but don't directly derive from the APPS list.  
7 You recall that distinction?  
8 A. Yes.  
9 Q. Okay. So, the issue we were just discussing  
10 about how things are coded between the what I've  
11 identified as the APPS list cases and the similar but  
12 not so defined other cases, would there be any  
13 distinction in recordkeeping about one versus the  
14 other?  
15 A. No.  
16 Q. Okay. So, I reserve the right to think  
17 about this a little bit more off the record, but I  
18 suspect that's going to resolve some of this issue,  
19 because until this moment right now I didn't know  
20 that that was the case.  
21 Borrow this.  
22 So, one of the topics that you were  
23 designated as Person Most Knowledgeable or Qualified  
24 on was topic 16.  
25 And what we were looking for on that is an

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1 explanation regarding a particular Request for  
2 Admission Answer.  
3 Specifically the answer stated that the  
4 relevant regulatory package from 2004 provides an  
5 explanation as to why a \$19 DROS fee is appropriate.  
6 Do you remember that issue?  
7 MR. HAKL: Just one second.  
8 Can I see the deposition or the --  
9 MR. FRANKLIN: I don't know that I have the  
10 old one. Let's go off the record for a second.  
11 (Off-the-record discussion)  
12 MR. HAKL: Just to make the record on this.  
13 This is -- the question is about item 16 on  
14 the PMQ deposition notice that talks about  
15 Request For Admission No. 79 which initially in the  
16 litigation was denied, and because it was denied, we  
17 offered an explanation in the form of an accompanying  
18 answer 17.1 to a form interrogatory.  
19 That's where this -- that's my understanding  
20 that that's where this quoted language comes from in  
21 No. 16, quote:  
22 "The relevant regulatory package from 2004  
23 provides an explanation as to why a \$19 DROS fee is  
24 appropriate", close quote.  
25 But through the discovery process and

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1 meeting and conferring which we've done a lot of in  
2 this case, we eventually admitted RFA No. 79, and  
3 that is in defendant's Attorney General Kamala Harris  
4 and Bureau of Firearms Chief Stephen Lindley's Second  
5 Amended Responses to Request for Admissions, Set One  
6 that were served -- Proof of Service on those is  
7 September 15, 2015.  
8 And we also in connection with that served  
9 amended answers to form interrogatories and that  
10 would be defendants Attorney General Kamala Harris  
11 and Bureau of Firearms Chief Stephen Lindley's  
12 Third Amended Responses to Form Interrogatories on  
13 July 15 is the most recent version of that, and  
14 there's no -- because 79 had been admitted, there's  
15 no accompanying explanation for 79 in the latest  
16 17.1 responses.  
17 So, counsel and I have a disagreement as to  
18 the continuing relevance and vitality of that  
19 statement in No. 16, but I just want the record to be  
20 clear that the form interrogatory that that category  
21 is based on has since been amended and isn't really  
22 for lack of a better phrase it's no longer the  
23 operative answer, because we've admitted RFA 79.  
24 BY MR. FRANKLIN:  
25 Q. The plaintiff's response is that there is

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1 a -- there's what appears to be at least a legal  
2 dispute here. Plaintiff certainly does not agree  
3 with the factual or legal characterizations made by  
4 defendant's counsel specifically that the amendment  
5 of an underlying Request for Admission somehow  
6 changes the, again, for lack of a better term  
7 relevancy or existence of a prior factual statement.  
8 It's plaintiff's position that either the  
9 statement was true when it was made or not or if  
10 there's some reason that a Request for Admission  
11 response has changed from an admit or a denial that  
12 there hasn't been a sufficient explanation as to why  
13 that factual issue would somehow be changed because  
14 of the change in response.  
15 So, having said all that, I think both sides  
16 have made the record clear on their positions and  
17 we'll move forward with the deposition.  
18 And I'll note that at the end of the day the  
19 question posed and the deposition topic is the  
20 factual basis for a particular response at a given  
21 point in time, so I want to understand how that  
22 happened even if the department changed its position  
23 thereafter. So, and Mr. Lindley was designated on  
24 this topic.  
25 So the phrase at issue that we're discussing

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1 here is the statement that was made by the department  
2 that, "The relevant regulatory package from 2004  
3 provides an explanation as to why the \$19 DROS fee is  
4 appropriate."  
5 Do you see that?  
6 A. Yes.  
7 Q. Okay. As you're designated on this topic,  
8 am I correct in understanding that you're prepared to  
9 provide the factual basis on it?  
10 A. For the increase of the fee from 14 to \$19?  
11 Q. Yeah.  
12 A. Yes.  
13 Q. And can you explain to us how -- what it is  
14 in the regulatory package that provides that  
15 explanation?  
16 A. So when you talk about why it was really  
17 raised at that time, again, it was before my time at  
18 the Bureau of Firearms. But the \$14 fee that was  
19 being charged for the -- as the DROS fee was  
20 insufficient to pay for the costs associated with the  
21 DROS program within the Department of Justice and  
22 they needed to increase that fee structure in order  
23 to bring in additional revenue.  
24 Q. Is there anything in the -- and so let me  
25 take a step back, too.

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1 There's a reference in here to the  
2 regulatory package from 2004, and I just want to make  
3 it clear that we're all on the same page that this is  
4 the 2004/2005 rulemaking we discussed earlier.  
5 A. Right.  
6 Q. Make sense to everyone? Okay.  
7 MR. HAKL: And I mean for the record the  
8 regulatory package isn't here.  
9 MR. FRANKLIN: It is.  
10 MR. HAKL: Oh, okay. All right.  
11 MR. FRANKLIN: Yeah. I have a copy for it.  
12 MR. HAKL: All right.  
13 MR. FRANKLIN: I certainly -- I wanted to  
14 make sure that Mr. -- Chief Lindley, rather, had the  
15 opportunity to look through the packet, because this  
16 was something that we noticed in advance.  
17 Now, if he said that there's nothing direct  
18 for him to point to, that's fine. I just need to  
19 make my record.  
20 So, is there something in the relevant  
21 regulatory package --  
22 MR. HAKL: Well, hold on, hold on, hold you.  
23 You should ask him if he looked through the  
24 package.  
25 MR. FRANKLIN: Well, respectfully I'll do it

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1 the way I see fit.  
2 MR. HAKL: Oh, okay. All right. Okay.  
3 MR. FRANKLIN: But, you know, I understand  
4 what you're saying. I want to know, first off, if he  
5 can tell me off the top of his head --  
6 MR. HAKL: Okay. All right.  
7 MR. FRANKLIN: -- and then I will  
8 definitely --  
9 MR. HAKL: Okay.  
10 MR. FRANKLIN: -- provide him the packet if  
11 he wants to look at it.  
12 If he also says he doesn't want to, I'll  
13 give him that option as well.  
14 So, setting it aside.  
15 Actually, can I have you read back the  
16 question.  
17 (Record Read)  
18 MR. FRANKLIN: Yeah, that's the question I'd  
19 like to ask.  
20 THE WITNESS: Okay. So I haven't looked at  
21 the package in some time so I would need to review it  
22 in order to identify that.  
23 BY MR. FRANKLIN:  
24 Q. Okay. Do you want it in the record or do  
25 you just want to give it to him as an exhibit because



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1 it's big. That's why I mention it.  
2 I believe it's all Bate stamped in this  
3 action and it's produced to us by the department.  
4 MR. HAKL: Right. Okay.  
5 MR. FRANKLIN: I believe that to be an  
6 accurate copy. It's double-sided.  
7 MR. HAKL: Okay. You want to ask him  
8 questions about this?  
9 MR. FRANKLIN: Well, I mean he said he  
10 hadn't had a chance -- an opportunity to look at it.  
11 MR. HAKL: Right.  
12 BY MR. FRANKLIN:  
13 Q. So, I certainly want to give him the  
14 opportunity.  
15 A. Is there a particular page you want me to  
16 look at or do you want me to peruse the entire  
17 document?  
18 Q. You know, it's really however you want to  
19 approach the issue, because, you know, you were the  
20 one the department designated.  
21 What I might suggest is I think the  
22 Statement of Reasons is probably the most relevant  
23 section, but I'm not -- this is, again, I don't do  
24 rulemaking for a living or as part of my living, so I  
25 certainly don't want to tell people what's important

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1 and what's not.  
2 MR. HAKL: That -- okay.  
3 I wouldn't -- I would just -- I mean you're  
4 not going to have time to read the whole thing.  
5 THE WITNESS: No.  
6 MR. HAKL: I would just -- I mean we can --  
7 you can ask your questions.  
8 MR. FRANKLIN: You know, I --  
9 MR. HAKL: When you're good if --  
10 MR. FRANKLIN: So, this is not a grand  
11 series of questions --  
12 MR. HAKL: All right.  
13 MR. FRANKLIN: -- about this document.  
14 MR. HAKL: All right.  
15 MR. FRANKLIN: It's literally just the issue  
16 I've already identified.  
17 MR. HAKL: Right.  
18 MR. FRANKLIN: And, you know, our position  
19 is this is something that was, you know, very clearly  
20 stated in the notice so --  
21 MR. HAKL: No. I know.  
22 MR. FRANKLIN: -- I don't -- I certainly  
23 don't want to make Mr. -- or Chief Lindley read this  
24 entire document.  
25 MR. HAKL: Right.

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1 MR. FRANKLIN: But at the same time I also  
2 want to give him the opportunity because of the  
3 question that's being asked.  
4 MR. HAKL: Okay. You can -- I mean like he  
5 said, answer the questions to the extent you can.  
6 If you can't answer them or don't know,  
7 that's perfectly fine, too.  
8 THE WITNESS: Well, I believe I already  
9 answered them, because in just when we talked about  
10 the finding of an emergency for the regulations is  
11 that the \$14 fee was insufficient to cover the cost  
12 of the DROS program in the Department of Justice and  
13 needed to bring in additional revenue.  
14 BY MR. FRANKLIN:  
15 Q. Okay. And when you say it was insufficient  
16 to cover the DROS -- I don't remember the word you  
17 used -- but you said it was insufficient to cover for  
18 a certain issue.  
19 A. The DROS program.  
20 Q. DROS program.  
21 How was it to the best of your knowledge  
22 determined that it was insufficient?  
23 A. The program was running in the red so there  
24 was more expenditures for the program than revenue  
25 coming in.

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1 Q. Was it the program itself that was running  
2 in the red or was it actually the DROS Special  
3 Account?  
4 A. Well, it's the funding source from the --  
5 that we use in order to pay for the expenditures  
6 associated with the program.  
7 Q. Okay. And I think I have this  
8 understanding, but I want to make it sure -- make  
9 sure is that it's my understanding that the  
10 2004/2005 rulemaking occurred because the DROS Fund,  
11 DROS Special Account, rather, was either almost out  
12 of money or out of money and the department needed  
13 more money for the DROS Special Account.  
14 I think that is the accurate statement, but  
15 I will ask Chief Lindley.  
16 MR. HAKL: We've produced documents on that  
17 issue.  
18 BY MR. FRANKLIN:  
19 Q. Right.  
20 And I'm sure defense counsel knows that one  
21 of the issues in this case is the distinction  
22 between the DROS program and the DROS Special Account  
23 so that's why I'm trying to clarify if the decision  
24 was made actually because of like background check  
25 costs that are related to the DROS program versus the

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1 DROS Special Account.  
2 But let's go back to what I stated about my  
3 understanding of how -- of how the special -- the  
4 2004/2005 rulemaking came about.  
5 And then that was that the DROS Special  
6 Account was either out of money or almost out of  
7 money and to resolve that issue the department did  
8 emergency rulemaking to increase the DROS fee.  
9 Is that a correct statement?  
10 A. Yes.  
11 I think we're bickering about nomenclature.  
12 But the funding that was coming to the  
13 department through the DROS fee associated with  
14 firearm purchases and transactions was insufficient  
15 for the department in order to continue its  
16 operations.  
17 Q. Okay. Okay.  
18 A. It also had not been raised since 1991.  
19 Q. So, changing topics.  
20 When did you first become aware of the  
21 existence of the DROS Special Account?  
22 A. April 2007. May 2007.  
23 Q. When did you first become aware of how the  
24 DROS fee is set?  
25 A. Generally the same time frame.

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1 Q. And what was your understanding at that time  
2 about how the DROS fee was set?  
3 A. I don't understand your question.  
4 Q. What was -- at the time you became aware of  
5 how the DROS fee was set, what was your understanding  
6 of the process used to set the DROS fee?  
7 A. So it was delineated in the penal code and  
8 gave the department the ability to raise it and the  
9 department last raised it in 2004/2005.  
10 Q. What factors are considered in that process?  
11 A. Are you talking about what I knew back in  
12 2007 or are you talking about what I know --  
13 Q. We're starting in 2007 and then if it's  
14 changed we'll get there.  
15 A. I think my understanding of it was somewhat  
16 limited at that time.  
17 Q. Okay. What's your current understanding?  
18 A. Can you repeat the question about --  
19 Q. Yeah. And let me -- and, you know, I think  
20 it's actually relevant that I'll say prior to SB 819  
21 becoming law, what was your understanding of the  
22 process for setting the DROS fee at that time?  
23 A. That the DROS fee needs to be set to the  
24 amount that the department can use it and fund the  
25 activities derived from the fee.

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1 Q. And how was that calculation -- well,  
2 strike that.  
3 Was the way in which that calculation  
4 performed primarily looking at the amount of money in  
5 the DROS Special Account as compared to anticipated  
6 cost in revenues?  
7 A. So we do have to look at the costs not only  
8 of today but going forward and also anticipate the  
9 amount of gun sales or gun transfers in California  
10 that can be a very dynamic issue, because it's hard  
11 to predict human behavior so that's pretty much how  
12 we look at it. And we have to predict if there's  
13 going to be enough funds in the surplus account to  
14 cover any loss of revenue from gun transfers in a  
15 particular year or if there's going to be sufficient  
16 amount of transfers and the fees associated with that  
17 to keep the program working on a given year.  
18 Q. How if at all are the specific types of  
19 costs identified in Penal Code 28225 used in setting  
20 the DROS fee?  
21 A. I think you need to be more specific about  
22 what you're looking at there.  
23 Q. Well, I think we all agree that the  
24 Penal Code Section 28225 lists various types of costs  
25 from anything from cost related to electronic

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1 transfer of information to cost related to providing  
2 information for mental health issues.  
3 And my question to you is:  
4 How are those specific types of costs  
5 considered, if at all, in the process of setting the  
6 DROS fee?  
7 A. We have operational costs on a lot of the  
8 things that we do especially associated with the  
9 DROS process and the work thereafter.  
10 So, we have to see what our expenditures are  
11 two years ago, today, and a prediction of what those  
12 expenditures might be in the future based on  
13 increases in facility costs and employee costs,  
14 you know, the amount of money that we're going to be  
15 bringing in we look at that constantly to try and  
16 determine if, you know, that is an appropriate fee.  
17 So far for the last 13 years it's been able  
18 to keep the program going forward.  
19 Q. So I think we're circling around the issue  
20 I'm interested in.  
21 Specifically what I'm trying to distinguish  
22 is whether or not the DROS fee is set based on a  
23 macro level analysis that is the total amount of  
24 money in the DROS account, DROS Special Account,  
25 and costs and expected revenues versus actually going

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1 through the specific costs identified in  
2 Penal Code Section 28225 and utilizing data as to  
3 each one of those costs to generate the amount that's  
4 going to be charged for the DROS fee.  
5 So, the question is:  
6 Does the department look at specific cost  
7 amounts for the items listed in Penal Code 28225 when  
8 it sets the DROS fee?  
9 A. The DROS fee has been -- has already been  
10 set since 2004.  
11 Q. Right.  
12 A. So it's not like we're reexamining it every  
13 single year to increase it.  
14 Q. How often does the department reexamine the  
15 DROS fee -- the amount being charged for the DROS fee  
16 rather?  
17 A. I think it's as we look at the amount of  
18 money that's coming in and amount of expenditures  
19 going out, if we believe that \$19 fee is going to  
20 cover those expenditures. And for the last 13 years  
21 it has, even though the amount of work that we do has  
22 probably quadrupled since then.  
23 If you look at the size of the bureau back  
24 in 2004 and you look at the size of the bureau now,  
25 we've done an excellent job in maintaining that \$19

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1 fee and doing a lot of things to keep costs down.  
2 Q. And I don't dispute that.  
3 But the question is specifically how is this  
4 DROS fee calculated?  
5 And, you know, my interest here is finding  
6 out if these specific cost items listed in  
7 Penal Code 28225 are being considered every time the  
8 department looks at the amount being charged for the  
9 DROS fee. You know, that's the question I'd like to  
10 ask.  
11 A. I think -- I think I've answered that in how  
12 we look at our budget and the expenditures that  
13 are -- that we can use the DROS fee for and the cost  
14 of the program and then what we're going to bring in.  
15 MR. FRANKLIN: You know, I respectfully  
16 disagree, Mr. Haki, you know.  
17 MR. HAKL: And there is -- this  
18 miscommunication problem it stems from like  
19 plaintiff's fundamental view of how things should be  
20 and operate in like your legal theory, and I mean I  
21 would submit that like the department and the witness  
22 simply does not look at the world that way.  
23 So, I mean, he's not -- I mean the  
24 obligation is on you to answer -- ask a good question  
25 about this.

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1 MR. FRANKLIN: Well, okay. So --  
2 MR. HAKL: I mean he's -- he's -- he sounds  
3 like he's doing the best that he can to me. I mean  
4 your question gets back -- I think a good way to go  
5 is this macro versus micro, even though that's vague,  
6 but that's kind of how you approached it with  
7 Mr. Harper I think.  
8 MR. FRANKLIN: Right.  
9 Well, I certainly don't agree with your  
10 characterization and I do think that the responses  
11 we're getting are not in line with the question.  
12 I can literally go through 28225 and we can  
13 look at every one of those costs and I can ask, you  
14 know, at the last time the fee was considered did you  
15 consider this. I think that's counterproductive, but  
16 if that's what I have to do to find out the answer to  
17 this question, I'll do it.  
18 MR. HAKL: I just -- I just don't think  
19 you're listening to his answers.  
20 MR. FRANKLIN: I am listening to his  
21 answers.  
22 MR. HAKL: Okay.  
23 MR. FRANKLIN: And what I'm hearing is an  
24 answer that is not going to the question I ask.  
25 My understanding is that the department

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1 figures out the DROS fee or whether or not to change  
2 it or analyzes it on whatever basis based on a macro  
3 level review that is consists of basically three  
4 elements: The current amount of money in the DROS  
5 Special Account; the anticipated expenditures that  
6 will be funded from the DROS Special Account; and  
7 the anticipated revenues that will be going into the  
8 DROS Special Account.  
9 If Mr. Lindley tells me that that is  
10 effectively an accurate description of how the  
11 DROS fee is analyzed in the department, we're done  
12 here. That question is resolved.  
13 MR. HAKL: I'm not sure you asked him that.  
14 BY MR. FRANKLIN:  
15 Q. Well, I will ask it now.  
16 A. Well, I've already answered that, but, yes,  
17 we look at it at a macro level.  
18 We take considerations of the other  
19 expenditures that could come out of DROS for not  
20 only, you know, Bureau of Firearms but CJS, but we  
21 don't get down into the fine, you know, the fine,  
22 you know, nitty-gritty of that. And if we did, it  
23 would cost a whole lot more money in order to operate  
24 that program which would be passed along to the  
25 DROS fee.

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1 Q. Yeah.

2 A. So, again, going back to, you know, the

3 statement, you know, from 2004 to today it's still

4 set at \$19. The department -- or I'm sorry -- the

5 bureau has expanded at least three times the size.

6 Our workload's probably four to five times

7 the workload that it was back in 2004, and because of

8 effective management of the DROS account, the DROS

9 surplus and our work product, it still has not been

10 raised.

11 Q. And, you know, I take no issue with the last

12 part of that. That certainly may well be true.

13 I think for the purposes of this deposition

14 the answer I got at the first half answered the

15 question. I think the rest I think as a matter of

16 doing a duty to my client I will move to strike as

17 nonresponsive. But I also think we've answered the

18 question and we can move on.

19 A. Well, I think you have to look at the entire

20 context.

21 MR. FRANKLIN: Yeah, same -- same move to

22 strike as nonresponsive.

23 Okay. So, let me give you a copy of SB 819.

24 I don't know that we need to introduce it,

25 but we can if that's what counsel wants, because I

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1 have a question about the language used.

2 And I'll represent I got this off of the

3 leginfo Web site. For some reason I only have two

4 copies. Where are we at Exhibit 5?

5 I'll give you a chance to review it.

6 (Exhibit No. 5 was marked)

7 BY MR. FRANKLIN:

8 Q. Then I'll tell you I think my questioning

9 will be limited to Section 1, Section (g).

10 Section 1, subsection (g).

11 A. Okay.

12 Q. To the extent -- well, let me take a step

13 back. Were you involved in the Bureau of Firearms

14 participate -- well, strike that.

15 Were you involved in the department's

16 participation as a sponsor of SB 819?

17 A. Yes.

18 Q. So you've read the statement and it talks

19 about an additional burden on the taxpayers of

20 California.

21 Is this statement consistent with the

22 department's position as of the time of SB 819?

23 A. I wouldn't be aware of that.

24 Q. Do you know if it's consistent with the

25 department's position now?

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1 A. I wouldn't say we're a burden on the

2 taxpayers of California for the work that we do.

3 Q. Oh. That's a fair point.

4 And other than that bit of possibly not

5 correct language, the concept of placing the payment

6 of these costs on the Dealers' Records of Sale

7 account as opposed to the taxpayers of California is

8 that a proposition that is consistent with the

9 department's current position?

10 A. I believe -- we believe that it's an

11 appropriate use of the DROS fund to pay for the

12 Armed Prohibitive Person System, the APPS system, as

13 opposed to taking it from the General Fund.

14 Q. Can you explain the basis for that

15 position?

16 A. The problem is caused by people who own

17 firearms. If you don't own a firearm and you don't

18 possess a firearm, you won't show up in the

19 Armed Prohibitive Person System.

20 Q. And that's, well, correct me if I'm wrong,

21 that's also true as to other people who are

22 illegally in possession of firearms who are not on

23 the APPS list?

24 A. Why would they be illegally in charge or in

25 possession of firearms? Do they have an assault

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1 weapon?

2 Q. Assault weapon or felon in possession or

3 any -- there's any number of reasons why people can

4 be -- mental health prohibition.

5 A. And the penal code allows us to enforce that

6 through the use of the DROS fee.

7 Q. And to clarify. I believe I understand

8 this. Is it the department's position that the cost

9 of APPS-based enforcement should be spread on

10 DROS fee payers regardless of whether or not they

11 actually become prohibited?

12 A. So, you're asking like if you're going to

13 buy insurance with your \$19 that if you're some day

14 going to get -- become prohibited, with that \$19 is

15 also going to cover your enforcement action?

16 Q. I don't think that's what I'm asking.

17 So, for example, is the department's

18 position that all DROS fee payers should be

19 responsible for the burden of APPS enforcement?

20 MR. HAKL: It's I mean -- objection.

21 The department's -- I mean you can ask --

22 the department's position is irrelevant inasmuch

23 as -- I mean we're talking about a statute here and

24 this is what the legislature has authorized --

25 MR. FRANKLIN: Yeah.

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1 MR. HAKL: -- so...  
2 I mean -- and related I mean you're --  
3 you're coming close to asking him to interpret 28225  
4 and what it means to him and ultimate -- and we  
5 have -- I mean that's at the heart of this case.  
6 Ultimately it's going to be up to the  
7 judge to determine what, you know, these findings say  
8 versus what the subdivision says and things like that  
9 so...  
10 I mean you can ask him, but I'm not sure  
11 it's relevant and it probably calls for an  
12 inappropriate legal conclusion, but you can ask him.  
13 MR. FRANKLIN: Yeah, and I'll explain where  
14 I'm coming from. I don't know that it will resolve  
15 those issues but I will do it.  
16 So, first off, I think we're actually done  
17 with this document.  
18 MR. HAKL: All right.  
19 MR. FRANKLIN: So that's the first thing.  
20 I just wanted to show it as a context to see  
21 what the -- you know, see if this same thought  
22 process was going on in the department.  
23 The second issue is that what's currently  
24 relevant in this case in the Fifth and Ninth Causes  
25 of Action that have been bifurcated out, one of the

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1 issues is how the DROS fee is being set and analyzed  
2 by the department the amount and that goes to what is  
3 being considered.  
4 One of the things we're trying to identify  
5 is what burdens and benefits are being considered in  
6 setting the DROS fee. So that's where this question  
7 comes in is whether or not this is a burden that the  
8 department says is shared equally among all DROS fee  
9 payers that is legal firearms purchasers and just the  
10 people who ultimately become prohibited.  
11 I certainly have my own opinions on that,  
12 but my job here is to get the record of what the  
13 department looks at in terms of these burdens and  
14 how they're allocated. So the --  
15 MR. HAKL: Just real quick.  
16 I'm not sure the benefits and burdens issue  
17 goes to the Fifth or Ninth Cause of Action, but we  
18 can disagree about that.  
19 MR. FRANKLIN: Fair enough.  
20 We probably -- probably do so...  
21 MR. HAKL: Just off the record.  
22 MR. FRANKLIN: Okay.  
23 MR. HAKL: Never mind.  
24 (Off-the-record discussion)  
25 (Whereupon, a brief recess was taken)

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1 BY MR. FRANKLIN:  
2 Q. After Senate Bill 819 became law, did the  
3 way in which the amount of the DROS fee is analyzed  
4 by the department change in any way?  
5 A. I think you have to talk about time frame.  
6 Initially, no, it did not.  
7 Q. And then after initially?  
8 A. Yes. Because there's now a cost associated  
9 from the Armed Prohibitive Person System that are  
10 being paid for out of the DROS fee.  
11 Q. And as of yet that hasn't led to an  
12 increase in the DROS fee?  
13 A. Not as of yet, no.  
14 Q. Based on your understanding of how the  
15 DROS fee is to be calculated at this point in time,  
16 is it possible that the DROS fee could be increased  
17 due to the costs of APPS-based law enforcement?  
18 A. I would say it a different way.  
19 I wouldn't just blame it on the cost of  
20 APPS enforcement, but the last time it was -- the  
21 DROS fee was raised was, you know, 13 years ago. So,  
22 costs have increased since then over the department  
23 including the bureau.  
24 So, unless there's another revenue source  
25 that comes in, eventually all fees will be increased

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1 including the DROS fee.  
2 When that happens I have no idea.  
3 Q. So, is it fair to state that the amount of  
4 the money being spent on APPS-based law enforcement  
5 activities is a consideration when the department  
6 analyzes the propriety of the DROS fee being  
7 charged?  
8 A. I would use a different word than propriety.  
9 But is that a calculation in the costs that  
10 is covered by the DROS fee, yes.  
11 Q. And that's new at some point after  
12 Senate Bill 819 became law, correct?  
13 A. Not necessarily.  
14 So we had an APPS program before 819.  
15 819 just allowed the expansion of that fee  
16 to cover possession that deals a lot with the APPS  
17 program. And, yes, it's covered under that.  
18 Some of that change in the budget was done  
19 at the Governor's level not at the department level.  
20 And then recently other parts of the  
21 APPS program had been moved in part to other  
22 funding sources besides DROS.  
23 Q. Well, since SB 819 became law, does the  
24 department consider anything about the specific  
25 individuals paying the DROS fee when looking at what

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1 level the DROS fee should be set at?  
2 MR. HAKL: Objection. Vague.  
3 But you can answer it.  
4 THE WITNESS: I don't quite understand it.  
5 BY MR. FRANKLIN:  
6 Q. So that what I'm trying to avoid -- so it's  
7 my understanding that on some kind of interval the  
8 department looks at the amount being charged of the  
9 DROS fee to figure out if it's the amount the  
10 department wants.  
11 Now I say propriety, but if there's a better  
12 way to phrase that, I'm open to it.  
13 A. So, it's not what the department wants.  
14 It's what the department needs in order to  
15 cover the program.  
16 Q. Okay. So, let's -- I think it will be  
17 helpful to get some kind of name for the department's  
18 analysis of whether or not the DROS fee is currently  
19 meeting its needs. But I do have a side question.  
20 Is part of that analysis that I just  
21 describe also whether or not the amount in the  
22 DROS Special Account is excessive as to the  
23 anticipated needs of the department?  
24 A. Are you asking if I believe that that \$19 is  
25 an excessive fee at this point?

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1 Q. No. No.  
2 What I'm asking is:  
3 Does the process only consider whether the  
4 amount is sufficient to meet needs or does the  
5 process also consider whether or not the amount at  
6 any given time is well beyond what is anticipated to  
7 be needed?  
8 A. We have considered that in the past in the  
9 2010 fee decrease regulation.  
10 Q. Right. We'll definitely get there.  
11 But I just want to make sure I understand  
12 the policy now, because it will help when we set this  
13 defined term, you know.  
14 And, again, open to you suggesting one.  
15 But the way I see it is that the department  
16 does some kind of analysis to figure out whether or  
17 not the currently charged DROS fee is either  
18 insufficient or vastly more than is anticipated to be  
19 needed to provide funding for the operations that are  
20 funded out of the special account.  
21 So I've said all that. I'm trying to get a  
22 workable term here. Is there a workable term that  
23 you can see for that concept?  
24 A. So, I think we have more of a discussion  
25 than maybe a term.

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1 When we look at the costs associated with  
2 that are going to be paid out of the DROS fee, that's  
3 a lot of different costs.  
4 We also have two other fee sources as well.  
5 So, when we're just looking at the \$19 fee,  
6 is that sufficient in order to cover costs. We also  
7 have to have somewhat of a backup with that.  
8 So, looking at if a catastrophe happens, we  
9 need at least six months to a year of funding in the  
10 DROS account in order to pay for even if we have to  
11 start laying employees off, we have to go through a  
12 certain state process. So is there going to be  
13 funding there. So we always need somewhat of a  
14 surplus.  
15 Then you look at future anticipated cost.  
16 IT costs, for instance. The DROS system itself was  
17 last built in 1996. So, one of the examples of that  
18 is look at your iPhone. Was that around in 1996? It  
19 was not. So, we're using 1996 technology. We're  
20 actually using probably 1994 or 1993 technology  
21 because that's when the system was started.  
22 So, we have to also anticipate future costs  
23 that maybe are five or ten years down the road and do  
24 we have sufficient funds in order to save up for  
25 those changes or whose going to pay for those

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1 changes. So that's part of the analysis.  
2 At one time part of the analysis was we  
3 thought we had an excessive amount in there and that  
4 led to the 2010 rulemaking process. So it is a  
5 consideration. Is it a consideration every year for  
6 reduction, no, because we're not in that place in the  
7 DROS surplus account or in the fee structure.  
8 We've done a lot of things over the years in  
9 order to cut costs associated with that process so we  
10 don't have to raise the fee.  
11 Recently I believe it was two thousand  
12 and -- 2014 when long gun retention came into effect.  
13 We also reduced the amount of fees that are being  
14 paid for multiple gun purchases.  
15 So, prior to that date if you purchased  
16 three or four rifles at one time, you paid a DROS fee  
17 for each one of those rifles for one background  
18 check.  
19 Now we just charge for one background check  
20 for multiple firearms. That's a savings to the  
21 gun owners or other prospective gun owners and that  
22 has impacted our DROS account, because we're losing  
23 about 10 percent of revenue generation on an annual  
24 basis since then.  
25 So those are all the things that go into

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1 just seeing if we have sufficient funding from that  
2 \$19 in order to operate the bureau.  
3 Q. Okay. Taking all of that into account,  
4 in my mind it would be sufficient to refer to that as  
5 the DROS amount review or a DROS amount review.  
6 Does that make sense?  
7 A. I wouldn't use that term, but I think that  
8 makes sense. I understand where you're coming from.  
9 Q. I mean I'm sure we got a bunch of good minds  
10 here we could figure it out after working it out for  
11 two hours, but I think that's going to serve our  
12 purposes today.  
13 And then I think I heard in that response  
14 about a yearly performance, but I don't want to put  
15 words in your mouth.  
16 So, roughly how often since SB 819 became  
17 law has a DROS amount review occurred?  
18 A. So, the DROS account is probably one the  
19 most heavily scrutinized accounts that we have in  
20 this department.  
21 Dave Harper and I talk constantly about  
22 expenditures out of that and we at least look at it  
23 on an annual basis. If we think, you know, my  
24 projections about expenditures and revenue generation  
25 match with his we have to talk about that. And if

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1 they're in relation -- usually the costs associated  
2 with operating the program are pretty much in place,  
3 but we also have to look at what revenue is going to  
4 be generated and coming in.  
5 We talk about it I wouldn't say constantly,  
6 but we at least do an annual review about what we  
7 think is going to happen in the next year to two  
8 years, because we always project out in order to  
9 make sure that we have enough money, and then we  
10 constantly monitor that throughout the year, not only  
11 at the bureau level, but at the division level and  
12 the department level.  
13 Q. Okay. Yeah, that's helpful.  
14 I think I have a couple of questions about  
15 what the department does or does not consider in  
16 setting the DROS fee, although, I feel like the  
17 information I heard earlier today may limit this, but  
18 I have to ask them.  
19 So, when the department is doing its  
20 DROS amount review, does it look at any particular  
21 things about specific individuals who are paying the  
22 DROS fee?  
23 MR. HAKL: Objection, vague, as to specific  
24 individuals, but go ahead, you can answer.  
25 THE WITNESS: One is I don't characterize it

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1 how you look at it is we're looking at it to set the  
2 DROS fee.  
3 What we look at is our revenue, our  
4 anticipated revenue coming in going to be adequate  
5 enough in order to cover our costs.  
6 If that answer is yes then, you know, great,  
7 we're in good shape.  
8 If that answer is no that's where the  
9 problem comes in, because again it hasn't been raised  
10 in 13 years.  
11 So, if in your characterization we had  
12 some massive surplus of -- I don't know what would be  
13 a massive surplus to you -- let's say we had  
14 \$50 million in surplus, should we look at a revenue  
15 decrease on it or a fee decrease, possibly. But  
16 that's not the case. We haven't been in that  
17 situation, because we have other obligations that we  
18 have to save for down the road.  
19 So we don't get together and say, all right,  
20 we're going to do our annual review of whether the  
21 DROS fee is going to be increased or decreased.  
22 What we look at is whether the funding  
23 coming in is going to cover the expenditures of the  
24 program. And we look at different ways to manage  
25 that.

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1 Q. That's all information that I appreciate and  
2 is relevant. And I'm just still trying to check off  
3 this question. And, again, I think I understand the  
4 answer, but so the question I have is this:  
5 Is it correct to say that in setting the  
6 DROS fee the department doesn't consider whether a  
7 specific fee payer might become prohibited later on?  
8 A. So, I'll, again, when you talk about how we  
9 setting the fee, the fee is set. So, I guess we can  
10 go round-and-round with that with that determination.  
11 Um, but to the second portion of your  
12 question about whether or not we consider the  
13 individual person who may or may not become  
14 prohibited do we factor that into our calculation of  
15 the DROS fee, no, we do not.  
16 Q. And that is the question I was looking to  
17 have answered so I can cross some stuff out.  
18 Okay. On the other side of the coin,  
19 are there any benefits to DROS fee payers that get  
20 considered when the DROS amount review occurs?  
21 MR. HAKL: Just objection in terms of I mean  
22 burdens and benefits can be legal terms of art when  
23 it comes to --  
24 MR. FRANKLIN: Sure.  
25 MR. HAKL: -- you know, some of the claims

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1 in this case about tax versus fee and all that.  
2 So, you know, to the extent you're going to  
3 talk about burdens and benefits that's just an  
4 objection that it calls for a legal conclusion and  
5 the term may be vague depending on how you intend it.  
6 But he can answer your questions to the extent he  
7 can.  
8 THE WITNESS: Can you answer or ask that  
9 again, please.  
10 BY MR. FRANKLIN:  
11 Q. Yeah, I'll just reword it again.  
12 Does the department consider any benefits  
13 received by DROS fee payers when setting the  
14 DROS fee?  
15 A. Outside of what they get for the fee  
16 there is they get a lot of enforcement, a lot of  
17 regulatory process, a lot of, you know, public safety  
18 concerns with that fee and that's what we're in the  
19 business of doing.  
20 Q. And those -- those items you mentioned,  
21 those are benefits to society or California as a  
22 whole?  
23 A. Some are. But a lot of them are  
24 concentrated around the firearm industry, the firearm  
25 possessors.

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1 Q. Could you tell me what those kind are the  
2 ones that are concentrated on the firearm possessors?  
3 A. Okay. Making sure they have a safe firearm.  
4 That's making sure that, you know, there's a  
5 background check. That, you know, people that are  
6 going to gun stores, people that are going to gun  
7 ranges that hopefully they're not prohibited. They  
8 don't have mental health issues. They're not  
9 convicted felons. And does that have some bleed over  
10 into society, yes. But the problem is caused by  
11 people who are purchasing, possessing, selling  
12 firearms.  
13 Q. So I have one more question on this.  
14 The benefits of APPS-based law enforcement  
15 activities, is that a benefit that goes to the  
16 DROS fee payers or is that a benefit that goes to the  
17 public?  
18 MR. HAKL: Same objection regarding benefit,  
19 but you can answer the question.  
20 THE WITNESS: Is there an impact to society  
21 as a whole for public safety through APPS  
22 enforcement, yes. Is there a benefit to the  
23 individual gun owner, yes. But the problem is caused  
24 by people who purchase, possess, use firearms.  
25 If you don't have a firearm, you're not

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1 going to show on the APPS system.  
2 BY MR. FRANKLIN:  
3 Q. I think you testified earlier that you were  
4 involved in the sponsorship of -- the department  
5 sponsorship rather of SB 819; is that correct?  
6 A. Yes.  
7 Q. When did that involvement start?  
8 A. Staff from Senator Leno's office contacted  
9 the department and I was asked to interact with them  
10 on the merits of 819, potential language of it, and I  
11 was asked to testify at least two hearings associated  
12 with the bill.  
13 Q. Did Senator Leno's office contact you --  
14 well, strike that.  
15 Had you been involved in drafting SB 819  
16 before Senator Leno's office contacted you?  
17 A. I had not, no.  
18 Q. And I'm reading into that.  
19 Is it true that you believe the department  
20 may have been involved in SB 819 before you were?  
21 A. I don't know that.  
22 Q. And when Senator Leno's office contacted you  
23 they had a draft at that time?  
24 A. I believe they wanted to sit down with our  
25 leg office and us just about the merits of 819.

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1 I believe that they did have some sort of  
2 rough draft of 819.  
3 Q. And you don't know as you sit here today  
4 whether or not that came from the department or from  
5 Senator Leno's office?  
6 A. I do not know.  
7 Q. Do you remember a discussion in the  
8 department about the specific language being used in  
9 SB 819 and even more specifically the addition of the  
10 word "possession" to Penal Code Section 28225?  
11 A. Yes.  
12 Q. Do you remember where the origin of that  
13 proposed change what the origin of that proposed  
14 change was?  
15 A. Define your "origin".  
16 Q. Like the person who thought of it.  
17 A. I'm thinking that I might take credit for  
18 that particular word, but I can't guarantee that.  
19 Q. After that idea was made public if it was  
20 from you or from someone else, was there any  
21 discussion within the department about whether or not  
22 adding that single word was sufficient to meet the  
23 department's goals in sponsoring SB 819?  
24 A. I don't know about the goals, but I believe  
25 it was sufficient for what we wanted to accomplish or



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1 what the senator's office and the AG wanted to  
2 accomplish out of 819.  
3 Q. Do you specifically remember what the AG's  
4 office wanted to accomplish out of SB 819?  
5 A. They wanted to broaden the term so that we  
6 can find a source of potential expansion of the DROS  
7 fee to pay for APPS enforcement.  
8 Q. And then just so I understand.  
9 APPS enforcement here is enforcement  
10 activities as to anyone in California whose  
11 illegally possessing a firearm?  
12 A. Not -- no. Anyone who is possessing a  
13 firearm that is prohibited. You can be --  
14 Q. True. It could be an illegal firearm.  
15 A. Correct.  
16 Q. Yeah, that's a weird nomenclature issue  
17 but...  
18 A. Yeah.  
19 Q. So, let me restate.  
20 Was it your understanding that the  
21 department's or the AG's goal of SB 819 was to open  
22 up the DROS Special Account as a funding source for  
23 law enforcement-related activities related to  
24 removing firearms from the possession of people who  
25 are prohibited from possessing firearms?

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1 MR. HAKL: Objection. Argumentative as to  
2 open up the account, but go ahead.  
3 MR. FRANKLIN: Whatever the term the  
4 deponent uses is what I meant to say.  
5 THE WITNESS: I believe the department was  
6 looking for a revenue source in order to prohibit the  
7 possession of firearms by prohibited individuals.  
8 BY MR. FRANKLIN:  
9 Q. Okay. Were there any other activities that  
10 the department was looking to fund out of SB 819  
11 other than what you just explained?  
12 A. Not at that time.  
13 Q. That's changed?  
14 A. I -- you asked the question. I don't think  
15 it's changed, but at that time --  
16 Q. Okay.  
17 A. -- I don't think there was any other  
18 intention with that. And, again, it wasn't just  
19 solely the department's.  
20 There was a number of other individuals that  
21 wanted the DROS fee to be used for that type of  
22 enforcement.  
23 Q. And I'm doing my best to segregate out the  
24 department's work versus the department and  
25 Senator Leno's office pursuant to the instructions

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1 we've gotten from the court.  
2 Were you involved in the 2010 rulemaking?  
3 A. Yes.  
4 Q. When did you first become involved in that?  
5 A. Since its inception.  
6 Q. Do you remember approximately when that  
7 was?  
8 A. No.  
9 I remember Dave Harper, myself, at that time  
10 Chief Will Cid, maybe a couple other people, we had a  
11 discussion about a letter that the department  
12 received from then Assembly Member Jim Nielsen about  
13 the surplus in the DROS account.  
14 Q. Okay. That was actually one of my next  
15 questions. So, is it fair to state that  
16 Assemblyman Nielsen -- then Assemblyman Nielsen's  
17 inquiry about the DROS surplus was at least one of  
18 the factors in moving forward on the 2010 rulemaking?  
19 A. I think that started any discussion and  
20 examination of the DROS fee, yes.  
21 Q. Approximate -- so I believe the letter is  
22 2009. But does that -- fall 2009.  
23 Does that roughly sound like the right time  
24 frame for the communication you were discussing?  
25 A. Yes. I can't give you a month, but within a

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1 couple weeks of that of us receiving that letter.  
2 And there's obviously a date on that letter.  
3 Q. Uh-huh.  
4 MR. HAKL: I think it's Nielsen,  
5 N-i-e-l-s-e-n.  
6 MR. FRANKLIN: Like the rating system.  
7 THE WITNESS: Yeah.  
8 MR. HAKL: Keep making X's. That's good.  
9 BY MR. FRANKLIN:  
10 Q. Yeah.  
11 Your involvement with the 2010 rulemaking  
12 began before your involvement with SB 819, correct?  
13 A. Yes.  
14 Q. When the first work on the 2010 rulemaking  
15 commenced, you were either Acting Director or  
16 Director at that time. I think you were  
17 Acting Director.  
18 A. I was either acting or the assistant, yeah.  
19 MR. HAKL: And just to be clear.  
20 At the time it was actually Chief.  
21 THE WITNESS: Chief, yeah.  
22 MR. HAKL: And just to clarify.  
23 You're talking of the bureau?  
24 MR. FRANKLIN: Right.  
25 MR. HAKL: Yeah.

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1 BY MR. FRANKLIN:  
2 Q. Maybe I'm going to state it this way.  
3 At the time of the commencement of the  
4 2010 rulemaking discussion, you were the highest  
5 level person in the Bureau of Firearms?  
6 A. I was either the highest level or the second  
7 highest.  
8 Q. Okay. And ultimately the bureau did  
9 institute a rulemaking on the potential reduction of  
10 the DROS fee, correct?  
11 A. I would use a different term.  
12 We went through the process.  
13 Q. And was that largely based on what  
14 Senator Nielsen had identified?  
15 A. I wouldn't say largely based.  
16 I mean he focused our attention on it and  
17 then we put attention towards the issue and it was  
18 decided by the administration at the time to look  
19 into the merits of reducing the fee.  
20 Q. Okay. The reason I'm trying to make sure I  
21 got all the players -- I have all the players here is  
22 my memory is that -- well, my memory and my note in  
23 front of me is that in the Bauer matter you had  
24 mentioned that you were instructed to do it. And I  
25 didn't know if you meant you were instructed by the

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1 Senate -- the assemblyman or if you meant you were  
2 instructed by someone in your chain of command.  
3 A. It would have been in my chain of command  
4 here at the department. We don't have to take the  
5 instructions from the legislators, although, we take  
6 their opinions and their guidance there.  
7 So, Senator Nielsen, to use a euphemism, he  
8 pushed the, you know, the cart kind of down the hill,  
9 and then it gained speed from there.  
10 MR. FRANKLIN: Okay. So, I'm going to  
11 introduce this just to establish a date.  
12 I don't think I even have any questions,  
13 unless you think it's not an accurate copy.  
14 (Exhibit No. 6 was marked)  
15 BY MR. FRANKLIN:  
16 Q. So, if I understand this document correctly,  
17 this would be the opening document for what I refer  
18 to as the 2010 rulemaking.  
19 Is that a correct understanding?  
20 A. But it doesn't have any signatures here so  
21 it usually has signatures.  
22 Q. Okay.  
23 A. But so you're just referring to the  
24 July 9th.  
25 Q. Either 9th or 23rd. I don't -- I guess the

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1 23rd might be the more accurate date because it's the  
2 literal publication date.  
3 A. That sounds right.  
4 (Off-the-record discussion)  
5 BY MR. FRANKLIN:  
6 Q. Back on the record.  
7 So, you have no reason to believe that the  
8 first public notice of this potential regulation was  
9 not July 23rd, 2010?  
10 A. Yes. I mean the document doesn't have  
11 signatures on it, but it was summer-ish of 2010.  
12 Q. Okay. And you were involved in the -- as of  
13 that date you were involved in what I've called the  
14 2010 rulemaking process?  
15 A. Yes, I was. I was head of the bureau at the  
16 time.  
17 MR. FRANKLIN: Okay. Have you look at the  
18 next exhibit which will be 7.  
19 (Exhibit No. 7 was marked)  
20 BY MR. FRANKLIN:  
21 Q. I'll give you a moment to review it.  
22 A. Okay.  
23 Q. Were you involved in drafting this document?  
24 A. Not in drafting it, but in reviewing it.  
25 Q. And then so this Notice of Proposed

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1 Rulemaking if I understand it correctly basically has  
2 two proposals in it.  
3 One is to reduce the DROS fee and the other  
4 is to set up a DROS fee review process.  
5 Is that a fair characterization?  
6 A. Yes. But there was a reason that we were  
7 dropping it to \$14.  
8 Q. Okay. What was the reason?  
9 A. We were going to I guess for lack of a  
10 better term "burn off" some of the surplus by  
11 putting the program into deficit and thereby taking  
12 money out of the DROS surplus in order to pay for  
13 operating costs. So we get the DROS surplus down to  
14 an agreed upon six months to one year operating  
15 amount and then after that set the fee what would be  
16 commensurate with an annual operation of a budget  
17 and the fee structure.  
18 Q. So, let me make sure I understand this.  
19 Was the \$14 amount in the scenario you just  
20 laid out, was the \$14 amount a temporary amount to as  
21 you say "burn off" surplus or was it the amount to be  
22 in place after the surplus was burned off?  
23 A. We would have to see.  
24 So, what we needed to look at and I think it  
25 was in the part of the letter from senator or, I'm

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1 sorry, Assemblyman Nielsen at that time is for us to  
2 burn off some of the surplus, because it had expanded  
3 to -- and I forget the exact amount at that time --  
4 so we wanted to burn some of that off.  
5 The only way we can do that is to bring in  
6 less revenue than our operating cost, and then after  
7 we get down to a certain amount, whatever that amount  
8 was going to be, let's say it was going to be  
9 \$4 million in the surplus, then we would start  
10 looking at setting the DROS fee commensurate with  
11 what our operating costs were at that time and that's  
12 what was being proposed.  
13 Q. Do you know how the number \$14 was -- how  
14 the department came to that number?  
15 A. That was what we had before and seemed a  
16 reasonable amount under the penal code, because  
17 that's what is delineated in the penal code.  
18 Q. So, during the 2010 rulemaking process,  
19 did the department ever analyze what -- setting aside  
20 the burn off issue -- what the DROS fee should be?  
21 A. We had discussions about it, but there's a  
22 lot of different components to that. But we had  
23 discussions about what it might be at that time.  
24 Q. Do you know if there were any written  
25 calculations done?

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1 A. I don't know.  
2 Q. And so I believe I understand the process  
3 here. In a general sense it sounds like the  
4 decision-makers working on the rulemaking determined  
5 that \$14 was believed to be less than the actual  
6 processing costs of processing a DROS?  
7 A. At that time, yes.  
8 Q. But it wasn't ever a specific calculation  
9 that led to the number \$14 was it?  
10 A. Okay. Explain that one.  
11 Q. So, for example, during the 2010 rulemaking  
12 process did the department ever identify what it felt  
13 to be the cost of processing a DROS application?  
14 MR. HAKL: Just -- objection.  
15 You're referring to the cost of processing a  
16 DROS application which is your legal position as to  
17 what DROS fee revenues can be used for.  
18 MR. FRANKLIN: Well, it's in the rulemaking  
19 document so we'll get there, too.  
20 MR. HAKL: Okay.  
21 MR. FRANKLIN: Yeah.  
22 I think the language is commensurate with  
23 the cost of processing a DROS fee so that's the  
24 language I'm relying on.  
25 MR. HAKL: Okay.

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1 MR. FRANKLIN: Can we go back to the  
2 question.  
3 (Record Read)  
4 THE WITNESS: You want me to answer that?  
5 BY MR. FRANKLIN:  
6 Q. Please.  
7 A. So we didn't look at just processing the  
8 DROS application. We looked at what was going to be  
9 commensurate to pay for the DROS process and the  
10 associated programs in the DROS unit.  
11 Q. So, if I understand, it is similar to the  
12 same process you told us about that I tried to  
13 characterize as the DROS amount review?  
14 A. Again, going backwards.  
15 The DROS pays for a number of different  
16 things within the department and within the bureau.  
17 We looked at what was -- what expenditures  
18 we had as part of that and how quickly we could bring  
19 down the surplus to having those programs basically  
20 run into the red and then as part of the rulemaking  
21 process it talked about that we start looking at the  
22 revenues and the DROS-related expenses at the end of  
23 each fiscal year in order to set the DROS amount for  
24 the next subsequent fiscal year.  
25 MR. FRANKLIN: So, are we on 8?

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1 THE REPORTER: Uh-huh.  
2 MR. FRANKLIN: Please review the  
3 document.  
4 (Exhibit No. 8 was marked)  
5 BY MR. FRANKLIN:  
6 Q. I believe my questioning is really only  
7 limited to the second to the last sentence in the  
8 first paragraph.  
9 A. The one that starts with:  
10 "The proposed regulations lower the current  
11 \$19 DROS fee to \$14, commensurate with the actual  
12 cost of processing a DROS."  
13 Q. Yeah.  
14 A. Okay. So what's your question?  
15 Q. Is -- when I read that sentence it says to  
16 me that the department identified \$14 as commensurate  
17 with the actual cost of processing a DROS.  
18 And is that accurate that the department  
19 made such a finding?  
20 A. If the lowering of the fee was to drain part  
21 of the surplus. There was no calculations done on  
22 the, as it quotes here, the actual cost of processing  
23 a Dealer Record of Sale transaction. We look at what  
24 is covered under the fee and our operations.  
25 Which goes back to the notice about

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1 increasing the fee that we review the DROS revenues  
2 and DROS related expenses at the end of each fiscal  
3 year to determine whether it is necessary to address  
4 the DROS fee. But that was after we were going to  
5 drain some of the surplus in the DROS account -- the  
6 DROS surplus account actually.  
7 Q. So we just looked at an "Initial Statement  
8 Of Reasons" and I have the next exhibit is a  
9 "Final Statement of Reasons".  
10 But I want to know, generally speaking, when  
11 is a "Final Statement of Reasons" issued in the  
12 rulemaking process?  
13 A. I'm not an expert on that.  
14 I roughly know how the process goes so I'm  
15 not sure exactly where that actually fits in.  
16 Q. Okay.  
17 A. But it does fit in.  
18 Actually towards the end.  
19 MR. FRANKLIN: Are we at 9?  
20 THE REPORTER: Uh-huh.  
21 (Exhibit No. 9 was marked)  
22 BY MR. FRANKLIN:  
23 Q. So, I'll represent this document was  
24 produced in this action as a part of the 2010  
25 rulemaking file.

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1 Do you have an understanding as to why this  
2 Final Statement of Reasons would be in the rulemaking  
3 file?  
4 A. No.  
5 Q. Is it your understanding that a "Final  
6 Statement of Reasons" is normally issued after the  
7 department has made a final decision to adopt a  
8 regulation?  
9 A. That sounds reasonable, but I don't know  
10 that for sure.  
11 Q. That's all I have for that document.  
12 Do you know if this rulemaking was ever sent  
13 to the Office of Administrative Law?  
14 A. I don't believe that it was.  
15 Q. Do you know why it was not sent to the  
16 Office of Administrative Law?  
17 A. I know there was a transition between the  
18 two administrations from the Attorney General Brown  
19 Administration and Attorney General Harris  
20 Administration and it was left for the Harris  
21 Administration to review.  
22 MR. HAKL: I mean No. 6, Exhibit No. 6 is  
23 stamped by OAL.  
24 MR. FRANKLIN: I mean we're already -- I  
25 think we're already beyond the question.

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1 MR. HAKL: Right.  
2 MR. FRANKLIN: So, I don't have any other  
3 OAL questions for him.  
4 MR. HAKL: Right. Okay.  
5 I mean having -- I mean --  
6 MR. FRANKLIN: I think we're beyond it.  
7 MR. HAKL: Okay.  
8 THE WITNESS: But still I mean there's no  
9 signatures on this from --  
10 MR. FRANKLIN: So, yeah. I'm just -- I'm  
11 working with what is available to me.  
12 MR. HAKL: No. I'm just trying to --  
13 MR. FRANKLIN: Well, I don't have any other  
14 OAL questions.  
15 MR. HAKL: All right.  
16 BY MR. FRANKLIN:  
17 Q. Okay. So we were talking about the change  
18 in leadership at the department.  
19 After the change in leadership what happened  
20 to the 2010 rulemaking?  
21 A. It was never adopted obviously.  
22 Q. Was there a decision not to adopt it?  
23 A. I'm assuming there was because it wasn't.  
24 But that decision was made well beyond my grade.  
25 Q. Do you have an understanding as to why the

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1 rulemaking was not adopted?  
2 A. From hearsay.  
3 Q. It's still relevant in a deposition.  
4 A. They wanted to move forward. There was a  
5 number -- not many people liked the idea of reducing  
6 the DROS fee for one reason or another. There were  
7 ideas about using the surplus DROS fee in order to  
8 pay for APPS enforcement and that's the way the  
9 administration wanted to go.  
10 Q. When you were working on the 2010  
11 rulemaking, SB 819 came to your attention?  
12 A. No. 819 didn't start until 2011.  
13 This rulemaking process that we're working  
14 on was in 2010.  
15 Q. Right.  
16 So, in my mind the process was ongoing until  
17 it was abandoned or whatever term you want to use to  
18 signify that the rulemaking was definitively not  
19 going to be adopted.  
20 So, did you cease having any  
21 responsibilities as to the 2010 rulemaking before  
22 your work on SB 819 started?  
23 MR. HAKL: Vague.  
24 I don't understand the question, but you may  
25 answer it.

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1 THE WITNESS: Yeah. I'm --  
2 BY MR. FRANKLIN:  
3 Q. I'm trying to figure out the time frame and  
4 the interaction between the two issues. That's kind  
5 of like where I'm looking to go.  
6 A. Can we maybe break it down into smaller  
7 chunks then?  
8 Q. Yeah.  
9 The time frame is roughly that in within  
10 looking at the documents I think the Initial  
11 Statement of Reasons for the 2010 rulemaking was  
12 September, maybe November of 2010. I think it might  
13 have been right before the election.  
14 Then we have the election and Ms. Harris  
15 becomes the Attorney General.  
16 And then soon after within I think it's  
17 probably three or four months someone in the  
18 department starts working on SB 819 and then  
19 presumably some point after that you become informed  
20 of SB 819 and what it's about.  
21 Generally speaking does that timeline sound  
22 correct to you?  
23 A. Yeah.  
24 Q. It's admittedly a general timeline.  
25 MR. HAKL: Where are you getting those

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1 dates? Just from your recollection?  
2 MR. FRANKLIN: I think -- I think the --  
3 MR. HAKL: And I'm only asking, because we  
4 have the Initial Statement of Reasons in front of us  
5 and there's no date on it.  
6 MR. FRANKLIN: The Notice of Rulemaking I  
7 believe sets a date of a public hearing.  
8 MR. HAKL: Okay.  
9 MR. FRANKLIN: Yes. September 15th, 2010.  
10 MR. HAKL: Right.  
11 MR. FRANKLIN: So that's -- I think that's  
12 where my numbers are coming from.  
13 I also have some recollection of the timing  
14 of the two actually occurring at that time.  
15 I don't -- I don't think there's any  
16 dispute there, but if I'm wrong, you know, we'll find  
17 out.  
18 MR. HAKL: No. I just don't -- I mean,  
19 yeah. I mean you can testify as to the best of your  
20 recollection.  
21 BY MR. FRANKLIN:  
22 Q. I think Ms. Deven -- Ms. Devencenzi  
23 testified about her time frame being early in 2011 as  
24 starting working on SB 819.  
25 I think I've also seen some e-mails coming

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1 from London Biggs that were around that time frame as  
2 well so...  
3 Now that we've completely prevented you from  
4 remembering what the question was...  
5 A. Actually, I do.  
6 So that time frame seems reasonable.  
7 Q. Okay. When you were -- so when did your  
8 activity on the 2010 rulemaking end?  
9 A. As far as my real involvement it was after  
10 we did the -- what are they called -- the public  
11 comment period and we had to write up our responses  
12 to the public comment and submit the package up to  
13 the Executive Office. So, late -- late October,  
14 early November of 2010.  
15 Q. And to the best of your memory the package  
16 was submitted to the Executive Office on this  
17 proposed rulemaking?  
18 A. I don't know where it landed, but we sent it  
19 on its path.  
20 Q. At any point were you a participant in any  
21 discussion about the potential interaction between  
22 the 2010 rulemaking and SB 819?  
23 MR. HAKL: Objection. Vague.  
24 But, go ahead, you can answer the question.  
25 THE WITNESS: Yeah. Maybe rephrase that.

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1 BY MR. FRANKLIN:  
2 Q. So the 2010 rulemaking was one way in which  
3 the DROS surplus could be addressed and as far as I  
4 see the SB 819 was another.  
5 Had the 2010 rulemaking been completed,  
6 that would have at least impacted the amount of  
7 surplus that was going to be available on the  
8 immediate future for SB 819.  
9 So, it seems to me that there's an overlap  
10 there, and I was wondering if that overlap had been  
11 discussed within the department.  
12 A. There were discussions about the use of that  
13 surplus that's in the DROS surplus account and some  
14 of the ideas that came out of the public comment  
15 period of the 2010 rulemaking.  
16 Q. And it's your understanding whether or not  
17 it's based on hearsay that at some point a decision  
18 was made to focus on SB 819 by the department?  
19 A. Well, the department did focus on that or  
20 at least the Harris Administration did and they  
21 wanted to use that surplus for APPS enforcement taken  
22 in from the comments made by the public.  
23 MR. FRANKLIN: So, I'm actually going to  
24 introduce some of the public comments from that  
25 rulemaking. Are we at 10?

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1 THE REPORTER: Uh-huh.  
2 MR. FRANKLIN: Exhibit 10.  
3 Let me look at my notes because it may be a  
4 very limited questioning.  
5 And this is certainly not the entire packet.  
6 I think it is all of the public comment  
7 packet however.  
8 (Exhibit No. 10 was marked)  
9 THE WITNESS: Is there a particular comment  
10 you want me to focus on?  
11 BY MR. FRANKLIN:  
12 Q. I think it's 15.  
13 A. Okay.  
14 Q. And I recognize that I think some of your  
15 testimony today may impact my questioning, but  
16 there's only two or three questions here.  
17 So, at the time of this statement and  
18 specifically the DOJ response portion of what we're  
19 looking at, did the department make a determination  
20 that the DROS Special Account would have a sufficient  
21 operating reserve if the DROS fee was lowered to  
22 \$14?  
23 MR. HAKL: Objection, just as an "operating  
24 reserve" I'm not sure what that means. But you can  
25 answer the question.

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1 THE WITNESS: So it looks here by the DOJ's  
2 response that they disagreed with the comment made by  
3 the California Chapter of the Brady Campaign to  
4 Prevent Gun Violence that will be reasonable  
5 reserve -- sorry -- there will be a much smaller but  
6 more reasonable reserve in the DROS account.  
7 BY MR. FRANKLIN:  
8 Q. And I just wanted to clarify that that  
9 statement was made in the context of the DROS fee  
10 being lowered to 14.  
11 So we talked -- specifically you talked  
12 earlier about the need to have, you know, an  
13 operational reserve that is, you know, in some ways a  
14 surplus but not in actuality you need I think you  
15 said six months to a year of funds.  
16 And so my question is:  
17 At the time of this statement had the  
18 department made a determination that charging a  
19 \$14 DROS fee in the future would still allow it to  
20 have that six to one month cushion -- one year  
21 cushion?  
22 A. My recall is that that would drain the  
23 surplus down to that operational amount that we need  
24 to retain, but we could not operate everything that  
25 is paid for out of the DROS fee under a \$14 fee.

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1 Q. And so is it fair to state in the rulemaking  
2 that the department concluded that at the time,  
3 because I understand these things change over time,  
4 the bracket was that \$14 appeared to be more than was  
5 currently required but at the same time leaving it at  
6 \$14 forever was likely to be insufficient?  
7 A. And that's what we stated that we're going  
8 to need the ability in order to increase decrease  
9 over time based on revenue generation from one year  
10 and some of our predictions for revenue in the next  
11 subsequent years.  
12 Q. During the 2010 rulemaking were there any  
13 like recorded calculations performed about how --  
14 whether or not a surplus would continue to grow under  
15 a \$19 DROS fee?  
16 A. I don't know if there was any calculations,  
17 but we saw the \$19 fee structure that the -- that  
18 there was additional surplus at the end of every  
19 fiscal year.  
20 MR. FRANKLIN: We'll go off the record.  
21 (Whereupon, a brief recess was taken)  
22 BY MR. FRANKLIN:  
23 Q. Do you recall if the department chose to  
24 delay making a final decision on the 2010 rulemaking  
25 until after the November 2010 election?

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1 A. I know that they wanted -- because of the  
2 transition, they didn't want to do something that was  
3 going to affect the next administration and that was  
4 done on a variety of different issues.  
5 Q. This probably overlaps a little bit with  
6 something you said previously, but do you know what  
7 the process was for the department's decision to  
8 abandon for lack of a better term the 2010  
9 rulemaking?  
10 A. I think they wanted to use the funds for  
11 other reasons in conjunction with legislation  
12 proposed by Senator Leno.  
13 Q. Do you know if there was ever any public  
14 explanation from the department regarding the end of  
15 that 2010 rulemaking process?  
16 A. I don't know that.  
17 Q. And then there's a second part of the  
18 proposed rulemaking regarding the annual review of  
19 the DROS Special Account.  
20 Do you remember any separate discussion  
21 about why that part of the rulemaking would be  
22 abandoned?  
23 A. I mean the entire rulemaking package was --  
24 did not move forward so...  
25 Q. The reason I'm asking is because I could at

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1 least see a distinction where it's one thing to  
2 decide to use DROS Special Account money for a  
3 different purpose, but the accounting question and  
4 the tracking question might be something different,  
5 so I wanted to know if there was a separate reason  
6 why that part of the rulemaking didn't go forward.  
7 A. I think that's part of the rulemaking  
8 package. I don't know once you push it forward if  
9 you can cherry pick what you want to go forward or  
10 what you don't. And I'm not an expert on that, but I  
11 think once you push it forward to public comment, it  
12 kind of has to go one way or another or not at all  
13 so...  
14 MR. FRANKLIN: Let's go off the record for  
15 one second.  
16 (Off-the-record discussion)  
17 BY MR. FRANKLIN:  
18 Q. During the 2010 rulemaking did the  
19 department ever make a determination that the \$19  
20 DROS fee was commensurate with the cost of processing  
21 a DROS application?  
22 A. So, again, we don't look at it as the  
23 DROS application. We look at it what's covered under  
24 the DROS fee which is more than just, you know, the  
25 background check. And if you looked at the surplus

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1 going up, at that point the \$19 was more than what  
2 was needed to run the rest of the DROS process, the  
3 DROS program, and that's why a surplus was generated.  
4 MR. FRANKLIN: You have no questions,  
5 Mr. Hakl?  
6 MR. HAKL: I'm thinking.  
7 MR. FRANKLIN: Well, I'll ask one more  
8 while you're --  
9 MR. HAKL: Okay.  
10 BY MR. FRANKLIN:  
11 Q. Well, I won't do it while you're thinking.  
12 To the best of your knowledge since 2009  
13 do you know if the department has ever attempted to  
14 calculate a per transaction cost for DROS  
15 applications?  
16 A. No.  
17 Q. No, they have not? It has not?  
18 A. No. Because it covers more than just the  
19 DROS transaction. So, it's a larger scope of  
20 expenses associated with the process, with the  
21 operation of the bureau, and then what that fee is  
22 actually covering.  
23 MR. FRANKLIN: That concludes all my  
24 questions.  
25 MR. HAKL: Okay.

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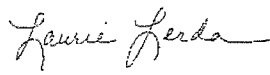
1 MR. FRANKLIN: You don't have any?  
2 MR. HAKL: No.  
3 MR. FRANKLIN: All right. We'll use the  
4 same stipulation we used earlier today.  
5 Is a seven day turnaround going to work in  
6 this situation?  
7 MR. HAKL: Yeah.  
8 I mean it sort of has to, right?  
9 MR. FRANKLIN: Yeah, I mean we're pretty  
10 locked up on a deadline so...  
11 Okay. So the stipulation I'll propose is  
12 that the reporter will be relieved of her duties  
13 under the code to maintain the original of the  
14 transcript.  
15 It will be expedited and forwarded to  
16 Mr. Hakl. The deponent will have seven days after  
17 receipt to review it and make changes.  
18 My office will retain the original and make  
19 it available if it's needed for any reason, and a  
20 certified copy of the transcript can be used at trial  
21 or in this matter if the original is lost or  
22 destroyed.  
23 So stipulated?  
24 MR. HAKL: Yeah.  
25 THE REPORTER: I'm putting orders on the

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1 record.  
2 MR. FRANKLIN: Seven day turnaround.  
3 MR. HAKL: Yes, please.  
4 (The proceedings were concluded at 1:08 p.m.)  
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REPORTER'S CERTIFICATION

1  
2  
3 I, Laurie D. Lerda, a Certified Shorthand  
4 Reporter in and for the State of California, do  
5 hereby certify:  
6  
7 That the foregoing witness was by me duly sworn;  
8 that the deposition was then taken before me at the  
9 time and place herein set forth; that the testimony  
10 and proceedings were reported stenographically by me  
11 and later transcribed into typewriting under my  
12 direction; that the foregoing is a true record of the  
13 testimony and proceedings taken at that time.  
14  
15 IN WITNESS WHEREOF, I have subscribed my name  
16 this 1st day of June, 2017.  
17  
18   
19 \_\_\_\_\_  
20 Laurie D. Lerda, CSR No. 3649  
21  
22  
23  
24  
25

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DEPOSITION ERRATA SHEET

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24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
25 STEPHEN J. LINDLEY

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1 Assignment No: J0582147  
2 Case Caption: Gentry vs. Harris  
3  
4 DECLARATION UNDER PENALTY OF PERJURY  
5 I declare under penalty of perjury  
6 that I have read the entire transcript of  
7 my deposition taken in the above-captioned matter,  
8 or the same has been read to me, and  
9 the same is true and accurate, save and  
10 except for changes and/or corrections, if any, as  
11 indicated by me on the DEPOSITION ERRATA SHEET  
12 hereof, with the understanding that I offer these  
13 changes as if still under oath.  
14 Signed on the \_\_\_ day of \_\_\_\_\_,  
15 2017.  
16  
17  
18  
19 \_\_\_\_\_  
20 STEPHEN J. LINDLEY  
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DEPOSITION ERRATA SHEET

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25 STEPHEN J. LINDLEY



1 DEPOSITION ERRATA SHEET  
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**EXHIBIT N**

CONDENSED

**In the Matter Of:**

**GENTRY vs HARRIS**

34-2013-80001667

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**DAVID SCOTT HARPER**

*January 30, 2017*

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Page 1

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SACRAMENTO  
3 --oOo--  
4  
5 DAVID GENTRY, JAMES  
6 PARKER, MARK MIDLAM,  
7 JAMES BASS, and CALGUNS  
8 SHOOTING SPORTS  
9 ASSOCIATION,  
10  
11 Plaintiffs and  
12 Petitioners,  
13 vs. Case No. 34-2013-80001667  
14 KAMALA HARRIS, in Her  
15 Official Capacity as  
16 Attorney General for the  
17 State of California;  
18 STEPHEN LINDLEY, in His  
19 Official Capacity as  
20 Acting Chief for the  
21 California Department of  
22 Justice, BETTY YEE, in  
23 Her Official Capacity as  
24 State Controller for the  
25 State of California and  
DOES 1-10,  
Defendants and  
Respondents.

DEPOSITION OF  
DAVID SCOTT HARPER  
January 30, 2017  
8:46 a.m.  
1300 I Street  
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

Page 2

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24  
25 --oOo--

Page 3

1 INDEX OF EXAMINATION  
2  
3 WITNESS: DAVID SCOTT HARPER  
4  
5 EXAMINATION PAGE  
6 By Mr. Franklin 6  
7  
8 --oOo--  
9  
10 QUESTIONS INSTRUCTED NOT TO ANSWER  
11 Page 128, Line 16:  
12 Q. Do you remember the basis for that  
13 decision?  
14 Page 133, Line 2:  
15 Q. Do you know if it was considered within the  
16 department?  
17  
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Exhibit	Description	Page
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2	Notice of Deposition of Person Most Qualified at the California Department of Justice (RE: Bifurcated Causes of Action)	6
3	Document Entitled 0820 Department of Justice	25
4	Document Entitled DOJ Programs Funded with DROS Special Fund FY 2012/13 Bate Stamp AGRFP000017	39
5	Document Entitled Department of Justice Report of Expenditures as of June 30, 2013 for Dealer Record of Sale Act Bate Stamp AGRFP000018 through AGRFP000019	40
6	Document Entitled Notice of Proposed Rulemaking Bate Stamp AGRFP000044 Through AGRFP000047	76
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1 testimony in response to that notice?

2 A. Yes.

3 Q. That's all we're doing with that document.

4 And then as to the second exhibit and the

5 title Notice of Deposition of Person Most Qualified

6 at the California Department of Justice.

7 Are you here to give deposition testimony as

8 a Person Most Qualified on specific topics within

9 that notice?

10 A. Yes.

11 Q. I'm going to try and list the topic numbers,

12 and correct me if I'm wrong.

13 Topic 5, Topic 12, Topic 13, Topic 15 and

14 Topic 18.

15 A. It appears correct, yes.

16 Q. Can I get your full name?

17 A. David Scott Harper.

18 Q. Have you had your deposition taken before?

19 A. No.

20 Q. Okay. So, I am going to go through the full

21 rules and instructions. If you have any questions

22 about these rules and instructions, don't hesitate to

23 ask. I want you to have as clear as possible of what

24 we're trying to do here today.

25 So, are there any medications or any other

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1 DEPOSITION OF DAVID SCOTT HARPER

2 January 30, 2017

3 DAVID SCOTT HARPER

4 having been first duly sworn testifies as follows:

5 ---oOo---

6 EXAMINATION

7 BY MR. FRANKLIN:

8 Q. Good morning. My name is Scott Franklin.

9 I'll be taking the deposition today in the matter

10 Gentry versus Harris, soon to be renamed due to the

11 change in Attorney General.

12 The Case No. Is 34-2013-80001667.

13 Okay. The first thing I'm going to show you

14 today is going to be marked Exhibit 1 and 2.

15 And I have copies for everyone so we

16 shouldn't have to share.

17 (Exhibit No. 1 and 2 were marked)

18 BY MR. FRANKLIN:

19 Q. I'll give you a moment to review those.

20 Have you had a chance to review the

21 documents?

22 A. Yes.

23 Q. The first one is titled Notice of Continued

24 Deposition of David Harper.

25 Are you here today to give deposition

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1 reasons you're aware of that would prevent you from

2 giving your best testimony today?

3 A. No.

4 Q. If you need a break at any time to use the

5 restroom or any other reason just feel free to do so

6 and ask for one at any time.

7 The only request I would make is if you not

8 ask for a break while a question is pending.

9 A. Okay.

10 Q. Does that make sense?

11 A. Yes.

12 Q. Okay. As you see we have a reporter here

13 today reporting the transcript.

14 At the end of the deposition, probably a

15 week to two weeks thereafter, you'll have a chance to

16 review the deposition and note any changes to your

17 testimony.

18 And I just want to let you know that you can

19 feel free to do that, but if you do that, then I

20 would have the right on behalf of my client to ask

21 you further questions about why you made those

22 changes.

23 Does that make sense?

24 A. Yes.

25 Q. I also sometimes speak very quickly.

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1 Do not hesitate to tell me to slow down,  
2 because again I want to make sure you understand what  
3 I'm asking and that I understand what you're  
4 responding.  
5 A. Okay.  
6 Q. The oath that you took today is the same  
7 oath you would take if you were in a court of law  
8 before a judge and a jury and it's the same level of  
9 truthfulness as expected.  
10 We are looking for accurate answers today,  
11 not guesses, but at the same time I can ask you for  
12 estimates, best recollections, things where you have  
13 some basis for what you're saying even if you're not  
14 certain about the response.  
15 The old example we always give is if I ask  
16 you to estimate how long the table we're sitting at  
17 today is you could do it, because you're sitting at  
18 it and you can see it.  
19 Whereas, if I ask you to estimate the length  
20 of the desk in my office, it would be awfully hard  
21 for you to do that, because as far as I know you've  
22 never been in my office.  
23 Does that make sense?  
24 A. Yes.  
25 Q. Also, if you have secondhand knowledge of

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1 something I would still need that information.  
2 For example, if someone told you what  
3 happened at a particular meeting, even though you may  
4 not have been at that meeting, I would still need to  
5 know what that person told you even though you don't  
6 have firsthand knowledge if it's true or not.  
7 Does that make sense?  
8 A. Yes.  
9 Q. I will do my best to not talk over you and I  
10 will request you do the same.  
11 It's primarily because it makes it very  
12 difficult to get an accurate transcript if you have  
13 two people talking at once.  
14 And also to the extent that physical  
15 gestures are made they won't be recorded in the  
16 record. So, if there is an occasion for such thing  
17 to happen, I'll ask you to describe what you're doing  
18 as well if that makes sense.  
19 And the last thing on the instruction list  
20 is that it is difficult for the court reporter to  
21 have a clear transcript when we have responses like  
22 "uh-huh" or "un-huh". So, if we can get clear  
23 "yes's" and "no's" that makes for a cleaner  
24 transcript. Do you understand all those  
25 instructions?

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1 A. Yes.  
2 Q. Did you review any documents in preparation  
3 for this deposition?  
4 A. Just the two documents that you handed out  
5 this morning.  
6 Q. Okay. Did you meet with anyone other than  
7 counsel in preparation for this deposition?  
8 A. No.  
9 Q. Okay. I have a list of definitions that I  
10 think will help the deposition go quicker, but I want  
11 to make sure we're on the same page about all these  
12 terms.  
13 A. Okay.  
14 Q. So, the first one is the acronym DROS.  
15 And I know there's some difference of  
16 opinion about how we pronounce that, but I may say  
17 DROS or DROS, and that's the Dealers Record Of Sale.  
18 It's a document used in the background process.  
19 Does that make sense?  
20 A. That is one definition of DROS, yes.  
21 Q. And the other definition is the process  
22 itself of the background check.  
23 Actually, let me ask you the question.  
24 What other definitions are you aware of?  
25 A. So, I would distinguish between programatic

Page 12

1 definitions like you mentioned the process that it  
2 takes to do the background check, the actual  
3 background check.  
4 DROS is also the acronym for the name of the  
5 fund the Dealer Record of Sale account, and so from a  
6 budget perspective from an accounting perspective  
7 when you talk of DROS my initial thought is the  
8 fund.  
9 Q. Uh-huh. So, I have a couple more  
10 definitions and maybe on that topic and maybe they'll  
11 help.  
12 One is the DROS fee, and that's specifically  
13 what's currently a \$19 fee that's charged on single  
14 firearm transfers. Does that make sense for that  
15 concept?  
16 A. Yes.  
17 Q. And then I will do my best to use  
18 the term DROS Special Account when referring to the  
19 what I believe you just mentioned. Sometimes I'll  
20 also refer to it as the DROS Fund.  
21 A. Yes.  
22 Q. Okay. And as a general term not a specific  
23 term the idea of a DROS surplus that is at least in  
24 my mind it's an amount that's a balance that's  
25 carried over in the DROS Special Fund from one year

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1 to the next. Does that make sense?  
 2 A. Yes.  
 3 Q. And it may be that there were specific  
 4 surpluses we'll talk about, but I'll do my best to  
 5 indicate that it's not the general concept of  
 6 surplus.  
 7 When I refer to "the department", I'm  
 8 referring to the Department of Justice and any  
 9 subsidiary entities that are part of the department.  
 10 An example is the Bureau of Firearms.  
 11 Does that make sense?  
 12 A. Yes.  
 13 Q. APPS is the Armed and Prohibited Person  
 14 System. And you're familiar with that acronym?  
 15 A. Generally, yes.  
 16 Q. And it's the same type of situation as  
 17 DROS where it depending on context it may have  
 18 different applications?  
 19 A. Yes.  
 20 Q. Are you familiar with the term APPS list?  
 21 A. Not -- not specifically, no.  
 22 Q. What I'll use that for herein is as part of  
 23 the APPS process there are some documents that are  
 24 merged together to create a database of people who  
 25 appear to be armed and prohibited from owning a

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1 firearm and that amalgamation of information is what  
 2 I call the APPS list.  
 3 Does that make sense?  
 4 A. Your description makes sense.  
 5 I can tell you that in my role in the  
 6 department that's information I would never have.  
 7 MR. FRANKLIN: Right, right.  
 8 And just I'll ask Mr. Hakl just to be -- so  
 9 we don't have any issues about using the term here  
 10 versus anywhere else in the case, is that a fair  
 11 representation of how we've used the term APPS list  
 12 in the past?  
 13 MR. HAKL: Read that back to me again.  
 14 (Record Read)  
 15 MR. HAKL: Yes, that's a reasonable  
 16 description.  
 17 Can I say just one thing about...  
 18 You suggested when you talk about "the  
 19 department" that includes the Department and  
 20 Bureau of Firearms.  
 21 MR. FRANKLIN: Uh-huh.  
 22 MR. HAKL: I'm envisioning there may be  
 23 circumstances in the deposition where there's a  
 24 distinction made between those two just because  
 25 Mr. Harper works for the department as a whole.

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1 MR. FRANKLIN: Uh-huh.  
 2 MR. HAKL: Bureau of Firearms is part of  
 3 what he does, but it's not all of what he does.  
 4 MR. FRANKLIN: Sure.  
 5 MR. HAKL: And so it may be necessary to  
 6 make a distinction on that.  
 7 BY MR. FRANKLIN:  
 8 Q. Yeah. And I would definitely request that  
 9 you do so if you feel that it's unclear somehow to  
 10 refer to the department when actually what you're  
 11 thinking of is the bureau.  
 12 A. Okay.  
 13 Q. So I would appreciate that.  
 14 Senate Bill 819 that was a 2011 Senate Bill  
 15 authored by Senator Mark Leno regarding the use of  
 16 the DROS surplus.  
 17 Does that definition make sense?  
 18 A. Yes.  
 19 Q. And I may call it SB 819 as well.  
 20 And then any reference I make to  
 21 Senator Mark Leno, I'm also referring to his staff  
 22 and functionaries, you know, anyone that would  
 23 normally be part of his team.  
 24 Does that make sense?  
 25 A. Yes.

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1 MR. HAKL: Just objection to the definition  
 2 use of DROS surplus kind of vague in terms of what  
 3 SB 819 involved.  
 4 BY MR. FRANKLIN:  
 5 Q. Yeah. And then I'll refer to  
 6 Penal Code Section 28225 as Section 28225 and it was  
 7 at one point Penal Code Section 12076.  
 8 I don't know that there's any reason why we  
 9 would have a distinction there, but to the extent  
 10 it's relevant you can feel free to use either term,  
 11 but I intend on primarily using 28225.  
 12 Does that make sense?  
 13 A. Yes.  
 14 Q. Okay. What was your -- well, when did you  
 15 first start working for the department?  
 16 A. I started here I want to say April of, wow,  
 17 2008 I believe.  
 18 Q. Okay. What was your job title?  
 19 A. Deputy Director, Division of Administration.  
 20 Q. Okay. And I know the department has gone  
 21 through various reorganizations.  
 22 Does that department still exist?  
 23 A. The department still exists.  
 24 Q. I'm sorry. The entity that you just gave  
 25 that you were Deputy Director of?

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1 A. Um, the entity exists. It's been renamed in  
2 reference to one of the reorganizations.  
3 Q. Uh-huh. Okay. And what were your primary  
4 duties as Deputy Director in 2008?  
5 A. So the focus of my job deals with the  
6 fiscal operations of the department and the facility  
7 operations of the department that encompasses the  
8 budget office; the accounting department; the  
9 accounting office; our contracts unit; our  
10 procurements unit; we have a facilities unit that  
11 deals both with building facilities and  
12 telecommunications and there's a unit known as our  
13 Case Management Section which is the Case Management  
14 IT Software Support for the Division of Legal  
15 Services. It's like their case -- well, it's a  
16 case management for the Legal Division.  
17 Q. Is it correct to say that the  
18 Administrative Services Division turned into the  
19 Division of Administrative Support?  
20 A. That's exactly correct.  
21 Q. Okay. In general the DROS Special Account  
22 receives money from multiple fees; is that correct?  
23 A. Yes.  
24 Q. Do you know approximately how many fees are  
25 going into the DROS Special Account right now?

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1 A. No, I don't.  
2 Q. Is it over 15?  
3 A. It could be about that number.  
4 I'm not sure if it's over that number or  
5 under that number so as a range 10 to 20.  
6 Q. Okay. So, for example, the fees people pay  
7 when they get what are known as CCW licenses would  
8 though go into the DROS Special Account?  
9 A. I believe so.  
10 Q. What's the Division of Administrative  
11 Support's role regarding the DROS Special Account?  
12 A. So, it would depend on what unit within DAS  
13 the Division of Administrative Support you're talking  
14 about.  
15 So, within the budget office the role is to  
16 ensure adequate funding to support the  
17 Bureau of Firearms or any other section that is using  
18 DROS revenue.  
19 The accounting department would ensure that  
20 the invoices are paid correctly with the DROS  
21 revenue.  
22 The contracts and/or procurement offices  
23 would ensure that things that are procured or  
24 contracted are charged to the appropriate cost codes  
25 when DROS items are purchased.

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1 And then the Facilities or Telecom Units  
2 would ensure that the appropriate rents are being  
3 charged to facilities where DROS activities are  
4 taking place and, you know, telephone expenditures  
5 are appropriately recorded charged.  
6 Q. Is part of the budget office's role to  
7 interact with the Office of Legislative Affairs  
8 regarding getting legislative approval for funding  
9 sources?  
10 A. We -- the budget office has had those types  
11 of interactions in the past, and so it might be in  
12 the context of there's proposed legislation going  
13 through the process in the legislature.  
14 Depending on what that legislation is there  
15 may be a fiscal impact to our department or any of  
16 the bureaus or divisions within our department and so  
17 the budget office would look to try and determine  
18 what cost estimates are for that bill to try and  
19 ascertain what that fiscal impact is going to be.  
20 There are other instances when the  
21 department or one of the units within the department  
22 has some idea for legislation and so we could work  
23 with the Office of Legislative Affairs to help  
24 develop the legislation in the context of fiscal  
25 estimates, potential revenue estimates, things of

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1 that nature.  
2 Q. Did what you just describe happen as to  
3 Senate Bill 819?  
4 A. Do you know what the specifics in 819 were?  
5 Q. Yes.  
6 The specifics -- well, Mr. Haki may want to  
7 characterize it differently, but, generally speaking,  
8 it was to allow the list of potential costs  
9 considered in calculating the DROS fee and the uses  
10 of the DROS fee to include the word "possession"  
11 which at a minimum concerned funding the APPS law  
12 enforcement activities.  
13 A. And so to repeat the question again.  
14 Q. So the question is:  
15 When Senate Bill 819 was being created and  
16 moved forward through the legislature, was the  
17 budget office involved in analysis related to that  
18 proposed legislation?  
19 A. I was involved in it. I don't necessarily  
20 recall if staff in my budget office were involved in  
21 it.  
22 Q. And what was your role in that process?  
23 A. So, I had provided some general guidance,  
24 some general recommendations on what it would take to  
25 use DROS revenues in what was then the APPS program,

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1 and at the same time there was -- the department was  
2 facing some budget reductions related to our  
3 General Fund Appropriation, so at the time that  
4 these discussions were going on on 817, the  
5 APPS program was funded with General Fund. That was  
6 the fund source that supported that program.  
7 So, as a way to provide General Fund savings  
8 in our department in order to use DROS revenues at  
9 that time the discussion was essentially you needed  
10 to have the legislature pass a statute that expanded  
11 the use of the DROS revenues to include the  
12 APPS program.  
13 Q. We'll probably come back to that topic.  
14 It's important to what we're looking at  
15 today, but I just want to do a little bit more  
16 background on what you do.  
17 And then I had a question.  
18 You referred to 817 during your statement.  
19 I don't know if you meant 819.  
20 A. I'm sorry, yeah. Senate Bill 819, the  
21 legislation that's kind of focal to this discussion  
22 here.  
23 Q. And then did the accounting office have any  
24 role in the ramp up to Senate Bill 819?  
25 A. Not to my knowledge.

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1 Q. And then both of these offices are under  
2 your direction currently?  
3 A. Correct.  
4 Q. Have you remained at the same position since  
5 2008?  
6 A. Correct.  
7 Q. Do you recall where you first heard about  
8 the concept of remedying or reducing General Fund  
9 burden rather for APPS via the DROS Fund?  
10 A. Can you repeat that?  
11 MR. FRANKLIN: We'll have you if you could  
12 read it back, please.  
13 (Record Read)  
14 MR. FRANKLIN: Let me rephrase.  
15 MR. HAKL: Yeah, I would suggest that.  
16 BY MR. FRANKLIN:  
17 Q. At some point you became aware of a concept  
18 that allowed APPS law enforcement activities could  
19 potentially be funded out of the DROS Fund,  
20 correct?  
21 A. Correct.  
22 Q. Do you remember when you first became aware  
23 of that concept?  
24 A. My recollection is that it was my idea at  
25 least initially. I thought of it on my own and then

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1 raised it in the context of budget discussions.  
2 Q. Who did you raise it to?  
3 A. Probably to my director at the time and to  
4 the Executive Staff at that time.  
5 Q. Okay. And when you say "Executive Staff",  
6 is that the staff of the Attorney General?  
7 A. Yes. In the Executive Office.  
8 Q. Okay. And for an outsider it's a little  
9 confusing to try and figure out the structure.  
10 A. It's confusing for an insider, too, so...  
11 Q. The Executive Office and the Division of  
12 Administrative Support are they grouped together in  
13 terms of how they operate or is that an accounting  
14 issue or am I off base?  
15 A. I would say they're grouped together in the  
16 context of how the budget is --  
17 Q. Okay.  
18 A. -- their budget is appropriated.  
19 They have separate budgets, separate  
20 allotments, if you will, but for sake of the way  
21 that they're funded through this indirect cost they  
22 both receive their funding through an indirect  
23 mechanism so we could lump them together to call it  
24 Exec/DAS.  
25 Q. Okay. And you said you -- I think you

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1 testified it was -- you would run the idea by the  
2 director at the time.  
3 Do you have a memory as to who that was?  
4 A. Back in 2008 I believe it was either  
5 Sue Johnsrud or Don Hayashida.  
6 Q. And this is the Director of DAS?  
7 A. Correct.  
8 MR. HAKL: Can we just for the -- what was  
9 the year of SB 819?  
10 MR. FRANKLIN: It was 2011.  
11 That's my next question.  
12 MR. HAKL: Okay.  
13 BY MR. FRANKLIN:  
14 Q. And so if I understood your testimony  
15 correctly, you believe that you first proposed this  
16 idea in twenty -- 2008?  
17 A. I believe it was towards the end of 2008 or  
18 2009. And then when you talk about 2011 for the  
19 legislation, are you referring to the date that it  
20 was chaptered?  
21 Q. Uh-huh.  
22 A. So there is a time period between those two  
23 that the legislation has to move through the  
24 process.  
25 Q. Sure. Sure. I believe it was October 9th,

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1 2011, but it was sometime in October.  
2 A. Okay.  
3 MR. FRANKLIN: I'll give you what will be  
4 marked as Exhibit 3.  
5 (Exhibit No. 3 was marked)  
6 MR. HAKL: Can we go off the record for just  
7 one second?  
8 (Whereupon, a brief recess was taken)  
9 MR. HAKL: Okay. We can go back on.  
10 Thank you.  
11 BY MR. FRANKLIN:  
12 Q. So, what I've handed to you is what I  
13 believe to be a portion of a larger document but  
14 it specifically includes something that I believe to  
15 be called a Fund Condition Statement and then  
16 specifically it includes the Fund Condition Statement  
17 for Dealers' Record of Sale Special Account.  
18 Does that seem to be correct?  
19 A. Yes.  
20 MR. HAKL: Is this Exhibit 3?  
21 BY MR. FRANKLIN:  
22 Q. Yes.  
23 In your role at DAS are you familiar with  
24 Fund Condition Statements?  
25 A. Very familiar.

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1 Q. Okay. If I could have you look on, let's  
2 see here, near the end of the page, the first page,  
3 three lines from the bottom there is a line that  
4 reads: "125700 Other Regulatory Licenses and  
5 Permits." Do you see that line?  
6 A. Yes.  
7 Q. What does other regulatory licenses and  
8 permits refer to?  
9 A. I don't have the actual definition of what  
10 of the various fees we spoke about earlier are coded  
11 to this line and which of the fees are coded to the  
12 line below it.  
13 So, in a general sense when revenues are  
14 collected and deposited into the DROS Fund, those  
15 revenues are assigned one of these two revenue codes.  
16 That's what those numbers are. And that's kind of  
17 how we track the differences between those two  
18 revenues or the components that make up those two  
19 revenues.  
20 Just the revenue codes here that you see  
21 other regulatory license, miscellaneous services,  
22 those codes are established by the Department of  
23 Finance and they're uniform across State government,  
24 so you may have another entity in State government  
25 that collects a regulatory license and permit that

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1 would use the same revenue code, but it would be  
2 collected for a separate and independent purpose  
3 outside of our budget.  
4 And then the Department of Finance can total  
5 up all of the various forms of revenue based on these  
6 revenue codes and they each have certain meanings  
7 that go along with them.  
8 Q. Is there a manual that provides those  
9 meanings?  
10 A. I believe there is. I'm not sure we have  
11 it. It might be a Department of Finance definition.  
12 Q. Does the department have any type of list or  
13 document that would show what fees are to be recorded  
14 under 125700?  
15 A. Again, I haven't seen the list.  
16 I believe program would have to know,  
17 otherwise, they couldn't code their revenues  
18 properly. I'm sorry. When I say "program", I refer  
19 to the Bureau of Firearms.  
20 And then our accounting office is likely to  
21 have a list of what individual fees collected and  
22 deposited into the DROS Fund are coded to each of  
23 these two revenue accounts.  
24 MR. HAKL: I'm fairly certain we've produced  
25 a list of all the fees that go into the DROS Special

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1 Account.  
2 BY MR. FRANKLIN:  
3 Q. Yeah. My recollection is the department  
4 produced its fee schedule and said that some of the  
5 items listed -- some or all, it was unclear, of the  
6 items listed on there go into the DROS fee and that  
7 it is unaware of any others.  
8 It sounds like there might be a different  
9 one that's used for accounting.  
10 Are you aware of any -- well, let me strike  
11 that.  
12 Do you know as to the two revenue codes  
13 we're talking about right now which one the DROS fee  
14 falls under?  
15 A. The \$19 fee?  
16 Q. Yeah.  
17 A. I believe it's the 142500 Miscellaneous  
18 Services to the Public.  
19 Q. Can you think of any examples that fit in  
20 125700 related to firearms?  
21 A. You referenced the CCW, the Concealed  
22 Weapons Permit Fee likely to be deposited on that  
23 revenue line.  
24 Q. Are there any other fees that you recall as  
25 being in one category or the other firearm-related

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1 fees?  
2 A. Not off the top of my head, no.  
3 Q. What is the process used to obtain the  
4 totals on this document for Revenue Code 125700?  
5 And I'll state that I understand that this  
6 particular document both has it's my understanding  
7 historical and future projections.  
8 I'm just looking for the general way in  
9 which these totals would be calculated.  
10 A. Okay. So, um, well, if you look at the  
11 three columns, the column that's entitled 2007-2008,  
12 so in a document like that those are actual, actual  
13 revenues, actual expenditures.  
14 Generally when programs BOF is working with  
15 the budget office on the revenue estimates, they'll  
16 use past year actuals as a starting point and then  
17 they will grow that revenue, if you will, based on  
18 assumptions as what they think future DROS  
19 transaction volumes will be.  
20 Q. Right.  
21 And I do just want to focus on that one,  
22 because I know it's an actual or I understand it to  
23 be an actual.  
24 A. Okay.  
25 Q. So how would this number have been obtained?

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1 A. So, in the context of the program,  
2 Bureau of Firearms receiving those remittances from  
3 an individual paying the DROS fee, we would receive  
4 that money and it would be deposited into one of our  
5 accounts and attached to that revenue code.  
6 And then within the accounting department we  
7 have things called collection reports and so we can  
8 run a collection report for the Bureau of Firearms  
9 for these two revenue streams to see what was  
10 actually collected and deposited into a State  
11 treasury account.  
12 And then when you get to the end of the year  
13 there's probably some allocation of an accrual for,  
14 you know, anticipated revenues that would have been  
15 maybe deposited for the month of June but not  
16 actually received until early in July, you would  
17 bill that accrual and then that would be the  
18 revenue.  
19 Q. And that would be for each you'd have a  
20 collection report for is it time-based and not  
21 fee-based the collection reports?  
22 Well, let me ask you it this way.  
23 What does a collection report consist of?  
24 A. As I recall, it is a -- it's a summary, if  
25 you will, almost like a running total of what

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1 revenues, how much of each revenue is deposited into  
2 a fund over the course of a fiscal year.  
3 Q. And how would the line items be identified?  
4 Would it be, you know, a total amount of  
5 DROS fees, a total amount of CCW fees, for example?  
6 A. I don't recall.  
7 Q. Would it refer to specific expenditures,  
8 for example, a receipt for gasoline travel on an  
9 APPS investigation?  
10 A. So we're talking about revenue here.  
11 Q. Right.  
12 A. This is the revenue side of the house.  
13 Q. I'm sorry.  
14 A. Yeah.  
15 Q. A particular applicant's DROS fee payment.  
16 A. I don't know. I haven't seen that level of  
17 detail so I don't know if we record, you know,  
18 John Smith deposited \$19 on this day and it went into  
19 the fund.  
20 Q. Who or -- who or what entity would you think  
21 has that level of detail?  
22 A. My initial thought would be it's the actual  
23 seller of the gun --  
24 Q. Uh-huh.  
25 A. -- outside of our department. Whether the

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1 name is transferred along with the amount of the fee,  
2 if it is, it would probably be residing in the  
3 Bureau of Firearms.  
4 Q. And then the collection reports would be  
5 within the accounting office?  
6 A. Correct.  
7 So program staff within the bureau would,  
8 you know, deposit the monies and then they might  
9 actually go into the system and record that the money  
10 is deposited or it could be recorded by accounting  
11 staff when they verify the deposit.  
12 Q. Where does BOF deposit that money?  
13 Does it go straight into the  
14 DROS Special Account?  
15 MR. HAKL: Objection.  
16 Have we -- I think that assumes facts not in  
17 evidence in terms of where the money goes from the  
18 dealer in the first place.  
19 BY MR. FRANKLIN:  
20 Q. Well, let's let them -- I mean I think  
21 statutorily it's my understanding dealers are  
22 required to collect the DROS fees and they are  
23 required to turn it over to the Bureau of Firearms.  
24 Is that your understanding?  
25 A. Yes.



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1 Q. Now, once the money for DROS fees is turned  
2 over to the bureau, do you have an understanding of  
3 what happens to that money next?  
4 A. In a general sense my understanding is that  
5 the funds will be deposited into a bank account and  
6 it's somehow its -- there's various banks around the  
7 state that are like depositories for State revenues,  
8 so the money would initially go into one of those  
9 depositories and then it would find its way into the  
10 State Treasury where the treasurer would take over  
11 kind of the administration of that money and the  
12 receipt or the deposit of that money would be  
13 trans -- the information will be transferred to the  
14 Controller's Office, and then at some point the  
15 Controller would make some type of an entry, a  
16 journal entry, to in fact show that that fund has  
17 or that money has been deposited into the  
18 DROS Special Account.  
19 Q. Is there a specific type of document that  
20 you're aware of that would reflect the transfer of  
21 money specifically money paid as a DROS fee from the  
22 bureau to the State Treasury?  
23 A. Repeat it.  
24 Q. Maybe I misunderstood your testimony.  
25 Go ahead.

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1 MR. HAKL: Objection.  
2 Misstates his testimony.  
3 BY MR. FRANKLIN:  
4 Q. The bureau hands or transfers money to a  
5 bank account once it's received as a result of the  
6 DROS fee being charged, correct?  
7 A. Correct.  
8 Q. And then from that bank account the money is  
9 next transferred to the State Treasury?  
10 A. I believe so.  
11 Q. So for that transfer do you know if there's  
12 a document that reflects the process of that?  
13 A. I don't know specifically.  
14 My guess, if you will, would be that there's  
15 got to be some wire transfer documents between the  
16 bank and the treasurer's office.  
17 Q. Do you know if the bureau would have any  
18 involvement in that transfer?  
19 A. I don't know.  
20 I think it would be highly unlikely, but I  
21 don't know for sure.  
22 Q. Specifically as it relates to the bureau,  
23 do you know if there is a manner in which it's  
24 determined whether or not revenues should go into  
25 Code 125700 versus 142500?

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1 A. I know there's a manner in which that  
2 determination is made, but I can't tell you who  
3 makes it.  
4 Q. And I think you gave me an answer for this  
5 already. But these two code categories we're talking  
6 about, the titles don't particularly have anything  
7 to do with Bureau of Firearms operations  
8 specifically?  
9 A. That's correct.  
10 Those are statewide revenue titles.  
11 Q. So, if I have collection reports for all of  
12 the -- that refer to all of the revenue coming in in  
13 a particular code, for example, 125700, then I should  
14 be able to calculate the as it is on this DROS Fund,  
15 the fund account statement, I should be able to total  
16 the past years number which is on this example it's  
17 2,474.  
18 Does that make sense?  
19 MR. HAKL: Objection. Vague.  
20 And it may misstate his testimony to the  
21 extent. I think he testified that he's not sure  
22 exactly what level of detail is on the collection  
23 reports.  
24 BY MR. FRANKLIN:  
25 Q. Uh-huh. So, to the best of your

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1 understanding the number -- or I'm just going to use  
2 that one as a specific example, because I think it  
3 will be simpler than speaking hypothetically.  
4 2,474 to the best of your understanding that number  
5 is a total based on collection reports regarding  
6 revenue from certain fees?  
7 A. So the 2.474 million that number --  
8 Q. Right.  
9 A. -- is the summation or the total of the  
10 revenues collected that fiscal year and identified or  
11 charged against this Revenue Code 125700.  
12 Q. And the department tracks revenue by fee as  
13 well, correct?  
14 For example, they could say we had a million  
15 dollars paid in in the form of DROS fees in 2005.  
16 A. I --  
17 MR. HAKL: Objection. Vague as to tracks,  
18 but go ahead and answer.  
19 THE WITNESS: Yeah.  
20 So, I think I understand what you're asking  
21 me. And so the department tracks revenue by  
22 depositing that revenue into a fund based on these  
23 revenue codes.  
24 If program receives five checks and those  
25 are five separate fees that are deposited into the

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1 DROS account, all five of those separate fees might  
 2 be charged to this one Revenue Code 125700.  
 3 But it doesn't necessarily mean there's  
 4 going to be an exact match between their estimation  
 5 of the value of those five fees and what shows up in  
 6 the revenue code.  
 7 BY MR. FRANKLIN:  
 8 Q. Okay. So, at least in terms of following  
 9 the money, once the batch of fees is deposited into  
 10 that first bank account that we've discussed  
 11 previously, the state depository bank, there's no  
 12 further segregation of that group of money?  
 13 A. That's correct.  
 14 Q. Are you aware of the bureau specifically  
 15 tracking the amount of funds coming in per specific  
 16 fees?  
 17 A. I believe they can tell us how much of each  
 18 individual fee they've collected in a year, yes.  
 19 Q. If I could have you turn to the next page.  
 20 Under the expenditures and expenditure  
 21 adjustments heading near the beginning of the page  
 22 the first "State Operations", is that a generalized  
 23 term used across State agencies?  
 24 A. Yes.  
 25 Q. Can you think of any examples within the

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1 bureau that would fall under that category?  
 2 A. So, in a general sense State Operations  
 3 refers to the operations of State Government.  
 4 So, essentially everything the bureau does  
 5 is State Operations.  
 6 If you want to move to the next line  
 7 "Local Assistance". The distinction of local  
 8 assistance would be monies given to some local entity  
 9 of government. It could be a police department. It  
 10 could be a sheriff's department. Some local entity.  
 11 And in respect to this 28,000 that you see  
 12 here. This local assistance money is related to a  
 13 reimbursable State mandate that the legislature  
 14 passed a few years ago and under our Constitution the  
 15 State is responsible to reimburse local governments  
 16 for the cost of certain things if the State dictates  
 17 to the local government they have to do something.  
 18 And so I don't recall specifically what the  
 19 28,000 is, but that's the distinction between State  
 20 Operations and local government.  
 21 It takes a legal appropriation in the  
 22 State -- Annual State Budget Act to establish a  
 23 State Operations appropriation and a Local Assistance  
 24 Appropriation and the department has no legal ability  
 25 to move money between the two if that makes sense.

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1 Q. It does. Thank you.  
 2 If I could have you look at one thing on the  
 3 previous page. Do you know if APPS-based law  
 4 enforcement activities if they're funded out of a  
 5 particular revenue stream either 125700 or 142500?  
 6 MR. HAKL: Objection. Vague as to  
 7 APPS-based law enforcement activities, but you can  
 8 go ahead and answer if you can.  
 9 THE WITNESS: So my understanding is that  
 10 the APPS program is funded out of both, both revenue  
 11 streams. That there's no specific fee that's paid to  
 12 support an APPS program. That the APPS program is  
 13 funded out of the revenues in the DROS Fund.  
 14 MR. FRANKLIN: I'm going to hand you a  
 15 document that we'll be marking Exhibit 4.  
 16 (Exhibit No. 4 was marked)  
 17 BY MR. FRANKLIN:  
 18 Q. Have you seen this type of document before?  
 19 A. I believe we created this document for you.  
 20 Q. And more specifically do you believe it was  
 21 created for the purpose of responding to a discovery  
 22 request in litigation?  
 23 A. Yes.  
 24 Q. So this document -- well, strike that.  
 25 This type of document is not a part of the

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1 department's normal budgetary process?  
 2 A. That's correct.  
 3 Q. Do you know if there's a manual for the  
 4 unit codes that are listed on the left of the page?  
 5 A. There is. I believe we've given it to you  
 6 in response to one of your requests.  
 7 MR. HAKL: I believe that's correct.  
 8 BY MR. FRANKLIN:  
 9 Q. Do you know where the raw data for this  
 10 document was obtained?  
 11 A. The data was obtained from our accounting  
 12 information system and in response to the original  
 13 request in your discovery we generated many pages of  
 14 expenditure records and so this document you're  
 15 looking at attempted to summarize that data for ease  
 16 of understanding.  
 17 MR. FRANKLIN: Okay. Let's see here.  
 18 Where are we at? Are we at 5?  
 19 THE REPORTER: Yes.  
 20 MR. FRANKLIN: I'll show you something that  
 21 we're going to mark as Exhibit 5.  
 22 (Exhibit No. 5 was marked)  
 23 BY MR. FRANKLIN:  
 24 Q. Do you recognize this type of document?  
 25 A. I do.

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1 Q. And what is it?  
2 A. We would refer to this as a budget report.  
3 Q. And was this the type of document you were  
4 referring to when we were speaking about Exhibit 4  
5 about where the data in Exhibit 4 was drawn from?  
6 A. Yes.  
7 Q. And is this type of document something that  
8 exists as a part of a larger computer system as  
9 opposed to just a set of documents in a file in a  
10 file cabinet?  
11 A. Yes. This report is a generated budget  
12 report from our accounting system.  
13 Q. And as to the amounts on this document,  
14 do you know where the data for these totals is  
15 obtained?  
16 A. Payroll records and the coding of invoices  
17 and contracts by our accounting department.  
18 Q. I'm sorry. The coding and what?  
19 Coding and...  
20 A. The coding of invoices and contracts.  
21 Q. So when you say "payroll", are you  
22 specifically referring to the cost of paying  
23 employees?  
24 A. Correct. Their salary, monthly salary,  
25 overtime, benefits that are associated with their

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1 position.  
2 Q. And then invoices could you give me some  
3 examples of those?  
4 A. The monthly telephone bill that comes in or  
5 the monthly utility bill or if the bureau was to  
6 purchase equipment for their employees then you would  
7 see a charge showing up under equipment line on that  
8 2-page detail report.  
9 Or if staff within the program travel within  
10 the State, travel without, you know, outside of the  
11 State. So each thing that is done, if you will, is  
12 tried to -- we try to associate it with a general  
13 object code, an accounting object code, and similar  
14 to the revenues codes we spoke about earlier,  
15 object codes are uniform across the State.  
16 Q. So, what document would list the accounting  
17 codes for multiple different invoices?  
18 That is to say, if I understood your  
19 response regarding Exhibit 5, these totals are drawn  
20 from a specific kind of report; is that correct?  
21 MR. HAKL: Objection.  
22 Misstates his testimony.  
23 You can answer the question.  
24 THE WITNESS: So we're talking about the  
25 2-page detail, correct?

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1 BY MR. FRANKLIN:  
2 Q. Yeah.  
3 A. Okay. You call it number five.  
4 Q. Yeah.  
5 A. So, the information from this report comes  
6 directly out of our accounting system and it's  
7 essentially a running total of all the expenditures  
8 that this Cost Code 510, DROS Program Cost Code has  
9 incurred in this fiscal year, this 12-13 fiscal year.  
10 Q. When you say "the accounting system",  
11 is that a computerized system?  
12 A. It is.  
13 Q. So, as to any specific incidents of costs  
14 like you mentioned travel, how would the cost of that  
15 travel be incorporated into a budget detail?  
16 A. In a general sense the program would receive  
17 an invoice --  
18 Q. Okay.  
19 A. -- for the cost of their travel.  
20 They would verify the invoice is accurate  
21 and typically mark "okay to pay" and that invoice  
22 would be sent to the accounting department and then  
23 somebody within the accounting department on our  
24 accounts payable staff would take that invoice, code  
25 it appropriately to in State travel, if you will, and

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1 then key that invoice into the system so that a check  
2 could be generated to pay that vendor.  
3 Q. So accounting then is responsible for coding  
4 expenditures?  
5 A. Generally, yes.  
6 Q. And when we refer to coding, for example,  
7 I believe on Exhibit 4 there's a list of unit codes.  
8 Are those the types of codes you're  
9 referring to?  
10 A. So a unit code is, um, I use that term  
11 interchangeably with a cost code.  
12 Q. Right.  
13 A. And so if you think about like the  
14 DROS program, Unit Cost Code 510.  
15 Q. Uh-huh.  
16 A. So everything that gets charged to that  
17 program would start with this Cost Code 510, but then  
18 it would be broken down by a certain type of  
19 expenditure code; travel, training, general expense.  
20 Q. And that process is all handled by  
21 accounting?  
22 A. Correct.  
23 Well, let me take that back.  
24 It may be initially started at the program  
25 level with program staff, but it's verified by

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1 accounting.  
2 Q. And then, well, let me do it in two steps.  
3 To the best of your understanding how does  
4 program staff determine which items of costs go under  
5 a particular cost code?  
6 A. That is usually at the direction of  
7 program management.  
8 Q. And is that something that direction that  
9 you mentioned, is that something that would -- that  
10 to the best of your knowledge is incorporated in some  
11 kind of guidance document?  
12 A. That I don't know.  
13 Q. And then on the accounting side, how do they  
14 make that same decision we've been discussing?  
15 A. On the accounting side they will refer to  
16 that cost code manual that I think we referenced  
17 earlier and within that manual talks about the  
18 various unit code cost codes in the department and I  
19 think it's a general name of it and then it talks  
20 about all of the various object codes within your  
21 budget that are available to charge things to.  
22 Q. And there's some form of description of the  
23 cost -- or I'm sorry -- of the activity that was  
24 paid for in the document that goes to accounting?  
25 A. Yes.

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1 Q. At what level of detail is in that statement  
2 if you can recall?  
3 A. It would be the same level that you would  
4 get in any invoice you would receive in, you know --  
5 Q. So we're talking a matter of words not  
6 necessarily paragraphs?  
7 A. It depends on the invoice quite frankly.  
8 So we could get a phone bill, for instance.  
9 One bill could have the detailed phone records of  
10 50 phone lines and it could be 100 pages long. It  
11 just really just depends on what it is the invoice is  
12 supporting.  
13 Q. Uh-huh. You doing okay?  
14 You want to take a break?  
15 A. Un-huh.  
16 Q. So, on Exhibit 5 about halfway down the page  
17 there is a line item that refers to Consultant and  
18 Professional Services I.  
19 A. Yes.  
20 Q. Do you know what that title means?  
21 A. So the "I" is referring to internal.  
22 The short term we use is an Internal  
23 Consultant Contract as opposed to an  
24 External Consultant Contract.  
25 Q. Can you give me an example of what would be

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1 covered under an External Consultant Contract?  
2 A. I believe charges that were assessed from  
3 Department of General Services for various things.  
4 They help us with our facilities. We tend  
5 to have to pay some additional surcharges on the  
6 costs of those facility contracts and I believe  
7 those charges are hitting the internal consultant  
8 line.  
9 Q. Are there any that are specific as to the  
10 bureau that you can think of?  
11 A. No.  
12 Q. Okay. Then the next line down refers to  
13 Consultant and Professional Services E.  
14 A. Right.  
15 Q. Can you tell me what that represents?  
16 A. So, with respect to an External Consultant  
17 Contract, that might be some contract that the  
18 bureau has entered into for specific services that  
19 aren't available with program staff.  
20 The most frequent one is something called  
21 background checks. So the bureau might hire outside  
22 investigators to assist in performing background  
23 checks of prospective employees.  
24 Q. The next line down has the term  
25 "Departmental Services". Can you tell me what that

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1 title means?  
2 A. I believe Departmental Services the acronym  
3 we use is called PRORATA, PRORATA and SCWAP. It's  
4 S-C-W-A-P. So those are essentially overhead charges  
5 by either the Department of Finance or the federal  
6 government for the use of their funds.  
7 Q. Okay. This is a general question. It's not  
8 necessarily related to the DROS Fund.  
9 But if an internal -- maybe that's not the  
10 right word choice.  
11 If an attorney from the Civil Law Section or  
12 Division defends an agency -- well, let me take that  
13 back.  
14 Does that occur that sometimes attorneys  
15 from the Civil Law Section or Division defend  
16 agencies in litigation?  
17 A. Quite frequently.  
18 MR. HAKL: Objection.  
19 Vague as to "agency".  
20 BY MR. FRANKLIN:  
21 Q. State agency.  
22 A. So, our Civil Law Division within our  
23 Legal Services Division the predominant work they do  
24 is defending State agencies in court.  
25 Q. Right. And is the cost of that defense

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1 something that would be included on a document like  
2 Exhibit 5?  
3 A. Yeah. Um, so let me distinguish between an  
4 external client and an internal client.  
5 So, in an external client a section in our  
6 Civil Law Division would bill that client it's a  
7 fee-for-service model. So they would charge their  
8 time to a specific matter and that matter would then  
9 be billed monthly to whoever the client is and the  
10 client would pay the bill. How they code that  
11 invoice in their system I have no idea.  
12 Similarly, when there are internal clients  
13 within the department and a bill is generated, I  
14 believe that bill is coded to internal consultant,  
15 but I'm not a hundred percent sure, but I believe  
16 that to be the case.  
17 Q. And then you may have stated this and I  
18 misunderstood it. An external client is one that's  
19 external to the department but not to the State  
20 government?  
21 A. That's correct.  
22 MR. HAKL: Just a point of clarification.  
23 This idea of internal and external clients,  
24 that's distinct from what we're talking about here?  
25 MR. FRANKLIN: As opposed to internal and

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1 external consultants that is my understanding, right,  
2 Mr. Harper?  
3 MR. HAKL: Is that right?  
4 THE WITNESS: One more time.  
5 BY MR. FRANKLIN:  
6 Q. The concepts of internal and external  
7 consultants and internal and external clients are  
8 completely different concept?  
9 A. Completely different concept, yes.  
10 MR. HAKL: Thank you.  
11 BY MR. FRANKLIN:  
12 Q. So, if I wanted to, for example -- let's see  
13 here. What do we have here?  
14 On Exhibit 5 there's an amount of  
15 \$2,404,118.05 for year-to-date expenditures on  
16 Consultant Professional Services External.  
17 Do you see that?  
18 A. Yes.  
19 Q. What documents would I look at to verify  
20 that total?  
21 Like where in the chain of accounting would  
22 I be able to see the numbers that add up to this  
23 total?  
24 A. It would be something akin to a Detailed  
25 Cost Report for that object code for that consultant

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1 external. I believe our system can go in and focus  
2 on that one object of expenditure and run a detail of  
3 everything that was charged to it and that should  
4 total up to that 2.4 million.  
5 Q. And if I understand correctly, the way in  
6 which the system obtains that information is an  
7 ongoing process of cost information being provided  
8 into the general accounting system?  
9 A. Correct.  
10 Although, this is a year-end statement so  
11 this should be kind of set-in-stone if you will.  
12 Q. Okay. Great.  
13 We talked a little bit about unit codes also  
14 known as cost codes.  
15 Can you explain to me in a general sense how  
16 an employee in the Department of Firearms would use a  
17 cost code like 505 for recording some kind of  
18 expense?  
19 A. So, without knowing the specifics of the  
20 internal checks and balances in the bureau, um,  
21 my assumption is that the employee would have to work  
22 in that Cost Code 505 and then would be responsible  
23 for coding invoices to that cost code.  
24 Q. When you say work within 505, so that would  
25 mean, for example, they would have to work within

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1 what is titled here "Armed Prohibited"?  
2 A. Correct.  
3 Q. Okay. And then they will enter it.  
4 Presumably it may or may not go through some  
5 review at the program stage and then it comes into  
6 accounting and there is some level of review as  
7 well?  
8 A. Correct.  
9 Let me just clarify.  
10 So when you say "enter", program staff don't  
11 have the ability to enter information into our  
12 accounting system.  
13 Q. Right.  
14 A. They can code an invoice, manually write  
15 what they think the appropriate cost code is and the  
16 appropriate object code, but all that is keyed,  
17 physically keyed into our accounting system by our  
18 accounting staff.  
19 Q. So all costs in a given program will reach  
20 the accounting office by way of invoices?  
21 A. Um, with the exception of personal services  
22 of salary that's typically automatic. It's kind of  
23 an automatic structure.  
24 Q. I'm going to shift gears a little bit.  
25 When did you first become aware of the

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1 existence of a DROS Special Account?  
 2 A. When did I first become aware of it?  
 3 Mid 90's.  
 4 Q. And why was that if you recall?  
 5 A. So, prior to working at this department I  
 6 worked at the Department of Finance and the justice  
 7 budget was one of my budget assignments.  
 8 Q. When you worked at the Department of Finance  
 9 would you work with, geez, I don't know what the name  
 10 of the entity was at the time, but I'm going to say  
 11 the predecessor of DAS or subentity in terms of  
 12 budgetary analysis?  
 13 A. Yes.  
 14 And just for the record the prior name  
 15 was -- the acronym was ASD. Stood for  
 16 Administrative Services Division.  
 17 And for the most part back then my contacts  
 18 were with the existing budget officer in this  
 19 department at that time and/or possibly the  
 20 Director of the Administrative Services Division  
 21 back then.  
 22 Q. And were you with the Department of Finance  
 23 until you started with the Department of Justice?  
 24 A. No. So, just chronologically, I started  
 25 with the Department of Finance in '89.

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1 I believe in '92 I went to work in the  
 2 State Assembly. Returned approximately two years  
 3 later for a short time. And then went to work in the  
 4 State Senate about six years.  
 5 Following the recall of Governor Davis, I  
 6 was appointed to Deputy Director of Legislation,  
 7 Department of Finance by Governor Schwarzenegger. I  
 8 was there for a little over two years.  
 9 I then went to work in the Assembly as the  
 10 Deputy Chief of Staff to the Assembly Republican  
 11 Leader. I think that was about three years.  
 12 And then following that is what brought me  
 13 to the Department of Justice.  
 14 Q. But at some point did you become aware of a  
 15 particular process being used for setting the  
 16 DROS fee and the amount being charged of the  
 17 DROS fee?  
 18 MR. HAKL: Objection. Vague as to  
 19 "particular process", but you can answer to the  
 20 extent you can.  
 21 THE WITNESS: I don't recall becoming aware  
 22 of a process. I believe the statute allows the  
 23 bureau to -- or the department to set that fee  
 24 through the regulatory process. Outside of that, the  
 25 existing fee was in existence when I got here so...

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1 BY MR. FRANKLIN:  
 2 Q. So, when I was referring to a process,  
 3 more specifically its I'm looking for what factors  
 4 are used in the decision to change or not change the  
 5 amount being charged for the DROS fee.  
 6 Do you have an understanding what factors  
 7 are used in calculating the amount of the DROS fee  
 8 currently?  
 9 A. I would say I have a general understanding.  
 10 Q. And what is that general understanding?  
 11 A. That the fee should be sufficient to recover  
 12 the costs of essentially administering the program.  
 13 Q. Which program?  
 14 A. The DROS program.  
 15 And then I would say that over time that  
 16 general understanding has been expanded by the  
 17 legislature to broaden the use of the DROS fee.  
 18 Q. Have you ever been involved in internal  
 19 conversation within the department about the  
 20 possibility of changing the DROS fee?  
 21 MR. HAKL: Objection.  
 22 To the extent it calls for Attorney-Client  
 23 Privilege, Deliberative Process Privilege, Official  
 24 Information Privilege and specifically I'm referring  
 25 to, you know, conversations with the Executive Staff.

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1 To the extent you can answer without  
 2 revealing those kind of confidences you can.  
 3 MR. FRANKLIN: On this one I'll say that I'm  
 4 sure this is an issue we will have going forward,  
 5 but this one specifically was just the timing so that  
 6 may affect, you know, the scope of response.  
 7 MR. HAKL: I'm sorry. Okay.  
 8 So what's the question?  
 9 MR. FRANKLIN: When was the first time that  
 10 type of discussion occurred that you were a part of?  
 11 MR. HAKL: And discussion regarding what?  
 12 MR. FRANKLIN: The setting of the DROS fee,  
 13 the amount of the DROS fee.  
 14 THE WITNESS: I'm still vague on the  
 15 question.  
 16 BY MR. FRANKLIN:  
 17 Q. You're aware of the department being the  
 18 entity responsible for setting the amount of the  
 19 DROS fee?  
 20 A. Correct.  
 21 Q. Do you recall ever having been a participant  
 22 in an internal discussion about the possibility of  
 23 changing the DROS fee, the amount of the DROS fee?  
 24 A. Yes.  
 25 Q. Do you remember the first time you were part

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1 of such a discussion?

2 A. Not specifically, but I would venture to say

3 approximately 2010. I couldn't be any more specific

4 than that.

5 Q. Right. No. It just helps me eliminate.

6 So, you wouldn't have any personal

7 involvement in the 2005 Rulemaking that resulted in

8 the increase of the DROS fee?

9 A. Absolutely zero involvement.

10 I wasn't even in the department at the time.

11 Q. Right. Do you have an opinion as to who

12 would have a better understanding of what process is

13 used to set the amount of the DROS fee?

14 A. No.

15 MR. HAKL: I would say objection vague as to

16 "process".

17 MR. FRANKLIN: I would like to provide

18 better clarification. I just -- I don't -- you know,

19 there is a fee that is set at an amount and there

20 must be a method in which that amount is determined.

21 I'm using the word process as a shorthand

22 for that method. I don't know if there's any --

23 maybe you can suggest a clearer way. I don't know

24 that I know one.

25 MR. HAKL: That's fine.

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1 I just want to make the objection for the

2 record, because I mean the fact characterization it

3 really goes to the heart of the lawsuit and

4 plaintiff's contention as to what the law requires as

5 to what we do or do not do in any such process and

6 what we contend is required or not required in

7 connection with any such process.

8 I just -- plaintiff's conception is very

9 different than our conception, and so I don't -- the

10 fact that we're here answering your questions about

11 it is totally fine, but I don't want our willingness

12 to answer questions about it to be misconstrued as an

13 agreement with what you think the process should or

14 should not be if that makes sense.

15 BY MR. FRANKLIN:

16 Q. It's understood.

17 I can have the reporter read it back, but

18 my understanding is that your general understanding

19 of how the amount of the DROS fee is determined is

20 an analysis of what it would take to cover program

21 costs; is that correct?

22 MR. HAKL: Objection. Misstates his

23 testimony. But you can answer his question.

24 THE WITNESS: I would say that if I were to

25 determine how the DROS fee were to be set it would be

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1 based on the existing activities supported, you know,

2 the Bureau of Firearms activities consistent with the

3 statute.

4 BY MR. FRANKLIN:

5 Q. How would you determine what bureau

6 activities are consistent with the statute?

7 A. It would probably be a discussion with the

8 bureau staff or at least the bureau management.

9 Q. Would it be --

10 A. So, from my perspective when I look at the

11 cost reports, when I look at the cost codes, the unit

12 codes, that provides a certain level of general

13 information as to what that unit does.

14 But I can't tell you specifically everything

15 they do within the unit because our systems don't

16 allow us to go down to that level of detail.

17 And so having a general understanding that

18 the fee needs to be sufficient to cover the

19 operations of enforcing, you know, the statutes

20 that's kind of where my starting point would be.

21 Q. So, let me give maybe a helpful example.

22 I believe there's a Cost Code Unit called a

23 Gun Show Unit?

24 A. Yes.

25 Q. And I think there's also a Unit 505. It's a

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1 DROS unit.

2 A. 505 would be the APPS --

3 Q. Oh, I'm sorry.

4 A. -- Unit. DROS is 510.

5 Q. So 510.

6 When looking at the possibility of changing

7 the amount of the DROS fee, you would not get into

8 the level of detail of evaluating whether or not

9 one of those programs should be considered in the

10 determination of the amount of the DROS fee?

11 A. I would assure that the activities performed

12 in those units are consistent with the statute.

13 Q. And then the statute you're referring to in

14 this instance is Penal Code 28225?

15 A. I'm not referring to any specific statute.

16 The penal code statutes in the firearm

17 section are fairly broad and have expanded over time,

18 and so what may have existed back in 2004 could be

19 greatly expanded today.

20 Q. Do you know if there's ever been a regular

21 review of the amount of the DROS fee within the

22 department?

23 MR. HAKL: Objection. Vague as to "regular

24 review", but you can answer.

25 THE WITNESS: So, I wouldn't characterize it

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1 as a review of the fee. What I would say is on a  
 2 regular basis my budget unit we're constantly  
 3 reviewing the expenditures within the DROS Fund.  
 4 We're constantly evaluating the revenues  
 5 that are being generated within the DROS Fund and  
 6 we're trying to ensure that the fund stays in  
 7 balance; that the department doesn't illegally  
 8 overspend their appropriation from the legislature,  
 9 and if we start to identify potentials of funding  
 10 shortfalls in the future then we may have discussions  
 11 on how to solve that potential shortfall and those  
 12 discussions could, you know, include, you know, the  
 13 possibility of raising the fee.  
 14 BY MR. FRANKLIN:  
 15 Q. And that discussion is done on a macro  
 16 level; that is to say, it's the total amount of  
 17 revenue going in to the DROS Special Account and the  
 18 total amount of expenditure coming from the  
 19 DROS Special Account?  
 20 A. That's correct. We don't distinguish  
 21 between the individual fees that we spoke about and  
 22 what they support versus what the DROS Fund supports  
 23 in the context of the operations of the  
 24 Bureau of Firearms.  
 25 Q. So then that consideration in terms of

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1 setting the DROS fee, that wouldn't include specific  
 2 goals applicable to the particular fee payers.  
 3 And what I mean by that is the process of  
 4 setting the DROS fee doesn't consider whether or not  
 5 a DROS fee payer may become prohibited from owning a  
 6 firearm later?  
 7 MR. HAKL: Objection.  
 8 Calls for speculation.  
 9 BY MR. FRANKLIN:  
 10 Q. Well, if he's familiar with the process he  
 11 would have a basis for responding if it's not used.  
 12 What I've heard thus far is that it's a  
 13 pretty again macro level analysis.  
 14 So, to the best of your knowledge, are --  
 15 let me just pick one thing.  
 16 To the best of your knowledge is the  
 17 possibility of someone becoming a prohibited person  
 18 a factor that is considered in setting the DROS fee?  
 19 MR. HAKL: Objection. Vague.  
 20 But you can answer it.  
 21 THE WITNESS: I would say that the legal  
 22 ability for the DROS fee or the DROS Fund to support  
 23 the APPS program is a consideration in the level  
 24 of -- the appropriate level of the DROS fee.  
 25 What the program does with respect to any --

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1 what the APPS program does with respect to any  
 2 individual who may or may not be prohibited is  
 3 immaterial to that analysis.  
 4 BY MR. FRANKLIN:  
 5 Q. How does that consideration actually get  
 6 quantified into the process of analyzing the amount  
 7 that could be charged for the DROS fee?  
 8 A. How does that -- say one more time.  
 9 Repeat it.  
 10 (Record Read)  
 11 MR. HAKL: Objection. Vague.  
 12 But you can answer.  
 13 THE WITNESS: I would say that we would --  
 14 the -- let's see. The costs of the APPS program for  
 15 the staffing cost and the operational cost would be  
 16 an expenditure that would draw revenue from the  
 17 DROS Fund, so we would look at, you know, what is  
 18 the size of that program and is the existing revenue  
 19 stream based on the number of DROS applications and  
 20 the existing fees sufficient to cover the cost of  
 21 that program and all the other programs that are  
 22 supported by the DROS fee.  
 23 BY MR. FRANKLIN:  
 24 Q. And the other programs are included ones  
 25 like the DROS background check?

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1 A. Exactly. Background check, yeah.  
 2 And possibly even gun show if gun show is  
 3 DROS funded. So, any of the programs that receive  
 4 funding from DROS they would be analyzed or  
 5 considered in kind of in totality that, you know,  
 6 that the DROS fee is the appropriate fund source or  
 7 the DROS Fund is the appropriate fund source to pay  
 8 for those activities.  
 9 Q. As part of the process of setting the  
 10 DROS fee is there any -- is there any consideration  
 11 given to any benefit that goes to the fee payer?  
 12 MR. HAKL: Objection, vague, as to benefit  
 13 to the fee payer. That's a legal term also.  
 14 BY MR. FRANKLIN:  
 15 Q. No. I don't mean -- I don't mean it in a  
 16 legal sense. I mean it in just a, you know, common  
 17 English sense.  
 18 A. Yeah. No. I don't understand the question  
 19 quite frankly.  
 20 Q. Okay. Other than the programatic costs that  
 21 we've been discussing, are there any specific costs  
 22 that are considered in setting the DROS fee?  
 23 A. Not that I know of.  
 24 Q. And then other than the type of programatic  
 25 costs that we've been discussing, are you aware of



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1 any other costs related -- sorry. Strike that.  
 2 To the best of your knowledge has the  
 3 department actually engaged in an analysis of the  
 4 amount being charged of the DROS fee specifically  
 5 including the costs of APPS-based law enforcement  
 6 activities?  
 7 MR. HAKL: Objection. Vague as to  
 8 "analysis". But go ahead.  
 9 THE WITNESS: So, in the context of the  
 10 frequent reviews that I spoke about earlier that  
 11 perform our budget shop, that would be the analysis I  
 12 would refer to that the APPS program is now funded  
 13 within the DROS Fund, and to the extent that the  
 14 DROS Fund can support those activities, the existing  
 15 fee is sufficient.  
 16 BY MR. FRANKLIN:  
 17 Q. Do you have any understanding about how the  
 18 amount necessary to fund the activities you just  
 19 mentioned is determined?  
 20 A. No.  
 21 So, going back.  
 22 The fee we're talking about has been in  
 23 existence since 2004, and I have no idea what  
 24 analysis went in to establishing that level of fee.  
 25 But that level of fee is sufficient to

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1 support all the existing activities within the  
 2 Bureau of Firearms that rely on the DROS Fund.  
 3 Q. But that could change in the future?  
 4 A. Absolutely. It could change. It could go  
 5 up. It could could go down.  
 6 Q. So, without getting to in the weeds on a  
 7 hypothetical. If there's a drastic increase in the  
 8 number of people on the APPS list and it leads to  
 9 an increase in costs absent enforcement costs,  
 10 how would that affect the analysis of the propriety  
 11 of the DROS fee?  
 12 MR. HAKL: Objection. Incomplete  
 13 hypothetical. But go ahead.  
 14 THE WITNESS: So, again, simply an increase  
 15 in the number of people on the APPS list doesn't  
 16 necessarily lead to an increase in program costs.  
 17 If there is some type of a policy decision  
 18 that is made either by an Attorney General and/or the  
 19 legislature that they want to increase enforcement,  
 20 they would have to provide additional appropriation  
 21 authority to spend more money, if you will, and that  
 22 appropriation authority would have to be supported by  
 23 some level of increased revenue if in fact the fund  
 24 was to remain solvent. So it really depends.  
 25 The legislature could uniformly just say I'm

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1 going to raise the fee \$5, provide all that money for  
 2 more enforcement. That's not something we would do.  
 3 We could raise the fee theoretically.  
 4 That doesn't mean we're going to get  
 5 additional spending authority to spend that extra  
 6 revenue. So, the two kind of are hand-in-hand.  
 7 Conversely, if there's an initiative to  
 8 expand enforcement in the APPS program say an  
 9 internal initiative by the Attorney General, we may  
 10 be able to redirect agents from other programs into  
 11 the APPS program provided we can create the savings  
 12 elsewhere in the DROS Fund from our existing  
 13 appropriation to fund those expanded enforcement  
 14 activities.  
 15 So, there's no one answer to your question.  
 16 It's simply what do you want to achieve, and  
 17 then knowing what you want to achieve, what is  
 18 the I'm not going to say what is the best, what are  
 19 the options to achieve that.  
 20 And the options may be what are the quickest  
 21 options. What are the best long-term options.  
 22 It's -- so there's a lot of factors that go into  
 23 determining something like that like what you asked.  
 24 BY MR. FRANKLIN:  
 25 Q. So, I'll try and make a more simple

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1 question. Assuming all other revenue and expenditure  
 2 amounts are consistent, if the department has an  
 3 increase in costs related to APPS-based law  
 4 enforcement, is it your understanding that the  
 5 department could increase the amount of the fee  
 6 because of that increase in APPS-based law  
 7 enforcement costs?  
 8 MR. HAKL: Objection. Vague as to  
 9 APPS-based law enforcement costs, but you can answer.  
 10 THE WITNESS: So my understanding would be  
 11 yes. If the department chose to expand the APPS  
 12 unit, the enforcement unit, that they could choose to  
 13 increase the fee to pay for that expansion provided  
 14 the legislature provided the additional spending  
 15 authority to go along with the fee increase.  
 16 BY MR. FRANKLIN:  
 17 Q. And the spending authority would be in the  
 18 Budget Act?  
 19 A. Correct.  
 20 Q. And I think you've already answered this  
 21 question. Looking at total revenue and expenditures  
 22 going in and out of the DROS Special Account, is that  
 23 the method used for monitoring the amount of reserve  
 24 in that account?  
 25 A. That's a component of it, yes.

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1 Q. What other components are there?  
2 A. So, it's clearly it's the revenue that's  
3 coming in. It's the legal appropriations of  
4 expenditure. And then there's a third component if  
5 you refer back to that Fund Condition Statement that  
6 you provided.  
7 Q. Uh-huh.  
8 A. Um, I'm trying to find it now.  
9 Well, I'm not seeing it on here, so it may  
10 not be listed on these Fund Condition Statements.  
11 But there's a, um, there's an adjustment  
12 made in our Fund Condition Statements every year.  
13 It's called a Prior Year Adjustment is the line, and  
14 what that refers to is kind of settling up the annual  
15 appropriation from two years ago.  
16 So, I apologize. It's going to be a little  
17 lengthy.  
18 When the legislature -- when the Budget Act  
19 provides an appropriation, the funding is good for  
20 one year essentially so you have one year to encumber  
21 that money, and then after the encumbrance, you have  
22 two years to liquidate that encumbrance.  
23 So, as an example, let's say we have a  
24 contract for these investigative, you know, these  
25 outside investigators to do background checks, and so

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1 the contract is a million dollars and we encumber  
2 that million dollars within the fiscal year that  
3 they're operating. That encumbrance will stay as an  
4 expenditure against the fund, if you will, almost  
5 like an outstanding check for two more years.  
6 At the end of that 2-year period when the  
7 liquidation expires, the Controller's office will  
8 revert that unused portion of the million back into  
9 the fund and that reversion is called a Prior Year  
10 Adjustment.  
11 So, essentially we look at revenues and we  
12 look at expenditures, but we always also look to see  
13 what's anticipated Prior Year Adjustment. It's a  
14 one-time usually windfall to the fund which may or  
15 may not be significant in an operating context.  
16 Q. Is there a -- is there an amount or standard  
17 used as kind of a bellwether for the amount of  
18 reserve in the DROS Special Account?  
19 MR. HAKL: Objection. Vague.  
20 I just don't understand the question.  
21 BY MR. FRANKLIN:  
22 Q. So, is there a method to identify when  
23 there's concern that there's not enough money in the  
24 DROS Special Account?  
25 A. So, as part of our analysis we will look at

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1 longer term revenue trends based on, you know,  
2 consulting with program staff on what they think  
3 out year DROS transactions are likely to be.  
4 Do they see a growth, a year-to-year growth  
5 and try and model what that growth would look like  
6 and then what the revenues generated from that growth  
7 are.  
8 And then we have expenditure trends.  
9 And for the most part expenditures are  
10 essentially flat year-to-year, because they're  
11 controlled by the legislature, so there's not a  
12 natural growth built into that, if you will, and so  
13 we can kind of get like an operating budget that goes  
14 forward in time which will compare annual revenues to  
15 annual expenditures with that carry forward balance  
16 and so that's like a starting point.  
17 Q. There's no starting point in terms of a  
18 percentage or a dollar amount that sets off the alarm  
19 saying we need to address this deficiency because  
20 we're below our number?  
21 A. No. There's nothing like that.  
22 You know, there's nothing like that.  
23 MR. HAKL: Can we go off the record just for  
24 one second?  
25 MR. FRANKLIN: Sure.

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1 (Whereupon, a brief recess was taken)  
2 BY MR. FRANKLIN:  
3 Q. At some point did the department become  
4 concerned that the reserve in the DROS Special  
5 Account was larger than it needed to be?  
6 A. Yes.  
7 Q. Do you remember approximately when that was?  
8 A. For some reason I want to say approximately  
9 2010.  
10 Q. And do you remember at the time any specific  
11 proposals about how to address the surplus?  
12 A. I recall suggesting a fee reduction to  
13 reduce the reserve.  
14 Q. Do you recall any other ideas?  
15 A. No, I don't.  
16 Q. At that time was there any external pressure  
17 on the department to reduce the DROS surplus?  
18 MR. HAKL: Objection. Vague, argumentative.  
19 You can answer if you can.  
20 THE WITNESS: None that I know of.  
21 BY MR. FRANKLIN:  
22 Q. For example, were there any legislators that  
23 were pushing to reduce the DROS fee?  
24 A. I recall a memo I wrote to then  
25 Assembly Member Nielsen. I don't believe the context

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1 of that memo had to do with reducing the DROS fee.  
2 It was -- it was a general discussion on  
3 reserve levels and use of the DROS Fund.  
4 But I don't recall if in his initial letter  
5 to us was advocating a reduction in the fee.  
6 Q. And the department did in fact institute a  
7 rulemaking for reducing the DROS fee in 2010; is that  
8 right?  
9 A. I believe so.  
10 Q. Was there any opposition to that  
11 rulemaking?  
12 A. I have no idea.  
13 Q. Were you involved in the drafting of the  
14 proposed rule?  
15 A. No.  
16 Q. Do you recall who was?  
17 A. No.  
18 Q. So, to the best of your recollection the  
19 idea to start a rulemaking regarding the reduction of  
20 the DROS fee was your idea?  
21 A. It was my suggestion that we reduce the fee,  
22 because the reserve had grown to a rather large  
23 level.  
24 Q. The reduction of the -- strike that.  
25 The rulemaking to reduce the DROS fee was

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1 not something that the bureau was instructed to do?  
2 MR. HAKL: Objection.  
3 Misstates his testimony.  
4 MR. FRANKLIN: The question is not based on  
5 his testimony.  
6 MR. HAKL: Okay.  
7 THE WITNESS: So, I suggested that the fee  
8 be reduced due to the level of reserve.  
9 BY MR. FRANKLIN:  
10 Q. Uh-huh.  
11 A. Who instructed whom in the bureau to do that  
12 I have no idea. I wasn't involved in any of that  
13 process.  
14 Q. Yeah. Well, let me -- I'll ask a  
15 clarification question.  
16 You weren't instructed -- strike that.  
17 You weren't aware of an instruction of  
18 someone senior to you that the rulemaking be  
19 instituted?  
20 A. No.  
21 Q. Do you know when the proposed legislation  
22 that became SB 819 was first being discussed within  
23 the department?  
24 MR. HAKL: Objection. To the extent it  
25 calls for Attorney-Client Privilege or Deliberative

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1 Process Official Information Privilege Information,  
2 but you can answer.  
3 THE WITNESS: Like from a timeline  
4 perspective?  
5 BY MR. FRANKLIN:  
6 Q. Yes.  
7 A. I would say generally it was shortly after  
8 the change in the administration with the  
9 Attorney General, so shortly after  
10 Attorney General Harris came into the office.  
11 Q. And that was while the 2010 rulemaking  
12 process was still ongoing?  
13 A. That I don't know.  
14 Q. Do you have any recollection of if those  
15 two matters led to any discussions about their  
16 overlap, that is, the 2010 DROS Fee Reduction  
17 Rulemaking and SB 819 becoming law?  
18 A. No.  
19 Q. And you said you weren't involved in the  
20 drafting of the rulemaking -- the proposed rule?  
21 A. Correct.  
22 Q. Were you involved in the rulemaking process  
23 thereafter?  
24 A. Not at all.  
25 MR. FRANKLIN: I'm going to show you a

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1 document that I believe we're going to mark as  
2 Exhibit 6.  
3 (Exhibit No. 6 was marked)  
4 BY MR. FRANKLIN:  
5 Q. We'll give you a moment to skim through the  
6 entire document. To the best of your recollection  
7 were you involved in drafting this document?  
8 A. No.  
9 Q. I'd like to have you look at the last  
10 paragraph on the first page that refers to that  
11 the proposed regulations would require a review  
12 process.  
13 Do you see that paragraph?  
14 A. I do.  
15 Q. Do you have any recollection as to this  
16 proposal?  
17 A. I would say no direct recollection of this  
18 proposal, although, it generally describes what the  
19 budget office does already on an annual basis more  
20 than on a recurring basis.  
21 Q. Do you have any recollection as to why this  
22 proposal is in the Notice of Proposed Rulemaking  
23 given what you just said about what the office  
24 actually does?  
25 A. No.

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1 MR. FRANKLIN: I'll give you a document that  
2 we'll mark as Exhibit 7.  
3 (Exhibit No. 7 was marked)  
4 BY MR. FRANKLIN:  
5 Q. Did you have a chance to review the  
6 document?  
7 A. I did, yes.  
8 Q. Do you believe you were involved in the  
9 drafting of this document?  
10 A. No.  
11 Q. If I could have you look at the first  
12 paragraph. The second sentence says:  
13 "The proposed regulations lower the current  
14 \$19 DROS fee to \$14, commensurate with the actual  
15 cost of processing a DROS."  
16 Do you see that?  
17 A. I do see that sentence.  
18 Q. Do you have an understanding of what that  
19 sentence is based on?  
20 A. No.  
21 Q. Do you recall at around this time 2010  
22 working with the department to analyze what amount  
23 would be commensurate with the actual cost of  
24 processing a DROS?  
25 A. No.

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1 Q. In your experience and in your role at  
2 DAS if -- strike that.  
3 Does -- has DAS ever undertaken an analysis  
4 of figuring out the actual cost to processing a  
5 DROS?  
6 A. Not since I've been here.  
7 Q. Are you aware of anyone in the department  
8 undertaking that type of analysis?  
9 A. No.  
10 MR. HAKL: I'm going to belatedly object.  
11 Just I know it's on the document, but actual  
12 cost of processing a DROS I'm not sure what that  
13 means.  
14 BY MR. FRANKLIN:  
15 Q. Okay. So, just to close this out.  
16 You don't have any opinion as to where this  
17 conclusion about the \$14 being commensurate with the  
18 actual cost of processing a DROS what data that  
19 conclusion was based on?  
20 Let me restate the question.  
21 Were you aware of any information that  
22 supports the contention here that \$14 would be  
23 commensurate with the actual cost of processing a  
24 DROS?  
25 A. No.

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1 Q. If I could have you turn to the second page.  
2 Under the heading "Reasonable Alternative to  
3 the Regulations and the Agency's Reasons for  
4 Rejecting Them."  
5 Is it fair to say that you're not aware of  
6 any reasonable alternatives to this rulemaking having  
7 arisen?  
8 Let me rephrase the question.  
9 Are you aware of any reasonable alternatives  
10 to the regulation being offered within the  
11 department?  
12 MR. HAKL: Objection as to "reasonable  
13 alternatives" being vague.  
14 BY MR. FRANKLIN:  
15 Q. I'm happy to re-ask the question just as  
16 alternatives.  
17 A. So, I can recall I asked a question when I  
18 was aware that the proposal was to go from 19 to 14.  
19 Q. Uh-huh.  
20 A. I don't believe it was before this was  
21 drafted. I think it was kind of after those  
22 decisions were already made.  
23 And at one time I had thought about a way to  
24 refund the reserve to individuals that paid the DROS  
25 fee, if you will, as a way to give them back a

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1 portion of money they've already paid --  
2 Q. Uh-huh.  
3 A. -- as opposed to lowering the fee for some  
4 future DROS transaction.  
5 And my recall at the time it wasn't possible  
6 because of the -- we didn't have the registration  
7 data on individuals who purchased long guns and so  
8 there was a disconnect in trying to rebate, if you  
9 will, the reserve to people who have already paid it  
10 versus some other alternative so I mean --  
11 Q. And that was the reason that option wasn't  
12 further pursued is because it would be at least  
13 difficult to identify the portion of people who paid  
14 DROS fees for long guns?  
15 A. That's my understanding, yes.  
16 Q. And you don't specifically recall the  
17 concept that's embodied by SB 819 as being considered  
18 an alternative to the proposed regulation?  
19 A. No.  
20 MR. FRANKLIN: This will be a document that  
21 will be marked 8.  
22 (Exhibit No. 8 was marked)  
23 BY MR. FRANKLIN:  
24 Q. Were you involved in the drafting of this  
25 document?

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1 A. I've never seen this document.  
2 Q. As a general concept are you familiar with  
3 Final Statement of Reasons?  
4 A. No.  
5 Q. In your role at DAS are you required to  
6 participate in the rulemaking process?  
7 A. Um, I would say on the periphery.  
8 So, the actual rulemaking process no  
9 involvement whatsoever. But there is a document that  
10 is submitted to the Department of Finance and the  
11 Office of Administrative Law with respect to the  
12 fiscal impacts of proposed regulations, and I sign  
13 off on all of the potential fiscal impacts of all  
14 regs.  
15 So, my role is really more reviewing the  
16 fiscal consequences or benefits of a regulation as  
17 opposed to actually drafting the regulation.  
18 Q. From the administrative procedure side of it  
19 you wouldn't be involved?  
20 A. Correct.  
21 MR. FRANKLIN: I have a couple documents  
22 that I think you're not going to have any knowledge  
23 about, but I just need to make a record on it.  
24 This will be Exhibit 9.  
25 (Exhibit No. 9 was marked)

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1 BY MR. FRANKLIN:  
2 Q. Were you involved in the drafting of this  
3 document?  
4 A. No.  
5 Q. Do you know who Erica Goerzen is?  
6 A. I do.  
7 Q. And do you understand what her role was  
8 regarding the 2010 regulation -- rulemaking process?  
9 A. Not her direct role.  
10 My understanding is she generally provided  
11 all the administrative support in compiling the  
12 documents and, you know, ensuring that it was  
13 submitted timely and accurate with all of the  
14 necessary backup.  
15 In fact, she was the one that would have  
16 given me the document, the fiscal document to sign if  
17 in fact there was a fiscal document to sign.  
18 Q. And I'll represent that I got this document  
19 from the department, and I believe it's part of the  
20 rulemaking file. And I just want to ask you one more  
21 question if you know why this document isn't  
22 completed?  
23 A. I have no idea.  
24 MR. FRANKLIN: Okay.  
25 This will be Exhibit 10.

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1 (Exhibit No. 10 was marked)  
2 BY MR. FRANKLIN:  
3 Q. And I think a skim will probably be  
4 sufficient.  
5 Do you believe you were involved in making  
6 this -- creating this document?  
7 A. I've never seen this document before.  
8 Q. That's all we have for that.  
9 Am I correct in understanding that at  
10 some point during the rulemaking process you and  
11 Stephen Lindley worked together on reviewing  
12 expenditures into or money going into and coming out  
13 of the DROS account as it relates to that  
14 rulemaking?  
15 A. I don't recall a review as it relates to the  
16 rulemaking, but Chief Lindley and I have reviewed  
17 revenues and expenditures in the DROS Fund for a  
18 number of years. I can't tell you that we did one  
19 specifically related to this rulemaking. I can't  
20 recall one.  
21 Q. And it's that same macro level review that  
22 we discussed previously, correct?  
23 A. Yes. Yes.  
24 Q. So, just to clarify the record.  
25 Other than a macro level review, you're not

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1 aware of any other review of the DROS Special Account  
2 as it relates to the 2010 rulemaking?  
3 MR. HAKL: I'm going to object to macro just  
4 because that's the word that you introduced to the  
5 record and it's vague and argumentative.  
6 BY MR. FRANKLIN:  
7 Q. If you have a more succinct way of referring  
8 to that analysis of using expenditures -- total  
9 expenditures going in and total expenditures going  
10 out that analysis process I'm happy to use it.  
11 That's just a concept that I think is most quickly  
12 explained with the word "macro".  
13 A. I would use "general" as opposed to "macro".  
14 Q. Okay.  
15 A. But I mean I understand the context of the  
16 meaning when you use macro.  
17 So, a specific more detailed analysis with  
18 respect to the rulemaking, no.  
19 Q. Okay. Do you have any recollection as to  
20 \$14 as compared to \$19 being chosen as an amount  
21 commensurate with the cost of processing DROS  
22 applications?  
23 A. Not in the context of the rulemaking  
24 process. What strikes me is the \$14 seems to be the  
25 amount that exists in statute, and prior to the

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1 increase through the regulatory process the fee was  
2 14 so...

3 If coincidental I don't know -- I don't know  
4 why 14 was chosen coincidentally or not. It's just  
5 to me 14 is what exists in statute so that's what --  
6 that's the fee the legislature established.

7 Q. Do you know -- do you have an understanding  
8 of what happened to the 2010 rulemaking how it ended?  
9 A. No.

10 Q. Were you ever provided information that  
11 there was an intent to complete the rulemaking?  
12 A. No.

13 Q. To the best of your knowledge do you know if  
14 the department provided an explanation to the public  
15 as to why the rulemaking was not completed?  
16 A. No.

17 Q. To the best of your knowledge is it usual  
18 practice for the department to abandon a rulemaking  
19 without providing a public explanation?  
20 MR. HAKL: Objection. Vague and  
21 argumentative with respect to "abandon".  
22 MR. FRANKLIN: That's not an instruction  
23 then?  
24 MR. HAKL: No. You can answer.  
25 THE WITNESS: What was the first part of the

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1 question again?  
2 MR. FRANKLIN: Can you read it back, please?  
3 (Record Read)  
4 THE WITNESS: So usual in the context of  
5 routine?  
6 BY MR. FRANKLIN:  
7 Q. Yes.  
8 A. To my knowledge -- I mean I don't -- I'm not  
9 aware that rules are either adopted or abandoned on a  
10 regular basis.  
11 You know, I see a rulemaking package.  
12 When I see a rulemaking package, I don't  
13 necessarily get involved in the level of work at the  
14 program level before seeing it other than I might  
15 here hear about it on occasion.  
16 But the fact that this one was abandoned, I  
17 didn't think twice about it one way or the other.  
18 MR. FRANKLIN: I think you already referred  
19 to this letter before. It's going to be Exhibit 11.  
20 Maybe not. Yeah, it's going to be eleven.  
21 We might jump around a little bit.  
22 (Exhibit No. 11 was marked)  
23 BY MR. FRANKLIN:  
24 Q. I'm going to give you a moment to review it.  
25 Did you have a chance to review it?

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1 A. Yes.  
2 Q. Do you recognize this document?  
3 A. I wrote this document.  
4 Q. What is this document?  
5 A. This is a letter in response to a letter we  
6 received from Assembly Member Nielsen generally  
7 talking about the issue of the DROS account.  
8 Q. Do you know if the department has a copy of  
9 the letter referred to in this draft letter?  
10 A. I don't know if we still have a copy of it  
11 given the date of the letter was probably sometime in  
12 early 2009 or mid 2009 as this letter suggests.  
13 I reviewed my records initially and couldn't  
14 find the copy of Assembly Member's letter.  
15 MR. FRANKLIN: To the best of your  
16 knowledge -- so I'm speaking with Attorney Hakl --  
17 you're not aware of this document either the one  
18 referred to?  
19 MR. HAKL: That's correct.  
20 After a reasonably diligent inquiry, this is  
21 the only copy we've been able to find.  
22 THE WITNESS: Can I point out though, the  
23 way I drafted the response was to basically point out  
24 the questions in his letter so maybe reasonably infer  
25 the context to his letter based on how I answered the

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1 questions to his letter.  
2 BY MR. FRANKLIN:  
3 Q. Okay. And that's fine.  
4 So if we could look at the second page of  
5 the document. About halfway down the page there's a  
6 paragraph that starts with "As you point out"..  
7 A. Okay.  
8 Q. If I could have you review that paragraph  
9 and then I have a question about it.  
10 A. Okay.  
11 Q. Am I correct in understanding that that last  
12 sentence what you explain there is the general review  
13 process you've spoken about earlier today?  
14 A. Which of the three paragraphs?  
15 Q. The first paragraph, last sentence -- second  
16 sentence.  
17 A. Okay. Yes.  
18 Q. In this paragraph on the third line there's  
19 a reference to specified costs. What specified costs  
20 are being referred to here?  
21 A. One second.  
22 Specified costs. I'm not seeing the term.  
23 Q. I'm sorry. Right here. Specified costs.  
24 A. Oh.  
25 MR. HAKL: Objection. Vague to the extent

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1 this seems like a reference to Senator Nielsen's  
2 letter. Does that make sense?  
3 THE WITNESS: I think -- I think it was.  
4 So, I was trying to restate a portion of his  
5 letter to me. So as you point out --  
6 BY MR. FRANKLIN:  
7 Q. Uh-huh.  
8 A. -- shall be no more than necessary to fund  
9 specified costs. I believe that was verbiage in his  
10 letter.  
11 Q. But at the same time this wasn't a  
12 proposition you disagreed with?  
13 A. No.  
14 Q. Okay. And then the specified costs are  
15 those the costs specified in what's referred to as  
16 Penal Code Section 12076?  
17 A. I don't think my response was focused solely  
18 on what was in 12076. I think it included 12076, but  
19 I believe there are other costs outside of that  
20 Penal Code Section.  
21 Q. Where would those costs be identified?  
22 A. Generally within the firearms-related  
23 statutes.  
24 Q. No specific statutes come to mind right  
25 now?

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1 A. No, not off the top of my head.  
2 I try not to memorize that stuff.  
3 Q. Probably a good thing.  
4 If I can have you look at the last and  
5 review the last paragraph on the page.  
6 A. Okay.  
7 Q. So, it refers to the department currently  
8 exploring numerous administrative and statutory  
9 options to reduce the surplus.  
10 Do you recall any of those options?  
11 A. So, in the context of an administrative  
12 option would be a fee reduction and a regulation to  
13 reduce the fee.  
14 A statutory option would be the legislature  
15 resetting the fee so outside of the regulatory  
16 process or some other -- some other statutory  
17 solution that would involve the legislature.  
18 Q. Was using the DROS Fund for a new purpose a  
19 statutory option that was under consideration at that  
20 time?  
21 A. No.  
22 Q. Then the next sentence do I understand this  
23 correctly to state that the options were confidential  
24 at the time, because they were part of budget  
25 discussions regarding a budget that hadn't been

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1 finalized?  
2 A. That's correct.  
3 Q. Is that kind of information to your  
4 understanding considered confidential after the  
5 budget is complete?  
6 A. It could be.  
7 Q. And so I'll just -- it doesn't sound like  
8 it, but at this point you're not keeping any options  
9 being considered at the time confidential now in this  
10 deposition?  
11 A. Correct.  
12 Q. And it's your understanding that a  
13 substantially similar letter was indeed mailed to  
14 Jim Nielsen at some point?  
15 A. Yes.  
16 Q. Okay. I think I have one further question  
17 on that. It's the second to the last sentence in the  
18 letter. It reads:  
19 "Furthermore, should we decide to pursue  
20 statutory changes to reduce the surplus, I would  
21 welcome an opportunity to meet with you to discuss  
22 the specifics of any proposal."  
23 Do you see that line?  
24 A. Yes.  
25 Q. Are you aware of that type of meeting ever

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1 occurring?  
2 A. It never -- to my knowledge it never  
3 occurred.  
4 MR. HAKL: Can we clarify what exhibit  
5 number this is?  
6 MR. FRANKLIN: Eleven.  
7 MR. HAKL: Okay. I just saw 12 written on  
8 your copy so...  
9 MR. FRANKLIN: Yeah, I think I wrote on the  
10 wrong one.  
11 MR. HAKL: All right. Sorry.  
12 BY MR. FRANKLIN:  
13 Q. Is it your understanding that the department  
14 brought the proposed legislation to Senator Leno that  
15 became SB 819?  
16 MR. HAKL: Objection. Vague as to in terms  
17 of bringing legislation to Senator Leno.  
18 BY MR. FRANKLIN:  
19 Q. Provided.  
20 I mean unless there's an instruction not to  
21 answer, you can answer.  
22 MR. HAKL: Are you asking if we sponsored  
23 the legislation?  
24 MR. FRANKLIN: And specifically if he's  
25 aware of that.

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1 MR. HAKL: Oh.  
2 You can answer the question if you can.  
3 THE WITNESS: Yeah, I'm aware that we  
4 sponsored the legislation. I'm aware that  
5 Senator Leno I believe had a existing relationship  
6 with then Attorney General Harris when she came into  
7 office, that he was interested in the general subject  
8 matter of firearms, firearms-related issues, and that  
9 was essentially a natural ally for the department,  
10 and given his position in the Senate would have been  
11 a good author to carry such legislation.  
12 BY MR. FRANKLIN:  
13 Q. Do you know if the idea for this particular  
14 proposed legislation if that's something that arose  
15 before or after Attorney General Harris took office  
16 within the department?  
17 A. The idea to?  
18 Q. Use the DROS Fund Special Account rather for  
19 APPS-based law enforcement?  
20 A. So, I think that --  
21 MR. HAKL: I'll just say I'm not sure it's  
22 established that -- objection. Vague as to your  
23 characterization of the use of "funds".  
24 THE WITNESS: Um, I would respond and tell  
25 you from my recollection the initial impetus behind

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1 the expansion of the DROS account to include APPS  
2 enforcement, the APPS program, was at that time the  
3 APPS program was supported by our General Fund, and  
4 at that same time the State and our department were  
5 facing General Fund expenditure reductions and so we  
6 needed to come up with ways to achieve General Fund  
7 savings and one of the suggestions that went forward  
8 was to expand the use of the APPS or the DROS Fund to  
9 essentially buy out, if you will, what was then a  
10 General Fund Program to avoid, um, negative impact to  
11 the department's operations from a General Fund cut.  
12 Essentially we did a fund swap.  
13 And it was in those contexts I think that  
14 that initial legislation was passed, and then  
15 shortly thereafter the Governor did in fact just  
16 that. He took away the General Fund in the APPS  
17 program and gave us DROS Funds.  
18 BY MR. FRANKLIN:  
19 Q. I appreciate the breadth of the answer,  
20 because it's helpful. I don't know if we actually  
21 addressed the timing issue of whether or not this  
22 came up during I guess it was Jerry -- initially that  
23 you became first aware of this concept --  
24 A. I'm sorry.  
25 Q. -- during Jerry Brown tenure versus the

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1 Kamala Harris tenure.  
2 A. Honestly, I think it was during that  
3 transition. So it probably initially started under  
4 the very end the last few months of the  
5 Brown Administration and then transitioned over to  
6 the beginning of the Harris Administration.  
7 Q. Uh-huh. Okay. Thank you.  
8 And then maybe to resolve at least for the  
9 purpose of the deposition counsel's concern.  
10 Maybe you could tell us what your  
11 understanding the purpose of SB 819 is.  
12 A. It was to provide General Fund savings to  
13 the State the General Fund, while at the same time  
14 maintaining the existing level of services in the  
15 department.  
16 Q. And that would include the existing level of  
17 services regarding the APPS-based law enforcement?  
18 A. Correct.  
19 So, essentially it was to replace the  
20 General Fund supporting the APPS program with  
21 DROS funds.  
22 Q. Was Senator Leno the origin of the idea for  
23 what became SB 819?  
24 MR. HAKL: Objection. To the extent it  
25 calls for Official Information or Deliberative

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1 Process Information, but you can answer.  
2 THE WITNESS: Well, I don't recall all the  
3 specifics of that bill, but the concept I don't  
4 believe came from Senator Leno. I think it came from  
5 our department. The idea of expanding the statute to  
6 allow DROS funds to be used for the APPS program I  
7 believe was an internal departmental proposal.  
8 BY MR. FRANKLIN:  
9 Q. Is there anyone specifically you can think  
10 of who would -- who would -- you believe would have  
11 more information about the origin of that idea?  
12 A. Marc at that time.  
13 Marc LeForestier I believe was our  
14 Director of Legislature Affairs back then.  
15 Q. Uh-huh. Okay.  
16 THE REPORTER: Can you spell his last name?  
17 THE WITNESS: I can try.  
18 So it's capital L-e, small "e", and then  
19 capital F-o-r-i-e-s-t-e-r. (Sic)  
20 BY MR. FRANKLIN:  
21 Q. That sounds close.  
22 You answered a fair number of questions  
23 already I had listed.  
24 A. I'm sorry. I thought you wanted to ask them  
25 one at a time.



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1 Q. No, I don't.  
2 Were you involved in the process of working  
3 with Senator Leno regarding the bill that became  
4 SB 819?  
5 A. No.  
6 Q. And then from the time the bill was actually  
7 introduced and substantively placed before the  
8 public, did you have any involvement in SB 819?  
9 A. No.  
10 Q. Are you aware of the department ever  
11 providing any analytical data to Senator Leno  
12 regarding the costs of -- the costs being funded out  
13 of the DROS Special Account?  
14 A. I'm not aware of it. Um, it wouldn't  
15 surprise me if it was provided. I'm just not aware  
16 of it.  
17 Q. Would there -- would you expect that to go  
18 through a particular conduit to Senator Leno?  
19 A. It would probably come through our  
20 Office of Legislative Affairs.  
21 So, I may have worked with Marc or his staff  
22 at the time on components of that. Nothing comes  
23 specifically to my mind that I can point to, but we  
24 would have provided information to our Leg Office and  
25 they would have worked with the Senator and/or his

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1 Senator staff.  
2 Q. So you don't have any recollection of  
3 specific information being provided to Senator Leno  
4 regarding how much the DROS fee should be?  
5 A. No.  
6 Q. And you weren't involved in any way in the  
7 drafting of the text of what became SB 819?  
8 A. No.  
9 Q. That's correct?  
10 A. That's correct.  
11 Q. Okay.  
12 A. Let me clarify.  
13 I may have reviewed the draft text at some  
14 point in time. I don't recall specifically. But I  
15 wouldn't have, you know, actually written out  
16 proposed language or anything like that.  
17 MR. FRANKLIN: That's exactly what I wanted  
18 to know. I think we're at 12.  
19 (Exhibit No. 12 was marked)  
20 MR. FRANKLIN: We might be short a copy so  
21 I'll give you mine when we're done.  
22 THE REPORTER: Okay.  
23 BY MR. FRANKLIN:  
24 Q. Have you had a chance to review the  
25 document?

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1 A. Yes. Yes.  
2 Q. If I could have you look at paragraph 9 on  
3 the fourth page. On paragraph 9 there's a reference  
4 to a document entitled BCP -- I'm sorry --  
5 BCP Concept Paper - APPS, Response to Anson's  
6 Questions.  
7 Do you see that?  
8 A. I do.  
9 Q. Do you have a belief as to who Anson is?  
10 A. He was a former analyst in my budget office.  
11 Q. And that's Anson is it Anson Gip?  
12 A. G-i-p is his last name, yes.  
13 Q. I'll have you look at paragraph 11.  
14 It refers to the document entitled  
15 DLE Restoration. Is DLE restoration the process  
16 of -- well, actually, let me just ask you.  
17 I think you've explained it to us already  
18 today, but what is meant by the term DLE Restoration?  
19 A. So this was kind of an internal working  
20 title that we used to describe the process to try and  
21 obtain additional budget spending authority for the  
22 Division of Law Enforcement.  
23 Shortly after Attorney General Harris took  
24 over I think that first year that first budget that  
25 was signed in July, um, "Leg" took over in January,

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1 then Governor Brown vetoed what was essentially all  
2 of the General Fund out of the Division of Law  
3 Enforcement for General Fund savings reasons. It was  
4 about 72 million total. I think the first veto was  
5 half year funding \$36 million. Gave us essentially  
6 six months to wrap up operations.  
7 And so while we had to proceed on the  
8 assumption we weren't going to have any of that  
9 money, we run a alternative track to try and obtain  
10 some funding back and so that process was called the  
11 DLE Restoration.  
12 MR. HAKL: Just for the record, I just  
13 want to point out that this Exhibit 12 is a  
14 Declaration of Mr. Harper submitted in Support of our  
15 Opposition to our Motion to Compel concerning a  
16 privilege log and a bunch of items that we asserted  
17 privileges to. That was resolved.  
18 And I think some of these have been work  
19 produced and some of them have not been. I don't  
20 have a recollection as we sit here.  
21 MR. FRANKLIN: My memory is this is  
22 actually -- these are the ones that were specifically  
23 attorney-client. We stipulated to let it go  
24 because --  
25 MR. HAKL: Right.

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1 MR. FRANKLIN: -- it seemed like it was  
2 attorney-client at least at the time.  
3 MR. HAKL: I just want to be clear.  
4 We're not waiving any privileges here in  
5 connection with the items you're talking about here  
6 18, 19, 21, 23 and so on.  
7 MR. FRANKLIN: No. And --  
8 MR. HAKL: Do you know if those -- like have  
9 18 and 19 been produced, for example?  
10 Do you even know?  
11 I don't recall. I just don't know.  
12 MR. FRANKLIN: I don't remember either.  
13 I can tell you my intent is not to get into  
14 the substance of what those documents actually were.  
15 MR. HAKL: All right.  
16 MR. FRANKLIN: It's only if there's  
17 something in the title or the parties to and from  
18 that makes me think that person or location is going  
19 to have more relevant information than I'll look at  
20 those things but not the substance.  
21 MR. HAKL: Okay.  
22 BY MR. FRANKLIN:  
23 Q. So, in the same paragraph there's a  
24 reference to the possibility that the document  
25 reflects the comments and thinking of the

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1 Legislative Analyst's Office or a legislative  
2 staffer, and DOJ budget office staff.  
3 Do you see that line?  
4 A. I do.  
5 Q. So, just as a general concept regarding this  
6 DLE Restoration. That discussion regarding that  
7 topic included you believe the Legislative Analyst  
8 Office of the department?  
9 A. No. Separate. It's a separate entity.  
10 Q. But it's the same name, right?  
11 A. Similar names, yeah, yeah.  
12 Q. Okay. Which LAO is this?  
13 A. This would be the Independent Legislative  
14 Analyst Office that works for the State Legislature.  
15 Q. And so the Independent Legislative Analyst  
16 Office was involved in the DLE Restoration attempt?  
17 A. Review of the proposal, yes.  
18 Q. And this was a specific budgetary proposal?  
19 A. Right. It was -- it was -- they're called  
20 Budget Change Proposals. We use the acronym BCP.  
21 And so the initial proposal is confidential  
22 as it relates to our department working with the  
23 Department of Finance and the Governor's office.  
24 If that proposal is included in the  
25 Governor's budget on January 10th, then those

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1 documents become open to the public, and the actual  
2 BCP the document itself is then shared with both  
3 legislative staff that primarily work on the Budget  
4 Committees in the Legislature and the Legislative  
5 Analyst Office who provides independent analysis on  
6 behalf of the Legislature to the legislative staff.  
7 And so this is referring to probably a  
8 series of questions asked by one of those entities  
9 with respect to this DLE Restoration BCP.  
10 Q. And this happens after the BCP is  
11 effectively public?  
12 A. Correct.  
13 Q. Is the Legislative Analyst Office response  
14 regarding the proposed legislation is that considered  
15 confidential?  
16 A. The response?  
17 I'm not sure what you mean by "the response  
18 to it".  
19 Q. The Legislative Analyst Office provides some  
20 form of analysis of the BCP --  
21 A. Correct.  
22 Q. -- correct?  
23 And that's not considered confidential to  
24 the best of your knowledge?  
25 A. No, it's not. It's shared. It's a public

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1 document.  
2 Q. Do you know if -- and you were involved in  
3 this DLE Restoration --  
4 A. Yes.  
5 Q. -- BCP.  
6 During that process of working with the  
7 Independent Legislative Analyst Office, was part of  
8 the Legislative Analyst Office role to determine  
9 whether or not the restoration would conflict with  
10 any other law?  
11 A. I would say in a general sense that's  
12 something they evaluate just like something  
13 legislative staff would evaluate.  
14 It's also something that, you know, we would  
15 evaluate Department of Finance. We're not going to  
16 knowingly make proposals that conflict with current  
17 law. And to the extent that a conflict might occur,  
18 you may see the introduction of what's called  
19 trailer bill language. Some type of a  
20 proposed -- proposal to change statute so that  
21 statutes are now consistent with the budget proposal  
22 before the Legislature.  
23 Q. Do you recall any specific concerns about  
24 the DLE Restoration that the Legislative Analyst  
25 Office discussed with the department?

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1 A. Nothing specific.  
2 Q. About this -- the DLE Restoration?  
3 I should be specific.  
4 A. Right. Nothing specific.  
5 Q. And when you say legislative staffer here,  
6 is that either a Senator or Assembly person's staff  
7 member?  
8 A. It's either their personal staff or it's  
9 committee staff in the Legislature.  
10 So, primarily I'm referring to staff that  
11 work on the Budget Committees in the legislature;  
12 the Assembly Budget Committee and the Senate Budget  
13 Committee.  
14 Q. Okay.  
15 A. They work for legislative members, but  
16 they're really employed by a committee as opposed to  
17 being personal staff to that member.  
18 Q. That actually helps clarify this, because I  
19 wasn't clear if it was, you know, for example,  
20 legislative sponsor versus a legislative member who  
21 was in as we say one of these committees.  
22 A. Right.  
23 Q. Okay.  
24 A. And it's not infrequent that we would  
25 approach members of the legislature that are on these

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1 budget committees as potential authors to our  
2 legislation.  
3 Q. Is it your understanding that -- well, you  
4 may have already answered this as well.  
5 But internal consultants in the form of  
6 attorneys have provided services that were funded out  
7 of the DROS Special Fund?  
8 MR. HAKL: Objection. Assumes facts not in  
9 evidence. You can try to answer.  
10 Or to the extent you understand and can  
11 answer the question you can.  
12 THE WITNESS: I would say, yes, that  
13 attorneys have provided services to the  
14 Bureau of Firearms and those services have been paid  
15 by the DROS Fund by the DROS account.  
16 BY MR. FRANKLIN:  
17 Q. Do you have an understanding of how long  
18 that's been going on?  
19 A. It could have occurred well before I started  
20 working here.  
21 Q. Do you have an understanding of how the  
22 department determines what attorney services can be  
23 funded out of the DROS Special Account?  
24 A. Um, not -- not personally.  
25 I mean I don't -- I don't make a distinction

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1 on the types of attorney services. To me they're  
2 attorney services. And it's probably more up to the  
3 Senior Assistant Attorney General and, you know,  
4 Supervising Deputy Attorney General's and the  
5 Attorney General's providing that support to  
6 determine any such distinctions.  
7 From my perspective I view attorney services  
8 as a general kind of a broad category and they  
9 encompass everything from A to Z so...  
10 Without trying to determine, you know,  
11 specifics.  
12 Q. Are you aware of any method of determining  
13 whether DROS Special Account money can be used to  
14 fund one activity versus another?  
15 MR. HAKL: Objection.  
16 Vague as to "activity".  
17 BY MR. FRANKLIN:  
18 Q. Well, I mean I can do it in the context of  
19 an attorney. Are you aware of any process that's  
20 used to determine whether or not a particular  
21 attorney's service in a particular matter can or  
22 cannot be funded out of the DROS Special Account?  
23 MR. HAKL: Objection.  
24 Asked and answered I think, but go ahead.  
25 THE WITNESS: The question's a bit vague

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1 still. What I can say is that, um, the services the  
2 attorneys provide to the Bureau of Firearms on behalf  
3 of the DROS account and somehow support the statutes  
4 within the firearm statutes or the operations of the  
5 bureau or some combination of the two.  
6 BY MR. FRANKLIN:  
7 Q. Do you know whether or not there are  
8 attorneys who are not in the Civil Law is it section,  
9 Civil Law Section?  
10 A. Civil Law Division.  
11 Q. Division.  
12 A. Yeah.  
13 Q. That are paid for out of the  
14 DROS Special Account?  
15 MR. HAKL: Objection. Vague.  
16 You got -- you lost me with a couple  
17 negatives there. That's all.  
18 BY MR. FRANKLIN:  
19 Q. Are you aware of any attorneys outside of  
20 the Civil Law Division that are funded -- that  
21 their work is funded via the DROS Special Account?  
22 A. Are you talking about currently or...  
23 Q. Let's say in the last 15 years.  
24 A. So, there was a time when I first started  
25 working here that then the Division of Firearms had

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1 their own attorneys. I don't know how many. Maybe  
2 two or three. And those attorneys worked for the  
3 Division on Firearms-related stuff.  
4 Attorney General --  
5 Q. They were paid out of?  
6 A. Out of the DROS Fund, you know, the  
7 DROS account as far as I know.  
8 Or it could have been a combination of  
9 DROS and General Fund to the extent that the bureau  
10 had General Fund back -- or the Division of General  
11 Fund back then.  
12 Shortly after General Brown took office the  
13 department went through a major reorganization and  
14 there was some consolidations in the Division of  
15 Law Enforcement. So they collapsed what were a lot  
16 of stand-alone divisions back then and created  
17 bureaus.  
18 And so in the context of those bureaus, one  
19 of the other changes we made is we tried to  
20 transition the attorneys out of the bureaus back  
21 into the legal sections of the department, and it  
22 was primarily due to chain of command issues so that  
23 the attorneys could get their direction from  
24 Supervising Deputy Attorney General's and so to that  
25 nature chain of, you know, chain of work types of

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1 things and they weren't kind of acting independently  
2 on their own. I think what had happened, the  
3 department determined possibly that some of those  
4 attorneys that were out kind of in these stand-alone  
5 divisions maybe weren't as competitive when it came  
6 to promotions as attorneys kind of in the legal  
7 division structure. They weren't exposed to or  
8 maybe given the same level of review and job  
9 training, and so the desire was to consolidate the  
10 legal professionals under a legal professional  
11 management structure.  
12 Q. So, after the reorganization there weren't  
13 any attorneys that were dedicated to the  
14 Bureau of Firearms?  
15 A. There weren't -- to my knowledge there  
16 weren't any attorneys that were physically paid out  
17 of the Bureau of Firearms cost codes.  
18 So, for instance, there could have been  
19 attorneys in the Government Law Section --  
20 Q. Uh-huh.  
21 A. -- who due to the nature and the volume of  
22 the work did nothing but firearms-related work.  
23 Q. Sure.  
24 A. But they were government law attorneys  
25 working for a client the then Bureau of Firearms.

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1 Q. Even if that was a hundred percent of their  
2 work?  
3 A. Exactly.  
4 Q. Thank you. That's helpful.  
5 Can you walk me through the process of how a  
6 government law attorney would record the expenditure  
7 of time that is ultimately funded out of the  
8 DROS Special Account?  
9 MR. HAKL: Objection, to the extent it calls  
10 for Attorney-Client Privilege and Work Product  
11 Doctrine, but you can -- you can answer the question.  
12 MR. FRANKLIN: I'm looking for like the  
13 accounting chain of events.  
14 THE WITNESS: You want the mechanics?  
15 BY MR. FRANKLIN:  
16 Q. Yeah, the mechanics is a good way to put it.  
17 A. Okay. So, the government law attorney would  
18 open up a matter a case. They call them matters in  
19 our pro law system. And the Bureau of Firearms would  
20 have a billing code established to it.  
21 So they would call up their client. They  
22 would open a matter under the context of the  
23 Bureau of Firearms as a billable client --  
24 Q. Uh-huh.  
25 A. -- billable versus nonbillable.

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1 And, you know, there's sometimes things are  
2 billable. Sometimes they're not. And so then every  
3 time they would work on that matter, they would  
4 record their time and kind of descriptions of what  
5 they do on, you know, time increments. I think  
6 they're 20 minute increments or something like that.  
7 And at the end of every month, all of that  
8 data is summarized and there's an invoice that's  
9 created. That invoice is then sent over to the  
10 Bureau of Firearms and the bureau pays that invoice  
11 just like they pay every other invoice.  
12 And so then the Government Law Section is  
13 reimbursed for the work that the attorneys did on  
14 behalf of that client.  
15 MR. FRANKLIN: Okay.  
16 Exhibit 13 I believe.  
17 (Exhibit No. 13 was marked)  
18 BY MR. FRANKLIN:  
19 Q. Have you had a chance to review the  
20 document?  
21 A. Yes.  
22 Q. I have one follow-up question on the prior  
23 document, but you don't need to look at it I don't  
24 believe to answer.  
25 Other than Government Law Division

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1 Attorneys, are you aware of any other attorneys who  
2 have part of their salary paid for out of the  
3 DROS Special Account?  
4 MR. HAKL: Objection.  
5 Misstates his testimony. I'm not sure --  
6 MR. FRANKLIN: Well, that's what I'm trying  
7 to clarify.  
8 MR. HAKL: Right.  
9 I mean it assumes facts not in evidence in  
10 terms of how salaries are paid.  
11 I don't understand that.  
12 BY MR. FRANKLIN:  
13 Q. To the best of your knowledge are there any  
14 attorney hours incurred by department attorneys that  
15 are not within the Department of Legal Services?  
16 MR. HAKL: Objection. Vague.  
17 THE WITNESS: Do you want me to help him?  
18 MR. HAKL: Sure.  
19 THE WITNESS: So, yes.  
20 The short answer is yes.  
21 So, we will have sections of law.  
22 Government Law Section does the vast majority of  
23 work for the Bureau of Firearms.  
24 BY MR. FRANKLIN:  
25 Q. Uh-huh.

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1 A. We also have an employment an  
2 Administrative Matter Section so Employment Law.  
3 Q. Okay.  
4 A. So, if there are attorneys -- or not  
5 attorneys -- if there are employees in the bureau and  
6 they're going through some administrative  
7 disciplinary action called adverse actions, we might  
8 have attorneys in our Employment Law Section  
9 representing the department in that action.  
10 Maybe the individual's being fired or  
11 demoted, something like that. So, those are the two  
12 primary ones.  
13 We have an Office of Solicitor General which  
14 may be doing some work in the Supreme Court which  
15 related to a firearms-related matter --  
16 Q. Uh-huh.  
17 A. -- and they may charge some of their time to  
18 firearms to pay for that work.  
19 Q. Okay.  
20 A. We might have some tort attorneys in our  
21 Tort Section that are dealing with some tort claims  
22 that occurred, you know, through the actions of  
23 firearms employees or something that happened in the  
24 facility that's occupied by firearms; so, it's not  
25 uncommon for various sections in the department to

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1 support other sections in the department, but the  
2 distinction is that they're viewed as a separate  
3 client and so from the Legal Division's perspective,  
4 it's simply another client that they're representing.  
5 We don't make a distinction between an  
6 internal departmental-housed clients versus an  
7 external department or agency client.  
8 A client is a client.  
9 Q. That makes sense. Okay. Great.  
10 If I can turn to the document that I believe  
11 it says Exhibit 13. Have you seen a document like  
12 this before?  
13 A. Yes.  
14 Q. Is this a type of document that's used in  
15 your employment?  
16 A. This is a document that's generally probably  
17 always produced by my budget staff.  
18 Q. Okay. What function does it serve?  
19 A. So, in the context of the periodic reviews  
20 of departmental budgets that we've been speaking  
21 about these would be talking points.  
22 Specifically this one is the first quarter  
23 review that we did in the 12-13 fiscal year and  
24 there are some talking points related to the  
25 Bureau of Firearms and it highlights three different

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1 cost codes.  
2 Q. Would every -- would one of these documents  
3 presumably be created every quarter for the  
4 Bureau of Firearms specifically?  
5 A. Not necessarily.  
6 So, if there's no issues to talk about then  
7 we generally wouldn't create a document that says  
8 no issues to talk about.  
9 Q. Uh-huh.  
10 A. So it's really -- it's more of a it's like a  
11 talking point document to help the individual  
12 providing the briefing with, you know, the salient  
13 points for that point in time.  
14 Q. And you -- these have been used since you  
15 started with the --  
16 A. Yes.  
17 Q. -- department?  
18 A. Yes.  
19 MR. HAKL: We actually produced  
20 Fiscal Monitoring Reports for various years like  
21 actual reports.  
22 BY MR. FRANKLIN:  
23 Q. It's probably true.  
24 You know, this is a little bit different,  
25 because it's as he testified it's more of talking

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1 points than just hard data.  
2 Okay. And if I could have you -- can you  
3 explain to me what is meant by the first I guess  
4 paragraph:  
5 "Salaries from 826 will be picked up here  
6 when funding for the grant is fully expended in  
7 December 2012."  
8 A. Yes.  
9 So, 826, you know, in the next line refers  
10 to that firearms trafficking grant.  
11 So, at this time period the bureau had a  
12 grant, probably a federal grant, to do something  
13 related to firearms trafficking, and they most likely  
14 were using the grant monies to pay for salaries of  
15 agents.  
16 Because the grant was going to expire in  
17 December, we had to move those employees out of 826  
18 into the 505 Armed Prohibited cost code to continue  
19 to pay for them so that's what that's talking about.  
20 Q. Okay. That's helpful.  
21 Down under the heading 510 - DROS, the  
22 first line refers to CS 3.60.  
23 Can you tell me what that means?  
24 A. Right. CS 3.60 is an acronym for  
25 Control Section 3.60 in the Annual Budget Act, and

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1 I believe that relates to employees salaries or  
2 employee benefits.  
3 And there's a technical adjustment that  
4 occurs every year in departmental budgets through  
5 this control section where changes in retirement rate  
6 contributions occur annually and, you know, depending  
7 on what bargaining unit you work for, your retirement  
8 adjustment can go up or down or your benefit  
9 adjustment can go up or down so this is kind of a  
10 catchall control section that allows the  
11 Department of Finance to make these technical  
12 baseline adjustments to departmental budgets to  
13 account for the change in the cost of benefits.  
14 Q. And then the final bullet point or  
15 hash mark starts with consultant-internal projection  
16 ties to PY adjusted for billable hours, and it gives  
17 a number to salary. Another number for one DAG.  
18 Can you explain to me what that means?  
19 A. So that's probably how DROS 510 paid for  
20 attorney services.  
21 Q. And this would be an attorney within which  
22 entity?  
23 A. I couldn't tell you based on this -- based  
24 on this document. Somewhere within the Legal  
25 Division.

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1 Q. And then the last sentence:  
2 Chargebacks are still occurring from  
3 Government Law for lawsuits related to Penal Codes  
4 and CCW's. Do you have an understanding as to what  
5 that means?  
6 A. So, when I talked about the re-org that  
7 Governor Brown undertook, one of the structural  
8 changes we made in the department was to move the  
9 Legal Divisions to essentially a fee-for-service  
10 model, right, a billable hours model.  
11 Prior to that time programs paid for  
12 legal services through an internal adjustment known  
13 as a chargeback.  
14 Because our department is involved in a new  
15 statewide accounting system that we're hopefully  
16 going to take part in in the next year or so, the  
17 fundamental structure of our accounting systems are  
18 going to change and the new system, the new  
19 statewide FI\$Cal system, doesn't allow for this  
20 concept of chargeback.  
21 So, we were trying to transition programs  
22 away from the chargeback models that they grew up  
23 with for 20 plus years to the more hourly billing  
24 fee-for-service model that we were transitioning to.  
25 So, a chargeback is simply another way to

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1 bill for -- bill for services.  
2 The program the new statewide accounting  
3 system is called FI\$Cal. Although the "S" is a  
4 dollar sign in case that matters. It stands for --  
5 I'm not even sure anymore.  
6 Q. I won't put you to the test on the record.  
7 A. Okay. Thank you.  
8 Q. So, is this a document that you would  
9 normally create?  
10 A. My staff would create it, yeah.  
11 I would provide edits and comments to it,  
12 yeah.  
13 Q. And is this type of document normally  
14 retained?  
15 A. For a brief period of time.  
16 Depending on where it's stored.  
17 If it's created on an analyst's computer,  
18 they might store it on their hard drive, and when  
19 that analyst leaves the budget office, then  
20 essentially all that personal stuff on their hard  
21 drive is lost when the computer is called re-imaged.  
22 If it's stored in a central file then it can  
23 be there for a number of years depending on what the  
24 retention schedule might be.  
25 Q. Okay.

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1 MR. HAKL: Just to perhaps preempt another  
2 document request. I think we've looked. Yeah, I  
3 mean we've scoured where this stuff might be.  
4 MR. FRANKLIN: Looking at Exhibit 13?  
5 MR. HAKL: Yeah.  
6 MR. FRANKLIN: Okay. I appreciate that.  
7 That is a reasonable --  
8 THE WITNESS: That's a huge hard drive we  
9 gave you, huh? Whatever.  
10 MR. FRANKLIN: That's a reasonable  
11 inference.  
12 MR. HAKL: Just for what it's worth.  
13 BY MR. FRANKLIN:  
14 Q. It's appreciated.  
15 Are you aware of there being special agents  
16 who perform field work related to the enforcement of  
17 the APPS system?  
18 A. Field work.  
19 Q. They go out and try and take guns away from  
20 people that shouldn't have them.  
21 A. Yes.  
22 Q. Do you know if those agents solely --  
23 well, strike that.  
24 Are you aware of field work like we just  
25 discussed occurring for subjects that aren't on the

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1 APPS list?  
2 MR. HAKL: Objection. Vague.  
3 But you can answer.  
4 THE WITNESS: Are you talking generally or  
5 within the Bureau of Firearms?  
6 BY MR. FRANKLIN:  
7 Q. Within the Bureau of Firearms and even more  
8 specifically funded from the DROS Special Account?  
9 A. No.  
10 Q. So, if I understand at least your  
11 understanding correctly, um, all law enforcement  
12 activities to obtain firearms from subjects that are  
13 funded out of the DROS Special Account concern  
14 subjects who are on the APPS list?  
15 MR. HAKL: Objection. Vague.  
16 MR. FRANKLIN: I can probably shorten it  
17 down a little bit.  
18 MR. HAKL: So, what are you driving at?  
19 Just --  
20 BY MR. FRANKLIN:  
21 Q. Whether or not there are -- I don't want to  
22 use the term raid -- but whether or not special  
23 agents who are funded from the DROS Special Account  
24 are performing investigations of people other than  
25 those on the APPS list?

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1 MR. HAKL: I mean this is kind of one of  
2 those areas where I mean Dave works for the  
3 Department of Justice as opposed to the  
4 Bureau of Firearms.  
5 MR. FRANKLIN: Understood.  
6 MR. HAKL: But to the extent he has an  
7 answer, yeah, go ahead and answer the question.  
8 MR. FRANKLIN: It leads to another question  
9 about accounting so that's why -- that's why it makes  
10 sense for me.  
11 THE WITNESS: So my general understanding is  
12 that agents in the Bureau of Firearms do various  
13 types of enforcement actions including the APPS  
14 program.  
15 But there are other types of enforcement  
16 activities separate from the APPS program and all of  
17 those activities are supported by the DROS Fund.  
18 BY MR. FRANKLIN:  
19 Q. Okay. And --  
20 A. Well, not all. Most. Well, I think now  
21 most are.  
22 Q. So, based on your understanding, the way in  
23 which a special agent would identify whether or not  
24 it's an APPS list enforcement action or not in  
25 recording his time is to use a cost code?

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1 MR. HAKL: Objection. Assumes facts not in  
2 evidence in terms of agent's recording time. I'm not  
3 sure what you mean.  
4 BY MR. FRANKLIN:  
5 Q. To the best of your knowledge do special  
6 agents who work in the Bureau of Firearms have a  
7 system of recording time spent during employment?  
8 A. My understanding is they have a time  
9 based -- they have a time reporting system. I think  
10 it's called TRS, Time Reporting System, that's used  
11 throughout the division.  
12 How they use it and how it works I have no  
13 idea. I've never seen it actually work.  
14 But I can tell you that how they record  
15 their time for purposes of timekeeping is  
16 independent of how we pay their salary. They're  
17 salaried employees. They're going to get the same  
18 amount of money every month up -- you know,  
19 overtime is going to be different, but their same  
20 base salary is going to occur every month.  
21 What they do in that month is at the  
22 direction of their management.  
23 Q. Now, the ultimate question I was looking to  
24 ask is whether or not you're aware of any mechanism  
25 that allows a special agent to record their time as

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1 either a investigation of an APPS subject or any  
2 other person?  
3 A. That would be from the bureau's perspective.  
4 They would control that. I have no idea how they  
5 record their time at that level of detail.  
6 MR. FRANKLIN: I have a document that I'll  
7 be marking as Exhibit 14.  
8 (Exhibit No. 14 was marked)  
9 BY MR. FRANKLIN:  
10 Q. I think this is actually a document I  
11 decided not to use, because it predates your time,  
12 so you can either throw it away or I can take it  
13 back.  
14 We'll mark this one -- I'm sorry. It is.  
15 I forget what I'm doing. So this is before your  
16 time. It's -- I'm interested in the pages at  
17 13 and 14 in the document.  
18 A. The attachments?  
19 Q. Yeah, Attachment -- yes, Attachment 3.  
20 And I just wanted to know.  
21 So this is a Budget Change Proposal Package  
22 from 2004-2005, and I just wanted to know if you are  
23 aware of this type of workload measurement data,  
24 breakdown ever being done regarding the APPS  
25 program?

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1 MR. HAKL: Objection. Calls for  
2 speculation. Do you mean during his time here?  
3 MR. FRANKLIN: Well, I mean if he's aware of  
4 it. I guess I want it regardless but, yeah, it's  
5 limited to his awareness.  
6 THE WITNESS: I would say that I'm not aware  
7 of this level of workload detail being done on the  
8 APPS program while I've been here and/or before I was  
9 here.  
10 MR. FRANKLIN: Okay. That's all.  
11 Fifteen.  
12 (Exhibit No. 15 was marked)  
13 BY MR. FRANKLIN:  
14 Q. I don't know that you need to review this  
15 whole packet yet.  
16 My first question is a more general one.  
17 Am I correct in understanding at least at  
18 this point in time APPS-based law enforcement is  
19 still being founded out of the DROS Special  
20 Account?  
21 MR. HAKL: Objection, vague, as to  
22 APPS-based law enforcement, but you can answer the  
23 question.  
24 THE WITNESS: What's this point in time?  
25 As of what point in time?

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1 BY MR. FRANKLIN:  
2 Q. As of today.  
3 A. So, as of today, um, the APPS program is  
4 split funded between DROS and the Firearm Safety and  
5 Enforcement Fund.  
6 Q. Okay.  
7 A. That's what this BCP did is it established  
8 more positions with the new fund source in that  
9 program.  
10 Q. And is that -- strike that.  
11 Were you involved in the creation of this  
12 Budget Change Proposal?  
13 A. Yes.  
14 Q. Do you have an understanding as to why this  
15 Budget Change Proposal is out of the FSE Special Fund  
16 as opposed to the DROS Special Account?  
17 A. Yes.  
18 Q. Why is that?  
19 A. At the time that the BCP was being developed  
20 there wasn't sufficient reserve in the DROS Fund to  
21 expand the APPS program using that fund source.  
22 However, this Firearm Safety Enforcement  
23 Fund is an appropriate source of funds to pay for  
24 APPS enforcement and had a reserve and enough extra  
25 revenue in their operating budget to support this

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1 request to pay for these positions.  
2 Q. Do you have an understanding of why -- why  
3 the department sponsored Senate Bill 819 to obtain  
4 funding from the DROS Special Account as opposed to  
5 the Firearm Safety and Enforcement Special Fund?  
6 A. I don't.  
7 Q. And do you have an understanding as to why  
8 the department decided to do a Budget Change Proposal  
9 to get funds from the FSE Fund instead of increasing  
10 the DROS fee?  
11 A. My understanding is that was a decision made  
12 by the Executive Staff at the time.  
13 Q. And the Executive Staff is the  
14 Attorney General's direct staff?  
15 A. Correct.  
16 Q. Do you remember the basis for that decision?  
17 MR. HAKL: Objection.  
18 To the extent it calls for --  
19 THE WITNESS: Fully confidential.  
20 MR. HAKL: -- okay, Official Information,  
21 Deliberative Process, Attorney-Client Privilege.  
22 BY MR. FRANKLIN:  
23 Q. So, let me get all the players down so I can  
24 at least think about the analysis of that.  
25 It would be -- the information we're talking



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1 about would be something that was provided from the  
2 Executive Staff to you as in your title as  
3 Deputy Director --  
4 A. Yes.  
5 Q. -- of DAS?  
6 A. Correct.  
7 Q. Okay. And specifically in the course of a  
8 budgetary discussion?  
9 A. Correct.  
10 MR. FRANKLIN: And there's an instruction  
11 not to answer?  
12 MR. HAKL: What's the question?  
13 What's the question?  
14 What was the -- what was the basis?  
15 I'm sorry. What's the question?  
16 What's the basis...  
17 MR. FRANKLIN: Can you read it back?  
18 (Record Read)  
19 MR. HAKL: Yeah, for now that's an  
20 instruction not to answer based on the privileges  
21 asserted.  
22 BY MR. FRANKLIN:  
23 Q. And then in that who is the attorney and  
24 who is the client in that privilege assertion?  
25 MR. HAKL: Well, we need to identify -- you

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1 can identify the players that were, you know,  
2 involved in that decision in terms of the  
3 communications and the discussions. I mean I have a  
4 pretty good guess as to who was involved.  
5 MR. FRANKLIN: Yeah.  
6 MR. HAKL: But, you know, those are  
7 conversations within the Executive Office about the  
8 basis for this -- why this decision -- why or how  
9 this decision was made so...  
10 MR. FRANKLIN: Uh-huh.  
11 MR. HAKL: That's going to involve counsel  
12 and...  
13 MR. FRANKLIN: So, I don't know if this  
14 touches on privilege or not. I'll ask. But this  
15 issue was discussed.  
16 Can he answer that question about this  
17 funding source versus raising the DROS fee?  
18 MR. HAKL: Um, well, yeah, I mean it was  
19 discussed by -- you just mean like in the department?  
20 MR. FRANKLIN: Right.  
21 MR. WILSON: That's the equivalent of asking  
22 what they talked about and you don't get it.  
23 MR. FRANKLIN: That's why I'm asking.  
24 MR. HAKL: Right.  
25 MR. FRANKLIN: I think he already testified

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1 to it is why I'm not sure right where we fall to be  
2 honest. Can you read back his testimony?  
3 Maybe we can go off the record and take a  
4 look.  
5 MR. HAKL: Sure. Sure.  
6 (Record Read)  
7 (Whereupon, a brief recess was taken)  
8 BY MR. FRANKLIN:  
9 Q. I'd like to direct you to page 4 of this  
10 document. And do you see Alternative 2?  
11 A. Yes.  
12 Q. And what do you understand that sentence to  
13 mean as an alternative?  
14 A. That the -- the existing fund balance and  
15 by inference the existing fee structure is  
16 insufficient to fund this permanent request for  
17 ongoing funding.  
18 Q. Uh-huh. But it wasn't intended to mean that  
19 the DROS fee could not be increased to address this  
20 need for money?  
21 MR. HAKL: Objection.  
22 Calls for speculation.  
23 MR. FRANKLIN: Well, he was involved in  
24 drafting --  
25 MR. WILSON: The document speaks for itself.

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1 BY MR. FRANKLIN:  
2 Q. Well, I don't believe in that objection  
3 but... My understanding is that you were involved in  
4 the drafting of this document, correct?  
5 A. Correct.  
6 MR. FRANKLIN: So, he would be able to tell  
7 me what that statement was intended to mean and  
8 specifically whether or not it was intended to mean  
9 that the DROS fee cannot be raised as an alternative  
10 method of addressing the funding issue.  
11 MR. HAKL: I would suggest you ask him if he  
12 was involved in drafting this portion of the  
13 document.  
14 MR. FRANKLIN: Well, I don't -- I don't  
15 think I have to limit it that way. I think I can ask  
16 the entire document.  
17 MR. HAKL: Okay. All right.  
18 What's the question?  
19 Could you read it back?  
20 (Record Read)  
21 BY MR. FRANKLIN:  
22 Q. I don't have any problem rephrasing it as:  
23 To the best of your knowledge was the intent  
24 of this alternative to identify raising the DROS fee  
25 as an alternative?

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1 A. No.  
2 Q. Do you know if it was considered within the  
3 department?  
4 MR. HAKL: Um, yeah, objection.  
5 Attorney-Client Privilege, Work Product Doctrine and  
6 Deliberative Process Official Information.  
7 MR. FRANKLIN: Are you -- and is this an  
8 instruction not to answer?  
9 MR. HAKL: Yeah. I'm not -- yeah.  
10 I don't -- it's an instruction not to  
11 answer, yes.  
12 BY MR. FRANKLIN:  
13 Q. Are you aware of the department making any  
14 public statement as to whether or not increase of the  
15 DROS fee would address the funding you discussed in  
16 this BCP?  
17 A. No.  
18 Q. Do you know if the department has ever  
19 attempted to calculate a per transaction cost for a  
20 DROS application?  
21 A. No.  
22 Q. No, you're not aware of that?  
23 A. No, I'm not aware of that.  
24 Q. I don't know that I need to introduce  
25 Penal Code Section 28225 as an exhibit.

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1 I'll give you this as a copy I just made and  
2 put it on a spreadsheet, but just so you can see the  
3 categories.  
4 To the best of your knowledge in all of the  
5 discussions you've had about the amount of -- the  
6 amount being charged for the DROS fee, do you ever  
7 recall considering a specific cost category within  
8 Penal Code Section 28225 as affecting that analysis?  
9 MR. HAKL: Objection. Calls for  
10 Attorney-Client Privilege; Work Product Doctrine,  
11 Official Information, Deliberative Process.  
12 To the extent you're asking him about  
13 conversations --  
14 MR. FRANKLIN: No.  
15 MR. HAKL: -- and discussions.  
16 MR. FRANKLIN: Just internal in his mind.  
17 So, I don't think that there's an  
18 attorney-client issue there.  
19 It's solely as to the mental process he's  
20 gone through in looking at how the amount of the  
21 DROS fee should be charged.  
22 MR. HAKL: Object. Asked and answered to  
23 the extent that he's already testified about his role  
24 or not lack thereof in setting the fee.  
25 I mean --

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1 BY MR. FRANKLIN:  
2 Q. Yeah, but he still would do analysis.  
3 I think we have testimony that he and  
4 Lindley, Chief Lindley, Former Chief Lindley did do  
5 some level of general analysis, so it would be -- it  
6 would be as to that analysis, general analysis that  
7 you performed. Were these -- any of these specific  
8 items considered?  
9 MR. HAKL: Um, yeah, I mean to the extent  
10 you understand the question you can answer it.  
11 THE WITNESS: I would say no.  
12 These specific -- this level of detail was  
13 not considered.  
14 MR. FRANKLIN: Do you think this needs to be  
15 in the record?  
16 MR. HAKL: No. I mean -- yeah, let's put it  
17 in there.  
18 MR. FRANKLIN: Okay. I'll represent that I  
19 believe I properly copied it into that table.  
20 What number are we making it?  
21 MR. HAKL: 16.  
22 (Exhibit No. 16 was marked)  
23 MR. FRANKLIN: I'm going to introduce these  
24 as a group, because I think it will be easier.  
25 (Exhibit No. 17 was marked)

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1 BY MR. FRANKLIN:  
2 Q. Have you had a chance to review the  
3 document?  
4 A. Yes.  
5 Q. Do you have an understanding of what this  
6 document represents?  
7 A. Yes.  
8 Q. What are they?  
9 A. So these are copies of essentially invoices  
10 from the Legal Services Divisions to the  
11 Bureau of Firearms for monthly legal service costs.  
12 Q. So --  
13 A. Or legal service cost I should say.  
14 Q. On the first page there's a description  
15 LSRF Contractual Service.  
16 Can you tell me what that means?  
17 A. So the acronym LSRF stands for  
18 the Legal Services Revolving Fund, and that's the  
19 name of the fund that supports most of the activities  
20 at our Legal Services Division.  
21 Q. Okay. And then there's a handwritten 510 on  
22 there. Do you see that?  
23 A. Yes.  
24 Q. Do you have an understanding of what that  
25 means?

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1 A. I would assume that's Cost Code 510.  
2 Q. Meaning that this cost charge is being  
3 allocated to Cost Code 510?  
4 A. Expensed to 510, yes.  
5 Q. Expensed to 510.  
6 Okay. And then on the final page of the  
7 document there's a description LSRF Cost of Suit.  
8 Do you see that?  
9 A. Yes.  
10 Q. Do you have an understanding as to what that  
11 means?  
12 A. Yes.  
13 Q. What do you believe that means?  
14 A. So, Cost of Suit is independent of the  
15 hourly billing charge.  
16 So, when you see -- well, let me see if I  
17 can -- for comparison purposes.  
18 If we were to bill for services on an hourly  
19 basis there would be an hourly rate \$170 an hour.  
20 That rate includes everything except those  
21 external consultant contracts that we spoke about  
22 earlier.  
23 So, this is some type of a charge related to  
24 probably an expert witness contract that is in place  
25 to represent one of the matters that the attorneys

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1 are working on and it's that portion of the contract  
2 that's been used that's being charged back to the  
3 bureau to pay for that expert witness contract or a  
4 portion of that expert witness contract.  
5 So, normally let's just say we would enter  
6 into a contract with an expert witness \$75,000 would  
7 be the value of that contract maybe over a year's  
8 time, and then as those services are used, we would  
9 draw down on that incrementally based on, you know,  
10 whatever is used.  
11 Q. Uh-huh.  
12 A. And whatever that value is would then be  
13 charged to the client and it's all called the  
14 Cost of Suit.  
15 Q. Okay. And then -- so these documents come  
16 from Government Law the Legal Services, right?  
17 A. So the data comes from Legal Services.  
18 The contracts are generated in our  
19 accounting department or the invoices are generated  
20 in our accounting department.  
21 Q. And invoices don't have any further  
22 breakdown other than the total amount being charged  
23 and on what appears to be a monthly basis?  
24 A. That's correct.  
25 Q. So you wouldn't see like "Attorney X"

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1 working on this project, "Attorney Y" working on some  
2 other project?  
3 A. Not from our accounting department.  
4 Q. Okay.  
5 A. And that's done to protect attorney-client  
6 confidentiality.  
7 Q. Understood.  
8 MR. HAKL: This is number 17?  
9 MR. FRANKLIN: Do you have any questions?  
10 MR. HAKL: I do not.  
11 MR. FRANKLIN: Okay.  
12 So, I'll propose the following stipulation.  
13 Off the record Attorney Haki and I spoke  
14 about the few instances of instructions not to  
15 answer, and I believe we reached an agreement that we  
16 would conclude the deposition today but, regardless,  
17 the plaintiff would retain the ability to bring a  
18 Motion to Compel on those few instances where there  
19 was an instruction not to answer.  
20 The reporter will be relieved of her duty to  
21 maintain the original of the transcript.  
22 The original will be forwarded to the  
23 deponent via Mr. Haki 14 days to review.  
24 So, you'll you have 14 days to review it  
25 after receipt. And a certified copy can be used at

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1 trial if the original is lost or destroyed.  
2 So stipulated?  
3 MR. HAKL: Yeah, that's consistent with what  
4 we did last time I think. Yes.  
5 MR. FRANKLIN: Off the record.  
6 THE REPORTER: Can I get orders on the  
7 record?  
8 MR. HAKL: Yes. I'd like a copy.  
9 MR. FRANKLIN: I think I'm going to order it  
10 a little bit expedited. Seven days.  
11 (The proceedings were concluded at 12:26 p.m.)  
12 --o0o--  
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1 REPORTER'S CERTIFICATION

2

3 I, Laurie D. Lerda, a Certified Shorthand

4 Reporter in and for the State of California, do

5 hereby certify:

6

7 That the foregoing witness was by me duly sworn;

8 that the deposition was then taken before me at the

9 time and place herein set forth; that the testimony

10 and proceedings were reported stenographically by me

11 and later transcribed into typewriting under my

12 direction; that the foregoing is a true record of the

13 testimony and proceedings taken at that time.

14

15 IN WITNESS WHEREOF, I have subscribed my name

16 this 7th day of February, 2017.

17

18 *Laurie Lerda*

19 \_\_\_\_\_

20 Laurie D. Lerda, CSR No. 3649

21

22

23

24

25

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1 Assignment No: J0501178

2 Case Caption: Gentry vs. Harris

3

4 DECLARATION UNDER PENALTY OF PERJURY

5 I declare under penalty of perjury

6 that I have read the entire transcript of

7 my deposition taken in the above-captioned matter,

8 or the same has been read to me, and

9 the same is true and accurate, save and

10 except for changes and/or corrections, if any, as

11 indicated by me on the DEPOSITION ERRATA SHEET

12 hereof, with the understanding that I offer these

13 changes as if still under oath.

14 Signed on the \_\_\_\_ day of \_\_\_\_\_,

15 2017.

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17

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19 \_\_\_\_\_

20 DAVID SCOTT HARPER

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1 DEPOSITION ERRATA SHEET

2 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_

3 Reason for change: \_\_\_\_\_

4 Page No. \_\_\_ Line No. \_\_\_ Change To: \_\_\_\_\_

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10 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_

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12 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_

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19 Reason for change: \_\_\_\_\_

20 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_

21 Reason for change: \_\_\_\_\_

22 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_

23 REASON for change: \_\_\_\_\_

24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 DAVID SCOTT HARPER

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1 DEPOSITION ERRATA SHEET

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# **EXHIBIT O**

CONDENSED

**In the Matter Of:**  
**GENTRY vs HARRIS**

34-2013-80001667

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**JESSICA RYAN DEVENCENZI HOLMES**

*January 30, 2017*

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Page 1

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SACRAMENTO  
3 --oOo--  
4  
5 DAVID GENTRY, JAMES  
6 PARKER, MARK MIDLAM,  
7 JAMES BASS, and CALGUNS  
8 SHOOTING SPORTS  
9 ASSOCIATION,  
10  
11 Plaintiffs and  
12 Petitioners,  
13 vs. Case No. 34-2013-80001667  
14  
15 KAMALA HARRIS, in Her  
16 Official Capacity as  
17 Attorney General for the  
18 State of California;  
19 STEPHEN LINDLEY, in His  
20 Official Capacity as  
21 Acting Chief for the  
22 California Department of  
23 Justice, BETTY YEE, in  
24 Her Official Capacity as  
25 State Controller for the  
State of California and  
DOES 1-10,  
Defendants and  
Respondents.

DEPOSITION OF  
JESSICA R. DEVENCENZI HOLMES  
January 30, 2017  
2:58 p.m.  
1300 I Street  
Sacramento, California  
LAURIE D. LERDA, CSR No. 3649

Page 3

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1 APPEARANCES OF COUNSEL  
2  
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14 CIVIL LAW DIVISION, GOVERNMENT LAW SECTION  
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19 anthony.hakl@doj.ca.gov  
20  
21 --oOo--  
22  
23  
24  
25

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Exhibit	Description	Page
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6		Governor, State of California, Re:
7		Request for Signature on SB 819
8		from Mark Leno, Senator, 3rd District
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10		Assembly Committee on Appropriations
11		Felipe Fuentes, Chair - SB 819 (Leno)
12		As Amended: April 14, 2011
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1 QUESTIONS INSTRUCTED NOT TO ANSWER, CONTINUED

2

3 Page 46, Line 19:

4 Q. This is I think similar to a previous

5 question, but I also believe it's distinct.

6 It will be quicker to just ask it than find

7 it in the record.

8 Did the department provide Senator Leno any

9 information about the actual cost of processing a

10 DROS application?

11

12 Page 54, Line 12:

13 Q. Do you have any recollection of speaking

14 with Senator Leno concerning litigation related to

15 the DROS fee?

16 Page 64, Line 14:

17 Q. Do you recall providing Senator Leno with

18 information about the relationship referred to in

19 this paragraph specifically at the language:

20 "A prospective gun owner pays a fee to

21 determine whether he or she is eligible to purchase a

22 gun (background check), it makes sense that the fee

23 should apply to enforcement when those same

24 individuals become "ineligible" due to criminal

25 behavior or mental illness."

Page 65, Line 2:

Q. Do you recall providing Senator Leno with

information about the relationship referred to in

this paragraph specifically at the language:

"A prospective gun owner pays a fee to

determine whether he or she is eligible to purchase a

gun (background check), it makes sense that the fee

should apply to enforcement when those same

individuals become "ineligible" due to criminal

behavior or mental illness."

Page 65, Line 9:

Q. The next section is entitled "Isn't this

bill just a gun tax?"

Do you recall discussing with Senator Leno

the possibility that SB 819 could be characterized as

a tax?

//

Page 6

1 QUESTIONS INSTRUCTED NOT TO ANSWER

2

3 Page 24, Line 23:

4 Q. What was that?

5

6 Page 34, Line 21:

7 Q. The question is:

8 Why was the choice to use a single word to

9 amend the statute made as opposed to something more

10 detailed?

11

12 Page 36, Line 1:

13 Q. Did Senator Leno inquire as to why the

14 proposed language of SB 819 amending

15 Penal Code Section 28225 was not more descriptive?

16 Page 42, Line 22:

17 Q. Did you ever explain to the senator what the

18 cause of the DROS surplus was?

19 Page 43, Line 3:

20 Q. In discussing the proposed legislation with

21 Senator Leno, did you discuss how the proposed

22 legislation would apply to future DROS Fund

23 surpluses?

24 Page 44, Line 17:

25 Q. Do you have any recollection of the

department providing Senator Leno any data about the

specifics of how the DROS fee amount is set?

Page 44, Line 23:

Q. To the best of your recollection did the

department ever provide Senator Leno with data

concerning the amount of DROS fee payers who

eventually are on the APPS list?

Page 46, Line 7:

Q. Did you provide Senator Leno any information

as to the department's ability to administratively

reduce the DROS fee?

Page 46, Line 14:

Q. Did you discuss the 2010 rulemaking intended

to lower the DROS fee with Senator Leno?

//

Page 8

1 QUESTIONS INSTRUCTED NOT TO ANSWER, CONTINUED

2

3 Page 70, Line 23:

4 Q. Okay. And then the last paragraph on the

5 page and the last sentence in that paragraph states:

6 "DROS fees have not been raised for 7 years

7 and the fund will continue to run a surplus

8 regardless of the passage of SB 819."

9 Do you recall the department telling

10 Senator Leno that the DROS Special Account would

11 run a surplus regardless of the passage of

12 SB 819?

13

14 Page 84, Line 19:

15 Q. And was the department in contact with this

16 consultant regarding information that was ultimately

17 put in this report?

18

19

20

21

22

23

24

25

Page 9

1 DEPOSITION OF JESSICA R. DEVENCENZI HOLMES  
 2 January 30, 2017  
 3 JESSICA R. DEVENCENZI HOLMES  
 4 having been first duly sworn testifies as follows:  
 5 ---oOo---  
 6 (Exhibit No. 1 was pre-marked)  
 7 EXAMINATION  
 8 BY MR. FRANKLIN:  
 9 Q. Okay. We're on the record.  
 10 My name is Scott Franklin. I'll be taking  
 11 the deposition today on behalf of the plaintiffs in  
 12 the action currently captioned Gentry v. Harris,  
 13 Case No. 34-2013-80001667.  
 14 Put a document in front of you we're going  
 15 to mark as Exhibit 1. I'd like you to review that  
 16 document. And I'm giving Mr. Haki a copy of  
 17 everything I give you so you don't have to share.  
 18 A. Okay.  
 19 Q. Have you seen this document before?  
 20 A. Yes.  
 21 Q. Are you here today to give deposition  
 22 testimony in response to this notice?  
 23 A. Yes.  
 24 MR. FRANKLIN: Okay. This is a document I'm  
 25 going to be marking as Exhibit 2.

Page 10

1 (Exhibit No. 2 was marked)  
 2 BY MR. FRANKLIN:  
 3 Q. Look at the document and specifically  
 4 item 10 on the document. Are you here today to give  
 5 testimony on item 10?  
 6 A. Yeah.  
 7 MR. HAKL: And just I mean we'll see where  
 8 it goes. We're starting a little bit later than  
 9 expected, because counsel's been meeting and  
 10 conferring for about an hour on this issue that I  
 11 wrote -- I brought up during the break about the  
 12 Legislative Privilege and the extent to which it  
 13 applies to non-legislators such as perhaps  
 14 Ms. Devencenzi.  
 15 And so in terms of the information  
 16 communicated to Senator Leno's office by our office,  
 17 we may have some objections and instructions not to  
 18 answer, particularly, as it goes to this category.  
 19 We'll take it as it comes.  
 20 BY MR. FRANKLIN:  
 21 Q. And I'll state our position for the record  
 22 that at least at this time having the issue having  
 23 been raised for the first time immediately prior to  
 24 the deposition, our position would be that this  
 25 objection could have been raised during the period in

Page 11

1 which the notice was active and that the argument's  
 2 been waived. So that's our position, but we're  
 3 moving forward.  
 4 Can you give us your full name on the  
 5 record?  
 6 A. Jessica Ryan Devencenzi Holmes.  
 7 Q. Are you taking any medications or any --  
 8 or is there any other reason that will prevent you  
 9 from giving your best testimony today?  
 10 A. No.  
 11 Q. If you need a break at any time just let me  
 12 know. There's no problem with that.  
 13 The only thing I ask is that you do not ask  
 14 for a break while a question is pending.  
 15 A. (Witness nodding)  
 16 Q. I see you nodding your head.  
 17 A. Yes.  
 18 Q. Yes. And you're an attorney.  
 19 I'm guessing you're familiar with these  
 20 rules. If you'd like I can read them all and then  
 21 you can have any questions or comments at the end if  
 22 that's quicker.  
 23 A. That's great.  
 24 Q. Okay. You see we have a reporter here  
 25 recording the transcript. You will get an

Page 12

1 opportunity to review the transcript after it's  
 2 completed, but you should understand that we will  
 3 have the ability to question you if you make any  
 4 material changes to your testimony.  
 5 The understanding you have today is key.  
 6 I want to make sure you give your best  
 7 possible answers, so feel free to ask for rephrasing  
 8 or clarification if you don't understand a question.  
 9 The oath you took today is the same oath you  
 10 will take if you were in a court of law before a  
 11 judge and a jury.  
 12 We're looking for accurate answers. No  
 13 guessing. But we do want estimates where possible.  
 14 Your best recollection of something is  
 15 perfectly fine and reasonable testimony.  
 16 An example it would be an estimate if I ask  
 17 you to tell me the length of the table we're sitting  
 18 before, but it would be a guess if I ask you to tell  
 19 me the length of my desk at my office, because I  
 20 don't believe you've ever been in my office.  
 21 Also, if you have secondhand knowledge of  
 22 something, I need you to tell me that.  
 23 For example, even if you weren't at a  
 24 meeting but someone told you what happened at the  
 25 meeting, I would want to know what you were told

Page 13

1 even though you don't have firsthand knowledge.  
2 Okay. Do our best to speak one person at a  
3 time so we can get a clear transcript.  
4 To the extent there are any physical  
5 gestures made during the deposition, if you would  
6 explain what you're doing.  
7 And clear answers. No "uh-huhs" or  
8 "uh-uhs". Those don't translate very well into our  
9 record so "yes's", "no's" and then more detailed  
10 answers. Have you understood the instructions I  
11 provided?  
12 A. Yes.  
13 Q. Okay. Have you been deposed before?  
14 A. No.  
15 Q. Did you review any documents in preparation  
16 for this deposition?  
17 A. Yes.  
18 Q. What documents were those?  
19 A. I reviewed an e-mail that I sent to some --  
20 to I believe the Brady Campaign and the LCAV.  
21 Q. Any other documents?  
22 A. No.  
23 MR. FRANKLIN: I'll ask counsel.  
24 Do you believe those documents have been  
25 produced in this litigation?

Page 14

1 MR. HAKL: Yeah, I know it was.  
2 BY MR. FRANKLIN:  
3 Q. Okay. Did you meet with anyone in  
4 preparation for this deposition other than counsel?  
5 A. No.  
6 Q. Okay. I have some defined terms I think it  
7 will make things go quicker, but if they don't make  
8 sense, I want you to let me know.  
9 We had a couple.  
10 We had David Harper in here this morning and  
11 he had a couple that he gave me some clarification.  
12 I will try to recall that and, if not,  
13 Mr. Hakl, if you have any thoughts, I'll definitely  
14 take them.  
15 The first one is the Dealer Record of Sale.  
16 That can mean depending on the context  
17 either the actual document that records a sale of a  
18 firearm or the process generally of making that  
19 document and doing background checks.  
20 Does that make sense?  
21 A. Yes.  
22 Q. The DROS Special Account.  
23 That's a segregated fund within the  
24 State's General Fund where the DROS fees are  
25 deposited.

Page 15

1 A DROS surplus is simply the general term  
2 for a balance carried over from one year to next in  
3 the DROS Fund -- a DROS Special Account rather.  
4 "The department" when I say that, I'm  
5 referring to the entire Department of Justice and  
6 including the subentities like the Bureau of  
7 Firearms.  
8 However, certainly if you feel there's a  
9 distinction that needs to be made, please let me know  
10 that if it's, for example, something that's only  
11 Bureau of Firearms and not necessarily, you know,  
12 some other aspect of the department.  
13 And I also know that I speak very fast.  
14 But I assume everyone wants to go as quickly  
15 as reasonably possible, so if I go too fast let me  
16 know, but, otherwise, I'll keep it at this speed.  
17 When I refer to "APPS", I'm referring to the  
18 Armed Prohibited Person System.  
19 Are you familiar generally with what APPS  
20 is?  
21 A. Yes.  
22 Q. Okay. And when I refer to the "APPS list",  
23 I'm referring to the list that's created by APPS  
24 that includes DROS fee payers who are prohibited from  
25 owning and possessing firearms period.

Page 16

1 A. Uh-huh.  
2 MR. FRANKLIN: Senate Bill 819 or SB 819  
3 that is a 2011 Senate Bill authored by  
4 Senator Mark Leno regarding the use of let's say  
5 money from the DROS Fund.  
6 Is that a -- I know that was an issue in the  
7 Harper. Is that a fair definition?  
8 MR. HAKL: Yes, it's fair.  
9 BY MR. FRANKLIN:  
10 Q. Okay. When I refer to Senator Mark Leno,  
11 I'm also referring to his staff.  
12 So, for example, if I ask, which I may or  
13 may not, if I ask did you tell Senator Leno "X",  
14 I'm also asking did you tell his staffers or,  
15 you know, his executive assistant or anything along  
16 that line.  
17 When I refer to Section 28225, I'm referring  
18 to Penal Code 28225, and I'm also using that as the  
19 term for its prior codification location which is  
20 Penal Code 12076.  
21 Okay. You were employed by the department  
22 at one time, correct?  
23 A. Yes.  
24 Q. When did you start with the department?  
25 A. I believe I started in 2007.

Page 17

1 Q. And what was your job title in 2007?  
2 A. In 2007 I was a Deputy Attorney General with  
3 the Correctional Law Section.  
4 Q. Okay. What did you do in that capacity?  
5 A. I defended the state against inmate lawsuits  
6 and I represented the state in a class action.  
7 Q. How long did you have that position?  
8 A. Until 2011.  
9 Q. And was that a litigation position?  
10 A. It was.  
11 Q. Okay. And then you changed your position in  
12 2011?  
13 A. Yes.  
14 Q. What did you change to?  
15 A. I was, well, Deputy Attorney General, but  
16 with the Office of Legislative Affairs.  
17 Q. What were your job responsibilities when you  
18 moved to the Office of Legislative Affairs?  
19 A. I staffed bills sponsored by the  
20 Attorney General. I reviewed legislation that -- all  
21 legislation that had an impact on the department in  
22 the areas I staffed which included firearms.  
23 Q. I guess I want to make sure I understand  
24 what you mean by "staffed".  
25 Does that mean you were responsible for

Page 18

1 putting employees in places to perform work?  
2 A. No.  
3 The Office of Legislative Affairs when I was  
4 there was every legislative advocate had different  
5 areas that they worked on.  
6 So, for example, I had firearms,  
7 charitable trusts, different areas within the office.  
8 Q. Uh-huh.  
9 A. So all legislation that was introduced in  
10 those areas I would review and then send out to  
11 experts in the department for review.  
12 Q. When you say "experts", nonlawyer  
13 experts?  
14 A. Yes.  
15 Q. So, for just a general example.  
16 If it was a bill having to do with  
17 firearms ammunition, you would send it to someone  
18 within the Bureau of Firearms who knew about  
19 firearms ammunition?  
20 A. Yes.  
21 Q. When did you first become aware of the  
22 existence of the DROS Special Account?  
23 A. 2011.  
24 Q. Do you remember what month that was?  
25 A. Probably January.

Page 19

1 Q. And did you start your position there in  
2 January?  
3 A. Yes.  
4 Q. And in what context did you learn about the  
5 DROS Special Account in January 2011?  
6 A. In the context of Senate Bill 819.  
7 Q. So, the legislation that became  
8 Senate Bill 819 already existed when you came in in  
9 January 2011?  
10 A. It was the concept for the legislation.  
11 Q. Was there a draft in place?  
12 A. I don't remember.  
13 Q. So, is it fair to say then that you do not  
14 recall drafting that legislation?  
15 A. No. I would have drafted it. I don't  
16 recall if -- sorry. I don't understand.  
17 So, I would have drafted the legislation,  
18 but it wouldn't have been in place when I came in  
19 when I started with Leg Affairs.  
20 Does that make sense?  
21 Q. Well, I guess my question is:  
22 Let me tell you what I understand and we can  
23 see --  
24 A. Okay.  
25 Q. -- if that's accurate.

Page 20

1 My understanding from your testimony is that  
2 the concept of what became Senate Bill 819 existed  
3 within the department when you came in in  
4 January 2011.  
5 So my question is:  
6 Did it exist in a draft form or was it more  
7 amorphous?  
8 A. More morphous I believe.  
9 Q. And what was your understanding of the  
10 concept?  
11 A. It was basically a need -- that basically  
12 there was a backlog on the APPS list and there was a  
13 need for additional enforcement.  
14 Q. Do you remember what caused the need?  
15 A. Just the backlog continually growing.  
16 That's all I remember.  
17 Q. Did you ever gain an understanding of how  
18 the DROS fee is actually set?  
19 A. No.  
20 Q. Did you ever gain an understanding of  
21 what -- any elements that would be considered in  
22 setting the DROS fee?  
23 MR. HAKL: Objection. Asked and answered.  
24 She already said no.  
25 But you can answer the question.



Page 21

1 BY MR. FRANKLIN:  
2 Q. So, I would say I'd have to look at the  
3 wording, but I'm pretty sure the first question was  
4 whether or not she understood the entire process.  
5 And then the second question was whether or  
6 not she knew any independent elements where she might  
7 not know the whole equation but she might know some  
8 elements.  
9 MR. HAKL: She can answer the question.  
10 THE WITNESS: So, I don't know for sure.  
11 BY MR. FRANKLIN:  
12 Q. Uh-huh.  
13 A. I know that the penal code allows them to  
14 use it for certain things.  
15 Q. Okay. Did you have an understanding ever of  
16 who performed analysis of the amount being charged  
17 for the DROS fee?  
18 MR. HAKL: Objection. Vague in terms of  
19 "who". Do you mean like an actual person?  
20 MR. FRANKLIN: Either an actual person or a  
21 division, department, whatever.  
22 THE WITNESS: I don't want to guess.  
23 I'm not going to guess.  
24 MR. HAKL: Just if you don't know and you  
25 have to guess say that.

Page 22

1 BY MR. FRANKLIN:  
2 Q. Do you ever recall being involved in a  
3 discussion about whether or not the DROS fee should  
4 be lowered?  
5 A. No.  
6 Q. And that's, no, you don't recall ever --  
7 A. No. I don't think I was ever involved  
8 setting the fee or anything like that.  
9 Q. When you came in in January 2011, did you  
10 have an understanding of how long the concept of  
11 SB 819 had been being discussed in the department?  
12 A. No.  
13 Q. Did you have an understanding of whether or  
14 not it was something that came in with Kamala Harris?  
15 A. No.  
16 Q. And do you know the particular source of  
17 this idea we're talking about?  
18 A. No.  
19 Q. When you came in in January 2011, were you  
20 aware that the department was working on a rulemaking  
21 to reduce the amount of the DROS fee?  
22 MR. HAKL: Objection.  
23 Assumes facts not in evidence.  
24 But go ahead. You can answer.  
25 THE WITNESS: No, not in 2011.

Page 23

1 BY MR. FRANKLIN:  
2 Q. When did you become aware of the rulemaking  
3 to reduce the DROS fee?  
4 MR. HAKL: Assumes -- objection.  
5 Assumes facts not in evidence.  
6 You might want to --  
7 MR. FRANKLIN: I mean if you want to go  
8 through the documents we can, but I don't think  
9 there's going to be any factual dispute about when  
10 that rulemaking existed so...  
11 MR. HAKL: No.  
12 But you're assuming she was aware of the  
13 rulemaking.  
14 MR. FRANKLIN: I am not.  
15 I want to know if she was aware.  
16 I am not assuming she's aware.  
17 MR. HAKL: Okay.  
18 THE WITNESS: So, let me tell you what I was  
19 aware of. I know that there was an effort -- there  
20 was some discussion about reducing the DROS fee and  
21 there were some I think regulations that were out  
22 there pending. I don't know what year. I don't  
23 recall what year.  
24 BY MR. FRANKLIN:  
25 Q. Do you ever recall having to analyze what

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1 became Senate Bill 819 and its relationship to those  
2 proposed regulations?  
3 A. No.  
4 Q. Did you ever inquire -- well, strike that.  
5 At the time SB -- before SB 819 became law,  
6 did you know that the rulemaking process had started  
7 on the DROS fee reduction?  
8 MR. HAKL: Objection. Vague as to time.  
9 Did you say at or before?  
10 BY MR. FRANKLIN:  
11 Q. I said before.  
12 So, I didn't put a date on it, because I  
13 think it was enacted October 9th, 2011.  
14 Before October 9th, 2011, were you aware of  
15 the rulemaking to reduce the DROS fee?  
16 A. Yes. But -- yes.  
17 But I thought it was my understanding that  
18 that had occurred before the bill was introduced, but  
19 maybe I have my timelines misunderstood.  
20 Q. Your understanding was that it had been  
21 introduced before the bill?  
22 A. Yes. The rule -- all the rulemaking had  
23 been done prior to the bill but...  
24 Q. And was it your understanding that that  
25 rulemaking was completed?

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1 A. No.  
2 Q. Your understanding it was open?  
3 A. I -- almost abandoned I think but...  
4 Q. Okay.  
5 MR. HAKL: I see you -- Ms. Devencenzi, I  
6 see you shrugging your shoulders and sort of like  
7 eking out answers.  
8 THE WITNESS: Yeah.  
9 MR. HAKL: To the extent -- I mean you  
10 should -- if you recall the answers, you should give  
11 the information, but if your -- and he's entitled --  
12 you're entitled to, you know, your best recollection  
13 and your estimates and those kind of things, but,  
14 you know, answer the questions asked as best you can.  
15 But if you can't, you can't.  
16 THE WITNESS: Okay.  
17 BY MR. FRANKLIN:  
18 Q. Did anyone ever provide to you any  
19 explanation as to why the department would be  
20 pursuing SB 819 and a DROS fee reduction at the same  
21 time?  
22 A. No.  
23 Q. Okay. I think we're getting back to that  
24 question we had some confusion on.  
25 At some point do you believe you did a draft

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1 of the proposed legislation?  
2 A. Yes. I would have drafted.  
3 Q. Do you believe you were the first person to  
4 attempt to draft it in the department?  
5 A. I don't remember.  
6 Q. If I understood correctly, because firearms  
7 was one of your areas that you would work in, it  
8 would be the normal process that a bill like SB 819  
9 which is a firearms-related bill would have been  
10 drafted by you?  
11 A. I typically drafted legislation.  
12 Q. Do you remember anything about the drafting  
13 process for this bill?  
14 A. Not really.  
15 Q. Do you remember that the actual text of  
16 Penal Code now 28225 was only actually amended with  
17 one word the addition of the word "possession"?  
18 A. I do. And I'm sorry.  
19 Q. No.  
20 A. I do.  
21 Q. Do you remember why that was?  
22 A. I do.  
23 Q. What was that?  
24 A. Can we take a break?  
25 Can I take a break, because I'm --

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1 Q. We're getting to that issue?  
2 A. Yes.  
3 I think we're moving into the legislative  
4 issue on communications.  
5 MR. HAKL: Yeah.  
6 MR. FRANKLIN: And before you go out, let me  
7 just -- something to think about during that  
8 discussion is whether or not this is actually a  
9 legislative privilege issue that would stem from a  
10 claim under Mark Leno's Legislative Privilege versus  
11 something else.  
12 Because what we've talked about to date or  
13 earlier today was --  
14 MR. HAKL: This might be attorney-client  
15 privilege.  
16 MR. FRANKLIN: That's why I'm just setting  
17 out my thought process now is that, um, if it's  
18 something other than that, we may have to go back off  
19 the record, because it will be a new type of  
20 objection so...  
21 MR. HAKL: Okay.  
22 MR. FRANKLIN: We have time.  
23 MR. HAKL: Okay. There may have been some  
24 other minor modifications to the statute just in  
25 terms of your characterization of SB 819.

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1 MR. FRANKLIN: There might be one about  
2 swapping the term "mental health" for some other  
3 word.  
4 MR. HAKL: Yeah.  
5 MR. FRANKLIN: But I think we're all in  
6 agreement that as to the substance of this lawsuit  
7 between counsel and then what the deponent knows of  
8 it, the only change in that statute that is relevant  
9 is the word "possession".  
10 MR. HAKL: I think that's right.  
11 The statute speaks for itself, but I think I  
12 agree with you.  
13 MR. FRANKLIN: Yeah. Okay. All right.  
14 Let's take a break.  
15 I can take off if you want in here.  
16 You're good?  
17 MR. HAKL: Yeah.  
18 (Whereupon, a brief recess was taken)  
19 MR. HAKL: Yes. On the record.  
20 Having consulted with the witness, I do  
21 think it's squarely in the Legislative Privilege  
22 issue. To be sure, can I hear the question read  
23 back, please?  
24 (Record Read)  
25 MR. HAKL: So, as to the question why that

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1 was, I'll assert the Legislative Privilege that we  
2 talked about.  
3 MR. FRANKLIN: Who's that being asserted on  
4 behalf of?  
5 MR. HAKL: Well, all the holders of the  
6 privilege. I mean -- so I mean here's -- it's based  
7 on cases like County of Los Angeles versus  
8 Superior Court 15 Cal.App 3rd 721 at 726 to 728.  
9 Nadler versus Schwarzenegger,  
10 137 Cal.App 4th 1327 at 1336.  
11 That's a 2006 case.  
12 And also City of Santa Cruz versus  
13 Superior Court, 1995, 40 Cal.App 4th 1146.  
14 And those cases stand for the general  
15 proposition that you can't require legislators to  
16 testify about their reasoning process or question  
17 others about the factors which may have led to a  
18 particular legislative decision being made.  
19 And I mean I'm asserting that to the -- I  
20 mean it's my understanding that based on these cases  
21 we have the ability to assert that privilege.  
22 MR. FRANKLIN: "We" being who?  
23 MR. HAKL: The Department of Justice.  
24 MR. FRANKLIN: In what capacity?  
25 The capacity as the sponsor of the

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1 legislation or as an attorney advising a client or I  
2 mean an attorney advising the legislature?  
3 I just want to make sure I understand.  
4 MR. HAKL: It's just not discoverable  
5 information. I mean I don't know if it -- I mean the  
6 cases say it's not discoverable information.  
7 MR. FRANKLIN: Because it relates to the  
8 sponsorship of the bill?  
9 MR. HAKL: Because it's all -- it's all  
10 wrapped up in the -- the information you're seeking  
11 is wrapped up in the legislature's motivations and  
12 reasons for doing what it did.  
13 MR. FRANKLIN: The legislature's or  
14 Mark Leno's?  
15 MR. HAKL: I don't think that's a meaningful  
16 distinction.  
17 MR. FRANKLIN: Okay.  
18 But you don't have a position one way or the  
19 other?  
20 MR. HAKL: Well, I think the answer is both.  
21 MR. FRANKLIN: Okay.  
22 MR. HAKL: I mean the privilege applies to  
23 legislators. That's my understanding.  
24 MR. FRANKLIN: Well, certainly we disagree.  
25 I think -- I think actually those cases do

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1 not stand for the same proposition but...  
2 And then I'll just add one to the list.  
3 Let's see here.  
4 City of King City versus Community Bank of  
5 Central California, 131 Cal.App 4th 913, 931, 2005.  
6 So, pursuant to the discussion of counsel,  
7 at this time we're going to continue the deposition.  
8 It being understood that there's an instruction not  
9 to answer and that at this time the plaintiff is  
10 likely to take that up on a Motion to Compel, but we  
11 believe we can have further productive deposition  
12 today so we're going to do that.  
13 MR. HAKL: And that's --  
14 MR. FRANKLIN: I need to understand the  
15 privilege the claim going forward.  
16 Is the claim that working up a piece of  
17 draft legislation before providing it to a legislator  
18 is still falling within the Legislative Privilege?  
19 MR. HAKL: Um, it could be.  
20 MR. FRANKLIN: Are you claiming it in this  
21 instance?  
22 MR. HAKL: Um, in relation to the question  
23 that you -- that you asked, yes.  
24 BY MR. FRANKLIN:  
25 Q. Do you know if the -- when the first draft

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1 of SB 819 was provided to Senator Leno?  
2 MR. HAKL: Objection.  
3 MR. FRANKLIN: When.  
4 MR. HAKL: That's covered -- that's covered  
5 by the cases we discussed previous to the deposition  
6 which was the timing of events and when certain  
7 things were done by legislators or given to  
8 legislators can go -- it's all tied up in a  
9 legislator's mental processes.  
10 MR. FRANKLIN: Well, I would agree that  
11 that's the case if the timing actually means  
12 something in terms of their mental process.  
13 The reason I'm asking for it here is to  
14 establish the boundaries of when the privilege claim  
15 would have come into existence so I can focus my  
16 questioning before that point in time.  
17 MR. HAKL: So, you're assuming that the  
18 privilege doesn't attach until we provided a draft to  
19 Senator Leno if that's what happened?  
20 MR. FRANKLIN: I'm just trying to figure out  
21 the bounds of this objection that's being made.  
22 MR. HAKL: I'm objecting to communications  
23 to and from our office and with Senator Leno  
24 regarding SB 19 -- SB 819.  
25 MR. FRANKLIN: But then the underlying

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1 question wouldn't be part of the privilege which was  
 2 concerning why things were drafted the way they were.  
 3 That's not a communication to Senator Leno at all.  
 4 MR. HAKL: I stand on my objection.  
 5 MR. FRANKLIN: Okay. But it's -- but that  
 6 one is not based on a communication.  
 7 MR. HAKL: I stand on the objection.  
 8 I can only say so much.  
 9 MR. FRANKLIN: That's your call.  
 10 I think it's worth my time though to try to  
 11 flush the position out especially since this isn't  
 12 something that was raised before today so I just want  
 13 to know the contours before I move forward.  
 14 So, I understand we're probably going to  
 15 have a series of instructions not to answer.  
 16 I get that. I hear that.  
 17 I'm going to make the record on the  
 18 questions and then we can just breeze through them.  
 19 MR. HAKL: Okay.  
 20 BY MR. FRANKLIN:  
 21 Q. And of course there may be some that you  
 22 don't find objectionable, but we'll cross that  
 23 bridge when we come to it.  
 24 Do you have an understanding as to why the  
 25 department would pursue both the rulemaking to reduce

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1 the DROS fee and Senate Bill 819 at the same time?  
 2 MR. HAKL: Objection.  
 3 That's definitely asked and answered.  
 4 BY MR. FRANKLIN:  
 5 Q. And the answer was no?  
 6 A. Yes.  
 7 Q. Do you have an understanding why the  
 8 amendment to Senate Bill 28225 was not more detailed?  
 9 MR. HAKL: Objection. Argumentative.  
 10 MR. FRANKLIN: Is there an instruction not  
 11 to answer?  
 12 MR. HAKL: I mean to the extent you can  
 13 answer it, go ahead.  
 14 THE WITNESS: I don't know what that means.  
 15 BY MR. FRANKLIN:  
 16 Q. For example, I don't think it will get into  
 17 privilege to say that as a general concept you  
 18 understood the purpose of Senate Bill 819 was to use  
 19 money from the DROS Fund on let's say at the least  
 20 some cost related to the APPS program?  
 21 A. Yes.  
 22 Q. Okay. So the word APPS, cost, DROS Special  
 23 Account none of those words are in Penal Code Section  
 24 28225.  
 25 And my question was why it was not something

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1 more than just the addition of the word "possession"  
 2 to express the concepts I was just referring to?  
 3 MR. HAKL: I want to say objection.  
 4 28225 speaks for itself.  
 5 I'm not sure to the extent your  
 6 characterization of it is important here.  
 7 MR. FRANKLIN: Well, I mean "it speaks for  
 8 itself" isn't an objection that's recognized.  
 9 MR. HAKL: Well, you're -- right. No.  
 10 You're representing portions of the penal  
 11 code to her.  
 12 I'm not sure --  
 13 MR. FRANKLIN: Right.  
 14 MR. HAKL: -- what your point is.  
 15 MR. FRANKLIN: Well, the question is that if  
 16 the purpose here was to create a new funding source  
 17 for APPS-related expenditures, why that level of  
 18 detail wasn't included in the SB 819 language.  
 19 MR. HAKL: Okay.  
 20 That assumes it wasn't included.  
 21 MR. FRANKLIN: I mean I see what the statute  
 22 says so...  
 23 MR. HAKL: Right.  
 24 And that's why I'm saying the statute speaks  
 25 for itself.

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1 MR. FRANKLIN: Right.  
 2 And the question I'm asking is why was the  
 3 intent that we've already -- that we generally agreed  
 4 on why that intent wasn't more fully flushed out.  
 5 MR. HAKL: Yeah, but you're asking her --  
 6 this is your way of asking her her interpretation of  
 7 28225.  
 8 MR. FRANKLIN: No. I'm asking --  
 9 MR. HAKL: I mean it's improper, you know,  
 10 request for a legal opinion or contention.  
 11 I mean you're asking her to interpret 28225.  
 12 MR. FRANKLIN: Well, most specifically I'm  
 13 asking why it was amended the way in which it was  
 14 why that language was chosen and not other language.  
 15 I'm not asking her to interpret what it says  
 16 right now, because I already know the department's  
 17 position on what it says.  
 18 MR. HAKL: Okay.  
 19 So what's the question?  
 20 BY MR. FRANKLIN:  
 21 Q. The question is:  
 22 Why was the choice to use a single word to  
 23 amend the statute made as opposed to something more  
 24 detailed?  
 25 MR. HAKL: I mean I guess I'll object on,

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1 you know, Legislative Privilege grounds and possibly  
2 Deliberative Process and Official Information and  
3 even Attorney-Client depending on, you know, what  
4 consultations with my client might reveal.  
5 MR. FRANKLIN: Okay. And it's an  
6 instruction not to answer?  
7 MR. HAKL: Yeah.  
8 MR. FRANKLIN: And when you do an  
9 Official Information Privilege is that a  
10 Evidence Code 1040 objection?  
11 MR. HAKL: It's a -- yeah.  
12 MR. FRANKLIN: Okay.  
13 MR. HAKL: The one we've briefed previously.  
14 MR. FRANKLIN: Yeah.  
15 I mean I think at the end of the day  
16 "Deliberative" and at least "Official" relatively  
17 speaking go to the same basis, but we've never had a  
18 discussion I don't think about Legislative Privilege,  
19 so I want to keep that separate.  
20 MR. HAKL: Right.  
21 Briefing you mean?  
22 BY MR. FRANKLIN:  
23 Q. Right. Right.  
24 So, again, I recognize that there will be  
25 objections to these, but I'm making a record on them.

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1 Did Senator Leno inquire as to why the  
2 proposed language of SB 819 amending  
3 Penal Code Section 28225 was not more descriptive?  
4 MR. HAKL: Same objections and instruction  
5 not to answer.  
6 BY MR. FRANKLIN:  
7 Q. To the best of your knowledge -- well,  
8 strike that.  
9 Do you recall the purpose of SB 819 to be  
10 creating a funding source for something other than  
11 costs related to APPS?  
12 MR. HAKL: Just -- you can answer the  
13 question, but objection in terms of her understanding  
14 of the purpose of the law is irrelevant for any and  
15 all purposes.  
16 MR. FRANKLIN: I understand your position.  
17 THE WITNESS: Yes. The -- sorry.  
18 Can you repeat the question?  
19 MR. FRANKLIN: Can you read it back for  
20 us?  
21 THE WITNESS: Thank you.  
22 (Record Read)  
23 THE WITNESS: Yeah.  
24 The purpose of -- the purpose of the  
25 legislation was to -- for APPS enforcement.

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1 BY MR. FRANKLIN:  
2 Q. Was one of your responsibilities regarding  
3 this legislation to find a legislative author for the  
4 bill?  
5 MR. HAKL: Objection.  
6 Vague as to legislative author.  
7 MR. FRANKLIN: Well, I'll ask you guys,  
8 because you're the government experts.  
9 Technically speaking in the legislature the  
10 person putting forth the bill is called the sponsor,  
11 correct, the actual legislator?  
12 MR. HAKL: I don't know.  
13 MR. FRANKLIN: I'll ask the deponent.  
14 THE WITNESS: So, typically we call the  
15 sponsor is the entity that brings the bill to the  
16 author. Then the author is the author of the bill a  
17 senator or an assembly member.  
18 I don't -- honestly don't remember if he was  
19 the author when I came. I started in January. This  
20 kind of all happened January, February so I don't  
21 recall.  
22 BY MR. FRANKLIN:  
23 Q. Did your responsibilities related to  
24 Senate Bill 819 include providing information to the  
25 public?

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1 A. No.  
2 Q. Did your responsibilities regarding  
3 Senate Bill 819 include providing information to the  
4 media?  
5 A. No.  
6 And if we can go back to the public.  
7 I don't know what you mean by public.  
8 Like general public?  
9 Q. General public.  
10 A. No.  
11 Q. Like public meetings or --  
12 A. No, no.  
13 Q. -- something like that?  
14 A. No.  
15 I mean I provided information to others in  
16 support of the bill or those, yeah, like that, who  
17 are members of the public, but not in like meetings.  
18 Q. So, would it be fair to say that part of  
19 your role regarding SB 819 was to provide information  
20 to members of the legislature?  
21 A. Yes.  
22 Q. Could you give me an example of how you  
23 would normally do that?  
24 A. I would -- we would have something called a  
25 fact sheet.

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1 Q. Uh-huh.  
 2 A. Usually author's offices put them together,  
 3 sometimes we did, that we would send out, and it was  
 4 basically just a very high overview of what the  
 5 legislation is proposed to do.  
 6 Q. And what was the -- other than -- the  
 7 purpose was to provide other legislators an overview  
 8 of the bill?  
 9 A. Yes.  
 10 Q. Okay. Senate Bill 819 has a Findings in  
 11 Declaration Section. Do you have a recollection as  
 12 to why that is?  
 13 A. I don't.  
 14 Q. Was part of your job to obtain support for  
 15 SB 819 from nongovernmental support sources?  
 16 A. Well, yes. Yes.  
 17 Q. Can you identify some nongovernmental  
 18 sources that you would contact regarding a bill like  
 19 SB 819?  
 20 A. I would reach out to, like I said earlier,  
 21 the Brady Campaign or it used to be The Law Center to  
 22 Prevent Gun Violence. I don't know who they are now.  
 23 Q. And what would you -- how would you  
 24 communicate with them?  
 25 A. Via I'd call or e-mail.

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1 Q. And was part of your job to contact  
 2 opponents of the bill?  
 3 A. Not typically.  
 4 Q. Do you recall contacting any opponents of  
 5 SB 819?  
 6 A. I don't recall.  
 7 I mean if folks had questions or called me I  
 8 would talk to them.  
 9 Q. Do you remember any specific objections that  
 10 were presented to you regarding SB 819 setting aside  
 11 objections that might have been brought to you by  
 12 Senator Leno?  
 13 So, for example, do you recall any  
 14 objections brought to you regarding SB 819 by a  
 15 legislative -- like a legislator who was not  
 16 Senator Leno?  
 17 MR. HAKL: I mean that would go --  
 18 objection. Legislative Privilege as to those  
 19 legislators as well.  
 20 MR. FRANKLIN: Right.  
 21 My -- so, is it -- just so I understand  
 22 these objections.  
 23 The office isn't representing that it has  
 24 communicated with any of these legislators and that  
 25 they are expressly making this privilege objection

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1 on their behalf and they know that this is  
 2 happening.  
 3 MR. HAKL: You're correct.  
 4 As I sit here I don't know that it has  
 5 happened.  
 6 BY MR. FRANKLIN:  
 7 Q. Okay. Do you remember any objections about  
 8 SB 819 that you heard from nongovernment  
 9 entities?  
 10 A. There was opposition.  
 11 Q. Do you recall what the basis of that  
 12 opposition was?  
 13 A. Um, I think some of the opposition one of  
 14 the bases was that they -- I can't talk -- was that  
 15 folks did not want the DROS account used for the  
 16 purpose of APPS enforcement. They wanted it to be  
 17 General Fund.  
 18 Q. Do you know if the department ever issued a  
 19 public statement addressing that issue?  
 20 A. No. I don't know.  
 21 Q. Did you have a specific contact at  
 22 Senator Leno's office regarding SB 819?  
 23 MR. HAKL: In terms of -- well, you can  
 24 answer that specific question.  
 25 THE WITNESS: Yes.

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1 BY MR. FRANKLIN:  
 2 Q. Who was that?  
 3 MR. HAKL: You can answer that question,  
 4 too.  
 5 THE WITNESS: Okay.  
 6 MR. FRANKLIN: Because you know I already  
 7 know the answer.  
 8 THE WITNESS: London Biggs.  
 9 BY MR. FRANKLIN:  
 10 Q. Right.  
 11 Do you recall any other people that you  
 12 worked with regarding SB 819 regarding  
 13 Senator Leno's office?  
 14 A. No.  
 15 Q. Do you recall any other department  
 16 employees being involved in communications with  
 17 Senator Leno's office on SB 819?  
 18 A. I don't remember. Maybe.  
 19 It would be speculation.  
 20 Q. It would be speculation?  
 21 A. Yeah. Or assumptions.  
 22 Q. Did you ever explain to the senator what the  
 23 cause of the DROS surplus was?  
 24 MR. HAKL: Objection.  
 25 Legislative and other privileges I have

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1 identified. Don't answer.  
2 BY MR. FRANKLIN:  
3 Q. In discussing the proposed legislation with  
4 Senator Leno, did you discuss how the proposed  
5 legislation would apply to future DROS Fund  
6 surpluses?  
7 MR. HAKL: Same objection.  
8 Same instruction.  
9 BY MR. FRANKLIN:  
10 Q. Did you have any understanding of the  
11 department's intent for SB 819 to apply to only the  
12 DROS surplus that existed at the time SB 819 was  
13 under consideration?  
14 MR. HAKL: Objection. Vague.  
15 And also irrelevant in terms of department's  
16 intent behind a piece of legislation. But you can  
17 answer the question to the extent you can.  
18 THE WITNESS: I don't understand what you're  
19 asking.  
20 BY MR. FRANKLIN:  
21 Q. So, the situation at the time I think we can  
22 all agree there was a very large amount of money in  
23 the account. It was I believe over \$10 million or  
24 maybe almost \$15 million.  
25 And what I was trying to ask is whether or

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1 not the department's intent was in bringing SB 819 to  
2 the legislature if the intent was solely to use that  
3 10 to \$15 million for APPS or if their intent was to  
4 make a statutory change that would apply so that  
5 APPS could be funded out of all future surpluses?  
6 MR. HAKL: I mean she's not -- just  
7 objection in terms of -- I mean she's not a  
8 policy maker in terms of like what the departmental  
9 intent was.  
10 But if you want to ask her what her  
11 understanding was at the time, that's fine.  
12 BY MR. FRANKLIN:  
13 Q. That is what I'd like to do.  
14 A. My understanding was that there was a large  
15 backlog on the APPS system and that the department  
16 needed additional funds to disarm those people.  
17 Q. Do you have any recollection of the  
18 department providing Senator Leno any data about the  
19 specifics of how the DROS fee amount is set?  
20 MR. HAKL: Same objection about  
21 Legislative Privilege and instruction not to answer.  
22 BY MR. FRANKLIN:  
23 Q. To the best of your recollection did the  
24 department ever provide Senator Leno with data  
25 concerning the amount of DROS fee payers who

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1 eventually are on the APPS list?  
2 MR. HAKL: Objection. Vague.  
3 But because it touches upon communications  
4 with Senator Leno regarding SB 819 same objection  
5 regarding the Legislative Privilege.  
6 BY MR. FRANKLIN:  
7 Q. Without touching on the issue of what was  
8 actually told to Senator Leno, are you aware of the  
9 department ever identifying percentage of DROS fee  
10 payers -- I'm sorry -- the percentage of DROS fee  
11 payers who end up on the APPS list?  
12 A. I'm not clear on the question.  
13 Q. So, for example, the APPS list is comprised  
14 of people who are both -- had participated in some  
15 kind of DROS process and became prohibited.  
16 Can we agree with that predicate?  
17 MR. HAKL: Yeah, I mean I think as a  
18 general matter I think that's accurate.  
19 BY MR. FRANKLIN:  
20 Q. Okay. So that has to be a subset of the  
21 entire universe of people who paid the DROS fee.  
22 And what I'm asking is:  
23 Did the department ever -- were you ever  
24 aware of any type of attempt to reconcile those two  
25 things into a percentage?

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1 For example, one percent of people who  
2 participate in the DROS process end up on the  
3 APPS list.  
4 Were you ever aware of that kind of a  
5 calculation being performed?  
6 A. No.  
7 Q. Did you provide Senator Leno any information  
8 as to the department's ability to administratively  
9 reduce the DROS fee?  
10 MR. HAKL: Objection.  
11 Same privileges and instruction not to  
12 answer.  
13 BY MR. FRANKLIN:  
14 Q. Did you discuss the 2010 rulemaking intended  
15 to lower the DROS fee with Senator Leno?  
16 MR. HAKL: Same objections.  
17 Same instruction.  
18 BY MR. FRANKLIN:  
19 Q. This is I think similar to a previous  
20 question, but I also believe it's distinct.  
21 It will be quicker to just ask it than find  
22 it in the record.  
23 Did the department provide Senator Leno any  
24 information about the actual cost of processing a  
25 DROS application?

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1 MR. HAKL: Same objection.  
2 Same instruction.  
3 MR. FRANKLIN: Okay. I'm going to show you  
4 what's going to be introduced as Exhibit 3.  
5 (Exhibit No. 3 was marked)  
6 BY MR. FRANKLIN:  
7 Q. If I could have you look at page 3,  
8 Item 6. Are you familiar with the document that's  
9 described in six?  
10 A. I don't really remember it.  
11 Q. Around the time April 14th, 2011, would you  
12 create memos to the file in the course of your work?  
13 A. I'm sorry?  
14 Q. In the course of your work would you create  
15 memos to the file?  
16 A. Yes.  
17 Q. What is the function of a memo to the file?  
18 A. I don't remember. I have no idea.  
19 I mean typically I would put in some like a  
20 note in my file saying spoke to author, spoke to...  
21 So I don't know what this is.  
22 Q. Was memo writing a normal part of your  
23 position at that time?  
24 A. It was, yes.  
25 Q. Do you know if it was -- if at that time it

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1 was primarily legal memos or factual memos that you  
2 were doing?  
3 A. It would be both.  
4 Q. Okay. So, at that time memos you were  
5 writing were likely to have legal analysis in them?  
6 A. Yes.  
7 MR. HAKL: And just for the purpose of  
8 putting it on the record.  
9 This is a document we've identified on the  
10 privilege log as subject to various privileges, and  
11 to date it has not been produced for that reason I  
12 think.  
13 MR. FRANKLIN: Yeah.  
14 MR. HAKL: Based on I guess I think counsel  
15 have agreed to that.  
16 MR. FRANKLIN: Yeah.  
17 I think based on the facts available at the  
18 time --  
19 MR. HAKL: Right.  
20 BY MR. FRANKLIN:  
21 Q. -- that I didn't see any reason to push on  
22 it.  
23 Would it normally be the process to provide  
24 memo to files to someone outside the department?  
25 A. No.

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1 Q. That would not have been normal?  
2 A. No.  
3 MR. FRANKLIN: A document I'm going to  
4 introduce as Exhibit 4.  
5 (Exhibit No. 4 was marked)  
6 BY MR. FRANKLIN:  
7 Q. I'm going to give you a second to review it.  
8 I'll give you as long as you want to review  
9 it.  
10 A. That's okay.  
11 Q. Are you familiar with this type of document?  
12 A. I am.  
13 Q. What type of document is this?  
14 A. This is what I referred to earlier.  
15 It's a fact sheet.  
16 Q. Do you believe you created this fact sheet?  
17 A. It does not look like mine.  
18 Q. Do you have an opinion as to where it would  
19 have come from?  
20 A. I believe this would have been the  
21 author's fact sheet.  
22 Q. And in this case we're talking about  
23 Senator Leno's office?  
24 A. Yes.  
25 Q. And I think you mentioned that sometimes

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1 fact sheets were created by the author and sometimes  
2 they're created by the department; is that right?  
3 A. Yes.  
4 Q. When the author creates the fact sheet,  
5 do they independently obtain the facts for the  
6 fact sheet, that is, without the department's  
7 assistance?  
8 MR. HAKL: Do you mean --  
9 MR. FRANKLIN: As a general concept?  
10 MR. HAKL: So, you mean generally concerning  
11 preparation of fact sheets?  
12 MR. FRANKLIN: Yes.  
13 THE WITNESS: For generally for all my  
14 sponsored bills I would provide information to the  
15 author.  
16 BY MR. FRANKLIN:  
17 Q. And generally speaking --  
18 A. Not my sponsored bills.  
19 Bills that I worked on --  
20 Q. Right.  
21 A. -- for the office.  
22 Q. Right.  
23 And, generally speaking, would they be  
24 drafts of a fact sheet or just information?  
25 A. It could be either.



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1 Q. Okay. But you have no reason to believe  
2 that you drafted this particular one we're looking  
3 at?  
4 A. It doesn't look like mine would look.  
5 Q. Is that a formatting and style issue of that  
6 nature?  
7 A. Exactly.  
8 Q. What is the purpose of this type of  
9 fact sheet?  
10 A. It's basically to provide other members and  
11 outside entities a quick summary of what the bill  
12 does and does not do and why they're introducing it.  
13 MR. FRANKLIN: That's the only questions I  
14 have on that. This is -- I don't think I need to  
15 introduce this.  
16 This will be Exhibit 5.  
17 (Exhibit No. 5 was marked)  
18 BY MR. FRANKLIN:  
19 Q. I'll give you a moment to review it.  
20 A. Okay.  
21 Q. Have you had a chance to review the  
22 document?  
23 A. Yes.  
24 Q. Do you have any reason to believe that this  
25 is not an e-mail from you to London Biggs dated

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1 February 16th, 2011?  
2 A. No.  
3 Q. To the extent this information -- this  
4 e-mail rather has specific numerical data in it;  
5 for example, it refers to the DROS surplus as being  
6 14,815,000.  
7 Where would you obtain that type of factual  
8 data in creating this document?  
9 A. I have no idea.  
10 Q. And then the next paragraph says:  
11 "The ongoing expense would be approximately  
12 \$1 million a year to fund additional positions at  
13 DOJ to ensure the investigation of people on the  
14 APPS list."  
15 Do you see that line?  
16 A. Yes.  
17 Q. Do you have any recollection as to what the  
18 basis was for that \$1 million amount?  
19 A. I don't remember.  
20 MR. FRANKLIN: That's all I have for this  
21 document. I'm going to show you as Exhibit 6 and  
22 have marked as Exhibit 6 rather.  
23 (Exhibit No. 6 was marked)  
24 BY MR. FRANKLIN:  
25 Q. Have you had a chance to review the

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1 document?  
2 A. Yes.  
3 Q. Do you have any reason to believe that this  
4 is not a copy -- a true and correct copy of an e-mail  
5 from you to London Biggs dated August 29, 2011?  
6 A. No.  
7 Q. Do you recall sending this e-mail?  
8 A. No.  
9 Q. Do you have any understanding as to why you  
10 sent this e-mail?  
11 A. No.  
12 Q. Do you have any recollection of speaking  
13 with Senator Leno concerning litigation related to  
14 the DROS fee?  
15 MR. HAKL: Objection.  
16 Legislative Privilege and also the  
17 Attorney-Client Work Product Privileges.  
18 I mean it's ongoing litigation in the  
19 office. Ms. Devencenzi is a Deputy Attorney General.  
20 Anyway...  
21 MR. FRANKLIN: Yeah, my opinion on that  
22 really doesn't matter, because there's an instruction  
23 not to answer.  
24 MR. HAKL: Right.  
25 MR. FRANKLIN: Okay. If I could show you an

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1 exhibit that we're going to mark number 7.  
2 (Exhibit No. 7 was marked)  
3 BY MR. FRANKLIN:  
4 Q. I will give you a moment to review it.  
5 You've had a chance to review it?  
6 A. Yes.  
7 Q. Do you recognize this document?  
8 A. No.  
9 Q. Do you have any opinion as to who drafted  
10 this document?  
11 A. I don't. I don't think I did.  
12 Q. Okay.  
13 A. I mean given -- given the fact the last  
14 page says:  
15 "Our sponsor is willing to amend the bill."  
16 It probably wasn't the sponsor.  
17 Q. Based on that statement do you believe --  
18 well, is it your opinion that this document appears  
19 to have come from Senator Leno's office?  
20 A. Probably.  
21 MR. HAKL: I'm sorry.  
22 What language were you referring to?  
23 Our sponsor...  
24 MR. FRANKLIN: Yes.  
25 MR. HAKL: Oh, I see.

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1 BY MR. FRANKLIN:  
2 Q. Have you ever seen a Q and A format document  
3 like this before as it relates to pending  
4 legislation?  
5 A. Sometimes.  
6 Q. And how are those documents normally created  
7 if you recall?  
8 A. I mean -- so for just from my experience  
9 for what --  
10 Q. Uh-huh. Generally speaking?  
11 A. No. I don't see them that often.  
12 Q. Uh-huh.  
13 A. Um, they'd be created by the author's  
14 office just to -- usually for the author.  
15 Hold on. Excuse me.  
16 Q. Take your time.  
17 A. Sorry.  
18 Q. I have a cough drop.  
19 A. I have a cold.  
20 Do you have one?  
21 Q. I do.  
22 A. Thank you.  
23 Q. Shake it out of the bag so I don't touch it.  
24 A. So, this is something that you would -- I  
25 think staffers would usually do for their senator so

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1 that the senator, whoever it might be, would have an  
2 understanding when he -- so they would be able to  
3 answer questions on the bill.  
4 Q. In your experience generally Q and A  
5 documents similar to this one are they only intended  
6 for internal use within a legislator's office?  
7 A. I think it depends.  
8 I mean I could see this something like a  
9 Q and A being passed out to other members. But,  
10 yeah, I think it really depends.  
11 MR. FRANKLIN: So this document includes --  
12 this is more of a conversation between you and me --  
13 opposing counsel and me, because it's about speeding  
14 up the deposition --  
15 MR. HAKL: Okay.  
16 MR. FRANKLIN: -- if we can.  
17 It includes a lot of factual and legal  
18 assertions that I would like to know the basis for.  
19 What I've heard today is that the deponent  
20 does not believe she drafted the document.  
21 Given the relationship of a senator and a  
22 sponsor in the course of drafting legislation and  
23 promoting it, I suspect some of this information may  
24 have originated with the department.  
25 But I also suspect that if I ask,

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1 for example, on one that has information about there  
2 being a \$5.5 million surplus in the DROS account, if  
3 I start asking questions did the department provide  
4 this information to the senator, I will receive an  
5 objection.  
6 MR. HAKL: Right.  
7 MR. FRANKLIN: So, if you want to make a  
8 blanket objection as to the whole document for that  
9 purpose you can and we'll move on, or, I can go  
10 through my questioning and we can have a series of  
11 them.  
12 MR. HAKL: She's testified that she didn't  
13 write it.  
14 MR. FRANKLIN: Uh-huh.  
15 MR. HAKL: And she's testified that she's  
16 never seen it before.  
17 MR. FRANKLIN: Like so I think the  
18 5.5 million example is a good one.  
19 It says in this document in the first or the  
20 second paragraph:  
21 There is currently a \$5.5 million surplus in  
22 the DROS account.  
23 So my question to her might be:  
24 Did you ever tell Senator Leno that there  
25 was a \$5.5 million surplus?

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1 And she certainly at least possibly could  
2 remember such a fact regardless of whether or not she  
3 wrote this document.  
4 MR. HAKL: Right.  
5 And I would object to that.  
6 MR. FRANKLIN: And so I'm proposing that I  
7 can either go through all my questions.  
8 We can have a series of objections as to the  
9 source of information referred to on this or we can  
10 do it as an entire document.  
11 And maybe it makes sense just to go through  
12 it.  
13 MR. HAKL: Is there a lot?  
14 MR. FRANKLIN: There's a fair amount.  
15 MR. HAKL: So, I mean to the extent you  
16 intend to ask the deponent whether or not she  
17 provided Senator Leno with certain facts that may  
18 also happen to be reflected in this sheet, I would  
19 object based on the same privileges.  
20 MR. FRANKLIN: And then I think importantly  
21 my question is:  
22 If I were to ask if she is aware of facts in  
23 this sheet and what the basis for that awareness was,  
24 regardless of whether or not that information was  
25 transferred to Senator Leno, would that also get a

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1 Legislative Privilege-based instruction not to  
2 answer?  
3 MR. HAKL: Not necessarily. Right.  
4 MR. FRANKLIN: Then we should probably go  
5 through it.  
6 MR. HAKL: I mean because -- well, there's  
7 not a date on this --  
8 MR. FRANKLIN: Right.  
9 MR. HAKL: -- for example.  
10 There's a lot of question marks about this  
11 document.  
12 MR. FRANKLIN: Uh-huh.  
13 MR. HAKL: There's no foundation laid or --  
14 well, I don't know.  
15 MR. FRANKLIN: I can certainly represent  
16 that I got it through legislative intent service and  
17 it was represented to be Senator Leno's restricted  
18 file on this.  
19 MR. HAKL: Okay. So...  
20 MR. FRANKLIN: I think I should just go  
21 through it.  
22 MR. HAKL: Yeah, just go through.  
23 BY MR. FRANKLIN:  
24 Q. Yeah.  
25 And, again, I didn't ask you this question

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1 specifically. You don't have a belief that it was  
2 drafted by someone else in the department?  
3 A. No.  
4 Q. There's a reference in the first paragraph  
5 that's a Penal Code Section 16580 specifically that  
6 because the Penal Code Section's governing  
7 Armed Prohibited Persons system are specifically  
8 referenced in Section 16580 of the Penal Code.  
9 Given this, it is likely that DOJ can  
10 currently utilize these funds for the enforcement of  
11 APPS.  
12 Do you have any recollection as to why -- do  
13 you have any recollection as to the basis for this  
14 proposition?  
15 MR. HAKL: Objection. Calls for a legal  
16 contention and assumes facts not in evidence.  
17 And she's already testified that she didn't  
18 write this. No one in the department wrote it as far  
19 as she knows and she's never seen it before.  
20 So, I'm not sure of the value of asking her  
21 opinion about what the document says.  
22 MR. FRANKLIN: Not opinion. Recollection.  
23 MR. HAKL: So -- okay.  
24 So, what's the question?  
25 Does she have a recollection of what?

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1 MR. FRANKLIN: Of what the basis was for  
2 this type of contention?  
3 This may not be a good example.  
4 MR. HAKL: Whose contention is that?  
5 That's the thing. We don't know.  
6 We don't know.  
7 MR. FRANKLIN: That's gets in the privilege  
8 issue.  
9 MR. HAKL: We don't know who wrote it.  
10 MR. FRANKLIN: Right.  
11 Well, and so I could go:  
12 Do you recall this type of -- this type of  
13 argument being raised at any point regarding the APPS  
14 system? That was the --  
15 MR. HAKL: Oh, that's the question?  
16 MR. FRANKLIN: Yeah.  
17 MR. HAKL: Let me read this.  
18 Are we talking about the first sentence  
19 right there?  
20 MR. FRANKLIN: It's really I think the  
21 middle two sentences in that paragraph.  
22 MR. HAKL: Okay. What's the question?  
23 Has she ever heard an argument like that  
24 before?  
25 MR. FRANKLIN: Yeah. Does she recall?

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1 MR. HAKL: Yeah, you can answer that  
2 question.  
3 THE WITNESS: Yes.  
4 BY MR. FRANKLIN:  
5 Q. And do you remember what context it arose  
6 in?  
7 A. I don't.  
8 MR. HAKL: I think the legislative  
9 history actually -- some of the more formal  
10 legislative history contains some of that same  
11 language I believe.  
12 MR. FRANKLIN: It's possible.  
13 MR. HAKL: And that really is a legal  
14 argument --  
15 THE WITNESS: Yeah.  
16 MR. HAKL: -- about what -- what the scope  
17 of the statute authorized at that time vis-a-vis  
18 post SB 819.  
19 MR. FRANKLIN: The reason I ask and it would  
20 make more sense if she actually wrote the document is  
21 because it does not -- this proposition makes no  
22 sense to me having looked at that statute --  
23 MR. HAKL: Right.  
24 MR. FRANKLIN: -- and depending on who this  
25 document was circulated to which again we also don't

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1 know it would be relevant to me --  
2 MR. HAKL: Right.  
3 MR. FRANKLIN: -- if the legislature as a  
4 whole had one understanding of what SB 819 was  
5 intended to do versus another.  
6 But in this instance given her testimony  
7 it's not something we need to expend any more time  
8 on.  
9 So, if I can have you turn to the next page.  
10 And read the paragraph that's under the  
11 heading, "Why should firearms owners have to pay for  
12 APPS enforcement."  
13 A. Okay.  
14 Q. Do you recall providing Senator Leno with  
15 information about the relationship referred to in  
16 this paragraph specifically at the language:  
17 "A prospective gun owner pays a fee to  
18 determine whether he or she is eligible to purchase a  
19 gun (background check), it makes sense that the fee  
20 should apply to enforcement when those same  
21 individuals become "ineligible" due to criminal  
22 behavior or mental illness."  
23 MR. HAKL: Same objection about the  
24 legislative and other privileges and instruction not  
25 to answer.

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1 BY MR. FRANKLIN:  
2 Q. Do you recall any discussion with  
3 Senator Leno regarding the, quote, "very close nexus"  
4 between the DROS Fund and the bill's intended  
5 purpose?  
6 MR. HAKL: Same objection and same  
7 instruction.  
8 BY MR. FRANKLIN:  
9 Q. The next section is entitled "Isn't this  
10 bill just a gun tax?"  
11 Do you recall discussing with Senator Leno  
12 the possibility that SB 819 could be characterized as  
13 a tax?  
14 MR. HAKL: Same objection.  
15 Same instruction not to answer.  
16 Plus it calls for a legal analysis really  
17 perhaps arguably.  
18 BY MR. FRANKLIN:  
19 Q. The middle paragraph says:  
20 "This is analogous to fishing licensing fees  
21 for field enforcement activities by the Department of  
22 Fish and Game."  
23 Do you see that paragraph?  
24 A. Yes.  
25 Q. To the best of your recollection when you

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1 were working on SB 819, were you aware of anyone in  
2 the department identifying a specific fishing license  
3 fee that was, quote, "for field enforcement  
4 activities by the Department of Fish and Game"?"  
5 A. Yes.  
6 Q. And who was that?  
7 A. I don't remember.  
8 I was -- I was involved.  
9 I think there were discussions.  
10 Q. There was another attorney?  
11 A. No. I don't believe so.  
12 Q. So a non-attorney proposed that the analogy  
13 that the situation with the use of the DROS funds at  
14 issue here was analogous to the fishing license fee  
15 for field enforcement activities by the  
16 Department of Fish and Game?  
17 A. No.  
18 MR. HAKL: I guess I don't understand the  
19 question. Are you trying to just figure out what  
20 that fishing licensing fee is?  
21 MR. FRANKLIN: Oh, I know what it is.  
22 MR. HAKL: Oh.  
23 MR. FRANKLIN: I'm trying to understand why  
24 this analogy is made where based on my research the  
25 analogy does not hold true at all, because that's not

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1 how Fish and Game -- that's not how Fish and Game  
2 fees are calculated so...  
3 MR. HAKL: Right. Okay.  
4 I mean she testified -- I mean just to  
5 reiterate. I mean she didn't write it. Nobody in  
6 the department wrote it.  
7 MR. FRANKLIN: Right.  
8 MR. HAKL: She's never seen it before.  
9 MR. FRANKLIN: Right.  
10 This question was --  
11 MR. HAKL: You're asking about where this  
12 analogy came from. That's really what you're asking.  
13 Um, and I think -- well, where did that  
14 analogy come from? I mean do you know where that  
15 analogy came from?  
16 THE WITNESS: I remember the analogy.  
17 That's what I was starting to say.  
18 BY MR. FRANKLIN:  
19 Q. Okay.  
20 A. I just don't --  
21 Q. But the actual details of how the analogy  
22 would work you don't recall that?  
23 A. No. No.  
24 Q. Okay. On the next page there's a section  
25 that starts with: "The bill only changes one word in

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1 the statute."  
2 Do you see that section?  
3 A. Yes.  
4 Q. And you see the response to that question?  
5 A. Uh-huh. Yes.  
6 MR. HAKL: Are you referring to like both  
7 paragraphs?  
8 BY MR. FRANKLIN:  
9 Q. Yes.  
10 We're going to talk about each.  
11 Well, I'm going to talk about each  
12 separately. In your role with the  
13 Legislative Analyst Office, do you recall adding  
14 declarations and findings to Senate Bill 819 to make  
15 it clear that the bill was intended to address the  
16 APPS enforcement issue?  
17 MR. HAKL: Objection. Asked and answered.  
18 You asked her do you know why there were  
19 findings and declarations and she said no.  
20 MR. FRANKLIN: Right.  
21 And I'm showing a document that could jog  
22 her memory --  
23 MR. HAKL: Okay.  
24 MR. FRANKLIN: -- is my logic.  
25 THE WITNESS: So, can you ask that -- can

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1 someone read it back or ask her?  
2 MR. FRANKLIN: Please.  
3 (Record Read)  
4 THE WITNESS: So first it was the Office of  
5 Legislative Affairs.  
6 Legislative Analyst office is a whole  
7 separate entity from DOJ.  
8 BY MR. FRANKLIN:  
9 Q. Right. Right.  
10 A. So just to be clear.  
11 I don't remember exactly why we added the  
12 intent language. I don't want to speculate.  
13 What I will say is you typically add intent  
14 language to make it clear what the intent is of the  
15 legislation.  
16 Q. And then there's a parenthetical at the  
17 bottom of the page. Again, we don't know who the  
18 author of this document is, but it says:  
19 "(Our sponsor is willing to amend the bill  
20 to say that the funds are specifically for APPS  
21 enforcement in the codified section of the bill, in  
22 contrast to simply the findings, but only if it gets  
23 us Republican support.)"  
24 Do you recall the issue that's described in  
25 this parenthetical occurring with regard to SB 819?

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1 A. I don't remember.  
2 Q. In your employment with the -- I know I'm  
3 going to get it backwards -- the Office of  
4 Legislative --  
5 A. Affairs.  
6 Q. -- Affairs. Thank you.  
7 Generally speaking was there a reason why in  
8 drafting legislation the department would use  
9 declarations and findings as opposed to addressing  
10 the same issue in the codified section of the bill?  
11 MR. HAKL: Objection. Vague.  
12 You mean as a general matter?  
13 MR. FRANKLIN: As a general matter.  
14 THE WITNESS: I mean typically you use  
15 intent language like I said to make it clear what the  
16 intent of the bill is.  
17 It's also helpful I think for members,  
18 assembly members and senators, sorry, when they're  
19 reading the bill so that they have kind of a  
20 foundation built into the bill as to what -- why  
21 you're doing it.  
22 BY MR. FRANKLIN:  
23 Q. Okay. And then the last paragraph on the  
24 page and the last sentence in that paragraph states:  
25 "DROS fees have not been raised for 7 years

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1 and the fund will continue to run a surplus  
2 regardless of the passage of SB 819."  
3 Do you recall the department telling  
4 Senator Leno that the DROS Special Account would  
5 run a surplus regardless of the passage of  
6 SB 819?  
7 MR. HAKL: Same objections about information  
8 provided to Senator Leno's office and same  
9 instruction not to answer.  
10 MR. FRANKLIN: We're done with that  
11 document.  
12 MR. HAKL: Everyone is eagerly looking at  
13 your outline.  
14 MR. FRANKLIN: Yeah.  
15 Well, it will make you happy to know that  
16 the last couple of pages are not actually outline.  
17 MR. HAKL: All right.  
18 MR. FRANKLIN: And this may be a document  
19 you've actually seen before so there's at least a  
20 chance.  
21 THE WITNESS: Okay.  
22 MR. HAKL: What number is this?  
23 MR. FRANKLIN: I think this is going to be  
24 eight.  
25 (Exhibit No. 8 was marked)

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1 BY MR. FRANKLIN:  
2 Q. Do you believe you created this  
3 Senate Floor Alert?  
4 A. Yes.  
5 Q. And what is the purpose of a  
6 Senate Floor Alert?  
7 A. A Senate -- so, it's something called a  
8 Floor Alert. It's sent out to all senators or all  
9 assembly members depending on what floor you're at  
10 and what floor -- what house -- sorry -- is hearing  
11 the bill and then the purpose is just to give every  
12 office a very short little synopsis of why you're  
13 doing the bill, what the bill is.  
14 Q. Would you normally do more than one  
15 floor alert for any given legislation?  
16 A. Maybe. Maybe you send one more than once.  
17 It depends. Bills can be ready to be heard on the  
18 floor so you could send it one week and then it  
19 doesn't get taken up until two weeks later so you  
20 send another. It just really really depends on the  
21 bill.  
22 MR. FRANKLIN: Okay. I don't have any  
23 further questions about that document.  
24 THE WITNESS: It's the one I recognize.  
25 MR. FRANKLIN: I think we'll be on

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1 Exhibit 9.  
2 (Exhibit No. 9 was marked)  
3 THE WITNESS: Here's mine.  
4 BY MR. FRANKLIN:  
5 Q. And I'll give you a moment to review the  
6 document, but it sounds like this is something that  
7 you recognize?  
8 A. Yes, it is.  
9 Q. Do you believe you created this document?  
10 A. Yes.  
11 Q. To the extent you know, when the -- so,  
12 first, who is this type of document normally created  
13 for?  
14 A. It's created for just General Assembly  
15 members and senators.  
16 Q. How is it different if at all from a  
17 floor alert?  
18 A. It's a more detailed document than a  
19 floor alert. A legislative advocate or a lobbyist on  
20 the outside would use something like this when they  
21 go and visit members on a committee and discuss the  
22 bill with our staff. It's a common practice.  
23 Q. So, on the second page of this document in  
24 the section "Solution" on the last paragraph in that  
25 section it says:

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1 "This subdivision will not increase the  
2 amount of the DROS fee."  
3 Do you see that?  
4 A. Yes.  
5 Q. To the best of your knowledge is it your  
6 understanding that at that time that was the position  
7 being taken by the Department of Justice regarding  
8 what SB 819 would do?  
9 MR. HAKL: Objection. Vague.  
10 THE WITNESS: I --  
11 BY MR. FRANKLIN:  
12 Q. Was your intent in writing this sentence to  
13 tell the recipients of this document that if enacted  
14 SB 819 would not increase the amount of the  
15 DROS fee?  
16 A. I think the intent was that the new addition  
17 to the penal code that they're voting on did not  
18 increase the DROS fee.  
19 Q. As opposed to that it was not intended to  
20 say -- I'm going to get a double negative, but..  
21 Well, strike that.  
22 At the time this statement was circulated --  
23 A. Uh-huh.  
24 MR. HAKL: Have we established that?  
25 I don't think we have. There's no date on

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1 this document.  
2 BY MR. FRANKLIN:  
3 Q. Well, yeah, it's proposed and it's a  
4 public document so it has to fall within I think  
5 March of 2011 when the spot bill was replaced and  
6 its enactment, because then it wouldn't be proposed  
7 so...  
8 Do you have any reason to believe this  
9 document wasn't created sometime in 2011?  
10 A. No. And -- I'm sorry.  
11 Q. And then at the time of the creation of this  
12 document, was it your understanding that the  
13 department intended SB 819 to change the law such  
14 that the DROS fee could be increased based on the  
15 addition of the word "possession" to  
16 Penal Code 28225?  
17 MR. HAKL: To the -- I mean, again, she's  
18 not in a position to testify as to the department's  
19 policy positions at the time.  
20 MR. FRANKLIN: Well --  
21 MR. HAKL: I guess I don't -- and I just  
22 don't understand the question.  
23 MR. FRANKLIN: I think she might be able to,  
24 because in the course of her work it is to express  
25 what the sponsor's intending to do with this

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1 legislation, and this is a document that was  
2 circulated publicly.  
3 So, what I'm trying to understand is:  
4 Is that little statement that the  
5 subdivision will not increase the amount of the  
6 DROS fee, was that meant to say as a result of  
7 SB 819 specifically the amount of the DROS fee is not  
8 going to go up, or, that the change in  
9 Penal Code Section 28225 resulting from SB 819 could  
10 never result in a higher DROS fee?  
11 It really boils down --  
12 MR. HAKL: I mean I think that that  
13 section's -- I mean that sentence -- I mean the  
14 sentence speaks for itself but...  
15 MR. FRANKLIN: I could even ask the question  
16 outside of the context of this.  
17 MR. HAKL: Right.  
18 MR. FRANKLIN: And you may or may not have a  
19 different response. But since this is a public  
20 document that I think it's accepted that this was  
21 circulated to the public.  
22 MR. HAKL: Right.  
23 MR. FRANKLIN: I want to understand if the  
24 intent of this document by the department was that  
25 basically by adding the word "possession" to what is

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1 now Penal Code Section 28225 that meant that in the  
2 future the cost of APPS could be considered in  
3 calculating the DROS fee.  
4 MR. HAKL: It --  
5 MR. FRANKLIN: I mean that's a question at  
6 the heart of this case.  
7 MR. HAKL: Right.  
8 But that's not what that says.  
9 MR. FRANKLIN: If that's not what that says  
10 then I assume the deponent won't have any problem in  
11 saying that that was not the intent.  
12 MR. HAKL: Okay. I understand.  
13 Okay. So your question is:  
14 Does this mean that just this -- well, I'm  
15 not going to ask you. I'll let you ask your own  
16 question.  
17 BY MR. FRANKLIN:  
18 Q. Right. No.  
19 My question is:  
20 At the time of this document when the  
21 department through you is saying the subdivision will  
22 not increase the amount of the DROS fee, was that  
23 intended to express that adding the word "possession"  
24 to 28225 could not increase the amount of the  
25 DROS fee because it now incorporated APPS into 28225?

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1 MR. HAKL: You're getting at at this time or  
2 never?  
3 MR. FRANKLIN: Right.  
4 At the end of the day, yes.  
5 MR. HAKL: Right.  
6 MR. FRANKLIN: Absolutely.  
7 MR. HAKL: Right.  
8 THE WITNESS: So now I'm thoroughly  
9 confused.  
10 BY MR. FRANKLIN:  
11 Q. I mean I can phrase this in a different way.  
12 I think Mr. Hakl and I at least  
13 understand --  
14 MR. HAKL: I understand the question.  
15 BY MR. FRANKLIN:  
16 Q. -- the question.  
17 So the issue before you is:  
18 If you add the word "possession" --  
19 A. Uh-huh.  
20 Q. -- to a list of things in Penal Code 28225,  
21 and such things are the items you're supposed to  
22 consider in setting the DROS fee --  
23 A. Uh-huh.  
24 Q. -- was the intention to add another thing  
25 into the pot that could increase the amount being

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1 charged for the DROS fee?  
2 MR. HAKL: Do you understand the question?  
3 THE WITNESS: Kind of.  
4 So, I'm going to answer as to what I know  
5 the intent was of the bill and then if it doesn't get  
6 to your -- doesn't answer, please let me know.  
7 So the intent was to give access to the  
8 DROS account to do APPS enforcement.  
9 And at that time there was such a surplus in  
10 the DROS account, that there was not a necessity to  
11 actually raise the DROS fee. Enforcement could be  
12 done out of the DROS surplus.  
13 To the extent that anything -- I don't think  
14 we made up the DO -- I don't recall making a promise  
15 that DOJ would never raise the DROS fee. And that  
16 would be -- that would not be me anyway.  
17 I mean that's -- I have no responsibility  
18 over the DROS fee.  
19 BY MR. FRANKLIN:  
20 Q. No. I think at least as to your knowledge  
21 your testimony is that you did not express that the  
22 legislative change brought by SB 819 could never be  
23 used as a basis for increasing the DROS fee?  
24 A. Yeah.  
25 Q. Okay. That -- thank you for working that

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1 through. I appreciate it.  
 2 MR. HAKL: And I would -- yeah, I mean  
 3 because it says the subdivision will not increase the  
 4 amount.  
 5 It doesn't say the subdivision will never be  
 6 used to increase the amount which is what your --  
 7 that's sort of what you were getting at, right?  
 8 MR. FRANKLIN: I'm confident that there are  
 9 two reasonable interpretations of that language.  
 10 MR. HAKL: Okay.  
 11 MR. FRANKLIN: I don't dispute that.  
 12 So this is going to be document number  
 13 ten -- Exhibit No. 10 rather.  
 14 (Exhibit No. 10 was marked)  
 15 BY MR. FRANKLIN:  
 16 Q. Do you recognize this document?  
 17 A. No.  
 18 Q. Do you have -- is it of a type of document  
 19 that you're familiar with?  
 20 A. I have no idea what it is.  
 21 Q. Okay. Moving on.  
 22 A. I'm sorry.  
 23 MR. FRANKLIN: I'll show you a document that  
 24 we're going to mark Exhibit 11.  
 25 (Exhibit No. 11 was marked)

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1 BY MR. FRANKLIN:  
 2 Q. Do you recognize this type of document?  
 3 A. I do.  
 4 Q. And what kind of -- what type of document is  
 5 this?  
 6 A. This is a standard letter from an author to  
 7 the governor basically requesting a signature for a  
 8 bill.  
 9 Q. At the bottom of the first page there's a  
 10 statement that says:  
 11 "At the current DROS fee level, the account  
 12 has a surplus of more than \$6 million which is  
 13 projected to grow by \$3 million annually."  
 14 Do you see that?  
 15 A. Yes.  
 16 Q. Are you aware of any projection regarding  
 17 the \$3 million increase referred to in this  
 18 sentence?  
 19 A. No. I don't remember at all.  
 20 Q. There's a sentence on the second page that  
 21 states:  
 22 "Their opposition flows from their  
 23 ongoing challenge in the Federal Court case of  
 24 Bauer versus Kamala Harris regarding the state's  
 25 right to charge the fee. They simply do not believe

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1 there should be any fee for registration or  
 2 ownership."  
 3 Do you see that statement?  
 4 A. Yes.  
 5 Q. Did the department provide that analysis to  
 6 Senator Leno to the best of your recollection?  
 7 MR. HAKL: Objection. Based on the  
 8 privileges we talked and also the -- I mean this is a  
 9 reference to Bauer versus Harris which is ongoing  
 10 litigation as well, um, so that's going to be  
 11 Attorney-Client and Work Product Privilege as well  
 12 and instruction not to answer.  
 13 There might be a way around this.  
 14 I'm not sure what you're driving at.  
 15 MR. FRANKLIN: If you make the Legislative  
 16 Privilege objection and instruction, there's no way  
 17 around it right now.  
 18 The other ones I don't -- I think there are  
 19 reasons why they wouldn't apply, but, you know, if  
 20 you have an instruction not to answer it doesn't  
 21 matter right now.  
 22 MR. HAKL: Okay.  
 23 MR. FRANKLIN: And you do?  
 24 MR. HAKL: Yes.  
 25 MR. FRANKLIN: All right. Okay. That's all

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1 for that document.  
 2 I'm going to show you the last document that  
 3 we're going to mark as Exhibit 12.  
 4 (Exhibit No. 12 was marked)  
 5 MR. FRANKLIN: I'll give you a moment to  
 6 review it.  
 7 MR. HAKL: Off the record.  
 8 (Off-the-record discussion)  
 9 BY MR. FRANKLIN:  
 10 Q. Let's go back on.  
 11 Do you recognize this type of document?  
 12 A. I do.  
 13 Q. What type of document is it?  
 14 A. It is analysis that's prepared by a  
 15 consultant and a committee.  
 16 Q. Okay. The consultant is employed by whom?  
 17 A. One of the houses. In this case it would  
 18 have been the assembly.  
 19 Q. And was the department in contact with this  
 20 consultant regarding information that was ultimately  
 21 put in this report?  
 22 MR. HAKL: Yeah. I mean that's -- same  
 23 objection in terms of the Legislative Privilege.  
 24 I mean this is a staff and a legislature  
 25 effectively.



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1 MR. FRANKLIN: Right.  
2 And even though what I'm talking about are  
3 like specific facts that are in this document that's  
4 still coming under the privilege?  
5 MR. HAKL: Yeah. You're -- you're asking  
6 what information we the department may or may not  
7 have provided to Jeff Long.  
8 Is that the question?  
9 MR. FRANKLIN: Right.  
10 MR. HAKL: Yes. Same objection.  
11 MR. FRANKLIN: Okay. And do you see --  
12 MR. HAKL: And just to be clear. I'm not  
13 being difficult. It's just --  
14 MR. FRANKLIN: No. I don't think that.  
15 MR. HAKL: I think that it's all intertwined  
16 with mental processes. That's the issue.  
17 BY MR. FRANKLIN:  
18 Q. Yeah. And I think that's why we probably  
19 will move forward on it, because the breadth we're  
20 talking about it seems like it's too much.  
21 And if I could have you look at the second  
22 page and the second paragraph if I could have you  
23 read the whole thing.  
24 A. The second paragraph?  
25 Q. Uh-huh.

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1 A. The department --  
2 Q. According to the author...  
3 A. Oh. Sorry. I thought you meant number two.  
4 You want me to read it out loud?  
5 Q. No. Read it to yourself. Sorry.  
6 A. Okay.  
7 Q. In your work on SB 819, do you have any  
8 recollection of the department looking to protect  
9 gun ownership from becoming strongly associated with  
10 random acts of deranged individuals?  
11 MR. HAKL: Objection. Argumentative and  
12 assumes facts not in evidence, but you can answer it  
13 to the extent you can.  
14 THE WITNESS: I think that the department  
15 has a definite interest in protecting just  
16 California publically -- California citizens as a  
17 whole.  
18 BY MR. FRANKLIN:  
19 Q. So, I mean you probably see where I'm going  
20 with this. It refers to this statement that  
21 law abiding firearm owners have a particularly strong  
22 interest in -- and it's referring to APPS -- to help  
23 avoid gun ownership from becoming strongly associated  
24 with the random acts of deranged individuals.  
25 MR. HAKL: I'm just going to object to the

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1 extent you're trying to attribute that statement to  
2 the deponent or the department.  
3 I mean this is I think --  
4 MR. FRANKLIN: I'm not unless the deponent  
5 says yes.  
6 THE WITNESS: Yeah. No. I --  
7 BY MR. FRANKLIN:  
8 Q. Did the department ever express this  
9 proposition?  
10 A. I don't remember.  
11 Q. And, similarly, do you have any recollection  
12 regarding the conclusion that, "accordingly, there is  
13 a very close nexus between the DROS Fund and the  
14 bill's intended purpose?"  
15 A. I do recall something about that.  
16 I -- vaguely.  
17 Q. Do you remember anything other than that  
18 there was a claim that there was a close nexus?  
19 A. Not particularly, no. No. Sorry.  
20 It was six years ago. Almost six years ago.  
21 MR. HAKL: And, again, just for the record.  
22 I mean this is an analysis by the  
23 Assembly Committee on Appropriations and, you know,  
24 asking Ms. Devencenzi to get inside their head is not  
25 really appropriate.

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1 MR. FRANKLIN: Well, I don't know if I agree  
2 with that characterization. If she had indeed  
3 provided this information I would understand why  
4 they're making these claims that on their face I  
5 can't understand as an educated person so...  
6 MR. HAKL: It seems clear to me.  
7 MR. FRANKLIN: That's -- yes.  
8 I will move on.  
9 MR. HAKL: And I know you disagree.  
10 MR. FRANKLIN: True.  
11 MR. HAKL: We can disagree as to the  
12 assembly committee analyses.  
13 MR. FRANKLIN: I think we can agree on being  
14 done with this document.  
15 MR. HAKL: Is that number 12?  
16 BY MR. FRANKLIN:  
17 Q. Yeah.  
18 Are you familiar with a concept known as  
19 Division of Law Enforcement Restoration?  
20 A. I don't know. I want to guess, but I don't  
21 want to guess so...  
22 Q. Let me put it out there like this.  
23 Is in your mind the concept of the  
24 Division of Law Enforcement Restoration related to an  
25 attempt to raise budget funds to replace General Fund

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1 monies that were cut from the department's budget by  
2 the governor?  
3 MR. HAKL: Objection. Vague.  
4 And it assumes facts not in evidence.  
5 But you can answer to the extent you can.  
6 THE WITNESS: So, I do recall that the  
7 governor did cut some of the Division of Law  
8 Enforcement funds.  
9 I don't recall if it was this year or a  
10 different year. I didn't really work on that.  
11 BY MR. FRANKLIN:  
12 Q. Do you recall if that the kind of concept of  
13 Division of Law Enforcement Restoration was part of  
14 the department's intent in moving forward with  
15 SB 819?  
16 A. No. I believe that the funds being cut  
17 happened after the introduction of 819 I think.  
18 Tax my memory here.  
19 MR. FRANKLIN: I think that's all I have.  
20 Do you have any questions, Mr. Hakl?  
21 MR. HAKL: No.  
22 Other than your answer to that. I mean  
23 just -- the witness has been sort of tentative in  
24 terms of that answer, but I don't have any questions.  
25 MR. FRANKLIN: Okay. And I'd like to

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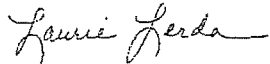
1 propose the same stipulation that we had used in the  
2 Harper deposition which is even though we're  
3 concluding the deposition now, counsel agrees that  
4 Plaintiff's counsel has the right to move to compel  
5 on all of the responses that were -- all the  
6 responses that were prevented by an instruction not  
7 to answer.  
8 We're going to have the reporter be relieved  
9 of her duties under the code to maintain the original  
10 transcript.  
11 The original will be forwarded to Mr. Hakl  
12 for the deponent's review. There will be a 14 day  
13 review period, and the original will be kept by the  
14 deposing party thereafter and made available, if  
15 needed, and the certified copy can be used at trial  
16 if the original is lost or destroyed.  
17 So stipulated?  
18 MR. HAKL: Yes.  
19 So it's closed except to the Motion to  
20 Compel issue as to the marked questions that there  
21 was an instruction not to answer?  
22 MR. FRANKLIN: Yeah.  
23 MR. HAKL: And do you want orders on the  
24 transcript?  
25 THE REPORTER: Yes.

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1 MR. FRANKLIN: I want the same as last time  
2 if we could do it in seven days.  
3 MR. HAKL: I'd like a copy also, please.  
4 (The proceedings were concluded at 4:51 p.m.)  
5 --00o--  
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REPORTER'S CERTIFICATION

1  
2  
3 I, Laurie D. Lerda, a Certified Shorthand  
4 Reporter in and for the State of California, do  
5 hereby certify:  
6  
7 That the foregoing witness was by me duly sworn,  
8 that the deposition was then taken before me at the  
9 time and place herein set forth; that the testimony  
10 and proceedings were reported stenographically by me  
11 and later transcribed into typewriting under my  
12 direction; that the foregoing is a true record of the  
13 testimony and proceedings taken at that time.  
14  
15 IN WITNESS WHEREOF, I have subscribed my name  
16 this 7th day of February, 2017.  
17  
18   
19  
20 Laurie D. Lerda, CSR No. 3649  
21  
22  
23  
24  
25

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1 Assignment No: J0501178  
 2 Case Caption: Gentry vs. Harris  
 3  
 4 DECLARATION UNDER PENALTY OF PERJURY  
 5 I declare under penalty of perjury  
 6 that I have read the entire transcript of  
 7 my deposition taken in the above-captioned matter,  
 8 or the same has been read to me, and  
 9 the same is true and accurate, save and  
 10 except for changes and/or corrections, if any, as  
 11 indicated by me on the DEPOSITION ERRATA SHEET  
 12 hereof, with the understanding that I offer these  
 13 changes as if still under oath.  
 14 Signed on the \_\_\_\_ day of \_\_\_\_\_,  
 15 2017.  
 16  
 17  
 18  
 19 \_\_\_\_\_  
 20 JESSICA R. DEVENCENZI HOLMES  
 21  
 22  
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1 DEPOSITION ERRATA SHEET  
 2 Page No. \_\_\_ Line No. \_\_\_ Change to: \_\_\_\_\_  
 3 Reason for change: \_\_\_\_\_  
 4 Page No. \_\_\_ Line No. \_\_\_ Change To: \_\_\_\_\_  
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 23 Reason for change: \_\_\_\_\_  
 24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 25 JESSICA R. DEVENCENZI HOLMES

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1 DEPOSITION ERRATA SHEET  
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 24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 25 JESSICA R. DEVENCENZI HOLMES

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1 DEPOSITION ERRATA SHEET  
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 23 Reason for change: \_\_\_\_\_  
 24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 25 JESSICA R. DEVENCENZI HOLMES

	501178 DEVE	9:6,15	1995	
Exhibits	NCENZI.	10	29:13	3
	JESSICA.	10:4,5		
	exhibit10	46:3	2	3
501178 DEVE	501178 DEVE	81:13,14		49:4,5,7
NCENZI.	NCENZI.	1040	2	30
JESSICA.	JESSICA.	37:10	9:25 10:1	9:2
exhibit1	exhibit11	11	2005	34-2013-
501178 DEVE	501178 DEVE	81:24,25	31:5	80001667
NCENZI.	NCENZI.	1146	2006	9:13
JESSICA.	JESSICA.	29:13	29:11	3rd
exhibit2	exhibit12	12	2007	29:8
501178 DEVE		\$	16:25	
NCENZI.		84:3,4	17:1,2	4
JESSICA.		88:15		
exhibit3		12076	2010	
501178 DEVE	\$1	16:20	48:14	4
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# **EXHIBIT P**

CONDENSED

**In the Matter Of:**

**DAVID GENTRY vs KAMALA HARRIS**

34-2013-80001667

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**JESSICA R. DEVENCENZI HOLMES**

*May 24, 2017*

*Volume 2*

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF SACRAMENTO  
3 --oOo--  
4  
5 DAVID GENTRY, JAMES  
6 PARKER, MARK MIDLAM,  
7 JAMES BASS, and CALGUNS  
8 SHOOTING SPORTS  
9 ASSOCIATION,  
10  
11 Plaintiffs and  
12 Petitioners,  
13 vs. Case No. 34-2013-80001667  
14  
15 KAMALA HARRIS, in Her  
16 Official Capacity as  
17 Attorney General for the  
18 State of California;  
19 STEPHEN LINDLEY, in His  
20 Official Capacity as  
21 Acting Chief for the  
22 California Department of  
23 Justice, BETTY YEE, in  
24 Her Official Capacity as  
25 State Controller for the  
State of California and  
DOES 1-10,  
Defendants and  
Respondents.

DEPOSITION OF  
JESSICA R. DEVENCENZI HOLMES  
Volume 2  
Pages 97 through 134  
May 24, 2017  
8:41 a.m.  
1300 I Street  
Sacramento, California  
LAURIE D. LERDA, CSR No. 3649

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1 INDEX OF EXAMINATION  
2  
3 WITNESS: JESSICA R. DEVENCENZI HOLMES, VOLUME 2  
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5 EXAMINATION PAGE  
6 By Mr. Franklin 101  
7  
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1 APPEARANCES OF COUNSEL  
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22  
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24  
25 --oOo--

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1 INDEX TO EXHIBITS  
2  
3 Exhibit Description Page  
4 1-A Notice of Continued Deposition 101  
5 of Person Most Knowledgeable  
6 Jessica Devencenzi  
7 (RE: Bifurcated Causes of Action)  
8  
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1 DEPOSITION OF JESSICA R. DEVENCENZI HOLMES  
2 May 24, 2017  
3 JESSICA R. DEVENCENZI HOLMES  
4 having been first duly sworn testifies as follows:  
5 ---oOo---  
6 (Exhibit No. 1-A was premarked)  
7 EXAMINATION  
8 BY MR. FRANKLIN:  
9 Q. Good morning. I'm Scott Franklin.  
10 We're here to do a second session of  
11 deposition of Ms. Devencenzi -- cenzi -- excuse me,  
12 a designated Person Most Knowledgeable by the  
13 Department of Justice as to Category 10 on the  
14 relevant deposition notice.  
15 And then today if I could have you look at  
16 the document that's been marked as Exhibit 1-A.  
17 That's a deposition notice, a continued deposition  
18 notice.  
19 Are you here to give testimony in response  
20 to that notice?  
21 A. Yes.  
22 Q. Are you taking any medications or any other  
23 reason why you can't give your best testimony today?  
24 A. No.  
25 Q. As you see we have a reporter recording the

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1 transcript today so try not to talk over each other.  
2 Let her get a clear record. Try not to speak too  
3 quickly.  
4 You will have the chance to review the  
5 transcript, and any changes that you should make if  
6 they're substantive they'd be subject to further  
7 examination at trial.  
8 Does that make sense?  
9 A. Yes.  
10 Q. Okay. And just as a "yes" or "no".  
11 You understand why we're having a second  
12 deposition session?  
13 A. Yes.  
14 Q. Okay. And then, one, we had a lot of  
15 definitions that I gave and we talked about in the  
16 last deposition session. I'm going to carry those  
17 through. But if you have any term that comes up  
18 today, we'll clarify it.  
19 But the one that's most important that I  
20 want to lay out beforehand is that any reference I  
21 make to Penal Code Section 28225, I'm also referring  
22 to the former version that was at 12076.  
23 A. Yes.  
24 Q. Does that make sense?  
25 A. Yes.

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1 Q. Okay. During the first session of your  
2 deposition we discussed that as a result of the  
3 drafting in the -- of SB 819 that there was one word  
4 added and that word was "possession".  
5 Do you remember that discussion?  
6 A. Yes.  
7 Q. And then do you remember during that  
8 discussion that you told me that you had a  
9 recollection as to why that one word was added?  
10 A. I do.  
11 Q. Can you now explain to me why SB 819 made  
12 the amendment to only add one word?  
13 A. The one word was added as a result of a  
14 meeting with the legislature and it was the idea of a  
15 staff member at the legislature.  
16 Q. Okay. That was someone in Leno's office?  
17 A. No.  
18 Q. So it was a staff member -- staff member for  
19 some senator?  
20 A. The -- a senate employee, yeah.  
21 Q. Okay. So it wasn't -- it was a senate  
22 employee but not someone -- well, let me just ask and  
23 you can object if you want.  
24 What part of the senate were they an  
25 employee of?

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1 A. I believe Rules Committee.  
2 Q. Okay. And do you remember the person's  
3 name?  
4 A. It was Irwin Nowick.  
5 And it was in a meeting within  
6 Public Safety.  
7 Q. Was it a committee meeting?  
8 A. It was just a --  
9 Q. Informal meeting?  
10 A. -- informal meeting.  
11 Q. Do you remember what the logic was  
12 Mr. Nowick provided to justify that one word  
13 addition?  
14 A. I don't.  
15 Q. Did you have an understanding of what the  
16 reasoning was behind it at any point in time?  
17 A. The reason behind...  
18 Q. The adding one word just the word  
19 "possession"?  
20 A. Because we've -- so as the sponsor I think I  
21 can say that we felt that it was a sufficient  
22 clarification of existing law.  
23 Q. Prior to this meeting with Mr. Nowick and  
24 others did the department have a draft of SB 819?  
25 A. I honestly don't remember. It was a long

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1 time ago.  
2 Q. Do you recall there being discussions within  
3 the department about whether or not adding the word  
4 "possession" in and of itself just that word to  
5 Section 28225 was sufficient to express the  
6 legislative change that the department wanted via  
7 SB 819?  
8 A. I don't remember specific discussions, but  
9 we certainly would have talked about whether it  
10 addressed the department's -- whether it was a  
11 sufficient clarification of the law.  
12 Q. And do you remember any comments from within  
13 the department that it was not a sufficient method to  
14 address what the department was looking for via  
15 SB 819?  
16 A. Not that I recall.  
17 Q. I think you answered this during your last  
18 session. I'm just asking it again to set the  
19 context.  
20 Did you have a particular understanding of  
21 what the department's goal was in being a sponsor of  
22 SB 819?  
23 A. Yes.  
24 Q. And what was that goal?  
25 A. It was to utilize the DROS fund for

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1 Armed Prohibitive Person System enforcement.  
2 Q. Was there any other goal other than  
3 utilizing the funds for the Armed Prohibitive Person  
4 System enforcement?  
5 A. Well, I think the goal, the overarching goal  
6 was to disarm folks who are mentally ill who were in  
7 the California Mental Health System that picked up a  
8 restraining order so it was really to address -- to  
9 address the overarching concern of these people  
10 having firearms.  
11 Q. Okay.  
12 A. Sorry. I don't know --  
13 Q. No, no. That was a totally fair response.  
14 Let me give you a clarification and see if  
15 it changes your answer.  
16 So, generally speaking, it was your  
17 understanding the department's interest in sponsoring  
18 SB 819 was because it wanted to gain access to  
19 funds -- gain access to funds to be used to take  
20 firearms out of the hands of people on the APPS list?  
21 A. So, not really a "yes" or "no" question.  
22 I think there was some question as to  
23 whether -- I think existing law probably would have  
24 allowed the department to do that.  
25 So, this was more of a clarification to

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1 ensure that the department was on solid legal ground  
2 to use those funds to go after people on the  
3 APPS list.  
4 Q. Okay. Yeah, and I understand that from what  
5 I've read that was an element of the department's  
6 consideration.  
7 What I'm trying to look for is whether or  
8 not the department was looking to SB 819 to fund  
9 removing firearms really any other activity out of  
10 people who shouldn't have them exclusive of people on  
11 the APPS list.  
12 So, let me rephrase.  
13 A. Yes. Thank you.  
14 Q. By the look on your face I think I should  
15 rephrase. Like for a hypothetical someone could be a  
16 felon in possession of a firearm illegally but they  
17 never legally purchased a firearm so they're not in  
18 the DROS system. They're not in APPS.  
19 So that's an example of someone who would  
20 have an illegal firearm and at least theoretically  
21 the department could investigate and try and remove  
22 the firearm from that person's possession.  
23 So, was it your understanding that the  
24 purpose of SB 819 from the department's perspective  
25 was to gain access to funds so it could go after

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1 people who were not on the APPS list, i.e., the felon  
2 I just gave as an example?  
3 A. I don't know.  
4 Q. Did you ever have an understanding as to why  
5 there was a DROS Special Account surplus?  
6 A. My understanding was that it was because  
7 gun sales were high.  
8 Q. And how did that -- can you go through the  
9 steps for me of how that made the surplus?  
10 A. So, my understanding is it was because sales  
11 had gone up and that the Bureau of Firearms was also  
12 managing the fund very prudently.  
13 Q. Do you know who you would have gotten that  
14 type of information from?  
15 A. It would have come from the  
16 Bureau of Firearms.  
17 Q. Was there a specific contact that you had?  
18 A. I have no idea. Probably Steve Lindley.  
19 THE REPORTER: Steve Lindley?  
20 THE WITNESS: Yeah.  
21 MR. HAKL: It's L-i-n-d-l-e-y.  
22 THE REPORTER: Thank you.  
23 BY MR. FRANKLIN:  
24 Q. When you were working on SB 819, did you  
25 know that the department had the authority to lower

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1 the DROS fee via a regulation?  
2 A. Yes.  
3 Q. In the context of SB 819, did anyone at the  
4 department tell you why the department was sponsoring  
5 SB 819 instead of lowering the DROS fee?  
6 A. Sorry. That question's a little bit  
7 strange. Can you rephrase it?  
8 Q. I can.  
9 So, at the time you were working on SB 819,  
10 did you know that there was a rulemaking that was  
11 pending to reduce the DROS fee?  
12 A. Yes.  
13 Q. And did you have any understanding of the  
14 interaction between those two issues; those two  
15 issues being SB 819 and the rulemaking to reduce the  
16 DROS fee?  
17 A. Not really. I know that the rulemaking was  
18 met with a lot of opposition and that the new  
19 administration came in with a priority of clearing  
20 that APPS backlog so...  
21 I don't know if that answers your question,  
22 but that's what I know.  
23 Q. It does.  
24 And as to the opposition, can you explain to  
25 me what you mean by that?

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1 A. My understanding, and I have no  
2 firsthand knowledge just what I have heard, is that  
3 both sides objected during the rulemaking process to  
4 the DROS fee being lowered.  
5 And the one side was saying that -- sorry --  
6 gun control groups were saying it shouldn't be  
7 lowered. Second amendment groups were saying it  
8 should be lowered further. That was my  
9 understanding. I never saw any documents, but that  
10 was my basic understanding of it.  
11 Q. Who would you have gotten the information,  
12 that information you just described for us that you  
13 got secondhand, who would you have gotten that from?  
14 A. I have no idea.  
15 Q. Someone in the Bureau of Firearms?  
16 A. Maybe. It's a long time ago.  
17 Q. So, let me ask a follow-up question on that.  
18 I think I understood your testimony, but I  
19 don't want to misstate it.  
20 It was your understanding that when the new  
21 administration came in and I guess that's -- well,  
22 first off, when you refer to the new administration,  
23 did you mean the governor or the attorney general?  
24 A. The attorney general.  
25 Q. Okay. And when the attorney general came in

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1 it was your understanding that her priority was more  
2 aligned with what was being sought by SB 819 than the  
3 DROS fee reduction rulemaking?  
4 A. I don't know if I would put it that way.  
5 I think one of her many priorities, and I  
6 will not speak for her --  
7 Q. Uh-huh.  
8 A. -- was clearing that APPS backlog.  
9 Q. Okay. So, you don't know or you hadn't even  
10 heard anything about the interrelation of these two  
11 issues from the attorney general's point of view?  
12 A. No. Not at all.  
13 Q. Did you ever hear any information within the  
14 department about its expectations regarding the  
15 amount of potential DROS Special Account surpluses in  
16 the future?  
17 MR. HAKL: Objection. Vague.  
18 I'm not sure I understand that.  
19 BY MR. FRANKLIN:  
20 Q. So, it is a little bit difficult to explain,  
21 but there was definitely a finite amount of money  
22 that was a surplus at the time of SB 819 and then  
23 presumably if everything else is a constant, surplus  
24 money would continue to come in.  
25 And I was wondering if anyone in the

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1 department ever gave you any kind of information as  
2 to what they expected? Like, for example, in 2018 we  
3 project the DROS fund surplus to be \$15 million.  
4 Do you recall any type of projection  
5 information like that?  
6 A. I feel like there was projection information  
7 out there. I can absolutely not give you any  
8 numbers. I have -- we're talking six years ago.  
9 Q. Right. Okay. And just to make a clear  
10 record. The reason you believe you can't give me any  
11 information is because you don't recall any such  
12 information?  
13 A. No. I don't recall the information.  
14 Q. Okay. When you were working on SB 819, was  
15 it your understanding that the department intended  
16 that bill was only intended to utilize the then  
17 existing DROS fund surplus?  
18 So, again, like I don't remember the exact  
19 number. I want to say it's either 10 or \$15 million.  
20 But let's say it's \$10 million was the  
21 surplus at the time of SB 819.  
22 Was it your understanding when you were  
23 working on drafting SB 819 that the department was  
24 only looking at SB 819 as a way to utilize that  
25 amount ten million or whatever it was?

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1 A. So, SB 819 did not have an appropriation in  
2 it for us to -- or for us -- sorry -- I don't work  
3 here any more -- for DOJ to utilize those funds. It  
4 would have to go through the Budget Change Proposal  
5 process and through our entire budget process.  
6 So, as far as 819 having a specific number  
7 tied to it, and maybe there were projections out  
8 there. I believe there was an exhibit in my last  
9 deposition that some numbers were reported to the  
10 Appropriations Committee so that would probably have  
11 been our best guesstimate on what we thought we could  
12 use, but, like I said, 819 was not an appropriations  
13 bill.  
14 Q. Maybe like a little bit more of a layman's  
15 terms way.  
16 A. Uh-huh.  
17 Q. When you were working on this, you didn't --  
18 is it correct to say that you didn't see it as a one  
19 shot deal to only deal with the existing surplus?  
20 Does that make sense?  
21 A. No.  
22 Q. Your understanding in drafting SB 819 was  
23 that it would provide a mechanism for potentially  
24 multiple future appropriations bills?  
25 A. It provided a mechanism number for the

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1 department to request funding through the regular  
2 budget process, yes.  
3 Q. And in the future?  
4 A. Future, yes, absolutely.  
5 Q. That clarifies it. Thank you.  
6 Did you ever have any understanding about  
7 the specific process that's used to set the DROS fee?  
8 A. No.  
9 Q. Do you know -- do you recall any of the  
10 elements that were considered?  
11 A. No.  
12 Q. To the best of your knowledge now do you  
13 think you had an understanding of how the DROS fee  
14 was set when you were drafting SB 819?  
15 A. To be clear, I didn't draft SB 819. That's  
16 we already talked about that. That was drafted by a  
17 senate -- by the senate. But, no, I didn't -- I  
18 don't know how it was drafted or why how it sat.  
19 Q. Okay. Well, I probably should go back,  
20 because my memory of your first session of the  
21 deposition was that you said you would have drafted  
22 it. But maybe I misunderstood that.  
23 So, what was your recollection of how SB 819  
24 was drafted?  
25 A. So I believe in my first deposition I said

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1 that typical practice is that we would draft  
2 legislation.  
3 Q. Uh-huh.  
4 A. With this bill I don't remember if there was  
5 a draft out there. I think I testified to that  
6 earlier.  
7 Q. Uh-huh.  
8 A. And then the final word being added to the  
9 code section that final version of the legislation  
10 was not something that I drafted.  
11 Q. Okay.  
12 A. At least the changes to the penal code.  
13 Q. So, based on your best memory there was some  
14 version of the bill drafted before it went to  
15 Irwin Nowick?  
16 A. I don't know. I don't remember.  
17 Q. Okay.  
18 A. Typically we -- typically we would have  
19 drafted something. I think that's what I said  
20 previously.  
21 Q. My memory is that you said not that you  
22 remember doing it, but based on the scope of your  
23 work areas, one of which was firearm issues, it would  
24 have been likely that you drafted it.  
25 A. Yeah.

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1 Q. Is that correct?  
2 A. Yeah. Well, I likely would have drafted  
3 something. I don't recall drafting anything. I  
4 don't recall what it said --  
5 Q. Sure.  
6 A. -- if I did.  
7 Q. I was just clarifying for the record,  
8 because you were shaking your head or nodding your  
9 head up-and-down, but I don't know that the reporter  
10 got it.  
11 MR. HAKL: It's as clear as mud.  
12 BY MR. FRANKLIN:  
13 Q. Do you have any recollection of anyone in  
14 the department talking about the DROS fee reduction  
15 rulemaking as it related to SB 819?  
16 A. Not really.  
17 Q. So, for example, you don't recall anyone  
18 saying something along the lines of the rulemaking  
19 was on hold until SB 819 got an up or down vote?  
20 A. I don't recall anything like that.  
21 Q. Were you ever provided access to data  
22 regarding the cost of processing DROS applications?  
23 A. No.  
24 Q. Okay. I'm going to show you a document that  
25 we already noticed. And I fully understand based on

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1 your last testimony that this is a document that you  
2 do not believe you drafted.  
3 A. Uh-huh.  
4 Q. But it's only to refresh your recollection  
5 about what this concept is and whether or not you  
6 recall any discussions internally.  
7 And I'll direct you to the sections that are  
8 most important.  
9 MR. HAKL: Just to identify, it's Exhibit 7  
10 from the previous deposition.  
11 BY MR. FRANKLIN:  
12 Q. Okay. Let's see here.  
13 So the first paragraph I'd like you to look  
14 at is on the second page. It's in the middle of the  
15 page.  
16 A. Uh-huh.  
17 Q. And it's under the heading "Why should  
18 firearm owners have to pay for APPS enforcement?"  
19 And I guess I'll just read into the record  
20 so it will be easier. Starting in the middle of the  
21 page, middle of the paragraph rather with "a  
22 prospective".  
23 And it's:  
24 "A prospective gun owner pays a fee to  
25 determine whether he or she is eligible to purchase a

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1 gun (background check), it makes sense that the fee  
2 should apply to enforcement when those same  
3 individuals become "ineligible" due to criminal  
4 behavior or mental illness. Accordingly, there is a  
5 very close nexus between the DROS fund and the bill's  
6 intended purpose."  
7 Do you see that line?  
8 A. I do.  
9 Q. Do you remember that concept of a nexus  
10 being discussed at any time in the department?  
11 A. So, I don't have a particular recollection  
12 of a particular discussion. I do -- I'm sure that I  
13 made statements similar to this. I do think that's  
14 accurate.  
15 Q. Do you know what the basis was for the  
16 nexus?  
17 A. It's that an individual would go through a  
18 background check process through the Department of  
19 Justice. The department determines whether that  
20 person is eligible to own a firearm. When that  
21 person becomes ineligible, I believe that there is a  
22 nexus to take that end of to use the funding that  
23 individual paid, that fee that individual paid to  
24 take the firearm away from that individual.  
25 Q. And was your understanding that that nexus

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1 also exists for people who don't ever become  
2 prohibited from owning a firearm but who pay the  
3 DROS fee?  
4 MR. HAKL: I'm just going to say that you  
5 can answer the question. But objection. I mean this  
6 really is a legal analysis in terms of nexus and it's  
7 actually I mean it's right on the table in the Bauer  
8 case about what's a sufficient nexus for purposes of  
9 the analysis that your office is arguing for there.  
10 So, I'm just going to say objection. Calls for a  
11 legal conclusion. But she can go ahead and answer  
12 the question.  
13 BY MR. FRANKLIN:  
14 Q. Yeah. And I'll tell you it's foundational  
15 for the issue of what the department considers in  
16 setting the DROS fee and so if there's a nexus  
17 between a burden and a payer, I want to look at the  
18 burden. So that's where I'm going next.  
19 So, does this nexus also apply -- I'll  
20 restate the last question.  
21 A. Uh-huh.  
22 Q. Does this nexus also apply to a person who  
23 pays the DROS fee and never is on the APPS list?  
24 Was that your understanding at the time of  
25 SB 819?

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1 A. I would argue -- so, yeah, we are getting  
2 into a legal argument. Sorry. I'm happy to make the  
3 legal argument.  
4 I would argue that not the entire DROS  
5 account is not used for APPS enforcement so not  
6 every -- not every individual's fee is being used to  
7 go and take the firearms away. That would be my  
8 argument.  
9 Q. Are you aware -- at the time of SB 819 being  
10 drafted, are you aware of any manner in which the  
11 department segregated funds between those who pay the  
12 DROS fee and become prohibited and those who pay the  
13 DROS fee and do not become prohibited?  
14 A. No. And, like I said, it was just a legal  
15 argument. No firsthand knowledge.  
16 Q. But when you were working on SB 819, did  
17 anyone at the department ever provide to you any  
18 information as to the percentage of DROS fee payers  
19 who end up on the APPS list?  
20 A. I don't remember any numbers.  
21 There was quite the backlog.  
22 Q. When you were working on SB 819, do you  
23 recall anyone in the department discussing the  
24 relationship between the total amount of fees paid by  
25 a DROS fee payer and the possibility of that person



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1 becoming prohibited and on the APPS list?  
2 A. I don't understand that question.  
3 Q. So, just hypothetically let's say someone  
4 buys 15 guns over the course of a year and they pay  
5 15 DROS fees.  
6 Do you recall anyone in the department  
7 telling you that there was some analysis as to how  
8 that multiple DROS fee payer's burden would be  
9 analyzed --  
10 A. No.  
11 Q. -- in this discussion?  
12 A. No.  
13 Q. When you were working on SB 819, did anyone  
14 in the department tell you that you needed to make  
15 this nexus claim when making public statements about  
16 SB 819?  
17 A. Not that I recall.  
18 Are you referring to an instruction to make  
19 this -- I don't --  
20 Q. Yeah, yeah, like a senior attorney telling  
21 you that.  
22 MR. HAKL: Objection to the extent it calls  
23 for, you know --  
24 BY MR. FRANKLIN:  
25 Q. That's true. I'm just thinking of her in an

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1 administrative capacity as opposed to a legal  
2 capacity so I'm going to withdraw that question.  
3 When you were working on SB 819, did  
4 anyone in the department ever raise a concern that  
5 the amount charged for the DROS fee had to be based  
6 on the cost identified in Penal Code Section 28225?  
7 A. Not that I recall.  
8 MR. HAKL: And just a belated objection  
9 about asked and answered just because you've already  
10 asked her about what does she know about the cost  
11 setting and I believe her testimony was nothing.  
12 MR. FRANKLIN: Yeah. No, it's -- and I  
13 understand that. I don't have any other questions I  
14 don't think on that.  
15 MR. HAKL: All right.  
16 BY MR. FRANKLIN:  
17 Q. It's more just to set the context without  
18 having to go back in the transcript.  
19 When you were working on SB 819, were you  
20 aware of any analysis -- well, strike that.  
21 When you were working on SB 819, to the best  
22 of your knowledge was SB 819 intended to in any way  
23 change the way the DROS fee was set -- sorry -- is  
24 set?  
25 A. No.

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1 MR. FRANKLIN: I should re-ask just  
2 because I --  
3 MR. HAKL: Yeah.  
4 BY MR. FRANKLIN:  
5 Q. When you were working on SB 819, was it your  
6 understanding that the department's intent was that  
7 SB 819 would change the way the DROS fee was  
8 calculated?  
9 A. I -- sorry.  
10 MR. HAKL: Asked and answered.  
11 I mean she's -- you've already asked her  
12 what she knows about how it may or may not be  
13 calculated.  
14 BY MR. FRANKLIN:  
15 Q. Right.  
16 This is about what the -- I can -- I can  
17 back load the question.  
18 My -- what I want to know is if adding the  
19 word "possession" was somehow intended by the  
20 department to change the way the DROS fee would be  
21 calculated in the future.  
22 So, let me rephrase that question --  
23 A. Okay.  
24 Q. -- for you so it's succinct.  
25 But to the best of your knowledge was the

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1 department's intent in adding the word "possession"  
2 to SB 819 intended to change the way the DROS fee  
3 would be calculated in the future?  
4 A. So, I have no knowledge of how it was  
5 calculated. That said, I don't think -- there was --  
6 as far as I know, there was not an intent to raise  
7 the fee.  
8 Q. That's a -- I understand the difficulty of  
9 the question.  
10 Just as a general clarification.  
11 Do you know that Penal Code 28225 provides a  
12 list of cost categories?  
13 A. Yes.  
14 Q. And, generally speaking, is it your  
15 understanding that those cost categories are in some  
16 way related to how the DROS fee is set?  
17 MR. HAKL: Objection.  
18 I mean you've already asked her -- I'm just  
19 going to say objection. Asked and answered.  
20 You've already asked her do you know how it  
21 was set and she said no. I mean --  
22 MR. FRANKLIN: Yeah, but I'm not --  
23 MR. HAKL: Drilling down on that is whether  
24 or not, well, do you know if these categories...  
25 I mean --

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1 BY MR. FRANKLIN:  
2 Q. No. It's contextual, because I want to know  
3 if, you know, she was involved in the drafting if the  
4 intention here was to change -- to add that word  
5 "possession" if the intention here was to make it so  
6 that "possession" could be -- and then APPS or  
7 whatever else costs that are related to "possession"  
8 could be used to increase the DROS fee.  
9 You know, if she understood that the intent  
10 here was to add APPS as a cost under 28225 which  
11 could be used to increase the DROS fee that's really  
12 relevant. You know, if I'm not asking the question  
13 quite straightforwardly, you can give me an answer  
14 that, you know, you think addresses my question.  
15 It is important to this case to know whether  
16 or not the concept of "possession" and then, for  
17 example, APPS-based costs are getting rolled into the  
18 DROS fee process or not.  
19 A. When I -- I'm sorry.  
20 MR. HAKL: My concern is that, in addition  
21 to being asked and answered, the question assumes  
22 cost and calculation and methodology that is,  
23 you know, certainly not reflected in deposition  
24 transcript, but in the record in which we disagree  
25 with. I mean it assumes facts not in evidence.

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1 But go ahead ask your question and if she  
2 knows she can try to answer.  
3 BY MR. FRANKLIN:  
4 Q. Yeah. And I understand your objection.  
5 I'm really not trying to -- she clearly has  
6 explained to us that, you know, going backwards she  
7 doesn't understand how it was the DROS fee was set.  
8 I just want to know if the intent that she  
9 was aware of was that adding this word "possession"  
10 would somehow change the DROS fee calculation  
11 process.  
12 A. I think I'm getting hung up on "calculation  
13 process".  
14 Q. Uh-huh.  
15 A. What I can tell you and what I do know is  
16 that when we were working with the legislature on  
17 819 we did say that this would not lead -- that one  
18 change at the time would not lead to an increase in  
19 the DROS fee. That's all.  
20 Q. Okay. And when you say "at the time", you  
21 mean no increase of the DROS fee?  
22 A. Like ever I don't think we promised that,  
23 but I mean for APPS enforcement we can't bind a  
24 department for decades.  
25 Q. Well, I think that answers my question.

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1 MR. HAKL: All right.  
2 BY MR. FRANKLIN:  
3 Q. So, excluding any communication from an  
4 attorney, do you recall the Bauer v. Harris case  
5 somehow impacting the drafting of SB 819?  
6 A. A vague recollection.  
7 Q. What is that recollection?  
8 A. Just that I knew about the case.  
9 Q. But not how any way how it impacted?  
10 A. Not really. Not -- probably I likely did at  
11 the time. I know that last time you showed me  
12 Senator Leno's letter to the governor I think in  
13 support of 819 asking for a signature, so I would  
14 have talked to Leno's office about the case. No  
15 recollection of what I would have said.  
16 A long time ago.  
17 Q. Okay.  
18 A. I don't remember some of the stuff I drafted  
19 last week so or said last week.  
20 MR. FRANKLIN: You're not the only one.  
21 Do you have any questions?  
22 MR. HAKL: No.  
23 MR. FRANKLIN: Okay. So this will be the  
24 end of the deposition. Is seven days okay or do you  
25 need more on the turnaround?

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1 MR. HAKL: No. I think that's -- yeah,  
2 that's fine.  
3 MR. FRANKLIN: Okay.  
4 So we will relieve the reporter of her  
5 duties under the code to maintain the original  
6 transcript.  
7 It will be forwarded to Mr. Hakl and then  
8 the deponent will have seven days to review and make  
9 changes.  
10 The original will be kept by my office and  
11 made available if needed.  
12 A certified copy can be used for the  
13 purposes of this case and at trial if lost or  
14 destroyed. So stipulated?  
15 MR. HAKL: Yes.  
16 That's the same one we did last time for  
17 the --  
18 MR. FRANKLIN: I think so.  
19 The days might be different, but, otherwise,  
20 yes.  
21 MR. HAKL: Yeah, that's fine.  
22 MR. FRANKLIN: To the extent there's a  
23 distinction it's so stipulated as to the terms  
24 previously used.  
25 MR. HAKL: Yeah.

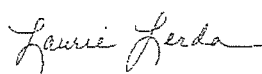
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1 MR. FRANKLIN: We're done. Thank you.  
 2 THE REPORTER: Can I get orders on the  
 3 record? You want this typed up?  
 4 MR. FRANKLIN: Yeah, I think we have to get  
 5 it 7-day turnaround.  
 6 THE REPORTER: Expedited?  
 7 MR. FRANKLIN: Yeah, I think we have to,  
 8 because of where we're at in the briefing schedule.  
 9 MR. HAKL: Yes.  
 10 THE REPORTER: And you want a copy?  
 11 MR. HAKL: Yes.  
 12 (The proceedings were concluded at 9:16 a.m.)  
 13 --o0o--  
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1 Assignment No: J0582147  
 2 Case Caption: Gentry vs. Harris  
 3  
 4 DECLARATION UNDER PENALTY OF PERJURY  
 5 I declare under penalty of perjury  
 6 that I have read the entire transcript of  
 7 my deposition taken in the above-captioned matter,  
 8 or the same has been read to me, and  
 9 the same is true and accurate, save and  
 10 except for changes and/or corrections, if any, as  
 11 indicated by me on the DEPOSITION ERRATA SHEET  
 12 hereof, with the understanding that I offer these  
 13 changes as if still under oath.  
 14 Signed on the \_\_\_\_ day of \_\_\_\_\_,  
 15 2017.  
 16  
 17  
 18  
 19  
 20 JESSICA R. DEVENCENZI HOLMES  
 21  
 22  
 23  
 24  
 25

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1 REPORTER'S CERTIFICATION  
 2  
 3 I, Laurie D. Lerda, a Certified Shorthand  
 4 Reporter in and for the State of California, do  
 5 hereby certify:  
 6  
 7 That the foregoing witness was by me duly sworn;  
 8 that the deposition was then taken before me at the  
 9 time and place herein set forth; that the testimony  
 10 and proceedings were reported stenographically by me  
 11 and later transcribed into typewriting under my  
 12 direction; that the foregoing is a true record of the  
 13 testimony and proceedings taken at that time.  
 14  
 15 IN WITNESS WHEREOF, I have subscribed my name  
 16 this 31st day of May, 2017.  
 17  
 18   
 19 \_\_\_\_\_  
 20 Laurie D. Lerda, CSR No. 3649  
 21  
 22  
 23  
 24  
 25

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## PROOF OF ELECTRONIC SERVICE

Case Name: *Gentry, et al. v. Becerra, et al.*  
Court of Appeal Case No.: C089655  
Superior Court Case No.: 34-2013-80001667

I, Sean A. Brady, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On February 7, 2020, I served a copy of the foregoing document(s) described as: **APPELLANTS' APPENDIX, VOLUME VII OF XVI, (Pages 1638 to 1867 of 4059)**, by electronic transmission as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2020, at Long Beach, California.

*s/ Sean A. Brady* \_\_\_\_\_  
Sean A. Brady  
Declarant