

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

DEPARTMENT 52

HON. KENT HAMLIN, JUDGE

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AMERICAN CIVIL LIBERTIES)
UNION OF SOUTHERN CALIFORNIA,)
a non-profit corporation,)

Petitioner,)

v.)

Case No. 24CECG01635

CITY OF FRESNO,)

Respondent.)
_____)

Fresno, California

March 21, 2025

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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JOB NO.: 110277

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SESSIONS

FRIDAY, March 21, 2025

AFTERNOON SESSION

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1 FRESNO, CA; FRIDAY, MARCH 21, 2025

2 SESSIONS

3 DEPARTMENT 52 HON. KENT HAMLIN, JUDGE

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5 THE COURT: We are in session in the matter of the
6 American Civil Liberties Union and versus the City of
7 Fresno.

8 State appearances.

9 MR. HIDALGO: Sure. My name is Nicholas Hidalgo.
10 I'm here representing Petitioner, ACLU of Southern
11 California.

12 MR. SAIN: Tony Sain on behalf of defendant --
13 excuse me -- Respondent, City of Fresno.

14 THE COURT: Okay. Well, I have some points I'd
15 like to hear from you on. I did, you know, get all of
16 the original pleadings and declarations and attachments,
17 and then I got each of your subsequent briefs that I
18 thought were helpful to focus some of my questions. So
19 what I'd like to do is, um, just start with the
20 Petitioner, ask a couple of points that I need
21 clarification on. And then go to Respondent for the
22 same.

23 And then what I'll do is just I'll let you
24 each have a final opportunity to address anything that I
25 haven't asked about that you think is important. That

1 might be unclear from the documents or might be unclear
2 to me to me based on my comments and questions. And
3 then what I'll do is be taking the matter under
4 advisement and giving you a written opinion.

5 So I guess the first question I have for
6 Petitioner is, your Item 13 asks for reports of
7 incidents involving death or serious bodily injury. And
8 it uses the word serious. And matters involving
9 unreasonable or excessive force. Now, the latter, seems
10 to turn on whether the officer faced a threat of serious
11 bodily injury or death and whether he or she used
12 unreasonable excessive force.

13 The former, asked for reports of incidence
14 involving death or serious bodily injury, and I think
15 respondent's position is you didn't ask for reports. At
16 least not reports that might be included if the Court
17 were to adopt the less restricted great bodily injury
18 definition.

19 So how do you respond to their argument, and
20 this is in their, um, subsequent brief. And I'll -- let
21 me get that open here.

22 Referring to Page 8 of the supplemental
23 brief submitted on the 7th of March. Notwithstanding
24 the foregoing even if some circumstances inapplicable to
25 the reports at issue here could theoretically have

1 rendered certain information there is disposable. Such
2 would remain outside of the CPRA duty to disclose. In
3 this case, for one very simple reason Petitioner never
4 requested such a expressly identifying information here.

5 So, um, how do you respond to that?

6 MR. HIDALGO: I'm sorry, Your Honor. When you
7 began to question were you discussing something
8 about 13. Were you referring to Request 13?

9 THE COURT: Well, they listed it as 13. I think
10 in yours it's part of Number 4. They put a list of 13
11 things. Which I had four -- your Item 4, then I crossed
12 it out and put 13. So if that's helpful.

13 MR. HIDALGO: Sure. I just want to start by
14 clarifying that. Effectively, what we're still looking
15 for are responsive documents to our Request 7
16 through 13. So it's a whole gambit of different
17 documents we're still looking for.

18 THE COURT: Right.

19 MR. HIDALGO: As for the arrestee information that
20 we're seeking, we believe that we have adequately
21 requested reports of use of force and accidental-bite
22 information, and that in producing some of those forms,
23 Fresno, Respondent, overly redacted broad swath of those
24 reports. And that some of the information that is
25 contained in those redacted sections that should be

1 produced includes some of this -- these factual
2 narrative surrounding arrest, including arrestee
3 information. And that comes from Government Code
4 Section 7923.610.

5 And that section, of course, lists various
6 circumstances -- or various pieces of information that
7 must be disclosed, including factual circumstances
8 surrounding an arrest. We're not necessarily seeking
9 the arrestee identifying information itself; we're
10 looking for the whole factual picture here. And as Your
11 Honor knows the Respondent has a duty as the withholding
12 party to segregate reasonably segregable disclosable
13 information from otherwise exempt or withheld
14 information.

15 So we just do not think that the Respondent
16 has met its burden of with these huge grey boxes of
17 redactions. And that's part of why we provided some
18 examples of responsive materials to similar PRAs the
19 ACLU of Southern California submitted, responsive
20 from -- from other police stations, such as Bakersfield,
21 that contained far less redaction and where it's clear
22 where -- that enable the Court and the ACLU to identify
23 what is hidden behind those boxes. But here, we just
24 cannot tell.

25 THE COURT: Okay. And on these points, you'll get

1 a chance to respond, Mr. Sain. So let me move on to the
2 next question I had. Trying to find a way to keep both
3 of these files visible. I guess I'll need to go in
4 order.

5 Then I have their items that have been
6 characterized as 10 through 12, which I think, in
7 fairness to you, go back to how you numbered them in
8 your initial petition.

9 MR. HIDALGO: 10 through 12 would be the
10 use-of-force and accidental-bite reports, if that's what
11 Your Honor is referring to.

12 THE COURT: Right. So I don't think I have to
13 resolve whether these are investigatory records if I
14 conclude that they all within the exception of 832.7,
15 Sub B, Sub 1, Sub A, Sub ii. But I do see that you
16 still contest that they're not investigatory records,
17 and I'd just like you to articulate to the best of your
18 ability why those wouldn't fall within that category.

19 MR. HIDALGO: Absolutely. All exemptions to the
20 PRA have to be narrowly construed and that includes the
21 investigatory records exemption. Looking at the Haney
22 and Capsenara and Dixon and other cases cited in both
23 parties briefing, our position is that a police record
24 is only exempt as an investigate -- under the
25 investigatory records exemption if it is created for the

1 purpose of assisting with the criminal investigation or
2 if it's incidental to that purpose but placed in a
3 criminal investigatory file, but in that case, if it's
4 not independently investigatory, it would also need --
5 the Respondent would need to demonstrate a concrete
6 and -- what is the precise language? A concrete and
7 definite likelihood of using that document for a
8 criminal investigatory purpose.

9 And we don't believe that's the case with
10 these records, Your Honor. And we believe that because
11 of our general understanding of how these use-of-force
12 and accidental-bite reports are created and their
13 purpose. But we also know that because Fresno's own
14 police policy manual says so. It refers to these
15 documents as for the purpose of transparency and
16 accountability and building community trust. Purposes
17 which cannot be met if they are withheld as
18 investigatory.

19 So, Your Honor, we believe that these are
20 administrative or procedural documents not created for
21 the express purpose of conducting a criminal
22 investigation. And we're not seeking, you know, your
23 traditional police investigatory reports that are surely
24 created -- you know, from the same set of facts,
25 perhaps. But these records, the records we are seeking,

1 are limited to, sort of, a procedural purpose.

2 THE COURT: Okay. And then they have a rather
3 lengthy discussion of the legislative history of 832.7
4 as amended by SP1421.

5 MR. HIDALGO: Right.

6 THE COURT: And I'm -- you know, again, I don't, I
7 don't know, necessarily, that The Court reaches inquiry
8 in the legislative history if The Court finds the terms
9 of the statute not absurd and not vague. But they have
10 a rather -- I don't know officially. I find it somewhat
11 circuitous. I'm going to let Mr. Sain explain to me why
12 it isn't here in a moment. But they point out that the
13 legislative history suggests the legislature was trying
14 to narrow the circumstances under which that exception
15 might apply or -- and, um, I guess I'll give you a
16 chance to just sort of summarize why you think that
17 analysis is flawed.

18 MR. HIDALGO: Your Honor, as you recognized at the
19 last hearing, you know, when the legislature -- the
20 legislative language is crystal clear, as it is here, I
21 don't think you need to do any of the legislative
22 history analysis that -- that Respondent is arguing for.
23 And here, the text it's crystal clear. SB1421 Amended
24 Penal Code 832.7 to say great bodily injury, not serious
25 bodily injury. Perhaps the legislature considered that

1 term, but the end version of the statute that we have to
2 follow today says great bodily injury. You know, I can
3 cite you case law for the statutory principals, but I'm
4 sure you're --

5 THE COURT: Oh. Yeah. That I'm familiar with.
6 I'm just -- you know, Mr. Sain makes an argument that
7 these are interchangeable in the law, and we'll talk
8 about that in a little bit when I talk with him. But --

9 MR. HIDALGO: If I may respond to that point?

10 THE COURT: Yeah. Yeah.

11 MR. HIDALGO: The Cabrera case pretty clearly says
12 that these are not interchangeable. You know, it
13 acknowledges that they can be -- they're not mutually
14 exclusive, right? If great bodily injury has a rather
15 broad definition, serious bodily injury is a bit more
16 narrow. But The Court -- the legislature ended up
17 choosing great bodily injury, it did not say serious
18 bodily injury, Your Honor. And that's the term we need
19 to look to today.

20 THE COURT: Yeah. And that's what I'm going to
21 ask of Mr. Sain. I look at the fact that the draft, the
22 earlier version of 1421, in fact used the term serious
23 bodily injury. And then they adopted a statute that in
24 fact -- or a bill that changed the statute to read great
25 bodily injury.

1 MR. HIDALGO: Uh-huh.

2 THE COURT: So, um, why isn't that the clearest
3 indication of legislative intent? This conflation of
4 the subject of what, um, the standards are for officers'
5 use of force and the definitions of these various uses
6 of forces, deadly, non-deadly, and intermediate, and so
7 forth. I kind of -- it doesn't impress me as nearly as
8 convincing as the idea that the legislature had a bill
9 that says SBI and made a bill that said GBI. So I, you
10 know -- I want you to address these points because I
11 tore these cases apart because, you know, having been a
12 judge who did 220 criminal jury trials, I had more than
13 a few occasions to give jurors instructions on serious
14 bodily injury and great bodily injury.

15 And first point I want to make is it was
16 pretty rare that it was bruises and scrapes and the jury
17 came back great bodily injury. I think, you know, to
18 say that great bodily injury just negates any
19 requirement at all, that it just applies to every dog
20 bite, I think is probably -- it assumes that jurors
21 can't follow the instructions. And occasionally they
22 can't, and we've seen that.

23 But the Thomson versus County of LA case,
24 which you cite, that holding is that the use of the K-9
25 isn't deadly force. And it, again, throws this language

1 in there, well, they're essentially the same. But the
2 actual holding of the case is their using the K-9 is not
3 deadly force. It's not the GBI and SBI are the same, or
4 that one was applied and the other should have applied
5 or otherwise.

6 And the same thing with Miller. You know,
7 the Miller case is this one where the dog bit, killed
8 another resident there in San Francisco. We all read
9 about it at the time. And they put in a footnote when
10 they say, here's what the petition requested. The
11 Petitioner asked us to look at these questions. And one
12 of them was whether great bodily injury was a proper
13 subject for jurors to consider in deciding whether or
14 not this was a manslaughter -- was a second-degree
15 murder. And awareness of great proximity of great
16 bodily injury.

17 Well, basically, that's somebody who
18 apparently read the language out of one of these older
19 cases that they're essentially the same and asked the
20 question, but that question was never in front of the
21 jury. The jury actually considered an instruction from
22 The Court -- or actually, The Court of Appeal applied a
23 standard, saying, well, second-degree murder could be
24 proven by awareness of conduct, that risk causing death,
25 or serious bodily injury.

1 And so the holding in Thomson has nothing to
2 do with great bodily injury. They just throw in this,
3 well, they're essentially the same to explain why
4 they're addressing this serious bodily injury that The
5 Court of Appeal applied erroneously in that case.

6 It's just dictum and it doesn't really
7 enlighten. So it was really addressing whether
8 awareness of an act that might cause serious bodily
9 injury was the proper standard, and it just points out
10 that the difference -- it even qualifies it in the
11 footnote. It says, and the differences aren't
12 materially our decision. Well, obviously, because The
13 Court never applied that standard.

14 And the case it cites that Burrows case is
15 asking whether either term is inherently dangerous to
16 human life. And again, just, well, they might be about
17 the same. I mean, I know why Court's throw garbage like
18 that into an opinion. They aren't. They are different.
19 They are essentially the same. I'm not sure exactly
20 what that means.

21 But in any event, then you have that Taylor
22 case, now that's a total aberration. This is where a
23 jury somehow finds serious bodily injury on one count,
24 but can't find great bodily injury on the other. And
25 because they didn't, The Court couldn't sentence him as

1 if the facts of the case support a jury finding that
2 great bodily injury had been inflicted, only because
3 they returned not true on that charge.

4 I mean, if they found serious bodily injury,
5 they necessarily would have found great bodily injury if
6 they applied common sense and applied the jury
7 instructions. But it appears to me that the jurors
8 thought they couldn't do both. That they had to make a
9 decision whether it was serious or great, and they found
10 it was serious. And when they found not true. Whatever
11 they found, that case doesn't really have any control.
12 I think this Cabrera case really, kind of, puts to death
13 the idea that the two are analogous.

14 So my question is, what's the point of that
15 analysis? You know, we have cases that talk about
16 what's deadly force, and deadly force is not equivalent
17 to matters that might cause GBI or serious bodily
18 injury. But it doesn't strike me that there's much to
19 be gained from just string cites that say, they're
20 essentially the same. They're not. And even The
21 Court's that applied it, their decisions pointed out
22 that they weren't treating them the same.

23 So in any event, um, this is your chance to
24 tell me why, um, I'm missing the boat here on this GBI
25 standard. I've got -- I've got a legislative intent

1 expressed by an earlier version of the statute that says
2 SBI was replaced with GBI. I've got an argument from
3 you that GBI just, pretty much, throws out anything and
4 makes every report disclosable because every little
5 scrape is a GBI and dogs cause scrapes. And then this
6 discussion of dogs and its not deadly and it's
7 intermediate level of force. And I'm just not seeing
8 how any of that gets me to the conclusion that the GBI
9 that's written into this statute doesn't mean the GBI as
10 defined in 12022.7.

11 So this is your opportunity to tell me how I
12 missed the boat, Mr. Sain.

13 MR. SAIN: Thank you, Your Honor. First, let's
14 address the first inquiry, Your Honor. Petitioner just
15 said that when it comes to their requests, that the
16 reason that they're entitled to the accepted arrestee
17 information is because the request reports that has that
18 information. That's not how it works. They asked for
19 the reports themselves. So when it comes to arrestee
20 information, they're not the victim. They're not
21 entitled under that exception. They never requested the
22 actual information. They requested separate reports.
23 Not arrest reports; use of force reports. So no, they
24 are not entitled to that in the light of this particular
25 factual record.

1 The other thing that Your Honor said was
2 whether or not you needed to conclude that these were
3 investigatory records. Absolutely, you do. Because if
4 they're not investigatory records, then this exemption
5 doesn't apply at all. And it's very clear. Plaintiff's
6 cite to the policy, where it says that, well, these are
7 administrative records. That's not what the policy
8 says. It's also not how the policy works.

9 And to evidence that, we have the
10 declaration from paralegal, in this case, from the City
11 of Fresno. They don't offer any other evidence. But
12 you have to understand, Your Honor, and I think it's
13 very clear in the evidence, what investigations are,
14 with what administrative investigations are. The law
15 enforcement investigative privilege, it's very clear in
16 the case law, is not limited to records of
17 investigations of criminal matters.

18 It's records of investigations by law
19 enforcement agencies, and there's plenty of case law
20 that makes it very clear that this exemption applies to
21 administrative investigation records, like these
22 use-of-force reports. Also, petitioner said something
23 about how the investigative records exemption should
24 only apply when there's a definite and concrete prospect
25 of criminal enforcement. That's exactly contrary to the

1 law.

2 And he says very clearly, I'm quoting -- let
3 me start that before the quote. Limiting the
4 investigatory records exemption "only to records of
5 investigations when the likelihood of enforcement has
6 ripen into something concrete and definite would expose
7 the public -- to the public the very sensitive stages of
8 determining whether a crime has been committed or who
9 has submitted it."

10 The Court rejected that idea that the --
11 exemption only applies when criminal or investigation is
12 likely to ripen into some sort of punishment. That's
13 not how it works. Once an investigation has begun by a
14 law enforcement agency, records associated with that
15 investigation, whether criminal or administrative, are
16 covered by the exemption.

17 To answer your Honor's additional query, you
18 asked about the, um, whether or not there has to be a
19 purpose, an investigatory purpose. I don't think
20 there's any law that says there has to be some specific
21 purpose. All that needs to happen for the exemption to
22 attach is that they -- the law enforcement agency's
23 investigating something related to something. Once that
24 happens, it's a law enforcement investigatory record.
25 And it becomes exempt unless an exception applies.

1 The exception for arrestee information does
2 not apply because they are not -- the petitioners are
3 not a victim, and they didn't ask for those types of
4 information. They ask for use-of-force reports. They
5 ask for use-of-force and accidental-bite reports; not
6 arrestee information.

7 The last point, Your Honor, is more subtle.
8 In response to their case, I point back to the People v
9 Arnett that we've already cited, but let me talk to you
10 about why the legislative analysis is necessary here.
11 It's not that the term great bodily injury is clear or
12 not clear. The problem here is the definition of what
13 great bodily injury is in the Penal Code. And all it
14 says is substantial or significant physical injury.
15 That's the entirety of the plain text reading.

16 Petitioner wants you to say, well, you
17 should only rely on a plain text reading; it's crystal
18 clear what that is. No it's not. Because if you can
19 look at that statute and know what great bodily injury
20 is, the inquiry would be done. You can't. You have to
21 automatically look to case law. And the case law here
22 is contra to the legislative intent here.

23 When the legislature was trying to figure
24 out -- the issue isn't whether the term -- what the term
25 GBI, in terms of what the legislature was picking in

1 that term; the issue is, in terms of determining their
2 legislative intent, was what was the scope of records
3 they meant to be disclosable under this exemption they
4 were creating. That's the issue before this Court.
5 That's the issue that's really at debate here. How big
6 is this exemption supposed to be.

7 They started with including more uses of
8 force, making them more disclosable, and they kept
9 walking it back. It started all the way down to tasers,
10 they took that away. There was baton strikes in there
11 at one point, they took that away. There was dog bites
12 in there at one point, they took that away. They kept
13 winding it back further and further, and it was only
14 when it got as narrow as it did that that bill obtained
15 the support of California police chiefs. Because they
16 construed that term, great bodily injury, to mean the
17 same thing as it does in police use-of-force context.

18 There is nothing in the legislative history
19 that says when the legislature switched the term from
20 serious bodily injury to great bodily injury, there's
21 nothing in there that says they meant the Penal Code
22 version of GBI. There's nothing in there that says
23 that. Why, just looking at it from a logical
24 perspective, if GBI meant the broad categories of force
25 that petitioner contends, why would the police chiefs

1 have signed on? Why would they have supported it? If
2 it meant the broad categorization that they contend, why
3 would the sponsor of SB1421, a few years later, come
4 back and put another bill up that would have essentially
5 make all uses of force disclosable. Why would that bill
6 be necessary if SB1421 was as broad as they contend. It
7 wouldn't.

8 The issue is what does GBI mean for the
9 purposes of this specific statute? Legislature doesn't
10 tell us. It doesn't say go to the Penal Code.
11 Petitioner cites an argument that, oh, well, we should
12 go to the code where there's a definite section that
13 defines that term. That doesn't work here. Here's why.
14 Because it is directly contrary to what the apparent
15 intent was.

16 If we're going to adopt the case law
17 definition that petitioner's telling us, which as you
18 saw, it's pretty raw, the statute doesn't say, it's just
19 significant or substantial bodily injury. It doesn't
20 define that. Case law defines it. If we're adopting
21 Penal Code, all the way down the scrapes, all the way
22 down to physical pain. You've seen those cases. You're
23 aware of then.

24 I know that some jurors did different
25 things, but CPRA disclosures are never going to be

1 decided by a jury. Judges decide what's disclosable.
2 They look to these cases, and the cases, if they're
3 adopted, the Penal Code version say, GBI means pain. If
4 that was what the legislature intended, then they
5 attended all use-of-force reports, any kind of injury,
6 any kind of pain to be disclosable. The broadest
7 possible scope of CPRA disclosure, and that can't
8 possibly be true here. That can't possibly be true.

9 If that were the case, you wouldn't need an
10 amendment. If that were the case, the police chiefs
11 would not have signed on. It was because everybody
12 viewed this as getting narrower that you got that
13 support. In fact, the legislative history for this
14 particular statute tells us, that part of the reason
15 they amended it, Your Honor, was because they only
16 wanted to make the most serious complaints disclosable.

17 If any complaint, ow, I have an owie. I
18 have pain. I have a scrape. If all of that is
19 disclosable, that cannot possibly be the most serious
20 complaints. That's the issue. It's not what does the
21 word -- it's not does it say great bodily injury; it's
22 what does great bodily injury mean for the purpose of
23 CPRA disclosure. I don't believe that secured us at
24 all. I think that's the central issue. And you can't
25 figure that out without looking at the legislative

1 history.

2 Now, I think the reason that we cite to
3 those cases that say that when you're talking about
4 police use of force, great bodily injury and serious
5 bodily injury basically mean the same thing. The reason
6 we cite to that is because this statute is not about a
7 sentencing enhancement, which is what the Penal Code
8 definition of GBI is about. That's not what this
9 statute is about. This statute is about police use of
10 force. You can't look to the sentencing enhancement
11 criminal law to figure out what GBI means when you're
12 talking about police use of force.

13 THE COURT: The police use of force uses the term
14 serious bodily injury.

15 MR. SAIN: They use both, Your Honor. That is our
16 point. If you look at the case law when they're talking
17 about deadly force, they talk about when deadly force is
18 authorized. California statute says serious bodily
19 injury. Absolutely. Case law, some of which predated
20 that statute, uses great bodily injury. You are allowed
21 to shoot somebody when you're facing an immediate death
22 of threat or great bodily injury.

23 THE COURT: If that's the case, then why doesn't,
24 you know, um, Penal Code Section 835A, Sub C, Sub 1 --
25 Sub 1, eliminate the argument? It controls the standard

1 for use of deadly force. It's adopted after all that
2 case law. It's adopted after adoption of this crime --

3 MR. SAIN: Yes.

4 THE COURT: -- in this section. So why isn't that
5 the final word?

6 MR. SAIN: Because, Your Honor, that's the final
7 word for when you can use deadly force in California.
8 They use the term serious bodily injury, right?

9 THE COURT: Right.

10 MR. SAIN: But in terms of how officers and
11 agencies and everybody else who was on board with this
12 statute analyze what that term great bodily injury
13 means, to them it's the same. And I don't think that
14 you can look at this statute or the legislative history
15 and get to the idea that they meant it to be as broad as
16 the Penal Code defines it. The legislative history is
17 very clear of what they were trying to do.

18 For example, the term that they used was
19 they wanted to limit this disclosure to only the most
20 serious uses of force. The most serious complaints.
21 Why then did they not leave tasers in the mix? Why then
22 did they not leave dog bites in the mix? Why did they
23 not leave baton strikes in the mix?

24 THE COURT: Well, now doesn't this argument assume
25 that everything is logical and none of it's

1 transactional? I mean, the fact is, somebody screams
2 takes tasers out. Well, okay. Somebody screams take --
3 okay. But we're going to change this to make it GBI,
4 and we're going to have a bill that everybody will choke
5 down. I mean, isn't that how they make sausage up
6 there?

7 MR. SAIN: That is how they make sausage, Your
8 Honor. And that's actually our point. But these law
9 enforcement -- these legislatures understand what these
10 types of force are. And they can only get the agreement
11 that they wanted by making the bill narrower. If they
12 were trying to make it broader, they would never have
13 got the Cal chiefs' support, and they would never have
14 needed another bill to make it broader to all uses of
15 force. That's the part. I think that is sort of the
16 smoking gun here.

17 Why, if it's as broad as they're claiming,
18 would they need to amend this statute? If that was the
19 legislative intent, why did they have to amend?

20 THE COURT: Because it said SBI before.

21 MR. SAIN: No. I'm talking about after SB1421 was
22 passed, Your Honor.

23 THE COURT: Oh.

24 MR. SAIN: After they adopted the great bodily
25 injury language.

1 THE COURT: Okay.

2 MR. SAIN: Senator Skinner and her supporters at
3 ACLU tried to bring another bill. And that other bill
4 would have expanded the disclosure requirement to all
5 uses of force.

6 THE COURT: Right.

7 MR. SAIN: It died. Why would you need to bring
8 that bill if the original bill meant the same thing?

9 THE COURT: Well, and again, that's when you're
10 conflating the idea that all uses of force and uses of
11 force cause a great bodily injury are the same.

12 MR. SAIN: All uses of force -- if you're using
13 force on someone and it causes any degree of pain, if
14 we're adopting the Penal Code definition, that would
15 basically be any use of force. Otherwise it's not
16 force.

17 MR. HIDALGO: May I respond to some of this, Your
18 Honor?

19 THE COURT: You're going to get your chance. I
20 don't want to cut him off. He's on a role. I'm just
21 puzzled. I mean, I get the idea that, you know, they're
22 knocking some things out of this provision by throwing
23 some things out. I just don't see how -- it's just
24 somebody just couldn't tell the difference between the G
25 and an S.

1 MR. SAIN: I think that they presumed that the
2 term great bodily injury was meant to be defined the
3 same way it's used in police context.

4 THE COURT: I think you give them way too much
5 credit.

6 MR. SAIN: I do. I do, Your Honor. But I think
7 there's no other logical way to construe all of the
8 other pieces of that pie. There's no other way to put
9 those pieces of that pie together without getting to go
10 an absurd result. And all of our statutes -- statutory
11 construction tells you that you're to interpret a
12 statute to avoid absurd results.

13 If the idea of this statute was to limit
14 disclosures to only the disclosures of force resulting
15 in the most serious complaints, the most serious uses of
16 force, then how can you possibly construe GBI to be as
17 broad as they're contending it is, that's the part that
18 doesn't make any sense. That's why it cannot be the
19 correct result. It cannot be the correct
20 interpretation.

21 If you didn't have to rely on the Penal Code
22 to get to where they want to go, you didn't have to rely
23 on the case law to get to where they want to go, we
24 might be in a different situation. But you do, and
25 doing their version, doesn't make any sense. It doesn't

1 apply. It isn't at all consistent with how police uses
2 of force are construed or evaluated or have been for the
3 last 30 some-odd years.

4 THE COURT: Well, let me ask you this -- and,
5 again, I'm going to make a decision, and I'm going to
6 give you all the reasons I made it. I'm not making a
7 decision as I ask this question.

8 But I do want to narrow down what's left.
9 If the GBI standard in 837.2, Sub B, Sub 1, Sub A,
10 Sub ii, is, in fact, should be applied as articulated
11 in 12022.7, if that is the conclusion I reach, going
12 through the legislative history, comparing all uses of
13 force and uses of force that meet that standard, then
14 what's left for the city to not disclose? I mean, if
15 there was talk about, you know, privacy rights, there
16 was talk about worker, work products, attorney/client
17 privilege. I mean, I think they've knocked out the idea
18 that just because the report goes to a lawyer, doesn't
19 make it privileged. So if that were the standard, and,
20 again, it's not saying that's the standard, but if I
21 applied that standard, what else do you think shouldn't
22 be disclosed with the things they've asked for?

23 MR. SAIN: Your Honor, I believe the only thing
24 that we, um, withheld -- we disclosed the actual
25 use-of-force report, we just redacted the information in

1 those reports.

2 THE COURT: Right.

3 MR. SAIN: Because we believe the entire report is
4 exempt.

5 THE COURT: I appreciate that.

6 MR. SAIN: So I don't believe we made the argument
7 in any of the briefing that there was attorney/client
8 privilege at issue.

9 THE COURT: Well, that was certainly a response
10 that you gave to the ACLU.

11 MR. SAIN: That was before my time, Your Honor,
12 but, yes, I don't think we made any contention in the
13 briefing that there was any privilege at issue.

14 THE COURT: All right. You know, I didn't see
15 anything that looked like work product.

16 MR. SAIN: Yeah.

17 THE COURT: But then, again, I got these big grey
18 boxes and I'm trying to figure out --

19 MR. SAIN: Yeah.

20 THE COURT: -- is there something else, besides --
21 now, you've said they haven't asked for arrest reports,
22 and they didn't specifically request identification of
23 the alleged victim of this dog bite. So they're not
24 entitled to that. But beyond that, if the Court were to
25 apply 2832.7, et cetera, exception, pretty much, the

1 whole grey box goes away.

2 MR. SAIN: Your Honor, if these -- if Your Honor
3 is going to adopt their version of what GBI means, which
4 is the Penal Code version, which extends the definition
5 of great bodily injury all the way down to scrapes and
6 physical pain, then pretty much any use of force, where
7 there's even a claim of an owie, is going to be
8 disclosable, which is exactly contrary to what the
9 legislature intended here in trying to restrict these
10 disclosures to the most serious complaints, the most
11 serious uses of force.

12 If that were the case, if that's what they
13 intended that to mean, the Penal Code definition and all
14 of its case law meanings, it would not have said that,
15 and they would not have removed all of these other
16 categories of force to make it narrower. It's just
17 beyond conception that they would revise it the way they
18 did if they were trying to broaden it. It's beyond
19 conception, beyond reason that they would need a
20 supplemental statute that brought it to all uses of
21 force if the existing statute already did that.

22 None of that is at all logical. None of
23 that is at all rational. None of it is consistent with
24 the legislative history here. The idea that all uses of
25 force or virtually all uses of force are now suddenly

1 disclosable is just not supported by the statutes, by
2 the legislative history, or by just common sense.

3 THE COURT: Okay.

4 You, sir.

5 MR. HIDALGO: There's a lot to respond to there,
6 Your Honor, but I'll start with the -- with this
7 supposed ambiguity. In short, there is none. The text
8 says great bodily injury, and that was a very well
9 defined term of art. It's actually not only defined in
10 the Penal Code, it's defined in a couple different areas
11 in California statutes. And they all either refer back
12 to Penal Code Section 12022.7 or else define it the
13 exact same way. And that does not include any and all
14 minor pain. There's a few cases that say, requires some
15 pain or force applied, but the -- no jury that I know of
16 has found that some, you know, GBI exists where there's
17 just a bump. They require some kind of jury or
18 something like that.

19 Your Honor, Respondent repeatedly claims
20 that the ACLU is attempting to rewrite this law. But
21 the opposite is true. We ask The Court to read the law
22 exactly as it is written and as numerous other Courts
23 have done. Fresno, on the other hand, attempts to
24 replace one clearly defined term with another in order
25 to justify withholding of public records. The Courts

1 expressly rejected that argument. And not just in cases
2 involving -- not limited to cases of police use of
3 force, but also in cases pertaining to this specific
4 section, 832.7, as amended under -- by Senate Bill 1421.
5 The Sacramento Bee and Richmond cases that we cited in
6 our reply and our supplement address the exact same
7 argument that Fresno is making here, that they only have
8 to apply serious bodily injury as opposed to great
9 bodily injury, and both rejected that -- that argument.

10 The Contra Costa County Superior Court found
11 there is simply no ambiguity at all. The legislature's
12 choice of phrase great bodily injury signals intent that
13 that term be applied, not the narrow, and well
14 established term of art serious bodily injury. And the
15 Sacramento County Court found that the plain language,
16 it's legislative history, the text, and purpose of the
17 PRA all show that the legislature intended agencies to
18 apply a broader definition of great bodily injury rather
19 than the overly restrictive term serious bodily injury
20 when responding to PRA requests.

21 As I said, Your Honor, there's no ambiguity.
22 Great bodily injury is a clearly defined term of art
23 that must be applied even in the context of this PRA
24 exception.

25 MR. SAIN: Your Honor, I'll just add one final

1 thing from this analysis. This is a direct quote. It
2 says that the idea of this statute SB1421 and the reason
3 they amended it and kept restricting it and kept
4 narrowing it was so that it would only be applicable in
5 "very limited cases."

6 There is no way --

7 THE COURT: I'm sorry. The quote coming from
8 where?

9 MR. SAIN: The Senate analysis, which is part of
10 our original brief structure, Your Honor. We included
11 that. Judicially noticeable document, and I believe
12 last time you took judicial notice of it. Senate
13 analysis says that the idea of SB1421 was that uses of
14 force would only be disclosable in "very limited cases."
15 That only the most serious complaints -- that's a
16 quote -- "most serious complaints" will be disclosable.
17 It was only to be the most serious cases. Their words.
18 "Serious cases" that were disclosable.

19 He just said -- Petitioner just said, that
20 their whole intent, their construction is that this
21 should be very broad. That's not what the legislature
22 intended.

23 THE COURT: Isn't that the overall language,
24 though, throughout all of these sections about 832 and
25 about disclosure and that exceptions are to be narrowly

1 construed, that the exemptions are narrowly construed.
2 Isn't that what we're getting throughout all the
3 language?

4 MR. SAIN: Exemptions are narrowly construed, but
5 law enforcement investigatory records is one of the
6 broadest ones. In fact, it's the broadest one. And
7 what they're talking about is an exception to that
8 exemption. There's no way that you can say that this
9 exemption is more than a pinhole. They want to take --
10 basically, turn this pinhole into a giant black hole
11 that consumes the exemption because then there would be
12 no more exemption.

13 And that is not what the legislature
14 intended. There's no way that you can read that
15 language from the Senate analysis or read the support
16 that this legislation ultimately received from the law
17 enforcement community as being on board with the idea
18 that now there is no more law enforcement investigatory
19 exemption, which is what their argument essentially
20 means.

21 And that's why it cannot possibly be the
22 correct construction of this statute, why it cannot
23 possibly be what this law is supposed to be doing. It
24 is an absurd result to presume that the exception is now
25 going to consume the exemption because that's what it

1 means. If great bodily injury means pretty much any
2 injury, pretty much even pain, then there is no more law
3 enforcement investigatory exemption, and that's probably
4 what they wanted. Probably their goal. And now they
5 are trying to accomplish, like I said before through
6 litigation what they couldn't accomplish through
7 legislation. But that is not what the legislature
8 intended.

9 We have plenty of evidence to support that.
10 And I think that's what this Court needs to do. It
11 needs to read the GBI in the way that law enforcement
12 reads it, the way that the legislature intended, which
13 was a narrow construction.

14 THE COURT: Okay. It's your petition, so you get
15 the final word.

16 MR. HIDALGO: Your Honor, Fresno is attempting to
17 invert the transparency principal in the California
18 constitution. And to quote Section 3 of the California
19 Article 1, declaration of rights, "A statute, Court
20 rule, or other authority, including those in effect on
21 the effective date of this subdivision, shall be broadly
22 construed if it furthers the people's right of access
23 and narrowly construed if it limits their access."

24 That applies to the PRA. That applies to
25 the exemptions. That applies to exceptions to those

1 exemptions. That applies to the issue before us here
2 today.

3 Your Honor, the ACLU is seeking nothing more
4 than the PRA and the constitution required. We're not
5 trying to destroy the investigatory records exemption,
6 we just need it to be interpreted correctly and
7 narrowly, as the California constitution requires.

8 Whereas, Respondent is attempting to rewrite
9 the clear text of a statute to hide evidence of harm
10 caused by police K-9s. We ask this Court to reject this
11 effort to subvert the State legislature's will and to
12 support the peoples' right of access to public records.
13 I apologize. I have a tendency to be a motor mouth.

14 THE COURT: That's a very strong common tendency
15 people, when they read, speed up. All right. Thank
16 you.

17 Thank you both.

18 MR. SAIN: Thank you, Your Honor.

19 THE COURT: I'm not done. You know, this is --
20 this has been a delight. I did not bother to add up all
21 the pages that I was tasked with reviewing here, though
22 I know it's probably closer to 2000 than 1000. I find
23 this a very challenging and interesting issue. And I
24 find the arguments on both sides to be compelling and
25 worthy of careful consideration. That's -- I think the

1 most I can ask for in any case. That's what I always
2 ask for in a jury trial. That both lawyers do good jobs
3 so the jurors have everything they need to make an
4 informed decision. I have that. Now we'll see how
5 informed I am.

6 MR. HIDALGO: Thank you, Your Honor.

7 THE COURT: Thank you, all.

8 MR. SAIN: Thank you, Your Honor.

9 THE REPORTER: Tony, do you want this transcribed?
10 Written up?

11 MR. SAIN: I'm sorry.

12 THE REPORTER: Do you want it written up? A
13 transcribed copy?

14 MR. SAIN: Yes.

15 MR. HIDALGO: Yes, please.

16

17

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19 (The proceedings concluded at 2:16 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF TULARE) ss.

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4
5 I, VICTORIA L. THOMAS, a Certified Shorthand
6 Reporter of the State of California, do hereby certify
7 that the foregoing pages numbered 1 to 38, inclusive,
8 contain a full, true and correct transcript of my
9 shorthand notes, and a full, true and correct statement
10 of the proceedings had and testimony given as reflected
11 herein.

12

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14 Dated April 1, 2025.

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Victoria L. Thomas
VICTORIA L. THOMAS
CA CSR NO. 12927

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