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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
THURSDAY, AUGUST 13TH, 2009
RE: EXCERPT FROM TRIAL PROCEEDINGS
TRIAL TESTIMONY OF DAVID PAULSON

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

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APPEARANCES

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FOR THE PLAINTIFF:

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SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 13TH, 2009 - 9:15 A.M.

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(Excerpt from trial proceedings.)

MR. GONZALEZ: We call Dave Paulson.

THE COURT: Come around and be sworn, sir.

DAVID PAULSON,

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, be seated.

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

THE WITNESS: My name is David Paulson,
P-a-u-l-s-o-n.

MR. GONZALEZ: Your Honor, I don't expect that this
examination is going to be very long so...

CROSS-EXAMINATION (ADVERSE WITNESS)

BY MR. GONZALEZ:

Q. Good morning, Mr. Paulson.

A. Good morning.

Q. We've met before. I took your deposition, I believe,
was it September or November?

A. I don't know.

1 Q. It was in September in my office in San Francisco.
2 Do you recall that?

3 A. Yes.

4 Q. I just want to lay out some facts in this matter.
5 You're the elected District Attorney of Solano
6 County.

7 A. That's correct.

8 Q. And you've held that office, there's been reference
9 to it, I believe you're in your fourth term?

10 A. That's correct. Since January of 1993.

11 Q. All right.

12 If I understand correctly, when did you first become
13 aware of Tom Toler who is seated here at plaintiff's table?

14 A. But for the incident that I described to you in that
15 deposition that was referenced to me after the incident of
16 July 12th, the first -- or June 12th rather, the first time I
17 believe I had any knowledge of Mr. Toler was the article that
18 was published in the Daily Republic regarding a small claims
19 court action. I believe that is on June 12th, 2005.

20 Q. All right. My records show it was June 13th?

21 A. I believe he was in our office on the 13th. The
22 article was published on the 12th.

23 Q. Okay. So, Mr. Paulson, your memory is that you read
24 that article; is that correct?

25 A. Yes. With my morning coffee.

1 Q. But you had not read the ad that was published -- the
2 advertisement that had been published by Mr. Toler; is that
3 correct?

4 A. That's correct. I read a news article. I did not
5 read the political commentary.

6 Q. So the news article came out in June so the ad you
7 referred to in court, which was published April 12th, you did
8 not read?

9 A. No.

10 Q. In fact, as of the time of the deposition we had
11 together, you had not read that; is that correct?

12 A. As of today I have not read it.

13 Q. Okay. And the letter that is also dated April 12th
14 that Mr. Toler addressed to you, you had not read that as of
15 the date of the deposition; is that correct?

16 MR. CASSIDY: Objection, Your Honor. Assumes facts
17 not in evidence, that he had ever seen it.

18 THE COURT: He just asked him if that is correct.
19 You can answer "yes" or "no."

20 THE WITNESS: I don't believe I can answer "yes" or
21 "no." I don't believe the letter was ever sent. A letter
22 was never received by our office.

23 BY MR. GONZALEZ:

24 Q. Mr. Paulson, you have never suggested that prior to
25 today, have you?

1 A. I believe so, yes.

2 Q. At your deposition you said you believed that the
3 letter had never been sent?

4 A. I believe I told you very clearly that the letter was
5 never received by our office. We have -- we had no knowledge
6 of this letter whatsoever until I was shown it at deposition.

7 Q. Let me ask you this, Mr. Paulson. How many times did
8 you get a little notation that Tom Toler had come to the
9 office with his phone number indicating he wanted to meet
10 with you?

11 A. Never.

12 Q. Prior to June 13th?

13 A. Never.

14 Q. Did you reply to a Board of Supervisors' inquiry
15 about the ad that was taken out in the paper on April 12th?

16 A. I have no recollection of that. You've shown me an
17 e-mail, I believe, that was drafted by my administrator
18 referencing an inquiry by an aide to a member of the Board of
19 Supervisors, but I have no recollection of receiving that
20 e-mail or responding to it.

21 Q. All right.

22 But you have seen a communication by your executive
23 secretary, Marsha Johnson?

24 A. My administrator, yes.

25 Q. And Marsha Johnson sent an e-mail to other members of

1 your staff about "Today's Article," not on April 12th, but on
2 April 14th; is that correct?

3 MR. CASSIDY: Objection. Vague, Your Honor.

4 THE COURT: Beg your pardon?

5 MR. CASSIDY: Vague as to time.

6 THE COURT: What's vague about it?

7 On April the 13th or whatever it was.

8 BY MR. GONZALEZ:

9 Q. You would concede, Mr. Paulson, that that --

10 THE COURT: I don't know if there was an answer to
11 that.

12 THE WITNESS: Yes, Your Honor.

13 BY MR. GONZALEZ:

14 Q. You would concede that the subject line was something
15 like "Today's Article" or "Today's Paper?"

16 A. Of the e-mail that Marsha sent to, I believe it was,
17 to Al Garza.

18 Q. And Mr. Byerley was cc'd on it?

19 A. I believe so, yes.

20 Q. And the subject said "Today's Newspaper." Does that
21 ring a bell?

22 A. I've seen that e-mail, yes.

23 Q. And when you read -- this in is evidence, Your
24 Honor -- that Miss Johnson said, and I'm quoting --

25 THE COURT: What is the exhibit number?

1 MR. GONZALEZ: It is Plaintiff's 3.

2 THE COURT: You may proceed.

3 MR. GONZALEZ: (READING):

4 I didn't know Dave had already responded to this.

5 (READING CONCLUDED.)

6 Do you recall I showed you that during the
7 deposition?

8 A. Yes, you did. I don't know what Miss Johnson may
9 have known. She may have presumed that I responded to it.
10 But as I say, I have no independent recollection of receiving
11 the e-mail, let alone responding to it, assuming an e-mail
12 was even sent.

13 Q. Did you ever direct anyone in your office to respond
14 to the April 12th publication of the ad that Mr. Toler took
15 out?

16 A. On April 12th?

17 Q. Yes.

18 A. No.

19 Q. Any time after April 12th?

20 A. Yes. After the incident -- the Uzi incident on the
21 13th, yes.

22 Q. But between April 12th and June 13th you had never
23 directed somebody to respond to this advertisement?

24 A. Absolutely not.

25 Q. And you were totally unaware of there being any

1 letter written to you at that point?

2 A. That's correct.

3 Q. Did you ever speak to Mr. Al Garza in your office
4 about this advertisement any time on or after April 12th --
5 between April 12th and June 13th?

6 A. Not to my recollection, no. I believe the only
7 person that I did speak to about it was, again, Miss Johnson.

8 I believe it was on the morning that the article was
9 published. And I think this has been reflected -- refreshed
10 in my recollection through the depositions that she mentioned
11 to me that there had been an article published and asked if I
12 had seen it. I said no.

13 Q. Now, if an aide to a member of the Board of
14 Supervisors had written an e-mail inquiring what's going on
15 about this or something to that effect, would you have saved
16 that e-mail?

17 A. Not necessarily.

18 Q. Would you have -- If you had responded to it, would
19 you have saved your response?

20 A. Not necessarily.

21 Q. And, in fact, you have not saved any correspondence
22 via e-mail that you personally had relating to Tom Toler
23 between March 27th and June 13th?

24 MR. CASSIDY: Objection, Your Honor. Assumes facts
25 not in evidence.

1 THE COURT: He's asking him.

2 You may answer, sir.

3 THE WITNESS: No. I have many e-mails relating to
4 Mr. Toler, but I have nothing between April 12th and June
5 13th, that's correct.

6 BY MR. GONZALEZ:

7 Q. You also, in the deposition that we were at together,
8 I showed you a memo from Mr. Godwin -- or prepared by
9 Mr. Godwin that specifically has as a subject line "Response
10 To Daily Republic Article." And this is prepared April 12th,
11 '05.

12 Have you seen that?

13 A. I have.

14 Q. Did you direct Mr. Godwin to prepare a response to
15 the Daily Republic article?

16 A. I don't believe he did prepare a response to the
17 Daily Republic article.

18 THE COURT: Sir, the question was not whether he did,
19 did you direct him to do it?

20 THE WITNESS: No.

21 BY MR. GONZALEZ:

22 Q. Can you think of any reason why his memo would have
23 that heading, "Response To Daily Republic Article?"

24 THE COURT: Now the objection calls for the witness
25 to speculate on somebody else's state of mind, and that

1 objection, Mr. Cassidy, is well taken and sustained.

2 You may proceed.

3 MR. GONZALEZ: Your Honor, Exhibit Plaintiff's 6 is a
4 memo prepared by William Godwin. The subject line is, I
5 quote, "Response To Daily Republic Article."

6 BY MR. GONZALEZ:

7 Q. Now, Mr. Garza came to speak with you after the
8 incident he had with Mr. Toler on June 13th; is that correct?

9 A. Yes, he did. It was my impression it was immediately
10 following that.

11 Q. And you spoke to him, and you directed him to write
12 it up -- write up what had transpired?

13 A. Yes.

14 Q. Did you review it before it was submitted to the
15 County Counsel for a TRO?

16 A. No, I did not.

17 Q. You didn't review it at all?

18 A. No.

19 Q. Now, would you -- Well, I'll leave that alone then.

20 Now, in the deposition that we were at together, you
21 also indicated you had never -- you didn't care about the
22 March 27th Fairfield Police Report. You hadn't read it, and
23 you had no interest in it.

24 Do you recall that testimony?

25 A. I don't believe I said I had no interest in it. I

1 did say I did not read the report. The report -- I don't
2 believe -- I think my inquiry on that was, again, on the 13th
3 of June. And I believe I spoke with the felony intake
4 deputy, that would be John Daugherty, regarding the --
5 regarding that case because I had already been informed, I
6 think earlier in the afternoon of the 13th by either
7 Chief Garza or Supervising Investigator Byerley, that the
8 case had been investigated by Bill Godwin and there was a
9 determination that there was insufficient evidence to
10 prosecute the case.

11 Q. I want to ask you about that in a moment, but I want
12 to ask you about --

13 MR. GONZALEZ: For counsel's benefit I'm referring to
14 the September 19th, 2008 deposition of David Paulson at page
15 33 beginning --

16 MR. CASSIDY: May I have a moment. What page?

17 MR. GONZALEZ: Page 33, line 15.

18 (Brief pause.)

19 THE COURT: Beginning line 15 through what, sir?

20 MR. GONZALEZ: 19.

21 I'm going to read an answer that you gave in the
22 deposition to see if it refreshes your memory as it relates
23 to what you said about the report.

24 MR. CASSIDY: Your Honor, he can show him the
25 testimony and let the witness reviews it and see if it

1 refreshes his memory.

2 THE COURT: He can do whatever he chooses. The
3 question is whether or not -- It doesn't appear to me to be,
4 sir, a question of refreshing recollection. It may be
5 impeaching in that the witness at trial said that I didn't
6 say I didn't care about the report. For that purpose you may
7 proceed.

8 MR. GONZALEZ: All right.

9 Reading, Your Honor, the answer beginning on line 15.

10 (READING):

11 He can do a lot of things with it. Like I said, I
12 have never read the report. The fact I can't answer
13 these questions any better, it shows you I really
14 didn't care about that report. I have no interest in
15 that report.

16 (READING CONCLUDED.)

17 BY MR. GONZALEZ:

18 Q. Do you recall that testimony, sir?

19 A. Vaguely, yes.

20 Q. All right.

21 And before you gave that answer, you had mentioned
22 what you said here in court today about Mr. Daugherty making
23 a filing decision in the matter.

24 Do you recall telling me in that deposition that you
25 felt that you believed that your office didn't even have

1 jurisdiction on the threats case that Mr. Toler had brought
2 to your office?

3 A. Yes. I believe I told you that I might be mistaken,
4 but my recollection of the discussion that I had with John
5 Daugherty on the 13th of June, that afternoon, was that he
6 informed me generally about the incidents of the threats.

7 The only threat that I believe I recalled was the
8 phone call that was made to a John Colfer in Napa. And my
9 understanding from Mr. Daugherty was that that phone call was
10 actually placed from San Joaquin County to Napa County and
11 that nothing occurred in Solano County.

12 So I had an understanding, at least on that day, that
13 afternoon, that part of the decision as to why he hadn't
14 filed the case -- why John had not issued a complaint was
15 because Solano County had no jurisdiction.

16 Q. Mr. Paulson, you knew that when you came to my office
17 for this deposition that we were there to discuss Tom Toler
18 and the retaliation allegation against you?

19 A. That's correct.

20 Q. And when you came to my office for this deposition,
21 you had not read the ad he took out in the paper, correct?

22 A. That's correct.

23 MR. CASSIDY: Asked and answered.

24 ///

25 BY MR. GONZALEZ:

1 Q. You had not read the Fairfield Police Report that
2 we're talking about right now, about whether or not there is
3 jurisdiction; is that correct?

4 A. That's correct.

5 Q. And you -- when you told me that you had a memory
6 there was some jurisdictional problem with it, you're now
7 remembering that's because you were thinking of a whole
8 different -- a related but different threats case; is that
9 correct?

10 A. No. That's the only threat that I was aware of on
11 the 13th of June was the phone call to Mr. Toler's child as
12 it was described on that date.

13 Q. All right.

14 So you're telling me that in September, when you came
15 to my office for deposition, you were not aware that
16 Mr. Toler was alleging that somebody had called him while he
17 was in your county and made threats against his children?

18 A. No, I was not.

19 Q. Okay. Mr. Paulson, I want to clarify an answer that
20 you gave. You said that you had many e-mails related to
21 Mr. Toler, and I was asking you whether or not you had any of
22 those between March 27th and June 13th. And I understand
23 your testimony is that you first became aware of Tom Toler on
24 June 13th.

25 Is that correct?

1 A. June 12th.

2 Q. June 12th?

3 A. That's correct.

4 Q. So I'm asking you, did you produce any of these
5 e-mails to your counsel in this litigation?

6 A. Every e-mail that I have, yes, except the
7 communications that I received from the attorney's office.

8 MR. CASSIDY: Objection to the extent it may invade
9 the attorney-client privilege.

10 MR. GONZALEZ: Actually, it goes to the request for
11 the production of documents.

12 THE COURT: Gentlemen, or Mr. Gonzalez particularly,
13 I think there was -- there was an objection, which appears
14 not to be appropriate from Mr. Cassidy because he was worried
15 about your next question. And your response, I gather, was
16 to Mr. Cassidy.

17 If you would like to go out in the hall and discuss
18 it for a while and then come back and try the lawsuit, I'll
19 let you do that. We'll take a break.

20 MR. GONZALEZ: No, Your Honor.

21 THE COURT: You may proceed then.

22 MR. GONZALEZ: Just for clarification, Your Honor,
23 I'll ask the witness.

24 ///

25 BY MR. GONZALEZ:

1 Q. I mean, I've asked you directly, Mr. Paulson, both at
2 deposition and today. You said you first became aware of
3 Mr. Tom Toler in June; is that correct?

4 A. That's correct.

5 But for the incident that I believe I also told you
6 about, that my recollection was refreshed after a
7 conversation with Sheriff Stanton, I did have some earlier
8 knowledge of a bail bondsman. I didn't have specific
9 knowledge of Mr. Toler until June 12th.

10 Q. I'm asking you about e-mail communications?

11 A. Yeah. I know.

12 Q. If somebody had sent you an e-mail communication
13 prior to June, would you be testifying today -- if they had
14 sent you an e-mail communication about Mr. Tom Toler, would
15 you be testifying today that you had never heard of him until
16 June?

17 A. I'm not sure I can answer that question. I had never
18 heard of him. I don't know about any e-mails. In fact, I
19 don't believe I ever received an e-mail about Mr. Toler.

20 I have no recollection of receiving any e-mail
21 regarding Tom Toler prior to the June 12th date.

22 MR. GONZALEZ: Nothing further, Your Honor.

23 Thank you.

24 THE COURT: Ladies and Gentlemen, we'll take our
25 morning recess. Fifteen minutes.

1 Please, remember the admonition the Court has
2 heretofore given to you.

3 (Off the record at 10:32 AM.)

4 (On the record at 10:53 AM.)

5 THE CLERK: Please, remain seated.

6 The court is now in session.

7 THE COURT: Mr. Cassidy, do you desire to take the
8 witness now or in your own case?

9 One or the other. You can't do both.

10 MR. CASSIDY: I would like to take him now and move
11 to open our direct at this time.

12 THE COURT: You may.

13 DIRECT EXAMINATION

14 BY MR. CASSIDY:

15 Q. Good morning, Mr. Paulson.

16 A. Good morning.

17 Q. When were you first licensed to practice law in the
18 State of California?

19 A. In California in 1974.

20 Q. All right. And have you practiced law continuously
21 since that time?

22 A. Yes, I have.

23 Q. When was it that you were first hired by the Solano
24 County District Attorney's Office?

25 A. In March. I believe it was March 17th of 1977.

1 Q. And could you just briefly describe for us the
2 various positions you held at the Solano County District
3 Attorney's Office?

4 A. I was hired as a Deputy District Attorney in the
5 Vallejo Branch Office. I served in that capacity until
6 January of 1983 when I became the Chief Deputy under then
7 District Attorney Mike Nail.

8 I served Mike for ten years. He retired midterm and
9 took a seat on the Solano County Superior Court. And I was
10 appointed by the Board of Supervisors in January of 1993,
11 confirmed in March of 1993, and elected in June of 1994 as
12 the District Attorney. I've been in that office ever
13 since.

14 Q. Since that time you've held the elected position of
15 District Attorney of Solano County?

16 A. Yes.

17 Q. Could you describe just briefly any associations or
18 memberships you hold in your capacity as District Attorney?

19 A. Ever since I've been in the office I've been a member
20 of the California District Attorneys Association. I've also
21 belonged to the National District Attorneys Association and
22 still do.

23 For, oh, I would say maybe the last ten years I've
24 been quite active with the District Attorneys Association. I
25 served as president for one year of the statewide

1 association, from I believe 2005 to 2006.

2 I subsequently served as the President of the
3 Institute for the Advancement of Criminal Justice, which is
4 the nonprofit arm of the California District Attorneys.

5 And I currently, for the past three years, have
6 served as the executive editor for the journal of the
7 institute, an annual publication regarding legal issues.

8 Q. Were you a member of any governor's advisory
9 committee?

10 A. Yes. Governor Schwarzenegger appointed me to the
11 Juvenile Justice Advisory Commission approximately four years
12 ago.

13 Q. And could you please describe generally the duties
14 and responsibilities of a District Attorney?

15 A. Well, DA's are sort of in a unique situation because
16 we're both county or local officers as well as state
17 officers.

18 We have an obligation both under the Constitution and
19 under state law to prosecute cases, to inform the public
20 about issues of law, to advocate for specific issues that may
21 result in the advancement of criminal justice.

22 Q. Do you, as District Attorney of Solano County, have
23 any particular philosophy in the handling of criminal
24 matters?

25 A. Well, I do. Shortly after I became a DA, I think

1 certainly in the early '80's, I served on a committee with
2 the District Attorneys Association that helped establish what
3 we call the Uniform Crime Charging Standards.

4 And the import of that was that you don't charge a
5 crime that you don't believe you can prove. You certainly
6 never charge a crime because there's probable cause to
7 believe the crime occurred. You charge the crime because you
8 believe you can prove the facts that would establish that
9 crime beyond a reasonable doubt, to a moral certainty as the
10 jury is charged.

11 So we tend to, at least since I've been DA, my
12 philosophy has been that we charge crimes that we're
13 confident we can prove. And we dispose of those crimes, if
14 it is possible, by a plea that relates to the gravamen
15 offense, the most serious offense.

16 Q. Is there -- I think you touched on it, but I want to
17 be clear. Is there a difference between the probable cause,
18 if you will, for an arrest of a possible suspect, and the
19 ultimate filing of a complaint charging a person in court
20 with that offense?

21 A. Absolutely. There's lots of different standards of
22 proof that relate to police work, all the way through
23 prosecution work, and ultimately the way the standards of the
24 court applies.

25 But the most common differentiation is between the

1 police officer's probable cause to make an arrest and the
2 district attorney's responsibility not to file a case unless
3 you believe you can prove it beyond a reasonable doubt.

4 I don't know -- I've watched defense lawyers over the
5 years try to demonstrate to a jury where that line occurs,
6 and it's floated up and down a chart, but there is a
7 substantial difference.

8 And it results -- typically in our office we file,
9 oh, right around 4000 felony cases a year. Well over 10,000
10 misdemeanor cases. But just looking at felony cases we file
11 around 4000 a year, and about 15 percent of the total number
12 of cases that are sent to us for review we either don't file
13 as a felony, we don't file at all or we return for further
14 investigation.

15 So we receive a lot more arrests, a lot more requests
16 for prosecution than we ultimately are able to file.

17 Q. Do you have any general philosophy as District
18 Attorney of Solano County with respect to your interaction
19 with members of the public?

20 A. Well, I think I have a fairly good interaction with
21 the public. I've had two uncontested elections, as well as
22 two contested elections. But I -- We have a very open policy
23 in terms of our relationship with the public.

24 I have a very active website. There is a lot of
25 information on our website. I try to keep that website

1 updated with information that's relevant to things that are
2 happening statewide or issues that are important to the
3 administration of justice.

4 We also send people out into the community to talk to
5 different groups in the community, and I do myself, whether
6 it is about real estate fraud, which is a very hot topic
7 right now, or other issues that may relate to elders or other
8 particular groups.

9 Q. Have there ever been occasions, prior to the spring
10 of 2005, where you have actually come out of your office,
11 gone to the lobby and met someone who is there for the first
12 time, a victim perhaps?

13 A. It would be rather rare for me to come -- to come out
14 to the lobby to meet someone I had never met before unless I
15 had been briefed on the case.

16 The simple reason for that is, as I say, there is
17 probably about 20,000 cases that come into our office in any
18 given year. I know about a very few of those cases.

19 I personally look at homicide cases. We have
20 meetings that involve myself and my assistant, my chief
21 deputies regarding homicide cases, but most other cases are
22 directly handled by subordinate staff, by the Deputy District
23 Attorneys.

24 So it would be -- Unless I know someone, it's very
25 unlikely that I would go to the lobby to meet with someone

1 about a case that I didn't have any -- hadn't been briefed
2 about, that I didn't know something about.

3 Q. Can you give us just kind of a working description of
4 the divisions or breakdown of the operations of the District
5 Attorney's Office?

6 A. Well, in my office I have an assistant currently. At
7 the time of this incident, I did not have that assistant
8 position.

9 I have two chief deputies. I have now about 60
10 attorneys that work for me. I have a chief investigator, two
11 supervising investigators, about 12 full-time peace officers
12 that are district attorney investigators.

13 We have about ten to 12 what we call "annuitants."
14 They're retired peace officers who have come back to work
15 part-time. It works out very well for us because we get
16 really a very good bang for the buck, if you pardon the
17 phrase. It works out good for them.

18 I have a clerical staff that's -- Over all
19 administration is my administrator, Marsha Johnson. We have
20 a small administrative staff that handles the budget and
21 payroll, things like that.

22 Then I have a clerical staff of about 55 or 60 legal
23 secretaries, legal procedures clerks, one senior legal
24 procedure clerk, Mr. Butler, that was referred to earlier,
25 and receptionists that are Office Assistant II's that meet

1 the public.

2 I have an office in Fairfield, which is our main
3 office. That's in the Government Center, a building
4 constructed about five years ago. And I have a branch office
5 in Vallejo in the courthouse -- on the second floor of the
6 courthouse in Vallejo

7 Q. When you talk about the -- You talked about a "Chief
8 Deputy." Is that on the criminal side?

9 In other words, is that a District Attorney position
10 that's involved in the prosecution of cases?

11 A. Yes. As far as I know, when I came to the office in
12 '77, there were two chief deputies. And up until about a
13 year ago, when the assistant position was added, there have
14 been -- remained two chief deputies. I was one of two chief
15 deputies.

16 As a chief deputy you have kind of a dual
17 responsibility. The first responsibility, of course, is to
18 serve the District Attorney and to help administer the
19 office, but you also have the responsibility of handling some
20 cases.

21 I prosecuted homicide cases as a chief deputy. My
22 two chief deputies at the time of this incident were Kathy
23 Coffey and George Williamson. Kathy Coffey primarily did
24 administrative work. I think she handled some calendars.
25 George Williamson is one of the most preeminent trial lawyers

1 in California and tried many homicide cases, both in Solano
2 County and other counties around the state.

3 Q. Just as a rough estimate, do you have an estimate of
4 how many different trials you've participated in in
5 prosecuting a case?

6 A. Well, it's well over a hundred. I haven't appeared
7 in court on a case since the early '90's, but I like to
8 recall the fact that even after being elected DA I handled
9 the misdemeanor calendar in the Fairfield court for a number
10 of months.

11 Q. Can you describe, please, how a case comes into your
12 office?

13 A. Well, there are two ways that the cases can come into
14 our office. The most common way is a police agency conducts
15 an investigation and they forward a report to us.

16 Most reports come in on a Tuesday morning. That's
17 the heaviest day of the week, but we get -- we get lots of
18 reports, both misdemeanor and felony reports.

19 When they're received, as the clerical staff is able
20 to do so, they immediately or as soon as possible try to put
21 it into a computer system so we can track the case.

22 Once the case is entered into the computer system,
23 depending on whether it is misdemeanor or felony, it is
24 routed to the felony intake deputy or the misdemeanor unit.
25 In the misdemeanor unit there are several attorneys that

1 split the filing responsibilities.

2 But unless the case is of a nature that it relates to
3 what we call one of our specialized units, it's a homicide --

4 Q. I'll get to those in just a minute. If I may stop
5 you there?

6 A. Sure.

7 Q. When you talk about logging -- having the report
8 logged into the system, can you just describe generally
9 what's logged into the system?

10 A. Sure. Our case management system is called CRIMES.
11 It is used in several counties here in California. We enter
12 the agency, the agency report number, the name of the
13 arresting officer, the investigating officer if it is known.

14 We enter the defendant's name, date of birth, Social
15 Security number, other identifying information if it's
16 available in the police report, height and weight. We also
17 enter the charges that the law enforcement agency has
18 referred to us.

19 Just as an example, they may refer to us a petty
20 theft and we may file a burglary. So we enter -- The initial
21 entry into the system though would be the law enforcement
22 referral charges.

23 Q. And if someone is searching the system and a report,
24 either through any of those identifiers is not on the system,
25 it generally has not yet been received by the District

1 Attorney's Office?

2 A. If you can't find it in the system, with very, very
3 few exceptions I always assume that we don't have it.

4 It's possible that it came in earlier in that day and
5 it just hasn't been entered into the system, but typically it
6 is going to be entered within the day that it is received.

7 Q. Okay. Now, generally speaking, not talking about --
8 we'll get into the investigation unit in a minute, but
9 generally when a report is received by your office from a
10 local law enforcement agency, what's the status of that
11 report -- the status of the investigation?

12 A. It is entered into the computer as "Arrest." So, for
13 example, we -- we keep -- or as a "Request For A Warrant."

14 We have different filing statuses so it is not going
15 to be entered in the computer as having been filed until it
16 has actually been reviewed by an attorney and the attorney
17 has made a filing decision.

18 And when we went to this system, we sort of changed
19 the way we did business in the office, which was back in the
20 late '80's, at the time I was a chief deputy.

21 When we went to the computer system, we discovered
22 that really the best thing to do is, if we rejected a case,
23 is to send it back.

24 So if our system shows a case has been filed, we have
25 the reports, we have the file until it is purged.

1 If we've rejected a case, for whatever reason, or if
2 we have sent it back for further investigation, we don't have
3 the file. That entire package has been sent back to the law
4 enforcement agency.

5 Q. Is that then noted on the computer system?

6 A. Yes, it is.

7 Q. So when a case comes to you in your office from a
8 local law enforcement agency, what is usually the status of
9 the investigation?

10 A. Oh, it is complete.

11 Q. And at the time that the report comes from the local
12 law enforcement agency and after it is logged into the
13 system, what is the process and what are the options for your
14 office in handling that matter?

15 A. Well, as I say, the person can either be in custody
16 or out of custody. If they're in custody it is going to get
17 processed a little faster because of the rule that we must
18 process that case and make a filing decision within 48
19 hours -- 48 court hours, if you will.

20 So that case is going to go to a filing deputy or
21 review deputy. They're going to read the police report.
22 They may look at the attached rap sheet to learn further
23 information about the defendant. They're going to make a
24 decision as to whether or not -- consistent with my filing
25 practice whether or not they believe the case can be proved

1 beyond a reasonable doubt to a moral certainty.

2 If they believe that it can, then they file the case,
3 the status is changed in the computer, a complaint is
4 generated, and other information, such as a witness list, is
5 also entered into the computer.

6 Q. What other options does your office have after
7 reviewing the complaint -- or the report I should say?

8 A. Essentially, two other options. One would be to
9 request further information, further investigation.

10 Q. How would that work?

11 A. Well, at that point there's a notation made in the
12 computer system, and the attorney that's reviewing the file
13 completes what we call a green sheet. It's simply a request
14 for further investigation. It's on a green piece of paper so
15 that everybody knows what it is.

16 They fill out the green sheet. That's attached back
17 to that file, and that is sent back to the investigating
18 agency.

19 Q. So what types of -- What would you be asking for on
20 behalf of the District Attorney's Office if a green sheet
21 goes back to an agency?

22 A. There may be a question about -- maybe there's some
23 information that was left out of the report. Maybe there is
24 a page missing. Maybe there's a question about what the
25 officer may have known about some other person that may have

1 been there or a statement of some other witness. It could
2 have been a conclusionary statement as opposed to an actual
3 interview of a witness to the crime.

4 But where we believe that the facts and circumstances
5 may likely lead to a filing and we'd like to get a little bit
6 more information, we like to get that up front. Because once
7 the process starts, it is more and more difficult to obtain
8 information. So you want as much information as you can to
9 make a proper filing decision.

10 Q. Between the time that the law enforcement agency
11 starts working on its report and the time that it's received
12 by the District Attorney's Office, does the District
13 Attorney's Office have any control over that local law
14 enforcement agency as to how long it takes before they send
15 it to your office?

16 A. No.

17 Q. Is there a particular routing system, in other words
18 a protocol that says the proper way for a law enforcement
19 agency to send a report to your office for review?

20 A. Oh, yes. Yes. We ask all the law enforcement
21 agencies to send us not only a copy of the report, but for
22 example, let's say there's two suspects, they're required to
23 send us two copies of the report, plus an additional copy for
24 the court.

25 So that would be three copies of the report, a copy

1 of a rap sheet for each of the individuals, a copy of a DMV
2 printout, a Department of Motor Vehicles printout showing any
3 driving history, any history of violations relating to
4 violations of the Vehicle Code.

5 We also ask that they send that, in essence, directly
6 to our office. Typically, it is brought over by -- I'm not
7 sure what they're called -- community services officers, I
8 believe. I know they wear a white shirt or light blue shirt
9 as opposed to the dark blue shirt of a typical police
10 officer. And they come to our office in the mornings.

11 Two CHP officers come to our office almost every
12 morning with a stack of reports that have been generated
13 since the prior morning by the local office of the Highway
14 Patrol.

15 Q. I'm sorry to interrupt.

16 Do they maintain it in a chain of custody, if you
17 will? They want to be sure that nothing is altered between
18 the condition in which the report is in when it leaves the
19 law enforcement agency and when it is received by your
20 office?

21 A. That may be of some interest to the agency. I think
22 the real interest to the agency though is they want to know
23 we've received it.

24 Typically, we actually acknowledge receipt of the
25 report so that they can then go back to their department, to

1 their records division and the records division has something
2 in writing that says that a report has actually been sent to
3 the District Attorney on such and such a date, it was
4 received by the District Attorney on that date, and that
5 comes back to the records division of a police agency.

6 Q. Are there occasions that sometimes before you get the
7 actual report through the protocol that's established for
8 delivery that you get a faxed copy over to your office?

9 A. On occasion. It would be the exception rather than
10 the rule, but it does happen on occasion.

11 We may have -- a police officer may simply bring over
12 a copy of a report and ask for a review. It's a case that
13 he's working on, and he just wants a little advice.

14 We may get an inquiry. There was the question
15 earlier about getting an inquiry from the Board of
16 Supervisors.

17 I have, on rare occasion, from a member of the Board
18 of Supervisors, but I have -- people that I know in the
19 community have called me and said that, you know, they are --
20 they made a report about a particular crime and they're
21 curious if we received it yet.

22 I'll look in the computer and say: No, I haven't
23 received it. Where did you make the report? They'll tell us
24 what agency it was.

25 Typically my routine is that I send an e-mail or say

1 something to either Chief Garza, Supervisor Byerley or
2 Supervisor Cardwell. I ask them: Can you get a copy of the
3 report, take a look at it, assist the police agency in any
4 way you can. Then it ultimately comes over in the general
5 course of business.

6 Q. So even if it is faxed over or it is hand carried
7 over informally like that, you still ultimately want that
8 report to come through the protocol?

9 A. Yes. We have to because when it comes over in a
10 faxed form or hand carried over, that's really -- it's more
11 informational. It is more sharing -- sharing the
12 responsibility of investigating the case.

13 It is not -- it is not the formal referral from the
14 police agency to the District Attorney saying that we
15 completed our investigation, here's our report, you take a
16 look at it and now it is your turn to decide whether or not
17 this case goes any further.

18 Q. So now looking toward the investigative division
19 where the investigators are, can you describe please the role
20 of your investigators in the District Attorney's Office that
21 they play in the process?

22 A. Well, they have both original investigative
23 responsibilities, and they have support responsibilities.

24 I have the investigators in the County that do auto
25 theft investigation. I have the investigators in the County

1 that do real estate fraud investigation. Police agencies do
2 not.

3 I have investigators in the County that do prison
4 crimes investigations. In fact, I have two investigators.
5 They're assigned to work with the prisons.

6 In the event we file a death penalty case, my
7 investigators have the original responsibility of collecting
8 all of the information, doing the investigation regarding the
9 penalty phase of a death penalty case.

10 Other than that, other than those kinds of direct
11 original jurisdiction if you will kinds of cases, my
12 investigator's role is to support, as the clerical role is,
13 as the victim witness role is, to support the attorneys that
14 go to court and help them be as prepared as they can on cases
15 that are being prosecuted.

16 Q. Do the investigators in the District Attorney's
17 Office conduct any other investigations, other than what you
18 described?

19 In other words, from time to time do matters come in
20 from local law enforcement agencies that they do some
21 follow-up to see what the status of the case is or perhaps
22 gain some more information?

23 A. Yes. Yes. They also assist other agencies in the
24 county. We've worked with the welfare agency as an example
25 to provide assistance in the investigation of suspected

1 welfare crimes or even in some suspected crimes by county
2 employees in other departments.

3 We work with the Sheriff's Office and every other
4 agency in the county whenever there's what we call an
5 "officer involved incident."

6 Whenever an officer uses force that results in
7 discharge of a weapon, we're part of the initial primary team
8 that responds to those invocations of a protocol. And we
9 participate as a co-equal agency with the police agency in
10 the investigation. And I ultimately make the decision as to
11 whether or not an officer has committed any crime or not.

12 Q. Now, you described the standard, I guess, that is
13 used by district attorneys in determining whether a criminal
14 complaint will be filed in a case.

15 Is there a particular title or position in the
16 District Attorney's Office that handles that decision-making
17 process?

18 A. In both the Fairfield and the Vallejo office I have a
19 Felony Intake Deputy. Also in both offices I have
20 misdemeanor staff, misdemeanor attorneys. I believe there is
21 four in Fairfield, three in Vallejo. And they all have the
22 responsibilities of filing cases.

23 Q. And in your office in Fairfield is there a particular
24 deputy that is the lead charging attorney, if you will, for
25 criminal matters, whether they're going to actually -- there

1 is actually going to be a criminal complaint filed in a case?

2 A. In Fairfield that is John Daugherty.

3 Q. How long has he been the Charging Deputy DA, so to
4 speak?

5 A. Some people in the office don't understand why he
6 likes it as much as he does, but it has been probably close
7 to 15 years now. He has been with the office over 25 years.

8 Q. In the majority of cases do you rely upon Charging
9 District Attorney Daugherty to make the decision as to
10 whether a criminal complaint will be filed in a case?

11 A. Absolutely.

12 Q. He's experienced in the review and process in making
13 that determination?

14 A. Yes. He was selected. I assigned him to that role
15 because of the trust and confidence I have in him.

16 Q. Now, in or about 2005 and continuing to this day, who
17 is the Chief Investigator of Investigations?

18 A. Al Garza.

19 Q. And could you briefly describe Al Garza's duties and
20 responsibilities as Chief Investigator?

21 A. I don't know that there is a specific job description
22 that describes all the things I've asked him to do.

23 The county has a job description that essentially
24 requires -- or states that his role is to be the Chief of the
25 Bureau of Investigations.

1 He supervises two investigative supervisors, that is
2 Brook Byerley and Kurtis Cardwell, and the entire
3 Investigations Bureau, which is made up of full-time peace
4 officers, annuitant peace officers, my investigative
5 assistants. We have some investigative assistants that help
6 with a variety of different roles, including the bad check
7 program.

8 I also have a unit that serves all subpoenas for the
9 office. That's made up of both process servers and a
10 clerical staff that prepares all the subpoenas. Also under
11 that umbrella is the Crime Victim Assistance Program.

12 So Chief Garza is responsible for the investigative
13 function, the subpoena function, the crime victim assistance,
14 the bad check program, virtually everything in the office
15 other than clerical and other than lawyers.

16 Q. In his capacity as Chief Investigator, is one of the
17 duties and responsibilities of Mr. Garza to provide for the
18 security and protection of the District Attorney?

19 A. Yes.

20 Q. And does he also provide any security and protection
21 services, for instance, for the court or judges?

22 A. Yes. We're the only law enforcement agency in the
23 Government Center. As such we have access to all floors of
24 the Government Center, which is not typical.

25 Typically you have access -- For example, the Public

1 Defender has access to his offices on the third floor. We
2 have access to the entire building.

3 Mr. Garza has also provided assistance to the courts
4 when there's been threats against judges or other court
5 personnel.

6 Q. Now, drawing your attention to the spring of 2005, do
7 you have any recollection of being aware of an individual by
8 the name of Tom Toler prior to June 12th or 13th, 2005?

9 A. As my recollection was refreshed, later, after June
10 13th of 2005, yes, I had become aware through Sheriff Stanton
11 that there was a person named Tom Toler.

12 Q. Now, you're familiar, at least you indicated, that
13 you were made aware at some point that an ad had been taken
14 out in one of the papers.

15 Were you aware -- Just to be clear, did you ever read
16 that ad?

17 A. I did not.

18 Q. Were you aware that that ad had been put in the paper
19 by Tom Toler?

20 A. No.

21 Q. When you talk about not reading that ad, from time to
22 time is there local press that comes out, for instance
23 perhaps an editorial or letters to the editor, that come out
24 in the local paper about you as District Attorney?

25 A. Oh, yes. Indeed.

1 Q. All right.

2 And do you have any specific custom and practice as
3 to your review of those types of media coverage?

4 A. Yes, I do. I read news articles. I read editorials.
5 I typically do not respond to editorials unless they are
6 factually inadequate. And that's pretty rare.

7 But I do not respond. I don't read and I don't
8 respond to most letters to the editor. Sometimes a letter to
9 the editor may be called to my attention because it relates
10 to a case where a person has a specific question about a
11 case. Someone in the office may come to me and say that
12 there's a letter to the editor, here's the file, you know,
13 you need to know about this file. It would be in that
14 context.

15 But I don't respond to letters to the editor, and I
16 don't read political commentary in the paper.

17 Q. There was a mention of the e-mail that you were shown
18 that had mentioned some inquiry by an aide of the Board of
19 Supervisors.

20 Do you recall anything related to that?

21 A. I remember seeing the e-mail. I believe it was shown
22 to me in Mr. Gonzalez' office. Prior to that, no. I have no
23 recollection of ever receiving an e-mail from a member of the
24 Board of Supervisors about Mr. Toler.

25 I do get e-mails from the Board of Supervisors. When

1 I had child support, I used to get a lot of them. But no, I
2 don't get very many inquiries. I believe I would remember if
3 I had received one. I have no recollection of it.

4 Q. That same would apply if it had come from an aide
5 from a member of the Board of Supervisors?

6 A. Yes.

7 Q. You were also asked questions about a correspondence
8 of April 12th, 2005, that Mr. Toler says he sent to the
9 District Attorney's Office.

10 Did you ever see that correspondence in or about this
11 period of April, May, June 2005?

12 A. No.

13 Q. Is there some usual procedure that's followed by your
14 office if a correspondence is directed to you?

15 A. Yes. And we've had to do this because a lot of mail
16 is addressed to me. And that's -- You know, I certainly
17 understand that. But most of the mail that's addressed to me
18 really shouldn't come to me. It will slow down the process,
19 if you will, if the mail comes to me.

20 So with the exception of mail that's addressed to me
21 with a "Personal and Confidential," for example something
22 comes from the state bar or something like that, it's opened
23 at the front counter.

24 If it relates to a case -- if the correspondence
25 relates to a case, that mail is never forwarded to

1 Miss Johnson, it is never forwarded to me. It is forwarded
2 directly to the attorney or the investigator or the victim
3 witness advocate or the paralegal that has responsibility for
4 that case because that's the person that can solve the
5 problem.

6 Mail that comes to me is going to be -- typically
7 it's going to be official mail, correspondence or a letter
8 from the AG's office, a letter from the U.S. Attorney, some
9 official mail, or something that is personal and
10 confidential.

11 Or it is going to be something that has been received
12 by someone else, they've made a decision that it does need to
13 come to me, and it will be attached to a file or some other
14 information and the entire packet will be forwarded to me.

15 Now, if it is something that the front desk believes
16 should come to me, the first stop is going to be Marsha
17 Johnson's office.

18 Q. Let me stop you there for a second.

19 In terms of generally setting up meetings with you --
20 personal meetings with you, do you maintain your own
21 calendar?

22 A. Yes, I do.

23 Q. So if someone wanted to set up a meeting with you,
24 would they go through Marsha Johnson?

25 A. Yes.

1 Q. And what would be the general steps that are followed
2 to set up a meeting?

3 A. Let's say it is a phone call, the front desk would
4 refer the phone call to Marsha. She would take the phone
5 call. She would get some information.

6 One of the first things she's going to ask is, you
7 know, what's this about because I've requested my staff,
8 whoever it is, I don't care whether it's an attorney or
9 paralegal or who you are on my staff, I want you to be
10 prepared when you -- when you're trying to answer a question,
11 so we don't want to answer a question blind.

12 So for me in particular, I'm going to need a file,
13 I'm going to need some information. So Marsha will get a
14 name and a telephone number. She'll also try to get some
15 information about what the person wants to see me about.

16 Then she'll put it on a pink slip, a little memo pad,
17 and it will be in my in box. Or she'll hand it to me when I
18 come in to see her in the morning because my first stop after
19 my cup of coffee is to see Marsha Johnson every morning.

20 Q. Now, do you -- When was the first time Tom Toler was
21 brought to your attention other than the involvement that you
22 spoke about with Sheriff Stanton?

23 A. Well, I know someone, and I don't know -- I think it
24 was Marsha, it may have been Al, it may have been somebody
25 else -- somebody mentioned to me probably on a date that now

1 I know was either the 12th or the 13th of April, that there
2 was a full page spread in the newspaper.

3 I don't know who mentioned it to me. All I know is
4 there was some mention about it.

5 Q. Okay. Did you know that was Tom Toler's spread in
6 the newspaper?

7 A. No. No.

8 Q. So when was the first time that you remember actually
9 the name "Tom Toler" coming to your attention?

10 A. That would be on the 13th of June when Al Garza came
11 to me and said he had met with Mr. Toler and Mr. Toler had
12 threatened to bring an Uzi into the office.

13 Q. So at that point in time what did you do next?

14 A. Well, obviously we sat down and talked about it. I
15 recall that --

16 Q. Let me stop you there. I'm sorry to interrupt.

17 A. Sure.

18 Q. Let's back up.

19 You indicated that there was -- you had seen an
20 article on June 12th, 2005, about a small claims matter?

21 A. That's correct.

22 Q. Okay. At that time did you become aware that the
23 individual involved in the small claims matter was Tom Toler?

24 A. The article and the gentleman who wrote the article
25 is sitting in the back of the courtroom. The article was by

1 Jess Sullivan.

2 I believe there was mention in the article that Tom
3 Toler, a local bail bondsman, words to that effect, had filed
4 a small claims court action against the District Attorney for
5 his gas money for driving to the DA's office on several
6 occasions. I think the amount was \$26.75.

7 And I think the first thing I did after I read that
8 was ask Marsha if we had been served with any small claims
9 court action, and her answer was no. I asked her if she saw
10 the article. She said she had. As it turns out, we were
11 never served.

12 Q. What was your -- did you have any other response at
13 that time, other than speaking with Miss Johnson?

14 A. Well, I probably made some comment about this being a
15 wacko or something like that.

16 Q. Did you make any contact with County Counsel at that
17 point?

18 A. No. I don't believe so. Not that day anyway.

19 Q. Okay. Now stepping in --

20 A. Miss Johnson could have. I don't know.

21 Q. Stepping then to the next day, on June 13th, 2005,
22 you indicated that Mr. Garza came to you and made the report
23 as you indicated.

24 What happened next after that?

25 A. Well, we sat down and talked about it. I believe we

1 called in Supervising Investigator Byerley because Al
2 indicated that Brook had information about prior contacts
3 with Mr. Toler.

4 I know that my now assistant, Kathy Coffey, was in on
5 some of the discussions that we had during that late morning,
6 certainly in the afternoon of that day.

7 Excuse me.

8 I know sometime during that day we talked to Bill
9 Godwin briefly. I know that sometime during that day or the
10 following day I talked to John Daugherty. And based on all
11 the information that I was given, I asked Chief Garza to
12 write a report. He also called the County Counsel's Office.

13 Q. Thank you. I'm sorry.

14 Can you generally describe what information it was
15 that you received during the course of the meeting that you
16 had where you called in -- I mean Mr. Garza was there and
17 Mr. Byerley was there?

18 A. Well, I know I tried to make very clear what was
19 said. And the way it was described to me, at least my
20 recollection, is that Chief Garza said that he had met Tom
21 Toler out near the elevator lobby. That in the course of
22 that meeting he had offered to set up a meeting with me.
23 That Mr. Toler had agreed to that meeting. That he was in
24 the process of writing down, I believe, his phone number for
25 Al.

1 When Al asked, "By the way, you know, what's this
2 about," at that point in time Toler crumpled up the piece of
3 paper and used some foul language and derogatory comments
4 towards Al and shortly thereafter made the comment that
5 perhaps he would bring an Uzi into the office the next time
6 he came.

7 Q. Did you receive in that initial meeting, before you
8 met with Detective -- or Investigator Godwin or Charging
9 Deputy District Attorney Daugherty, did you receive any
10 information regarding Mr. Toler's background or other
11 contacts with the office?

12 A. Yes. I think most of it would have been from
13 Supervisor Byerley. He indicated that Toler was a bondsman.
14 He indicated that Toler had been to the office, I believe, on
15 two or three prior occasions, once in late March, once on
16 April 7th, I believe.

17 That on those occasions that he had been loud,
18 boisterous, obnoxious, used foul language. On one occasion
19 he threatened to kill someone. I believe that was a comment
20 that he made in the presence of Miss Johnson.

21 That, together with the fact that he had used -- said
22 he was going to bring an Uzi in the next time he came, I
23 decided that we really needed some help.

24 I was concerned about my staff, particularly the two
25 young women that sit at the front counter. I heard it

1 described as this bullet proof glass there. It is a sheet of
2 glass there, but they're relatively vulnerable. So I was
3 concerned about them.

4 I was made aware that on, I believe it was, the
5 instance of the 7th, that what started as a loud person in
6 the office that was of concern to Linda Jones led to her
7 contacting Warren Butler who was unable to answer Mr. Toler's
8 questions or calm him down.

9 That resulted in the calling to the front counter of
10 Miss Johnson, my administrator, to whom Mr. Toler became only
11 louder and ultimately threatened to kill somebody, which
12 resulted in the calling to the lobby of an investigator. And
13 both Supervisor Byerley and Investigator Godwin had responded
14 to the lobby area and ultimately got with and had met with
15 Toler.

16 Q. Now, would you describe the demeanor, if you will, or
17 how this was treated by Chief Investigator Garza in relating
18 the information that he did to you?

19 A. Well, I'll be honest. I don't believe I have ever
20 seen him as serious as he was. My initial reaction was for
21 the concern of my staff. Chief Garza's concern was for me.

22 Q. Would you describe how the demeanor of Supervising
23 Investigator Byerley was in relating the information he did
24 to you?

25 A. I got the impression from Supervisor Byerley he was

1 very concerned about what appeared to be escalating behavior,
2 behavior becoming more and more threatening and more and more
3 violent.

4 Q. During the course of the meetings, did you learn any
5 information about -- Well, initially in the meetings with
6 Chief Garza and Investigator Byerley, did you learn anything
7 about Mr. Toler being a private investigator?

8 A. I'm not sure.

9 Q. At some point you brought in Investigator Godwin to
10 meet with you?

11 A. I'm not sure if he came in to meet with me or I meet
12 with him down in the investigation section, but I do remember
13 speaking with Godwin.

14 He indicated that he had -- he had met with
15 Mr. Toler, he had conducted an investigation, and the result
16 of that investigation was that there was insufficient
17 evidence to prosecute the case, that he had spoken with John
18 Daugherty about it and there just wasn't enough evidence.

19 Q. Did you, during the course of June 13th, 2005,
20 receive any other information regarding Mr. Toler's
21 background?

22 A. We knew either on that date or the following date,
23 either the 13th or 14th, that Mr. Toler was the subject of a
24 Workplace Violence Restraining Order in Marin County. We
25 shortly thereafter obtained a copy of that.

1 The reason we became aware of it was I believe we ran
2 a rap sheet that day.

3 Q. Was there any other additional formation you became
4 aware of about Mr. Toler during the course of this June 13th
5 and the various contacts you had that day?

6 A. I don't recall.

7 Q. Did you at some point learn on June 13th or June 14th
8 that Mr. Toler had been a prior police officer?

9 A. I believe Chief Garza was aware of that and did
10 mention that he had been what we call a reserve officer. And
11 I -- at the time I thought it was with Winters P.D. During
12 the course of this I've learned that he also worked for a
13 while as a reserve with Vacaville.

14 Q. You indicated that you directed Chief Investigator
15 Garza to prepare a report?

16 A. Yes.

17 Q. Did you direct anyone else to prepare a report?

18 A. Supervisor Byerley had already drafted reports as far
19 as I think I was aware. He was not a witness to anything
20 that occurred that day.

21 No, I don't believe I directed anyone else to write
22 any report or prepare any memorandum.

23 Q. In connection with June 13th, June 14th, the
24 information that you received, was there some game plan in
25 addition to the preparation of the report that was going to

1 take place?

2 A. Well, what I did -- I'm not sure I made the call, but
3 I know I was in the room when the call was made, a call was
4 placed to the County Counsel's Office specifically to then
5 Assistant County Counsel Wendy Getty. She's now a Superior
6 Court Judge in Solano County.

7 But we called Wendy Getty. And I can remember one of
8 the things I said to her is: We need your help. We had this
9 incident occur. This fellow has come into our office,
10 threatened to bring an Uzi into the office, can you help me
11 protect my staff.

12 Q. And at some point was a decision made regarding what
13 to do?

14 A. A decision was made by Miss Getty as to what to do.

15 Q. But did you have some understanding of what that
16 decision was?

17 A. Yes. I was told what she would be able to do, what
18 the court might likely -- what order a court might likely
19 enter. She gave us advice as to -- you know, in essence what
20 was likely to happen.

21 Q. All right.

22 What was it that you understood was going to take
23 place?

24 A. What I understood was going to take place was she was
25 going to draft a declaration for Chief Garza based on --

1 primarily on his report, that that declaration would, in her
2 belief, establish probable cause for the issuance of the
3 temporary restraining order.

4 She said that the restraining order would accomplish
5 several things. It would keep him out of our office. It
6 would protect us in the sense that he would not be able to
7 come within a specified distance from us. And she also
8 indicated that, you know, there would be further hearings on
9 it and determinations as to, you know, how it might be
10 enforced or what particular terms the court might approve.

11 Q. At that time did you have an understanding that the
12 temporary restraining order that would be obtained would be
13 sought on your behalf?

14 A. Yes. We were told that that was the requirement,
15 that a temporary restraining order had to have named
16 individuals, that it couldn't be issued to protect the
17 District Attorney's Office or to keep Mr. Toler away from the
18 District Attorney's Office.

19 It had to be written in such a way it was to keep him
20 away from specific individuals and their place of employment.
21 So, as I say we -- I readily volunteered because I didn't
22 want him in the office.

23 Q. Was one of the purposes, at least in your
24 understanding of this restraining order, was that it would
25 also assist in protecting the staff if necessary because

1 Mr. Toler would have to stay away from the office?

2 A. I was confident that if the order was approved by the
3 court, based upon what Miss Getty told us, that Mr. Toler
4 would be prohibited from coming to the District Attorney's
5 Office unless he had lawful business there.

6 It was the same essentially of anything within that
7 specified distance. If he had lawful business, of course he
8 was -- he could be -- for example, if he had business at the
9 court, he could go to court.

10 Q. Did you have an understanding that there would be
11 some provision requested that would allow Mr. Toler to come
12 into the Government Center if he called County Counsel?

13 A. Yes. We specifically spoke with Miss Getty about
14 that. I'm not sure who suggested it. It could have been
15 suggested by my assistant, now Kathy Coffey, or I could have
16 suggested it, but I wanted to make sure that there weren't
17 going to be any what I called "inadvertent" meetings.

18 And I asked Miss Getty was it possible that we could
19 make sure that even on those instances where he had lawful
20 business at the courthouse, that we could be made aware that
21 he was going to be within the specified distance such that I
22 wouldn't walk out to get on the elevator and the elevator
23 doors open and there's Mr. Toler or that I wouldn't run into
24 him any place else.

25 And a specific condition of the temporary restraining

1 order was that he was required to notify the County Counsel's
2 Office any time he was going to be at the Government Center,
3 which would include the parking structure because the
4 Government Center is a six story building, a parking
5 structure, and a two story building that houses probation, or
6 at the court or at the jail. All he had to do was call up
7 and say "I'm going to be there at eight o'clock tomorrow
8 morning."

9 And we took specific steps. I don't want to go into
10 the detail of our security measures, but we took specific
11 steps. When we were advised of that by County Counsel during
12 the pendency of the TRO, we made sure we weren't where
13 Mr. Toler was supposed to be.

14 Q. Did you consider the fact that Mr. Toler was a bail
15 bondsman in relation to the obtaining of this order?

16 A. I certainly knew that he was a bail bondsman, yes. I
17 certainly knew that he would have business at the court and
18 at the jail. So as far as I was aware, the temporary
19 restraining order did not prohibit him from exercising lawful
20 business.

21 I know it was later amended to specifically make it
22 clear that if he had lawful business at another department
23 within the Government Center, for example if he had to go to
24 Planning or he had to go to see a member of the Board of
25 Supervisors or whatever else, that he could again notify the

1 County Counsel's Office that he was going to be at a meeting
2 with supervisor so and so at such a time and he could conduct
3 his lawful business.

4 It was just so that there wouldn't be this
5 inadvertent meeting.

6 Q. Did you also understand that he would be able to get
7 into the courthouse or get into the jail to operate his
8 business?

9 A. Absolutely. There was no prohibition. No
10 prohibition.

11 Q. Initially there was a five hundred yard perimeter, if
12 you will, that was requested in that. And was there some
13 thought process you had in relation to the 500 yard request?

14 A. Not that I had. That came from Miss Getty. But I
15 was assured during the course of the conversation that that
16 had nothing to do with lawful business.

17 So, for example, it would prohibit him from coming
18 within 500 yards of me, in essence, for the purpose of
19 annoying or bothering or harassing me. It wouldn't prevent
20 him from going to the courthouse on lawful business or going
21 some place else on lawful business.

22 Q. Jumping ahead for a minute, shortly after the
23 restraining order was issued there was some concern that the
24 500 yards may present a difficulty to Mr. Toler.

25 Did you agree that could be reduced so that he could

1 go to the courthouse and to the jail as needed for his
2 business?

3 A. I'm not aware that it was because it presented a
4 difficulty for him, but I know Miss Getty asked me if we had
5 any objection if it be reduced to a hundred yards. And I
6 said, No, we had no objection.

7 Q. And when the temporary restraining order was entered,
8 did you have any understanding of whether there would be a
9 hearing set on that matter?

10 A. Yes. As a matter of fact, I believe a hearing was
11 set for July 5th. The TRO was granted on the 15th of June,
12 and I believe a hearing date was set for July 5th.

13 Q. What's your understanding of why there was a hearing
14 that is set in conjunction with a restraining order like
15 that?

16 A. Well, I'm not a civil lawyer so I really -- this was
17 the first time I had even sought assistance with regard to
18 this issue.

19 The way Miss Getty explained it to us on either the
20 13th or 14th was that the application for a TRO was what is
21 called an ex parte application. In other words, it's without
22 notice to an opposing party. So there would be no notice to
23 Mr. Toler she was going to seek this order.

24 She simply would present the request with
25 accompanying documents to the court, and ask the court to

1 make an ex-parte -- or without regard to the other -- to the
2 opposition an order. But there would have to be a hearing to
3 determine whether or not that ex-parte order could stand
4 longer than a relatively short period of time.

5 And the hearing date that she set was on the 5th, and
6 it was my understanding there would be some testimony or some
7 documents or some other information presented to the court on
8 July 5th that would allow the court to make a decision as to
9 whether or not this temporary ex-parte order would be made
10 into a more permanent order.

11 Q. Over the course of time, did that hearing ever take
12 place?

13 A. It never took place.

14 Q. Did you have any understanding generally as to why
15 that hearing never occurred or was postponed?

16 A. Well, like most courts -- I'll put this as gently, I
17 guess, as I can. Like most courts in California, probably
18 this very court, there's a lot of business. And there aren't
19 a lot of judges so this type of work is assigned to
20 commissioners.

21 This case was assigned to Commissioner Alberta Chew.
22 She had other commitments. She had other issues. She
23 ultimately, I think, retired even during the pendency of this
24 TRO.

25 So there were a couple of instances where the case

1 was continued because Miss Chew was unavailable to hear the
2 case. There were other times that it was continued, it was
3 my understanding, because Mr. Toler had swapped attorneys.

4 As far I know Miss Getty never requested a
5 continuance. I know I never requested a continuance. I was
6 never subpoenaed to appear at any hearing. And as far as I
7 know no one from my office ever appeared in any proceeding
8 with regard to this TRO.

9 Q. You mentioned that in or about June 13, 2005, in
10 connection ultimately with the restraining order that your
11 office did implement some security measures?

12 A. Yes, we did.

13 Q. And I think I understand that you're not comfortable
14 detailing what those security measures were.

15 Can you state them in a general nature?

16 A. Well, we obviously tried to make everybody aware of
17 the situation so that no one in the office would be unaware
18 of Mr. Toler.

19 A color photograph, what is called a Soundex, the
20 photograph on his driver's license, a colored copy of that
21 was posted throughout the office in areas where all of the
22 office staff would have an opportunity to see it, become
23 familiar with his face.

24 And between Chief Garza and other members of the
25 investigators, they made sure that I was accompanied when I

1 went anywhere outside the office.

2 THE COURT: Last question, Mr. Cassidy?

3 MR. CASSIDY: Just a couple more, but I'll go to
4 those after break.

5 BY MR. CASSIDY:

6 Q. As far as you were concerned was the matter after
7 June 13th, including the time period the restraining order
8 was in effect, was that all treated seriously by your office?

9 A. Absolutely. Yes.

10 MR. CASSIDY: I'll break there, Your Honor, to resume
11 after lunch.

12 MR. GONZALEZ: Maybe after you excuse the jury I
13 would like to bring one matter up with you.

14 THE COURT: All right.

15 Ladies and Gentlemen, we'll take our afternoon
16 recess. We'll reconvene at 1:30.

17 Please, remember the admonition the Court has
18 heretofore given to you.

19 (Jury exits at 11:54 AM.)

20 THE CLERK: Record will reflect we're in open court,
21 counsel are present, the jury is not.

22 Yes, Mr. Gonzalez.

23 MR. GONZALEZ: I'm sorry to delay your lunch, Your
24 Honor.

25 THE COURT: That's all right.

1 MR. GONZALEZ: I know the matter didn't come up as an
2 in limine recently, and I was asking Mr. Springman whether or
3 not there had been a prior order by the Court that we could
4 not go into what occurred with the TRO.

5 In other words, ultimately County Counsel and
6 Mr. Toler reached an agreement to just do away with the
7 temporary restraining order and not have a hearing.

8 He's elicited from this witness did the hearing ever
9 take place. He's suggesting the reason for that is nobody
10 had time for it.

11 The truth is an agreement -- they got together and
12 said, Okay, forget about it, we're not going to proceed on
13 this.

14 This is important because --

15 THE COURT: I understand why it is important. I
16 don't know that you're right. And if you have some way that
17 you want to demonstrate that, I suppose at this point you
18 have a right to do that in rebuttal.

19 MR. GONZALEZ: I just want to bring it to your
20 attention.

21 THE COURT: I don't even recall there being a
22 conversation. I may be wrong.

23 MR. GONZALEZ: Do you understand what I'm saying?

24 MR. CASSIDY: I do. Ultimately, which I didn't ask,
25 is that the restraining order was dropped with the agreement

1 that Mr. Toler, if he was going to come to the District
2 Attorney's Office, would call and set up an appointment in
3 advance.

4 MR. GONZALEZ: That is not true.

5 MR. CASSIDY: It is true.

6 THE COURT: No, it isn't. Yes, it is. That is very
7 helpful.

8 MR. CASSIDY: Probably makes a trial.

9 THE COURT: Gentlemen, I have no idea of what
10 happened. But, Mr. Gonzalez, if you want to put on something
11 in rebuttal at the appropriate time, feel free to do so.

12 MR. GONZALEZ: All right.

13 Thank you, Your Honor.

14 THE COURT: Stand in recess.

15 (Off the record at 11:56 AM.)

16 (On the record at 01:32 PM.)

17 THE CLERK: Please, remain seated.

18 Court is now in session.

19 THE COURT: Mr. Cassidy.

20 MR. CASSIDY: Thank you.

21 BY MR. CASSIDY:

22 Q. Mr. Paulson, I'm going to direct your attention now
23 to September 22nd, 2005.

24 Prior to September 22nd, 2005, had you ever seen
25 Mr. Tom Toler?

1 A. No. Only the photographs that were posted in the
2 office.

3 Q. And on September 22nd, 2005, did you happen to be in
4 the first level of the parking garage of the Government
5 Center building in Solano County?

6 A. Yes. At about 8:25, I think it was, in the morning.

7 Q. And at that point did you arrive in your vehicle?

8 A. Yes.

9 Q. And what happens -- I want to take this a little bit
10 at a time. What happens initially after you arrive in your
11 vehicle?

12 A. I drive in. Park. Get out of the car. Grab my bag
13 and coat from the back seat. I typically carry my coat over
14 my arm. I don't wear my coat in the car. So I carried my
15 coat and my bag in my left hand.

16 I'm walking past -- There is a row of parking spaces
17 which are for the members of the Board of Supervisors. And
18 then immediately in the front of their cars would be the
19 first row of handicap parking stalls.

20 As I crossed that, I see someone that I recognize.

21 Q. All right. Who is that?

22 A. That's Robin Keeney.

23 Q. Who is Robin Keeney?

24 A. Robin Keeney was one of the first lawyers I met in
25 the DA's Office in Solano County. He was working there when

1 I started in '77. I've known Robin for years. We've been
2 very good friends.

3 Q. Do you have a discussion with Robin Keeney?

4 A. Yes, we do. At the time I think his daughter was in
5 her third year of law school, my son was in his first or
6 second.

7 Stephanie, his daughter, had worked for me, summer
8 clerk in our office, so I was interested just how she was
9 doing, if she -- what she had been up to.

10 We chatted about different things. I think we also
11 talked about the firm my son was interviewing with because we
12 were in September. I think that was the start of his second
13 year. He started interviewing with firms.

14 Q. Approximately, how long did that conversation take
15 place?

16 A. Oh, I would say two or three minutes maybe.

17 Q. At some point did you complete that conversation?

18 A. Yeah. We said good-bye, parted ways. Robin started
19 to walk towards the exit from the parking garage on to Union
20 Avenue, and I started to walk across the second row of
21 handicap stalls towards the breezeway that leads from the
22 parking garage to the county building that I'm in.

23 Q. So If I understand you correctly, you were walking in
24 opposite directions after you parted from Mr. Keeney?

25 A. Sort of a right angle. Robin would have been going

1 virtually directly east. I was going north.

2 Q. Did something happen at that point to cause you to
3 change your course?

4 A. Yeah. I hadn't taken more than a few steps after
5 turning and saying good-bye to Robin, and I heard someone
6 calling "Dave, Dave Paulson."

7 I thought it was Robin. I thought maybe there was
8 something else he wanted to talk to me about.

9 Q. What did you do in response to hearing your name
10 called?

11 A. I turned around and looked now towards the exit from
12 the parking garage on to Union. And I don't know if you have
13 been in a parking garage, but it is lighted, but when you're
14 looking down that driveway towards that exit, obviously there
15 is daylight outside and all you see is a shadow.

16 I wasn't able to see, you know, a person's features.
17 So I looked. I thought it was Robin there.

18 Q. As you stopped and turned to look backwards, you were
19 looking in the direction in which Robin Keeney had left you
20 and headed toward Union Street?

21 A. Yes.

22 Q. All right. What happens next?

23 A. Well, I hear coming from that same direction again my
24 name, calling out "Dave Paulson." And then whoever was
25 talking was walking towards me saying, "We need to talk, we

1 need to talk."

2 Q. Let me stop you there.

3 At that point in time had you taken any steps toward
4 this person that's making these statements?

5 A. No. If anything, I simply stopped walking towards
6 the breezeway and turned to face eastward towards that exit.

7 Q. All right.

8 And at the point that you hear the phrase -- or the
9 repeated phrase, "We need to talk," could you tell who the
10 person was that was making that statement?

11 A. Not at that point because I'm looking -- again, as I
12 say, I'm looking directly east towards this entrance -- or
13 exit, it actually is, that you drive through. And it's like
14 the person is back lit. All I can see is a male figure
15 walking towards me.

16 Q. What happens next?

17 A. Well, when the person gets within ten to 15 feet of
18 me, now I've got enough ambient light from the garage I can
19 see. And I recognize the person that's walking towards me as
20 the same person that's in the photograph that's been posted
21 in our office. I recognize that person as Tom Toler.

22 Q. So the person who has now said "We need to talk," and
23 within ten to 15 feet of you, you recognize as Tom Toler?

24 A. Yes.

25 Q. And what happens next?

1 A. As he says "We need to talk," I said, no, we don't,
2 and I walked away.

3 Q. Did anything else happen in relation to that contact
4 other than what you've already told me?

5 A. No. No. I don't believe so.

6 Q. At the time that Mr. Toler was coming toward you and
7 was making the comment "We need to talk" and you recognized
8 who it was, did you form any impression as to whether or not
9 Mr. Toler was in violation of the restraining order that was
10 then in effect?

11 A. As soon as I recognized it to be Mr. Toler I knew he
12 was in violation of the restraining order. And immediately,
13 when I went into the building, went up to the fourth floor, I
14 reported it immediately to Chief Garza.

15 Q. Now, after that there was a matter filed against
16 Mr. Toler as a result of the violation of that restraining
17 order. You're familiar with that?

18 A. I'm familiar with it in the sense that I was a
19 witness. The Attorney General's Office received reports from
20 the Sheriff's Office I believe. I don't believe our office
21 was involved at all.

22 But the Sheriff's Office subsequent to the incident
23 in the parking garage, a representative contacted me, took a
24 report, conducted an investigation, it was referred to the
25 Attorney General's Office, and yes, a complaint was filed by

1 the Attorney General.

2 Q. Other than your providing a report and being a
3 witness, did you cause that proceeding to go forward?

4 A. Absolutely not. I had no contact with it at all. In
5 fact, I had never seen the report that was the basis of my
6 interview until a deposition that was held in this matter.

7 Q. Now, drawing your attention back to in or about the
8 time period of June 13th through June 15th, 2005, and based
9 on the information available to you at that time involving
10 Mr. Toler's contacts with the District Attorney's Office and
11 the information available, did you feel that Mr. Toler
12 presented a credible threat of violence toward you?

13 A. Yes, I did.

14 Q. Why is that?

15 A. The behavior that we had seen as described to me
16 escalating from coming to the office and meeting with
17 Investigator Byerley, abruptly leaving that meeting, walking
18 away from Investigator Byerley as he was attempting to get
19 some information, his -- the incident approximately a week
20 later when we had the escalating problem between going from
21 our receptionist to a supervisor to my office administrator,
22 eventually calling an armed peace officer to come up and deal
23 with Mr. Toler, and then the incident two months later when
24 he told Chief Garza he would perhaps bring an Uzi.

25 Q. Did you also feel that Mr. Toler presented a credible

1 threat of violence toward others in the office?

2 A. That was my primary concern. Yes. I was more
3 concerned for the clerical staff that had to deal with
4 someone at the counter than I was for myself who was inside
5 the office at the time.

6 Q. Now, in making the determination and knowing that
7 this restraining order is going to be filed on your behalf to
8 keep Mr. Toler away from you and your office, did you in any
9 manner base your decision for requesting the temporary
10 restraining order on the ad that Mr. Toler had taken out back
11 on April 12, 2005?

12 A. No.

13 Q. At any point during your meetings in or about June
14 13th, 14th or 15th, in relation to the decision-making
15 process and obtaining the temporary restraining order, did
16 you have some -- did you engage in some form of conspiracy
17 with Chief Garza or Supervising Investigator Byerley to
18 retaliate against Mr. Toler for having taken out this ad on
19 April 12th, 2005, by seeking this TRO?

20 A. No.

21 MR. CASSIDY: That's all I have.

22 Thank you.

23 ///

24 ///

25 ///

1 RE-CROSS-EXAMINATION

2 BY MR. GONZALEZ:

3 Q. Mr. Paulson, would you agree that before you reach a
4 conclusion about somebody's escalating violent behavior that
5 you should have a sense of the totality of the information?6 A. I believed I had a totality of the information that
7 was necessary --8 THE COURT: That's not an answer to the question,
9 sir. The question is do you believe you ought to have an
10 understanding of the totality of the circumstances. Not
11 whether you did at the time, but as a general matter
12 apparently the question is.

13 THE WITNESS: As a general rule, yes.

14 BY MR. GONZALEZ:

15 Q. Right. I asked you this at a deposition whether or
16 not --

17 A. Yeah.

18 Q. -- somebody that submits a declaration in support of
19 a temporary restraining order should give a commissioner or a
20 judge a complete picture of who it is that they are dealing
21 with.

22 You would agree with that, wouldn't you?

23 A. Not necessarily, no.

24 Q. So you think a one-sided presentation of the facts to
25 a commissioner or judge would be acceptable?

1 A. It's an ex-parte proceeding wherein the moving party
2 is going to present the facts that they believe are necessary
3 to adequately inform the judge of the need for a restraining
4 order.

5 Q. Sir, you're indicating to us today about this
6 escalating pattern of violence, but you've told us that you
7 didn't bother to read an advertisement that Mr. Toler put in
8 the paper that you don't know whether or not conveyed how he
9 felt about what was going on; isn't that true?

10 A. I think I knew generally what was in that ad because
11 of the briefing that Supervisor Byerley had given at the
12 meeting on the 13th or the 14th.

13 Q. Right. But Mr. Paulson, you, yourself, have
14 indicated today that it wasn't until after the incident with
15 Mr. Garza that you started to be told about incidents that
16 had happened earlier; is that correct?

17 A. That is correct.

18 Q. And you've admitted that there are certain things
19 that you have never seen. A letter, for instance, that
20 Mr. Toler wrote?

21 A. If he wrote it, no, I have never seen it.

22 Q. Do you have any reason to believe he didn't write it?

23 A. Yes, I do.

24 Q. And is that because you don't have any evidence that
25 you received it?

1 A. No.

2 Q. Is it -- I asked you this during direct examination
3 about whether or not somebody that comes to the front counter
4 of your office and leaves a note to get a callback would get
5 such a callback. And from the way you describe your office,
6 in very professional terms, it would appear somebody would
7 get a callback.

8 A. Yes, they would.

9 Q. Can you explain how somebody could visit your office
10 over ten times and not get a callback?

11 A. I have no explanation for that, no.

12 Q. Now, you have run political campaigns before, haven't
13 you?

14 A. Yes, I have.

15 Q. You know a full-page ad in the Daily Republic costs
16 some money?

17 A. I wouldn't have a clue how much. I've never taken
18 out a full-page ad.

19 Q. You indicated that you read editorials, but not
20 letters to the editor?

21 A. Generally, yes.

22 Q. A letter to the editor is going to be a short item?

23 A. It may or may not be. It may be a long letter.

24 Q. Not a full-page ad, right?

25 A. No.

1 Q. In fact, nobody has ever written a full-page ad about
2 you or your office in the entire time you've been a district
3 attorney; is that true?

4 A. I don't know. I don't know.

5 Q. When did you become a district attorney in that
6 office?

7 A. I started in 1977. I was elected in 1993.

8 Q. Since 1977 can you recall a single time that you saw
9 an advertisement taken out in any newspaper about the
10 District Attorney or the office by a private citizen?

11 A. Yes.

12 Q. When was that?

13 A. It was during the 2002 campaign. It was taken out by
14 the owner of an auto dealership in Vacaville.

15 Q. That was in support or against a particular
16 candidate?

17 A. No. It was a criticism of how my office had handled
18 a case involving a vehicle that had been misappropriated from
19 his dealership.

20 Q. You read that apparently?

21 A. It was called to my attention by Chief Garza.

22 Q. I asked you if you read it?

23 A. I did after it was called to my attention by
24 Chief Garza, yes.

25 Q. In this case you're being sued with an allegation

1 that you retaliated in part because of that publication and
2 as of today you have not read it?

3 A. For that very reason I have not read it. Because I
4 was under the impression that the decision that I made on the
5 date that I made it, which would be to contact the County
6 Counsel and ask them for assistance, that that was the --
7 that was the time frame that was important. So no, I have
8 not read anything since then that I wasn't aware of before
9 that date.

10 Q. Do you think it is interesting that when we -- I
11 asked you in direct examination about this June 13th
12 situation. And you corrected me and said June 12th. So I
13 went back here, and I looked. And I came back and said,
14 Okay, is it the 13th, and you said the 12th.

15 Do you think it is possible that you read this ad on
16 April 12th given how certain you are that something happened
17 on the 12th?

18 A. No. June 12th was the date that the Daily Republic
19 published an article, it was written by Jess Sullivan, that
20 described a small claims action that had been filed by
21 Mr. Toler.

22 Q. All right.

23 If I told you that had happened on June 13th and
24 you're mistaken, your own attorney has been referring to it
25 as June 13th --

1 MR. CASSIDY: Objection, Your Honor. It is
2 argumentative. It is vague.

3 MR. GONZALEZ: I'll withdraw.

4 THE COURT: I don't know what you are talking about.
5 BY MR. GONZALEZ:

6 Q. Let me ask you this, sir.

7 THE COURT: He's withdrawn it in any event.

8 BY MR. GONZALEZ:

9 Q. There was -- it seems -- you testified that -- at the
10 deposition that took place in my office, I showed you an
11 e-mail related to Marsha Johnson. I just want to get this
12 clear. I did not show you an e-mail that the Board of
13 Supervisors or an aide of the Board of Supervisors sent to
14 you or your office; is that correct?

15 A. I don't know. You showed me an e-mail that the top
16 header was from Marsha Johnson to -- I believe it was to
17 Chief Garza with copies to Brook Byerley.

18 And it did reference -- in your question, at least,
19 you said that referenced an inquiry from an aide to the Board
20 of Supervisors.

21 Q. Sir, you said the same thing when you looked at it,
22 which is it's an e-mail from Marsha Johnson saying that Al
23 already -- or I'm sorry -- "Dave already took care of this
24 inquiry," this inquiry that had been made from an aide to the
25 Board of Supervisors; isn't that right?

1 A. It does.

2 Q. All right.

3 Do you understand that your office has never -- never
4 provided any information or any e-mails -- the original
5 e-mail that that was referring to? Are you aware of that?

6 A. If we haven't it's because we don't have it. It
7 doesn't exist.

8 Q. Right. I understand that this is an e-mail that if
9 you responded to that -- you received it and you respond to
10 it, it would have been in your possession; isn't that right?

11 A. Well, you're assuming that I responded to it. As I
12 say, I have no recollection of ever receiving it. I have no
13 recollection of ever responding to it. And I assumed,
14 looking at the document that you showed me, that Marsha
15 believes that I did, but I have no recollection of ever
16 seeing it or responding to it.

17 Q. All right.

18 If you received an inquiry from the Board of
19 Supervisors you'll concealed, won't you, this doesn't happen
20 very often, does it?

21 A. It probably happens on a weekly basis, yes.

22 Q. You, yourself, in your examination by your attorney
23 said that it was a rare occasion to get an inquiry from the
24 Board of Supervisors such as this?

25 A. Well, an inquiry about a complaint from someone, yes,

1 that would be a rare occasion.

2 Q. So if you received such a thing, that might be
3 something that you would remember?

4 A. If I received it, I believe I would remember it. And
5 because I don't remember it, I don't believe I received it.

6 Q. And if you responded to it, that's something that you
7 would remember?

8 A. Yes. And I don't have any recollection of
9 responding.

10 Q. Is Marsha Johnson somebody that is generally diligent
11 in her duties on your behalf?

12 A. Absolutely.

13 Q. So if she said that "Dave already took care of it,"
14 do you think that she may have just made that up and gotten
15 it confused with something else?

16 MR. CASSIDY: Objection, Your Honor. Calls for
17 speculation.

18 THE COURT: Objection sustained.

19 BY MR. GONZALEZ:

20 Q. Well, if it had come to your attention at some
21 subsequent point that somebody that worked that closely with
22 you may have made this kind of mistake, would you have
23 conducted an investigation to try to figure out how did this
24 mistake occur that somebody is representing you've done
25 something that you haven't?

1 A. No.

2 Q. Wouldn't bother you at all?

3 A. E-mails that come to the address -- typically an
4 e-mail that comes in that's addressed to me is going to come
5 to me. It is not going to come to anybody else.

6 An e-mail that is sent to Solano DA, which is a
7 website inquiry, is going to come to both me and Marsha
8 Johnson. It's not unusual for both of us to respond to the
9 same e-mail because they come -- if it's a web inquiry.

10 If it's a personal e-mail, that would have been sent
11 from a member of the Board or an aide to the Board directly
12 to me, to my e-mail address. Frankly, I don't know how
13 Marsha would know about it unless we talked about it.

14 I have no recollection of talking to her about it.
15 It is just something I don't remember.

16 Q. Mr. Paulson, have you ever sat down with your staff
17 to say: How is it somebody could come to my office this many
18 times and leave their phone number for me and nobody told me
19 about this?

20 A. With the exception of Mr. Toler, I'm not aware that
21 it has ever happened. That's why I questioned that, in fact,
22 he was ever there that many times.

23 I don't believe he was there more than the three
24 times that we have documentation to support.

25 Q. Your own -- members of your own staff have indicated

1 he came back repeatedly?

2 A. I've heard I believe three times, maybe four times.
3 Not ten, not 18.

4 Q. So in that case, if he was only there three times,
5 and you've made an argument about escalating conduct, let's
6 break down the times that you're aware of.

7 So he came the first time and interacted with
8 Mr. Byerley; is that correct?

9 A. Yes.

10 Q. And Mr. Byerley, although there has been a suggestion
11 he took notes, we don't know if it was on the 28th or the
12 29th because apparently he didn't keep a notation on the
13 date; is that correct?

14 A. I don't know. I assume he took notes.

15 Q. Okay. But I'm asking about the information that you
16 have to reach a conclusion that this is an escalating
17 pattern.

18 A. Yes. I was told by Supervisor Byerley that he had
19 met with Mr. Toler, that he had taken some information from
20 Mr. Toler, that he had initiated a contact with the Fairfield
21 Police Department, but during the -- at the end of his
22 contact with Mr. Toler that Mr. Toler had left, got up and
23 walked away.

24 Q. But Mr. Paulson, aren't you going to concede that it
25 was your own employee, Mr. Byerley, that told him "We can't

1 do anything until we get a report?"

2 A. I'm sure there would have been some discussion that
3 we need a police report in order to know what really
4 occurred. But I do not believe that that's what
5 Investigator Byerley told Mr. Toler.

6 Q. Sir, you, yourself, in your testimony today have
7 indicated that the case doesn't start until you get a report?

8 A. That's not what I said.

9 MR. CASSIDY: Objection. Misstates his testimony.

10 MR. GONZALEZ: All right.

11 BY MR. GONZALEZ:

12 Q. You indicated there are some pretty clear protocols
13 as to how you typically start an investigation, and that's
14 because law enforcement sends a police report over to you?

15 A. That's correct.

16 Q. So it doesn't surprise you there is an allegation by
17 someone that says a member of your staff said, "We don't have
18 a police report yet, we can't do anything yet?"

19 A. It would surprise me if that was the only thing they
20 said. That's why when Supervisor Byerley described what had
21 happened on the -- at the end of March -- I just remember it
22 being in late March, when he described what was said on that
23 occasion it was that he was going to look into it, he would
24 contact the Fairfield Police Department, find out what was
25 going on, get the report over as quick as he can and get back

1 to Mr. Toler. And Mr. Toler was not satisfied with that. He
2 simply got up and walked out and left the office.

3 Q. Mr. Paulson, you didn't even get told about this
4 interaction until June?

5 A. June 13th is my recollection.

6 Q. And you became aware Mr. Byerley wrote up this
7 incident after a publication on April 12th --

8 A. I was not aware of that.

9 Q. -- criticizing your office?

10 A. I was not aware of that. I was not aware of when he
11 wrote the report until that was -- that was discovered as
12 part of this case.

13 Q. How many of the felony cases that you filed would you
14 put in a category as routine? Let's say petty drug offenses,
15 or auto burglaries, things like that?

16 A. I couldn't give you a number. I don't know.

17 Q. Give me an idea. You said there are 4000 felonies.
18 Would you agree probably a good 50 percent of those are
19 relatively routine cases?

20 A. Well, I would not agree to that, no. Every felony
21 case is a serious case. We probably prosecute in any given
22 year maybe 30 to 40 homicide cases.

23 I'd hesitate to guess the number of sexual assaults
24 or familial assaults. There is a lot. I don't know the
25 numbers. We don't keep statistics by case type if you will.

1 Q. Okay. How many jury trials do your attorneys try in
2 a single year?

3 A. A little over a hundred.

4 Q. So you got 60 --

5 A. Felony jury trials.

6 Q. You have 60 attorneys in your office. They do a
7 hundred felony trials. How many misdemeanor trials?

8 A. About the same number.

9 Q. All right. So 200 trials total for your office. And
10 you're not able to tell me as to the felony filings how many
11 of them are less serious than others?

12 A. No, I really don't know because, like I say, we
13 don't -- I never get a report breakdown.

14 Q. Let me ask you this question then: How many of the
15 cases that you file, felony cases, ever have an evidentiary
16 hearing where somebody takes the stand and testifies?

17 A. I would say almost every one.

18 Q. Okay. So you're saying every felony you file goes
19 through a preliminary hearing before they get settled?

20 A. Yes.

21 Almost all of them.

22 Q. What's the percentage of cases that you file that
23 result in a plea of guilty without a trial?

24 A. I don't know.

25 Q. If you filed 4000 felonies and try a hundred of them,

1 that means 3900 of them result in a plea of guilty or are
2 dismissed during the process?

3 A. Or reduction to a misdemeanor or some other
4 disposition.

5 Q. But you don't keep those statistics?

6 A. We don't. The Department of Justice keeps statistics
7 on the processing of every case whether it be a felony or
8 misdemeanor.

9 Q. Now, you talked about the manner in which you might
10 have a felony intake deputy that's going to review a report
11 and decide what to do with it.

12 Are you aware in this case that Mr. Byerley, once he
13 got the report, read it, took it to Mr. Daugherty, he read it
14 and they decided together that there wasn't enough evidence
15 to proceed in the matter?

16 A. I became aware of that on June 12th or 13th or 14th,
17 yes.

18 Q. So that was a decision that was made.

19 Now, you talked about --

20 A. But that wasn't the end of that case.

21 Q. I understand because Mr. Godwin was apparently taken
22 upon himself to do some further inquiry?

23 A. That's not correct.

24 MR. CASSIDY: Objection, Your Honor. Misstates the
25 evidence.

1 MR. GONZALEZ: All right.

2 BY MR. GONZALEZ:

3 Q. You actually -- you don't know because you weren't
4 even aware of Tom Toler at the time?

5 A. I became aware on June 12th or 13th or 14th, whatever
6 date it was, that Supervisor Byerley had assigned that case
7 to Investigator Godwin.

8 Q. Right. But he assigned it after he had made a
9 decision that it wasn't going to proceed forward, and that's
10 what John Daugherty agreed to on the 7th?

11 A. No, that's not correct.

12 MR. CASSIDY: Objection. Compound. Argumentative.

13 THE COURT: It's not compound. And the witness is
14 perfectly capable of saying, "I don't agree. That's not what
15 happened."

16 You may proceed.

17 BY MR. GONZALEZ:

18 Q. You can originate a case in your office, can't you?

19 A. Yes.

20 Q. And your office can issue warrants; is that correct?

21 A. We can ask the court to issue a warrant.

22 Q. But you prepare a DA warrant package and take it to
23 the court to be issued?

24 A. We prepare an affidavit in support of a request for a
25 warrant, yes.

1 Q. All right.

2 And as an attorney you've prepared declarations
3 before?

4 A. Years ago.

5 Q. You stated in a deposition in my office that you had
6 not prepared declarations?

7 A. I've prepared declarations for search warrants. I've
8 prepared declarations for arrest warrants. I don't believe I
9 ever testified that I had never prepared a declaration.

10 I've never prepared a declaration in a temporary
11 restraining order case.

12 Q. Okay. Now, if you have occasion to approve the
13 moving forward -- I mean -- Let me start over.

14 You talked about the standards under which you would
15 have to make a decision before a case can be prosecuted; is
16 that right?

17 In other words, you have to believe that you can
18 prove the case, right?

19 A. That's generally the standard that I've insisted on
20 in terms of whether or not my office files a case, yes.

21 Q. Right.

22 But in some cases you have made a decision to
23 prosecute a case even though it is one person's word against
24 another; isn't that right?

25 A. Oh, yes.

1 MR. CASSIDY: Objection, Your Honor. It's an
2 incomplete hypothetical.

3 THE COURT: Overruled. The answer will stand.

4 THE WITNESS: Yes.

5 BY MR. GONZALEZ:

6 Q. You have done that before?

7 A. Yes.

8 Q. So the fact that you had a situation of an allegation
9 of threats being made, in this case of Tom Toler, your
10 deputies reaching a conclusion that they didn't want to file
11 the case isn't simply because it is one person's word against
12 another; is that correct?

13 A. That would probably be correct, yes.

14 Q. In this particular case, at the time of April 7th
15 where you have an individual coming forward making these
16 allegations of a threat against somebody else, is there
17 enough evidence to move forward on that?

18 A. I don't know.

19 Q. I'm asking you?

20 A. I don't know.

21 Q. We just said that even in a situation of one person's
22 word against another that you can move forward on a case like
23 that?

24 A. No. I said that we have filed cases where it is, in
25 essence, the word of one person as opposed to another. But

1 there's typically other evidence that corroborates that or
2 some other factors that cause one person to be more credible
3 than another.

4 Q. Right.

5 And can you, for instance, if somebody, when they're
6 being interviewed about what actually happened in this
7 allegation of a threat, lies to a law enforcement officer and
8 is caught lying to them, is that a factor that might be
9 considered in whether or not the case is prosecuted?

10 A. Depends on whether it is reflected in a police
11 report. If it is reflected in the police report that the
12 officer's opinion of one person's credibility is impaired,
13 than the fact that's reflected in that report would be
14 something that my intake deputies would weigh in making a
15 decision.

16 Q. I'm going to refer to Plaintiff's B -- Defense
17 Exhibit B.

18 This is the first page of two pages by Supervising
19 Investigator Brook Byerley. I'm going to read it and ask
20 questions about it.

21 (READING):

22 I then reviewed the report written by Fairfield
23 Officer Strictland that had been faxed to me. After
24 reading the report, I hand carried it to Intake
25 Deputy District Attorney John Daugherty. John

1 Daugherty briefly read the report and told me he did
2 not feel there was enough in the investigation to
3 file criminal charges against Oawster, but that
4 Fairfield Police Department needed to submit the
5 report through established policy. I made a copy of
6 the report and gave it to Bill Godwin.

7 (READING CONCLUDED.)

8 Did you hear that, sir?

9 A. Yes, I did.

10 Q. So Mr. Daugherty looks at the report and on the spot
11 makes a decision that there isn't enough to move forward on?

12 MR. CASSIDY: Objection, Your Honor.

13 Mischaracterizes the witness' answers.

14 THE COURT: The objection is overruled. You may
15 answer, sir.

16 It is beginning to sound like the objections are
17 frivolous, sir.

18 You may answer, sir.

19 BY MR. GONZALEZ:

20 Q. Do you understand the question?

21 A. I do understand the question.

22 I don't believe that's the decision that's made. I
23 think what's the decision that's made is that based on this
24 cursory reading of a report, without more, that there wasn't
25 sufficient evidence to file a case.

1 Q. So then if I show you a memo from Mr. Godwin --
2 I'm sorry, Your Honor. There is lots of exhibits
3 here. I believe this is June 14th, '05, a report by Godwin.
4 It is Plaintiff's Number 8.

5 He indicates that Tom Toler had provided proof that
6 Mr. Oawster had called him on March 27th. And when he went
7 to speak to Mr. Oawster, Oawster denied even making any calls
8 to Toler. Then he presented Mr. Oawster with proof the call
9 had, in fact, been made.

10 Would you agree with me, Mr. Paulson, that that's the
11 kind of fact that you would put into that weighing decision
12 about who's got more credibility in terms of proceeding with
13 a prosecution or not?

14 A. Sure. Sure.

15 Q. Now, one of the things that you said in the course of
16 what you sought to obtain when you decided to get the TRO --
17 Let me find my page here.

18 Let me start with the incident that you learned from
19 Mr. Garza. June 16th -- I'm sorry. June 13th or 14th,
20 whatever date that you recall he telling you that Mr. Toler
21 said he was going to bring an Uzi into the office, did
22 Mr. Garza tell you that he had lied to Mr. Toler during his
23 interaction with Mr. Toler?

24 A. He didn't tell me that, and to the best of my
25 information and belief he didn't lie.

1 Q. Did he tell you that he asked Mr. Toler to give him a
2 phone number so that "we could get this meeting set up?" Did
3 he tell you that Mr. Toler had given his information before
4 and had never gotten a callback?

5 A. The first yes, the second no.

6 Q. Now, did you ask Mr. Garza why he didn't arrest
7 Mr. Toler when he said that he was going to bring an Uzi into
8 your office?

9 A. No.

10 Q. It would be a sufficient basis to make an arrest on
11 the spot if you believed that was a credible threat; wouldn't
12 you agree?

13 A. That's a decision made by a peace officer on a daily
14 basis. It is what discretion they choose to exercise.

15 Q. So he comes into your office, he's feeling it is a
16 very serious matter, he shares it with you and it doesn't
17 occur to you to say: Al, why didn't you arrest him?

18 A. I didn't ask him that.

19 Q. Why didn't you prepare -- Did you ask him to prepare
20 a warrant and let's have him arrested immediately?

21 Did you say that?

22 A. No. I'll tell you why. Because I could not -- I
23 don't believe at that point in time we would be in a position
24 to arrest him and prosecute him.

25 Q. I didn't say "prosecute," Mr. Paulson. Arrest. The

1 same way you know that Mr. Garza could have arrested him on
2 the spot, you could issue a warrant and have him arrested?

3 A. I could not issue a warrant and have him arrested.

4 Q. Are you alleging that you can't because the Attorney
5 General has to prosecute him?

6 A. Yes. I can request a warrant of arrest. Absent an
7 arrest warrant that would be a so-called Ramey warrant, which
8 would be requested by the police agency.

9 My agency -- I cannot request an arrest warrant
10 without filing a complaint. And I'm not in a position to
11 file a complaint against someone who has committed an alleged
12 offense against a member of my office, at least at that
13 level.

14 Q. Let me ask you this: You're telling me Mr. Garza
15 could have arrested him on the spot, but that you have no
16 power to issue a warrant for his arrest?

17 A. I have no power to issue a warrant of arrest in any
18 event, let alone in this event.

19 Q. You prepare a warrant package, then a judge issues
20 the --

21 A. That warrant package includes a filing, a complaint
22 document.

23 Q. I understand.

24 A. I would not be allowed to file a complaint where the
25 victim, in essence, was a member of my office.

1 Q. All right.

2 Sir, you would agree that a member of the public has
3 a right to exercise free speech and criticize your office and
4 criticize you?

5 A. Absolutely.

6 Q. And that's something we cherish in the United States?

7 A. Yes.

8 Q. And you would agree that if you directed others to
9 fabricate or mischaracterize interactions with Mr. Toler in
10 order to obtain a temporary restraining order against him,
11 that would be against his Constitutional Rights?

12 A. I did not do that.

13 Q. I'm asking you. Would you agree that if you had
14 directed others to fabricate or mischaracterize interactions
15 with him to obtain a TRO, that that would be retaliation
16 against his free speech rights?

17 MR. CASSIDY: Objection, Your Honor. Calls for a
18 legal conclusion.

19 THE COURT: I don't agree with that, but I do agree
20 it is wholly argumentative.

21 You may proceed, sir.

22 BY MR. GONZALEZ:

23 Q. Sir, you have testified today -- well, is there
24 anything you can think of that you -- is there anything that
25 you can think of that you may have communicated to members of

1 your staff encouraging them to take actions to stop Mr. Toler
2 from coming to your office or to teach him a lesson?

3 A. Absolutely not.

4 Q. But you understand that the effect of issuing the
5 temporary restraining order was that he would not be coming
6 to your office any more?

7 A. Yes. If the court approved -- As I say, Miss Getty
8 informed me if a court approved the request, the net effect
9 of that would be he would not be coming to our office except
10 on official business, on lawful business.

11 Q. You testified that Miss Getty told you that given
12 what Mr. Garza put in his declaration that a court was going
13 to issue this order?

14 A. Her opinion.

15 Q. That's what she told you?

16 A. Yes.

17 Q. You understand that the original order that was
18 issued -- Do we have a copy here?

19 MR. GONZALEZ: We are looking for the original TRO
20 that was issued. I'll have that in a moment.

21 THE COURT: Madam Clerk, do we have a list of the
22 exhibits handy?

23 MR. CASSIDY: Your Honor, I think it is Plaintiff's
24 Exhibit 13.

25 THE WITNESS: I have it as Defendant's P.

1 MR. CASSIDY: It is Defendant's N actually.

2 THE WITNESS: I thought it was P.

3 MR. GONZALEZ: If I can take a look?

4 Thank you.

5 (Brief pause.)

6 MR. GONZALEZ: Your Honor, there is some confusion
7 because the request for the order does not match up with the
8 actual order that was issued at that time.

9 We're just trying to...

10 While he does that, I'll ask some other questions.

11 BY MR. GONZALEZ:

12 Q. Now, were you surprised, when you were briefed about
13 Mr. Toler in June, that you were informed that he had
14 threatened to kill somebody in your office and had not
15 learned about it earlier?

16 A. No, not necessarily.

17 Q. All right.

18 But you would be concerned if somebody is in your
19 office making a death treat against somebody?

20 That is something that you would want your office to
21 take action on, isn't it?

22 A. As it was described to me the threat was not
23 immediate. It was not -- I asked if it was a specific
24 person, but essentially it was "If I have to, I'll take
25 matters into my own hands," "I'll kill anybody that tries to

1 hurt my kids."

2 Q. But not that "Tries to hurt kids." Isn't what
3 Mr. Toler was alleged to have said is, "If somebody harms my
4 children, I will -- I will deal with it" or "I will kill
5 somebody that harms my children?"

6 A. I think it was words to that effect, yes.

7 Q. Would you say the same about your children, sir?

8 A. No.

9 Q. If somebody harmed your children, you're not capable
10 of responding to that?

11 A. I suppose I'm capable of it, but I certainly wouldn't
12 say it.

13 Q. Okay. Would you call that a death threat against
14 somebody?

15 A. What Mr. Toler said in our lobby?

16 Q. What I'm saying to you right now?

17 If somebody said, "If somebody harms my children,
18 does physical harm to them, I'm going to -- I'll defend them
19 and kill if I need to," is that a death threat?

20 A. No.

21 Q. And if somebody says, "Don't make me protect my
22 children," is that a death threat?

23 A. It depends on the context. Both of them depend on
24 the context. If we're talking about a specific individual,
25 yes, it may very well be.

1 If it is said with generality, "If anybody harms my
2 kids, I'll defend them," that's not -- that's not what I view
3 to be a threat.

4 I view to be a threat something that's direct and
5 immediate and there is a specific person that's the target of
6 the threat.

7 Q. So let's explore this. What I'm asking you is with a
8 specific person in mind, if somebody says, "Don't make me
9 protect my children," and they're in your office trying to
10 get help, you think that's a death threat against that
11 person?

12 A. Not necessarily.

13 Q. Okay. If somebody says, "If this person does
14 physical harm to my children, I will do what's necessary and
15 I'm capable of killing them if necessary," is that a death
16 threat?

17 A. Not necessarily.

18 Q. How would it be necessarily a death threat?

19 A. Well, you have inserted -- in both of these
20 hypotheticals you have inserted the word "if." There is no
21 "if" in a death threat.

22 Q. Okay.

23 Now, when you talk about Mr. Toler's escalating
24 pattern of behavior though, you're including in that that
25 he's come to your office, made a threat to kill somebody, and

1 that this conduct has continued and escalated?

2 A. I described an instance where -- the meeting with
3 Investigator Byerley where he walks off without completing
4 the discussion, without providing all the information perhaps
5 that Supervisor Byerley needed. But in any event, he gets up
6 and walks away.

7 Q. Stop you right there.

8 What do you think it was Mr. Byerley was asking him
9 for that he didn't get from him?

10 A. I don't know.

11 Q. Sir, you just testified --

12 A. I assume that there was more information that
13 Supervisor Byerley would like to have obtained on the 7th
14 that would have given him the ability to make a more thorough
15 inquiry as to what was going on.

16 Q. Sir, you're making that assumption, aren't you?

17 A. Based upon the briefing I received on June 12th, 13th
18 or 14th, yes.

19 Q. You're making that assumption. You understand that
20 it is a contested matter. Mr. Toler has testified that
21 Mr. Byerley, with all due respect, told him "There is nothing
22 I can do because we don't have a report yet."

23 A. I've heard how he's described Mr. Byerley. With all
24 due respect, he's wrong.

25 Q. Right. But you're now putting together a pattern of

1 escalating conduct, and you're inserting assumptions that you
2 are making that you've decided Toler walked out before the
3 interaction with Mr. Byerley was completed?

4 A. I'm describing what was detailed to me on the 12th,
5 13th or 14th, or a combination of those days, about what
6 occurred in late March, what occurred in early April and what
7 occurred on that very morning.

8 Q. Going back to Defense Exhibit B, this is Byerley's
9 memo wherein he recounts that interaction with Mr. Toler.

10 I'm going to read the portion where his interaction
11 with Mr. Toler appears to end. This is in the third
12 paragraph going into the fourth paragraph.

13 MR. CASSIDY: Objection, Your Honor. The document
14 speaks for itself.

15 THE COURT: You can ask questions about it
16 obviously.

17 BY MR. GONZALEZ:

18 Q. (READING):

19 I told Toler we had not even received the report yet.
20 I told Toler that the Fairfield Police Department
21 needs to send the report to our office. I told Toler
22 that a Deputy District Attorney would review his
23 report, and if the case could be prosecuted, we would
24 file it. Toler told me: Don't make me defend my
25 kids. I told Toler that I would call Fairfield

1 Police Department to make sure they forward a copy of
2 the report to me also. Toler again stated: Don't
3 make me defend my kids. After Toler left the lobby,
4 I came back to Chief Garza's office and spoke to him.
5 (READING CONCLUDED.)

6 Is there any part of what you heard that suggests
7 that the interaction ended with Mr. Toler refusing to give
8 Mr. Byerley information?

9 A. What I was briefed on either the 12th, 13th or 14th
10 of June was generally consistent with that. However, once
11 Supervisor Byerley asked for more information that would
12 allow him to make inquiry with the Fairfield Police
13 Department, Mr. Toler repeatedly indicated, "Don't make me
14 defend my kids," and he then got up and left.

15 Q. Mr. Paulson --

16 A. In essence, Byerley only had certain information.

17 Q. Let me ask you this: You got the memos that have
18 been prepared, and you're telling me that in an oral
19 explanation to you, two months -- over two months, something
20 from March, you're talking about it in June, and you're
21 telling me in court today that as part of the escalating
22 pattern of conduct Mr. Toler just walked out of there, didn't
23 want to give him information that was being asked of him?
24 That's what you're telling me today?

25 A. That's correct. Because that same behavior was

1 repeated the morning with Chief Garza. After Chief Garza
2 asked him for a phone number so that he could give him a call
3 and set up the meeting -- the appointment that he would have
4 where we would have sat down and talked about this, he
5 stormed out on Chief Garza.

6 Q. Right.

7 But you've also testified under oath that your office
8 just never got a request from Mr. Toler, didn't have his
9 phone number, didn't call him for this period of time, that
10 you never got a single message from him?

11 A. That's correct. On July 12th Chief Garza offered to
12 set up an appointment. He simply asked him -- He was -- As I
13 understand it, he was in the process of writing down his
14 phone number when Chief Garza asked him, "Now, what's this
15 about?"

16 Q. Right. And Tom said --

17 A. He blew up.

18 Q. -- "You read the paper, don't you?"

19 He said: "No, I have no idea what you are talking
20 about."

21 That's what Mr. Garza has testified he said.

22 In a deposition -- a sworn deposition Mr. Garza
23 admitted he had seen the newspaper but he responded to Tom's
24 comment, "You know about the newspaper," he says "I don't
25 know what you are talking about" even though he was quoted in

1 the article.

2 You're aware of this, aren't you?

3 A. Which article are you talking about? An ad?

4 Q. The article.

5 A. On the --

6 (Court Reporter requests the parties speak one at a
7 time.)

8 THE COURT: Actually, I think we can, I was going to
9 say, end this argument.

10 Ladies and Gentlemen, we'll take our afternoon recess
11 a little early. I want to talk to the lawyers in any event.

12 Please, remember the admonition the Court has
13 heretofore given to you.

14 (Jury exits at 02:27 PM.)

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

17 Mr. Gonzalez, I'm sure that you -- Never mind that.

18 I told the jury at the beginning of this case that
19 the reason they have an hour-and-a-half lunch hour is because
20 the lawyers have got to get together, got to get the exhibits
21 that they're going to examine together so that we can have an
22 efficient trial.

23 I don't know what you do during the lunch hour
24 besides eating, but you clearly don't do that. I'm warning
25 you, I won't tolerate half-an-hour, 15 minute delays because

1 you can't find the documents.

2 And don't tell me anything. I'm telling you, it
3 won't be tolerated.

4 That's number one.

5 Number two, you're to tell your client he's to answer
6 the questions, not argue.

7 Take a 15 minute recess.

8 (Off the record at 02:29 PM.)

9 (On the record at 02:49 PM.)

10 THE CLERK: Please, remain seated.

11 Court is now in session.

12 THE COURT: Mr. Gonzalez.

13 MR. GONZALEZ: Thank you, Your Honor.

14 BY MR. GONZALEZ:

15 Q. Mr. Paulson, you indicated that you had a particular
16 concern for the members of your staff in seeking the TRO; is
17 that correct?

18 A. Yes.

19 Q. Did you ask any of the reception staff whether or not
20 they wanted to be named in the TRO?

21 A. I did not.

22 Q. And, in fact, when you sought the TRO, you sought it
23 for three men, two of which are law enforcement or former law
24 enforcement officials?

25 A. When I sought the TRO, I sought to protect the

1 office. I was informed it had to be three people.

2 Q. I understand. But the individuals named, I mean --

3 A. Yes.

4 Q. Mr. Byerley, he wears two guns normally to work?

5 A. I don't know.

6 Q. You see him at work, don't you?

7 A. I see him with a coat on, yes.

8 Q. And Mr. Garza, does he wear a gun?

9 A. He wears a weapon, yes.

10 Q. And you've said two or three times during your
11 examination that you were really interested in taking care of
12 your staff because of how vulnerable they are.

13 Do you recall that testimony?

14 A. Yes.

15 Q. Now, the TRO that was issued --

16 MR. GONZALEZ: Mr. Springman apologizes, Your Honor,
17 for the difficulty with the documents. It is his fault.

18 THE COURT: You want to comment on that, sir?

19 Go ahead.

20 BY MR. GONZALEZ:

21 Q. Defense Exhibit N, sir.

22 Mr. Paulson, you said over and over again that the
23 original order that was issued allowed for lawful business.
24 This is the order that kept Mr. Toler 500 yards away from
25 your office.

1 Is there any place - you study that three-page
2 order - where it says "lawful business?"

3 THE COURT: He wants to know whether there is such a
4 phrase I think. The question wasn't presented, but I think
5 that's what he meant.

6 BY MR. GONZALEZ:

7 Q. I'm going to ask you about the subsequent order after
8 that.

9 A. (Witness reviews exhibit.)

10 I do not see the words "lawful business" on the
11 printed document, no.

12 Q. All right.

13 And I'm going to show you or ask you to take a look
14 at Defense Exhibit N.

15 THE COURT: That was N.

16 MR. GONZALEZ: I'm sorry.

17 I'm told it should follow part N, which is the
18 application for the order.

19 BY MR. GONZALEZ:

20 Q. What I'm asking you to look at, Mr. Paulson, is not
21 the judge's order that you just looked at, but the
22 application signed by your counsel.

23 MR. GONZALEZ: I've got a copy here. Can I show him?

24 THE COURT: Also part of Exhibit N?

25 THE WITNESS: I don't believe so, Your Honor. I

1 can't find it.

2 MR. GONZALEZ: There is some issues here.

3 Why don't you take a look at that?

4 (Document hand to witness for review.)

5 THE COURT: Just a minute. Just a minute.

6 Sir, do you agree that -- I don't know. Is the
7 application an exhibit in this case?

8 MR. CASSIDY: If it is not in the documents that are
9 in the exhibits, then it is not an exhibit. I'm sorry to
10 sound --

11 THE COURT: No. I don't know.

12 MR. CASSIDY: But I would like to see it. Perhaps
13 that might help me solve my problem.

14 MR. GONZALEZ: Excuse me, counsel. The document is
15 labeled Defense Exhibit N as well. We believe it is in the
16 same portion of the binder.

17 MR. CASSIDY: If it helps any, in the bottom
18 right-hand-corner they are numbered N-1 through whatever
19 number. So if it is a numbered exhibit, the page is on the
20 exhibit.

21 THE COURT: All right. He's got it now.

22 Apparently it is in --

23 MR. GONZALEZ: It's in the binder.

24 THE COURT: It's in the binder.

25 ///

1 BY MR. GONZALEZ:

2 Q. It is Exhibit N, right?

3 A. It's the first set of documents behind tab N, yes.

4 Q. Now, if you look at that, does that appear to be the
5 application for the order?

6 A. If you would characterize it as that. I don't know.
7 It is called a Petition of Employer for Injunction
8 Prohibiting Violence or Threats of Violence Against the
9 Employee.

10 Q. I want you to look at page 3?

11 A. Okay.

12 Q. It says under Provision 10:

13 (READING):

14 Defendant shall stay at least 500 yards away.

15 (READING CONCLUDED.)

16 Do you see that?

17 A. Yes, I do.

18 Q. It has your office's address there. Do you see that?

19 A. That's correct.

20 Q. Do you see letter B?

21 (READING):

22 Will granting of any of the Stay Away Orders in Item
23 10A deprive defendant of access to his or her
24 residence or place of employment?

25 (READING CONCLUDED.)

1 It is checked off "No."

2 A. That would be exactly what I said --

3 Q. All right.

4 A. -- earlier.

5 Q. Let me ask you this, sir: Are you aware that
6 Mr. Toler's office at 790 Jefferson Street is within 500
7 yards of your office?

8 A. I am now.

9 Q. All right.

10 But the request that was submitted on your behalf,
11 Mr. Byerley's behalf, Mr. Garza's behalf, told the judge that
12 it was not going to impact his ability to go to work; is that
13 true?

14 A. Well, I can't answer that with a simple "yes" or "no"
15 answer.

16 Q. I just showed you where the document showed that it
17 was checked off and a judge was told that this was not going
18 to have an impact on somebody's work, right?

19 A. And based on what I had been advised by Miss Getty,
20 that would be because --

21 Q. I'm not asking you what you were advised. I'm asking
22 you what's in the document. I'm trying to get through this
23 examination.

24 THE WITNESS: I don't know how to answer the
25 question, Your Honor.

1 THE COURT: The question is does the document say
2 that it won't interfere with his ability to get to his work
3 or words to that effect?

4 THE WITNESS: Yes. It does say that.

5 BY MR. GONZALEZ:

6 Q. All right. Let me take a look.

7 Look at letter B again. Would you read what it says
8 on it.

9 MR. CASSIDY: Objection, Your Honor. The document
10 speaks for itself?

11 THE COURT: He can publish through the witness.
12 You may do that, sir.

13 THE WITNESS: It's a question.

14 (READING):

15 Will granting any of the Stay Away Orders in Item 10A
16 deprive defendant of access to his or her residence
17 or place of employment?

18 (READING CONCLUDED.)

19 The box is checked "No."

20 BY MR. GONZALEZ:

21 Q. Which is incorrect, isn't it?

22 A. No, it is correct.

23 Q. I just asked you whether or not Mr. Toler's place of
24 business was within 500 yards of your office.

25 A. They're different questions. I don't know how to

1 answer that question because, as I said, yes, his -- he would
2 be within the 500 yards. My understanding was it was not to
3 interfere with lawful business.

4 Q. All right.

5 But I asked you to take a look at what was requested
6 by your office and what the judge issued, and there's nothing
7 about an exception for lawful business, is there, in those
8 documents?

9 A. But for the fact that it is checked that it will not
10 interfere with his access to his place of business or
11 residence.

12 Q. Sir, you've been attorney a long time, right?

13 A. Yes, sir. Over 30 years.

14 MR. CASSIDY: Objection, Your Honor.
15 Argumentative.

16 BY MR. GONZALEZ:

17 Q. You understand that this is telling the judge that if
18 you issue this order, it will not have an impact on
19 somebody's ability to get to work. And your representative
20 said: I'm telling the judge, if you issue this order, it is
21 not going to effect his ability to get to his job. And that
22 was not true. That is the only point I'm trying to make.

23 THE COURT: Well, that was a wonderful argument, but
24 fortunately this is not the time for argument. This is the
25 time to question and answer.

1 Let me make clear to both parties, both lawyers, this
2 is an examination. You ask questions. You don't argue with
3 him, you answer him.

4 Now, everybody I'm warning you. I'm going to
5 start -- Never mind. Go ahead.

6 BY MR. GONZALEZ:

7 Q. In the first part of the request for this order the
8 address of Mr. Toler's workplace is on that order, isn't it?

9 A. That's correct. 3B, 790 Jefferson Street, Fairfield,
10 California.

11 Q. Do you recall about three weeks after the issuance of
12 this order that you agreed to modify the order to allow
13 Mr. Toler to be within a hundred yards of your office?

14 Do you remember that?

15 A. At the first hearing, yes.

16 Q. And you recall it was at that hearing that the judge
17 issued an order that he would be able to gain access if he
18 had lawful business to the areas he needed to be at?

19 Is that right?

20 A. I don't know. I wasn't there.

21 Q. All right.

22 Now, you would not agree to anything less than a
23 hundred yards; is that correct?

24 A. I don't know that I was ever asked.

25 Q. All right.

1 You understand a hundred yards, the length of a
2 football field, is the position your office took in this
3 matter at that time?

4 A. It's the position that the County Counsel took.

5 Q. All right. But the County Counsel was representing
6 you; isn't that right?

7 A. Representing the County of Solano.

8 Q. Sir, at some point you talked about the various
9 delays with the hearing on the temporary restraining order.

10 Now, you were aware, weren't you, that Mr. Toler was
11 taking depositions and trying to gather evidence to prove
12 that the statements that were being attributed to him were
13 false?

14 Do you understand that?

15 A. I understand that, yes.

16 Q. And you understand that there were a number of
17 depositions that took place, some of which have been referred
18 to in this proceeding, right?

19 A. Yes.

20 Q. And do you understand that at some point the TRO
21 matter was resolved, not because, you know, somebody wasn't
22 available for a hearing, but rather that you, through your
23 counsel, entered into an agreement that dismissed the matter,
24 the terms of which were confidential at your request?

25 MR. CASSIDY: Objection, Your Honor.

1 May we approach?

2 THE COURT: Come to sidebar.

3 (Whereupon, the following discussion was held at
4 sidebar.)

5 THE COURT: Record will reflect we're at sidebar.

6 Yes, sir.

7 MR. CASSIDY: I want the record to reflect that I
8 have avoided questions on the agreement of why this was
9 dropped, and I think this opens the door.

10 THE COURT: I'm sorry. I don't agree. If it opens
11 the door, it opens the door.

12 MR. GONZALEZ: Your Honor, the terms of the agreement
13 are confidential. They remain confidential. I'm not going
14 into the terms.

15 What was said publicly was the matter was dismissed,
16 the parties have reached an agreement. He brought it up
17 because of the questions he asked.

18 THE COURT: Gentlemen, I don't know what we're
19 arguing about. I just said you can proceed.

20 MR. GONZALEZ: Okay.

21 THE COURT: If there is an objection about the
22 confidentiality being breached, I'll -- Well, maybe we ought
23 to think about it now.

24 You want to go into the terms of the agreement?

25 MR. CASSIDY: One simple term that is based on that

1 agreement. Mr. Toler agreed he would not visit the District
2 Attorney's Office without making a prior appointment. It is
3 simple.

4 MR. GONZALEZ: Your Honor, the terms of the agreement
5 remain confidential and will be the basis of a separate
6 lawsuit.

7 What I'm asking here is that the matter did not get
8 dismissed simply because a judge didn't want to have a
9 hearing.

10 THE COURT: You can ask that. That doesn't open up
11 any questions.

12 MR. CASSIDY: But that was not what was asked.

13 THE COURT: I said he can ask that question.

14 MR. GONZALEZ: Can I ask the question -- I want
15 guidance. Can I ask the question that the matter was
16 resolved?

17 THE COURT: You can speak up.

18 MR. GONZALEZ: The matter was resolved because you
19 entered into an agreement -- that there was an agreement to
20 put the matter aside that dismissed the matter.

21 THE COURT: All right. Let's go.

22 (Sidebar discussion concluded.)

23 BY MR. GONZALEZ:

24 Q. Mr. Paulson, are you aware that the TRO matter was
25 resolved because you entered into an agreement, through your

1 counsel, the terms of which were confidential?

2 A. That is correct.

3 Q. You raise the matter regarding -- One other question.

4 And that that agreement occurred after the trial that
5 took place -- the criminal trial against Mr. Toler in
6 Vallejo; is that correct?

7 A. I'm not sure.

8 Q. When did the trial in Vallejo take place?

9 A. In April of -- April of '07, I believe.

10 Q. When was the TRO matter resolved?

11 A. Honestly, I don't know.

12 Q. The declaration that was submitted by Mr. Garza and
13 the request for the TRO also included a reference to the
14 Marin County restraining order that you learned about when
15 you ran Mr. Toler's rap sheet; is that correct?

16 A. Yes.

17 Q. And the declaration that was submitted in the request
18 to the court never had any factual explanation of that
19 matter; is that correct?

20 A. It only reflected what was shown on the temporary
21 restraining order itself.

22 Q. And at the time you reviewed Mr. Toler's rap sheet,
23 he had no criminal history; is that true?

24 A. No. None.

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

1 Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. CASSIDY:

4 Q. Mr. Paulson, just to be clear, you were asked
5 questions about the yardage set forth in the temporary
6 restraining order.

7 Did you have some understanding that shortly after
8 the initial temporary restraining order was entered, that the
9 yardage was reduced?

10 A. Yes. I was informed that it had been reduced from
11 500 to 100 yards.

12 Q. What was the purpose of that reduction?

13 A. I don't believe I was ever informed of that.

14 Q. All right.

15 Did you have any understanding as to whether
16 Mr. Toler could continue to do business as he regularly did
17 apart from coming to the District Attorney's Office without
18 an appointment at that point that it is modified?

19 A. My understanding from the time that the court
20 initially received the request for the TRO was that there was
21 no impediment to Mr. Toler doing anything as long -- in terms
22 of coming to the Government Center, the jail, court, whatever
23 else, as long as he contacted County Counsel and gave them
24 the date and time so that there wouldn't be an inadvertent
25 meeting.

1 Q. Now, in relation to your decision-making process that
2 a temporary restraining order would be requested, did you
3 consider the fact that Mr. Toler had made comments to the
4 effect that he had threatened to kill somebody and/or that he
5 had made these comments about defending his kids as
6 necessary?

7 A. Yes.

8 Q. And what did you consider in that regard?

9 A. Well, simply that that showed there was someone here
10 who was talking about taking the law into their own hands. I
11 considered it a threat to my staff.

12 Q. Why is that?

13 A. It's not unusual for someone to be upset, but this
14 seemed to be more than that. This seemed to be more than
15 being upset because we made a filing decision or being upset
16 because the police had not taken a report. This was
17 apparently much more irrational. And I took those comments
18 very seriously, as did the staff that briefed me on them.

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

20 MR. GONZALEZ: Nothing further, Your Honor.

21 THE COURT: You may step down, sir.

22 THE WITNESS: Thank you, Your Honor.

23 (Whereupon, the excerpt was 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 16TH day of
AUGUST, 2009.

/S/ Catherine E.F. Bodene
CATHERINE E.F. BODENE, CSR NO. 6926
Official United States District Court Reporter