Witness: Cliff Marchetti

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Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – Rick Distaso; Cross – Pat Harris; Redirect – Rick Distaso; Recross – Pat Harris; 2nd Redirect – Rick Distaso

Day 1 of 1 for this witness

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Direct Examination by Rick Distaso

DISTASO: Mr. Marchetti, where do you work?

MARCHETTI: I work for the City of Berkeley at the Berkeley Marina.

DISTASO: What is your job title?

MARCHETTI: I'm a waterfront manager. I am in charge of the marina.

DISTASO: How long have you worked there at the marina?

MARCHETTI: I have been at the marina for eight and a half years now.

DISTASO: Your Honor, I'm going to have this marked next in order. It's a printout from the ticket machine.

JUDGE: That will be number 107. Ticket Printout

DISTASO: Let me just show People's 107. Let me ask you if you recognize that.

MARCHETTI: Yes, I do.

DISTASO: What is that?

MARCHETTI: That's the summary sheet for money collected at the launch ramp.

DISTASO: Let's go through that a little bit. If someone goes to launch a boat at the marina, can you see People's 106 there?

MARCHETTI: Yes.

DISTASO: What's on the screen? The boat launch the ramp area is down here, correct?

MARCHETTI: Right.

DISTASO: Show you a close-up. This is 106-B. If you are going to launch, if you are going to launch a boat, what do you have to do? I mean whether, I'm talking about procedurally with the marina, does the marina require a fee?

MARCHETTI: Yes. There is a five dollar fee to launch.

DISTASO: This little machine right here, is that where the you pay your fee?

MARCHETTI: Yes, it is.

DISTASO: And is it an, for lack of a better term, kind after honor system kind of thing?

MARCHETTI: Yes.

DISTASO: There is no person sitting there taking your money?

MARCHETTI: No.

DISTASO: 106-C. That's a picture of the machine?

MARCHETTI: Yes, it is.

DISTASO: So you just put your money in there, it spits out a little ticket?

MARCHETTI: Yes.

DISTASO: As far as you know, this is 106-E. Is that the only sign that tells you boat launch, I mean boat launch, ramp five dollars per car?

MARCHETTI: I think so.

DISTASO: Okay.

MARCHETTI: I know that one is there.

DISTASO: Now, once people pay their money and they get their ticket, then what do they do with it?

MARCHETTI: They put it up in the windshield so that we can, if we drive by, we can see it.

DISTASO: You can kind of check to see who's paid?

MARCHETTI: See who has paid.

DISTASO: The machine is computerized?

MARCHETTI: Yes.

DISTASO: Does it have an ability to keep track of how much, how many tickets were sold between certain days?

MARCHETTI: Yes.

DISTASO: People's 107 that I have here, it says start date is December 23rd, 2002, and end date is December 27th, 2002. Would that be the run date, or the amount of tickets sold between those days?

MARCHETTI: Correct.

DISTASO: Let's just go through this. The start date here is the 23rd of December, and end date is the 27th of December. And looks like roughly the same time periods 8:21 and 8:57, correct?

MARCHETTI: Correct.

DISTASO: And then cash in the machine was fifteen dollars.

MARCHETTI: Right.

DISTASO: And what does "Overpay" mean?

MARCHETTI: The machine, some of the machines have the ability to pay change back.

DISTASO: Your machine doesn't?

MARCHETTI: No.

DISTASO: And then it looks like cash box, fifteen ones, which is, I assume, is fifteen one-dollar bills?

MARCHETTI: Probably.

DISTASO: And then the total cash was in the machine for that period of time was fifteen dollars.

MARCHETTI: Based on the receipt, yes.

DISTASO: So at five dollars per car, that would show that three tickets had been sold during that time period.

MARCHETTI: That's what that ticket would say, yes.

DISTASO: And this ticket, these tickets are kept in the normal course of business at the marina?

MARCHETTI: Right. We keep them as part of our deposits, so that when staff go over to pick up the cash, they come back with a transaction sheet like that to verify how much money was collected.

DISTASO: And your business at the marina relies on these tickets to make sure that when the staff collects the money, it matches up with how many tickets were sold?

MARCHETTI: Right.

DISTASO: Talk to you about the marina as a whole. Where is, let me give you this pointer back. Where is your particular office at the marina?

MARCHETTI: Right there.

DISTASO: And there are people who live in their boats, correct?

MARCHETTI: Correct.

DISTASO: And these people are called live-aboards?

MARCHETTI: Yes.

DISTASO: Are they scattered throughout the marina, or are they grouped in one section?

MARCHETTI: They are generally scattered throughout the marina.

DISTASO: So there is no one particular section where this is, where everybody is?

MARCHETTI: No.

DISTASO: And do you know how many slips there are that people can park their boats at the marina?

MARCHETTI: There is about a thousand slips.

DISTASO: And of those slips, how many people are live-aboards, folks living in their boats?

MARCHETTI: We have the capacity to have a hundred live-aboard slips.

DISTASO: And are all 100 filled?

MARCHETTI: No. There is probably between 60 and 80 filled at any one time.

DISTASO: And I imagine the people kind of come and go with, some people move in and live aboard, some people move out?

MARCHETTI: Right.

DISTASO: At any given time it's between 60 and 80 would be your best estimate?

MARCHETTI: That would be the people that are signed up as live-aboards, that's correct.

DISTASO: Now, were you working on December 24th, 2002?

MARCHETTI: Yes.

DISTASO: And can you tell, where did you spend your day?

MARCHETTI: Most of the time I spent in the office.

DISTASO: And did you ever go out and drive around and check out the marina?

MARCHETTI: Yes, I drove around the marina once that day.

DISTASO: What hours were you there at the marina?

MARCHETTI: I was there from about eight until five, eight until 4:30, something like that.

DISTASO: What was the amount of people or customer traffic coming into the office on that day?

MARCHETTI: We didn't have anybody that I recall come into the office.

DISTASO: Did, was that a slow day at the marina?

MARCHETTI: Yes.

DISTASO: And when you drove around the marina the one time, did you observe, what was the people activity that you observed at the marina, just driving around?

MARCHETTI: There really wasn't much going on that day. I had only seen two or three cars parked by the park, the big park, Cesar Chavez, which is at the bottom of that picture.

DISTASO: So that Cesar Chavez Park, when you drove around down there, you only saw two or three cars?

MARCHETTI: Right.

DISTASO: And what was the weather?

MARCHETTI: It was cold. It was cloudy.

DISTASO: And is that a normal, was it a normal December 24th day there at the marina?

MARCHETTI: Pretty normal.

DISTASO: I mean that's a normal day, cold, cloudy, not a lot of traffic?

MARCHETTI: Well, based on what I remember, it had rained a couple of days before. It was cold that day. It wasn't one of those days that I wanted to get out of the car and go do anything.

DISTASO: Nothing further, your Honor.

Cross Examination by Pat Harris

HARRIS: Good morning, Mr. Marchetti. Are you the, you are the waterfront manager, is that correct?

MARCHETTI: Right.

HARRIS: If I understand your testimony, you said you had about a hundred specific slips for live-aboards?

MARCHETTI: We have a hundred slips set aside by BCDC for live-aboards, cruising live-aboards in the marina.

HARRIS: And do other people live on their boats as well?

MARCHETTI: Yes.

HARRIS: Quite a few, actually, don't they?

MARCHETTI: There is probably, from my estimation, 50, 60, maybe a hundred, something like that.

HARRIS: So as many as a hundred more possible people just live on their boats?

MARCHETTI: Right.

HARRIS: So approximately 20 to 25 percent of the boats in the Bay, it's your estimate, are live-aboards? People, I'll rephrase it. Not live-aboards, but people who actually live on their boats?

MARCHETTI: Could be.

HARRIS: Are you familiar with the Berkeley Marina website?

MARCHETTI: Yes.

HARRIS: You are familiar with a section known as frequently asked questions about the Berkeley Marina?

MARCHETTI: Yes.

HARRIS: On that section, have you take a look at it. I'll point you specifically to the yellow.

MARCHETTI: Right.

HARRIS: Okay. Under the frequently asked questions, is it, does it state that the Berkeley Marina actually has a waiting list of two years for live-aboards?

MARCHETTI: Sometimes that's true.

HARRIS: In fact, it says specifically it currently has a wait list for live-aboard status. The cost is a forty-dollar nonrefundable fee. Wait list may up to two years long?

MARCHETTI: That's right.

HARRIS: Do you recall that shortly after Christmas that year, the Berkeley Police Department coming to talk to you?

MARCHETTI: The Berkeley Police Department came down and talked to me, but I don't remember anything specific.

HARRIS: Do you recall specifically them asking for a list of people living on their boats?

MARCHETTI: No.

HARRIS: Do you remember giving them such a list?

MARCHETTI: No.

HARRIS: I'm going to refer you to Berkeley Police Department supplemental report dated January 1st. If you would just take a look at the yellow.

MARCHETTI: Okay.

HARRIS: Does that refresh your recollection?

MARCHETTI: No.

HARRIS: Okay. Docks A through E would be this section?

MARCHETTI: Yes.

HARRIS: Is it alphabetical, A, B, C, D, E? Is that correct?

MARCHETTI: Yes.

HARRIS: So this section here is A through E?

MARCHETTI: Yes.

HARRIS: And from your recollection or your knowledge, you are well aware that live-aboarders are living on their boats on A through E, aren't they?

MARCHETTI: Yes.

HARRIS: I want to refer you to what's been marked as triple

MARCHETTI: Are you familiar with this brochure?

MARCHETTI: Yes.

HARRIS: Brochure put out by your office?

MARCHETTI: Yes.

HARRIS: In the brochure it states that the Berkeley Marina is the largest marina in Northern California, is that correct?

MARCHETTI: Based on the information I have, yes.

HARRIS: It's the marina in Northern California with the most traffic, isn't it?

MARCHETTI: It's the marina in Northern California that has a thousand slips, which is greater than most other marinas in Northern California, most likely. Other than Santa Barbara, Long Beach, the biggest.

HARRIS: Okay. I'm sorry if I misunderstood that. So other than, certainly Northern California. But you are saying other than Santa Barbara and Long Beach, it's the largest?

MARCHETTI: It's one of the biggest public marinas.

HARRIS: Third largest marina in California?

MARCHETTI: Could be.

HARRIS: I want to refer you to, in the brochure, there is a layout map of the marina, is that right?

MARCHETTI: Yes.

HARRIS: Do you recall it?

MARCHETTI: Yeah.

HARRIS: Now, as you look at the map, I just want to go through and point out some things. You tell me where certain things are located, or certain things are. If I understand correctly, you enter the marina from the Interstate, is that right?

MARCHETTI: Yes.

HARRIS: Okay. What Interstate is that?

MARCHETTI: Interstate 80.

HARRIS: You come off, what's the best exit to come off of to get into the marina?

MARCHETTI: Either Emeryville or Gilman. You can get off at University, but you have to go through downtown Berkeley.

HARRIS: In order to enter the marina, is it a fair statement that you end up coming down, what is it, Marina Boulevard, or University Avenue that brings you into the marina?

MARCHETTI: University.

HARRIS: If you want to go to the north section of the marina, do you turn right on Marina Boulevard right here?

MARCHETTI: That's right.

HARRIS: And as you turn right, and as you drive down Marina Boulevard, there is a hotel here, is that right?

MARCHETTI: That's right.

HARRIS: It's a Radisson?

MARCHETTI: It's a Double Tree now.

HARRIS: Double Tree. It was a Radisson at the time?

MARCHETTI: Yes.

HARRIS: 375 room hotel?

MARCHETTI: Yup.

HARRIS: It's pretty busy?

MARCHETTI: It depends on the season.

HARRIS: You then drive, in order to get to the parking deck, or the parking, excuse me, boat launch ramp, you come around this area, is that right?

MARCHETTI: That's correct.

HARRIS: And as you come along this area, there is Cesar Chavez Park, is that right?

MARCHETTI: Correct.

HARRIS: That's north of the boat launch ramp?

MARCHETTI: Right.

HARRIS: This is the park with the bike paths, the walkers, joggers, and so forth?

MARCHETTI: Right.

HARRIS: And we have been told by a previous witness that in, fact they show trees here, but there are no trees here.

MARCHETTI: There is not on the north side of the pathway, but on the south side of the pathway there are some trees there.

HARRIS: So as you are driving down this street, there is nothing blocking your view of the road here.

MARCHETTI: No.

HARRIS: You come on down here to the boat launch ramp, is that correct? Right there?

MARCHETTI: Right.

HARRIS: Now, I want to ask you about, first of all, there is a fuel dock right here, is that correct? Where the number two is?

MARCHETTI: Yes.

HARRIS: And when boats want to fuel up, go out into the Bay, that's where they, all the boats in the bay come to this area to fuel, is that right?

MARCHETTI: Yes.

HARRIS: Now, the "V" here, what does that stand for?

MARCHETTI: Might be the channel marker, but I'm not sure. How about view?

HARRIS: I'm sorry?

MARCHETTI: Maybe view.

HARRIS: The place where people actually go and stand out to look out into the Bay, isn't it?

MARCHETTI: Can be.

HARRIS: The "V" over here, what is that?

MARCHETTI: That's the lawn area next to the yacht club.

HARRIS: Also a view area, isn't it?

MARCHETTI: Can be.

HARRIS: By the way, on the 24th, the marina was open, wasn't it?

MARCHETTI: Yes.

HARRIS: Anyone who wanted could come into the marina at any time?

MARCHETTI: Yes.

HARRIS: Enjoy the views?

MARCHETTI: Yes.

HARRIS: Walk their dog?

MARCHETTI: Yes.

HARRIS: Jog?

MARCHETTI: Un-huh.

HARRIS: Ride a bicycle?

MARCHETTI: Yes.

HARRIS: Go own down here. 32. This is a restaurant, is that correct?

MARCHETTI: That's correct.

HARRIS: Restaurant that has, I believe, glass out so you can look out into the Bay?

MARCHETTI: Yes.

HARRIS: 31 is a view tower, is that what it's called?

MARCHETTI: It was an observation deck.

HARRIS: Okay. And by an observation deck, it's somewhere where you go and you look out over the Bay?

MARCHETTI: I don't think at that time, well, it was an observation deck if it had any steps going up, because they had rotted away, and may have removed them.

HARRIS: Taken it out?

MARCHETTI: Yes.

HARRIS: And then this is the Berkeley Pier, what's referred to as the Old Berkeley Pier going out?

MARCHETTI: Yes.

HARRIS: People walk out on that pier going back and forth?

MARCHETTI: Yes.

HARRIS: Again, looking over the ocean?

MARCHETTI: The Bay.

HARRIS: The Bay. When you said the marina is the largest marina in Northern California, it's not the only marina on the Bay, is it?

MARCHETTI: No, it's not.

HARRIS: In fact, there are approximately 34 other marinas on the Bay, is that right?

MARCHETTI: Could be.

HARRIS: Refer you to what's been marked as BBB. Do you recognize this as a document that your office provides?

MARCHETTI: Looks familiar.

HARRIS: Okay. And is it a list of the Bay Area Marinas? Is that the title of it?

MARCHETTI: Yes, it does.

HARRIS: Does the appear to list approximately somewhere between 30 and 35 marinas?

MARCHETTI: Yes.

HARRIS: With their phone numbers. Berkeley Marina is not the only place to gain access to The Bay?

MARCHETTI: No, it's not.

HARRIS: It's just the most crowded?

DISTASO: Objection, your Honor. Calls for speculation.

JUDGE: Sustained.

HARRIS: Have you had a chance to go to the other marinas?

MARCHETTI: Yes.

HARRIS: Any other marinas have this kind of traffic?

MARCHETTI: What kind of traffic are you, what kind of traffic?

HARRIS: The number of boats that are put there.

MARCHETTI: They don't have that many boats in the marina.

HARRIS: They don't have that many, these other marinas have as large a park, as big as Cesar Chavez Park?

MARCHETTI: No.

HARRIS: People walk all around?

MARCHETTI: No.

HARRIS: You mentioned in one of your interviews that the press showed up shortly after Christmas to talk to you. Do you recall that?

MARCHETTI: I remember the press showing up shortly after Christmas.

HARRIS: Okay. Do you recall what day it was the press showed up?

MARCHETTI: No.

HARRIS: Were you in any way responsible for press access to the Bay?

MARCHETTI: No.

HARRIS: In other words, I assume when the press came, they wanted to get information about the Bay, they came to your office, is that fair?

MARCHETTI: It's one of the places they show up.

HARRIS: Were there any, well, fair to say that there were quite a few media trucks showed up?

MARCHETTI: Oh, after, at certain points, yeah, there were a lot of media trucks that showed up.

HARRIS: Do you recall a television show actually broadcasting from there on the 26th of December?

MARCHETTI: No.

HARRIS: Do you have, were there any, did your office have any responsibility in terms of setting rules or access for the media at that point?

MARCHETTI: No, I just, no.

HARRIS: How long have you worked at the marina?

MARCHETTI: Eight years.

HARRIS: During that time, have you become familiar with, somewhat familiar, at least, with the fishing in the Bay?

MARCHETTI: A little familiar with the fishing in the Bay.

HARRIS: Is it fair to say that there are people who come from all over California to fish in the Bay?

MARCHETTI: During various seasons, yes.

HARRIS: If you are fishing in the Bay, it's my understanding, and correct me if I'm wrong, but for the most part, the Bay is salt water, is that right?

MARCHETTI: Correct.

HARRIS: There are actually sections, I guess, up north where the rivers dump in that are fresh water?

MARCHETTI: Correct.

HARRIS: Is that right? In fact, mark this next in order.

JUDGE: Triple E.

JUDGE: Mr. Harris, how much longer are you going to be with Mr. Marchetti?

HARRIS: A little while.

<lunch recess>

HARRIS: Thank you, Judge.

JUDGE: You marked something Triple E. Can you tell me what it is.

GERAGOS: Right up on the board.

HARRIS: Right behind you.

JUDGE: All right. That's the map of the Bay.

HARRIS: It's a map of the Bay, yes.

JUDGE: Okay.

HARRIS: And I'll jump right into that. Mr. Marchetti, if you would take a look behind you on the board. Do you see a map of the Bay. San Francisco Bay?

MARCHETTI: Yes.

HARRIS: Does this look like an accurate reflection of the Bay as you know it to be?

MARCHETTI: Yes.

HARRIS: We were talking a little bit before the break that I'd asked you some questions about, about saltwater and freshwater, and I think I mentioned the area we're discussing in this area is saltwater, is that correct?

MARCHETTI: For the most part, yeah.

HARRIS: And, in fact, if I'm, if I'm, correct me if I'm wrong, but essentially this channel coming down here kind of circles back in this direction, is that correct?

MARCHETTI: Yes.

HARRIS: Okay. Where it circles back is where the different rivers, streams, et cetera, come in from California, from Northern California? They dump into the Bay there?

MARCHETTI: Right.

HARRIS: Those are mostly freshwater?

MARCHETTI: Yes.

HARRIS: Okay. So they come in, if it comes up here, it becomes a mixture of freshwater, saltwater, and as it comes down into the channel this becomes almost all saltwater, is that fair?

MARCHETTI: I don't, yeah, I don't,

HARRIS: If you know?

MARCHETTI: Yeah. I'm not an expert. I know at some point it mixes, and it depends on the tides and the winds. And it depends.

HARRIS: Okay. From, if you know, the different rivers and streams that are dumping in here coming into the Bay, do you know which ones specifically dump into the Bay?

MARCHETTI: No. I wouldn't want to guess on that.

HARRIS: Sure. Okay. Right here is the marina, is that, have I got it right?

MARCHETTI: No.

HARRIS: Oh, I'm sorry. Excuse me. Up here?

MARCHETTI: Yes.

HARRIS: That's the correct area? You're familiar with the entire Bay, or just the Berkeley Marina area?

MARCHETTI: It depends on, you know, what you're looking for. I'm familiar with some of the Bay. I'm somewhat familiar with the Berkeley Marina and the area around it.

HARRIS: Are you familiar with the area that goes up to Point Isabel and into the Richmond Inner Harbor?

MARCHETTI: Somewhat familiar.

HARRIS: Have you heard of Brooks Island?

MARCHETTI: Yes.

HARRIS: And do you see this is outlined kind of a light blue?

MARCHETTI: Correct.

HARRIS: Are you familiar with this area is known as the shallows? Have you heard that term?

MARCHETTI: No.

HARRIS: Okay. Are you aware that this area right in here, average depth runs about three to four feet?

MARCHETTI: I know it's shallow, but I don't know if it's three to four feet.

HARRIS: Okay. It's an average. Are you also, are you aware that at low tide, low tide goes low enough that you can literally walk from Brooks Island to the shore?

MARCHETTI: I've never heard of that.

HARRIS: Okay.

MARCHETTI: I wouldn't want to try it.

HARRIS: But in this area right in here, where it shows, I'm sorry if you can't, the numbers are a little small line 20 here, but right in this area, this Richmond Harbor area across from Brooks Island, are you familiar with that area?

MARCHETTI: Somewhat familiar.

HARRIS: You are familiar that that area is very shallow?

MARCHETTI: Yes.

HARRIS: Okay. You mentioned earlier with Mr. Distaso that near the boat ramp was a ticket machine?

MARCHETTI: Correct.

HARRIS: And this ticket machine, when you park you put in your money and put in $5 and get a parking ticket and put it in your windshield, and that's the fee for parking your truck there while you boat, is that right?

MARCHETTI: Yes.

HARRIS: And this machine is essentially on an honor system, is that right?

MARCHETTI: Correct.

HARRIS: And for the most part there is no one, strike that. There is no one monitoring the machine, is there?

MARCHETTI: No one monitors it on a hourly by hourly basis. We probably send someone over to the launch ramp at least once a day. And if there's complaint, for example if it's not working, we go over there and see.

HARRIS: Who would you send over there?

MARCHETTI: Generally one of the marina assistants.

HARRIS: And generally one of the marina, I'm sorry?

MARCHETTI: Assistants.

HARRIS: Somebody that works in your office?

MARCHETTI: Yes.

HARRIS: And on that day, the 24th, did someone go over there and check?

MARCHETTI: No.

HARRIS: In fact, when you were testifying for Mr. Distaso, you mentioned you were in your office pretty much all day the 24th, is that right?

MARCHETTI: Pretty much.

HARRIS: And you went out one time during the day?

MARCHETTI: From what I recall, yeah.

HARRIS: And you recall that you didn't go to the boat ramp that day?

MARCHETTI: No, I didn't.

HARRIS: So you have no knowledge whether or not there were actually anybody using the boat ramp that day or not?

MARCHETTI: No, I don't.

HARRIS: Have you ever done, has anyone ever, the marina ever done a study to see how many, how effective the parking machine is?

MARCHETTI: No.

HARRIS: So you have no idea, no way of knowing whether people actually use the machine or not?

MARCHETTI: We do during fishing season go inspect the launch ramp area and the cars, and if they're not, if they don't have a receipt on it, we will put a courtesy notice on the car informing them that they should come over to the marina office and pay.

HARRIS: There's no penalty?

MARCHETTI: No, we just ask them to pay.

HARRIS: Come pay?

MARCHETTI: We could if we, if we had someone that was abusing the system on a regular basis.

HARRIS: And this is during the fishing season?

MARCHETTI: During the fishing season.

HARRIS: This wasn't on the 24th the 25th, the 26th, the 27th, was it?

MARCHETTI: No.

HARRIS: The days of the receipt that you were shown, days on that receipt, there was no one monitoring it or no one going over to check it or anything along those lines, was it?

MARCHETTI: There may have been people going over there, but there was no removal of cash from the ticket box that date, those days, other than the one time on the 27th.

HARRIS: Your, the area around the parking, around the parking meter, you mention there is a sign there going down a ramp that indicates it's five dollars to park?

MARCHETTI: Yes.

HARRIS: That sign's not always up, is it?

MARCHETTI: I don't know.

HARRIS: You go over there, for example, if you go today it's not necessarily up, is it?

MARCHETTI: I couldn't tell you.

HARRIS: And if that sign isn't up, a person doesn't know what the machine's there for, somebody drove into the Bay won't even know to pay, would they?

MARCHETTI: If it wasn't up, I, I think that might be the only sign.

HARRIS: It is the only sign, isn't it?

MARCHETTI: I don't know.

HARRIS: You don't know if there's another sign?

MARCHETTI: No.

HARRIS: The machine's off to the left, so if there is no sign, you wouldn't know to pay, would you?

DISTASO: Objection. Argumentative. Calls for,

JUDGE: Sustained. Sustained.

HARRIS: If I could just have one second. <pause> Nothing further, your Honor.

Redirect Examination by Rick Distaso

DISTASO: Mr. Marchetti, let me, let me just kind of start, start from the top. The marina here, I think counsel was asking you a number of questions that, about areas here like these, these areas here in the marina. Do you remember that in, I think it was marked with B on the map?

MARCHETTI: Right.

DISTASO: And the park and some other areas. And he was asking you these general questions that people could come and use these areas and people could come and use this area and, you know, people could ride their bikes and could do these things. Did you see anybody out and about on the 24th when you were there?

MARCHETTI: I don't, I don't remember seeing anybody out doing much of anything that day.

DISTASO: On the, regarding the ticket machine and the, there were only three tickets sold during that particular time period, right?

MARCHETTI: Right.

DISTASO: Between the 23rd and 27th?

MARCHETTI: Based on what the tickets said, yes.

DISTASO: And you don't know, you can't know as you sit here today if somebody came in and parked but didn't use the machine?

MARCHETTI: No, I wouldn't know that.

DISTASO: Right. And you don't have somebody going down during that Christmas holiday period and checking it every day?

MARCHETTI: No, I don't.

DISTASO: Okay. The, and is that because it's a slow time at the marina and there's not a lot of activity there?

MARCHETTI: Right. It's the holiday season, and, and generally my experience has been that there's not a lot of people down in the marina. That day our one marina assistant went home for a family emergency, and I locked the office because I just had nobody coming in to the office to do any business.

DISTASO: The, and you said that during the fishing season people, you check the machine more frequently? Or somebody does?

MARCHETTI: Right.

DISTASO: What, what time of year would that be?

MARCHETTI: It's changed a little bit. Generally it's spring through fall, like November, maybe.

DISTASO: So would that be the more busy time at the marina?

MARCHETTI: Right.

DISTASO: Counsel asked you a question, I think it was phrased something to the effect of people come from all around California to fish in the San Francisco Bay, do you remember that?

MARCHETTI: Correct.

DISTASO: And you said yes, during the fishing season?

MARCHETTI: Right.

DISTASO: Is it your experience people come from all around California to fish in the San Francisco Bay on Christmas Eve?

MARCHETTI: I, I haven't seen that pattern before.

DISTASO: I want to ask you about the live-aboard situation. There was something on your web site about a waiting list for the live-aboard slips?

MARCHETTI: Right.

DISTASO: And are all the live-aboard slips the exact same?

MARCHETTI: No. Many times a person will come in with a boat of a specific size and want to be a live-aboard and we don't have a slip available for that boat. So that person can't become a live-aboard until somebody vacates a slip that size in a dock that is, that, that doesn't have a whole lot of live-aboards. And so we have to put them on a waiting list.

DISTASO: Okay. Let me stop you. So slips at the marina, places, a slip is like a parking place for a boat, right?

MARCHETTI: Right.

DISTASO: And are they all one size?

MARCHETTI: No, they're not.

DISTASO: Okay. So if I have a 60 foot boat that I want to live on and you have a, a 30 foot slip that's open, can I bring my boat in there and live on it?

MARCHETTI: No.

DISTASO: But if I have a 30 foot boat and you have a 30 foot slip, I might be able to get in right away?

MARCHETTI: If there was a 30 foot slip available, yes.

DISTASO: Okay. So the, when you were testifying that 60 to 80 of these 100 slips, roughly, are occupied at any one time, is all due, is this true, it's due to the size of the boat and size of the slips that are available and who wants what?

MARCHETTI: Yes.

DISTASO: The, let me show you this. You see this area here to the right-hand side of the picture?

MARCHETTI: Yes.

DISTASO: These, these, this dock area right here, is that part of the city dock area?

MARCHETTI: No, it's not.

DISTASO: What is that?

MARCHETTI: It's part of the Marine Center, Berkeley Marine Center.

DISTASO: And there's a sailing school over there?

MARCHETTI: Right.

DISTASO: And are the boats in here kind of a mixture of boats from the sailing school that are there all the time, and private boats?

MARCHETTI: I believe most of those boats belong to the sailing school.

DISTASO: The, this area here, I think you said this is A, B, C, D, E docks?

MARCHETTI: Correct.

DISTASO: The boats here in the A and B dock sections, are those generally larger boats or smaller boats?

MARCHETTI: Generally they're smaller boats.

DISTASO: So that's kind of like, those slips are smaller size?

MARCHETTI: Correct.

DISTASO: This view here in 106 D, do you recognize that as the boat launch area of the marina?

MARCHETTI: Yes.

DISTASO: Okay. And these, this is the docks where the sailing school is over to the right?

MARCHETTI: Correct.

DISTASO: And then this section here starts the A docks?

MARCHETTI: Yes.

DISTASO: Okay. And then A, B, C down this way?

MARCHETTI: Right.

DISTASO: So this is a view looking straight out into the marina?

MARCHETTI: Yes.

DISTASO: Now, if you were going to exit the marina in your boat, you go out through the launch ramps here, correct?

MARCHETTI: Right.

DISTASO: And then to get out of the marina you can go, you can go either to the left, is that right?

MARCHETTI: Yes.

DISTASO: Or to the right?

MARCHETTI: Yes.

DISTASO: And this is the Berkeley pier right here?

MARCHETTI: Yes.

DISTASO: So if you go out and go around the breakwater here, you can go around the breakwater and then go to the right?

MARCHETTI: Yes.

DISTASO: Or you can go around the breakwater to the left and go out into the Bay straight that way?

MARCHETTI: Correct.

DISTASO: And if you went to the right, you exit the marina and went to the right, you come down past the breakwater and then you can exit out into the Bay?

MARCHETTI: Right.

DISTASO: Nothing further.

Recross Examination by Pat Harris

HARRIS: Mr. Distaso was just showing you how you can go out, you can go to the, this way, which would be south, right around the break, is that right?

MARCHETTI: South around, yes.

HARRIS: Okay. And if you go south around the break, coming out of the marina, you come out here, you go south, around the break, if you go straight, just straight ahead about the same distance from there as it is to Brooks Island, that's about a hundred and 20 feet deep there, isn't it?

MARCHETTI: I don't know.

HARRIS: You see the dark blue?

MARCHETTI: Well, I see the dark blue.

HARRIS: Okay. Would you like to stand and take a look, get a closer look?

JUDGE: Well, if it's on the map, it's hearsay. Can't testify to what the map says.

HARRIS: It's the deepest part of the Bay to your knowledge, is that right?

MARCHETTI: Actually, it's deeper between Angel Island and the shoreline.

HARRIS: There?

MARCHETTI: At Raccoon Strait.

HARRIS: Right there?

MARCHETTI: Yes.

HARRIS: The whole area in, in other words, the area put in dark blue is what is considered the deepest part, is that correct?

MARCHETTI: Sure.

HARRIS: Yeah. Sure. So if you go straight out, you take Mr. Distaso's route straight out, you end up in the deepest part of the Bay, don't you?

MARCHETTI: You could.

HARRIS: As opposed to a shallow area, right?

MARCHETTI: Yes.

HARRIS: Mr. Distaso showed you this picture looking off directly into, that's a picture directly in front of the boat ramp as you take your boat off into the water, correct?

MARCHETTI: Correct.

HARRIS: See the boat right there?

MARCHETTI: Yes.

HARRIS: It's a Berkeley police boat, isn't it?

MARCHETTI: Yes.

HARRIS: You were asked a minute ago about the fishing season, and I'm sorry, when is fishing season? When do you generally consider it to be?

MARCHETTI: Sometime in the spring until November. It depends on what is being fished. Sometimes it's rock fish that they're fishing for, or something. Salmon.

HARRIS: So in November, around that area, does the marina close down?

MARCHETTI: It's not closed.

HARRIS: The end of fishing season it doesn't just close?

MARCHETTI: No.

HARRIS: The bait shop doesn't close?

MARCHETTI: No.

HARRIS: Is that because people are still fishing?

MARCHETTI: It could be.

HARRIS: In fact they are, aren't they?

MARCHETTI: Some people fish.

HARRIS: Sure. Some people fish all year round, don't they?

MARCHETTI: Sometimes.

HARRIS: Not only do some people fish all year round, but some people come from locations other than in the Berkeley area in the State of California to fish during that time, don't they?

MARCHETTI: I wouldn't know that.

HARRIS: Well, you told Mr. Distaso you knew on December 24th no one came from out of the state, or out of the area to fish. So were you taking independent surveys out on the marina to see if people were fishing?

MARCHETTI: No. I think what I said was we don't have a lot of people coming down to the marina at that time of the year to go fishing. Not out of the state or out of the area.

HARRIS: So on the 24th of December you have no idea, first of all, you don't even know if anybody is out fishing, do you?

MARCHETTI: Nope.

HARRIS: And you sure don't know where they came from, do you?

MARCHETTI: Nope.

HARRIS: And you are aware that this is saltwater we're talking about fishing in, right?

MARCHETTI: Yes.

HARRIS: And you're aware there are people that fish and prefer to fish in saltwater as opposed to freshwater, correct?

MARCHETTI: Yes.

HARRIS: In fact, there's some people who fish only in saltwater as opposed to freshwater?

MARCHETTI: Yes.

DISTASO: Objection. Relevance.

JUDGE: Overruled.

HARRIS: You can answer. Yes? Is that your answer?

MARCHETTI: I did. Yes.

HARRIS: Just to follow-up on that briefly, the fishing during the day, you've got the parking machine there, meter machine. Is it a fair statement to say that people come to fish all during the day?

MARCHETTI: Yes.

HARRIS: You see, for example, when you see boats going into the, the dock area, or when you've seen receipts from the parking machine, that people could come at 10:00 o'clock in the morning, 11:00 o'clock, 12:00 o'clock? They come all day long, don't they?

MARCHETTI: Yes.

HARRIS: They don't come just early in the morning or just when the sun's setting, correct?

MARCHETTI: Generally they come in the morning.

HARRIS: Uh-huh.

MARCHETTI: But they can come at different hours of the day.

HARRIS: And it's been your experience that people do come all during the day to fish?

MARCHETTI: Yes.

HARRIS: Now, Mr. Distaso asked you on numerous occasions about not seeing anybody that particular day on the 24th when you went out?

MARCHETTI: Right.

HARRIS: You drove through the marina one time during that day?

MARCHETTI: Yes.

HARRIS: Okay.

MARCHETTI: That I know of.

HARRIS: That you're aware of?

MARCHETTI: Yeah.

HARRIS: That you recall?

MARCHETTI: Yeah.

HARRIS: Okay. And did you go out on the, for example, did you go out on the view area,

MARCHETTI: No.

HARRIS: take a look? Any, either one of the view areas, did you go out, take a look to see if there was anybody out there?

MARCHETTI: I don't recall.

HARRIS: Did you get out of your car and walk down the bike paths and park? I believe you already testified you didn't go to the boat ramp area at all, right?

MARCHETTI: Correct.

HARRIS: So is it fair to say that the only thing you actually did was get in the car, drive down to Cesar Chavez, make a circle and go back?

MARCHETTI: I drove, I drove that loop, and generally I drive the other loop down by His Lordships, which is at the other end of the marina. Just kind of a quick tour of the marina.

HARRIS: Okay. So as far as you know you don't really know whether there was much activity there or not?

DISTASO: Objection. It's argumentative.

JUDGE: Sustained.

HARRIS: Well, did you ever get a phone call from Scott Peterson asking you about the, what the activity would be like on that day?

DISTASO: Objection, your Honor. Calls for hearsay.

JUDGE: Well, I don't think so. Could be under 1250. Overruled. Did you get a phone call from the defendant asking you a,

HARRIS: Just asking you what it would be like that day, what the activity would be like at the marina?

MARCHETTI: I didn't get a call like that.

HARRIS: That's all I have.

2nd Redirect Examination by Rick Distaso

DISTASO: This picture that counsel, or that we were looking at, do you have any idea when that was taken?

MARCHETTI: No.

DISTASO: The boat that I think counsel said Oh, that's a Berkeley police boat, do you know if that's a Berkeley police boat?

MARCHETTI: Yeah.

DISTASO: And do you have, do you know when it was there or when it was parked, or anything else?

MARCHETTI: No. A lot of times they keep it on a trailer and put it in dry storage.

DISTASO: Nothing further, your Honor.

JUDGE: Anything about the Berkeley police boat?

HARRIS: No.

JUDGE: Okay. Mr. Marchetti, thank you very much.