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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE LAWRENCE K. KARLTON, SENIOR JUDGE

JOEL THOMAS TOLER,
Plaintiff,

Vs. CASE NO. CIV. S-06-0735 LKK

DAVID PAULSON, COUNTY
OF SOLANO, AL GARZA,
BROOK BYERLEY, and DOES
1 THROUGH 10, inclusive,

Defendants.

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REPORTER'S TRANSCRIPT

EXCERPT FROM TRIAL PROCEEDINGS

TRIAL TESTIMONY OF BROOK ROBERT BYERLEY

THURSDAY, AUGUST 13TH, 2009 - FRIDAY, AUGUST 14TH, 2009

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Reported by: CATHERINE E.F. BODENE,
CSR. No. 6926

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SACRAMENTO, CALIFORNIA
THURSDAY, AUGUST 13TH, 2009 - AFTERNOON SESSION

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(Excerpt from trial proceedings.)

MR. GONZALEZ: I will call Mr. Brook Byerley to the stand.

BROOK ROBERT BYERLEY,
was thereupon called as a witness herein by the Plaintiff,
and having been sworn to tell the truth, the whole truth and
nothing but the truth, was thereupon examined and testified
as follows:

THE CLERK: Please, take a seat.

State your name, spell your last name and speak
directly into the microphone.

THE WITNESS: Brook Robert Byerley, B-y-e-r-l-e-y.

CROSS-EXAMINATION (ADVERSE WITNESS)

BY MR. GONZALEZ:

Q. Good afternoon, Mr. Byerley.

A. Good afternoon.

Q. Can you tell the jury what you do for a living?

A. I'm the Supervising Investigator for the Solano
County District Attorney's Office.

Q. How long have you held that position?

A. About 22 years.

Q. I want to start out by asking you about the first

1 interaction you had with Mr. Toler in the District Attorney's
2 Office.

3 Do you recall that first meeting?

4 A. Yes, sir, I do.

5 Q. Was it the first time you had interacted with
6 Mr. Toler?

7 A. Yes, it was.

8 Q. And there has been -- I want to get this handled
9 right away. There has been some talk about whether or not
10 you took notes during that meeting?

11 A. Yes, sir.

12 Q. Did you take notes?

13 A. I have them right here.

14 Q. Can I take a look at those?

15 A. Absolutely.

16 Q. I haven't seen them.

17 (Documents handed to counsel.)

18 MR. GONZALEZ: Your Honor, this is the first time
19 we've seen this. Is there a way to make a copy of it so
20 counsel can have that?

21 I don't know if he's ever seen it before.

22 MR. CASSIDY: It was produced in discovery. I'm
23 happy to take a copy of it.

24 MR. GONZALEZ: That's fine. If he has a copy, I'm
25 happy to continue. It's just for his courtesy.

1 THE COURT: Go ahead.

2 BY MR. GONZALEZ:

3 Q. Why don't you tell the jury -- Mr. Byerley, why don't
4 you tell the jury what's on that sheet of paper?

5 MR. GONZALEZ: I don't believe it is marked as an
6 exhibit, is it, Counsel?

7 MR. CASSIDY: No.

8 MR. GONZALEZ: Okay.

9 THE WITNESS: What I have written at the top is:
10 Fairfield PD, Tom Toler. Then I wrote -- it looks like the
11 beginning of an F, then 4202. Then I've got 4202 Virginia
12 Pine Court, 1988 Molest Case, Lieutenant and the sign for
13 "at" 709 Jefferson, IA Marsha Zalenskey (phonetic) -
14 916-464-3772, yesterday, the sign for "at," 2:41, 3-27-05, a
15 square with a -- I'm sorry -- a square with an "X" in it,
16 05-4800 Strictland. I think it is 1218.

17 I believe that's what it is.

18 BY MR. GONZALEZ:

19 Q. So, Mr. Byerley, is that a document that you might
20 have prepared after calling the Fairfield police?

21 A. No.

22 Q. It has an address for Mr. Toler that is not an
23 accurate address for him. Do you realize that?

24 A. No, I don't.

25 Q. And it doesn't have a date on it; is that correct?

1 A. Correct.

2 Q. And the lack of a date on this document is why you
3 have referred to March 28th or 29th as the first date you had
4 an interaction with Mr. Toler?

5 A. That's correct.

6 Q. Now, how did you first become aware Mr. Toler wanted
7 to speak with you?

8 A. I was back by my cubicle. Chief Garza, we were kind
9 of like passing by one another. He asked me if I would go up
10 front and talk to somebody about a child abuse investigation.

11 Q. And so you stepped out in the lobby, and you talked
12 to Mr. Tom Toler?

13 A. Yes.

14 Q. And when you first stepped out, you were under the
15 belief he might be a peace officer?

16 A. Yes, sir.

17 Q. But he identified himself how to you?

18 A. At the time we first met, he was sitting down. He
19 stood up, he shook my hand, and I believe he introduced
20 himself as a child abuse investigator. And then I sat down.

21 Q. Well --

22 A. He used his name too. Sorry.

23 Q. In Defendant's Exhibit B, it's an item that you
24 prepared on April 12th speaking about the earlier incident,
25 you wrote that Toler told you -- I asked -- Excuse me. Let

1 me start over.

2 (READING):

3 I asked Toler what law enforcement agency he worked
4 for.

5 (READING INTERRUPTED.)

6 And this is after some other things you have written.

7 (READING CONTINUED):

8 Toler appeared irritated and told me he was a private
9 investigator and also had a bail bonds business here
10 in Fairfield. Toler also told me he was a former
11 peace officer, and I don't recall if he told me with
12 what agency.

13 (READING CONCLUDED.)

14 A. I'm sorry, sir. I understood your question was when
15 I first met him, how did he introduce himself or what was my
16 impression.

17 That was the first impression I had, was that -- him
18 introducing himself as -- I think he used the term "child
19 abuse investigator."

20 After we had a conversation, I asked him a question,
21 and then he clarified what he did.

22 Q. And when he then -- The point is he identified
23 himself as a bail bondsman and an investigator with some
24 peace officer background?

25 A. He did identify himself as a private investigator,

1 told me he had a bail bonds business in the area, and that he
2 was a former peace officer.

3 Q. Did you see him with any materials?

4 A. I think he had a notebook in his hand. I believe it
5 was, like, a legal pad.

6 Q. You don't have a clear memory of it?

7 A. No, I don't.

8 Q. Is it possible that he had a folder with him like the
9 one I have in front of me?

10 A. What I recall seeing was yellow papers so that's why
11 I thought it was a legal pad folded over, like a note pad.

12 Q. All right.

13 Now, was it obvious he had a lot of information he
14 wanted to impart to you?

15 A. Yeah. We started having a conversation, yes.

16 Q. And at some point did you tell him that you really
17 couldn't do anything until you had the original police
18 report?

19 A. I told him there was nothing -- that our office had
20 not received the report yet, so there was nothing I could do
21 to assist him right at that minute.

22 Q. All right.

23 And did you -- At some point did you advise him of
24 the sorts of steps he could take to protect himself from
25 someone that was making a threat against him or his children?

1 A. When we first started to talk, I asked him if he had
2 filed a police report. That's when he told me he had
3 contacted the Fairfield Police Department.

4 Q. Did you give him any advice on how to deal with the
5 threat if it had immediacy to it?

6 A. I don't have a clear recollection of doing that, no.

7 Q. At what point in the conversation did you believe
8 that he was making a threat against you or your office?

9 A. When he first sat down and he started talking about
10 what his investigation had shown, and I was kind of confused
11 about what was going on, I asked him to -- because I was
12 still under the impression he was another law enforcement
13 officer, and I asked him something to the effect of "What
14 agency do you work for?" Because he seems -- it was not the
15 way a normal peace officer would ask about a case that they
16 had submitted so I was slightly confused.

17 I asked him the question. I distinctly remember he
18 tightened up his lips. He grimaced. That's when he told me
19 he was a private investigator and a bail bonds agent.

20 Sir, I don't remember your question. I'm sorry.

21 Q. Let me ask you this: Any reason why you didn't take
22 him into an interview room rather than do it in the lobby of
23 the office?

24 A. It's not unusual for me to talk to people right out
25 there in the lobby.

1 Q. Isn't it true, though, before you even stepped out to
2 talk to him you already knew you didn't have a police report?

3 A. I don't know if I knew it before going out there or
4 after we were talking I had to check to see if a report had
5 been submitted.

6 I don't know how -- I know I had the information we
7 had not received the report yet, but I don't know if it was
8 while talking with him I stepped back to see if we had it or
9 if I knew that prior -- prior to coming out.

10 Q. My question earlier was when did you -- when did you
11 believe Mr. Toler made a threat against your office?

12 You talked about him grimacing. That wasn't a
13 threat, was it?

14 A. It was an unusual reaction. He appeared to start
15 getting angry.

16 THE COURT: Well, people get angry all the time.
17 That doesn't equal, or does it in your mind equal with a
18 threat?

19 THE WITNESS: No, sir, it doesn't.

20 BY MR. GONZALEZ:

21 Q. So at some point, I mean, did Tom Toler say, "Don't
22 make me protect my children"?

23 A. Yes, he did.

24 Q. And he said that after you told him that there was
25 nothing you could do until you got the police report?

1 A. It was -- There was some other conversation where he
2 demanded special attention for his case. He said that he
3 didn't want it to fall through the cracks.

4 And what I told him is that once we get the police
5 report, it will be reviewed by a Deputy District Attorney.
6 If there is sufficient evidence to charge the case, the case
7 will be charged.

8 He continued to --

9 Q. At some point he said then, "Don't make me protect my
10 children," right?

11 A. Yes, he did.

12 Q. So it was after you told him you weren't going to
13 start working on it until you got the police report?

14 A. Well, I think that would mischaracterize it just a
15 little bit, sir.

16 The other thing I would add is I told him I would
17 contact Fairfield Police Department and ask them to send me a
18 copy of the report, but that I didn't have it.

19 And that's when he started getting more agitated and
20 said, "Don't make me protect my kids."

21 Q. All right.

22 Now, did you tell him that you would get back to him
23 as soon as you had that report?

24 A. Yes.

25 Q. And did you tell him you would -- Did you get back to

1 him, for instance, that day when you learned that the
2 Fairfield police hadn't sent the report to your office?

3 A. No, I did not.

4 Q. Why not?

5 A. I was busy doing other duties. I had told him that I
6 would get back with him when I had the report.

7 Q. So now you believed "Don't make me protect my
8 children" is a threat?

9 A. The way he said it, the way he was reacting, it
10 struck me -- He didn't just say it once. He said it twice.
11 He said it as he started to walk away from our office.

12 It struck me as somebody that was -- that was -- my
13 immediate reaction was this guy is setting up a defense if
14 something happens. I thought he was going to take the law
15 into his own hands.

16 Q. Mr. Byerley, I want you to think about what you're
17 saying.

18 A. Okay.

19 Q. Somebody comes to you about a threat against their
20 children. And he's in the lobby there trying to get help
21 from your office, right?

22 Yes?

23 A. Yes.

24 Q. And he's already gone to the Fairfield police before
25 that, right?

1 A. Correct.

2 Q. And you're reaching a conclusion that he wanted to
3 take the law into his own hands, and he was setting up a
4 defense?

5 A. My immediate reaction was it was such an unusual
6 comment. I have not had somebody tell me that in my law
7 enforcement experience.

8 I have worked child abuse cases. I was a specialist
9 in child abuse cases. I'm used to people getting upset and
10 protective of their kids.

11 Q. Mr. Byerley, could the comment have been evidence
12 that this was a threat that Mr. Toler was taking very
13 seriously, and he was trying to convey to you, "Don't make me
14 protect my kids"?

15 Did you consider that it really might be that he's
16 there with a very serious matter?

17 A. I would agree that he took the matter very serious.

18 Q. At some point --

19 MR. GONZALEZ: I'm looking at a deposition of your
20 testimony, March 2nd of 2006, page 57.

21 THE COURT: Line, please?

22 MR. GONZALEZ: Beginning at line 8.

23 THE COURT: Through?

24 MR. GONZALEZ: 16.

25 (READING):

1 QUESTION:

2 THE COURT: Hang on. Give counsel an opportunity.

3 (Brief pause.)

4 MR. CASSIDY: For what purpose?

5 MR. GONZALEZ: I'm going to ask him questions based
6 on it.

7 THE COURT: Well, ask him the question. I mean, if
8 you're not using the deposition to impeach or refresh
9 recollection, it's not appropriate.

10 Ask him a question and see what his response is.

11 MR. GONZALEZ: All right.

12 BY MR. GONZALEZ:

13 Q. Mr. Byerley, did you ever hear Mr. Toler make any
14 remarks with respect to physically injuring somebody or
15 killing somebody?

16 A. I never personally heard him say that, no.

17 Q. All right.

18 At your deposition do you recall answering the same
19 question affirmatively?

20 A. I would have to know what the question was before and
21 after.

22 Q. All right.

23 Going to the transcript, the same section.

24 (READING):

25 QUESTION: During any encounter that you had with

1 Mr. Toler, and this can go back from March 2005 to
2 April of 2005, did you ever hear Mr. Toler make any
3 remarks with respect to physically injuring somebody
4 or killing somebody?

5 ANSWER: I would have to answer that yes.

6 QUESTION: Okay. What would that be?

7 ANSWER: When he stated to me twice, "Don't make me
8 protect my kids."

9 (READING CONCLUDED.)

10 A. Sir, the question that was asked to me was killing or
11 injuring somebody. And I took when he said "Don't make me
12 protect my kids" as a threat that he could kill or injury
13 somebody.

14 Q. But I asked you the same question here, Mr. Byerley,
15 and you answered it differently than you did under oath on a
16 previous occasion; is that correct?

17 A. I'm -- I'm not sure.

18 Q. All right.

19 And at that previous occasion, your deposition was
20 being taken because Mr. Toler was, in part, trying to defend
21 against this temporary restraining order?

22 You're aware of that?

23 A. I know a deposition was taken, yes, but I'm not quite
24 sure of the purpose. It was some type of lawsuit.

25 Q. All right.

1 Now, would you concede today that there was an
2 equal -- there was an equally valid interpretation of the
3 remark "Don't ask me to protect my kids" after someone has
4 gone to the police, come to a District Attorney's Office and
5 been told that the DA's Office can't get working on something
6 until they have a report, is it fair that saying those things
7 might not be a threat to kill somebody, but might be exactly
8 what somebody is saying, "Help me. Don't make me protect my
9 kids alone"?

10 Isn't that possible?

11 A. Anything is in the realm of possibility. But yes, it
12 is possible.

13 Q. Do you think it is reasonable, sir?

14 Is that a reasonable interpretation?

15 A. That would be -- that could be a reasonable
16 interpretation.

17 Q. Now, at some point you were present when on April
18 7th -- Let me ask you a final question about March 27th.

19 Did Mr. Toler walk away from you in midsentence?

20 A. No. He walked away and -- He said, "Don't make me
21 protect my kids," and he walked away towards the elevator. I
22 was still sitting there.

23 Q. So when you wrote this encounter up, I read it
24 earlier while Mr. Paulson was on the stand, the portion of
25 the end of your meeting on March 28th or 29th, you said:

1 (READING):

2 I told Toler that I would call Fairfield Police
3 Department and make sure they forwarded a copy of the
4 report to me also. Toler again stated, "Don't make
5 me defend my kids." After Toler left the front
6 lobby, I came back to Chief Garza's office and spoke
7 to him.

8 (Reading concluded.)

9 So you're saying though he did not abruptly -- Well,
10 he made those statements, but my question to you is he did
11 not abruptly walk away from you while you were still talking
12 to him; is that true?

13 A. The way I would categorize it was that he had said
14 what he wanted to say. He was -- It appeared he was upset.
15 He got up, and then he walked away.

16 Q. All right.

17 Am I to understand that you had enough information to
18 follow up on this police report?

19 A. I had the police department's case number. I had his
20 name. I felt I had enough to follow up on.

21 Q. Let me ask you about the April 7th interaction when
22 Mr. Toler came into the office.

23 If I understand correctly, you were informed that
24 Mr. Toler was in the office inquiring about his case; is that
25 correct?

1 A. Yes.

2 Q. And you looked around and discovered that the police
3 report had been faxed to your office that day?

4 A. That would be incorrect, that order.

5 Q. Okay. So you already had the report, but hadn't had
6 a chance to read it?

7 A. Correct.

8 Q. So you informed Mr. Butler, I believe, or someone
9 else to go talk to Tom and let him know that the report had
10 arrived but nobody had read it yet; is that correct?

11 A. That's not my memory.

12 Q. All right. What did you do?

13 A. Okay. That morning it was a fairly busy morning as
14 we have. I know that in my in-basket there was a faxed copy
15 of the Fairfield Police Department report.

16 I was out doing other things. I believe I had just
17 left a meeting and had started to walk up towards my cubical.
18 I heard Mr. Butler on the telephone say the name Tom Toler.

19 I basically said: Oh, man, I just got that report
20 this morning. I haven't even had a chance to read it.

21 Mr. Butler then volunteered to go up and talk to
22 Mr. Toler. And I said that that's fine, tell him I'll give
23 him a call as soon as I can read the report.

24 Q. All right.

25 Did it occur to you, Mr. Byerley, that this was --

1 this was over a week after you had interacted with him and
2 told him that you would follow up on your meeting; is that
3 correct?

4 A. I had attempted to follow up on it by contacting
5 Fairfield.

6 Q. I'm not asking you how you did that. I'm saying that
7 you interacted with him. Now you're hearing his name and you
8 realize, "Boy, it's been over a week and I haven't called
9 this guy to tell him what's going on."

10 Is that correct?

11 A. Yes, that's correct. May I explain my answer?

12 Q. I'm not accusing you of not having done anything
13 between March 28th or 29th and April 7th. I'm asking you
14 that on April 7th, when you heard the name Tom Toler, you
15 realized you had ignored communicating with him for over a
16 week; is that correct?

17 A. I would say that's incorrect.

18 Q. All right.

19 And you made a decision that you were not going to
20 personally go speak to him and tell him what was going on,
21 but you allowed someone who is not a lawyer or investigator
22 to go take care of that; is that correct?

23 A. That would be correct.

24 Q. And you had already had, let's say, a difficult
25 interaction with Mr. Toler on March 28th or 29th; is that

1 true?

2 A. I don't know if I would call it a difficult
3 interaction. We had an interaction on that date.

4 Q. Right. But you had an interaction with somebody that
5 already had grimaced and given you an impression that he was
6 unhappy with what you were saying, right?

7 A. I don't know if he was unhappy with what I was
8 saying. He reacted when I asked him what law enforcement
9 agency he worked for. That's when he grimaced. When I tried
10 to ask him how we could help him --

11 Q. Mr. Byerley, did it occur to you on April 7th that
12 you should go speak to Mr. Toler or you were going to be
13 inviting a nonlawyer, noninvestigator to walk right into a
14 problem because they had no information to share with him
15 over a week after -- I mean actually over ten days after
16 threats had been made against his children?

17 MR. CASSIDY: Objection. Misstates his testimony.

18 THE COURT: What's the misstatement?

19 MR. CASSIDY: He sent Mr. Butler up there with a
20 message to convey to him.

21 THE COURT: The objection is overruled.

22 I'm sorry. Let me read you the question.

23 (Whereupon, the record was read back.)

24 THE COURT: That's a terrible question, but do you
25 understand the question?

1 THE WITNESS: Yes, sir, I do.

2 THE COURT: You may answer it.

3 THE WITNESS: Okay. I didn't know I was sending
4 Mr. Butler up to a problem. It was a very busy day. I was
5 in the middle of another task. Had we had an appointment
6 scheduled, I would have had time taken out of my schedule to
7 handle that. But we did not have an appointment. Mr. Toler
8 showed up. I was trying to deal with the situation as
9 efficiently as I could at that time.

10 BY MR. GONZALEZ:

11 Q. Mr. Byerley, I want to take what you just said and
12 put it in context because you never wrote up that initial
13 interaction with Mr. Toler until he published something in a
14 newspaper, then you wrote a memo talking about that original
15 incident; is that correct?

16 A. That's correct.

17 Q. And so when you wrote up that incident -- I'm
18 sorry -- your memo on April 12th, you characterized that
19 original meeting with Mr. Toler in a particular way. Isn't
20 that true? Based on your memory?

21 A. I wrote what I recalled happened that day.

22 Q. Right.

23 You've heard Mr. Toler testify to it and the way he
24 reacted. He didn't say he grimaced at you and things like
25 that, right?

1 A. I don't recall him saying he didn't grimace.

2 Q. Right.

3 Is it possible -- Don't you think, sitting here now,
4 that if the way you're describing the March 28th or 29th
5 encounter is accurate, there's no way you would have sent
6 Warren Butler to go talk to Tom Toler when he was there
7 eleven days after the threats had been made to tell him that
8 no one has read your report yet?

9 MR. CASSIDY: Objection, Your Honor. Calls for
10 speculation.

11 THE COURT: No. He's asking him to think about now
12 whether that was an appropriate thing to do.

13 I'm not sure it is relevant, but anyhow, if you can
14 answer, go ahead. If not, just say I don't know or whatever.

15 THE WITNESS: Can I ask him to repeat the question?

16 THE COURT: I don't blame you.

17 What was the question?

18 BY MR. GONZALEZ:

19 Q. Mr. Byerley, you wrote about the March 28th and 29th
20 incident on memory April 12th after Tom Toler published an ad
21 in the newspaper, correct?

22 A. That's correct, sir.

23 Q. And you wrote that up from memory?

24 A. Yes.

25 Q. And you characterized that incident a particular way,

1 right?

2 To the best of your abilities you wrote it up the way
3 you remembered it, right?

4 A. Correct.

5 Q. Now, I'm asking you, though, don't you think that if
6 the way you wrote it up was accurate, that on April 7th, when
7 Tom Toler came into the office inquiring about his case, you
8 wouldn't have sent or allowed Warren Butler to go talk to him
9 in your place?

10 A. No, that's incorrect.

11 Q. Do you think it would be reasonable that somebody
12 would have gotten a follow-up call or some kind of message
13 from an Assistant District Attorney or investigator after
14 that initial meeting of March 28th or 29th?

15 Is it reasonable Mr. Toler should have heard from
16 somebody from your office to give him an update?

17 A. In a perfect world, yes.

18 Q. Not a perfect world, in the world that you live and
19 work in, in your office, would it be reasonable that somebody
20 could expect to be given that kind of treatment?

21 A. Okay. In the world I live in, if we don't have the
22 information, it's hard to respond to somebody or answer their
23 questions.

24 If the agency has not provided you with a copy of the
25 report, it is hard to talk to somebody and answer questions

1 for them or have an intelligent conversation back and forth.

2 Q. Mr. Byerley, did it occur to you to tell Warren
3 Butler to tell Mr. Toler that I will be out to see him as
4 soon as I'm done reading this police report?

5 A. No, it did not.

6 Q. Is there any reason why you didn't tell him to do
7 that?

8 A. Yes.

9 Q. And why was that?

10 A. I was in the middle of another task, and I was trying
11 to handle that task. When I had walked over to my desk, I
12 continued to try to handle that task.

13 Q. Mr. Byerley, after Tom Toler sat down with William
14 Godwin you, in fact, went back to your desk and read the
15 report, didn't you?

16 A. Yes, I did.

17 Q. And then you went and talked to John Daugherty and
18 said that you didn't think there was enough evidence to
19 proceed on it, correct?

20 A. I'm sorry. Could you ask your question again.

21 Q. My question to you, sir, is there are a lot of tasks
22 going on in your office at any given time, correct?

23 A. Correct.

24 Q. You're a busy guy? Everybody in your office is busy?

25 A. Yes.

1 Q. But you've got somebody that's following up on a
2 matter eleven days later. You've got the report there. And
3 I'm asking you why didn't you say: Have Tom Toler wait and
4 let him know I'm going to see him as soon as I'm done reading
5 it. I may have another task before I read it, but I am going
6 to read it and get back to him today. He can sit there and
7 wait for me.

8 A. I didn't think -- I didn't think of asking him to
9 wait there while I completed the task I had. I'm not sure
10 how long that would have taken. I don't even recall what it
11 was I was doing. It seemed to have a higher priority at that
12 time. To have him wait and then have time to read the
13 report, I just didn't think of it.

14 Q. Did it occur to you he would be willing to wait?
15 That this was important enough to him that he would wait?

16 A. It didn't even occur to me.

17 Q. Now, at some point on April 12th you read an ad that
18 Mr. Toler took out in a local paper; is that correct?

19 A. Yes.

20 Q. And at some point after reading the ad, did somebody
21 direct you to write up your previous interactions with Tom
22 Toler?

23 A. I don't know if I was directed or if it was my own
24 initiative that now I need to start documenting this, it's
25 not just a citizen coming in and asking about a case.

1 Q. Did you ever talk to Mr. Paulson about perhaps he
2 should have a meeting with Tom Toler after you read that ad?

3 A. Not that I recall, no.

4 Q. Did you say that to Al Garza?

5 Did you say: You know, Al, why don't we set up a
6 meeting, it's a concerned father, let's take care of him?

7 A. No.

8 Q. Did you personally talk to Mr. Paulson about the --
9 about Tom Toler?

10 A. Yes, I did.

11 Q. And did you talk to him about the interaction that
12 you had had with him in March?

13 MR. CASSIDY: Objection. Vague as to time.

14 THE COURT: Yeah. Well, I agree. That's actually a
15 good vagueness argument.

16 BY MR. GONZALEZ:

17 Q. All right.

18 Did you, after April 7th, speak to Mr. Paulson about
19 Tom Toler?

20 A. Yes. Much after April 7th.

21 Q. All right.

22 And how many times did you speak to him?

23 THE COURT: About this issue he means.

24 THE WITNESS: I can recall -- I can recall about
25 three conversations that we had specifically about

1 Mr. Toler.

2 BY MR. GONZALEZ:

3 Q. After April 7th?

4 A. Yes.

5 Q. So do you mean sometime after June you spoke to
6 Mr. Paulson three times?

7 You were asked a question at your deposition about
8 April 7th -- speaking to him about it after April 7th and you
9 said yes.

10 Do you remember that?

11 A. Yes, I do.

12 Q. How many times did you speak about Mr. Toler to Dave
13 Paulson?

14 A. I can recall three times.

15 Q. And what was the time range? Between April 7th and
16 June 13th?

17 A. It was about two weeks -- or two months later. It
18 was after another incident had happened.

19 Q. So you're saying when you gave an affirmative answer
20 about speaking to Dave Paulson after April 7th, you really
21 meant you spoke to Dave Paulson in June sometime?

22 MR. CASSIDY: Objection. Argumentative.

23 THE COURT: No. He's asking what he meant. But I
24 don't know why you've reached that conclusion either.

25 Let me see whether I can -- I don't know that anybody

1 wants to get this right, but when was the first time that you
2 spoke to Mr. Paulson?

3 THE WITNESS: About Mr. Toler?

4 THE COURT: Yes, sir.

5 THE WITNESS: Where we had an actual conversation
6 focusing on Tom Toler using his name and that would have been
7 after he came in and made a statement to Mr. Garza after he
8 had met with Mr. Garza.

9 I think I told Al Garza actually about the -- after
10 the advertisement came out that we had taken care of the
11 situation that was discussed in the advertisement.

12 THE COURT: Well, I'm not -- that doesn't appear to
13 me to be responsive. Perhaps I'm wrong.

14 You read the advertisement -- You had never talked to
15 Mr. Paulson about Mr. Toler before the advertisement came
16 out; is that right?

17 THE WITNESS: That's correct.

18 THE COURT: And you did talk to him after the
19 advertisement came out?

20 THE WITNESS: There was -- I don't know if I -- I
21 don't know if I talked with Mr. Paulson about the name Tom
22 Toler. I don't have a clear recollection like a sit-down
23 conversation with Mr. Paulson about Tom Toler until after
24 June.

25 THE COURT: Okay. So your testimony now is your best

1 recollection is you did not have a conversation with
2 Mr. Paulson about Mr. Toler until sometime in June?

3 THE WITNESS: Not mentioning -- not mentioning him.
4 I don't have a clear recollection of it, sir.

5 THE COURT: You may proceed.

6 BY MR. GONZALEZ:

7 Q. Mr. Byerley, you were in court when Dave Paulson
8 testified in this trial?

9 A. I was sitting right over there.

10 Q. That's right. So you're aware of his testimony? You
11 were here for that?

12 A. Yes, I was.

13 Q. All right.

14 I want to try to explore this date. And counsel, I'm
15 looking at his deposition, page 75 and 76.

16 THE COURT: Give him the line numbers and give him a
17 chance to look at it.

18 MR. GONZALEZ: Page 75, beginning line 17.

19 THE COURT: To?

20 MR. GONZALEZ: To page 76, line 22.

21 I'm going to read from it because it speaks about --

22 THE COURT: Just a minute.

23 Right now there isn't an objection so you don't --

24 MR. CASSIDY: For what purpose?

25 Is it to refresh his recollection about this

1 discussion of the conversations with Mr. Paulson?

2 THE COURT: Do you believe it is impeaching, sir?

3 MR. GONZALEZ: It starts with a question, "Can you
4 estimate how many times you talked to Mr. Paulson?" There is
5 a date thrown in there, April 7th.

6 THE COURT: Hang on a second. Let me do this because
7 otherwise we'll be here all day.

8 (Brief pause.)

9 MR. GONZALEZ: Your Honor, the offer of proof I would
10 make is page 76, he mentions memorializing.

11 THE COURT: You may read it, sir.

12 MR. GONZALEZ: Thank you.

13 BY MR. GONZALEZ:

14 Q. Reading beginning on page 75, line 17.

15 (READING):

16 QUESTION: Okay. Can you estimate how many times you
17 talked to Mr. Paulson about Tom Toler following April
18 7th?

19 ANSWER: Probably, oh, gosh, I can recall three --
20 three times we have discussed it. But there's
21 probably more than that, but I -- I recall three
22 times.

23 QUESTION: And during those conversations over three
24 times, were you sharing new information with him?
25 Like, for instance, were you getting more information

1 from other outside places that you were keeping him
2 updated on or what were the, in essence, the
3 substance of those conversations?

4 ANSWER: I think it would be accurate to say it was
5 updating him on our assessment of the threat.

6 QUESTION: Is it fair to say at this point now there
7 was actually a DA-generated investigation of
8 Mr. Toler?

9 ANSWER: Uh, yes.

10 QUESTION: And that would be around the time that you
11 thought it prudent to start memorializing your
12 encounters?

13 ANSWER: Yes.

14 QUESTION: Were you aware that there was a newspaper
15 ad or something that Mr. Toler had placed in the
16 local paper about Mr. Paulson?

17 ANSWER: Yes.

18 QUESTION: Do you recall when that time period was?

19 ANSWER: Oh, I -- No. It -- I know it was after the
20 April 7th meeting, but I -- I don't recall the exact
21 date.

22 QUESTION: But it was pretty close in time to when
23 this investigation of Mr. Toler was going on?

24 ANSWER: Yes.

25 (READING CONCLUDED.)

1 BY MR. GONZALEZ:

2 Q. Mr. Byerley, is it fair to say you had a conversation
3 with Mr. Paulson about Tom Toler about the time you started
4 memorializing Mr. Toler's behavior in your office?

5 A. That would be accurate then.

6 Q. And you indicated -- you indicated that that occurred
7 with the publication of an ad on April 12th by Mr. Toler in a
8 local paper, that you started writing up your previous
9 encounters with him; is that correct?

10 A. Could you restate your question. I'm sorry.

11 Q. Yes. I asked you whether or not you started talking
12 to Mr. Paulson about Tom Toler at the time you were
13 memorializing your interactions with Toler, and you said yes.

14 And I said you started memorializing those
15 conversations -- I'm sorry -- those interactions with Tom
16 Toler when that ad was published April 12th; isn't that
17 correct?

18 A. I started memorializing what happened after the
19 advertisement came out. That's correct. I believe what I
20 said during the deposition was that I started having the
21 conversations with Mr. Paulson after the threat had come
22 out -- the threat with Mr. Garza.

23 Q. Sir, we've already read from the transcript --

24 THE COURT: Sir, don't argue. The transcript says
25 what it says. The jury heard it. Let's go on.

1 BY MR. GONZALEZ:

2 Q. Sir, on the April 7th meeting, when you read the
3 police report and you had a conversation with Mr. Daugherty
4 and after Tom Toler left after he spoke to William Godwin and
5 he left, you sent out an e-mail to other members of your
6 staff inquiring as to whether or not anybody had a file on
7 Richard Oawster that Mr. Toler had possibly left with your
8 office; is that correct?

9 A. What my e-mail stated was if anybody -- if anybody
10 had received a, quote, "thick portfolio" from Mr. Toler
11 please contact me and let me know that you have it.

12 Q. And did you ask Tom Toler to get you another copy of
13 that?

14 A. No, I did not.

15 Q. Did you ask Tom Toler to give you a copy of that
16 before you had the conversation with Mr. Daugherty wherein
17 you decided there wasn't sufficient evidence to proceed with
18 the case?

19 A. I had no further conversations with Mr. Toler.

20 Q. I want to ask you what kind of weapons do you wear,
21 if any, when you go to work?

22 A. I carry a Glock.45 caliber pistol on my belt. I
23 carry an expandable baton. I carry pepper spray. And then I
24 carry a secondary .45 caliber pistol, a backup gun on my
25 ankle.

1 MR. GONZALEZ: I don't have anything further.

2 Thank you, Your Honor.

3 THE COURT: Hang on a second, Mr. Cassidy.

4 (Court confers with court reporter.)

5 Go ahead.

6 DIRECT EXAMINATION

7 BY MR. CASSIDY:

8 Q. Investigator Byerley, will you please give us a brief
9 description of your educational background?

10 A. I graduated the basic police academy. I've been a
11 patrol officer. I hold an advanced certificate from the
12 Police Officer Standards and Training. I have two specialty
13 certificates from the Ron Presley Institute of Criminal
14 Investigation, one in homicide investigation, the second in
15 child abuse investigation.

16 I'm a FBI-certified rangemaster. I was one of the
17 first 20 state-certified survival shooting instructors. I'm
18 a forensic interviewer for children that have been abused.

19 I have had training in dignitary security. Gosh, let
20 me think. All sorts of advanced training classes; informant
21 development, environmental crimes. There's a lot of
22 education. A bachelor's degree also.

23 Q. Thank you.

24 Prior to working at the Solano County District
25 Attorney's Office, where did you work?

1 A. Suisun City Police Department.

2 Q. For how long?

3 A. About five years as a regular patrol officer.

4 Q. What year did you join the Solano County District
5 Attorney's Office?

6 A. I believe 1987. It was about 22 years ago. I'm
7 sorry. I think it was '87. It was 22 years ago.

8 Q. What year did you become a supervising investigator?

9 A. That was about six years ago.

10 Q. What are your duties?

11 Just describe very briefly generally your duties and
12 responsibilities as a supervising investigator.

13 A. As a supervising investigator I'm responsible for
14 making assignments for the other peace officers that work for
15 our office, the other DA investigators. I'm responsible for
16 reviewing their reports.

17 I interact with attorneys to find out what support
18 they need in court. I interact with all different law
19 enforcement agencies to assist them on investigations.

20 I go out and do public speaking engagements. I'm
21 responsible for training for the department, both POST
22 training and county training. I'm responsible for running
23 the fleet of vehicles that we have.

24 That's basically it.

25 Q. Do you still investigate cases?

1 A. Not so often. On rare occasions.

2 Q. And do you assist in supervising the investigators in
3 the department with respect to any investigations they're
4 going to conduct?

5 A. Yes.

6 Q. And just generally what is your role in that respect?

7 A. I might give them advice or another avenue of
8 information that they can go to. I might have to critique
9 the reports they have written. Just stuff like that.
10 General day-to-day supervision.

11 Q. Now, I'm going to draw your attention to the March
12 28th, 29th, contact with Mr. Toler.

13 At that time I think you described the interaction
14 with Mr. Toler. You referenced when you read into the record
15 your notes and there was reference to yesterday at 2:41,
16 3-27-05.

17 Do you recall that?

18 A. I'd have to look at my note.

19 (Witness reviews document.)

20 Yes.

21 Q. Would that generally indicate to you that those notes
22 were taken the next day since you referenced yesterday?

23 A. I believe so, but I didn't feel comfortable enough to
24 put it in the report that way. I can't say positively.

25 Q. So that's why you noted either the 28th or 29th?

1 A. Correct.

2 Q. Now, what did you advise Mr. Toler you were going to
3 do in response to his inquiry on either March 28th or March
4 29th?

5 A. I told him I would get a copy of the Fairfield Police
6 Department report.

7 Q. And you were asked some questions about his comment
8 about protecting his kids or don't make me protect my kids.

9 Did you find that to be an unusual comment?

10 A. Extremely unusual.

11 Q. Why was that?

12 A. In the 22 years that I've been in the office, I've
13 never had somebody come up to the front counter -- and I have
14 dealt with angry citizens before -- and say something that
15 struck me as this guy's going to take the law into his own
16 hands.

17 Q. After the meeting with Mr. Toler, you indicated you
18 went back into the investigators' area?

19 A. That's correct.

20 Q. And what did you do first?

21 A. I spoke with my chief, Al Garza.

22 Q. Why is that?

23 A. I was under the impression when I went up there that
24 I was going to speak to a fellow police officer. And finding
25 out he's not, that this guy got upset, and that he made the

1 comment "Don't make me protect my kids," so I was asking him
2 if he knew this guy.

3 Q. So did you report that comment that Mr. Toler had
4 made to you about "Don't make me protect my kids" to Chief
5 Investigator Garza?

6 A. Yes, I did.

7 Q. Was there any discussion about the impact or what
8 that meant to you at that time?

9 A. Other than me possibly making the comment that, you
10 know, it was -- he was emotional about it, no, there wasn't
11 really -- there might have been a short discussion, but not
12 that I recall.

13 Q. All right.

14 Now, you indicated, I believe, that you then
15 reviewed -- Well, withdrawn.

16 What did you do next after the conversation with
17 Chief Investigator Garza?

18 A. I then called John Dugan from the Fairfield Police
19 Department and told him about the contact I had with
20 Mr. Toler.

21 Q. Describe what happened in that conversation?

22 A. I asked him for a copy of the report. And I just
23 told him -- basically it was kind of like, Hey, you guys need
24 a heads up. When he left here he told me, "Don't make me
25 protect my kids," "Don't make me protect my kids."

1 Q. Did you request a copy of the report?

2 A. Yes, I did.

3 Q. What did Sergeant Dugan tell you in relationship to
4 when to expect that report?

5 A. I don't recall him saying when to expect it. He just
6 basically promised to get me a copy of the report.

7 Q. All right.

8 Now, did the sergeant advise you from the Fairfield
9 Police Department about the status of the investigation they
10 were conducting?

11 A. I don't recall if he told me the report hadn't been
12 submitted yet, but --

13 THE COURT: The question is not about the report.
14 The question is the status of their investigation as I
15 understand it.

16 Did you discuss that at all?

17 THE WITNESS: No, sir, I didn't.

18 BY MR. CASSIDY:

19 Q. Okay. After you had this conversation with
20 Sergeant Dugan, you were expecting at some point to receive
21 the completed report from the Fairfield Police Department?

22 A. Yes.

23 Q. Did you have -- Prior to April 7th, 2005, did you
24 have any further contact with Sergeant Dugan?

25 A. Sergeant Dugan?

1 Q. Sorry.

2 A. Yes, I did.

3 Q. He's Irish. I should get that. With Sergeant Dugan.
4 What was the nature of that contact?

5 A. After my initial contact with Mr. Toler and I had
6 called the Fairfield Police Department, the following week I
7 got a phone call from Sergeant Dugan. He apologized to me
8 that the report was not finished, and he would still get it
9 to me when it was ready.

10 Q. So at that point you were continuing to expect at
11 some point the completed report from the Fairfield Police
12 Department?

13 A. That's correct.

14 Q. Did he give you any information about the status of
15 that investigation?

16 A. I believe by him apologizing and telling me the
17 report hadn't been completed, that would be the status, that
18 it is not a completed investigation. That's what I took it
19 to mean.

20 Q. Now, does anything else happen in relation to this
21 report that Mr. Toler made to the Fairfield Police Department
22 between that call -- that later call with Sergeant Dugan and
23 the time that Mr. Toler arrives at the District Attorney's
24 Office on the morning of April 7th?

25 A. I'm sorry. I don't understand.

1 Q. Anything else happen in between that time period?

2 A. No. Well, other than regular work, no.

3 Q. Okay. When you arrived, how did you learn that the
4 police report was faxed to you?

5 A. I have an in-basket that's like a hanging basket
6 outside my cubicle. As I had come to work I glanced and saw
7 all the in stuff I had. That was one of the items in there.

8 Q. And it was after the conversation you had with --
9 Well, withdrawn.

10 What did you ask Investigator Godwin to -- Did you
11 ask Investigator Godwin to take any action on April 7th?

12 A. Yes, I did.

13 Q. What did you ask him to do?

14 A. I asked him to come up to the front lobby with me
15 because there was a problem up there.

16 Q. All right.

17 Would you describe what happened in that regard?

18 A. Yes. After Mr. Butler had volunteered to go up front
19 and talk to Mr. Toler I continued doing whatever it was I was
20 doing.

21 I then got a call from Mr. Butler on a Nextel, which
22 is like a two-way walkie-talkie. He called me on that and
23 said that Mr. Toler wanted to schedule an appointment with
24 Dave Paulson.

25 I told Mr. Butler to put him in contact with Marsha

1 Johnson who schedules or assists in scheduling Mr. Paulson's
2 appointments.

3 Q. What happened next?

4 A. I continued whatever I was doing. I next got a call
5 from Linda Jones telling me "You better get up here. He's
6 yelling."

7 Q. What happens after that?

8 A. As I started to walk up to the front I saw Bill
9 Godwin, one of our other sworn peace officers, standing by
10 his cubicle. I told him, Bill, come with me, there's a
11 problem up at the front counter. And then I started to brief
12 him on the information I knew from about Mr. Toler.

13 Q. And can you just briefly describe what it was you
14 told Investigator Godwin at that point?

15 A. What I told him was that Mr. Toler had come into the
16 office because somebody had made a threat to his children.
17 The person that had made the threat to his children was a
18 lieutenant or captain that worked for the California
19 Department of Corrections.

20 I could not remember the guy's name at that time. I
21 told Bill that Mr. Toler had already reported it to the
22 Internal Affairs Division of the Department of Corrections.
23 And I believe that's all the time we had as we're walking up
24 front.

25 I was also on my Nextel calling another investigator

1 and asking them to come to the lobby area.

2 Q. Why is that?

3 A. Because I had sent Warren Butler up there. Warren
4 Butler was unable to -- Warren Butler did not call me on his
5 Nextel walkie-talkie asking me to come up to the lobby asking
6 me to speak to somebody. I was getting a call from somebody
7 that I knew was behind some protective glass telling me that
8 I needed to get up there, he's yelling.

9 Q. So what happened next? What do you do next?

10 A. As we got up to the lobby area, I'm still talking on
11 my Nextel walkie-talkie to Kurtis Cardwell. As we started to
12 walk out the front door, Bill Godwin walked out in front of
13 me. And as I walked out, I saw Mr. Toler standing near the
14 elevators -- near the north bank of elevators. His back was
15 to us, and he appeared to be focused on the reception area.
16 He was staring into the reception area.

17 Q. Could you see Warren Butler at that time?

18 A. I really -- At that particular time, when I first
19 walked out, no, I don't recall seeing Mr. Butler.

20 Q. All right. What happened next?

21 A. As we -- as we came out, Mr. Godwin walked kind of
22 like around and in front of Mr. Toler and asked him something
23 to the effect of "Is there a problem" or "Can I help you?"
24 It was very a short question that he asked.

25 Q. And what happened next?

1 A. Mr. Toler responded a very short response. It was a
2 three or four response in an angry tone -- in an angry tone.

3 Q. All right. What happens after that?

4 A. Mr. -- I'm sorry. Investigator Godwin told him, "If
5 you'll --" I think he said, "If you'll calm down, I'll see if
6 I can help you." Or something about calming down and I'll
7 see if I can help you.

8 I can't say those are his exact words. I know he put
9 his hands up and was doing like, if you will, verbal judo.
10 It's a way of trying to defuse a situation, putting your
11 hands up, trying to get somebody to calm down. It is a
12 common physical expression, calm down.

13 Q. And you are putting your hands palms outstretched in
14 front of you at chest level or thereabouts?

15 A. Yes.

16 Q. And what was Mr. Toler response to Investigator
17 Godwin's approach?

18 A. There was a slight pause. My impression was that he
19 thought about it. I saw his body physically kind of relax,
20 his shoulders dropped down, and then they shook hands.
21 Mr. Toler and Investigator Godwin shook hands. Bill then
22 invited him into a conference room.

23 THE COURT: This might be an appropriate time to
24 stop.

25 Ladies and Gentlemen, we'll take our afternoon

1 recess. We'll reconvene tomorrow morning. You know how I
2 told you yesterday I ask Ana. She's not here. There she is.
3 Tomorrow morning what time?

4 THE CLERK: 9:15.

5 THE COURT: 9:15.

6 Please, remember the admonition the Court has
7 heretofore given to you.

8 MR. GONZALEZ: Before we leave, Your Honor --

9 THE COURT: I was going to say we have a couple of
10 things to talk about.

11 Thank you, Ladies and Gentlemen.

12 (Jury exits at 04:14 PM.)

13 THE COURT: Record will reflect we're in open court,
14 counsel are present, the jury is not.

15 Yes, Mr. Gonzalez.

16 MR. GONZALEZ: Your Honor, we just wanted to give you
17 an idea of the order of witnesses. We were going to take
18 Mr. Garza next, then if counsel could make Mr. Godwin
19 available. And our offer to submit the declaration of Warren
20 Butler remains a good offer.

21 THE COURT: I don't know anything about that.

22 MR. CASSIDY: I'm going to review Mr. Butler's
23 testimony again and see whether that is sufficient. He's
24 going to be a short witness though.

25 THE COURT: But the question is I gather you want

1 Mr. Godwin tomorrow?

2 MR. GONZALEZ: Yes. It would be Mr. Garza.

3 THE COURT: Garza first, then Mr. Godwin.

4 MR. CASSIDY: Okay. Mr. Godwin is in from Arizona,
5 but he needs to leave tomorrow. So we want to be sure --

6 THE COURT: Why don't you take Mr. Godwin first.

7 MR. GONZALEZ: What time is his flight?

8 MR. CASSIDY: I don't know. I just don't know.

9 MR. GONZALEZ: Your Honor, we'll take him first, but
10 we'd rather do it the other way.

11 THE COURT: Find out when he is leaving.

12 MR. CASSIDY: We could do the first half of
13 Mr. Garza, then finish -- It looks like we're going to get
14 into Tuesday. Hate to say it, but --

15 MR. GONZALEZ: All right. That would be agreeable.

16 MR. CASSIDY: I'm sure he doesn't have to leave until
17 the end of the day.

18 THE COURT: All right.

19 Let's go off the record for a minute.

20 (Off the record at 04:16 PM.)

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1 SACRAMENTO, CALIFORNIA

2 FRIDAY, AUGUST 14TH, 2009 - MORNING SESSION

3 ---o0o---

4 (Excerpt from trial proceedings.)

5 THE COURT: Madam Clerk.

6 (Jury seated at 09:23 AM.)

7 THE COURT: You are examining, sir?

8 MR. CASSIDY: Correct.

9 THE COURT: I see what I did. You were examining.

10 MR. CASSIDY: Thank you, Your Honor.

11 (Whereupon, Mr. Byerley resumes the witness stand.)

12 CONTINUED DIRECT EXAMINATION

13 BY MR. CASSIDY:

14 Q. Good morning, Investigator Byerley.

15 A. Good morning.

16 Q. I believe where we left off was at the point in time
17 where you were describing and had described the contact with
18 Mr. Toler at the elevator bank which is on the -- Where is
19 that located in the Government Center Building?

20 A. It is basically like in the center. That elevator
21 bank is in the center of our office. It is not quite evenly
22 divided, but it is in the center of the office.

23 Q. All right.

24 And so if one were to come out of the elevator
25 bank -- I suppose it depends on which side of the elevator

1 bank. Could you describe what's on perhaps the north side
2 and south side, if that's possible?

3 A. Absolutely. It wouldn't matter which side of the
4 elevator you got off, they both face one another, but if you
5 turn to the west it is the reception area for the District
6 Attorney's Office. If you turn to the east, it leads to a
7 hallway that's open to the public, a conference room, two
8 sets of bathrooms, and down to Veterans Services, which is
9 another office, and then the rest of our office which is
10 behind doors.

11 Q. So if you get off -- and thank you, you said north,
12 south, east, west -- if you get off the elevator bank and go
13 directly east, there is a door that you face. Is that the
14 door that leads to the area where the investigators' offices
15 are located?

16 A. Yes. It leads to the hallway that goes down to it.

17 Q. And the investigator offices are on the sides and
18 further down that hallway?

19 A. Yes, sir.

20 Q. All right.

21 And if you go west, then you face the lobby area
22 which has a little couch and chair in it, for instance, and
23 the glass window, if you will, leading to the reception -- or
24 leading to the receptionist?

25 A. The only thing I would change is that there is two

1 sets of seats that sit back to back and it is like lodge
2 seats. It is similar to but not quite like what the jury is
3 sitting in. Some of them are double.

4 Q. Where we picked up -- I think where we left off
5 yesterday is that you indicated that Mr. Godwin --
6 Investigator Godwin had approached Mr. Toler as he was
7 starting to get on the elevator or at the elevator banks, and
8 he put his hands up and made a comment.

9 How close was Investigator Godwin to Mr. Toler at
10 that time?

11 A. He would have been about a three-foot distance.

12 Q. And where were you located at that time?

13 A. I would have been about four to five feet away.

14 Q. All right.

15 And what were you doing at that point in time?

16 A. When we first walked out there, I was going out there
17 to take care of whatever the situation was.

18 Q. But what were -- What did you do?

19 Just describe what you did?

20 A. When Mr. Godwin first made contact with Mr. Toler and
21 they started talking, he asked Mr. Toler to calm down and he
22 would try and listen to him.

23 I started moving back. I started to fade. Well,
24 move towards the background.

25 Q. Did you -- How close did you get to Mr. Toler?

1 A. Gosh, at any time I don't think I was closer than
2 three feet. I don't think I was closer than that.

3 Q. Where were you?

4 A. Let me correct that. Three feet would actually be
5 closer. It would probably be four feet and beyond.

6 Q. Did you somehow attempt to surround Mr. Toler?

7 A. No.

8 Q. In fact, what did you do in relation to your
9 positioning?

10 A. What I was trying to do was trying to deescalate the
11 situation. So that's why I kind of -- after Bill made
12 contact, I was trying to move into the background.

13 Q. Now, did you, as you were present in that elevator
14 area and Investigator Godwin was making and as you approached
15 to make contact with Mr. Toler, did you have any concerns for
16 your safety?

17 A. Yes.

18 Q. And would you describe that, please?

19 A. Due to my prior contact with Mr. Toler where he
20 became angry and had walked off, I had just been advised he
21 was causing a disturbance in the front lobby, that he was
22 yelling at the staff up there, and then, you know, just from
23 almost 30 years in the business of law enforcement, when
24 you're dealing with people that are yelling and that or
25 angry, you can't tell where their actions are going to go so

1 I was concerned.

2 Q. How would you characterize Mr. Toler's behavior that
3 you observed as you exited from the doorway from the hallway
4 leading from the investigator area?

5 A. What my perception was was that he was still focused
6 on the reception area where this yelling had just taken
7 place.

8 His body seemed tense. I would describe it as his
9 shoulders being back. He was tense. His face appeared red
10 to me, and he seemed to be focused on the reception area.

11 Q. Did you have any impression in that time whether
12 Mr. Toler was acting aggressively?

13 A. At that time he was -- just by his body language and
14 that he seemed -- he wasn't aggressively moving towards
15 somebody, but he seemed to be tense, he seemed to be angry.
16 That's probably the way I would describe it.

17 Q. So at some point Investigator Godwin moves into a
18 conference room with Mr. Toler?

19 A. That's correct.

20 Q. Now, is the doorway to that conference room -- If
21 you're facing east where the doorway is to the hallway
22 leading to the investigators' offices, is that just to the
23 left of the doorway that leads into the hallway?

24 A. If you came out of the hallway where our offices are
25 located, it would be to the right. So it would actually be

1 on the north side of that door. It will just be confusing if
2 I say left and right, so it would be the north of that
3 doorway.

4 Q. Okay. But it's almost immediately adjacent to that
5 doorway?

6 A. Yes.

7 Q. Okay. Now, what did you do while Investigator Godwin
8 was meeting with Mr. Toler?

9 A. I was still trying to deescalate the situation so I
10 walked back to that -- or back through that doorway that
11 leads to our offices, and then I came back around.

12 We've got some victim/witness rooms that have two-way
13 doors that go from an inside hallway out to the hallway. I
14 buttonhooked around one of those and came back out into the
15 hallway.

16 Bill had left the door open to the conference room,
17 and I was listening to what was going on.

18 Q. When you say the term "deescalate," I don't think I
19 asked you, but what do you mean by that?

20 A. Well, it's been my experience, when you're dealing
21 with somebody that is upset, pumped up, you're trying to use
22 the least amount of people you can so you're not throwing
23 fuel onto that fire.

24 You're trying -- you're trying to deescalate it.
25 You're not trying to add fuel to it.

1 Q. And I believe you indicated that there was another
2 investigator in the area, Cardwell?

3 A. Kurtis Cardwell eventually arrived, yes.

4 Q. What was his role in this series of events taking
5 place in or about the elevator bank and in the conference
6 room?

7 A. He was also to provide cover for Investigator Godwin.
8 Once Kurtis got there, I left the area. I went back towards
9 my cubical.

10 Q. What do you mean by "cover?"

11 A. If the situation escalated back up, if something else
12 happened, Kurtis was there to provide the safety of
13 Mr. Godwin and any other citizens or any other staff that
14 happened to be in the area.

15 Q. Well, you were in that area outside the conference
16 room. Did you ever step in or glance into the conference
17 room and ask Investigator Godwin whether everything was okay?

18 A. I walked by the conference room, but I didn't step
19 inside or ask anybody anything.

20 Q. Did you observe anyone else ask Investigator Godwin
21 if everything was okay?

22 A. No.

23 Q. Did you ever observe Investigator Cardwell ask
24 Investigator Godwin if everything was okay?

25 A. I would have to say no.

1 Q. At some point did Investigator Cardwell advise you he
2 had checked on Investigator Godwin?

3 A. Yes.

4 Q. What did he tell you?

5 A. It was after several minutes. He told me everything
6 was okay. What I believe he said was Code Four, which is a
7 police code for no further assistance needed.

8 Q. All right.

9 Now, at some point this meeting between Investigator
10 Godwin and Mr. Toler concluded?

11 A. Yes.

12 Q. And what happens next?

13 A. Bill came back to my cubical. He told me the
14 concerns that Mr. Toler had. He told me that he had given
15 Mr. Toler his business card and told Mr. Toler he would look
16 into the matter further. I told Bill that was okay, to go
17 ahead and do it.

18 Q. At that point did you consider that you had
19 essentially assigned this investigation to
20 Investigator Godwin?

21 A. Yes.

22 Q. Do you recall any of the specifics that
23 Investigator Godwin told you about what Mr. Toler had
24 imparted to him?

25 A. I just know it was basically what he had told me on

1 the first meeting, that his kids had been threatened, that it
2 was Mr. Oawster that had done it, that Oawster was a
3 lieutenant or captain at CDC and that he was going to check
4 into it further.

5 Q. Was there -- In connection with the assignment of
6 this assignment to Investigator Godwin, was there any game
7 plan about how he would approach this investigation?

8 A. I made no game plan with him.

9 Q. Okay. What did you do next?

10 A. At that time I started reading the report that had
11 been prepared by Fairfield Police Department.

12 Q. And continue. What did you do next?

13 A. After I had finished reading the report by Fairfield
14 Police Department, I walked down to John Daugherty, our
15 Charging Deputy District Attorney, and asked him if he would
16 review it and give his opinion.

17 Q. In advance of asking Mr. Daugherty for his opinion,
18 did you give him your opinions or conclusions regarding
19 whether criminal charges -- whether there was sufficient
20 evidence for criminal charges to be filed against Mr. Oawster
21 in relation to the complaints made or submitted to the
22 Fairfield Police Department by Mr. Toler?

23 A. No.

24 Q. And did Mr. Daugherty -- Deputy District Attorney
25 Daugherty review the Fairfield police report?

1 A. Yes.

2 Q. And what did he tell you in response to that?

3 A. He didn't feel there was sufficient evidence that had
4 been documented for us to charge criminally.

5 Q. Was that the end of the matter? Was that a closed
6 case as far as the DA's Office was concerned?

7 A. No.

8 Q. What happens next?

9 A. Well, I had assigned Bill to see if he could work on
10 it to build the case up.

11 One of the things that had not happened was the
12 Fairfield Police Department never contacted Mr. Oawster to
13 get a statement from him. They had made about a week's worth
14 of phone calls and never got a call back. So all they did is
15 they closed the report and forwarded it -- or asked it be
16 forwarded to our office.

17 Q. All right.

18 I'm going to ask you to take a look at Defendant's
19 Exhibit A?

20 A. Okay.

21 Q. All right.

22 During the course of reviewing the Fairfield police
23 report, did you receive any other information about possible
24 follow-up investigation?

25 A. Yes.

1 Q. And what was that?

2 A. In the report that had been written by the Fairfield
3 Police Department, the Fairfield Officer Strictland wrote
4 that he went out and contacted Tom Toler on this complaint.

5 Tom Toler gave him a history about his child abuse
6 investigations with Mr. Oawster and what his case had proven.
7 And then he said that he had given the District Attorney's
8 Office a "thick portfolio" was the term he used of
9 Mr. Oawster's activity.

10 He then went and told Officer Strictland what had
11 happened to him with the phone call, how he received the
12 phone call.

13 Q. In relation to the information you read in the
14 Fairfield Police Department report that Mr. Toler had given
15 the District Attorney's Office a portfolio regarding
16 information pertaining to Mr. Oawster, did you take any
17 action in response to that?

18 A. Yes, I did.

19 Q. What did you do?

20 A. I sent out an office-wide e-mail asking people --
21 asking if anyone had received this thick portfolio of
22 information.

23 Q. All right.

24 And is that -- In the bottom of Defendant's Exhibit
25 A, is that the e-mail that you circulated to the office

1 looking to see if this portfolio had, in fact, been delivered
2 by Mr. Toler?

3 A. Yes, sir.

4 Q. All right.

5 And did you ever receive a response from anyone
6 indicating that Mr. Toler had provided that portfolio to
7 them?

8 A. No one responded to me that they had a portfolio.

9 Q. Now, there was a response to the e-mail you received
10 from Chief Investigator Garza?

11 A. Yes.

12 Q. What was his inquiry?

13 A. He asked if this case had -- was pending prosecution
14 and if we even had the case.

15 Q. What did you understand him to mean by that?

16 A. Well, he asked if the case had -- What I understood
17 him to mean was he was asking questions about what's going
18 on, why are you sending this out, do we have a case pending
19 on this, is there a deputy DA that's been assigned to this
20 case to work on this case.

21 Q. By "case pending" did you mean a criminal
22 complaint has already -- did you understand him to mean a
23 criminal complaint had already been filed?

24 A. Correct.

25 Q. And did you respond to Chief Investigator Garza's

1 inquiry in that regard?

2 A. Yes.

3 Q. All right.

4 What did you advise him?

5 A. I told him that there was no case pending, and then
6 reminded him that this was the guy that he asked me to go
7 talk to about two weeks ago that told me "Don't make me
8 protect my kids."

9 Q. And that series -- that two additional e-mail series
10 is what's set forth in Defendant's Exhibit A?

11 A. Okay. There was one other thing that I had advised
12 Chief Garza and that was that Bill Godwin had told me Toler
13 had made a threat to him about Mr. Oawster.

14 Q. So was that something that Investigator Godwin had
15 reported to you after he met with Mr. Toler?

16 A. Yes.

17 Q. And what was that additional information that
18 Mr. Toler had stated to Investigator Godwin during the course
19 of that conference that Investigator Godwin reported to you?

20 A. Bill told me that Mr. Toler said he would kill the
21 guy if he hurt his kids.

22 Q. And did you report that information to anybody?

23 A. When I -- Yes. When I talked with the Fairfield
24 Police Department, I told them -- I take that back. No.

25 Q. Did you report it to Chief Investigator Garza?

1 A. Yes, I did.

2 Q. And that was also contained in this e-mail response
3 that you referred to earlier? That's one of the three
4 e-mails in Defendant's Exhibit A?

5 A. Yes, sir.

6 Q. Now, on -- I'm going to draw your attention now to --
7 Withdrawn.

8 Between April 7th and April 12th, the time that the
9 ad was placed in the paper by Mr. Toler, did you have any
10 discussions with Investigator Godwin about the progress of
11 the investigation?

12 A. I don't recall.

13 I take that back. Yes, I do recall.

14 What Bill had told me was that he had made a
15 telephone call to the Internal Affairs investigator at the
16 California Department of Corrections to try and get in
17 contact with him. But other than that, I don't recall
18 anything.

19 Q. There was reference to Investigator Godwin being a
20 prison liaison investigator. What is that position?

21 A. Basically, what it is in Solano County we have two
22 prisons located in our county. We have agreed to place two
23 investigators to work directly with the prison so when
24 there's crimes that occur at the prison or with prison staff
25 we have one of our investigators that can be a liaison

1 between questions their department might have or
2 investigative assistance or reports going back and forth in
3 our office and the attorneys that are assigned to work prison
4 cases.

5 Q. What was your understanding in relation to this call
6 that Investigator Godwin was going to make to the Department
7 of Corrections? What was the relationship to Oawster?

8 A. Well, because Mr. Oawster was, as I recall, a
9 lieutenant or captain that worked for the Department of
10 Corrections, Mr. Toler told us that he had already reported
11 this to one of the Internal Affairs investigators at the
12 prison. We're just starting to confirm this information that
13 they were aware of this and that this contact had taken
14 place.

15 Q. And so that was just kind of the beginning, if you
16 will, of Investigator Godwin's investigation and follow-up
17 into the information Mr. Toler provided?

18 A. Yes.

19 Q. Now, I'm going to draw your attention to April 12th,
20 and that was the day that the ad was published by Mr. Toler
21 in one of the papers or more locally regarding his contacts
22 with the District Attorney's Office.

23 Did you review that ad in or about April 12th?

24 A. Yes.

25 Q. And did you -- In reviewing that ad, what were your

1 impressions?

2 A. Well, it caused me some concern because of the
3 language that was used and how the incident was portrayed.

4 Q. Specifically, you understood that there was some
5 description about his meeting -- Mr. Toler's meeting with
6 representatives of the District Attorney's Office up to that
7 time?

8 A. Yes.

9 Q. And were those representations that Mr. Toler made in
10 this ad accurate?

11 A. They were not accurate.

12 Q. Did that somehow cause you to get mad or upset with
13 him?

14 A. No.

15 Q. Was there anything else about that ad that caused you
16 any concern?

17 A. Yes. It was the implied threat again.

18 Q. And what was the nature of the information in the ad
19 that reflected the implied threat you referred to?

20 A. Mr. Toler in the ad stated that he had made it quite
21 clear to the District Attorney staff that he would take care
22 of this problem. That if the District Attorney's Office
23 didn't act on it, he would take care of it.

24 He also said that he shouldn't -- he shouldn't have
25 to take this into his own hands, kind of words to that

1 effect.

2 Q. All right.

3 And why did that cause you concern?

4 A. Well, there were two things that caused me concern on
5 it. One of them was that he said that four District Attorney
6 Investigators had come out and contacted him. That was
7 absolutely not accurate. So I had some concerns if his
8 perception -- How can I put this?

9 I had concerns whether he was accurately seeing what
10 other people would see, that he had been surrounded by four
11 investigators.

12 And then the restating of this threat, that he would
13 take the law into his own hands -- that he made it clear to
14 our staff he would take the law into his own hands if we
15 wouldn't act.

16 Q. You referenced in this ad that one of the comments
17 that Mr. Toler referenced was that on the visit he made on
18 April 7th that he was surrounded by four investigators.

19 Was that accurate?

20 A. I don't know if he used the word "surrounded," but
21 what he basically said was he made it clear to the supervisor
22 that was behind the glass that he would take care of this
23 matter if the DA's Office wouldn't. And suddenly -- I think
24 it said, "Suddenly there were four investigators there around
25 him." But I don't recall the term "surrounded." Might have.

1 Q. At the point in time when you were at the elevator
2 bank, and you came out to find out what was going on and
3 Investigator Godwin contacted Mr. Toler, did you try to
4 effect something that would surround Mr. Toler?

5 A. No.

6 Q. After your review of this ad, did you make any
7 determinations of how to further proceed in relation to the
8 investigation that you had assigned to Investigator Godwin?

9 A. No.

10 Q. Did this play any -- The fact the ad came out, have
11 the information that you just described that caused you
12 concern, play any role in requesting that written reports be
13 prepared in this matter?

14 A. Yes.

15 Q. And why is that?

16 A. Because in meetings that took place between
17 Mr. Godwin and Mr. Toler, and in meetings that took place
18 after that, Mr. Toler was giving Bill information that I
19 thought needed to be documented.

20 Q. Okay. I'm going to draw your attention to
21 Defendant's Exhibit B?

22 THE COURT: I'm sorry. Don?

23 MR. CASSIDY: B as in boy. Sorry.

24 THE COURT: Thank you.

25 ///

1 BY MR. CASSIDY:

2 Q. If you would, briefly take a look at that. I think
3 you're familiar with it?

4 A. Yes.

5 Q. And what is that?

6 A. This is the report that I generated.

7 Q. And are you referencing the report you generated in
8 or about April 12th after having read this ad?

9 A. Yes.

10 Q. All right. And your reason was?

11 THE COURT: No, sir. This is critical stuff. You
12 can't lead on this.

13 MR. CASSIDY: I was going to say "was what". I
14 wasn't going to go there.

15 THE COURT: All right. I'm sorry.

16 BY MR. CASSIDY:

17 Q. Let me do it the other way.

18 What was your reason for preparing this report?

19 A. Because of Mr. Toler's actions when he first came
20 into the office and had met with me and making the statement
21 "Don't make me protect my kids," that had caused me concern
22 enough that I contacted Fairfield and told them.

23 Then the incident that happened with -- where he came
24 into the office and was yelling, had scared the staff, that
25 Bill Godwin asked him to calm down, and then Bill at the end

1 of that meeting, I thought things had gone along well, I
2 thought they had parted -- I'm pretty sure Bill said they had
3 parted as friends, I thought we were taking care of his
4 concerns, the advertisement came out and it's like, you know,
5 we need to start documenting what we're doing, what we have
6 done and how -- what steps we've taken to try to help him and
7 what he's done while he's been in the office.

8 Q. I'm going to draw your attention -- Do you have the
9 plaintiff's exhibit binder there?

10 A. Yes, sir.

11 Q. Before you go there, one last question.

12 A. It's the defendant's binder.

13 Q. One last question on Exhibit B, as in boy, that we
14 were looking at.

15 Does that report accurately reflect the events as you
16 recall them fresh in your mind as of April 12th, 2005,
17 regarding the contacts you had with Mr. Toler?

18 A. Yes.

19 Q. Now, I'm going to --

20 MR. CASSIDY: May I approach, Your Honor?

21 (Counsel locates exhibit for witness.)

22 BY MR. CASSIDY:

23 Q. Would you please refer to Plaintiff's Exhibit 6.

24 A. Okay.

25 Q. All right.

1 And generally would you describe what that is,
2 please?

3 A. It's the same report that we've just looked at. It
4 was the report written by me.

5 Q. This is the copy the plaintiff's gave me of these
6 exhibits. Let's see if I can --

7 THE COURT: If you have a copy of the Court's
8 exhibits, that will be accurate.

9 MR. CASSIDY: I'll move on. I'll do it the easy way.
10 BY MR. CASSIDY:

11 Q. In or about April 12th, did you direct Investigator
12 Godwin to prepare a report regarding the status of the matter
13 that he had been involved in with Mr. Toler?

14 A. Yes.

15 Q. And did he prepare a report that day?

16 A. I don't know if he prepared it that day, but I'm
17 pretty sure he did. I think the one exhibit you are talking
18 about is labeled 7 in here.

19 Is that the report by Bill Godwin?

20 Q. Maybe it is out of order.

21 MR. GONZALEZ: Counsel, you identified Plaintiff's 6.
22 It is Plaintiff's 7.

23 MR. CASSIDY: Thank you. I was looking at the
24 exhibit list. Thank you.

25 MR. GONZALEZ: We accept your apology.

1 BY MR. CASSIDY:

2 Q. Okay. Back to it.

3 Plaintiff's Exhibit 7, is that the report that you
4 directed that Investigator Godwin prepare in connection with
5 his contacts with Mr. Toler as of that time?

6 A. Yes.

7 Q. Now, I want to clarify, if possible, one of the areas
8 of inquiry you were asked yesterday.

9 At any time between the time Mr. Toler was at the
10 District Attorney's Office on April 7th and you saw him in or
11 about this elevator bank and meeting with Investigator
12 Godwin, and June 13th, at the time that Mr. Toler makes the
13 threat in the presence of Chief Investigator Garza, did you
14 have -- do you recall having any conversations or speaking
15 with District Attorney Paulson about Mr. Toler?

16 A. I don't recall any -- or I don't recall.

17 Q. As Investigator Godwin proceeds with his
18 investigation, do you receive any information from him
19 regarding the progress of that investigation?

20 A. Yes.

21 Q. And generally, how would that occur?

22 A. As our paths would cross Bill would fill me in on
23 what he had done so far, what steps he had taken so far.

24 Q. All right.

25 And do you have any clear recollection of the

1 progress of those events or do you just generally recall the
2 bits of information he provided you?

3 A. Just the various bits.

4 Q. And can you tell us, please, what it was - and maybe
5 work through a little bit at a time - what information
6 Investigator Godwin imparted to you about the progress of his
7 investigation on behalf of Mr. Toler regarding the report he
8 made to the Fairfield Police Department and the further
9 investigation conducted by your office?

10 A. As far as that part of it went, the investigation he
11 was doing, Bill told me that he had made several telephone
12 calls to the Internal Affairs Division of the California
13 Department of Corrections.

14 I believe he told me he had finally gotten in touch
15 with the Internal Affairs investigator and they did, in fact,
16 have an investigation going.

17 Bill told me that he was going to take one of our
18 other investigators down to Galt, California, where
19 Mr. Oawster lived and contact Mr. Oawster.

20 Bill told me that Mr. Toler had provided him with a
21 copy of a phone bill that he was going to use when he went
22 down and confronted Mr. Oawster about this telephone call
23 that Oawster made to Mr. Toler.

24 Bill told me that they did go down. And I think they
25 had to go on more than one occasion. I'm pretty sure they

1 had to go on more than one occasion.

2 Anyway, they did go down there. He did contact
3 Mr. Oawster. Mr. Oawster denied making the phone call. Bill
4 confronted him with the phone bill. Told him that, you know,
5 they know at least a phone call was -- a phone call had been
6 made and that Oawster should stay away from Mr. Toler and
7 stay away from his children. Okay.

8 Q. In relation to Investigator Godwin's contact with the
9 Department of Corrections, do you recall any specific
10 information that he imparted to you that he had learned?

11 A. I'm pretty sure what he told me was that Oawster was
12 off on some kind of disability. But I -- I was more
13 concerned that -- I won't say I was concerned.

14 My focus was on that it had been reported to the
15 Internal Affairs Division, that they know there was some kind
16 of child abuse investigation that had gone on or ask if they
17 knew there was. And Bill said that was being looked into.

18 Q. Have you related to us all of the information
19 Investigator Godwin advised you or reported back to you in
20 the progress of the investigation regarding his contact with
21 Mr. Oawster?

22 A. All I can recall.

23 Q. And you indicated that Investigator Godwin advised
24 you that Mr. Toler had provided him with a phone bill.

25 What was your understanding of the nature of that

1 phone bill as imparted to you by Investigator Godwin?

2 A. I don't know if -- I know it was a phone record of
3 some type. I don't know if it was a phone bill or what.

4 It was my impression that Toler had somehow gotten
5 Oawster's phone bill, and they were going to confront Oawster
6 with his own phone bill.

7 Q. Did that have any significance to you at the time you
8 learned that information?

9 A. Yes.

10 Q. And what is that?

11 A. Well, it would be -- I don't even know how you would
12 go about accomplishing that unless you were a police officer,
13 and then a search warrant to get a copy of somebody's phone
14 records. I don't know how he accomplished that.

15 It also -- it added to the information that I was
16 starting to gather that this is somebody that is very skilled
17 in obtaining information on other people.

18 Q. Did Investigator Godwin provide you with any
19 information about what Mr. Toler was telling him about you
20 and Chief Investigator Garza?

21 A. Yes.

22 Q. And what did he tell you in that regard that
23 Mr. Toler had advised Investigator Godwin?

24 A. After, I believe, it was the first meeting, which
25 would have been in April, Bill told me -- he came back and he

1 kind of chuckled and said, "Toler, does not like you."

2 There were -- Every time Bill would go out and meet
3 with Mr. Toler, Bill would come back with more information
4 about how Toler felt towards myself and Chief Garza.

5 Q. All right.

6 What did Investigator Godwin tell you that Mr. Toler
7 had told him about you and Chief Investigator Garza?

8 A. What I can recall is he specifically said that I was
9 an ass-kissing moron, that I couldn't -- something like I was
10 worthless as an investigator and should be a Good Humor ice
11 cream salesman.

12 Gosh. I know there was derogatory comments about
13 Chief Investigator Garza, about his investigative abilities
14 or something like that. It was not flattering stuff.

15 Q. As far as you were concerned, in the context of the
16 communications and contacts you had had with Mr. Toler, did
17 that seem to be -- what was your impression of his responses
18 toward you?

19 A. Well, I treat everybody respectfully. It was
20 somewhat surprising that we were trying to help him on this
21 case, and he still was angry, was getting angry, focusing his
22 anger on both Chief Garza and myself.

23 I had only talked to him one time so it was
24 surprising that he was -- he had this much venom against
25 me.

1 Q. Did Investigator Godwin ever tell you that Mr. Toler
2 had said that he hated you?

3 A. I don't recall those -- I don't recall.

4 Q. During the course of the investigation and in the
5 progress of the investigation conducted by Investigator
6 Godwin, did he report any information to you -- and I'm
7 talking about before. I want to put a timeline on this. Is
8 the information you've already related information that
9 Investigator Godwin reported to you prior to June 13, 2005?

10 A. Yes.

11 Q. And in that same time period, during the progress of
12 Investigator Godwin's investigation, did he provide you with
13 any information about contacts he had with the Napa Police
14 Department?

15 A. Yes.

16 Q. What was the nature of the information that he
17 reported to you in that regard?

18 A. Bill told me he had learned that a son or a stepson
19 from Mr. Toler had also reported that Mr. Oawster had made a
20 threat to him in Napa, California.

21 Bill went over and got a copy of the Napa Police
22 Department investigation. Found out that a Napa police
23 officer had taken a report. They investigated it. They sent
24 it to the Napa County District Attorney's Office.

25 The Napa County District Attorney's Office said there

1 was not sufficient evidence there to charge the case, and
2 they closed it.

3 Bill then contacted the -- this is where I'm
4 confused -- it is either the son or stepson of Mr. Toler.
5 And I believe his name is John Confer, but I might have the
6 name wrong, but stated that Mr. Toler put pressure on him to
7 file this police report.

8 Q. During the course of the progress of the
9 investigation being conducted by Investigator Godwin into
10 this report Mr. Toler made to the Fairfield Police
11 Department, did Investigator Godwin tell you anything about
12 comments Mr. Toler had made about District Attorney Paulson?

13 A. I don't recall.

14 I take that back. I'm sorry. Could you repeat your
15 question?

16 Q. Sure. Did Investigator Godwin tell you Mr. Toler had
17 made any comments about District Attorney Paulson during the
18 course of his communications with Mr. Toler?

19 A. Yes, he did.

20 Q. What was that?

21 A. Mr. Toler had expressed wanting to come down and meet
22 with Dave Paulson.

23 Q. And did you provide any response back through
24 Investigator Godwin?

25 A. I believe what Bill -- I'm not sure what Bill told

1 him to do. I didn't tell him anything to do.

2 Q. Did Investigator Godwin provide you with any other
3 information in that regard?

4 A. I think -- No. I don't recall.

5 Q. At some point during the progress of the
6 investigation did Investigator Godwin report to you about
7 presenting the information he had received to Deputy District
8 Attorney -- or to Charging Attorney John Daugherty?

9 A. Yes, he did.

10 Q. What did he tell you in that regard?

11 A. What he had done was he had taken the Fairfield
12 Police Department report back to Mr. Daugherty, had discussed
13 what his investigation had revealed, that Oawster denied --
14 first denied making a phone call, but then denied making a
15 threat.

16 And Daugherty reviewed it and said there is still not
17 enough here that we can charge criminally, we can't win a
18 conviction on it.

19 Q. And did you have any understanding whether that
20 information would be imparted to Mr. Toler?

21 A. Yes.

22 Q. And what was that?

23 A. Bill told me he did tell Mr. Toler that the case had
24 been reviewed and that it is one that couldn't be charged.

25 Mr. Toler told him he understood and thanked him for

1 his help.

2 Q. In the context of the time frame, do you recall did
3 that occur prior to June 13th, 2005?

4 A. Yes.

5 Q. I'm going to draw your attention now to June 13th,
6 2005. At some point did you become aware that Chief
7 Investigator Garza had had contact with Mr. Toler?

8 A. Yes.

9 Q. When was that?

10 A. I had been -- I was in a meeting with some people. I
11 don't know who it was. We had the conference room door open.
12 Chief Garza started to walk past me. He told me Tom Toler is
13 in the front lobby.

14 I asked him: Do you want me to go up and speak to
15 him? He said: No. No. He's being calm. I'll go up and
16 talk to him.

17 Chief Garza left. He was up there for a while. He
18 then came back and said: Tom Toler made a threat.

19 Q. What happens next?

20 A. I was kind of surprised. Asked him basically what he
21 had said, and he gave me a brief synopsis of what the
22 conversation was.

23 Q. And what did Chief Investigator Garza tell you at
24 that point?

25 A. What Al had done -- I'm sorry -- Chief Garza had done

1 was gone out and asked him what he could do to help him.
2 Mr. Toler had told him that he wanted to make an appointment
3 to see Dave Paulson.

4 Mr. Garza said: Okay. Give me a phone number --
5 write down your name and give me a phone number so we can
6 give you a call back.

7 Tom Toler started to write it down. Chief Garza
8 asked him: Can I tell the District Attorney what this is
9 regarding?

10 Tom Toler wadded up the piece of paper and told him:
11 You just don't get it. And then he said words to the effect
12 of every time I come in here you send Brook Byerley up here.
13 He pats me down like I'm carrying an Uzi, which maybe I
14 should do.

15 Mr. Garza then said: Why are you making a threat?
16 I'm trying to get an appointment with you. There was some
17 other profanities used too. I'm sorry. I don't recall the
18 exact profanities.

19 Chief Garza asked him why he was using the
20 profanities, said that I'm trying to set up this appointment
21 between you and Garza (sic).

22 I do recall that Mr. Toler told him that he could
23 blow him and maybe I'll take out another ad in the paper.
24 And I believe what Mr. Garza told me his response was you can
25 do what you think is right. And Mr. Toler walked off.

1 Q. What happens next?

2 A. Well, with the information that Bill would trickle in
3 and other information that we had obtained about Mr. Toler's
4 actions, and now him making a comment about bringing an Uzi
5 into the office, I was very concerned.

6 Q. What did you do in relation to that?

7 A. We went down and talked with Mr. -- First I told
8 Chief -- I didn't tell him because Chief Garza told me.

9 We had a brief discussion about this, that we needed
10 to bring Dave into the loop -- Mr. Paulson. I believe we
11 walked down to Mr. Paulson's office and told him this has
12 really escalated.

13 Q. All right.

14 And so the three of you met with District Attorney
15 Paulson a relatively short time after Chief Investigator
16 Garza told you about the threat?

17 A. The three of us met, yes.

18 Q. Could you describe what it was that you advised
19 District Attorney Paulson in this meeting that you had?

20 A. I told him the concerns that I had with Tom Toler,
21 the information that I had or knew about that I considered
22 when I was telling him this is getting more serious, this
23 could be a real threat, this needs to be looked into.

24 Q. Now, did you impart to him the information that
25 Investigator Godwin had told you about during the course of

1 his investigation?

2 A. Yes.

3 Q. And so rather than repeat that did you cover those
4 items that you've related here today that Investigator Godwin
5 told you about his investigation?

6 A. Well, there was more items also that I haven't told
7 you about. I'm sorry.

8 Q. So would it be fair to say you did tell District
9 Attorney Paulson about the items that Investigator Godwin had
10 told you about during the progress of the investigation?

11 A. Yes.

12 Q. Then there was some additional items that you
13 discussed with District Attorney Paulson?

14 A. Yes.

15 Q. Okay. And would you please describe the additional
16 information that you provided to District Attorney Paulson in
17 this meeting after Chief Investigator Garza has heard the
18 threat from Mr. Toler?

19 A. What I told Mr. Paulson is that Bill Godwin had
20 reported to us that in his meetings with Mr. Toler, Mr. Toler
21 had told him that part of the restraining order that had been
22 filed against Mr. Oawster he was supposed to surrender all
23 his firearms.

24 Mr. Oawster had not surrendered his firearms, and
25 that Mr. Toler went out to his property, climbed inside a

1 barn and found where these guns were hidden inside the barn.

2 Mr. Godwin had told us that he had done surveillance
3 on Mr. Oawster and in one of these surveillances he had
4 followed Mr. Oawster up to the Sacramento Airport, had
5 followed him all the way up to some part of the airport where
6 he was able to see him physically board a plane.

7 He told -- Mr. Toler had told Bill Godwin that he was
8 accompanying Miss Oawster to court in Sacramento for family
9 law hearings and that the judge had barred him from a -- had
10 barred Mr. Toler from attending these family law hearings.

11 I thought it was some kind of disturbance and he had
12 been barred from attending any court hearings in Sacramento.

13 MR. GONZALEZ: I'm sorry, Your Honor. I'm going to
14 object. Just so the record is clear, this is what Toler
15 allegedly said to Godwin or is Godwin saying he learned this
16 from some other source?

17 THE COURT: I'm sorry, sir. I don't know what -- Are
18 you asking me to ask Mr. Cassidy to clarify the source of
19 this information?

20 MR. GONZALEZ: I would make a foundational objection,
21 but I think the witness isn't being clear as to that one,
22 where it is coming from.

23 THE COURT: All right.

24 MR. GONZALEZ: If he says it is coming from Toler,
25 fine.

1 MR. CASSIDY: He said Investigator Godwin told him he
2 learned this information from Mr. Toler.

3 BY MR. CASSIDY:

4 Q. Is that correct?

5 A. Bill had told us this is where he got the information
6 from.

7 Q. From Mr. Toler?

8 A. Yeah.

9 Q. All right. What else?

10 A. Mr. Toler had told Bill Godwin that his relationship
11 with Mrs. Oawster had become personal. And I -- I think
12 that's all I can recall at this time.

13 Q. And was there some -- At some point did you -- What
14 was District Attorney Paulson's response?

15 A. We made a phone call to County Counsel.

16 Q. At some point -- Well, what happens next?

17 A. We told Mr. Paulson that it appeared that Tom Toler
18 was focusing on his -- he was focusing on Al Garza and
19 myself, but also on the office.

20 He was -- had come into the office and scared the
21 office staff so we advised him of that, that he had made
22 these implied threats and would take the law into his own
23 hands, was focusing on that.

24 Q. At this point in time that you're relating this
25 information to District Attorney Paulson, were you concerned

1 for your safety?

2 A. Yes.

3 Q. And did you have concerns for anyone else's safety?

4 A. Yes.

5 Q. Who?

6 A. The entire staff. Mr. Toler had come up and yelled
7 and scared the staff that worked in the front reception area.

8 I was concerned that he was focusing on the office of
9 the District Attorney and that he had expressed a total
10 dislike is, I think, the way Bill told me of both Al Garza
11 and myself.

12 Q. What happens next in the context of this meeting?

13 A. What we had originally tried -- While this
14 conversation is going on we had talked about, you know, what
15 we could do to protect the office.

16 Q. So just generally, instead of the specifics of actual
17 security, generally what's discussed?

18 A. One of the things that was discussed with County
19 Counsel was getting a restraining order barring Mr. Toler
20 from coming up onto the fourth floor to the District
21 Attorney's Office.

22 Q. Did you discuss any security measures that you would
23 adopt even before a restraining order may be sought?

24 A. Well, there were steps we wanted Mr. Paulson to take.
25 There were steps that as a peace officer I was going to start

1 taking myself also. But it was stuff we were telling
2 Mr. Paulson he needs to start thinking about and doing.

3 Q. And that was for his safety?

4 A. Correct.

5 Q. At some point did you determine to conduct some
6 additional investigation regarding Mr. Toler?

7 A. Yes.

8 Q. And when was that?

9 A. It would have been June 13th, after that threat had
10 come out.

11 Q. Okay. So it was during the context of this meeting
12 or shortly after the meeting?

13 A. There was still more stuff we needed to do so it
14 would have been after the meeting.

15 Q. And what was -- can you describe the nature, please,
16 of the additional investigation that was conducted in
17 relation to Mr. Toler?

18 A. During the whole process I know -- I know we had
19 learned of an additional police report that had come from the
20 Fairfield Police Department concerning Mr. Toler.

21 In that case -- And I believe it had been submitted
22 to our office a couple of months prior and had been referred
23 to another agency.

24 Fairfield Police Department had been contacted by an
25 attorney in Sacramento who was making a complaint of identity

1 theft, and Mr. Toler and an unknown female were the people
2 that she felt were responsible.

3 Q. Was there any other additional information you
4 received through the course of additional investigation after
5 you met with Mr. Paulson and Chief Investigator Garza?

6 A. Yes.

7 Q. And what additional information did you obtain?

8 A. At some point we had run to see if he has access to
9 guns or guns registered to him, and we obtained a list of
10 firearms that had been registered to him.

11 Q. And what was the significance of the fact that you
12 ran and discovered that he was registered with firearms?

13 A. It shows he has the tools to carry out a threat.

14 Q. Any additional information you obtained during the
15 course of this additional investigation?

16 A. Well, I became aware of stuff, but I didn't
17 personally do it.

18 Q. All right.

19 So were those items that you actually had conducted
20 yourself that you just identified?

21 A. The gun registration being done, I don't know if I
22 did it or somebody else did it. I know it had been done.

23 The Fairfield police report, I don't recall if I had
24 done it or if somebody else did it. It was brought to my
25 attention, "Here, we have this old report that had been

1 referred to another District Attorney's Office."

2 Q. What additional information -- Well, at some point a
3 decision was made to obtain a temporary restraining order?

4 A. Yes.

5 Q. And you understood that your name would be included
6 as one of the persons on whose behalf that order would be
7 sought?

8 A. Correct.

9 Q. And the -- Was there any -- Let me ask it this way.
10 I withdraw.

11 Was there any additional information, other than what
12 you've already stated, that went into your decision-making
13 process as to whether you believed the restraining order
14 would be appropriate?

15 A. Yes.

16 Q. And what was that?

17 A. I knew from my personal contact with Mr. Toler, he
18 told me he was a former peace officer. I knew that he had a
19 private investigative agency. I knew he was a bounty hunter.
20 I knew he had come into the office and scared our staff.

21 I knew that a restraining order had been taken out in
22 another county against him. I knew he had guns registered to
23 him. I knew that another -- well, an attorney had filed a
24 report on Mr. Toler getting phone records by assuming her
25 character.

1 Q. Okay. Did all of the information that you received
2 through Investigator Godwin during the progress of his
3 investigation, as well as the additional investigation that
4 your office conducted in relation to Mr. Toler after the
5 threat was made by Mr. Toler, as well as the threat that
6 Mr. Toler made to Mr. Garza, play a role in your
7 decision-making process to obtain the TRO?

8 A. Yes.

9 Q. Based on all of that information, did you believe
10 that --

11 THE COURT: Sir, you are leading about matters that
12 are the very issues in issue.

13 MR. CASSIDY: I was going to ask a question to ask
14 him if he believed there was a credible threat of --

15 THE COURT: Go ahead. If you want to ask it that
16 way, it is limited enough. It is still leading.

17 Go ahead. You may ask.

18 BY MR. CASSIDY:

19 Q. Did you believe that Mr. Toler posed a credible
20 threat of violence towards you?

21 A. Yes.

22 Q. I think we covered that, but what was that based on?

23 A. Based on the fact that he was a former police
24 officer --

25 THE COURT: You're not going to go through it all.

1 All the stuff you just described?

2 THE WITNESS: Yes, sir.

3 MR. CASSIDY: Fair enough. I didn't want to lead.

4 BY MR. CASSIDY:

5 Q. In connection with the decision-making process to
6 obtain the temporary restraining order, did you request that
7 that restraining order be obtained in any manner to retaliate
8 against Mr. Toler for his having placed the ad in the paper
9 about the District Attorney's Office?

10 A. No.

11 Q. At any time did you and Chief Investigator Garza and
12 District Attorney Paulson conspire or come to some kind of
13 agreement that you wanted to act out against Mr. Toler and
14 obtain this restraining order to retaliate against him for
15 having taken that ad out?

16 A. Absolutely not.

17 MR. CASSIDY: That's all I have. Thank you.

18 THE COURT: Why don't we take our morning recess,
19 then you can start Mr. Gonzalez.

20 MR. GONZALEZ: Okay.

21 THE COURT: Fifteen minutes, Ladies and Gentlemen.

22 Please, remember the admonition the Court has
23 heretofore given to you.

24 (Off the record at 10:22 AM.)

25 (On the record at 10:41 AM.)

1 THE CLERK: Please, remain seated.

2 Court is now in session.

3 THE COURT: Record will reflect we're in open court,
4 counsel are present, the jury is not.

5 Yes, sir.

6 MR. GONZALEZ: Your Honor, during the examination of
7 Mr. Byerley counsel elicited evidence about an identity theft
8 complaint against Mr. Toler. This was not referenced in any
9 memo, in any document, in anything related to a reason for
10 the TRO.

11 We made a previous motion in limine that any bad acts
12 that they intended to offer that they would do so. Of
13 course, you asked what are they. We said that we don't know.
14 He said he would make an offer of proof beforehand. He
15 didn't.

16 THE COURT: That's true.

17 I had forgotten that, but I know what you are talking
18 about now.

19 MR. CASSIDY: There was a reference in Mr. Byerley's
20 deposition to other illegal activity apparently that was
21 pending at the time it was considered by the District
22 Attorney's Office in relation to obtaining the TRO. And it
23 is the same -- All it shows --

24 THE COURT: I don't care what you think it shows.
25 The issue is something else, Mr. Cassidy.

1 You know, you're an experienced lawyer in this court,
2 you have been here before. You know that kind of stuff
3 doesn't go. You had an obligation to make the offer of
4 proof. Now what do we do?

5 MR. GONZALEZ: I would like to correct it like this,
6 Your Honor, I would like to ask Mr. Byerley when we get to
7 that portion, I would like to -- just to give -- well, just
8 ask him: Did you learn that that was an unfounded complaint
9 against Mr. Toler?

10 Yes.

11 Did you consider it?

12 THE COURT: I don't know whether he would say yes or
13 not.

14 MR. GONZALEZ: If not, I can tell you what it is
15 about. The defendant uses an online service to get
16 somebody's records, then they made a claim that hey, he used
17 a stolen identity. It is a total bogus thing.

18 THE COURT: Whether it is total bogus or not, it is
19 in.

20 Mr. Byerley, apparently, sir, you don't know
21 whether -- you have no reason to believe it is false or do
22 you or bogus, whatever?

23 THE WITNESS: Sir, it was referred to the Sacramento
24 County District Attorney's Office. We never even reviewed
25 it.

1 MR. GONZALEZ: But, Your Honor, there is no document
2 that they relied on in the TRO.

3 THE COURT: Please, be quiet.

4 I expect it from a lot of other attorneys. I don't
5 expect it from you, Mr. Cassidy.

6 MR. CASSIDY: It was nothing other than
7 inadvertence.

8 THE COURT: I accept that. I believe it. I believe
9 it. All right.

10 MR. CASSIDY: May I add one thing?

11 THE COURT: No. Please, no.

12 (Brief pause.)

13 All right. Yes, sir.

14 MR. CASSIDY: The one issue that came up was that
15 Mr. Toler had provided a copy of Mr. Oawster's home phone
16 record to Investigator Godwin, and the only impact of this
17 other information on the DA's Office was he could obtain
18 records they couldn't otherwise obtain. That's all it was
19 meant.

20 THE COURT: It had a much -- it had a bigger effect
21 on me, much less the jury.

22 I understand your problem. I'm trying to think of
23 what to do. Just hang on a second, Mr. Gonzalez.

24 I'm certainly not going to mistry the case. We're
25 going to get this case over with, but that's how serious it

1 is. That occurred to me, Mr. Cassidy.

2 MR. GONZALEZ: Your Honor, may I say something?

3 THE COURT: Yeah.

4 MR. GONZALEZ: When you asked me earlier about a
5 remedy, I didn't say let's mistry the case. I said given
6 what has happened, you have to let me try to cure it. And
7 the way to let me cure it is to make the witness say it is an
8 unfounded allegation.

9 THE COURT: But if he doesn't know that to be the
10 case, he's not going to say that. I won't require him to say
11 something he doesn't personally know.

12 MR. GONZALEZ: Let's enter into a stipulation that
13 corrects it somehow.

14 MR. CASSIDY: I have no objection to Mr. Toler coming
15 in and saying that I get these through an online service and
16 here's what I do and it was unfounded.

17 THE COURT: No. No.

18 Sir, Mr. Gonzalez, would you be satisfied if the
19 Court strikes the testimony and tells the jury that they may
20 not consider it, that there are reasons which we don't have
21 to go into which would suggest that the accusation was
22 unfounded.

23 MR. GONZALEZ: Well, it leaves in the minds of the
24 jury that he was using that and thinking about it when he
25 sought the TRO.

1 THE COURT: Well, that's the truth. I mean, I don't
2 know whether it is the truth or not. I wasn't there.
3 Mr. Byerley says that's the truth.

4 MR. GONZALEZ: But, Your Honor, the matter was never
5 prosecuted.

6 THE COURT: I didn't say that.

7 MR. GONZALEZ: It is unfounded.

8 THE COURT: Please, you're not listening.

9 MR. GONZALEZ: I am listening.

10 Your Honor, I think it is a very serious thing that
11 goes to Mr. Toler's character, truth and voracity, that he
12 stole an identity.

13 THE COURT: I just finished saying that I think it is
14 very serious, serious enough for me to think about a
15 mistrial.

16 (Brief pause.)

17 Which I'm not going to do. I'm not going to do that.
18 Although, I tell you, it's in nobody's interest retrying this
19 case. It is so expensive.

20 MR. GONZALEZ: Your Honor, if the Court were to
21 instruct the jury in the manner that you suggested, then
22 allow Mr. Toler right now to just say this is --

23 THE COURT: I won't allow it right now, but he can
24 come back on redirect and explain to the jury.

25 MR. GONZALEZ: But my problem then is Your Honor is

1 going to be curing the situation now, but leaving it in the
2 minds that he engaged in this identity theft.

3 THE COURT: No. You can put Mr. Toler on to explain
4 how he got it and where he got it from. I'm going to tell
5 the jury I'm striking it because -- Well, I can't actually
6 strike it if he says -- Oh, I see what I'm going to say.

7 I need a piece of paper, Madam Clerk. Just give
8 me -- You know what, I've got them in here.

9 Yeah. I do.

10 Go tell the jury it is going to take a couple of
11 minutes. We've got a problem.

12 (Brief pause.)

13 MR. GONZALEZ: Your Honor, Mr. Cassidy proposed some
14 language as a stipulation that I found very agreeable.

15 THE COURT: What's that, sir?

16 MR. CASSIDY: Just that we would stipulate that in
17 relation to that matter Mr. Toler did not engage in illegal
18 activity, was not prosecuted, it was later determined to be
19 unfounded because he sought the records through an online
20 service.

21 It is short and simple.

22 THE COURT: Very good. Very good.

23 MR. CASSIDY: I apologize to the Court.

24 THE COURT: Mr. Cassidy, I've been going on and on
25 and on to make the biggest -- That's a perfect solution.

1 Thank you, sir.

2 Madam Clerk, bring the jury in.

3 MR. CASSIDY: Will you recite it?

4 THE COURT: Yes, I'll do it or you guys can.

5 MR. CASSIDY: Just he did not engage in illegal
6 activity. There was no prosecution.

7 THE COURT: You say it, you stipulate to it, I'll
8 tell them what a stipulation means.

9 MR. CASSIDY: That's fine.

10 THE COURT: Bring the jury in.

11 Gentlemen, the jury is asking for an estimate about
12 when this case will be to them.

13 Tuesday sound right or Wednesday?

14 MR. CASSIDY: I would say Wednesday.

15 THE COURT: Wednesday. Okay.

16 (Jury seated at 10:54 AM.)

17 THE COURT: Mr. Cassidy, it is my understanding that
18 you have reached a stipulation.

19 Will you set it forth to the jury.

20 MR. CASSIDY: Yes, Your Honor.

21 During the course of the testimony of Investigator
22 Byerley he referenced a matter involving a Sacramento
23 attorney involving an alleged illegal theft identity.

24 The parties stipulate that Mr. Toler did not engage
25 in any illegal activity. There was no prosecution ultimately

1 in that matter. It was deemed unfounded. And he obtained
2 that record through an online Internet service.

3 THE COURT: So stipulate?

4 MR. GONZALEZ: That's the stipulation.

5 THE COURT: Ladies and Gentlemen, I think I told you
6 before, but if I haven't a stipulation is an agreement
7 between the parties that something is true.

8 When the parties agree that something is true, you
9 should accept it as true.

10 You may proceed, Mr. Cassidy.

11 MR. CASSIDY: I completed, Your Honor.

12 THE COURT: I beg your pardon.

13 Mr. Gonzalez.

14 MR. GONZALEZ: Thank you.

15 RE-CROSS-EXAMINATION (ADVERSE WITNESS)

16 BY MR. GONZALEZ:

17 Q. Mr. Byerley, I want to go to the matter on April 7th.

18 If I understand correctly -- Well, actually, do you
19 have a marker?

20 Can you draw a quick diagram of the -- As I
21 understand the office -- the DA's Office, the elevators,
22 there is kind of an L-turn where the windows are -- reception
23 windows?

24 A. I can probably draw it easier.

25 Q. It is not to scale, but it will help the jury

1 understand the floor layout.

2 A. (Witness draws diagram.)

3 Q. All right.

4 THE COURT: Hang on a second.

5 Madam Clerk, will you mark that as defendant's next
6 in order for identification. Whether you want to put it in
7 or not is up to you.

8 MR. GONZALEZ: Plaintiff's.

9 THE COURT: I'm sorry. What did I say?

10 MR. GONZALEZ: Defendant's.

11 THE COURT: I beg your pardon. Plaintiff's.

12 THE CLERK: That will be number 26.

13 THE COURT: Thank you, ma'am.

14 BY MR. GONZALEZ:

15 Q. Maybe just, Mr. Byerley, point out what you've drawn
16 for the jury?

17 A. Okay. This would be a brief sketch of our reception
18 area. I've drawn two boxes over here -- or actually four
19 boxes with X's in it. Those would represent the elevators
20 that come up to our office area.

21 Once you come up to the office area, you walk into
22 the actual reception area. This is the ten chairs I was
23 talking about out in our reception area.

24 There's two doors that lead inside the office I'm
25 going to draw real quick here. There's two desks that sit

1 side by side. That's where our receptionists sit.

2 Over here on the east side of the building -- and
3 I'll draw an E for east and a W for west, north and south --
4 on the east side of the building this is the conference room
5 I was talking about. It's got a door that leads into it.

6 There's a hallway that I've got right here. And I'll
7 label that "Hall." That goes down towards our offices. And
8 then there's three separate victim/witness rooms. And I'll
9 just write "VW" on it. These have got doors that go --

10 Q. I'm sorry.

11 A. Two of them have got doors that go both into the
12 hallway and out into our office proper.

13 Q. Mr. Byerley, what I'm interested in is asking you
14 about -- you gave testimony yesterday and you gave it today
15 related to Mr. Toler when he -- when you first saw him on
16 this occasion he was at the elevators. And I believe you
17 said he was staring intently at the reception area, he was
18 focused on the reception area.

19 Do you remember that testimony?

20 A. Yes, sir, I do.

21 Q. So I want to understand where was he and what he was
22 doing because this is important.

23 A. Okay. To draw this a little more accurately there is
24 a little lip that comes out here, and there's a security
25 camera right here.

1 When we came out the doorway, my recollection is
2 Mr. Toler was standing in this area. And I'm drawing an
3 arrow which way he was facing.

4 Q. All right. But you said that he was staring intently
5 at the reception area?

6 A. Yes, sir.

7 Q. And so he's looking at the people presumably that
8 he's just had an interaction with?

9 A. I could say he was staring into the reception area.
10 When I came out his back was to me. His head was facing
11 looking, it appeared to me, into the reception area.

12 Q. Okay. And you can have a seat now.

13 This is obviously not a diagram to scale; is that
14 correct?

15 A. No, sir.

16 Q. And who else -- When you first stepped out, was
17 Mr. Toler already at the elevator?

18 A. When I stepped out he was.

19 Q. And when Mr. Godwin and you were in the area of the
20 elevator, who else was in that area?

21 A. When I first walked out there I saw Mr. Godwin and
22 Mr. Toler, and that's who I was focused on at that immediate
23 time, the very first contact we made.

24 Q. Was there another investigator named Cardwell?

25 A. No.

1 Q. Was Warren Butler there?

2 A. Warren Butler? After the situation stabilized, saw
3 there was no immediate threat, then I noticed Mr. Butler.

4 Q. All right. So there were three folks there. Did
5 anybody walk through while Mr. Godwin was talking to
6 Mr. Toler?

7 A. Yes.

8 Q. And who was that?

9 A. That would have been Steve. I can't remember Steve's
10 last name. He's one of our clerical people.

11 Q. Now, do you remember in your -- First of all let me
12 ask you, have you seen the videotape?

13 You mentioned there is a security camera. Have you
14 seen the video of this -- of what transpired on that date?

15 A. Yes.

16 Q. Did you see it in the last day?

17 A. Yes.

18 Q. And would you concede that there's nothing on that
19 videotape that suggests Mr. Toler is staring intently at the
20 reception area?

21 A. I -- My impression, when I walked out, that's what he
22 was focused on.

23 THE COURT: The question is what was on the tape.

24 BY MR. GONZALEZ:

25 Q. I asked you if you saw the tape in the last day and

1 whether or not you stand by that testimony because you gave
2 it yesterday and today?

3 A. What -- what appears to happen is when Mr. Godwin
4 comes out and steps in front of him, that he's looking at
5 Bill. He focuses on Bill that is standing in between the
6 reception area and --

7 Q. Mr. Godwin, would you agree with me --

8 THE COURT: No. He's not Mr. Godwin.

9 MR. GONZALEZ: I'm sorry.

10 BY MR. GONZALEZ:

11 Q. Mr. Byerley, would you agree with me that when you
12 represent to the jury under oath that Mr. Toler stood there
13 staring intently at the reception area, that you're conveying
14 a basis to have a continuing concern about his potential for
15 violence?

16 MR. CASSIDY: Objection. It is argumentative.

17 THE COURT: No. Is that what you understand your
18 testimony is suggesting?

19 THE WITNESS: No.

20 THE COURT: Okay.

21 MR. GONZALEZ: We've got -- We're going to play the
22 video. I'm sorry, Your Honor.

23 We're going to play the video. It is in evidence as
24 Plaintiff's 25.

25 THE COURT: Thank you, sir.

1 MR. GONZALEZ: I'm going to move it to the portion
2 that deals with this interaction. I'll play it. It's very
3 short, less than probably 20 seconds. I'll rewind it and
4 play it a second time so everyone can see it.

5 It's going to show from the screen from the bottom
6 Mr. Toler apparently wearing a white shirt, and it is going
7 to show Mr. Godwin initially walking from the top of the
8 screen down.

9 It's about 20 seconds from now.

10 (Exhibit published.)

11 MR. GONZALEZ: We can turn that off.

12 BY MR. GONZALEZ:

13 Q. Mr. Byerley, Mr. Tom Toler was never on April 7th
14 standing at the elevators staring intently at the reception
15 area; is that true?

16 A. Yes.

17 Q. And you've testified under oath twice, both yesterday
18 and today, that the opposite was, in fact, the truth; isn't
19 that right?

20 A. I testified that was my perception when I walked out.

21 Q. Mr. Byerley, you would not have come to court --
22 Strike that.

23 You understand, for instance, when you gave testimony
24 today about the ad in the paper April 12th, you told your
25 counsel it caused you concern how the incident was being

1 portrayed in the ad Mr. Toler took out.

2 Do you remember that testimony today?

3 A. Yes.

4 Q. And you talked about how his representation was
5 unfair because he was never surrounded by four people, true?

6 I mean you said that today?

7 A. I don't think I used the word "surrounded." There
8 was some question about surrounded.

9 Q. The point I'm trying to make was you felt his
10 representation of matters as he published them April 12th
11 were not accurate, and yet you testified yourself that
12 Mr. Toler was engaging in behavior that would give people
13 reason to be concerned about his motives or intention, even
14 though you had seen his video within the last day and there
15 is nothing on it to suggest he behaved in the way that you
16 have said he behaved?

17 MR. CASSIDY: Objection, Your Honor. Overbroad and
18 compound.

19 THE COURT: It is not clear to me how he could have
20 asked that question any differently.

21 It starts off with "The point I'm trying to make."
22 It doesn't matter what point you're trying to make. I
23 suppose to that extent the question is bad.

24 You may try it again, sir. Let's see whether we
25 can -- The jury has seen the tape. The jury has heard the

1 testimony. Everything else is argument.

2 MR. GONZALEZ: I'm moving onto a different subject.

3 THE COURT: I'm sorry, sir?

4 MR. GONZALEZ: I'm going to move on to something
5 else.

6 THE COURT: Good.

7 BY MR. GONZALEZ:

8 Q. Mr. Byerley, in the memo you prepared, I'm going to
9 read something that you state. You said -- This is the April
10 12th memo that's been referred to.

11 MR. CASSIDY: Exhibit number, please?

12 MR. GONZALEZ: Yes. Plaintiff's B.

13 MR. CASSIDY: Thank you.

14 BY MR. GONZALEZ:

15 Q. (READING):

16 Bill Godwin invited Toler into the large conference
17 room east of the elevators. By this time Kurtis
18 Cardwell also had walked into the area but never said
19 anything to Toler. Bill Godwin and Toler went into
20 the conference where Bill Godwin spoke to him.

21 (READING CONCLUDED.)

22 Is that correct?

23 A. I'm sorry, sir. What -- I know you're on page 2.
24 I'm not sure which paragraph.

25 Q. All right. I'm trying to understand what

1 Investigator Cardwell's relationship was to this memo.

2 In other words, you prepared a memo -- Let me say it
3 like this. You appear to take offense to the way Mr. Toler
4 portrayed what took place when he took out the ad April 12th,
5 correct, what had transpired on April 7th?

6 A. I wouldn't use the word "offense."

7 Q. Okay. But you found it inaccurately portrayed what
8 had actually happened?

9 A. Yes.

10 Q. You just saw the interaction that Mr. Toler had with
11 Mr. Godwin the first time they met. Did you see that?

12 A. Yes.

13 Q. And Mr. Godwin is talking to Mr. Toler, and, in fact,
14 is turned in a way where his firearm, which is on his waist,
15 is faced towards Tom Toler; isn't that right?

16 A. When he first -- Once again, my recollection, when he
17 first approaches him, no, he takes a semi-bladed stance. And
18 in trying to de-escalate the situation he might have turned
19 more face-to-face.

20 Q. Right. But listen to the question I'm asking.

21 A. Sorry.

22 Q. You can face someone straight on, you can be giving
23 them your left, be giving them your right. Mr. Godwin is
24 giving him his right when he first starts talking, which is
25 the side his weapon is on. He's facing Mr. Toler that way.

1 Is that correct?

2 A. I -- I'm not positive if that's the way he's facing.

3 Q. Let me say to you this: You're training and
4 experience would be you would not stand talking to somebody
5 that you're fearful of or you think is violent or may carry
6 out some threat, you wouldn't face them that way as you are
7 talking to them, would you?

8 A. I wouldn't.

9 Q. Right.

10 And then while they're talking, Mr. Godwin closes the
11 gap and actually steps forward to Tom as they're talking and
12 starting to dialogue; is that correct?

13 A. Yes. When Mr. Godwin is trying to deescalate the
14 situation, yes.

15 Q. All right.

16 Then you see Tom Toler reach his hand out, and they
17 shake hands, correct?

18 A. Correct.

19 Q. Did you see that Mr. Toler appeared to have a folder
20 with him when we saw the video of the April 7th visit?

21 A. He's carrying some kind of paperwork in his hands.

22 Q. All right.

23 I appreciate that you have indicated that the
24 Fairfield report stated that Mr. Toler had apparently already
25 given the District Attorney's Office this folder.

1 You heard Mr. Toler testify under oath that no, what
2 he said was he was prepared to do that, that he was willing
3 to give that.

4 But you've testified today that your office didn't
5 have it, and you sent out an e-mail because you saw what was
6 written in that report inquiring if anybody had the report,
7 right?

8 A. That was a complex question, sir. I'm sorry. There
9 was several parts to that.

10 Q. Let me ask you this.

11 You sent out an e-mail because you saw a reference to
12 the Oawster information that Tom had in the Fairfield report,
13 right?

14 A. Correct.

15 Q. So you wanted to make sure that nobody in your office
16 might have this because it was referenced as having been
17 given to the District Attorney, right?

18 A. Correct.

19 Q. And I asked you yesterday whether or not it ever
20 occurred to you to call Tom up to see if he could provide you
21 with a copy or if he still had it, and you said you didn't do
22 that, right?

23 A. Correct.

24 Q. Did you ask Mr. Godwin whether or not he had access
25 to this file at any time?

1 A. No, sir, I didn't.

2 Q. Why didn't you do that if you were looking for it?

3 A. Because I had handed the assignment off to
4 Mr. Godwin. Mr. Godwin was going to be doing it. He's an
5 experienced investigator.

6 Q. Right.

7 A. I didn't think of it.

8 Q. You're not suggesting in your testimony, are you,
9 that Tom Toler's investigation of Mr. Oawster, that the
10 information he had related to that is something he did not
11 want to give to the District Attorney's Office?

12 A. I never said that.

13 Q. No. I'm saying now you're not suggesting that by
14 anything you've stated in your testimony, are you?

15 A. I have no factual basis to say that.

16 Q. We talked yesterday about the alleged threat, about
17 saying not only "Don't make me protect my children," but also
18 "If this guy hurts my children or physically hurts my
19 children, that I'll kill him."

20 I want to ask you about that because you presented
21 that as a very serious threat. You took that as a serious
22 threat, correct?

23 A. I took it as a threat.

24 Q. If one of your own employees, one of your own
25 investigators would say the same thing, would you consider

1 that a threat and inappropriate?

2 A. It depends on the surrounding circumstances.

3 Q. Don't you think just about any parent would say that
4 if somebody injured their kid, molested their kid, stomped
5 their kid like they may have done to, you know, an animal,
6 that saying that you want to kill that person, that you would
7 kill that person, that's not a surprise, is it?

8 MR. CASSIDY: Objection, Your Honor. Argumentative.
9 Calls for speculation. Compound. Assumes facts not in
10 evidence.

11 THE COURT: Mostly the question is bad. For me to
12 sort it out is too much.

13 But the question is would you regard it as a serious
14 threat if someone were to respond that if someone was to hurt
15 his children that he might want to kill them or he would kill
16 them?

17 You can answer that question.

18 THE WITNESS: I would take it as a threat.

19 BY MR. GONZALEZ:

20 Q. So if a parent said that if somebody hurts my
21 children, I'm going to kill that person, in the context of
22 Tom Toler, which you know that person has a history of
23 violence towards others, towards animals, molestation against
24 a child, you would still say that's a threat?

25 A. Yes.

1 Q. And so you must have decided to fill out some kind of
2 police report to have Mr. Toler arrested and prosecuted for
3 making that threat?

4 A. No, sir. I didn't.

5 Q. All right.

6 And so if Mr. Oawster made such a threat -- in fact a
7 more direct threat that has been related during these
8 proceedings that, Okay, now it is your turn, you've taken
9 away my kids, now I'm going to take away your kids, that
10 bitch and bastard son of yours are dead, you know, have fun
11 working on your motor home, that's a very serious threat,
12 isn't it?

13 A. Yes, sir.

14 Q. And you took it seriously, didn't you?

15 A. Yes, we did.

16 Q. So seriously that when you learned that he lied about
17 even ever calling Tom Toler, you decided to go out and arrest
18 him because you had enough evidence to show that he was being
19 untruthful?

20 MR. CASSIDY: Objection, Your Honor. Argumentative.
21 Assumes facts not in evidence.

22 THE COURT: Overruled. You may answer the question.

23 THE WITNESS: We did not go out and arrest
24 Mr. Oawster, no.

25 BY MR. GONZALEZ:

1 Q. In fact, you spent most of your time generating
2 reports after the article that came out April 12th making
3 sure everybody was documenting Tom Toler's visits to the
4 District Attorney's Office because you thought that, you
5 know, you wanted to make sure there was a record of what was
6 going on?

7 A. You're talking about me doing that?

8 Q. Yes.

9 A. That was the only involvement I had was to provide
10 information about Mr. Toler's actions when he had come into
11 the office and scared the staff and the continuing problems.

12 Q. Sir, you said he scared the staff repeatedly. And
13 the testimony, as I understand it in this trial, is that
14 Mr. Toler got loud on one occasion, that was the April 7th
15 occasion where your staff stated anything about being -- that
16 he was loud.

17 Is that correct?

18 MR. CASSIDY: Objection. Misstates his testimony.

19 THE COURT: His testimony as of this moment. That's
20 what the testimony -- I mean, that's a reasonable statement.

21 Sir, put your question again.

22 MR. GONZALEZ: Yes.

23 BY MR. GONZALEZ:

24 Q. Up to this point you've been saying that your staff
25 was scared, and you're basing that on the April 7th incident;

1 is that correct?

2 A. That's correct.

3 Q. Do you have anything that indicates a member of your
4 staff talked to you about wanting a TRO or was scared of Tom
5 Toler?

6 A. Yes.

7 Okay. I couldn't answer that "yes" or "no" without
8 an explanation.

9 Q. Let me ask it to you like this --

10 A. Okay.

11 Q. Mr. Toler -- you're presenting a picture of Tom Toler
12 that justifies why you needed to go get this temporary
13 restraining order against him, correct?

14 A. Correct.

15 Q. And you understand that when you actually went and
16 got the order, the people that were directly protected happen
17 to be you, Mr. Garza and Mr. Paulson.

18 You understand that?

19 A. We're the people named on the restraining order, yes.

20 Q. Now, did you hear Linda Jones' testimony that even
21 when Mr. Toler yelled in his interaction with Marsha Johnson
22 that she had simply gone back to her work, she had stuff to
23 do.

24 Do you remember that?

25 A. Yes, I do.

1 Q. You've conceded, I believe, that between the time
2 that you first interacted with Mr. Toler on March 28th or
3 29th, it sounds like you believe it may be the Monday the
4 28th, and when he came to the office eleven days later or
5 twelve days later, whatever that would be, that nobody to
6 your knowledge in your office had communicated with him
7 following up on that first conversation you had?

8 A. That's correct.

9 Q. So if you were doing work on his behalf, making
10 inquiries to the Fairfield police, doing that sort of thing,
11 Mr. Toler had absolutely no way of knowing that; is that
12 true?

13 A. That would be true.

14 Q. So when he came into your office, would you concede
15 that somebody maybe would be a little bit upset to have made
16 a serious allegation of threats against somebody else and not
17 know what's going on for over ten days? That wouldn't be
18 surprising to you that somebody is upset?

19 A. To the extent to his reaction I'd have to say yes, it
20 was surprising.

21 Q. Sir, you didn't see his reaction on April 7th, did
22 you?

23 A. Okay. From what I was told it was his reaction.

24 Q. Answer the question. You didn't see his reaction on
25 April 7th, did you?

1 A. I saw the aftermath of his reaction.

2 Q. Right. And the aftermath --

3 THE COURT: Sir, that was not an answer to the
4 question.

5 Put your question one more time.

6 BY MR. GONZALEZ:

7 Q. You didn't see Tom Toler's reaction in the reception
8 area on April 7th, did you?

9 A. No, I didn't.

10 Q. In fact, what you did see you've mischaracterized
11 under oath, that he stood staring intently at the reception
12 area; is that correct?

13 A. No. I wouldn't say I mischaracterized it.

14 Q. Sir, is there a reason why you are so intent on
15 conveying to this jury that you had a justifiable fear of
16 Mr. Toler given what we've seen on this video?

17 You've seen the video in the last day? You saw it
18 twice?

19 THE COURT: All right. The objection is --

20 MR. CASSIDY: The objection is argumentative.

21 THE COURT: Sustained.

22 BY MR. GONZALEZ:

23 Q. Mr. Godwin -- Mr. Byerley -- I keep saying Godwin
24 because so much of the testimony was about what Mr. Godwin
25 told you.

1 But Mr. Byerley, you made reference to this phone
2 bill that was -- that Mr. Godwin obtained from Mr. Toler.
3 And it seems like you were, in fact, more interested in the
4 question of whether or not any laws had been violated as
5 related to the obtaining of this phone bill than if you
6 should arrest Mr. Oawster for lying to a peace officer?

7 COURT: Objection it's argumentative?

8 MR. CASSIDY: Objection, argumentative.

9 THE COURT: Sustained.

10 BY MR. GONZALEZ:

11 Q. Did you ever ask Mr. Godwin to show you the document
12 that Tom Toler provided him related to this phone call that
13 Mr. Oawster made?

14 A. No, sir, I didn't.

15 Q. So if I were to tell you that it was obtained from an
16 online company in Florida that generated the document, you
17 would have no reason to disbelieve that, do you?

18 A. I have no reason to disbelieve it.

19 Q. Right. But you have come to court and suggested that
20 Tom Toler may have violated the law; isn't that right?

21 A. What I was told, sir, was that the phone bill had
22 come from Mr. Oawster's phone. I don't know. For me as a
23 peace officer to get that I'd have to write a search warrant.
24 I don't know of another way to do that. I don't know of
25 another mechanism to do that.

1 Q. Well, there is a San Marcos Company in Florida. Find
2 them online. They apparently can generate this document.

3 Let me ask you, do you believe Tom Toler was
4 surrounded by anybody on April 7th at the elevators?

5 Do you think that's a fair or unfair assessment?

6 A. I think it's an unfair assessment.

7 Q. If somebody gave false information to a peace
8 officer, is that a crime? If they gave an untruthful
9 statement to a peace officer?

10 A. No.

11 Q. It is not a crime?

12 A. No.

13 Q. If they're investigating a case and they lie to the
14 police officer?

15 A. No. It happens all the time.

16 Q. Right. But it is not something that could be
17 prosecuted under 148 of the Penal Code Section?

18 A. Boy, 148 is resisting, obstructing or delaying a
19 peace officer in the discharge of his duties. I don't know
20 of a single -- I personally don't know of a single case of
21 that ever having been charged for somebody lying to them. It
22 happens all the time. People lie all the time.

23 Q. I'm fully aware Mr. Godwin that people lie --

24 A. Mr. Byerley.

25 Q. Mr. Byerley. Excuse me.

1 I'm asking you whether or not you can prosecute
2 someone when in the course of the investigation they outright
3 lie to you?

4 You have the evidence, and they lie to you, you're
5 saying no, it is not a crime, it happens all the time?

6 That's your answer?

7 A. Well, first off I don't make charging decisions about
8 prosecutions. But I know we get reports all the time where
9 people lie, and we don't prosecute them for lying.

10 Q. You don't make charging decisions about prosecutions,
11 but you have very liberally given us your opinion about the
12 need to get a restraining order against Mr. Toler?

13 THE COURT: Sir, why are you arguing with him.

14 MR. GONZALEZ: Your Honor, you really want an answer
15 to that?

16 THE COURT: Yeah. I really want an answer as to why
17 you are not behaving appropriately.

18 Now, you may proceed.

19 MR. GONZALEZ: All right.

20 BY MR. GONZALEZ:

21 Q. Mr. Byerley, your testimony is and you just said 148
22 covers obstructing an officer in his duties; is that correct?

23 A. Correct.

24 Q. And giving false information and not being truthful
25 can be an obstruction; is that correct?

1 A. In the broadest sense of the word, yes, it could be.

2 Q. So if I -- Well, sir, I've been in the courts for a
3 decade -- two decades. I've seen many cases prosecuted where
4 somebody lied to a peace officer. You're telling me you have
5 never seen one?

6 MR. CASSIDY: Objection. Irrelevant. Assumes facts
7 not in evidence.

8 THE COURT: I thoroughly agree that Mr. Gonzalez's
9 statement about his own experience is beside the point.

10 You may ask a question.

11 BY MR. GONZALEZ:

12 Q. Sir, would it be fair to say that you related what
13 Mr. Godwin told you about his interaction with Mr. Oawster?

14 He goes to Mr. Oawster. He says: Look, did you make
15 this phone call to Tom Toler? Oawster denies it.

16 Is that correct?

17 A. Correct.

18 Q. Then if I understand your testimony, Mr. Godwin says:
19 Look, we know you made the call. Here's the proof. Cut it
20 out. Don't have any more contact with him.

21 Is that what he does?

22 A. Well, I would -- I don't know if he did this, but I
23 know he presented -- My understanding is, from what Bill
24 said, was he presented him with the phone bill, said we know
25 you made the phone call, quit calling Mr. Toler and leave his

1 kids alone. Words to that effect.

2 Q. Did he point his finger the way you did?

3 A. Sir, I don't think he did. That's my --

4 Q. My point is this, Mr. Byerley. Wouldn't you agree
5 with me that Mr. Godwin appeared to have additional evidence
6 that would support, when you're trying to weigh the
7 credibility of two people, that one has told you that a
8 threat was made and offered you the only proof available to
9 him that a phone call got made, and the other lied about
10 making the call. That Mr. Godwin has that information now.

11 Is that true?

12 A. Yes.

13 Q. In fact, when you went to Mr. Daugherty to say,
14 "Well, the report, we don't really have anything to go on it,
15 we're not going to file it," you didn't know at that time
16 that Mr. Oawster had lied about even making a call, did you?

17 A. I did not go to Mr. Daugherty in that way. I asked
18 Mr. Daugherty to review the report. I didn't tell him we
19 don't have enough to go on. I asked Mr. Daugherty to review
20 the report and give me his opinion.

21 Q. Sir, does Mr. Toler have the right to insult you?

22 A. Yes.

23 Q. He can call you names all he wants, can't he?

24 A. Sure.

25 Q. He's not violating any law when he does that?

1 A. Probably not.

2 Q. How would you feel about somebody that
3 mischaracterized interactions with you?

4 Would that be something that would get you angry?

5 A. I wouldn't say angry.

6 Q. What if they did it under oath; would that make you
7 more angry?

8 A. I didn't say it would make me angry.

9 Q. So Mr. Garza related what had happened on the
10 occasion on June 13th with him. And he said that Tom at one
11 point said, "You don't get it." When he started saying,
12 "What do you want to meet the District Attorney about" and
13 Tom said, "You don't get it."

14 A. I'm sorry.

15 Q. Mr. Garza told you that, right?

16 A. Words to that effect.

17 Q. And Mr. Garza told you he had denied seeing an
18 article that was written by a journalist in the paper that
19 day, that Mr. Garza was even quoted in, but he denied he had
20 seen it to Tom Toler. Did he tell you that?

21 A. No. He didn't tell me that.

22 Q. Did you become aware of that at some subsequent time?

23 A. No.

24 MR. GONZALEZ: All right.

25 Nothing further. Thank you, Your Honor.

1 MR. CASSIDY: Couple of quick follow-ups.

2 REDIRECT EXAMINATION

3 BY MR. CASSIDY:

4 Q. You were asked questions about this source of phone
5 records. In the ordinary course of a police officer's
6 abilities to obtain records, could police officers, based on
7 your experience and knowledge, go and obtain somebody's
8 private phone records off some Internet service like this
9 San Marcos that was referred to?

10 A. My personal experience in trying to use Internet
11 search records for phone -- or for phone records, this is
12 nonsubscription services, I don't know about subscription
13 services, I don't have that, but it might give you -- you
14 punch in a phone number, it might give you the person's
15 address, or you punch in an address, it might give you a
16 phone number.

17 I've personally never seen a phone search engine on
18 the computer where you can punch in a phone number and it
19 shows you a phone bill of when people are making phone calls.
20 I don't know of one.

21 Q. All right.

22 But ordinarily peace officers are entitled to access
23 what is called public records?

24 A. Correct.

25 Q. And if they're going to go beyond what's in the

1 public record and seek somebody's personal and private
2 information, is something more required of a peace officer?

3 A. Yes.

4 Q. What is that?

5 A. We'd have to do it with a search warrant. We'd have
6 to have an order from a judge.

7 Q. In relation to the consideration of obtaining the
8 TRO, why did this fact that Mr. Toler had presented the
9 private phone record of Mr. Oawster to Investigator Godwin,
10 why was that important to you?

11 A. It showed me that he had an ability that went above
12 ours without a search warrant to get personal information on
13 somebody, what times they were making phone calls, who they
14 were calling.

15 MR. CASSIDY: That's all I have.

16 Thanks.

17 FURTHER RECROSS-EXAMINATION (ADVERSE WITNESS)

18 BY MR. GONZALEZ:

19 Q. Mr. Byerley, you don't -- you don't know whether or
20 not you can hire San Marcos and Associates in Florida to
21 obtain the phone records, do you?

22 A. No, I don't.

23 Q. So nobody said to you that they obtained phone
24 records by typing something on the Internet. It's that
25 they're available via the Internet for hire.

1 You have no reason to believe that can't be done.
2 And that there are a number of services that do that?

3 A. I have no experience with it.

4 Q. Okay. You also raised in the context of this this
5 idea that somebody engaging in surveillance, that they're
6 sort of obtaining information and what that says about them.

7 If somebody wanted to know what somebody else was
8 doing, isn't one of the things that an investigator does is
9 they follow somebody around to have an idea of what their
10 patterns are?

11 A. That would be one way to do it, yes.

12 Q. So if Mr. Toler wanted to know is Mr. Oawster hanging
13 out in my neighborhood or is he hanging out somewhere he
14 shouldn't, I'm going to every now and then follow him or send
15 someone to follow him just to know if he's doing that, would
16 that be odd?

17 A. No. No.

18 Q. It wouldn't be odd?

19 But you've --

20 MR. GONZALEZ: That's fine. Thank you.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. CASSIDY:

23 Q. Was that type of activity, the kind of activity that
24 Mr. Toler can engage in and go out and surveil people and
25 watch them where they are and do it surreptitiously

1 considered by you in relation to the obtaining of the TRO?

2 A. Yes.

3 Q. And did it cause you -- is that one of the reasons it
4 caused you concern for your safety?

5 A. Yes, sir.

6 Q. Why is that?

7 A. Because once again it shows that he is paid to do
8 surveillance, he knows how to go out and establish people's
9 patterns, which way they drive to work, what their habits
10 are, where they park their cars, when they might be alone,
11 when they might be in an isolated area. That's why it caused
12 me concern.

13 MR. CASSIDY: Thank you. That's all I have.

14 FURTHER RECROSS-EXAMINATION (ADVERSE WITNESS)

15 BY MR. GONZALEZ:

16 Q. Mr. Byerley, you never submitted a declaration in
17 support of the TRO, did you?

18 MR. CASSIDY: Objection. Outside the scope of the
19 cross -- the direct.

20 THE COURT: Actually, it is connected with what you
21 just asked.

22 You may answer that question, sir.

23 THE WITNESS: No, sir, I didn't.

24 BY MR. GONZALEZ:

25 Q. So when counsel today has been asking you to

1 enumerate the reasons why you wanted the TRO, that was never
2 submitted to a court in a declaration by you?

3 Did you ever see the application for the TRO?

4 A. I don't recall.

5 MR. GONZALEZ: Okay.

6 MR. CASSIDY: No further questions.

7 THE COURT: You may step down, sir.

8 THE WITNESS: Thank you.

9 (Whereupon, the trial testimony of Mr. Byerley was
10 concluded.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

IN WITNESS WHEREOF, I subscribe this
certificate at Sacramento, California on this 19TH day of
OCTOBER, 2009.

/S/ Catherine E.F. Bodene
CATHERINE E.F. BODENE, CSR NO. 6926
Official United States District Court Reporter