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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

5 ALEJANDRO MADRID, et al.,)

6 Plaintiffs)

7)
8 v.)

9)
10 JAMES E. TILTON et al.,)

11 Defendants,)
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NO. C90-3094-T.E.H..

EXHIBITS RE SPECIAL MASTER'S FINAL
REPORT RE STATUS OF STATE OF CALIFORNIA
CORRECTIVE ACTION PLANS FOR
ADMINISTRATIVE INVESTIGATIONS
AND DISCIPLINE; RECOMMENDATIONS

APPENDIX OF EXHIBITS

Exhibit #'s

14. Plaintiffs' Objections to Special Master's Draft Report Re Status of State of California Corrective Action Plans for Administrative Investigations and Discipline; Recommendations
15. Defendants' Comments and Objections to Special Master's Draft Report Re Status of State of California Corrective Action Plans for Administrative Investigations and Discipline; Recommendations
16. Office of the Governor's June 30, 2006 Request to Submit Response to Special Master's Draft Report
17. Special Master's July 3, 2006 Letter of Response to Office of the Governor's Request to Submit Response to Special Master's Draft Report
18. Office of the Governor's July 7, 2006 Amicus Curiae Letter to the Special Master
19. December 1, 2005 Press Release re Appointment of Susan Kennedy from Schwarzenegger.com
20. CCPOA's June 28, 2006 Letter to Special Master re Right to Respond to Special Master's Draft Report
21. Special Master's June 29, 2006 Response to CCPOA's June 28 Letter re Right to Respond to Special Master's Draft Report
22. July 5, 2006 Declaration of Charles Alexander in Response to Special Master's Draft Report
23. September 22, 1997 Internal Affairs Investigation Report (Knowles/Palmer Report)
24. May 31, 2004 Memorandum from Dr. Patrick Maher to Special Master John Hagar
25. July 2006 Inspector General Report into Management of Union Leave Time by the California Department of Corrections and Rehabilitation
26. February 2, 2006 Letter to K. Mendoza-Powers Warden (A) from Mike Jimenez
27. February 7, 2006 Letter to Mike Jimenez from Tim Virga
28. April 3, 2006 Letter to Michael Jimenez from Brigid Hanson

29. July 3, 2006 CCPOA Sunshine Proposals

EXHIBIT 14

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13 Attorneys for Plaintiffs

14
15 IN THE UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18

19 ALEJANDRO MADRID, et al.,

20 Plaintiffs,

21 v.

22 JAMES E. TILTON, et al.,

23 Defendants.

No. C-90-3094 T.E.H.

**PLAINTIFFS' OBJECTIONS TO
SPECIAL MASTER'S DRAFT REPORT
RE STATUS OF STATE OF
CALIFORNIA CORRECTIVE ACTION
PLANS FOR ADMINISTRATIVE
INVESTIGATIONS AND DISCIPLINE;
RECOMMENDATIONS**

Hearing Date: July 12, 2006

Hearing Time: 9:00 a.m.

Hearing Place: Courtroom 12, 19th Floor

24 **INTRODUCTION**

25 Plaintiffs' objections, as detailed below, address only those portions of the Draft
26 Report concerning the Inspector General's Bureau of Independent Review (BIR), and
27 even then address only one particular matter regarding the BIR. The Draft Report's
28 findings regarding the BIR are set forth at 23:18-26:6, and a recommendation that the

1 Court adopt a plan for monitoring the BIR (attached as Exhibit 13) is set forth at 31:13-
2 21. As explained below, plaintiffs request that the Draft Report be modified to reflect the
3 need for the BIR to update its operating protocols to more accurately reflect current
4 practices.

5 ARGUMENT

6
7 **THE DRAFT REPORT SHOULD BE MODIFIED TO REFLECT THE
8 NEED FOR THE INSPECTOR GENERAL'S BUREAU OF INDEPENDENT
9 REVIEW TO UPDATE ITS OPERATING PROTOCOLS TO MORE
10 ACCURATELY REFLECT CURRENT PRACTICES.**

11 The Draft Report recommends, among other things, that the Court adopt a plan for
12 monitoring the Inspector General's Bureau of Independent Review (BIR). See Draft
13 Report at 31:13-21 and Exhibit 14. The proposed Court monitoring plan appropriately
14 requires assessment, on almost every point, of whether the BIR has acted in accord with
15 its protocols. See Peer Monitoring Plan, attached as Exhibit 13 to the Draft Report, at
16 Parts I.A, I.B, I.C., and I.D, and I.F.

17 Although assessment of the BIR's compliance with its own protocols is an
18 appropriate element of the proposed monitoring plan, the BIR is currently using draft
19 protocols developed in early 2005 when the BIR was beginning its work. See Declaration
20 of Steven Fama in Support of Plaintiffs' Objections to Special Master's Draft Report Re
21 Status of State of California Corrective Action Plans For Administrative Investigations
22 And Discipline [hereafter Fama Dec), at ¶ 3. Those draft protocols in several important
23 respects are now outdated, given the BIR's operational experiences over the last 18
24 months and changes made during that same period in the investigation and disciplinary
25 procedures used by the California Department of Corrections and Rehabilitation (CDCR).

26 For example, the BIR protocols do not address the BIR's role with respect to the
27 CDCR's Central Intake Unit for investigations, or the BIR's role in monitoring the work
28 of the CDCR's Vertical Advocates. See Fama Dec at ¶ 3. The protocols do not include
these matters because for the most part CDCR only implemented these processes in the

1 last 18 months. Nor do the protocols fully reflect the BIR's current expectations
2 regarding the content and timing of its semi-annual reports regarding the CDCR
3 investigations and discipline, which the BIR articulated last month following
4 communication with plaintiffs' counsel and others. See Fama Dec at ¶ 2. Thus, the BIR
5 protocols – a key measuring stick under the proposed plan for Court monitoring of the
6 BIR – need to be updated so that fair and adequate Court monitoring of its work can take
7 place. Those protocols also need to be updated so that they more accurately reflect
8 current BIR practices.

9 Plaintiffs' counsel has discussed these concerns with Howard Moseley, lead
10 special assistant inspector general at the BIR. See Fama Dec at 3. Mr. Moseley agrees
11 that the protocols need to be updated for both reasons noted above. *Ibid.* Mr. Moseley
12 also states that some work on updating the protocols has begun, including discussion with
13 Court Expert Mike Gennaco, and that he (Mr. Moseley) has an October 1, 2006 target
14 date for completing the project. *Ibid.*

15 Since updating the protocols is critical both for adequate BIR operations and
16 monitoring of those operations by the Court, plaintiffs request that the Draft Report be
17 modified to add, following the sentence at 26:5 that ends "these critical State positions," a
18 sentence that reads as follows:

19 The BIR also needs to update its protocols to reflect its current operational
20 practices and expectations, a process which it has begun and plans to complete by
21 October 1, 2006.

22 Further, the sentence that immediately follows at 26:5-6, which currently reads,
23 "Both issues call for continued monitoring by the Special Master" should be modified to
24 read, "These issues call for continued monitoring by the Special Master." This change is
25 necessary because with the requested modification there are three issues that call for
26 continued monitoring by the Special Master instead of two.

27 ///

1 Plaintiffs also request that the Draft Report's Recommendation that the Court
2 adopt the plan for Court monitoring of the BIR be modified to reflect that the protocols
3 against which BIR will be measured should and will be updated. Plaintiffs specifically
4 request that the recommendation at 31:20-21 be modified to read as follows (addition
5 indicated by underline):

6 reduction of, Court Oversight. This plan assumes that BIR, as previously
7 discussed, will update its protocols by October 1, 2006. Therefore, the Special
8 Master recommends that the Court adopt the BIR monitoring plan submitted by
9 Court Expert Michael Gennaco (Exhibit 13).

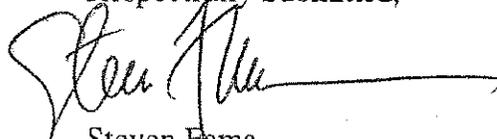
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CONCLUSION

For the reasons stated above, the Draft Report should be modified in the manner requested by plaintiffs.

Dated: July 7, 2006

Respectfully Submitted,



Steven Fama
Attorney for Plaintiffs

1 DECLARATION OF SERVICE BY MAIL

2 Case Name: Alejandro Madrid, et al.
3 v.
4 James E. Tilton, et al

No. C-90-3094 TEH

5 I am employed in the County of Marin, California. I am over the age of 18 years and not
6 a party to the within entitled cause: my business address is Prison Law Office, General
7 Delivery, San Quentin, California 94964.

8 On, July 7, 2006, I served the attached

9 **PLAINTIFFS' OBJECTIONS TO SPECIAL MASTER'S DRAFT REPORT**
10 **RE STATUS OF STATE OF CALIFORNIA CORRECTIVE ACTION**
11 **PLANS FOR ADMINISTRATIVE INVESTIGATIONS AND DISCIPLINE;**
12 **RECOMMENDATIONS**

13 and

14 **DECLARATION OF STEVEN FAMA IN SUPPORT OF PLAINTIFFS'**
15 **OBJECTIONS TO SPECIAL MASTER'S DRAFT REPORT RE STATUS**
16 **OF STATE OF CALIFORNIA CORRECTIVE ACTION PLANS FOR**
17 **ADMINISTRATIVE INVESTIGATIONS AND DISCIPLINE;**
18 **RECOMMENDATIONS**

19 in said cause, placing, or causing to be placed, a true copy thereof, enclosed in a sealed
20 envelope with postage thereon fully prepaid in the United States Mail at San Rafael,
21 California, addressed as follows:

22 MIKE JORGENSON
23 Deputy Attorney General
24 Office of the Attorney General
25 455 Golden Gate, Suite 11000
26 San Francisco, CA 94102-3664

MICHAEL J. GENNACO
Office of Independent Review
4900 South Eastern Ave., Suite 204
Commerce, CA 90040

27 RONALD YANK
28 Carroll, Burdick & McDonough
44 Montgomery, Suite 400
San Francisco, CA 94104-4606

PATRICK MAHER
PODC, INC.
5842 Crocus Circle
La Palma, CA 90623

JOHN HAGAR-Special Master
Judges Reading Rm/Court Library
U.S.D.C. 450 Golden Gate Ave.
San Francisco, CA 94102

MADRID UNIT
Pelican Bay State Prison
PO Box 7000
Crescent City, CA 95532

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Office of the Inspector General
PO Box 348780
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KATHLEEN KEESHEN
Legal Affairs Division
CDCR
1515 S Street
PO Box 94283
Sacramento, CA 94283

1 BRUCE SLAVIN
Counsel
2 CDCR
1515 S Street
3 PO Box 942883
Sacramento, CA 94283-0001
4

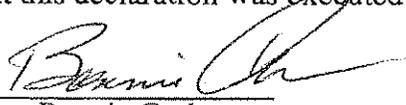
ANDREA LYNN HOCH
Legal Affairs Secretary
Office of the Governor
Capitol Building
Sacramento, CA 95814

5
6 WARREN C. (CURT) STRACENER
PAUL M. STARKEY
7 Labor Relations Counsel
Department of Personnel Administration
8 Legal Division
1515 S Street, North Building, Ste. 400
9 Sacramento, CA 95814-7243

BENJAMIN C. SYBESMA
Chief Legal Counsel
CCPOA
755 Riverpoint Drive, Ste. 200
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Rafael, July 7, 2006.


Bonnie Cash

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8 Attorneys for Plaintiffs

9

10 IN THE UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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ALEJANDRO MADRID, et al.,

Plaintiffs,

v.

JAMES E. TILTON, et al.,

Defendants.

No. C-90-3094 T.E.H.

**DECLARATION OF STEVEN FAMA IN
SUPPORT OF PLAINTIFFS'
OBJECTIONS TO SPECIAL MASTER'S
DRAFT REPORT RE STATUS OF
STATE OF CALIFORNIA
CORRECTIVE ACTION PLANS FOR
ADMINISTRATIVE INVESTIGATIONS
AND DISCIPLINE;
RECOMMENDATIONS**

Hearing Date: July 12, 2006

Hearing Time: 9:00 a.m.

Hearing Place: Courtroom 12, 19th Floor

23

I, Steven Fama, declare as follows:

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Madrid v. Tilton, C-90-3094 T.E.H.
Decl of S. Fama in Support of Plaintiffs'
Objections to Special Master's Draft Report
re Status of Corrective Action Plans

1 building housing the Inspector General, Howard Moseley, lead special assistant inspector
2 general of the Bureau of Independent Review, stated that the BIR's future semi-annual
3 reports regarding California Department of Corrections and Rehabilitation (CDCR)
4 investigation and discipline cases would take into account the concerns raised by the
5 undersigned and others regarding the substance of the semi-annual reports, including for
6 example the need to clearly identify the substance of charged allegations and findings
7 when reporting on particular investigations. Mr. Moseley at that meeting also distributed
8 a time-table for the preparation and completion of future semi-annual reports that was tied
9 to the end of each reporting period.

10 3. On July 6, 2006, Mr. Moseley and I talked by telephone with regard to BIR's
11 operating protocols. Mr. Moseley confirmed that the draft protocols developed in early
12 2005 were still in place. He stated that the protocols among other things did not fully
13 address the BIR's work regarding the CDCR central intake unit for investigations or the
14 BIR's work regarding the CDCR vertical advocates, since the CDCR had implemented
15 those processes and policies after the BIR draft protocols were developed. Mr. Moseley
16 stated that the BIR protocols needed to be updated so that they better reflect current BIR
17 practices and so the protocols could be a more valid measuring stick for Court monitoring
18 in this case. Mr. Moseley also stated that work on updating the protocols had begun,
19 including discussion with Court Expert Mike Gennaco. Mr. Moseley further stated that
20 he had an October 1, 2006 target date to complete the updating of the BIR protocols.

21 I declare under penalty of perjury that the foregoing is true and correct and that this
22 declaration was executed on July 7, 2006 at San Rafael, California.

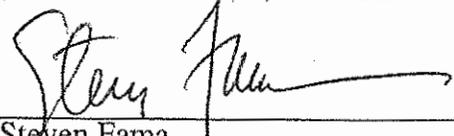
23 
24 _____
25 Steven Fama

EXHIBIT 15



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Public: (415) 703-5500
Telephone: (415) 703-5629
Facsimile: (415) 703-5843
E-Mail: michael.jorgenson@doj.ca.gov

July 7, 2006

Via Email and U.S. Mail

John Hagar, Special Master
Judges' Reading Room
Court Library, 18th Floor
U.S. District Court, Northern District
450 Golden Gate Avenue
San Francisco, CA 94102

RE: *Madrid v. Tilton*, USDC-ND California, Case No. C-90-3094 TEH
Comments and Objections to Report

Dear Mr. Hagar:

Defendants Tilton, Horel, and McLean submit the following comments and objections to the Special Master's Draft Report and Recommendation Re: Status of Corrective Action Plans for Administrative Investigations and Discipline (the Report). These are submitted under the January 23, 1995 Order of Reference, by which the parties may express concerns, comments, and objections to a draft report.

Recommendation No. 3 (Establishing an Appropriate Salary Enhancement for EAPT Attorneys):

The recommendation does not take into consideration the new labor contract with the state attorneys' union (CASE), which provides immediate and retroactive salary increases of at least 5.9% for all state rank-and-file attorneys. CDCR attorneys are members of the bargaining unit that received a 2.5% cost of living adjustment retroactive to July 1, 2005 and a 3.4% COLA effective July 1, 2006. In addition, based on discussions with DPA, the base salary for beginning attorneys was raised 15% retroactively to July 1, 2005 (from \$3834 to \$4410 a month), and the minimum and maximum salary range for Attorney IIIs and IVs was raised 5% effective July 1, 2006 (amounting to a 10.9% increase). The implementation of a Recruitment and Retention (R&R) bonus in addition to negotiated raises not only undermines the collective bargaining process, it is unnecessary.

The gravamen of discussions with you during the post-Powers meetings regarding EAPT turnover referenced creating a level IV classification for EAPT attorneys. That approach would only assist attorneys in that unit with ten or more years of experience. The significant raise that

was negotiated for entry level and experienced attorneys is a broader remedy. The Court should permit CDCR to explore with the Department of Personnel Administration other avenues of reducing attorney turnover in that unit before ordering an across-the-board R&R bonus. For example, a specialist class or salary could be created for EAPT attorneys.

Finally, the link between the salaries of EAPT attorneys and the constitutional violations that resulted in the adoption of the post-Powers investigation and employee discipline plan is tenuous at best. The court must make written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation. 18 U.S.C. § 3626(b)(3). The Report does not address how an increase in EAPT salaries will correct an ongoing violation, and the Report should take into account these new salary increases.

Recommendation No. 4 (Further Investigation and Public Hearings to Preserve the Post Powers Remedial Plan and Move Forward CDCR's Effort to Eliminate the Code of Silence):

The Report praises CDCR's progress with the post-Powers remedial orders. (Report at 16:7-19:24.) The Defendants believe that the recommendation for a further investigation goes beyond what is necessary to correct any Eighth Amendment violations, and that the Special Master's current level of monitoring is more than adequate for overseeing compliance with post-Powers remedial orders. Conducting an investigation and holding hearings at this point would not advance the remedial efforts in this case when so much progress has been achieved through the new structure and policy changes for CDCR investigations and discipline, the efforts of the vertical advocates and Office of Internal Affairs, the Bureau of Independent Review's monitoring, and the revitalized Office of the Inspector General. Any further investigations, hearings, and court orders would have a tenuous link with the original constitutional violations.

Additionally, the Report's findings do not support a need for further investigations. Remedial programs were implemented without the California Correctional Peace Officers' Association's assistance, even though it was afforded meet-and-confer benefits under its Memorandum of Understanding. CCPOA was not allowed to interfere with this group of reforms that have begun to be implemented in an effective manner. (Report at 19:19-24.) The recommendation for further investigations is not supported by the findings in the Report, only by an unsubstantiated anticipation of CCPOA interference with CDCR management decisions.

The Report does point out CCPOA tactics that raise concern about the existence of CCPOA's smear tactics and litigation efforts against Rod Hickman, Brigid Hanson, Tim Virga, and wardens (Report at 21:21-23:14). The Defendants believe that those tactics are unrelated to the constitutional violations found in *Madrid*. An additional example, not found in the Report, is that the Special Master was informed that CCPOA filed a state-court lawsuit over management decisions made by CDCR's administration. That lawsuit alleges that Rod Hickman, Brigid Hanson, and Tim Virga, in their individual capacities, violated CCPOA's First Amendment

July 7, 2006

Page 3

rights (*CCPOA et al. v. California et al.*, San Francisco Superior Court Case No. 06-450906 filed April 4, 2006) (copy attached). CCPOA sued CDCR managers instead of resolving the matter through collective bargaining. CCPOA's tactics have moved beyond representing its membership at bargaining into attempting to coerce and intimidate CDCR managers. (See Report at 21:20-23:17.) Nonetheless, the effort to end the code of silence within CDCR continues after Mr. Hickman's resignation, and Court-approved employee discipline and investigation corrective action plans have been implemented successfully under the current level of monitoring. The present level of monitoring by the Special Master is sufficient to reveal barriers to completing the remedial process without conducting further hearings and investigations.

The court must make written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation. 18 U.S.C. § 3626(b)(3). In order to determine if there is a current and ongoing violation, the court must look at the conditions as they exist now, not as they existed in the past, or as they might possibly occur in the future. *Castillo v. Cameron County*, 238 F.3d 339, 353 (5th Cir. 2001) (considering termination motion for previously entered injunctions); *see also Cason v. Seckinger*, 231 F.3d 777, 783 (11th Cir. 2000) (violation must presently exist). If the Court finds a violation, it must make a detailed analysis of why the steps taken by the prison officials constitute a violation of a Federal right. *Hadix v. Johnson*, 367 F.3d 529 (6th Cir. 2004). And any relief afforded must be "limited to enforcing the constitutional minimum." *Gilmore v. California*, 220 F.3d 987, 1000 (9th Cir. 2000). Because there is no evidence that the problems cited in the Report are contributing to any current constitutional violation or that the proposed recommendations will remedy any alleged violation, the recommendations should not be adopted.

Thank you for your consideration of these matters.

Respectfully Submitted,



MICHAEL JORGENSON
Deputy Attorney General

For BILL LOCKYER
Attorney General
Attorneys for Defendants Tilton, Horel, and
McLean

Enclosure

July 7, 2006

Page 4

cc: Steven Fama, Prison Law Office
Andrea Hoch, Governor's Legal Affairs Unit
Bruce Slavin, CDCR Legal Affairs Division
Kathleen Keeshen, CDCR Legal Affairs Division
Curt Stracener, Department of Personnel Administration
Matt Cate, Office of the Inspector General
Michael Gennaco, Office of Independent Review
Benjamin Sybesma, California Correctional Peace Officers' Association
Ron Yank, Carroll Burdick & McDonough
Audrey Swinney, Pelican Bay State Prison

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Alejandro Madrid, et al. v. Jeanne S. Woodford, et al.**

Case No.: **C 90-3094 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On July 7, 2006, I served the attached

**MADRID DEFENDANTS' COMMENTS AND OBJECTIONS TO SPECIAL MASTER'S
DRAFT REPORT RE STATUS OF STATE OF CALIFORNIA CORRECTIVE ACTION
PLANS RE ADMINISTRATIVE INVESTIGATIONS AND DISCIPLINE;
RECOMMENDATIONS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

DONALD SPECTER
STEVEN FAMA
Prison Law Office
General Delivery
San Quentin, CA 94964

MADRID UNIT
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JIM TILTON
Secretary (A)
Department of Corrections and
Rehabilitation
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Sacramento, CA 94283-0001

BRUCE SLAVIN, Counsel
Department of Corrections and
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KATHLEEN KEESHEN
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Rehabilitation
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Regional Office, Sacramento
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Chief Legal Counsel
California Correctional Peace Officers'
Association
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MICHAEL J. GENNACO
Office of Independent Review
4900 South Eastern Avenue, Suite 204
Commerce, CA 90040

ANDREA HOCH
Office of the Governor
State Capitol Building, 1st Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 7, 2006, at San Francisco, California.

L. S. Ward

Declarant



Signature

EXHIBIT 16



OFFICE OF THE GOVERNOR

June 30, 2006

Mr. John Hagar, Special Master
Judges' Reading Room
Court Library, 18th Floor
U.S. District Court, Northern District
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Madrid v. Tilton*;
United States District Court, Northern District of California, Case No. C-90-3094 TEH

Dear Mr. Hagar:

The Governor's office requests permission to submit a response to your June 20, 2006 draft report regarding the status of corrective action plans for administrative investigations and discipline, and your recommendations. As a non-party, we request the opportunity to address those portions of your draft report directed towards the Governor and his staff.

Sincerely,


ANDREA LYNN HOCH
Legal Affairs Secretary

cc: Steven Fama, Prison Law Office
Mike Jorgenson, Deputy Attorney General
Warren C. Stracener, California Department of Personnel Administration
Bruce Slavin, California Department of Corrections and Rehabilitation
Benjamin C. Sybesma, California Correctional Peace Officers' Association
Ron Yank, Carroll Burdick & McDonough

EXHIBIT 17

JOHN HAGAR - SPECIAL MASTER
Madrid v. Tilton et al., C-90-3094 T.E.H.

Federal District Courthouse
Law Library 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

July 3, 2006

BY E-MAIL (PDF) AND REGULAR MAIL

ANDREA LYNN HOCH
Legal Affairs Secretary
Office of the Governor
Capitol Building
Sacramento, CA 95814

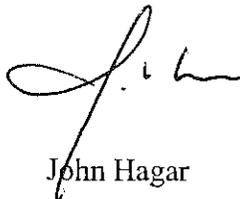
Re: Special Master's Draft Report

Dear Ms. Hoch:

I have reviewed your letter of June 30, 2006 and will honor your request to respond to those portions of the draft report directed toward the Governor and his staff. Please submit your response no later than Friday, July 7, 2006. Please serve all parties who were served with the draft report, utilizing both email and regular mail.

By sending this letter to counsel, the Special Master requests that plaintiffs, defendants, and the California Correctional Peace Officers Association serve Ms. Hoch with their comments and objections to the Special Master's draft report no later than Friday, July 7, 2006, utilizing both email and regular mail.

Yours truly,



John Hagar

cc. Steven Fama/Don Specter
Mike Jorgenson
Madrid Unit
Jim Tilton
Debra Ashbrook
Matthew Cate
Michael Gennaco
Dr. Patrick Maher
Brigid Hanson
Bruce Slavin
Kathleen Keeshen
Warren C. (Curt) Stracener
Ronald Yank
Benjamin C. Sybesma



OFFICE OF THE GOVERNOR

June 30, 2006

Mr. John Hagar, Special Master
Judges' Reading Room
Court Library, 18th Floor
U.S. District Court, Northern District
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Madrid v. Tilton*;
United States District Court, Northern District of California. Case No. C-90-3094 TEH

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Sincerely,


ANDREA LYNN HOCH
Legal Affairs Secretary

cc: Steven Fama, Prison Law Office
Mike Jorgenson, Deputy Attorney General
Warren C. Stracener, California Department of Personnel Administration
Bruce Slavin, California Department of Corrections and Rehabilitation
Benjamin C. Sybesma, California Correctional Peace Officers' Association
Ron Yank, Carroll Burdick & McDonough

EXHIBIT 18



OFFICE OF THE GOVERNOR

July 7, 2006

VIA U.S. MAIL & ELECTRONIC MAIL

Mr. John Hagar
Special Master
United States District Court, Northern District
450 Golden Gate Avenue
San Francisco, California 94102

RE: *Madrid v. Tilton, et al.*; United States District Court, Northern District of California,
Case No. C-90-3094 TEH

Dear Special Master Hagar:

This amicus curiae letter brief is being submitted on behalf of Governor Schwarzenegger to respond to comments as well as to Recommendation No. 4 in the *Special Master's Draft Report Re Status of State of California Corrective Action Plans for Administrative Investigations and Discipline; Recommendations*, dated June 20, 2006, (hereafter "draft report"), regarding the Governor, the Governor's Office, and the Governor's staff.

Introduction

In his draft report, the Special Master recognizes the positive steps that the California Department of Corrections and Rehabilitation (CDCR) has taken to implement the post powers corrective action plan and the success of the plan, including the commitment of the Governor's Administration to improve CDCR's administrative investigation and discipline process. In fact, the Special Master praises the first 24 months of the Governor's Administration as "one of the most productive periods of prison reform in California history." (See draft report, p. 4.) After documenting the successful implementation of the plan, however, the Special Master abruptly changes tone, opining that the Governor's Administration has retreated, or will retreat, from prison reform. (See draft report, p. 27-30.) The Special Master spends only four pages of the 33-page draft report on his concerns about the Governor's Office, and without any supportive facts, resorts to rumors and innuendo to reach his speculative opinion. This opinion is unfounded, unprofessional and wrong.

First and foremost, the Governor's Administration is committed to prison reform. Most recently, this commitment is demonstrated by: the Governor's inclusion of \$8.692 billion for CDCR and \$15.2 million for the Office of the Inspector General in his Fiscal Year 2006/2007 Budget; the Governor's proclamation convening a special session of the Legislature to address the prison overcrowding crisis; and the Governor's appointment of key CDCR and DPA officials. Further, it is the Governor's preference—and his prerogative—to seek input from stakeholders in a variety of matters, and his doing so neither lends validity to nor provides support for the Special Master's concerns about the Governor's Office.

Governor's Fiscal Year 2006/2007 Budget

Notably the Governor's Budget for Fiscal Year 2006/2007 contains an unprecedented budget of \$8.692 billion for CDCR, including an increase of \$6,560,000 to support CDCR's efforts to comply with the requirements of *Madrid*. It also includes \$15.2 million and 95 positions for the Office of the Inspector General, of which \$4.7 million and 27.8 positions are slated for the Bureau of Independent Review.

Special Session Convened by Governor to Address the Prison Overcrowding Crisis

On Monday, June 26, 2006, the Governor signed a proclamation convening a special session of the Legislature for the following purpose and to legislate upon the following four subjects, all related to addressing prison overcrowding:

1. To consider and act upon legislation to transfer low-risk women inmates out of state prison and into community correctional facilities.
2. To consider and act upon legislation to appropriate funds, including appropriations for lease-revenue bonds, to build additional prisons.
3. To consider and act upon legislation to establish and fund secure re-entry facilities.
4. To consider and act upon legislation to expedite and streamline the state contracting process for implementing programs and construction of additional prisons and secure re-entry facilities.

By focusing on these subjects during a special session, the Governor intends to work with legislators to explore options and find solutions to address the prison overcrowding crisis.

The Special Master's Concerns About the Governor's Office are Based on Incomplete Information and Unsupported Inferences

The Governor's appointment of Susan Kennedy as his Chief of Staff and Fred Aguiar as his Cabinet Secretary are noted by the Special Master in his draft report. (See draft report, p. 28.) The Special Master speculates that, based on the timing of these two appointments, the Governor's commitment to prison reform has changed. There are no facts in the Special

Special Master John Hagar

Madrid v. Tilton, et al.

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Master's draft report that demonstrate any retreat in the Governor's commitment to prison reform.

The concern over the appointment of Chief of Staff Kennedy is old news and has been refuted by the progress of the Governor's Administration during the past six months under the Chief of Staff's leadership. The Special Master's fear that Ms. Kennedy's appointment signals a return to the "Davis era practice of allowing CCPOA to over-rule decisions of the CDCR Secretary" and CCPOA having direct access to the Governor's Office during labor negotiations is unfounded. (See draft report, p. 8; p. 28.) In her role as Cabinet Secretary for Governor Davis, Ms. Kennedy was not part of the negotiations with state unions. (See Declaration of Susan Kennedy (attached).) Therefore, Ms. Kennedy's role in Governor Schwarzenegger's Office cannot be construed as a return to something that she was not previously part of.

The current appointment of Ms. Kennedy became effective January 1, 2006. As the new Chief of Staff, Ms. Kennedy met California Correctional Peace Officers Association (CCPOA) President Mike Jimenez for lunch on February 14, 2006, as part of her effort to reach out to the major unions. There was nothing clandestine about the lunch between Ms. Kennedy and Mr. Jimenez; it occurred at a popular Sacramento restaurant near the State Capitol. (See Declaration of Susan Kennedy.)

The appointment of Fred Aguiar as the Governor's Cabinet Secretary became effective January 31, 2006. From that time to February 28, 2006, the date of Secretary Hickman's resignation letter to the Governor's Office, Mr. Aguiar does not recall having any meetings with CCPOA. (See Declaration of Fred Aguiar (attached).)

Similarly, with regard to the resignation announcement of Acting Secretary Jeanne Woodford in April 2006, the Special Master's draft report states that "Kennedy and Aguiar, without the Acting Secretary Woodford's knowledge, were conducting regular meetings with CCPOA officials." (See draft report, p. 29.) In fact, Cabinet Secretary Fred Aguiar did inform Ms. Woodford of a meeting held on April 18, 2006 with CCPOA. (See Declaration of Fred Aguiar.)

The Special Master's draft report further asserts that, "Apparently, Ms. Woodford's appointment recommendations were the subject of discussion between Susan Kennedy, Fred Aguiar and CCPOA leaders." (See draft report, p. 29.) Neither Ms. Kennedy nor Mr. Aguiar discussed Ms. Woodford's appointment recommendations with CCPOA. (See Declaration of Susan Kennedy; Declaration of Fred Aguiar.)

The Special Master's draft report states that Secretary Hickman learned of the CCPOA meetings [with Chief of Staff Kennedy and Cabinet Secretary Aguiar] and observed CCPOA lobbyists at the Governor's Office. From this statement, the Special Master appears to speculate that the CCPOA meeting was connected with a return of allowing CCPOA to over-rule the decisions of the CDCR Secretary and related to the resignation of Secretary Hickman. (See draft report, p. 28.) Again, this inference is wrong. CCPOA representatives met with neither Chief of Staff Kennedy nor Cabinet Secretary Aguiar that day. (See Declaration of Susan Kennedy;

Declaration of Fred Aguiar.) It appears that on the same day that Secretary Hickman was meeting with Cabinet Secretary Aguiar to discuss his resignation, CCPOA lobbyists were meeting with members of the Governor's legislative unit to discuss the prison bonds in the Strategic Growth Plan and to try to work with CCPOA on joint use facilities. (See Declaration of Susan Kennedy.) Contrary to the perception painted by the Special Master, this CCPOA meeting was unrelated to CDCR.

Finally, the Special Master uses the fact that Chief of Staff Kennedy and Cabinet Secretary Aguiar were meeting with CCPOA as proof that the Governor will retreat from his commitment to prison reform. Again, this is speculative, and the Governor's recent actions are proof of his continued commitment to prison reform.

Incredibly, while the Special Master's draft report contains information obtained from undisclosed sources, the Special Master's draft report fails to include any information the Special Master received during a telephone call with Cabinet Secretary Aguiar. When Acting Secretary Woodford decided to resign, Cabinet Secretary Aguiar spoke with the Special Master to let him know about this development and to tell him that James Tilton was being appointed as Acting Secretary. Mr. Aguiar also reiterated to the Special Master the Governor's continued commitment to prison reform. In response to the Special Master's questions about CDCR appointments, Mr. Aguiar explained the Governor's preference to, and process within the Governor's Office relative to, engaging various stakeholders in various governmental matters, including legislation, reform efforts and appointments. With regard to the Governor's appointment process, Mr. Aguiar explained that, as a matter of course, the Governor's Office exposes potential candidates to interest groups with diverse viewpoints to gather input about the prospective candidates. Mr. Aguiar explained that this is an information gathering process and that no group has veto power over any appointment. With regard to CDCR appointments, Mr. Aguiar told the Special Master that CCPOA is included in this process, along with others. As another example, Mr. Aguiar explained that for potential candidates for the regional water boards, the Governor's Office routinely contacts both agricultural and environmental organizations for their input. With regard to meetings with CCPOA, Mr. Aguiar told the Special Master that he had informed Acting Secretary Woodford about a meeting scheduled with CCPOA. Finally, Mr. Aguiar explained to the Special Master that Secretary Hickman's chance encounter with CCPOA lobbyists at the Governor's Office on the day he met with Mr. Aguiar to discuss his resignation was not related to CDCR and that CCPOA was at the Governor's Office to discuss the Strategic Growth Plan. (See Declaration of Fred Aguiar.) The fact that the Special Master was aware of this information, yet apparently chose to ignore it as illustrated by the absence of any mention of this information in the draft report, is disingenuous and renders the draft report not credible with regard to these matters.

Recent Appointments Demonstrate the Governor's Continued Commitment to Prison Reform

The resignations and retirements of certain top officials at CDCR and the Department of Personnel Administration (DPA) do not support the Special Master's speculation that the Governor's commitment to prison reform has changed, let alone been lessened, in any way.

In the face of these resignations and retirements, the Governor has appointed strong, experienced leaders who share the Governor's commitment to prison reform.

Turnover in CDCR is not new. Recruitment and retention have been a challenge for years due, in part, to the work conditions, compensation and litigious environment. After the resignations of Secretary Rod Hickman and Acting Secretary Jeanne Woodford, the Governor recruited James Tilton to step in as Acting Secretary. Mr. Tilton has more than 20 years of management and budget experience working with the Department of Corrections. Most recently, he served as a program budget manager for the Department of Finance, where he was responsible for CDCR, State and Consumer Services Agency, Criminal Justice, Judiciary, Labor and General Government. Before that, he was the assistant program budget manager for the Capitol Outlay Unit and executive secretary to the State Public Works Board from 1998 to 2003. Prior to joining the Department of Finance, he served in the Department of Corrections as deputy director for administrative services from 1985 to 1998, where he was responsible for peace officer selection, personnel, training, budget, offender information and environmental health and safety, and he served as chair of the Correctional Peace Officer Standards and Training Commission. He also served as principal program budget analyst for the Youth and Adult Correctional Agency for the Department of Finance from 1984 to 1985, director of expenditure forecasting for the Commission on State Finance from 1980 to 1984 and budget analyst for the Department of Finance from 1976 to 1980. Acting Secretary Tilton's prior experience at the Department of Corrections and the Department of Finance is unmatched—and with this unique experience, he has earned the confidence of the CDCR management team and is effectively managing that organization.

After the retirement of Michael Navarro as the DPA Director, the Governor tapped into the expertise at DPA and appointed David Gilb as the new Director. Director Gilb has extensive experience in state labor relations. Most recently, Mr. Gilb was DPA's chief of labor relations the past two years. He previously served as the state-appointed mediator for the Mediation and Conciliation Service, handling labor-management disputes in the public and private sectors. From 1991 to 1999, Mr. Gilb was DPA's deputy labor relations chief. Based on Mr. Gilb's qualifications and leadership, there is no question that the State is in a position to adequately negotiate a contract that protects the court's remedial plan in *Madrid*. The Special Master's draft report contains no facts to conclude otherwise.

It is the Governor's Preference—And His Prerogative—to Seek Input from Stakeholders

The Special Master criticizes the Governor's Administration for engaging in a dialogue with CCPOA. In essence, the Special Master is fearful that the Administration's relationship with CCPOA has changed and that this change is undermining the progress at CDCR. By establishing a dialogue with CCPOA, the Special Master is concerned that CCPOA is unduly influencing the Administration's policy with regard to prison reform.¹ This is pure speculation.

¹ The on-going litigation between the State and CCPOA is evidence that refutes the Special Master's concerns over the influence of CCPOA. CCPOA has filed multiple actions against

As the Governor recently stated in a media interview, *he* "call[s] the shots." (See "'Prison yard bully' poses election year puzzle for Schwarzenegger," SFGate.com, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2006/07/02/state/n124910D89.DTL&hw=prison+yard+bully&sn=001&sc=1000>.)

As with any reform, it is important to engage the stakeholders to make sure that input is received and all options are considered. With regard to prison reform, the Governor has engaged not just CCPOA, but also the Legislature by convening a special session to work with legislators to explore ways to address the prison overcrowding crisis. The Governor's Administration also sought the input from many stakeholders, including CCPOA, California Teachers Association, legislators, local governments and others, regarding its Strategic Growth Plan. The fact that the Governor's Office is seeking such input does not mean that the Governor is changing his policy.

Another example of seeking stakeholder input is the Governor's creation of the High Risk Sex Offender Task Force to review and make recommendations on notification, placement, monitoring and enforcement of parole policies with regard to high risk sex offenders. By executive order, the Governor created a task force that includes stakeholders. The membership includes the following:

- a. Two representatives from the California State Legislature, who will serve as co-chairs
- b. California District Attorneys Association, president or his/her designee
- c. California State Sheriffs Association, president or his/her designee
- d. California Police Chiefs Association, president or his/her designee
- e. Chief Probation Officers of California, president or his/her designee

CDCR and the Governor. These actions are being vigorously defended by the State. (See *CCPOA v. State of California, et al.*, San Francisco Superior Court, Case No. CGC-04-04436452 [alleging that during rank-and-file negotiations the State agreed to provide CCPOA supervisors with a 70/30 post-and-bid policy of shift assignments (post and bid is a procedure by which certain employees at an institution may bid, based on seniority, for a certain ratio of post assignments, which determines the employee's days off and shifts)]; the court ruled in favor of the State, i.e., finding there indeed was no contract for 70/30 post and bid for supervisors, and CCPOA's appeal is pending in the California Court of Appeal, Third Appellate District; *CCPOA v. Governor Schwarzenegger*, Sacramento Superior Court, Case No. 05CS01551 [alleging that posting of interview transcripts on the Governor's website that include questions and responses regarding the special election constitute improper use of State resources]; and *CCPOA v. State of California, et al.*, San Francisco Superior Court, Case No. CGC-06-450906 [alleging that the State, and various individual management defendants, violated free-speech rights under the U.S. and California constitutions by changing the post-and-bid assignment ratios for supervisors, illegally imposing caps on the use of union release time and imposing onerous approval processes on the use of union release time in retaliation for the union's opposition to Proposition 75. (Proposition 75 would have imposed restrictions on the union's ability to use member dues for political purposes.)])

- f. League of California Cities, president or his/her designee
- g. California State Association of Counties, president or his/her designee
- h. Secretary of the California Department of Corrections and Rehabilitation, or his designee
- i. Director of the Division of Adult Parole Operations, Department of Corrections and Rehabilitation, or his designee
- j. Representative of victims of violent crimes
- k. Other representatives to be determined by the Secretary of the Department of Corrections and Rehabilitation

By August 15, 2006, the High Risk Sex Offender Task Force is to provide the CDCR Secretary, as well as the Governor and Legislature, with recommendations to improve departmental policies related to the placement of high risk sex offenders in local communities thereby ensuring public safety is not compromised.

The Governor's commitment to the Strategic Growth Plan and his commitment to public safety by improving the notification and placement of high risk sex offenders in local communities did not change because he sought input from stakeholders. By obtaining such input, the stakeholders became part of the solution. The Special Master's assertion that the Governor's commitment to prison reform has been, or can be, diminished by CCPOA is wrong.

With regard to the Governor's appointments, it is general practice that part of the appointment process includes contacting interest groups with diverse viewpoints to gather input about prospective candidates. For appointments in CDCR, CCPOA is included in this process, along with others such as the Prison Law Office and Senate Rules staff. None of the interest groups have veto power over the Governor's appointment. (See Declaration of Fred Aguiar.) This information gathering process is similar to an employer conducting formal and informal reference checks on a prospective employee. It would be irresponsible for an employer not to check references and contact others who may know a potential candidate.

The mere fact that Chief of Staff Kennedy and Cabinet Secretary Aguiar are meeting with CCPOA to discuss problems in California's prisons does not mean that there is a change in the Governor's policy. There are no facts to support any change in the Governor's commitment to prison reform. Indeed, the improvements in the investigative and discipline process at CDCR and elimination of the Code of Silence, the Governor's increased funding for CDCR's and OIG's budgets for fiscal year 2006/2007, the Governor's creation of a High Risk Sex Offender Task Force to address notification, placement, monitoring and enforcement of parole policies and the Governor's convening of a special session to address the prison overcrowding crisis are the best, most recent evidence of the Governor's commitment to prison reform.

There is No Need for the Court to Conduct an Investigation and Hold Public Hearings;
Recommendation No. 4 of the Draft Report is Without Merit

The Special Master concludes that there was a change of policy in the Governor's Office in January 2006, "that the Governor's Office may have given the [C]ode of [S]ilence in California's

Special Master John Hagar
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prisons a new lease on life,” and that the entire remedial process in *Madrid* is threatened as a result of such actions. (See draft report, p. 30-31.) He uses such to support his recommendation that the Court conduct “an investigation, including public hearings, to preserve the post powers remedial plan and move forward CDCR’s efforts to eliminate the Code of Silence.” (See draft report, Recommendation No. 4, p. 32-33.) There simply is no factual evidence cited in the Special Master’s draft report to warrant, let alone support, any investigation and public hearings concerning whether the *Madrid* and post powers remedial plans have been compromised.

Here, the facts speak for themselves. The Administration’s work to effectively eliminate the Code of Silence and successfully implement CDCR’s administrative investigation and discipline process demonstrate that there is no need for an investigation and public hearings. It would be a waste of time and resources to conduct an investigation and hold public hearings absent having valid reasons for doing so. This is especially true given the factual evidence of the Governor’s unequivocal and unchanged commitment to prison reform.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary

Attachments

1. Declaration of Susan Kennedy
2. Declaration of Fred Aguiar
3. Service List
4. Declaration of Service

Copies via U.S. and electronic mail to: Service List (with all attachments)

1 California Department of Corrections and Rehabilitation (CDCR) Secretary Rod Hickman during
2 the months of January and February.

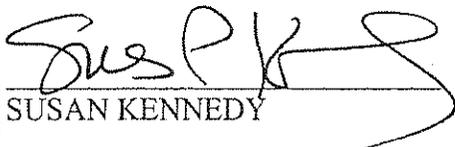
3
4 As the new Chief of Staff, I met California Correctional Peace Officers Association (CCPOA)
5 President Mike Jimenez for lunch as part of my effort to reach out to the major unions. This
6 lunch took place on February 14, 2006, at a popular Sacramento restaurant near the State Capitol.

7
8 On or about Friday, February 24, 2006, I am informed and believe that members of the
9 Governor's Legislative Unit met with CCPOA lobbyists and representatives from the California
10 State Sheriffs' Association to discuss the prison bonds in the SGP and to try to work with
11 CCPOA on joint use facilities. I am informed that this meeting was hostile and that CCPOA told
12 us that it would not assist the Governor's Office on the prison bonds in the SGP. CCPOA
13 representatives had no meeting with me that day.

14
15 In 2006, I have met with Cabinet Secretary Fred Aguiar and CCPOA representatives to discuss
16 problems in California's prison system, including overcrowding. Governor Schwarzenegger's
17 appointments, however, including Acting Secretary Woodford's recommendations for
18 appointment, were never the subject of any discussions I had with CCPOA.

19
20 I declare under penalty of the laws of the State of California that the foregoing is true and correct
21 and to the best of my knowledge and belief.

22
23 Executed this 6 day of July 2006, at Sacramento, California.

24 
25 SUSAN KENNEDY

1 I am informed and believe that on the same day Secretary Hickman came to see me about
2 resigning, Secretary Hickman observed CCPOA lobbyists entering the Governor's Office as he
3 was leaving my office. CCPOA representatives had no meeting with me that day.
4

5 On or about the morning of April 18, 2006, while Jeanne Woodford was Acting Secretary of
6 CDCR, I called Acting Secretary Woodford to let her know that Chief of Staff Susan Kennedy
7 and I were meeting with CCPOA later that day.
8

9 On or about April 20, 2006, the date of Acting Secretary Woodford's resignation announcement,
10 I spoke telephonically with Special Master John Hagar. I reiterated to Special Master Hagar the
11 Governor's continued commitment to prison reform, and told him that James Tilton was being
12 appointed as Acting Secretary for CDCR. In response to the Special Master's questions about
13 appointments at CDCR, I explained the Governor's preference to, and process within the
14 Governor's Office relative to, engaging various stakeholders in various governmental matters,
15 including legislation, reform efforts, and appointments. With regard to the Governor's
16 appointment process, I explained that, as a matter of course, the Governor's Office exposes
17 potential candidates to interest groups with diverse viewpoints to gather input about the
18 prospective candidates. I explained that this is an information gathering process and that no
19 group has veto power over any appointment. With regard to CDCR appointments, I told the
20 Special Master that CCPOA is included in this process, along with others. As another example, I
21 explained that for potential candidates for the regional water boards, the Governor's Office
22 routinely contacts both agricultural and environmental organizations for their input. With regard
23 to my meetings with CCPOA, I told the Special Master that I had informed Acting Secretary
24 Woodford about a meeting scheduled with CCPOA. Finally, I also explained that Secretary
25 Hickman's chance encounter with CCPOA lobbyists at the Governor's Office on the day he met

1 with me to discuss his resignation was not related to CDCR and that CCPOA was at the
2 Governor's Office to discuss the Strategic Growth Plan.

3
4 In 2006, I have met with Chief of Staff Susan Kennedy and representatives of CCPOA to discuss
5 problems in California's prison system, including overcrowding. Governor Schwarzenegger's
6 appointments, however, including Acting Secretary Woodford's recommendations for
7 appointment, were never the subject of any discussions I had with CCPOA.

8
9 I declare under penalty of the laws of the State of California that the foregoing is true and correct
10 and to the best of my knowledge and belief.

11
12 Executed this 7 day of July 2006, at Sacramento, California.

13
14 
15 FRED AGUIAR

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Page 3 of 3

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DECLARATION OF SERVICE

I, Justin Gosling, declare as follows:

I am employed in the County of Sacramento, State of California; I am over the age of eighteen years and am not a party to this action; my business address is State Capitol, Sacramento, California 95814, in said County and State. On July 7, 2006, I served the within document:

Amicus curiae letter brief, dated July 7, 2006, to Special Master John Hagar in response to "Special Master's Draft Report Re Status of State of California Corrective Action Plans for Administrative Investigations and Discipline; Recommendations"

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown and in the following manner:

SEE ATTACHED SERVICE LIST

- BY MAIL:** On July 7, 2006, I placed a true copy in a sealed envelope addressed to each person specifying service by U.S. Mail at the address shown. I am familiar with the office's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- BY ELECTRONIC MAIL:** On July 7, 2006, I sent true copy PDF versions to each of the persons named in the attached Service List at the e-mail addresses specified.

I certify under the laws of the State of California that the foregoing is true and correct and that this Declaration of Service was executed by me on July 7, 2006, at Sacramento, California.

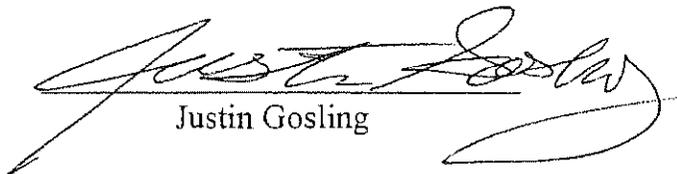

Justin Gosling

EXHIBIT 19



- HOME
- ARNOLD AUCTION
- NEWS
- SCHWARZENEGGER.COM ARCHIVE WEB SITE
- GOVERNOR'S WEB SITE
- AFTER-SCHOOL ALL-STARS & SPECIAL OLYMPICS
- GOVERNOR'S COUNCIL

December 1, 2005

GOVERNOR SCHWARZENEGGER APPOINTS SUSAN KENNEDY CHIEF OF STAFF

Governor Arnold Schwarzenegger today announced the appointment of Susan Kennedy as chief of staff.



Susan is a hands-on, action-oriented person who gets things done. She is a leader with incredible institutional knowledge about state government and a deep understanding of the public policy process. We have had incredible accomplishments throughout my administration and I look forward to working with Susan to build upon that foundation and make California once again the golden dream by the sea."

"Pat has worked tirelessly to assemble an amazing team and to guide my staff over the past two years. She has been an incredible chief of staff and I want to thank her for her service and dedication to not only my administration, but also to the people of California."

Kennedy has served on the California Public Utilities Commission since 2003, where she focused on regulatory consistency and broadband, infrastructure investment and promoting economic development. In addition, she has been a member of the California Bay-Delta Authority, the statewide body responsible for overseeing the restoration of the San Francisco Bay Delta ecosystem to increase storage, promote efficiency and protect California's extensive levee system since 2003.



Previously, Kennedy served as cabinet secretary and deputy chief of staff for Governor Gray Davis where she was principal liaison to the cabinet and state agencies, departments, boards and commissions. Prior to joining the Davis Administration, Kennedy served as communications director for U.S. Senator Dianne Feinstein.

"I am honored Governor Schwarzenegger has asked me to join him as he works to rebuild California," said Kennedy. "We have a tremendous opportunity to get past party lines and move California forward. I have come to know this man. I believe in him and where he wants to take this state. I look forward to using my experience and knowledge to work alongside the Governor to get the job done."

Ignoring party labels has been a hallmark of the Schwarzenegger administration. The Governor's cabinet and staff include more high-profile Republicans, Democrats and Independents than any administration in recent memory.

Kennedy, 45, of Marin County, attended San Francisco State University. This position does not require Senate confirmation and the compensation is \$131,412. Kennedy is a Democrat. She will assume this position on January 1, 2006.

NEW

Gov. on (5/8/2005)

Gov's St Approva Growth (5/5/2005)

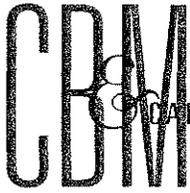
\$100M Crime Vi Restituti (5/3/2005)

Gov. Cel "Earth D Cleanup (5/2/2005)

CA to Fi Levee Si Flood Se (5/2/2005)

- 2006
- 2005
- 2004
- 2003
- 2002
- 2001
- 2000
- 1999

EXHIBIT 20



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June 28, 2006

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VIA E-MAIL AND REGULAR MAIL

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Special Master
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450 Golden Gate Avenue
San Francisco, CA 94102

**Re: *Madrid, et al. v. Tilton, et al.*, U.S.D.C., Northern District,
Case No. C90-3094-T.E.H. – Special Master’s Draft Report Re
Status of State of California Corrective Action Plans for
Administrative Investigations and Discipline; Recommendations
File No. 029029**

Dear Mr. Hagar:

The undersigned writes with respect to the above referenced draft report. In November 2004, Judge Henderson permitted California Correctional Peace Officers’ Association to intervene in this case, albeit for limited purposes. Accordingly, we believe that we have a right to provide a response to your draft report.

John Hagar

Re: *Madrid, et al. v. Tilton, et al.*, U.S.D.C., Northern District, Case No. C90-3094-T.E.H. – Special Master’s Draft Report Re Status of State of California Corrective Action Plans for Administrative Investigations and Discipline; Recommendations

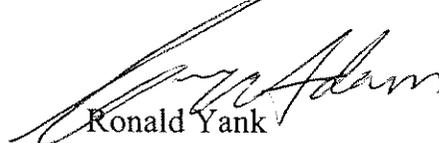
June 28, 2006

Page 2

Even if it were interpreted that your draft report goes beyond the scope of CCPOA’s intervention, we nonetheless request your permission to respond. We believe our response to be particularly appropriate with respect to the numerous parts of the draft report that discuss the purported actions of this labor organization, its officers and members.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Ronald Yank

Gregg McLean Adam

GMA:jo

cc: Michael Jorgenson, Deputy Attorney General *Via E-mail*
Steven Fama, Prison Law Office *Via E-mail*
Donald Spector, Prison Law Office
Debra L. Ashbrook, Assistant Chief Counsel, Adult Operations And Adult Programs *Via E-mail*
Michael Gennaco, Chief Attorney, Los Angeles County Office of Independent Review *Via E-mail*
Bruce Slavin, CDCR *Via E-mail*
Warren C. (Curt) Stracener, Deputy Chief Counsel, DPA *Via E-mail*
Brigid Hanson, Deputy Secretary Of Labor, CDCR *Via E-mail*
Lance Corcoran, Chief of Governmental Affairs, CCPOA *Via E-mail*
Benjamin C. Sybesma, Chief Legal Counsel, CCPOA *Via E-mail*

EXHIBIT 21

JOHN HAGAR - SPECIAL MASTER
Madrid v. Tilton et al., C-90-3094 T.E.H.

Federal District Courthouse
Law Library 18th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

June 29, 2006

BY E-MAIL (PDF) AND REGULAR MAIL

RONALD YANK
Carroll, Burdick & McDonough
44 Montgomery, Suite 400
San Francisco, CA 94104-4606

Re: Special Master's Draft Report

Dear Mr. Yank:

I have reviewed your letters. Judge Henderson's intervention order is extremely limited. It does not provide the California Correctional Peace Officers Association ("CCPOA") the right to comment on the draft report recently filed by the Special Master.

I will, however, honor your request to respond to the draft report concerning those portions that discuss the actions of the CCPOA, its officers, and members. Please submit your response no later than Friday, July 7, 2006. Please serve all parties who were served with the draft report, utilizing both email and regular mail.

By sending this letter to counsel, the Special Master requests that plaintiffs and defendants serve Mr. Yank and Mr. Sybesma with their comments and objections to the Special Master's draft report no later than Friday, July 7, 2006, utilizing both email and regular mail.

Yours truly,



John Hagar

cc. Steven Fama/Don Specter
Mike Jorgenson
Madrid Unit
Jim Tilton
Debra Ashbrook
Matthew Cate
Michael Gennaco
Dr. Patrick Maher
Brigid Hanson
Bruce Slavin
Kathleen Keeshen
Warren C. (Curt) Stracener
Benjamin C. Sybesma

EXHIBIT 22

1 Ronald Yank, No. 041200 [ryank@cbmlaw.com]
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Christine Albertine, No. 141033 [christine.albertine@ccpoa.org]
6 **CALIFORNIA CORRECTIONAL**
7 **PEACE OFFICERS' ASSOCIATION**
8 **LEGAL DEPARTMENT**
755 Riverpoint Drive, Suite 200
West Sacramento, California 95605-1634
9 Telephone: 916.372.6060

10 Attorneys for Intervenor California Correctional Peace
Officers' Association

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 ALEJANDRO MADRID, *et al.*,
16 Plaintiffs,

17 v.

18 JAMES E. TILTON, *et al.*,
19 Defendants.

No. C90-3094-TEH
CLASS ACTION

**DECLARATION OF CHARLES L.
ALEXANDER, JR., IN RESPONSE TO
SPECIAL MASTER'S DRAFT REPORT RE
STATUS OF STATE OF CALIFORNIA
CORRECTIVE ACTION PLANS FOR
ADMINISTRATIVE INVESTIGATIONS AND
DISCIPLINE; RECOMMENDATIONS**

20
21
22 I, Charles L. Alexander, Jr., declare as follows:

23 I. I am a Correctional Officer and a member of the California Correctional
24 Peace Officers' Association ("CCPOA"). I presently serve as the elected Executive Vice-
25 President of CCPOA, a position I have held for approximately nine (9) months. I
26 previously served as the appointed Rank & File (CDC) Vice-President of CCPOA for
27 approximately three (3) years. I am making this declaration in support of CCPOA's
28 Response to Special Master's Draft Report Re Status of State of California Corrective

CBM-SPSF314845.1

DECLARATION OF CHARLES L. ALEXANDER, JR., IN RESPONSE TO SPECIAL MASTER'S DRAFT REPORT

1 Action Plans For Administrative Investigations and Discipline; Recommendations ("the
2 draft report"). I am familiar with the facts set forth in this matter, as well as those set forth
3 in this Declaration. If called as a witness, I could and would testify competently to these
4 facts.

5 2. I started working for the California Department of Corrections ("CDC")
6 as a correctional officer in 1988. I initially worked at the California Medical Facility
7 South, which is located at Vacaville. In November 1988, I transferred to Chuckawalla
8 Valley State Prison. One year later, I transferred to Pelican Bay State Prison ("PBSP"). I
9 stayed at PBSP until approximately three (3) years ago. During the last 11½ years of my
10 employment at PBSP, I served as Chapter President. During the service described in this
11 paragraph, I worked a variety of different posts as a correctional officer.

12 3. CCPOA is presently the exclusive bargaining representative for
13 approximately 27,000 employees in State Bargaining Unit 6. It also represents – though
14 not as exclusive representative – some 2,000 supervisors of Unit 6 employees.

15 **The Emperor's New Clothing**

16 4. I have reviewed the Special Master Draft Report Re Status of State of
17 California Corrective Action Plans for Administrative Investigations and Discipline;
18 Recommendations ("the Draft Report"). At page 23, the Draft Report discusses a poster
19 entitled "Emperor's New Clothes," which was prepared by this labor organization. The
20 Special Master describes the poster as a "more recent example of the ridicule, threats, and
21 humiliation delivered by the CCPOA to competent CDCR employees to enforce this code
22 of silence...." The poster does relate to the code of silence – but not in the manner the
23 Special Master contends.

24 5. To explain the proper context of the poster requires some reference to
25 past history: In November 2004, after Secretary Hickman's Code of Silence letter was
26 issued earlier that year, I wrote to all of the wardens in the state. As an attachment, my
27 letter included a copy of the Hans Christian Andersen children's story, "The Emperor's
28 New Clothes." (A true and correct copy of a draft of my November 4, 2004 letter and a

1 copy of the cover page of the edition of "The Emperor's New Clothes," which was sent to
2 the wardens, is attached hereto as Exhibit "A," and is incorporated herein by this
3 reference. I recall that the version of the letter that was sent to wardens was substantively
4 similar to that attached as Exhibit "A.") I was prompted to write because it was becoming
5 more and more apparent to me that Secretary Hickman was replacing CDCR managers,
6 including wardens, who he perceived to be not "on board" with his agenda. His position
7 to his managers appear to be similar to what the message he conveyed to CCPOA -- that it
8 either get on his train or be left behind in the station.

9 6. The letter and book sought to encourage wardens to not be intimidated by
10 their own "code of silence" -- i.e., that wardens should stand up and tell CDCR leadership,
11 Secretary Hickman, or even the Legislature or the media, the truth, whether it be bad news
12 or information that he did not want to hear.

13 7. CCPOA's position was that overturning any code of silence did not begin
14 and end with the rank-and-file correctional officers in Unit Six. Secretary Hickman's
15 February 17, 2004 "zero tolerance" letter and his public statements thereafter suggested
16 that he only perceived a code of silence problem with the rank-and-file. CCPOA sought
17 for the department to take the lead from the top down; i.e., to really put an end to any code
18 of silence required supervisors and managers to also stand up and speak out when their
19 superiors were committing wrongdoing or making mistakes.

20 8. Moving back to 2006, the "Emperor's New Clothes" poster featuring
21 Governor Schwarzenegger revisited the substance of the November 2004 letter described
22 in paragraphs 5 and 6, *supra*. It was more narrowly directed towards only officials at
23 CDCR headquarters in Sacramento. Its message relayed CCPOA's continuing concern
24 that officials were telling the Governor and his representatives that everything was fine,
25 when in reality, everyone outside of CDCR management perceived conditions to be
26 worsening for both inmates and staff.

27 9. At my direction, the "Emperor's New Clothes" poster was posted only on
28 one bulletin board -- specifically at CDCR headquarters. I am not aware of it being

1 posted on any other CCPOA bulletin board, as the draft report contends, and I did not
2 direct that it be posted anywhere else. In fact, I am not aware of the poster being posted in
3 any way, shape, or form, through any other means. The reason the poster was only posted
4 at CDCR headquarters was that it was primarily directed to a narrow audience made up of
5 those who work at CDCR headquarters. The poster was not intended to "terrorize" any
6 CDCR employee, but rather to encourage employees to speak out to their superiors.

7 10. The images of Brigid Hanson and Tim Virga appear on the poster
8 because of their roles in negotiations in 2004, and Secretary Hickman's subsequent
9 decision to renege on a commitment they gave, as chief negotiators for the State
10 employer, to give correctional supervisors "70/30 Post-and-Bid." Your declarant was the
11 chief spokesperson for CCPOA during those discussions. Based on facts ascertained at
12 their depositions, it appeared that Ms. Hanson and Mr. Virga allowed Mr. Hickman to
13 renege on that oral agreement without adequately advising him of the commitment they
14 had given at the bargaining table.

15 11. From my review of the Draft Report, it appears that the Special Master
16 believes that every attack on Mr. Hickman, and for that matter, Ms. Hanson and Mr.
17 Virga, results from CCPOA opposition to their efforts to carry out the Special Master's
18 recommendations concerning the code of silence. This is erroneous. The major fracturing
19 of the relationship with Mr. Hickman occurred when he reneged on 70/30. Indeed,
20 relations between CCPOA and CDCR had the potential to improve markedly by virtue of
21 the 2004 addendum to the MOU. However, because of what followed, CCPOA lost any
22 trust it had in Mr. Hickman and members of his management team.

23 Code of Silence

24 12. Throughout the Draft Report, the Special Master attacks "CCPOA
25 leadership" for both refusing to acknowledge the existence of the code of silence and
26 attacking efforts to eliminate the code of silence. (See, e.g., Draft Report at pp. 20:20-21.)
27 At page 22 of the Draft Report, for example, the Special Master specifically identifies
28 your declarant as follows:

1 Indeed, any doubts about the importance of the Code of Silence for
2 CCPOA president Mike Jimenez and Executive Vice President
3 Chuck Alexander have been dispelled by their repeated denials that
the code exists, and their subsequent attempts to criticize and
humiliate Secretary Hickman.

4 (Draft Report at p. 22:6-9.)

5 13. I have never spoken with the Special Master, regarding the code of
6 silence. I am not aware of the source of the information upon which the Special Master
7 bases his conclusions regarding my conduct. I can testify truthfully, and categorically,
8 that I am aware of no concerted efforts by me, CCPOA executives, or CCPOA in general,
9 to actively conceal instances of employee wrongdoing or criminal violations. That is true
10 both with respect to my present statewide office, and, previously, when I served as chapter
11 president at Pelican Bay State Prison. For 11½ years, I was CCPOA's primary
12 representative PBSP. During that time, I was neither a part of, nor was I aware of, any
13 concerted activity by CCPOA, through its representatives, to actively prevent correctional
14 officers or other members of staff from reporting employee misconduct or criminal
15 wrongdoing.

16 14. I have reviewed the declaration of Michael L. Jimenez, and I agree with
17 his assertion that what the Special Master terms a code of silence, is better described as a
18 code of cowardice. In fact, I cannot think of any stronger language that Mr. Jimenez or I
19 could use to convey our disapproval of the practice. I also agree with Mr. Jimenez's
20 perception that employees who do not report other employees' wrongdoing are a fact of
21 life across many industries. That is not say that such conduct is pervasive in other work
22 settings, but it nonetheless goes on. I do disagree that the problem is "pervasive" in
23 CDCR, as a Special Master argues.

24 15. During my service at PBSP, I personally reported employee wrongdoing.
25 I was retaliated against for doing so. That finding was reached by both the California
26 State Personnel Board ("SPB") and the California Public Employment Relations Board
27 ("PERB"). (Attached as Exhibits "B" and "C," and incorporated herein by this reference,
28 are true and correct copies of the decisions issued those state agencies.) I was also

1 personally sued by four (4) CDC investigators for making statements to the Sacramento
2 Bee. (A true and correct copy of the lawsuit filed in *Smith et al. v. Alexander, et al.*,
3 Sacramento County Superior Court Case No. 97AS06236 is attached hereto as Exhibit
4 "D" and is incorporated herein by this reference.) CCPOA's legal representatives secured
5 a dismissal of this action pursuant to California Code of Civil Procedure section 425.16 --
6 the anti-SLAPP¹ statute. (A true and correct of the Final Judgment in that case is attached
7 hereto as Exhibit "E" and is incorporated herein by this reference.)

8 Meetings with the Governor's Office

9 16. I have participated in meetings in 2006 with members of the Governor's
10 Office, including Governor's Chief of Staff, Susan Kennedy, and his Cabinet Secretary,
11 Fred Aguiar. These meetings concerned problems within the prison system, including but
12 not limited to: staffing, communications, programs and overcrowding.

13 17. At page 29 of the Draft Report, relying on information. The Special
14 Master "has obtained," it asserts that former Acting Agency Secretary Jeanne Woodford
15 resigned because CCPOA effectively overruled the appointment of Tim Virga as Acting
16 Assistant Secretary of Labor Relations. Whatever the source of the Special Master's
17 information, he has been misinformed or mislead. CCPOA's concerns regarding Mr.
18 Virga are laid out elsewhere in these responding papers; however, I can categorically state
19 that at no meeting I attended involving representatives of the Governor's office did I or
20 any other representative of CCPOA discuss either denying Mr. Virga any promotional
21 opportunity, removing him from any position, or removing him from the State's
22 bargaining team.

23 //

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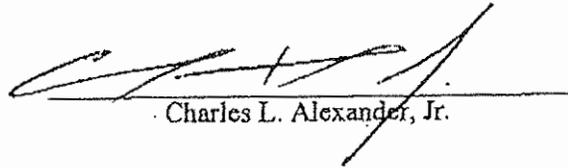
27 _____
28 ¹ The acronym stands for "Strategic Lawsuit Against Public Participation." (See, Civ.
Proc. Code § 425.16)

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18. In fact, I recently attended the first negotiation session between CCPOA and the State Employer for a successor Memorandum of Understanding. The meeting took place at CCPOA headquarters on June 9, 2006 and Mr. Virga and Ms. Hanson were two of the five members of the State's negotiating team.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 5th day of July, 2006 in Sacramento, California.



Charles L. Alexander, Jr.

EXHIBIT 23

State of California	Department of Corrections
Internal Affairs Investigation	
<p>TO: <i>Cal A. Terhune</i> <i>Director</i> <i>Department of Corrections</i> <i>1515 S Street</i></p> <p>VIA: <i>Brian Parry</i> <i>Assistant Director</i> <i>Law Enforcement Liaison Unit</i></p> <p>VIA: <i>S. Cambra</i> <i>Warden</i> <i>Pelican Bay State Prison</i></p>	<p>Corrections Investigator</p> <p>Name: <i>M. E. KNOWLES</i> Title: <i>Chief Deputy Warden</i> Location: <i>High Desert State Prison</i></p> <p>Name: <i>P. D. PALMER</i> Title: <i>Facility Captain</i> Location: <i>Folsom State Prison</i></p>
	<p>Date: 09/22/97</p> <p style="text-align: right;">Classification:</p>

AUTHORITY FOR REPORT: Case responsibility assigned by Northern Regional Administrator M. T. Pickett on April 23, 1997.

SUBJECTS: Name: Charles L. Alexander, Jr.
Correctional Officer
Hired: 1-25-88

Name: Richard T. Newton
Correctional Officer
Hired: 6-7-84

Name: Robert S. Rice, Jr.
Correctional Sergeant
Hired: 9-21-87

Name: Jean L. Rupert
Correctional Lieutenant
Hired: 12-23-83

Name: Roy J. Alvarado
Correctional Officer
Hired: 11-23-81

Name: Deanna L. Freitag
Correctional Officer
Hired: 07-16-94

NO. C-90-3094 TEH
Special Master Exhibit No. 26
Filed 11-21-03
RICHARD W. WIEKING, CLERK
By *Alison Skellman*
Deputy Clerk

SYNOPSIS:

On December 5, 1996, Correctional Officer Charles L. Alexander Jr. wrote then Director James H. Gomez concerning his displeasure over the investigative results of his allegations regarding the Pelican Bay State Prison (PBSP) Internal Affairs Unit (IAU). (See Attachment A)

On December 19, 1996, Correctional Officers Charles L. Alexander Jr. and Richard T. Newton submitted a Request to File Charges (SPB Case Nos. 96-4252 and 96-4253) against PBSP Correctional Captain Daniel R. Smith, PBSP Correctional Lieutenants Mark E. Roussopoulos and Chester A. Miller, and PBSP Correctional Sergeant Craig A. Franklin. Alexander and Newton alleged that former and present PBSP Internal Affairs (IA) Investigators (Smith, Roussopoulos, Miller, and Franklin) used inappropriate, threatening, and intimidating tactics during IA investigations of correctional staff at PBSP. They further alleged that inmates were "bribed" to give incriminating statements against correctional staff, that exculpatory information was omitted from IA reports, that other reports were "lost" and replaced with modified reports, and that the identified PBSP IA Investigators failed to object to each other's alleged misconduct (See Enclosure I)

Also on December 19, 1996, counter allegations were made by Captain Smith to Warden Steve Cambra, Jr., concerning illegal and inappropriate activities of Charles Alexander and Richard Newton (See Attachment B).

On February 10, 1997, allegations are made by Captain Smith and Lieutenant Roussopoulos to Ken O'Brien, Office of the Inspector General, concerning illegal and inappropriate activities of Alexander and Newton (see Attachment C).

On February 25, 1997, additional allegations are submitted by Departmental Legal Council Barbara L. Sheldon to Brian Parry, Assistant Director Law Enforcement and Investigation Unit, concerning illegal and inappropriate activities of Alexander and Newton (see Attachment D).

On March 6, 1997, a rebuttal is submitted to the State Personnel Board (SPB), written by Barbara Sheldon, and containing individual supplements by Smith, Roussopoulos, Lieutenant Miller, and Sergeant Franklin. The rebuttal also alleges illegal and inappropriate behavior by Alexander and Newton (see Attachment E).

On April 18, 1997, a "Request for Review" of the "unlawful" actions of Alexander and Newton was submitted by Attorney Thomas M. Hagler to Thomas M. Maddock, Interim Director, CDC. Mr. Hagler is an Attorney representing Smith, Roussopoulos, Miller, and Franklin (see Attachment F)

On June 17, 1997, the Request to File Charges was denied by the State Personnel Board (see Attachment G).

INVESTIGATION:

The following is a summary of the initial allegations by the complainants (Smith, Roussopoulos, Miller, and Franklin), as well as specific elements relative to each item. Additional issues were identified during the investigation and are addressed in the Findings of Fact.

Allegation I

During 1995, 1996, and 1997, Alexander and Newton initiated and perpetuated a campaign to impeach the Pelican Bay State Prison (PBSP) Internal Affairs Unit (IAU) in order to impede several on-going personnel investigations.

- Alexander made threats to Lieutenant Chester Miller to "get even" with Lieutenant Mark Roussopoulos following an interview with Correctional Officer Jose Garcia.
- A CCPOA "Flyer" was distributed on or about October 25, 1995, instructing staff that they did not have to talk to the District Attorney (DA) or his Representatives during an on-going criminal investigation of PBSP Correctional Officers. (see Attachment H)
- Alexander told Lieutenant Miller that their (CCPOA) strategy was to keep "them" (IAU) on the defense and attack SSU (Law Enforcement and Investigations Unit) and the IAU. (see Attachment I)
- Alexander and Newton collaborated testimony with Officers Steven E. Lee, Jimmie W. Pofahl and CCPOA Legal Counsel Daniel M. Lindsay, via a conference call on November 14, 1995, regarding the Officer Jose Garcia investigation.
- Alexander, Newton, and their associates attempted to question several inmates immediately following their (inmates) interviews with PBSP IAU Staff and SSU.
- Alexander and Newton threatened to oppose Warden Steve Cambra's confirmation unless action was taken against PBSP IA Investigators.
- Alexander and Newton alleged that a CDC-7219 concerning inmate Andrews dated November 9, 1995, was missing, when in fact, they possessed a copy. (see Attachment J)
- Alexander and Newton impeded the processing of a CDC-115 (Log #A95-11-037) on inmate Bacos. (see Enclosure I)
- Alexander told PBSP employees they would be considered a "rat" if they testified on other employees.
- PBSP Officer Roy Alvarado testified in a criminal trial (Bui, H-64261) that he (Alvarado) was involved in a "Union" investigation of illicit activity of PBSP IA investigators
- Officer Alvarado testified during a United States District Court deposition (Castillo vs. Gomez) that the PBSP IA Unit was corrupt.
- Alexander and Newton shared confidential information with Officer Alvarado, concerning the Jose Garcia IA Investigation (08/95).
- Alexander, Newton, Officer Paul Wenning, and CCPOA Legal Council Jeff Diamond attempted to obtain IA interview tapes from MTA Linda Brown, without reason and against her will. (see Attachment K)
- Alexander and Newton intimidated Officer David J. Collver to withhold information during the Officer David Lewis IA Investigation.
- Alexander and Newton falsely and maliciously alleged that exculpatory information concerning the David Lewis IA Investigation was intentionally omitted from the Investigative results by PBSP IA Investigators.

Allegation II

Alexander and Newton submitted false information to the State Personnel Board (SPB) in their Request For Adverse Action, dated December 12, 1996.

- Alexander and Newton cited the Inspector General's Report dated October 31, 1996, as critical of PBSP ISU when in fact they knew this to be false. (see Enclosure II)

- Alexander and Newton misrepresented the facts and investigative results of the inmate Bacos (E-33163) CDC-115 investigation of PBSP IA Personnel (41-004-96).
- Alexander and Newton misrepresented the facts of the Officer Mark Piland IA Investigation (001/95-S).
- Alexander and Newton misrepresented the facts of Inmate Watts' (D-29740) allegations of misconduct by PBSP IA Investigators and the subsequent IA Investigation by SSU (40-004-96).

Allegation III

Alexander and Newton inappropriately released privileged and confidential information to the SPB and to the Sacramento Bee.

- The 1/5/97 Bee article contained direct quotes from PBSP IA investigative material.
- The 3/22/97 Bee article contained quotes and information from taped interviews of employees who were not charged, as well as IA investigations that were still open.
- The release of inmate Bacos' name to the Bee as an informant, thereby endangering his life.
- The release of at least three copies of CDC-115's on inmate Bacos to the Bee that were obtained inappropriately.

Allegation IV

Alexander, Newton, and Correctional Sergeant Robert Rice were aware of, and withheld information concerning Officer Deanna Freitag's knowledge of Officer Jose Garcia's criminal activity before his SPB hearing, as well as before his Preliminary Hearing in Del Norte County.

Interview with Correctional Captain Daniel R. Smith

On April 30, 1997, Correctional Captain Daniel Smith was interviewed at PBSP and stated he was assigned as the PBSP Investigative Captain in September 1995. He said they began conducting an investigation into allegations of staff who were revealing commitment offenses of child molesters to other predatory inmates. Smith stated that after they initiated the investigation, "CCPOA" made threats that they were going to "get even" with the investigators, particularly Correctional Lieutenant Mark Roussopoulos. He said the IA Unit has been harassed ever since and the investigation became impeded by "CCPOA." Smith stated that they (CCPOA) effectively "shut" the IA Unit down and stopped the investigation as part of a defensive strategy. He felt that Officers Charles Alexander and Richard Newton knew their allegations were false when they (Alexander and Newton) submitted them to the State Personnel Board (SPB). He stated that the materials that Alexander and Newton filed with the SPB included transcripts of interviews with inmates and staff, that contained confidential information pertaining to other staff members who were subjects of the investigation. Smith said that misconduct could not be proved, nor disproved, concerning those employees and he felt the allegations were still open and the investigation still pending. Smith stated that these transcriptions provided to the SPB, and subsequently to the Sacramento Bee, contained confidential investigative materials on Correctional Officers who have not be charged, and therefore a violation of 832.7 of the Penal Code. He further stated that information was disclosed to the SPB concerning inmate Bacos and his participation in the investigation, which was also published in the Sacramento Bee. Smith said that the Sacramento Bee first published an article on December 5, 1996, which was broad based and discussed the investigation that was being conducted. He stated that the Union did make allegations that it was "the dirtiest IA investigation" they have every seen, but no investigators were named. Smith said that approximately December 20, 1996, he received a call from Tip

Kindel, Assistant Director Communication, indicating that Reporter Andy Furillo was preparing another article to be published on December 22, 1996, that would name the investigators in detail. Smith claimed the article did not come out until January 5, 1997 and it contained quotes, names, and other information from confidential investigative materials. He believed that the only source of this information to the Bee would have been Alexander and Newton. Smith further stated that he prepared a response to the SPB Request For Adverse Action and had submitted it to Legal Affairs Counsel Barbara Sheldon in Sacramento. He claimed that Sheldon informed him that she had submitted his rebuttal on March 15, 1997, and then on March 22, 1997, the Bee published another article containing direct quotes from his rebuttal as well as Roussopoulos' rebuttal. Smith believes that Alexander and Newton have been reckless with confidential material and Attorney-Client information. He claimed that Alexander and Newton have shared a lot of materials, tape recordings, reports, and "other things" that were developed during official investigations with persons not involved in the investigation. Smith identified Correctional Officer Ray Alvarado, who was called to testify on behalf of inmate Bui (H64261) during a drug trafficking prosecution. He stated that Alvarado subsequently testified in court, claiming that the PBSP IA Unit was "dirty" and that he (Alvarado) had warned inmate Bui (H64261) that "they" (IA) were going to set him up. Smith further claimed that in the court transcripts, Alvarado acknowledged that he was given materials by CCPOA which indicated "we (PBSP IAU) were crooked" and that he (Alvarado) had recordings and materials which if they needed, they either had to contact CCPOA or his Attorney. Smith stated that Alvarado had been on the Security Squad and was very close friends with Officer Garcia and Sergeant Michael Powers. He felt there were several indications that Alvarado was investigating on behalf of the Union. Smith stated that as the investigation of Officer Garcia proceeded, Alvarado began making derogatory comments about the investigation and was subsequently reassigned from the Security Squad. Smith identified Correctional Officer Mark Piland as another individual who had access to tape recordings of staff interviews and inmate interviews concerning the Garcia case. He claimed that some of the inmate witnesses have reported that they have been threaten by Correctional Officers for having provided information to the PBSP IA Unit. Smith said that he also feels that Alexander and Newton have collaborated with other witnesses, thereby obstructing justice. He stated that in October 1995, while attempting to conduct an investigatory interview with Correctional Officers Steven E. Lee and Jimmie W. Pofahl, Alexander and Newton excluded themselves from the interview due to a conflict of interest and arranged for a CCPOA Attorney to represent them via speaker phone. Smith said he believed that following the first interview, Correctional Officers Lee, Pofahl, Alexander and Newton preceded to Alexander's Office where they had a conference call with the attorney. Smith claims he confronted Alexander and Newton when they came out of the room, asking them if they had gone back into the office and called the lawyer. Smith stated they (Alexander and Newton) first acknowledge that they had met in between the interviews, however, both later recanted and denied that everybody was in the same room together. He claimed that Alexander and Newton also arranged for Union representatives and their associates to interview inmate witnesses after they had been interviewed by IAU in an attempt to find out what the inmates had told the IA Investigators. Smith said that the inmates would tell a completely different story and "CCPOA" would utilize that information to substantiate their belief that the reports generated by IA were false. He stated that on or about March 29, 1996, Barbara Sheldon had informed him that Alexander and Newton had come to her and told her that if the Warden didn't take some kind of action against the IA Unit, they (CCPOA) were going to oppose his confirmation. He said the Warden was gone that week for confirmation and upon his return, Smith was job changed out of the IA Unit. Smith acknowledged that when the Warden

reassigned him from investigations, he (Cambra) informed him that he didn't feel that he could trust him as Captain and that he wasn't confident in his abilities to do the job. Smith further stated that Alexander and Newton had alleged that IAU had physically assaulted inmate Andrews. Smith said that following an IAU interview with inmate Andrews, he (Andrews) wanted a "cover story." Smith said he asked escorting Officer James P. McMillin to take inmate Andrews by the infirmary so he could get a CDC-7219. He claimed that CCPOA then approached Warden Cambra, alleging that the IA Unit had beat-up inmate Andrews. Smith stated that inmate Andrews had gone back to the main line and told staff that IA had beat him up because he wouldn't say anything. He said that Alexander and Newton also alleged that the CDC-7219 had been removed and destroyed, implying that IA had done it. Smith stated that next time he saw Alexander, a week or two after the inmate Andrews interview, he confronted him with a copy of the CDC-7219 and stated, "I understand you are looking for this". He claimed that Alexander replied, "Oh, I don't need it, I got my own copy." Smith said that Captain Thomas J. Jordan was assigned to conduct the initial inquiry into the allegation and that inmate Andrews claimed the CDC-7219 was his "cover story" and the IA Staff had not done anything to him. Smith stated that Alexander and Newton were both made aware of the results of that inquiry. He said that inmate Andrews was later approached by Officer Walter L. Haynie who told him, "Why don't you really come forward and tell the truth. I'll set you up with Rick Newton, the Vice President of CCPOA and you can talk to him". Smith stated that Captain Jourden conducted another inquiry, and again concluded that inmate Andrews was not assaulted by staff. Smith said that the inmate named in the newspaper article (inmate Bacos) was issued a CDC-115 and placed in Administrative Segregation for conspiracy to assault inmates. Smith claimed he originally classified the CDC-115 as an A2 for conspiracy and that inmate Bacos later confronted him on why other inmates, who were similarly charged, were classified as a Division D. Smith claimed he reduced the Bacos CDC-115 to a Division D to coincide with the other inmates as well as the information that he had and that inmate Bacos' issue was legitimate. He stated that in December 1995, Alexander and Newton made an allegation to Warden Cambra that IA had destroyed the CDC-115 and that IA was letting inmate Bacos "walk" in exchange for his testimony. Smith claimed that he initiated a search for the CDC-115, but was unsuccessful, and instructed Sergeant Craig A. Franklin to reissue the CDC-115. He stated that approximately one week after the CDC-115 was reissued, the original CDC-115 was found. Smith said he was informed that it had been put in a file cabinet, where it didn't belong, and someone stumbled on it. Smith believes that that CDC-115 was tampered with because one of the Officers (John C. D'errico), who inmate Bacos had implicated in the conspiracy to assault inmates, had a brother (Salvatore M. D'errico) who was an S&E in the same facility and handling the CDC-115s. He stated he placed the original CDC-115 in the case file and proceeded with a reissued CDC-115. Smith said that in March 1996, additional information was received concerning inmate Bacos involvement in the stabbing of Inmate Conklin. He stated inmate Bacos was subsequently issued a Division A1 CDC-115 and believes he is currently doing a SHU term. Smith said he learned late in March 1996 that there was another CDC-115 written on inmate Bacos in June 1995. He stated that when it was classified, Lieutenant J.R. Long's name was noted as having classified the CDC-115. Smith claimed that Alexander and Newton subsequently accused the IA Unit of forging Lieutenant Long's name to the June 1995 CDC-115. Smith stated that the forgery allegation was formally investigated and inconclusive as to who forged the name on the CDC-115. He said that the June 1995 Bacos CDC-115 was based on a confidential report, written by Sergeant Ronnie D. Miller, who was CCPOA Supervisor Vice President at the time. Smith said that Sergeant Miller told him that he had discussed the circumstances of the CDC-115 with Alexander and Newton.

Smith said that shortly after the January 5, 1997, article came out in the Sacramento Bee, he had another discussion with Sergeant Miller. He claimed he asked Miller, "If they (Alexander and Newton) know that we (IAU) didn't forge the CDC-115 on inmate Bacos, how come they're telling the newspaper that we did?" Smith claimed that Miller told him it was their strategy and that they (Alexander and Newton) know IA didn't do it. Smith said that Miller also told him that he had talked to both Alexander and Newton and that they were helping him write a grievance on a Lieutenant for falsifying the CDC-115. Smith stated he was investigated several times concerning various allegations by Alexander and Newton, and that there was a couple of times he was investigated twice on the same issue. Smith said that he would be cleared and "CCPOA" wouldn't be satisfied, demand a re-investigation, and he would again be cleared. He stated that in March 1996, the Inspector General's Office also conducted an investigation of the IA Unit and cleared them. Smith said Alexander or Newton made threats to "get" Mark Roussopoulos and these threats were made to Lieutenant Chester A. Miller. He believed it occurred after an interview with Correctional Officer Jose Garcia, in which Roussopoulos called Garcia a liar. Smith said that CCPOA also put out a memorandum that instructed CCPOA members that they were to consult with their Union Representative or CCPOA Legal Affairs before talking to anyone from the District Attorney's (DA's) Office. He stated that it implied that they (CCPOA members) didn't have to talk to DA, which he believed is illegal. Smith stated that Lee and Pofahl interviews were another example of impeding the PBSP investigation process. He said that Alexander and Newton claimed they couldn't participate because of a conflict of interest, but they all sat in an office and discussed the first interview with the second interviewee. Smith stated that Officer Robert E. Evans, who was a witness in the David Lewis investigation, was interviewed on institution grounds with a Union Representative, and he didn't know anything. Smith claimed that when Lieutenant Miller talked with Evans later, without a representative, he disclosed information that he had been reluctant to say in front of his representative, because he didn't want to be considered a "rat." Smith claimed he knew of some situations where Alexander had actually told employees that if they talked to IAU, they would be considered "rats". He acknowledged he didn't have any first hand knowledge, but had obtained this information from other IA investigators who had told him. Smith believed that Sergeant Craig Franklin had specific information about a witness who was threatened of being labeled a "rat" if they testified. Smith felt that the supplements in Alexander and Newton's SPB document contained confidential materials, specifically transcripts of interviews with staff and transcripts of conversations with inmate Bacos. He believes it is confidential because inmate Bacos mentioned "five or six" staff members who have never been charged with anything. Smith believed that Alexander and Newton had received interview tapes through normal disclosure processes, but felt that the transcription of the inmate Bacos tape did not match the transcription SSU had done for them (IAU). Smith also felt that the interview transcripts of Inmate Wilson, Officer Robert Evans, Officer David Collver and the Officer Mark Piland investigation (CDC 989A) were confidential. Smith said that Officer Piland was originally charged with disclosing commitment offense information to inmates in an investigation that started in January 1995. He stated that Piland was subsequently placed on ATO and the District Attorney called him as a witness. Smith said that during Piland's interview with the DA, he revealed information that cleared him of the original charges. Smith claimed he went to Warden Cambra requesting to reopen the investigation. He feels that Alexander and Newton know that he (Smith) did not purposely omit exculpatory information from the original investigation. He claimed he was also able to prove that the rate of assaults within Piland's unit remained consistent before and after Piland had worked the Unit. Smith identified Sergeant Charles Davis as having done the original investigation and became

aware of the information when the DA showed him a video tape of his (Piland's) testimony. Smith stated the "Union" is well aware that he took those steps and their allegations that he had done something "evil" to Piland is "a lie and they know it." Smith identified an incident where Lieutenant Miller omitted an interview of Officer Evans in the David Lewis investigation. He said that CCPOA discovered this when PBSP released the tapes of the interviews. Smith felt that if he was attempting to hide this information, he wouldn't have given them copies of the tapes. He acknowledged it was exculpatory information, but claimed it wasn't intentionally omitted and did not have an impact on the final outcome of the investigation. Smith said he believed SSU Agent Phil Bruccoleri informed him that in one of their investigations, they concluded that CCPOA was doing their own illegal investigations. Smith stated he believed that the investigation citing CCPOA as performing their own investigations of staff was contained in the SSU Agent's George Ortiz and Phil Bruccoleri March 1996 Investigation concerning the forgery of the Bacos CDC-115. Smith said that the Del Norte DA's Office has more specific information concerning Officer Deanna Freitag's previous knowledge of Garcia's behavior and claimed that information was withheld prior to the conclusion of Garcia's preliminary hearing and prior to Garcia's SPB hearing. He felt that Alexander and Newton knew that Officer Freitag collaborated at least some of the inmate information concerning the charges against Garcia and still filed their Complaint with the SPB. Smith claimed that he is in the process of initiating a law suit concerning CCPOA actions and believes that CCPOA assisted Alexander and Newton in preparing the SPB request for Adverse Action. He said that his lawyer has written CCPOA, informed them that they were being held accountable, and CCPOA has responded, "You cannot challenge us". Smith feels that CCPOA has tacitly admitted their involvement with Alexander and Newton's SPB Complaint. Smith claimed that Barbara Sheldon had told him that Carol Dobbins (SPB) said that Alexander had admitted to her that he knew his representation of the IG Report misrepresented. He said that Sheldon further told him that Carol Dobbins claimed that the SPB does not give information to the media and that the only request for production concerning their Complaint has come from Alexander and Newton. Smith stated that Alvarado also testified in a Federal case involving an inmate (Jesse Shane Castillo) who had been shot and killed at PBSP. He stated that Castillo's Attorney subpoenaed Alexander and Newton and any information they had concerning illegal or unethical IA investigations. Smith further claimed that there was an allegation by inmate Watts, that he was beat-up by IA staff after Watt's wife and mother were prosecuted for drug trafficking. He said that Newton demanded an investigation and as far as he understood, SSU was investigating that. (see Attachment K)

Interview with Correctional Lieutenant Mark Roussopoulos

Correctional Lieutenant Mark Roussopoulos was interviewed on April 30, 1997 at PBSP, and stated he began working at PBSP Investigations Unit on approximately April 2, 1995. He said that on June 22, 1995, he interviewed Officer Jose Garcia during a personnel investigation and that following that interview, Alexander made a statement to Lieutenant Miller, "Roussopoulos is out of control, I am going to get him." Roussopoulos said that from that point forward, there had been numerous attacks in the form of inflammatory language and grievances by Alexander and Newton. He acknowledged that Alexander had not made any similar comments directly to him, however. Alexander had told him on different occasions that "we" (IA) were untruthful in our investigations. Roussopoulos stated, "I can't prove it, but I seriously believe that they have impeded our investigations." He said that there was an investigation concerning Officer David Lewis, were he attempted to interview Officers Lee and Pofahl. Roussopoulos believes that he interviewed Lee first and admonished him as well as his representative (whom he believes was an

Attorney by the name of Lindsay) not to discuss the matter with anyone. He claimed that after the interview and before his interview with Pofahl, that Alexander, Newton, Lee and Pofahl all proceeded to Alexander's office where they had a conference telephone call with Lindsay. Roussopoulos believes that this occurred based on Smith informing him that Newton had told him (Smith) that "they" had discussed the first interview during a conference call in Alexander's office. He felt that whenever IA interviewed anyone with either Alexander or Newton as the representatives, staff members tended to be less than truthful or hesitant to respond. Roussopoulos acknowledged that it was nothing that he could prove, "I just know it does happen." He stated that he knew that Pofahl was less than truthful during the second interview, but he couldn't prove it, as he had no specific information or evidence. Roussopoulos indicated that his involvement with Officer Freitag concerned instructions from Warden Cambra to arrange an interview with between her and District Attorney Jim Fallman. He stated he was not to take part in the interview and contacted her via telephone to inform her that he needed to introduce her to Fallman and his investigator, Rick Barton. He stated that he offered to come to her house, to work, or whatever would be convenient for her and that Freitag voluntarily gave the information that she would be in court the following day on a personal matter and agreed to meet him at the court house. He claimed that he did not know what Freitag looked like and obtained a picture from her personnel file. Roussopoulos said that as he waited at the courthouse, he observed her and called out her name three times until she responded. He stated that they proceeded into the courtroom and pointed her out to Jim Fallman and Rick Barton and they began talking to her. Roussopoulos claimed he was not part of the interview. Roussopoulos said another incident occurred when SSU Agent Phil Bruccoleri was going to interview Freitag and he (Roussopoulos) was originally going to assist with the interview. He stated he was informed that Freitag did not want to be interviewed by him, so he was excluded from the interview. Roussopoulos further claimed that he had information from Barbara Sheldon that Freitag had approached Sergeant Robert Rice sometime in September 1996, concerning information regarding Officer Jose Garcia. He believes that Rice and Newton withheld the information until approximately December 12, 1996. He went on to state that Newton had filed a grievance dated January 13, 1997, that accusing him of conducting a "rouge" investigation. Roussopoulos stated that in the SPB Complaint, "they" implied that he had conducted the initial investigation concerning Officer Piland, which he claims is incorrect. He stated that the first investigation of Piland was conducted by Sergeant Charles Davis. Roussopoulos said that on September 29, 1995, he and Jim Fallman interviewed Piland, in which mitigating factors were raised. Roussopoulos claimed that he, along with Dan Smith, submitted a report to Warden Cambra, who ordered an inquiry into the matter. He said that Officer Piland was subsequently brought back to work from ATO and has been back to work ever since. Roussopoulos said that he was not officially advised about the SPB Complaint until after January 7, 1997. He stated that on January 5, 1997, an article appeared in the Sacramento Bee that referenced several aspects of the SPB Complaint. He feels that Alexander and Newton, as Union Representatives, obtained confidential investigative reports and shared them with the Sacramento Bee. He feels that they used information that they do not have a right to share and jeopardized the life an inmate (Bacos) as well as "attacked us as being crooked and all this other business". Roussopoulos stated that the complaint alleges that he excluded exculpatory information in the Officer Lewis investigation that was given by Officer Evans. He stated that "they" know and have been told repeatedly that he did not do the interview with Officer Evans and that Lieutenant Miller and Sergeant Franklin did. Roussopoulos said that "they" have alleged that he intentionally left out the exculpatory evidence and that "they" (Alexander and Newton) knowingly presented this false information. Roussopoulos said that

"we" did not try to hide anything, and while the exculpatory information was included in the final SSU report, the end result was exactly the same. Roussopoulos said that while he was not "real fluent" in the allegations concerning the Bacos CDC-115, that he felt that both Alexander and Newton were aware of the circumstances of the reissuing of the CDC-115 and he believed Smith told both of them. He further stated that the complaint referenced the Inspector General's Report as being critical of "us" and while he did not have a copy of the audit itself, he did point out the comments in the cover letter from the Inspector General's Office, which he did not feel as overly critical. He further stated that he could only assume that Alexander and Newton got a copy of the actual report, but if "they" did not, "they" purposely falsified the statements in their complaint to the SPB.

Interview with Correctional Lieutenant Chet Miller

On May 1, 1997, Correctional Lieutenant Chet Miller was interviewed at PBSP and stated that he was currently assigned as the Investigative Lieutenant in the IA Unit of PBSP. He stated that in approximately October 1996, he had confronted Officer Alexander concerning CCPOA defending a "self-admitted felonious criminal" (Jose Garcia). He stated that Alexander's response was "they were going to attack SSU and they were going to attack IA". Miller said he then responded "Oh it's the OJ defense, you know your client's guilty, so attack the investigators". He stated that Alexander's response was, "Yeah, that's right". Miller stated that CCPOA was very successful at eliminating certain investigators from being able to do their job because of the allegations that "they" would make. Miller stated that it appeared that Alexander and Newton were able to "wear three hats" meaning that they were either private citizen, Correctional Officer, or Union Official, depending on what met their needs. He stated that they filed their complaint with the SPB as Correctional Officers, however most of the information that they used to file their complaint they obtained as Union Officials. He further felt that the Inspector General's audit was conducted not as a course of normal business, but as a result of the Union's request and political connections in Sacramento. Miller said that, "I think there is a difference between exercising your rights as a Union and harassing people so they can not do their job effectively." He stated that Alexander and Newton were trying to harass them (IA) to the point where they would become intimidated, or so restricted that they couldn't perform their duties as Investigators. Miller stated that on March 22, 1997, an article came out in the Sacramento Bee that had direct quotes from documents that "they" (Smith, Roussopoulos, Miller, and Franklin) had previously provided to Barbara Sheldon in rebuttal. He stated that before he even got a response from the SPB that they (SPB) had received their rebuttal, it appeared in the newspaper. Miller said that the memorandum from SPB acknowledging receipt of their rebuttal to the complaint was dated two days after the article appeared in the Sacramento Bee. Miller stated that Carol Dobbins (SPB) revealed to Sergeant Franklin that the "Union" had requested copies of those documents (rebuttal) and they were given to them. Miller felt his POBR Rights had been violated because he was a Peace Officer and that his rebuttal was private, confidential information, that was submitted to a state agency and subsequently revealed to the Union and eventually to the Sacramento Bee. He said that prior to either the first or second Bee article, he had been approached by Sacramento Bee Reporter Andy Furillo and referred him to the PBSP Public Information Officer Al Deinus. Miller feels that there is an underlining message being sent to the Union Membership at PBSP that you are not to cooperate with IAU and that "they are dirty, they are rotten, they can't be trusted, that you need Union Representation every time you talk to one of those guys". He stated he viewed it as intimidation factor, that if you do not cooperate, "we're (CCPOA) going to make life miserable for them (IAU) and you". Miller felt that they (IAU) ran a "clean operation" at PBSP, that they

were "honorable," but they were "continually attacked over bullshit." He felt that the newspaper articles were part of an impeding process as well as a soap box for Alexander to get his name exposed to the public for personal reasons. Miller said that he thought he had classified the original Bacos CDC-115 as an A1. He believed that the CDC-115 then got lost and subsequently appeared after it had been reissued. Miller stated he believed he was present during the conversation between Smith and inmate Bacos when the discrepancy over his CDC-115 being classified as an A1 was brought up. Miller said that Smith agreed that inmate Bacos had a legitimate issue and would look into it. Miller stated he vaguely recalled having a conversation with Smith about reducing the CDC-115 and agreed with Smith that inmate Bacos made a legitimate point. (Before the interview proceeded, it was clarified via review of the CDC-115 that Miller did not classify the original document). Miller said that he had heard from Sergeant Franklin that while conducting an investigation of MTA Linda Brown, she had made several accusations against other staff. He stated that when Franklin requested that Brown place her allegations in writing, Alexander told her that if she did, "you're going to be labeled a rat or a snitch, one of the two." Miller believed Brown contacted Franklin and informed him of this, but had no first hand knowledge. When asked about any threats made by Alexander toward Roussopoulos, Miller said, "Well I don't know if you call it a threat or a statement." Miller claimed that Alexander had made a statement to him at one time to the effect of "you know Roussopoulos, he is out of hand and he's got to be dealt with or he's got to be put in check, or he's no good, or he's a rotten bastard, or something to that flavor." He said that he didn't remember the exact quote, but after the conversation he informed Roussopoulos, "Hey man Alexander is pissed at you and here's what up about it". He believed the statement occurred during the first Officer Lewis investigation. Miller claimed he was responsible for leaving out a mitigating statement that Officer Evans had made during the Officer Lewis investigation. He claimed that they (IAU) had also made an attempt to find out what had happened to a missing classification chrono during the investigation of Officer Lewis and the "Union" alleged that they had made no attempt. Miller said that they were unsuccessful at determining what happened to the chrono. He stated that SSU Agents had told him that this was the most vicious attack that they had ever witnessed from a Union against an IA Unit. Miller felt that Alexander and Newton's behavior was vindictive, evil, and wrong. He feels that they (CCPOA) also withheld evidence in a criminal case (Garcia) from coming forth in a timely manner. Miller further stated that he believed the copy of the tape of inmate Bacos' interview was released to the Union in error by the ERO Office. He stated that until recently, there was poor record keeping concerning the release of documents from the IA Unit to the ERO's Office and the tape was released with several other documents to the ERO office.

Interview with Correctional Sergeant Craig Franklin

Correctional Sergeant Craig Franklin was interviewed on April 30, 1997 at PBSP and stated that he was currently assigned to PBSP Investigative Service Unit. Franklin said that on January 7, 1997, he received a letter from Carol Dobbins (SPB) stating that there was an SPB action filed against him. He stated that he contacted Dobbins because the January 5, 1997, Sacramento Bee article came out prior to his notification. Franklin claimed that Dobbins informed him that her agency did not release documents to the press. He said that as he reviewed the SPB complaint, he was concerned that the transcripts were not official and there was a transcript of a tape of inmate Bacos which was not used in testimony against any Peace Officer. Franklin further stated that when the tape is compared to the transcriptions that they (CCPOA) have submitted, there are some "glaring glitches." He cited an example where the transcription utilized the term "file" where

it should have been utilizing "chrono". Franklin stated that one of the SPB allegations concerned his failure to stop Captain Smith from doing illegal activity regarding the reduction of the Bacos CDC-115. Franklin stated that the Alexander and Newton allegation concerning this incident was "absurd," as there was no statements or deals made concerning obtaining information. He believes that it was never pursued where Alexander had obtained the original Bacos CDC-115. Franklin said that along with the original and duplicate Bacos CDC-115, there was another CDC-115 that was totally unrelated to the first incident. He said that while CCPOA maintains inmate Bacos was given this subsequent CDC-115 because he did not cooperate, it was because a stabbing suspect identified inmate Bacos as pressuring him into the stabbing incident. Franklin feels that Alexander and Newton have misrepresented the issues of the Bacos CDC-115 to the SPB by misrepresenting the truth and submitting false evidence. He recalled inmate Bacos bringing up the discrepancy of the classification of the CDC 115. Franklin denied that there was anything else to the reduction of the CDC 115 classification, other than inmate Bacos had brought up a valid point. He stated that while he did not have first-hand knowledge, he believed that Alexander and Newton knew of the factual circumstances surrounding the CDC-115 prior to their SPB complaint. Franklin believes that the tapes of inmate Bacos' interviews were released to Alexander and Newton in the course of normal discovery from the ERO. He believes that the tape had no reason to be released, that it wasn't pertinent to the case, and that somebody made an error in releasing them. Franklin also stated that he believes that inmate Bacos' central file should be reviewed in order to verify that the CDC-1030s do substantiate the CDC-115. Franklin went on to say that MTA Linda Brown was investigated for over-familiarity with an inmate and during his interview with her, she revealed misconduct by other employees. He stated that he had directed MTA Brown to document here allegations concerning other staff and to inform him when she was completed with the report. He stated approximately two weeks later he contacted MTA Brown, who informed him that she had talked with Alexander, and he had told her that she shouldn't write the report. Franklin claimed that Brown further stated that Alexander told her that if she did write the report, she would be labeled a "rat" and a "snitch." Franklin said he then ordered her to complete the report and in a couple of days proceeded to her house, when MTA Brown again informed him that Alexander had directed her not to write the report. Franklin said that when he first interviewed her, her CCPOA Representative was Officer Paul Wenning. Franklin said he subsequently received the written report and generated a CDC-989 for approval, but was not aware of the outcome of the investigation. Franklin stated he recently generated a report concerning a telephone conversation he had with MTA Brown (see Attachment L). He said that Brown alleged that Alexander, Newton and Paul Wenning were filing charges against her and trying to initiate litigation to get a hold of her tapes of her interview. Franklin stated that she also mentioned a CCPOA attorney by the name of Diamond, who in her opinion was trying to intimidate her to give him the tapes. He said that Brown told him that it apparently had something to do with "PERB" and she did not know what that stood for. Franklin claimed that Brown informed him that "the bottom line here is Alexander and Newton don't represent me, the only person who represents me is Jerry Griffin." He wasn't aware of anything on the tapes that might be of significant interest to Alexander, and believed that Alexander and Newton's attempts to obtain MTA Brown's tape was "just another avenue of attack, just another attempt to submarine us" ... "trying to make something out of nothing." He stated the entire time he has been assigned to the IA Unit, that he has been under attack from CCPOA and the attack has been personal and vicious. Franklin acknowledged that Sacramento Bee Reporter Andy Furillo did contact him concerning the issues brought up by Alexander and Newton in their SPB complaint and he referred Furillo to the PBSP Public Information Officer.

Interview with Inmate Andrews (E-05374)

On June 23, 1993, inmate Andrews (E-05374) was interviewed at California Correctional Institution (CCI). Inmate Andrews recalled he was housed at PBSP from approximately March 1991 through December 1996. Inmate Andrews acknowledged he was interviewed twice at PBSP by departmental employees who were conducting an IA investigation. During the first interview, inmate Andrews claimed he was questioned about the identities of inmates whom the investigators had photographs of and what type of activities they were involved in. He stated he knew the inmates' identities but not "what they were into" and provided them to the investigators. Inmate Andrews stated the second interview was held in the SHU unit and there were five investigators present, however, he could not specifically identify any of them. He claimed this interrogation was audio and video taped and "they" had him read pre-printed materials prior to being questioned. Inmate Andrews said this written information was then positioned in front of him to refresh his memory when he gave his declaration. Inmate Andrews stated he had no first-hand knowledge of what was written but the investigators wanted him to corroborate statements given by other inmates. Inmate Andrews insinuated he was physically abused for not cooperating, however, he was very evasive on how he was injured. He did state his hands were blue and his wrists were cut from handcuffs being too tight as well as his ribs were bruised and one eye was injured. When specifically asked if he was struck or knocked down by the investigators, inmate Andrews declined to respond. Inmate Andrews said he was being escorted back to his housing unit by Officers J. McMillin and O. Tuttle when the injuries were observed by them. He said the handcuffs were subsequently adjusted and he was taken to the Clinic for a medical evaluation. Inmate Andrews stated that he was later approached by an officer who previously was assigned in A Facility 3 Block Control where he had been housed. Although he could not recall this officer's name, he readily confirmed it as Officer Haynie when mentioned by this investigator and claimed he knew him "real well." He stated that Haynie arrived at his cell front in the evening, within a day or so of the second interview, and struck up a conversation. He said that as they talked, his cell partner, inmate Jones, was standing next to the officer on the tier. Inmate Andrews claimed Haynie told him he knew what happened to him at the IA Office and insinuated it happened to another inmate who was housed in B Facility. Inmate Andrews said he was interviewed a day or two later by Captain T. Jourden, as a result of his conversation with Haynie. Inmate Andrews insisted he never told Haynie anything. He claimed Haynie said he knew he had been injured by IA staff and recommended that he not allow "them" to get away with it. Inmate Andrews insisted he has never told anyone he was slapped around or otherwise physically abused by the investigators. He claimed that Haynie also advised him that there was someone he (Haynie) trusted and asked if he (Andrews) would be willing to talk with him. Inmate Andrews said he inquired, "about what?" and Haynie replied, "about what we discussed." Inmate Andrews said he informed Haynie that he fell down and Haynie replied, "That cool, but you talk to this dude and tell him what's up." Inmate Andrews could not initially recall the person's name whom Haynie wanted him to speak to. When asked if Officer Newton was the person Haynie asked him to speak with, he believed it was but said he never spoke with Newton. Inmate Andrews stated approximately one month after the second interview with IAU, he was approached by Officer David Lewis. He said he told Lewis that his (Lewis) name had been mentioned during his (Andrews) interviews with IA investigators. Inmate Andrews claimed he also told Lewis they (IAU) was out to get him and he (Lewis) better be honest regarding his involvement.

Interview with Inmate Bacos (E-33163)

On June 25, 1997, inmate Bacos (E-33163) was interviewed at Salinas Valley State Prison (SVSP). Inmate Bacos recalled he was housed at PBSP from approximately February 1992 through September 1996. He stated that he was housed in all facilities at PBSP including Administrative Segregation (Ad Seg) and Security Housing Units (SHU). Inmate Bacos acknowledged he was in Ad Seg in 1995 for conspiracy to assault inmates; specifically, child molesters. He said the CDC-115 was issued as a Serious, Division A-1 offense, however, other involved inmates received identical CDC-115's, except they were classified as Serious, Division D offenses. Inmate Bacos said he pointed out the disparity between the CDC-115's other inmates had received and what was issued to him and the CDC-115 was then reduced to a Division D to coincide with the other inmates. He then stated the charge was eventually dismissed by Lieutenant J. Rupert, due to the confidential information being deemed unreliable. Inmate Bacos recalled the original CDC-115 he received for conspiracy to assault inmates being misplaced or lost, and subsequently reissued. He believed his investigative employee informed him of the original CDC-115 being lost. Inmate Bacos stated he received another CDC-115 for conspiracy to stab inmates. He said he was initially found guilty, however, the Classification Staff Representative (CSR), who reviewed the disposition to confirm the SHU term, had the CDC-115 dismissed. Inmate Bacos believed he still had his copy of the original CDC-115 that was issued to him but he could not recall a staff member ever asking for a copy of it. He did believe it would have been possible for a staff member to have searched his cell, obtained it, and copied it without his knowledge. Inmate Bacos recalled having a conversation with an Officer S. D'errico the day after he was released from Ad Seg for the first CDC-115 that was eventually dismissed by Lieutenant Rupert. Inmate Bacos explained it was his second day in B Facility when he came into contact with Officer S. D'errico on the yard near the canteen and believed S. D'errico was assigned to the yard gate. Although he could not recall who initiated the conversation, he claimed Officer S. D'errico asked him about his brother and if he (inmate Bacos) had been questioned about his brother, who worked on A Yard. Inmate Bacos replied that they (IAU) were investigating staff "over there" (A Yard) and he (D'errico) didn't say anything. Inmate Bacos estimated the conversation with S. D'errico lasted 20 - 30 seconds and he didn't relate any specifics of the investigation or who were possible suspects. Inmate Bacos claimed he was nervous because he feels that officers look out for each other. He stated that after he was re-housed in Ad Seg the second time, Officer Lewis (who was his Housing Unit Control Officer when he was housed on A Facility) came to his cell and commented, "Are they starting this shit again." and asked if he was "all right." Inmate Bacos stated Lewis did not appear to have a purpose to be in the SHU unit other than to speak with him. Inmate Bacos recalled that when he was released to B Facility, an officer who also worked Second Watch 1 Block as a Floor Officer in A Facility, called out to inmate Towler (D-75176), who was walking with him on the yard and both of them walked over to a gate where the officer was located. The officer then informed inmate Towler he had obtained copies of the taped interviews they had with IA and informed him he was the only one who didn't say anything. This officer then thanked inmate Towler for not disclosing any information. Although Inmate Bacos could not recall this officer's name during the interview, he was sure he would recognize it from a list of names because it was on the "tip of his tongue." He described this officer as fairly short, with a mustache, and his hair was graying.

Interview with Inmate Birman (H-63023)

On June 5, 1997, inmate Birman (H-63023) was interviewed at CSP-Sacramento. Birman acknowledged he was housed at Pelican Bay State Prison (PBSP) from approximately June or

July 1993 until November 1996. Inmate Birman recalled being interviewed by Correctional Sergeant C. Franklin in March or April 1996 concerning former Officer Jose Garcia. Inmate Birman recalled Sergeant Teda. Boyll was also present during the interview, which was held in the PBSP IAU Office and was audio recorded. Inmate Birman stated he was interviewed a second time by Lieutenant C. Miller prior to a court appearance in either June or July 1996. This interview occurred at the S & I Office in B-Facility and was not recorded. Inmate Birman characterized Lieutenant Miller as attempting to intimidate him into telling the truth, however, he claimed he did not have any knowledge of misconduct by former Officer Garcia. Inmate Birman recalled at the time of the interview with Sergeant Franklin that he was housed in B-Facility/4-Block/Cell 123. Inmate Birman said he was escorted to and from his housing unit for the interview because the institution was under lockdown. Inmate Birman stated he was escorted to the Franklin interview by Officer D'errico and upon his return, he told D'errico and "every goddam cop he saw" why he was questioned. Inmate Birman commented he was doing "Life Without," and he needs to be "friends", not enemies, with the officers. He also felt it was not a secret why he was escorted to the IAU Office, and he did not want officers to speculate if he had cooperated or not. Inmate Birman noted a couple days prior to his first interview that inmate Branscum, who he believed initiated the Garcia investigation, was transported from PBSP via special transportation. He indicated that officers then referred to him (Branscum) as "Branscum" and inmate Birman was very concerned about being ill thought of by the officers. inmate Birman said he volunteered to S. D'errico and "half the prison convicts" why he was pulled out. Specifically, he warned officers "they're under investigation," and they (IAU) are going to "question you guys." Inmate Birman later disclosed he also made this announcement to obtain favorable treatment from officers. Inmate Birman stated the next day he was summoned to the Block Office for a telephone call. He stated that Officer P. Wenning was present and overheard the telephone conversation. Although inmate Birman was positive who he was speaking with, the (unnamed) individual warned that he would be re-housed in a lock-up unit if he didn't stop discussing the previous days interview. He stated that the caller accused him damaging of the integrity of the on-going investigation. Inmate Birman claimed he asked Wenning for advice and a telephone call, so he could contact his Attorney and an Executive Producer from ABC in New York about the threat he received. Inmate Birman said Wenning commented that he could not give him advice because he was "Union" and by giving him the telephone calls, he (Wenning) was stepping outside his authority. Inmate Birman stated the second day after the interview, he was placed on the telephone again by a Block Officer. The call was from Lieutenant T. Boyll who advised him, they (IAU) "were not" sending him to SHU, but "stop talking about it". Inmate Birman said he told Lieutenant Boyll that he would, but claimed that he never did. Inmate Birman stated a few days later the lockdown was lifted and that upon his return from the yard, someone, who he speculated was an officer, scratched a smiling face and a heart onto the frosted rear cell window from the outside. He claimed that approximately one week later, someone also scraped the bottom portion of the window frosting off, which was used to obscure the view. Inmate Birman stated he had been warned by an employee, who's name he would not disclose, that S & I staff would harass him. He claimed he would not disclose the employee's name because "he" was a good person who worked the yard.

Interview with Inmate Branscum (D-80566)

On June 5, 1997, inmate Branscum (D-80566) was interviewed at Mule Creek State Prison (MCSP). Inmate Branscum stated he was housed at PBSP between February 1992 and September 1995. He recalled being interviewed by the PBSP IA Unit, along with Special Agents

from SSU, and representatives from the Del Norte County District Attorney's Office concerning Officer Jose Garcia. Inmate Branscum stated there were two or three interviews, the first two occurring in an office near the SHU, and the third, which he later described as an informal discussion, was in the SHU when he was being locked up. Inmate Branscum related that after the first interview he was escorted, via a van, back to his general population housing unit in B Facility. Although he could not recall who escorted him, inmate Branscum did remember riding in the back of the van with Officer J. Dagenais, which made him uncomfortable. Inmate Branscum explained he was aware Dagenais was a good friend of Officer Garcia and Dagenais appeared to be looking at him. Inmate Branscum said that immediately after he returned to B Facility, he made eye contact with Officer M. Freeman. Inmate Branscum then demonstrated what appeared to be a wide-eyed glare that Officer Freeman apparently made towards him. Inmate Branscum stated he interpreted Officer Freeman's body language as a statement for him to keep his mouth shut. Inmate Branscum said returned to the same IAU office and provided a video-taped interview, either one or two days after the first interrogation. He claimed that stated no staff member questioned him about his involvement in the Garcia investigation between the first and second interviews. Inmate Branscum believed he was returned to his general population housing unit after the second time he was interviewed. He believes he was then called back a third time the next day. Inmate Branscum stated that on this occasion, his safety concerns were discussed and it was decided he would be housed overnight in an SHU, and transferred to CSP-SAC via special transportation, the next day. He did not recall if he had a conversation with Officer Freeman between the first interview and when he was transferred to CSP-SAC. Inmate Branscum felt that he possibly had, but couldn't remember. When asked if any other employees questioned him on the content of his interviews with IAU, he could not recall. Inmate Branscum did recall, possibly after the first interview, approaching Officer Freeman, due to his (Freeman's) knowledge of where he had been. Inmate Branscum explained that he was nervous and felt the need to have to explain why he had been interviewed. He said that after returning from the first interview and passing Officer Freeman, he returned to Freeman's location to walk. Inmate Branscum could not recall if he voluntarily returned and spoke to Freeman or if he was summoned. He claimed he told Freeman he "didn't say nothing," but could not recall informing him that the investigators had offered transfers in exchange for testimony. Inmate Branscum believes Officer Freeman reacted in a manner which made him feel compelled to explain more, or lie to him more. Inmate Branscum said he "felt he was in a cross and had to play both sides." He then recalled informing Freeman that the investigator had offered him a transfer and he wasn't accepting it. Inmate Branscum further recalled that Freeman asked specific questions about where the interview occurred. Inmate Branscum said he described the room having a wooden cabinet, and on the inside of one of the cabinet doors was a list of names. Inmate Branscum claimed that the interrogators had advised him that he was not the only inmate they were talking to, and then opened this cabinet door which briefly revealed a list of names that included inmate Billy Boyd (# Unknown) and a few others, before then immediately closing it.

Interview with Inmate Bui (H-64261)

On July 23, 1997, inmate Bui (H-64261) was interviewed at High Desert State Prison (HDSP). Bui stated he was housed at Pelican Bay State Prison (PBSP) from October 1995, until May 5, 1996. He acknowledged being a porter in the Facility-B Medical Clinic, where Officer Roy Alvarado was his immediate supervisor for approximately the last two months of his assignment. Bui stated he had heard "from a few Officers" that Officer Alvarado was having some sort of difficulty with management. Inmate Bui recalled Alvarado made a statement to him that "they" (S

& I) were watching him. Inmate Bui said Alvarado told him, "if he is doing anything wrong, let him know, if not, stay cool, because he has a law suit." Inmate Bui said that Alvarado expressed concern and thought S&I might focus on him (Bui) because of his (Alvarado) pending litigation against the PBSP Administration. Inmate Bui claims that Alvarado indicated S&I might attempt to apprehend him (Bui) for misconduct, with the intent to make him (Alvarado) look bad. Bui also recalled he had overheard a conversation from three second watch officers standing outside the B Facility Program Office. He claimed the officers discussed that he was being watched by S&I. Inmate Bui believed that when these officers were conversing, they intended for him to overhear their conversation. Inmate Bui related he was charged approximately three weeks after Alvarado had warned him and was subsequently convicted for drug trafficking. He stated this matter involved his wife bringing in contraband to their family visit. Inmate Bui claimed that he was "set up" by S&I staff and another inmate. Inmate Bui stated his counsel initially subpoenaed two correctional officers to testify on his behalf at his criminal trial. However, inmate Bui said his attorney reported to him that Officer Monroe Freeman claimed inmate Bui told to him (Freeman), that he knew of his wife's plan to smuggle contraband into the institution. Inmate Bui stated that Freeman was released from his subpoena and this left Officer Alvarado as his only staff witness. Inmate Bui recalled when Officer Alvarado testified, the jury was excluded from the Court Room because the judge determined the subject matter was not relevant to the trial. Inmate Bui stated he did not have the opportunity to talk to Alvarado between the time he was placed in Ad Seg and his criminal trial. Inmate Bui stated that in addition to S&I staff, four other officers talked to him on the circumstances surrounding his Ad Seg placement. He could only recall Freeman, however, inmate Bui claimed Freeman came to his cell after receiving a "Request for Interview" he had sent. After inmate Bui explained the matter, Freeman directed him to contact the IA Unit. Inmate Bui described one of the other officers as the regular Visiting Room Desk Officer, and the other two as Ad Seg Block Officers. Inmate Bui claimed Alvarado's testimony was solicited due to his (Alvarado's) previous statements that S&I might be after him to indirectly get back at Alvarado for filing a law suit.

Interview with Inmate Jones (D-57393)

On July 10, 1997, inmate Jones (D-57393) was interviewed at Pelican Bay State Prison. Inmate Jones acknowledged he was previously housed with inmate Andrews at PBSP between November 1994, until sometime in 1995. He recalled they were housed in 2 Block C Section and 1 Block cell 211 in January 1996. Inmate Jones stated while he and inmate Andrews were celled together, inmate Andrews confided in him about being accused of "pressuring inmates on the yard and stuff like that." Sometime after they were released from Ad Seg in November 1995, inmate Andrews was escorted from the yard by S&I. Inmate Jones related when he returned approximately one hour later he observed "bruises" on inmate Andrews' rib and facial areas. Inmate Andrews informed him that while he was in handcuffs, he was struck by a sergeant, in the ribs. Inmate Jones couldn't recall how inmate Andrews told him the eye injury was inflicted. Inmate Jones initially did not recall overhearing inmate Andrews informing other individuals about how he received his injuries. When questioned about overhearing discussions inmate Andrews might have had with officers at the cell door, inmate Jones acknowledged that it wasn't uncommon. Inmate Jones recalled inmate Andrews spoke to more than one officer at the cell door about being injured. He believed some of the officers initiated the conversations regarding the injuries inmate Andrews sustained. Inmate Jones could not be specific about these officers' identities, which watch they worked, or any other distinguishing characteristics, except they were all white males.

Interview with Inmate Leach (B-50632)

Inmate Leach (B-50632) refused to be interviewed on June 24, 1997, at Calipatria State Prison.

Interview with Inmate Phillips (C-28340)

On June 19, 1997, inmate Phillips (C-28340) was interviewed at Pelican Bay State Prison (PBSP) regarding the contents of a memorandum authored by Officer Gina Coffman dated October 25, 1995. Inmate Phillips acknowledged he was interrogated by five IA investigators, but could only recall Captain Dan Smith, who appeared to be in charge. Inmate Phillips stated the focus of the interview was a homicide, "some incidents...about cops," and indicated that an offer of a transfer in exchange for his cooperation was made. He claimed he did not have the information the investigators were requesting and was then threatened with Ad Seg placement. Inmate Phillips said he was released from the interview and allowed to return to his cell. In route to his housing unit, inmate Phillips claimed he was ignored by employees who would have normally acknowledged him. Inmate Phillips said this concerned him because of the content of the interview. Inmate Phillips then insinuated that he may have had information the investigators wanted, but was fearful of retaliation. He recalled being escorted from his block to a holding cell by the Third Watch Housing Unit officers and from that location, S & E officers escorted him to Ad Seg. Inmate Phillips believed these were the only officers he made his comments about the interview. Inmate Phillips recalled another attempt to interview him was made approximately three days prior to his release from Ad Seg and he again did not cooperate. Inmate Phillips acknowledged knowing Officer Coffman and that she previously supervised him when he was assigned to the yard crew. Inmate Phillips remembered briefly talking to her when he was being escorted to the first interview, however, he was adamant she would have been off duty by the time he was returned to his housing unit. Inmate Phillips claimed that the only individuals he spoke to regarding the first interview were the S&E officers who took him to Ad Seg.

On July 30, 1997, inmate Phillips was re-interviewed at PBSP. Inmate Phillips was questioned about a conversation he had with Officers Newton and Gina Coffman after his interview of June 19, 1997. Inmate Phillips appeared to be very hesitant to divulge what he had discussed with Officer Newton. He described approaching Officer Newton on his way to his assignment and informed Newton that "people came and talked to me." He said Newton responded "they" have talked to a lot of individuals, but the both of them couldn't discuss it. Inmate Phillips stated that since Newton and he had previously discussed his first PBSP IA interview, he wanted to tell Newton that he had been unaware that "officers" had documented previous discussions with him. Inmate Phillips was evasive about why he identified these investigators as the "FBI" to Newton. He acknowledged recalling one of us as a Lieutenant from "Folsom," but did not specifically recall our names when approaching Newton. Inmate Phillips denied informing Newton that he lied during the June 19, 1997, interview. He claimed he could not recall the timeframes of when he was in Ad Seg because he was nervous. Inmate Phillips stated that he had also talked to Officer Gina Coffman since the June 19, 1997 interview, and claimed she told him, "just tell the truth." He then acknowledged that he did not disclose, during his June 19, 1997 interview, the details of Officer Coffman's and his conversations after he was released from Ad Seg. Inmate Phillips then elaborated on a conversation he had with Coffman regarding the line of questioning the PBSP investigators had pursued with him and that it had occurred approximately three months after being interrogated.

Interview with Inmate Simpson (H-57939)

On July 28, 1997, Inmate Simpson (H-57939) was interviewed at California Correctional Center (CCC). Simpson stated he was at Pelican Bay State Prison (PBSP) from 1994 through September 1996. He acknowledged surrendering an inmate-manufactured weapon made from belt buckles to his work supervisor, Officer Dagenais, when he was housed in Facility B in approximately July 1996. Simpson stated that although he was very familiar with Officer J. McMillin, he could not recall if he was involved in the surrendering of this weapon. Simpson related he informed Officer Dagenais of his knowledge of an uncontrolled weapon. He claimed Dagenais inquired where the weapon was located, but he (Simpson) declined to inform him. Simpson explained it would have "fronted him off" if staff would have immediately went and confiscated the weapon. Simpson said he informed Dagenais that he would bring the weapon to him the following day before other inmates accessed the yard. The next morning he went to the weapon's location, removed its handle, placed it in a bag and into his rear pocket, and then went to Dagenais' office. Simpson claimed he later learned from Dagenais that Union representatives were questioning the appropriateness of him relinquishing the weapon. He further volunteered that he did not trust the majority of officers at PBSP but had previously disclosed to Dagenais the location of a razor blade that had been used to slash an inmate.

Interview with Inmate Towler (D-75176)

On July 24, 1997, inmate Towler (D-75176), was interviewed at Sierra Conservation Center (SCC). Inmate Towler stated he was housed at Pelican Bay State Prison (PBSP) from 1993 to 1996. He recalled being interviewed by IA investigators and re-housed in Ad Seg the same day (9/19/95). He said he was subsequently released to Facility B, general population, on November 21, 1995. Inmate Towler recalled being approached in Facility A, handcuffed and escorted to an interrogation without anyone informing him on what was occurring. Initially inmate Towler believed he was being escorted directly to lock-up, but ended up at an office complex where a Lieutenant from PBSP interviewed him. He described several individuals present, but wasn't sure of the identities. Inmate Towler believes his interview lasted twenty to thirty minutes and concerned his alleged involvement regarding Officers supplying him information from inmates' central files. He said he eventually received a Rules Violation Report but it was subsequently dismissed. Inmate Towler stated he was the Facility A1 Block Porter and that A-Section was mainline, B-Section was SHU kickouts, and C-Section was a mixture of inmates with special housing needs and mental problems. Inmate Towler admitted to advising an inmate who was housed in the block not to ask him for anything because they both "knew what he was about." Inmate Towler acknowledged he was implying the inmate was a child molester. He stated later on in the day an Officer asked him if he "was looking to get into a wreck?" and warned to "stay away from all them guys." Inmate Towler expressed it was his belief that this inmate complained about his comment and this led to his interview. Inmate Towler was asked if he recalled talking to some of his previous housing officers from A-Yard after being released to B-Yard. He recalled observing two, one of which was Officer Milar Piland. Inmate Towler said he did not recall Piland complimenting him as being the only inmate who did not reveal information to the IA Investigators.

Interview with Correctional Officer Deanna L. Freitag

Correctional Officer Deanna L. Freitag was interviewed on June 26, 1997, in her attorney's office in West Sacramento. Freitag claimed she has discussed her knowledge of former Officer Jose Garcia activities with SSU Agent Alan Addison, Departmental Legal Counsel Barbara Sheldon,

the Del Norte County District Attorney's Office, and most recently PBSP IA Captain Charles Carraway. Freitag denied that she had ever talked to Officer Alexander or Sergeant Robert Rice about Garcia's behavior, however, she said she does know that they are aware of it now. She stated her conversation with Carraway resulted from a memorandum she wrote to Warden Cambra dated May 19, 1997. A few days later she was called to Carraway's office where she discussed information she possessed concerning Garcia, information she possessed concerning Lieutenant Teda Boyll, break-ins at her house, someone accessing her mail, hang-up calls at her home, and that she didn't want to work first watch and leave her children home alone. Freitag said she believed she talked to Deputy DA James Fallman on two occasions and on one occasion to DA William Cornell II, concerning the lack of response to her burglary reports which subsequently resulted in a discussion about Garcia's behavior. Freitag claimed she did not talk to anyone else at PBSP about Jose Garcia. She said on or about January 5, 1997, she was ordered to a motel room by SSU Agent Bruccoleri to discuss Alexander and Newton. She said she informed Bruccoleri that she thought the interview was to be about Garcia. Freitag said she approached Warden Cambra on January 7, 1997, about being ordered to the motel room and she believes that Cambra apparently "quashed" the interview which had been scheduled for January 8, 1997. She said Cambra informed her that he would call Brian Parry whom she did recall talking to about Garcia. Freitag stated that Deputy DA Fallman had violated her civil rights when he told her that if she had left the Building during Garcia's preliminary hearing, she would be arrested. She said Fallman also would not allow her an attorney and she was given a one-hour subpoena. She claimed she was held in a room and was not allowed to be released until she gave a statement. Freitag stated she also recalled telling Cambra that she had dated Garcia and that she had knowledge that he had acted inappropriately. She said Cambra informed her that it was not an institution issue anymore and if the DA wanted information they would contact her. Freitag claimed she talked to a Sergeant Robert McNeil, during approximately August 1995 while at CVSP, who referred her to Charles Alexander. Freitag said she informed McNeil that Garcia had been investigated and had taken alcohol into the institution for inmates, that his supervisor had allowed it, and apparently been walked off the grounds. She stated she recalled McNeil telling her to wait until she got to PBSP, although McNeil did acknowledge that her information was unusual. Freitag stated when she first reported to PBSP, she called several phone numbers in the "Union time book," telling them "I may have information that would be valid." She stated that she had called the phone numbers listed in the CCPOA time book in which she termed the "Employee Relations Office," but didn't remember who she talked to. She said she was told by these "agencies" that it was not an issue unless they contacted me. Freitag said she believed there was a crime committed, that she needed to divulge some of this information to relieve herself of any liability as a correctional officer, and that the Warden need to be informed. She claimed she was personally concerned about Garcia and in September 1996, Garcia had made a "statement", in a Brookings Pilot newspaper advertisement for his judo classes, that he was coming back to work. Freitag said that she didn't want to meet Garcia on the tier because of the information he had divulged to her. She believed that he (Garcia) had been fired and went to Officer Rick Newton to find out if he had been hired back. Freitag said she and Newton discussed her concerns and he informed her that she would have to have some "guidance". She said that she told Newton that she had dated Garcia, that she had some information that she thought would be "valid," but claimed that she "really didn't tell Newton anything" other than what Garcia had told her about his work environment. She said Newton eventually got a hold of Cambra, who had been absent from the institution and believed that approximately December 19, 1996, she eventually talked to Cambra about Garcia. She also recalled informing Associate Warden Joe

McGrath prior to talking to Cambra. Freitag said she recalled talking to Sergeant Rice in September 1996 at Sutter Coast Hospital about Lieutenant Boyll, but claimed she didn't tell Rice about Garcia's activities. She said Rice referred her to Officer Newton, saying he could tell her what she should do. Freitag maintained that she didn't know what charges were pending against Garcia. When confronted about her report dated January 20, 1997, which states in part, "I begin to understand the value of the information Garcia had told me and I saw the supervisor who referred me to Richard Newton who assisted me in reporting to Cambra." Freitag stated "I don't recall. I did not tell him (Rice) any information about Garcia,"... "I never said I told Rice anything about Garcia." She claimed she didn't know Sergeant Rice, and wasn't going to divulge anything to him. Freitag further claimed that she had to get to know Newton "by reputation" before she eventually divulged the information she possessed about Garcia to him. When asked why she had no problem going to Rice about Teda Boyll, she claimed that she was not aware Garcia's behavior was misconduct until she actually worked "at the place." When asked if she didn't understand that bringing in alcohol to inmates was inappropriate, she claimed that Garcia told her that his supervisor had told him to do it and it was connected to an investigation. Freitag stated that she didn't think it was right, but she didn't know what PBSP's policy was on it. When informed that it was Departmental policy, she replied, "Why would his supervisor allow him to do it?" Freitag stated she didn't report "a lot of things" Garcia had said because she didn't believe him. She claimed her report is accurate to the best of her knowledge, however, she may not have "expressed it in a clear manner," and she will assist CDC in any matter possible. When asked again if she had informed Rice about Garcia's behavior, she then stated, "I don't recall." Freitag said she had never had any intention of telling "excessive" people anything about Garcia and she didn't believe she told Rice anything. She then stated that if Rice were to tell her that she had told him about Garcia, then she would believe him. When asked again if she had informed Rice about Garcia, she stated, "If I say no, then I could be lying, I don't recall." When asked again about her divulging information about Garcia to Rice, she stated, "Maybe I did, I don't recall, I could have talked to Rice about many things." Freitag said she met Garcia shortly after he began working at PBSP. She lived in the same a town where his family resided, and moved to Crescent City prior to her employment with CDC. She took judo classes with Garcia, and recalled him telling stories about things happening at PBSP, and she became interested in CDC. Freitag said Garcia later got divorced and she talked "a lot" with him when she was assigned to the Academy and later to CVSP. She said that Garcia told her about several things that went on at work between approximately July 1994 through December 1995, and they had frequent phone conversations where he divulged "a lot of information." Freitag stated she was aware of Garcia's behavior when she transferred to PBSP, but he was gone when she arrived. She recalled telling Newton about Garcia's behavior during the month of October 1996. Freitag stated Newton got back to her a week later and she then discussed with Newton her information concerning Teda Boyll. When read an excerpt from her transcript of her interview of January 1997, "I tried to tell as many people as I could," Freitag stated, "If there's proof that I did, I won't deny it. I can't specifically recall." When asked specifically what did she originally tell Newton, she initially responded, "I don't recall," but then stated that she told him (Newton), "I dated the guy," he talked about hitting child molesters, bringing in "the alcohol" for the inmates, saying he would kill a child molester if he had the opportunity, and that he offered to "hit my husband." She said Newton told her that he wanted to direct her to the Warden and that she couldn't go to S&I with the information. Freitag said that Newton told her that she should document it and that he would be contacting the Warden on her behalf. She stated that she didn't meet with Newton until "quite a bit later," but called him occasionally which she estimated to be approximately every week.

Freitag said she eventually met with Warden Cambra on December 19, 1996, and subsequently met with Deputy D. A. Fallman on December 20, 1996, and December 27, 1996. She stated that during this time period, Lieutenant Roussopoulos had called her and wanted to interview her at home or at the institution. Freitag claimed she had not received 24-hour notice and the Warden had not authorized the investigation, requirements that she became aware of after she had called Newton, immediately following Roussopoulos' phone call. Freitag initially stated that she did not talk to Alexander about Garcia's misconduct, but later recanted and stated that she didn't recall if she had talked to Alexander. Freitag initially said she didn't recall if she had discussed her reports with Newton and denied that anyone has approached her concerning her information about Garcia other than who she has already disclosed. She also stated that no one has approached her concerning her conversation with Sergeant Rice. Freitag said Rice did call her within the last week and said he was "checking in" on her. She said that Rice told her if she had not written her report on Garcia, then she should write it now. Freitag said he didn't know if she had written it or not; however, she claimed Rice acknowledged that he was aware of the issue concerning Garcia at the time. She claimed she offered Rice a copy of her report and he replied that he wanted to check on it first, and subsequently declined. She later changed her testimony and stated that Rice's telephone conversation concerned Boyll, and not Garcia, and then didn't recall if Rice mentioned a name or not. When asked if anyone is trying to influence her testimony concerning Garcia, she stated that she felt that someone was trying to influence her in some manner "about something" by breaking into her house. Freitag said she didn't recall giving Newton additional information, but did give him the report dated January 20, 1997. Freitag then recanted and claimed she didn't recall if Newton had accepted any of the reports from her. She acknowledged that Newton helped her write the reports, but later recanted stating, "I don't recall." She did recall an incident a couple of weeks after she first talked to Newton, in which they met in the general population visiting room, and went over an initial draft of her report. She stated that he had made some recommendations concerning "extrapolating" some information. Freitag said no one has tried to influence her testimony on Garcia. Freitag did recall that Newton once told her not to send a "nasty" note to Cambra about receiving phone calls at her home from work, as she would be "kicking the devil in the butt." Freitag acknowledged that Newton did tell her that CCPOA was representing Garcia, and that there might be a conflict of interest, sometime after they had talked to Warden Cambra. She admitted that this was after she had confided in him with her information about Garcia, after he had helped her write her report (suggesting that she remove some information), and after she had given him a copy of her report. (see Attachments M and N)

Interview With Correctional Officer Les Sprouse

Correctional Officer Les Sprouse was interviewed on July 31, 1997 at PBSP, and stated that on October 26, 1996 he was assigned to the Sutter Coast Hospital with Sergeant Robert Rice and Officer Deanna Freitag. He stated that the shift was third watch and recalled it being the only time that he ever worked with both the individuals together. Sprouse described his shift as being normal, but he did recall Officer Freitag talking to Sergeant Rice and overheard Freitag mention Officer Garcia's name. He said, "Garcia was brought up with something that happened in the past." Sprouse stated he didn't recall anything specific, but described the conversation about Garcia concerned "general stuff, stuff I've hear before." When asked if Freitag had brought up any issues concerning overfamiliarity, he said it "kind of rang a bell." Sprouse stated he recalled a comment Rice made, but not specifically who was being discussed or what the overfamiliarity actually was, but did recall it being a "past" issue. He did recall a sexual innuendo being made by Freitag and that Rice had said something back to her. Sprouse said they both looked at him and

he determined he wasn't going to participate in the conversation and walked away. He stated the sexual innuendo did not concern Officer Garcia. Sprouse claimed that no one has approached him or attempted to influence his testimony since this incident occurred.

Interview with Correctional Sergeant Robert S. Rice

Correctional Sergeant Robert S. Rice was interviewed on June 20, 1997 at PBSP, and stated that he knew Officer Deanna Freitag but did not regularly supervise her. He said that Officer Freitag approached him on or about October 26, 1996, at Sutter Coast Hospital during a third watch shift and informed him of an incident that she had observed concerning Lieutenant Teda Boyll. He stated that the conversation lasted approximately five minutes and did not recall anyone else involved in the conversation, however, he believed Officer Jimmy D. Moore was in the area and possibly one inmate. He said that Freitag told him she had a concern that she had spoken to with other supervisors regarding what she had observed with Lieutenant Boyll and that she felt that he could possibly help her. He stated that Freitag informed him that she was working D6 earlier in the summer when Lieutenant Boyll had approached her in her unit and asked her to accompany her to D9. Rice said Freitag told him she observed Boyll approach an inmate's cell and begin discussing his pending release and that she would make him dinner upon his parole. He said Freitag also claimed Boyll talked to the inmate about pending 115's, that she would hearing the 115's, and then were laughing during the conversation. Rice stated that Freitag claimed Boyll was standing close to the cell door but did not recall Freitag reporting any physical contact or sexual behavior between Boyll and the inmate. He stated that Freitag reported that Boyll's actions made her feel uncomfortable as the inmate was "recklessly eyeballing" Boyll during the conversation. Rice said he stopped the conversation with Freitag as he was not sure what to do or where to go forward with the information. He stated that he informed her that she needed to go to an EEO counselor because of Boyll's family connection with Captain Smith and the possible ramifications of that. Rice said he then referred Freitag to Newton in order to guide her through the EEO complaint process. Rice said that he was initially concerned why Boyll would take Freitag from one unit to another and also felt that there may be an issue of overfamiliarity between Boyll and the inmate, but claimed it was not clear to him. Rice said he did not pursue Freitag's information enough to get a clear picture in his mind to determine overfamiliarity and that is why he stopped her during the conversation and gave her the directions he gave. He admitted that he did not report the conversation with Freitag to any supervisor, either verbally or in writing. Rice acknowledged that he did receive training concerning the Equal Employment Opportunity process during Basic Supervision training at the Academy, but he considered the training very basic. Rice acknowledged that in reflecting on his handling of the incident, he should have requested a written report from Freitag and submitted the information to his supervisor. He stated that he had general conversation with Freitag the remainder of the shift and denied that Freitag discussed anything about the Garcia case while at the hospital. Rice claimed that he did discuss Garcia with Freitag on another work assignment, but claimed the conversation was about mutual acquaintances and nothing about her knowledge of his conduct. Rice denied that Freitag had ever told him about her knowledge of misconduct or criminal behavior by Garcia. He stated that he informed Newton that "someone" would be talking to him about an EEO complaint but did not give any details when he informed him. Rice stated that approximately three weeks later, Newton called and asked him, "Why are you sending me this missile?" Rice claimed that he told Newton that he thought it was a possible EEO complaint or a possible conduct complaint when Newton stated, "What the hell are you talking about?" and informed Rice that Freitag possessed information on Garcia's misconduct and possible unlawful behavior. Rice recalled that Newton told him that the

unlawful behavior pertained to conversations Freitag and Garcia had, but could not recall any specific criminal acts that were divulged by Newton. He said Newton informed him that he (Newton) had to proceed forward to the PBSP administration with Freitag and present her as a State witness. Rice acknowledged that he did not generate any documents or inform his supervisors of any of this information. He stated that he was aware that Newton eventually contacted Warden Cambra with the information. Rice believed that Newton had attempted within a few days to contact Cambra via Associate Warden Joe McGrath, but that Cambra was on vacation and it took several days for him to eventually make contact.

Interview with Correctional Officer Steven E. Lee

Correctional Officer Steven E. Lee was interviewed on July 9, 1997, at PBSP. He recalled that on or about November 14, 1995, he was interviewed in the PBSP IA Office by Lieutenant Roussopoulos and Sergeant Franklin concerning misconduct by Officer Jose Garcia. Lee said that when he was first noticed for the interview, he notified Officer Alexander, requesting representation. He stated that he believes a few days before the interview he discovered that Alexander and Newton were excluded from participating in the interviews due to what he understood to be the severity of the charges. He recalled a few days before the interview he talked to CCPOA attorney Dan Lindsay, who was the representative arranged by Alexander and Newton. Lee stated that on the day of the interview, Lindsay didn't show up because he had been fogged in, and represented them via a speaker phone during the interview. He recalled the interview lasting approximately one half hour and when it was concluded, he went home. Lee stated that he was advised by Lindsay not to speak to anyone about his interview, that it was confidential. He recalled that he spoke briefly with Alexander and Newton outside the IA office before he left for home, but denied that he discussed the case factors of his interview. Lee recalled other people being around but didn't remember any names or anyone asking him about his interview. He stated that Alexander and Newton just wanted to know if he was okay, he told them he was and he left for home. Initially, Lee didn't recall talking to Lindsay after the (11/14/95) interview, but later remembered speaking to Lindsay shortly after the interview on what he believes was Alexander's phone extension. Lee didn't recall if he had called Lindsay or Lindsay had called him, but Lee stated the conversation was brief, and he believed lasted approximately five minutes. He stated no one else was in the room and that the phone call was a "confidential" phone call between himself and his attorney. Lee stated that he didn't recall seeing Officer Pofahl before, during, or immediately after the interview either in the IA Office, in the patio area, or in Alexander's office. Lee denied that anyone has approached him concerning the events after his IA interview or pending his interview today. Lee also denied that anyone contacted him concerning the "confidentiality" of the conversation between himself and Lindsay. Lee stated that he had originally approached Gerald Griffin for representation for today's interview and denied Griffin or anyone else attempted to rehearse his testimony concerning this interview. When Lee was shown the telephone records indicating that his telephone call immediately after his interview lasted approximately 17 minutes, Lee said he recalled the conversation being brief, but that it could have lasted for the 17 minutes. Lee was adamant that no one else was in the room, that the door was closed during the telephone conversation, and no one else was listening to the conversation that he knew of. Lee further denied that Pofahl, Alexander, or Newton were in the room at any time during his conversation with Lindsay. NOTE: Shortly after this interview was concluded, Lee and his representative requested to go back on tape to clarify some particular issues. Lee stated that during the actual interview in the IA office, Lindsay had wanted to talk to him following the interview. Lee recalled leaving the IA

office and proceeding to Alexander, who led him to his own office. Lee stated that Alexander showed him how to utilize the phone and left the room. He claimed he dialed the number, talked to his attorney, and terminated the call himself before leaving the office. Lee did remember observing Alexander and Newton out in the patio area prior to leaving the institution for home.

Interview with Correctional Officer Jimmie W. Pofahl

Correctional Officer Jimmie Pofahl was interviewed on July 11, 1997 at PBSP, and stated he recalled being interviewed on one occasion concerning the investigation of Officer Jose Garcia on or about November 14, 1995. He stated that didn't remember the time of day but did recall that it occurred in the afternoon and the interview lasted approximately one hour. He said that the interview took place in the PBSP IA Office and was conducted by Lieutenant Roussopoulos and Sergeant Franklin. Pofahl stated that he was represented by a lawyer from Sacramento who participated in the interview over the speaker phone. Pofahl stated that he was on his RDO and went straight to Alexander's office when he reported to work, informing him that he was there. He stated that Alexander explained to him that there would be a conference call with a lawyer during the interview. Pofahl didn't recall if he had talked to his lawyer immediately prior to the interview, but believed that he talked to him a couple of days before. He stated that he knows Officer Lee but didn't recall seeing him at all during that day. Pofahl denied that anyone discussed or informed him what took place during Officer Lee's interview and claimed he walked into the interview "cold." Pofahl didn't recall Newton being present and didn't remember if he had taped his interview. Pofahl stated that after the interview, he proceeded to Alexander's office and Alexander proceeded to get the lawyer on the phone and left the office. He stated he had a phone call that lasted approximately two to three minutes with the lawyer. While Pofahl recalled speaking briefly with Alexander prior to the interview, he denied that any conference call took place in Alexander's office with Officer Lee, the lawyer, and Alexander. Pofahl denied that anyone has talked to him about the events of November 14, 1995 or attempted to influence his testimony prior to today's interview.

Interview with Correctional Officer James S. Blaise

Correctional Officer James S. Blaise was interviewed on July 10, 1997 at PBSP, and stated that he did know Officer Dave Lewis, however, he was not interviewed during Lewis' IA investigation or SPB hearing. Blaise stated he also knew Officer David Collver and considered him a good friend who he worked with periodically. Blaise recalled a conversation either by phone or in person which Collver had relayed to him that Lewis had been fired. He believed Collver was telling him that he (Collver) had testified and the hearing had already taken place. Blaise stated that he didn't recall talking to Collver prior to his testimony and did not have knowledge of when the SPB hearing took place. Blaise claimed he told Collver that if half the things he (Collver) had told him about Lewis were true, it's about time somebody had stood up and told the truth. Blaise didn't recall anybody else being present during this conversation, but acknowledged that he did ask Collver if he was afraid or worried of the "code of silence." He said Collver said no, that the only code he had was the code with God and Blaise said that he supported that. Blaise stated that he also told Collver that as long as he was "telling the truth, you're okay." He stated that Collver never mentioned to him that anyone was trying to influence his testimony concerning his knowledge of Officer Lewis. Blaise denied that he was trying to influence Collver, and denied that Collver had talked to him about this investigation.

Interview with Correctional Officer Gina Coffman

Correctional Officer Gina Coffman was interviewed on June 19, 1997 at PBSP and recalled an incident on October 24, 1995, when inmate Phillips came walking on to the B Facility Yard from the S&I area by himself. She stated that Phillips caught her attention and appeared upset as he approached her in front of the hobby store. She stated she asked him what was going on and she said that Inmate Phillips said he thought he was being set-up and made a comment that "they" were wanting him to role over on staff and tell things that weren't true. Coffman stated she talked for a "little bit", and tried to get Inmate Phillips to go into detail, but claimed he would not. She recalled that Inmate Phillips was worried about getting "rolled-up" over his interview with S&I Staff. Inmate Phillips subsequently left and she (Coffman) believes that he proceeded onto the yard. Coffman stated that approximately 30 to 40 minutes later Lieutenant Wootrin instructed her to prepare a 114D, placing Inmate Phillips in Ad Seg. She denied talking to Inmate Phillips after the conversation. Coffman believes that she told her immediate supervisor Sergeant Joe Pena on the same day of the conversation, but claimed her information did not appear to "hit home" with Pena. She didn't recall Pena instructing her to write a report, but she felt compelled to do so. (see Attachment K) She stated, "a lot of stuff was going on with IA" and that she wanted to "cover her butt, and to let someone else know about the conversation." Coffman stated it wasn't unusual for Inmates to make such allegations, however she felt that in Inmate Phillips case, it was unusual based on his experience as a convict. She believed that she may have said something about the conversation to Officer Sal D'errico, however, she later recanted and denied that she talked to him. Other than recalling her conversation with Pena, she claimed that no one else had since approached her concerning her conversation with Inmate Phillips, nor has anyone requested a copy of her report.

Correctional Officer Gina Coffman was re-interviewed on July 29, 1997 at PBSP, and stated that she recalled physically giving her report to Pena while he was in his office in B Facility. She remembered it being the morning after her conversation with Inmate Phillips and recalled Pena reviewing the report and saying, "Okay," however, he didn't say anything else or act overly concerned about the information in the memorandum. She stated that she didn't know what Pena did with the report, nor did he tell her to talk to anyone else about the information, and that no one has talked to her until this investigation. When asked if she recalled any witnesses to her conversation with Inmate Phillips, she stated that she did recall Sergeant Wootrin being present immediately after she had talked to Inmate Phillips, questioning her about the CDC 114D, but didn't remember him being there during the conversation. Coffman stated that Inmate Phillips had approached her again approximately a week ago, telling her about him being interviewed by this investigator and stating that he didn't want to get her involved. She said she told Inmate Phillips not to worry about it, he told her what he had told her, and she had documented it. Coffman said she also informed him that she wasn't supposed to be talking to him about the investigation. She recalled Inmate Phillips saying that he had been put up for transfer, but he had heard that the transfer was going to be "squashed." Coffman said she wasn't aware if that was in fact true because she has not seen or talked to Inmate Phillips since.

Interview with Correctional Officer David J. Collver

On June 19, 1997, Correctional Officer David J. Collver was interviewed at PBSP and stated that he was first interviewed concerning the Officer David Lewis IA Investigation in late November or early December 1995, by Lieutenant Roussopoulos, Lieutenant Chester Miller and Sergeant Craig Franklin. He stated the interview lasted approximately one hour and he chose not to have representation. Collver denied that he ever approached Lieutenant Miller wanting to be re-

interviewed a second time. He stated the interview concerned incidents of Officer David Lewis being verbally abusive at him on the work place in early 1995. Collver claimed that he had reported Lewis' behavior to his supervisors, both verbally and in writing, although he could not recall who the supervisor was. He stated that he was interviewed the second time by "Headquarters staff" in late spring or early summer 1996, in which he also declined a representative. Collver said he most recently talked to a female state attorney, who's name he could not recall, in May 1997, just prior to Lewis' SPB Hearing. He stated that the only negative comment that he could recall was during a phone conversation with Officer James S. Blaise, just prior to the Lewis SPB Hearing, when Blaise asked him, "Was he going to tell the truth or keep the code?". Collver stated he did not remember how the comment came up and he did not report the comment to anyone. He claimed he thought Blaise was teasing him and didn't take it as a threat as he got along fine with Blaise and did not take the comment seriously. Collver stated he believes that he told Lieutenant Miller that Blaise might have information concerning Lewis, and does remember telling the State Attorney that Blaise was a possible witness. Collver denied that anyone else has threatened, harassed or made any negative comments to him during the entire Lewis' Investigation and Adverse Action process. He denies that he was contacted by CCPOA and claimed that no one has attempted to influence his testimony. Collver said he didn't consider Blaise an advocate for Lewis, just a neutral party and also didn't believe Blaise was active in the Union. Collver stated that he was sensitive to having Union Representation present during his interview, claiming "my impression was that they would not be kept confidential". Collver said that his feelings were never substantiated and the Union Representatives have never said anything about his testimony. Collver claimed he was never pressured or confronted about not having a representative during his interviews and has been treated professionally and courteously by the Union at all times, even during the SPB Hearing. Collver further stated that nothing has been said or done to him negatively as a result of his testimony in the Lewis case.

Interview with Correctional Officer Mark Connolly

Correctional Officer Mark Connolly was interviewed on July 9, 1997 at PBSP, and stated that he was aware of inmate Birman who was a porter in the B-4 Housing Unit where he was assigned and worked with Officer Paul Wenning. He stated that on or about October 3, 1995, the institution was on lockdown and an S&E came by and escorted inmate Birman out of the unit. He recalled the S&E possibly being Officer Monroe Freeman or Sal D'errico, and that it was sometime in the morning, possibly 10:00 or 11:00 a.m.. Connolly said that inmate Birman came back into the unit about one hour later and had apparently been dropped off at the door of the unit by his escort. He stated that he questioned inmate Birman on where he had been, admitting that "I was being nosy." Connolly said he initiated the conversation as inmate Birman was walking past his office. He stated that inmate Birman said that he was in the IA Unit and "they" wanted him to testify against Officer Jose Garcia. He said inmate Birman told him "no way" and claimed he refused to testify. Connolly stated he felt inmate Birman was fearful that they (IA) were going to lock him up, but didn't feel that inmate Birman was fearful of his own safety. Connolly said that inmate Birman went back up to his cell and shortly after there was a phone call from Sergeant Teda Boyll from the S&I Unit. Connolly believes he might have answered the phone, but when inmate Birman actually got on the phone with Boyll, all he could hear was "yes ma'am, no ma'am, do whatever you want, etc." Connolly said that when inmate Birman got off the phone, he asked, "what was that all about," and inmate Birman replied "if I don't testify then she's going to lock me up." Connolly stated that he didn't believe that anyone was in the office when he first discussed inmate Birman's earlier allegations, but did recall Officer Wenning being there during

the telephone conversation inmate Birman had with Boyll. Connolly stated that the Control Booth Officer might have overheard the conversation but he wasn't sure and believed that the Control Officer was either Officer Ramsey or Escobar. Connolly claimed he wrote a report because he felt that the information was important and that inmate Birman was alleging that he was being manipulated to set up staff. (see Attachment K) He stated that he brought his handwritten report on the same day to Sergeant Pena, who read it in his presence. Connolly stated that Pena felt the information was not appropriate for him to receive and directed him to the S&I Unit. Connolly stated he proceeded to S&I and gave the report to Sergeant Reynoso who after reading it asked, "He told you that?" Connolly said he didn't discuss the details of inmate Birman's allegations with Reynoso however. He claimed that he didn't recall discussing the details of inmate Birman's allegations with anyone other than Officer Wenning. Connolly said that he knows Wenning wrote a report but didn't recall reading it. Connolly recalled that inmate Birman did request to use the institution telephone later in the day but did not remember who he had requested to call. Connolly said he did not ever recall seeing the memorandum with the perched eagle's letterhead that was authored by Wenning. Connolly stated that although he didn't recall any specific discussions about inmate Birman's allegations, that a lot of staff had told him that inmate Birman had testified in court identical to what he had told him during their conversation on October 3, 1995. Connolly didn't recall if he had heard that inmate Birman had discussed his allegations with any other staff.

Interview with Correctional Officer Salvatore M. D'errico

Correctional Officer Salvatore M. D'errico was interviewed on July 30, 1997 at PBSP, and stated that during the months of November and December 1995 he was assigned as the B Facility S&E and Disciplinary Officer on Second Watch. He identified his memorandum dated December 5, 1995, and felt that based on the time of the report, he must have been working overtime. He recalled initially seeing inmate Bacos, who was attempting to pass through a yard gate. He claimed that he didn't know inmate Bacos was back on the yard and stated, "Oh you're back again", and proceeded to let him through the gate. D'errico stated he felt that was the end of their conversation and inmate Bacos asked, "Can I talk to you?" He claimed that inmate Bacos then proceeded to tell him that Lieutenant Dan Smith was "setting up" his (D'errico's) brother and that Smith was "gunning for him". D'errico said that his brother worked on the A Yard and he was concerned. D'errico couldn't explain why inmate Bacos would tell him this information as he "had rolled him up before," and it shocked him that inmate Bacos would tell him anything like that. D'errico said he wrote a memo to protect his brother and presented it to Lieutenant James Long, asking what he should do with it. (see Attachment K) He stated that Long recommended he give it to SSU and during his interview with Agents George Ortiz and Phil Bruccoleri, he gave a copy to them as well as his Representative Gerald Griffith. D'errico stated he didn't realize there was a discrepancy between the date of the conversation and the date of the report. He said he typed the report and spoke to Long the same day of the incident. When questioned why Officer Roy Alvarado had knowledge of the conversation, D'errico stated he did not recall telling Alvarado, but did acknowledge as Alvarado as being a personal friend. D'errico denied that anyone asked or influenced him to write his report. D'errico also stated that he had written another memorandum to Lieutenant Long concerning Lieutenant Smith approaching him looking for the original Bacos CDC-115. D'errico said he felt that Smith was accusing him of knowing the whereabouts of the 115, but claimed he never saw it.

Interview with Correctional Officer Robert E. Evans

Correctional Officer Robert E. Evans was interviewed on July 10, 1997 at PBSP and stated he was interviewed by PBSP IAU concerning his knowledge of misconduct by Officer David Lewis during September 1995. He stated that during his initial interview in the PBSP IA office, by Lieutenant Miller and Sergeant Franklin, he was represented by Officer Newton. Evans stated that Lieutenant Miller conducted two subsequent interviews at his home in which he did not have a representative. He stated that Miller came to his house to bring a copy of "the lybarger". Evans stated he believed that Miller thought that he had a "little bit more" information that he did not say at the first interview, although he did possibly clarify some issues. Evans claimed he did not know why Miller thought this and did not believe that he gave any more information in the subsequent interviews. Evans admitted he was reluctant to discuss his knowledge of the actions by Officer Lewis as "nobody wants to be called a rat". He said that he had worked together with Lewis and although he was reluctant to speak about his knowledge, he did it anyway. He stated he was also interviewed a fourth time by SSU Agent Phil Bruccoleri at PBSP, in which he had representation. Evans claimed he was not intimidated by Newton, and denied that Newton or anyone else attempted to influence or question him about his testimony. Evans did recall having a discussion with Officer Alexander concerning him not having a representative during the two interviews at his home with Lieutenant Miller. He didn't recall who initiated the conversation, however, he believed it occurred after he attempted obtain a representative for the interview with SSU. Evans claimed that all Alexander told him was that he should have contacted him for representation during the interviews with Lieutenant Miller.

Interview with Correctional Officer Monroe Freeman

Correctional Officer Freeman was interviewed on July 11, 1997 at PBSP, and stated that he was assigned as a second watch S&E to B Facility on September 25, 1995, when he was approached by inmate Branscum. He said inmate Branscum approached him in front of the program office on the yard and needed to talk to him. Freeman said inmate Branscum told him that he was escorted to S&I and was interviewed by "various people in suits." He said inmate Branscum told him that "they" were trying to gather information on Officer Garcia and that Garcia had done some illegal activity. Freeman further claimed that inmate Branscum told him that "they" made statements that "they" would take 115's from his file, "they" would help him, and if he didn't cooperate, "they" would give him more time. He said inmate Branscum also told him that "they" were after him, and "they" were going to mess with his family, his visits, and that he was fearful for his safety. Freeman stated that he wrote a memo within a day or two but didn't remember talking to anyone about the conversation. He did feel that there was "a lot of things" in the information about staff he felt he needed to document. Freeman stated that he didn't recall telling anyone about the conversation, however, later in the interview he made a statement that he had talked to some people, but could not recall specifically who. He claimed that he prepared the report at home and had his wife type it. (see Attachment K) Freeman could not recall whom he gave the report to, but believed he gave a copy to Officer Alexander and couldn't remember if Alexander had asked him for it. He stated he possibly gave a copy to Lieutenant Long or Smith, but it was possible he didn't give it to "management." Freeman said he understood his obligation to report an inmate who claims to be in danger, but could not recall whom he submitted the report to. He then recalled inmate Branscum told him that he should tell Garcia that "they" were trying to put some bogus charges on him. He stated that he knew Garcia and had gone to the Academy with him. Freeman then recalled that he had talked to inmate Branscum in the morning and afternoon of the same day and his memorandum was a result of both conversations. Freeman denied that he

wrote the memorandum to assist Garcia and said he heard he had been accused of that, however, he couldn't remember from whom. Freeman claimed no one has approached him to assist in Garcia's defense and denied that he prepared a memorandum in an attempt to impeach the IA Unit. Freeman also denied that he escorted inmate Branscum to or from the IA Office during his (Branscum's) interviews. Freeman stated that he prepared another report concerning inmate Bui, who was also alleging staff misconduct by IA approximately one year ago. He stated that he prepared a report and submitted it to Lieutenant Long. Freeman stated that he also prepared a report concerning his finding the CDC-115 on inmate Bacos and submitted that report to Lieutenant Long.

Interview With Correctional Sergeant Mark Piland

Correctional Sergeant Mark Piland was interviewed on July 29, 1997, at PBSP and stated that during the month of November 1995, he was assigned to SHU C-11 as in S&E. He said that during November 1995, he was also on temporary assignment to an outside hospital, however, he didn't recall working a "Main Line" post on overtime. Piland stated he worked as the A-1 Floor Officer immediately prior to his assignment in C-11 on November 1, 1995. Piland said he knew of inmates Bacos and Towler and described them as possibly celling together, but definitely were associates, and stated that inmate Towler was also Lead Porter in A-1. Piland did not recall either inmates Bacos or Towler being placed in Ad Seg in November 1995. He claimed he didn't recall ever talking to inmate Towler about his (Piland's) personnel investigation, but did claim that many other people were talking about the investigation in front of staff and inmates. Piland did acknowledge he was under heavy medication at the time, due to the stress of the investigation, however, he did not recall talking to anybody regarding this investigation other than his representative, Officer Newton. Piland initially stated that he never possessed any audio tapes concerning his investigation, but did possess a video tape. He later acknowledged that Newton did have possession of audio tapes and that he heard some of them. Piland said he did not review all of the tapes and claimed he was not aware of inmate Towler not disclosing any negative information about him during the investigation. Piland stated he also didn't recall working in B-Facility during the month of December 1995.

Interview with Correctional Officer Paul Wenning

OFFICER Wenning was interviewed on July 10, 1997, at PBSP and acknowledged that he was a CCPOA Job Steward and member of the local board. Wenning stated that on or about October 3, 1995, he was assigned to the B4 Floor position and recalled an incident involving inmate inmate Birman. Wenning said he knew inmate Birman as he had lived in the unit and was assigned as the second watch porter. He stated that on October 3, 1995, he recalled inmate Birman returning from the program area back into the unit. He didn't recall if inmate Birman was escorted and denied that inmate Birman was in restraints. Wenning claimed that inmate Birman came unsolicited into the office area where he (Wenning) was sitting with Officer Connolly, and asked to speak to both of them. Wenning didn't recall if the control booth officer was standing overhead or if there was a lockdown in effect. He claimed that inmate Birman said he was interviewed by "somebody" and that he (Birman) had problems with officers on "A" yard, and he didn't want to have problems here, meaning the (B Facility yard). He stated inmate Birman mentioned inmate Branscum and he (Birman) felt that inmate Branscum had "given him up," referring to him as a "rat". Wenning said he believed that later in the morning, following the morning count, he contacted Sergeant Reynoso and relayed the information that was told to him by inmate Birman. He claimed that Reynoso requested to speak to inmate Birman and he

(Wenning) pulled inmate Birman out and put him on the phone. Wenning stated he heard inmate Birman tell Reynoso the same information that he had told him and heard inmate Birman comment, "I don't know why you are talking to me" and "If I don't stop talking to the officers, I will go to the hole?" He said that inmate Birman hung up before he had a chance to talk to Reynoso and inmate Birman turned to him and said, "I guess I made a mistake, I'm not talking to you." He claimed that inmate Birman then requested to talk to "the female Sergeant" on the "goon squad." Wenning believed that he attempted to contact Sergeant Boyll at inmate Birman's request, but was unable to do so and left a message. When questioned why his report stated that he had returned a call to Boyll, he believed that this was a result of her (Boyll) returning his call. Wenning claimed that he subsequently pulled inmate Birman back out of his cell, put him on the phone, and dialed Boyll. He stated that the conversation was similar to that between inmate Birman and Reynoso. He said he overheard inmate Birman talk about his interview the day before with Boyll and complained about possibly having to go to the "hole". He said the phone call took a few minutes and inmate Birman hung up, looking at him with a look of "can you help me." Wenning said he told inmate Birman that he (Birman) would have to deal with "those people" (S&I). Wenning stated that he informed his supervisor (via documentation) but didn't recall if he had discussed it with his supervisor prior to writing his report. Wenning claimed that he wrote his report within the next couple of days and gave it to Sergeant Pena. (see Attachment K) He stated that after Pena read it, he believed that Pena instructed him to give it to Reynoso. Wenning recalled Pena saying something to the effect that he didn't "want to deal with this." He didn't recall Pena questioning him about the letterhead that he used. Wenning stated that he had typed the report himself and it was not on official PBSP stationery as the letterhead was from his home computer. Wenning said that he didn't recall Reynoso questioning him about the letterhead either. Wenning didn't recall exactly how long after the conversation between him and inmate Birman that he contacted Officer Alexander and asked for advice about the situation. He stated he also gave Alexander a copy of the memorandum. Wenning didn't recall if inmate Birman requested to use the phone after his call with Boyll for either an outside call or possibly to call an attorney. He stated that inmate Birman mentioned nothing about contacting the press, however, he mentioned that he knew people in the press in the past. Wenning denied that his memorandum was intended in any way to discredit the IA Unit at PBSP.

Interview with Correctional Sergeant Joel M. Pena

Correctional Sergeant Joel M. Pena was interviewed on July 9, 1997, at PBSP and stated he was currently assigned as the Institution Gang Investigator but did supervise Officer Wenning while he was the B Facility Program Sergeant in October of 1995. Pena claimed he did not recall the memorandum authored by Wenning dated October 3, 1995, nor did he recall talking to Wenning about the circumstances of his report. Pena stated he did not recognize the letterhead with the two eagles on each side of the word "memorandum" and stated it was not official PBSP letterhead. Pena stated although he knew of Inmate inmate Birman, he does not remember him making any allegations about staff misconduct. Pena stated he also did not recall talking to Sergeant Reynoso about inmate Birman. He stated, "If I would have seen this memorandum (Wenning's), I would have had it retyped on the correct memorandum form". He further stated if he had seen it, he would have remembered it and he would have reported it to a Supervisor, and up the chain of command to his Captain, who he believed at the time was Dan Smith. Pena acknowledged that he supervised Officer Gina Coffman, during October 1995, in the B Facility Program Unit. He also did not recall the October 25, 1995 memorandum authored by Coffman, nor did he recall discussing the events of the memorandum with her. Pena stated he knows of an

inmate Phillips AKA "Smokey", but did not recall any staff informing him of Inmate Phillips' allegations of staff misconduct. Pena stated the letterhead utilized by Coffman was also not official PBSP memorandum paper and he would have had it retyped, as well as reported the information to his supervisor, had he become aware of it. Pena further claimed that he was never approached by any staff member during this particular time period concerning inmates alleging the IA Unit "setting up staff."

Correctional Sergeant Jose Pena was re-interviewed again on July 30, 1997, and again denied that he had ever seen the reports dated October 3, 1995, by Officer Paul Wenning, October 23, 1995, by Officer Gina Coffman and undated by Officer Mark Connolly. He also denied talking to any of the authors of the reports concerning the circumstances that caused the reports to be written. He denied that anyone has approached him concerning his previous interview with this investigator. Pena stated that contents of the reports were significant enough that he felt he would have remembered seeing them or having discussed them with any of the Officers. He also stated that due to the various types of letterhead on the memorandums, that he would have had them retyped properly by an Office Technician and been sure that he submitted the properly formatted reports to his supervisor. Pena stated that he was aware that Wenning, Coffman, and Connolly, all worked for him at the time and all socialize together. He described them as an occasionally challenging the way things were done and described their behavior as sometimes rational, but sometimes irrational. Pena claimed he knew no reason why Wenning, Coffman, and Connolly would claim that they submitted those reports to him and that they talked to him about the reports. Pena did request to clarify two points on his previous interview, one that his supervisor was Lieutenant Castalano and not Dan Smith, and the other was to clarify the assignments of Officer Wenning as the S&E and Officer Connolly as the Floor Officer.

Interview with Correctional Sergeant Jose Reynoso

Correctional Sergeant Jose Reynoso was interviewed on July 30, 1997, at PBSP and stated that he was assigned as a S&I Sergeant between approximately April 1994 and June 1996. He stated that he had never seen any of the reports authored by Officers Monroe Freeman, Paul Wenning, Gina Coffman, Mark Connelly, or Salvatore M. D'errico. He further claimed that neither of the five officers had ever notified him of the information contained in their reports. Reynoso stated he did recall the incident concerning inmate Birman as he remembered the phone call with inmate Birman. Reynoso said inmate Birman was interviewed that same day by IAU and Wenning had called and told him that inmate Birman was talking about the interview. Reynoso claimed he told Wenning that he wasn't present at the interview and informed him that he would call him back. He said he called Sergeant Franklin and told him what inmate Birman was doing. Reynoso said Franklin told him to call inmate Birman and tell him if he (Birman) kept "running his mouth," he would be locked up pending the outcome of the IA investigation, in order to maintain the integrity of the investigation. He didn't think that Franklin's request was out of the ordinary and called Wenning back, asking to speak to inmate Birman. He said he told inmate Birman the message from Franklin and recalled inmate Birman repeating to him, "If I don't keep my mouth shut, you're going to lock me up." Reynoso didn't recall if there was a lockdown during that time period. He specifically denied talking to Connolly or making the statement to him, "He told you that?" (referring to Birman). Reynoso also didn't recall talking to Pena about any of the reports. He said that, "Wenning, Coffman, D'errico, and them guys that work on 'B' Yard, they wouldn't bring me a memo if they had to." Reynoso recalled an incident in which inmate Andrews was escorted to SHU for an IA interview and immediately following the interview, was escorted back to 'A' Yard by S&I. He remembered S&I Officer James McMillin calling him and telling him that

inmate Andrews was in the Clinic claiming a head injury. Reynoso stated he responded to the Clinic and interviewed inmate Andrews. He recalled inmate Andrews telling him that he (Andrews) had done it himself because he needed a story to tell other inmates on the yard and inmate Andrews being adamant that staff didn't do it. Reynoso didn't recall anyone saying that staff had done it at the time, however, he did recall that there was an "inference" that staff were responsible because he had come back from an IA interview. Reynoso said that he didn't observe Officers McMillin or Brian Patton to be angry at the time, nor did they tell him that staff were responsible for inmate Andrews' injuries. He said that inmate Andrews was examined, a CDC-7219 was filled out, and he (Reynoso) notified Captain Smith, who he believed informed the Chief Deputy Warden. Reynoso stated he did not write a report, however, he gave a copy of the CDC-7219 to Captain Smith. He recalled Officer Roy Alvarado calling S&I Officer Judy Glover on a later date and asking if a CDC-7219 was completed on inmate Andrews and where a copy was located, but didn't recall if he had asked for a copy. Reynoso claimed that Alvarado was upset with S&I because he was removed from the unit for being untrustworthy and voicing his feelings about the IA investigation of Jose Garcia. Reynoso said in November 1996, he was assigned to the SHU as a lieutenant and had heard of an incident concerning Officers McMillin and James Dagenais involving an inmate Simpson who had turned over an inmate-manufactured weapon. He stated he had no first-hand knowledge of the incident but had heard that Newton approached Dagenais concerning his role in the incident.

Interview with Correctional Lieutenant Jean Rupert

Correctional Lieutenant Rupert was interviewed on July 9, 1997, at PBSP and stated that during February 1996 she was assigned as the third watch "A" Facility Lieutenant. She stated that on or about April 3, 1996, she was interviewed by IAU and was represented by Officer Richard Newton. She stated that prior to going to the interview, Sergeant Franklin gave her a CDC-115 on inmate Bacos and asked her to hear it because the previous one had been lost. She claimed that Franklin further told her to tell inmate Bacos that his transfer wouldn't be much longer. Rupert said she thought it was unusual that IAU was involved in transfers. She said that after her interview was over, Newton asked her, "What did he say about inmate Bacos?" She said she repeated the statements made by Franklin and believed that Newton asked her at that time if she would write him a memorandum about what Franklin had told her. Rupert stated, "I said sure," but believed that the memo is dated at a later date, as she didn't get around to writing it right away. Rupert said she wrote her report at work and believes that when she printed it, she didn't put official memorandum paper into the printer. (see Attachment O) Rupert denied that she gave a copy of her memorandum to anyone else other than Newton and acknowledged that she thought it was a "little unusual" for Newton's request. She claimed that she asked Newton why, and she believed Newton had said that he had another employee that he was preparing for a Skelley regarding some other issue. Rupert said that Newton told her he thought what Franklin had said about the transfer of inmate Bacos would help. She claimed she didn't ask Newton for any more information. Rupert said that there was a lot of investigations going on, inmates being transferred "in the middle of the night," "rumors," other things, and she "figured it was somehow all connected." Rupert stated that she felt if Franklin's statement to her could somehow help one of the employees that were off (on ATO) behind all the other "stuff" going on, then "that's why I wrote the memo." Rupert said she didn't think she reported it to her supervisor whom she believed at the time was Facility Captain Larry Hinnenberg. She stated that she didn't notify her supervisor because "it" didn't have anything to do with her supervisor, but denied that she was intentionally bypassing the chain of command. When asked if she considered herself a

representative of institution management, she stated, "I suppose I am." Rupert said she didn't believe her memorandum undermined or impeded any IA investigation. She stated that she didn't believe that the information in her memorandum was serious and that there were other people in the area when Franklin made his comment to her. Rupert also didn't believe that she was implying that inmate Bacos was receiving a reward in the way she worded her memorandum. Rupert said it didn't occur to her that the information was critical to an ongoing IA investigation. She stated that she later heard the inmate Bacos CDC-115 and dismissed it based on some issues concerning the confidential informants. She said that no one ever confronted her or challenged her about her dismissing the CDC-115. Rupert said that she was aware that the original Bacos CDC-115 was lost. She said that Newton asked her if she would ask inmate Bacos if he had a copy of the original 115, and if he did, to get a copy of it for her. She stated that it could have been the same day (April 3, 1996) that he asked her to write her memorandum, but she couldn't remember. Rupert said, "okay," got a copy from inmate Bacos and "I gave a copy to Newton." She said Newton didn't say why he needed it. She claimed she instructed Sergeant Gregory Lewis to ask inmate Bacos for a copy of the CDC-115 when he served a copy of the reissued CDC-115. Lewis gave her the copy which she sent to Newton in an envelope in which she left at the SHU Entrance Gate. Rupert stated that she didn't recall if it was a flimsy or a photocopy of the CDC-115. She stated that it was clear to her that Newton was acting as a CCPOA representative when he requested the memorandum and the copy of the CDC-115. She claimed that "I didn't see anything wrong at the time." Rupert said she acted on her own and didn't believe that she talked to any supervisors about what she had done or what she was planning to do. Rupert acknowledged that the request seemed strange, but if it was going to help one of the officers that was in trouble, "I didn't think it was a big deal." Rupert also said, "I guess there was other ways I could have handled it." Rupert denied Alexander ever approaching her concerning any documents or requests that had been made by Newton. Rupert said Newton never asked her for anything else and she denied any motive or role with CCPOA to discredit the IA Unit at PBSP.

Interview With Former MTA Linda Brown

Former MTA Linda Brown was contacted via telephone, at her residence on April 30, 1997 and initially agreed to be interviewed concerning her memorandum dated November 21, 1996. Brown failed to show up for the interview and several attempts to contact her via telephone have been unsuccessful.

Interview With Retired Correctional Sergeant Ronnie D. Miller

Retired Correctional Sergeant Ronnie D. Miller was contacted via telephone, at his residence on July 24, 1997. He declined to be interviewed concerning this matter.

Interview with Correctional Officer Walter J. Haynie

Correctional Officer Walter J. Haynie was interviewed on July 9, 1997, at PBSP and stated during the month of January 1996, he recalled being assigned as the B7 Control Officer. Although he did not recall the exact date, he believed he was working overtime or a swap on third watch in A1 when he documented his conversation with inmate Andrews. Haynie said he knows inmate Andrews from a previous unit and actually had written him up a few times for disciplinary infractions. Haynie stated that he was conducting the unit count by himself when inmate Andrews caught his attention from inside his cell. He claimed that inmate Andrews said something to the effect that he hadn't seen him for awhile and then proceeded to tell him that he had been down in

SHU and had been "slapped around" by "someone" investigating him and that a couple of S&I Officers took him to be treated in the infirmary. He stated that inmate Andrews mentioned that he was going to take the matter outside the institution. Haynie said he felt the less he knew about the incident the better, and inmate Andrews didn't give him any other details. Haynie claimed that inmate Andrews did not tell him who had "slapped him around" and he did not ask if it occurred in the SHU or the IA Office. Haynie said he told inmate Andrews that he would let his supervisor know and may have mentioned that his supervisor was Sergeant Gregory Lewis. He stated that during the conversation, inmate Andrews remained in his cell and believed that he did have a cell partner. Haynie stated that he informed Sergeant Lewis about what inmate Andrews had said within five minutes of the conversation. He claimed he wrote a report and left it to be typed on the same night. Haynie stated that he signed the typed chrono later, but didn't remember the exact date. (see Attachment P) Haynie admitted that he was reluctant to write the report because he felt that he was subject to "being picked on" or "harassed" for "telling on other staff" and believes he also told Sergeant Lewis this. Haynie said several days later he attempted to contact Officer Alexander who was not at the institution and subsequently told Officer Newton about the conversation he had with inmate Andrews as well as his concerns he had about retaliation for documenting the incident. Haynie stated that he did not talk to inmate Andrews after the conversation and denied that he had ever heard about inmate Andrews' allegations before the conversation at the cell front.

Correctional Officer Walter L. Haynie was re-interviewed on July 30, 1997, at PBSP and stated that on January 19, 1996, he was working a swap on AI Floor and was conducting a count at approximately 9:00 p.m., when he was confronted by inmate Andrews in his cell. Haynie denied that he told inmate Andrews, "we heard what happened to you down the hill" and denied he had stated, "there was somebody he could talk to that could be trusted." Haynie stated he did tell inmate Andrews, "I will talk to some people," claiming he was referring to his supervisor, and let inmate Andrews know that is what he meant. He claimed inmate Andrews was reluctant at that time and he was afraid of retaliation. Haynie stated he used the word "trusted" in reference to Sergeant Lewis. Haynie said he believed he asked inmate Andrews if he would willing to talk to Sergeant Lewis. Haynie stated he was not sure if he had brought up Newton's name in the conversation, but denied that he said that IA was trying to "nail" staff. He then believed that he might have brought up Newton's name, because Newton had been helpful in the past concerning a safety issue. Haynie believed he might have contacted Newton following the conversation with inmate Andrews, telling him he would be sending a copy of his chrono, stating "I am sending you something that could get me in trouble." Haynie did not recall discussing the specifics with Newton and claimed no one else was on the tier with him at the time of his conversation with inmate Andrews.

Interview With Correctional Sergeant Gregory D. Lewis

Correctional Sergeant Greg Lewis was interviewed on June 25, 1997, at Salinas Valley State Prison and recalled an incident on or about January 19, 1996, when he received a verbal report from Officer Haynie concerning comments made by inmate Andrews. Lewis stated that Haynie reported to him that inmate Andrews had approached him on the tier and said he had been assaulted by staff during an IA interview during the month of November 1995. Lewis stated that he believed Haynie had told him the information the same day of the conversation. Lewis stated that he directed Haynie to write a CDC 128 concerning the conversation and didn't recall Haynie being reluctant to document the incident. Lewis said he believed he submitted Haynie's typed CDC 128 with his report to Facility Captain Tom Jourden. He believed Haynie was working an

overtime or swap when the incident occurred. Lewis stated he has not had any conversations about inmate Andrews' allegations with any other staff after he initially reported the information. Lewis said he subsequently interviewed inmate Andrews with Lieutenant Sam Mallory concerning his statements to Haynie. Lewis stated that he didn't believe inmate Andrews, because he was reluctant and evasive about what had happened during his interview in the IAU. Lewis said he called the Medical Department and had an MTA pull inmate Andrews' medical file, but he did not recall the MTA's name. He stated that the MTA reported to him that there was a November 1995 document mentioning inmate Andrews being treated for red marks above his eye. He recalled inmate Andrews saying he slipped and fell while he was using the bathroom and made the statement, "no bones broken, no harm done." Lewis stated he confronted inmate Andrews that there was no bathroom in the holding cell in IA, however, inmate Andrews would still not give any details about what occurred. Lewis said inmate Andrews told him that Officer McMillin had escorted him from the IA Office and took him to the infirmary but, he never talked to McMillin about what had happened. Lewis stated inmate Andrews was very evasive, saying that there were four staff members in the IAU, but refused to identify who they were. Lewis said he didn't ask inmate Andrews why he was bringing this issue up at this time. He said he didn't give any copies of his report to anyone except for Captain Jourden and was present later when Jourden gave a copy of his report to Chief Deputy Warden Robert Ayers, which he believed occurred in May 1996. He described Haynie as good at obtaining information from inmates, passing the information on to him, and considered him fairly reliable at doing so. Lewis stated that no one has approached him concerning his conversation with Haynie or inmate Andrews. He recalled that he was periodically approached by various officers asking why certain inmates were locked up and he routinely told them that it was none of their concern. He claimed that there were also several "hothead" officers who were questioning the changes caused by Madrid as well as the lockups that were occurring as a result of IA investigations.

Correctional Sergeant Gregory D. Lewis was re-interviewed on July 22, 1997, at Salinas Valley State Prison via telephone, and recalled Lieutenant Rupert instructing him to re-issue a copy of a CDC-115 to inmate Bacos on or about January 26, 1996. He said that Rupert and he were both assigned to A Facility and she instructed him to proceed to B Facility and re-issue the CDC-115. Lewis said that Rupert also instructed him to question inmate Bacos if he had a copy of the previously issued CDC-115 with the same log number. He said that Rupert also instructed him that if inmate Bacos had it, to bring it back to her. He stated that he proceeded to B Facility and had inmate Bacos summoned to the staff office where he asked if he had a copy of the original CDC-115. Inmate Bacos acknowledged that he did and proceeded back to his cell and retrieved it. Lewis said he made a photocopy and delivered it back to Rupert. Lewis said when he turned it over, Rupert placed the re-issued CDC-115 and the copy of the original CDC-115 side by side, and looked at both of them. He recalled Rupert saying, "This isn't right, what they were doing," and that she should "turn it over to the Union." He then observed her place the copy of the CDC-115 into an envelope. Lewis said he didn't know what she meant at the time, however, he later heard that the Union had taken the copy of the original CDC-115 to the Warden. Lewis denied that anyone has ever talked or interviewed him concerning this incident.

Interview with Facility Captain Thomas J. Jourden

Facility Captain Thomas J. Jourden was interviewed on June 19, 1997, at PBSP. Jourden recalled a report he had written, dated November 16, 1995, concerning an interview he conducted with Inmate Andrews. He stated that the interview was at the request of Chief Deputy Warden Robert Ayers, regarding inmate Andrews allegations of use of force by PBSP staff. Jourden said that

inmate Andrews claimed he was taken to the IA Office but did not recall the exact date. He stated that inmate Andrews did complain about his handcuffs being too tight, but told him that he was not hurt by staff in any way. Jourden said that inmate Andrews claimed he was placed in a wet holding cell at the IA Office. He stated inmate Andrews claimed that while in the holding cell, he attempted to use the toilet, heard the door open and turned and slipped, hitting his head on the toilet above his right eye. Jourden said that inmate Andrews did request to talk to Captain Dan Smith concerning some photos that were taken of him in IA, but claimed his story of abuse by IA staff was made up to cover questions by other inmates. Jourden claimed he had no knowledge of inmate Andrews' allegations prior to CDW Ayers' request to have him interview inmate Andrews. Jourden said he interviewed inmate Andrews a second time on or about January 31, 1996, also at CDW Ayers' request. He said this was following a report generated by Sergeant Greg Lewis regarding a conversation he had with inmate Andrews on January 19, 1996. Jourden said that Sergeant Lewis informed him that Officer Haynie reported that on January 19, 1996, inmate Andrews told him (Haynie) that he (Andrews) had been assaulted by IA staff in November 1995. Jourden stated that Sergeant Lewis approached with concerns about allegations being made against staff but acknowledged that he (Jourden) never talked to Haynie about his report. Jourden recalled that inmate Andrews again denied that he had been physically assaulted by PBSP staff. Jourden said he never reviewed the CDC-7219 concerning the alleged injuries. He claimed that Sergeant Lewis had spoken to an MTA who examined inmate Andrews in November 1995, and verified the existence of the CDC-7219. Jourden said that inmate Andrews did not have any observable injuries and he (Andrews) denied having any when he first interviewed him. He stated that during the second interview, inmate Andrews claimed that Haynie had approached him in the cell block and told him, "hey, we heard what happened to you down the hill," and asked inmate Andrews if he would talk to Rick Newton, "the Union rep," because IA was "trying to nail staff". Jourden said he thought it was unusual that the inmate would know the first and last name of a union rep. Jourden claimed that after he submitted his supplemental report regarding the second interview, he was contacted by Captain Dan Smith concerning error on his report involving the date of the first interview. Jourden stated that he then submitted a third report dated March 14, 1997, clarifying the error. Jourden denied that any other staff had ever approached him concerning inmate Andrews allegations or his interviews with him. (see Attachment P)

Interview with Correctional Officer Owen G. Tuttle

Correctional Officer Owen G. Tuttle was interviewed on July 30, 1997, at PBSP and stated that on November 9, 1995, he was assigned as the A Facility Yard Crew Officer. He stated he knew inmate Andrews, but did not recall being involved in an escort of inmate Andrews with Officer McMillin on that date. Tuttle stated he did not recall ever hearing about inmate Andrews complaining of any injuries, being escorted to the infirmary, or complaining to him about staff mistreatment. Tuttle denied anyone approaching him concerning the November 9, 1995 incident involving inmate Andrews.

Interview with Correctional Officer Brian R. Patton

Correctional Officer Brian R. Patton was interviewed on July 30, 1997, at PBSP and stated on or about November 9, 1995, he was assigned to the S&I unit and recalled escorting inmate Andrews from IA back to his housing unit with Officer McMillin. Patton stated that inmate Andrews acted in a way that he was angry, making comments such as, "you guys aren't right, this is messed up, this is f'd up". He stated that McMillin stopped the escort and asked inmate Andrews what was he trying to say, if he was saying that he was beat-up. He stated that inmate Andrews replied,

"Do you see my eye?" Patton said that he hadn't noticed any injuries until then, but could "barely see anything" other than some redness by his eye. Patton believed that they proceeded to the clinic where they called Sergeant Reynoso and didn't believe that he (Patton) remained in the clinic during the examination. Patton did not recall if he wrote a report. After further questioning, Patton recalled that inmate Andrews did mention that his handcuffs were too tight, but believed it wasn't until after he had mentioned the injury to his eye. He stated that he had heard later that inmate Andrews said he had "did it" for an "alibi" for the other inmates on the yard, but emphasized that inmate Andrews never said he was assaulted by staff, and only implied it. Patton stated he recalled McMillin being upset that inmate Andrews appeared to be planning to accuse either them or IAU staff of assaulting him. He didn't know if Reynoso wrote a report, but claimed that Reynoso documented everything that happened, or ordered others to write reports. Patton recalled another incident, which he believed occurred after November 9, 1995, when he attempted to escort inmate Andrews to IAU. He recalled inmate Andrews as being "rude" and creating a scene by making statements, "take me down there and try and get me to tell...try to make me deals," and making it clear that he did not want to go. Patton recalled being told later, he believed by McMillin that inmate Andrews was acting for the benefit of his peers. He remembers that at a later date, he was monitoring inmate phone calls and recalled other inmates bringing up inmate Andrews alleged injuries being a result of IAU, but did not have any other specific information. Patton denied that anyone has approached him concerning his knowledge of inmate Andrews' allegations since the date of the incident.

Interview with Correctional Sergeant James P. McMillin

Correctional Sergeant James P. McMillin was interviewed by telephone on July 22, 1997, at CVSP via telephone. He stated that on November 9, 1995, he was assigned as a S&I Officer when he and Officer Patton were instructed by who he recalled as Sergeant Reynoso to proceed to IAU and escort inmate Andrews back to his housing unit. He stated when he arrived, he observed inmate Andrews in a holding cell across from the IAU office. He stated that inmate Andrews was handcuffed behind his back and he removed him and conducted a clothed body search. McMillin stated that he did not observe any toilet but did remember a shelf being in the cell. McMillin said he escorted inmate Andrews through the SHU and out through the "back dock" when inmate Andrews began complaining that his handcuffs were too tight. He said he stopped the escort and observed that the handcuffs were in fact too tight and inmate Andrews' hands were swelling. McMillin said he loosened up the handcuffs, subsequently observing a quarter-inch knot above inmate Andrews' right eye, and asked, "What happened to you." He said that inmate Andrews didn't say anything and McMillin again asked, "Did those guys beat you up inside there?" He stated that inmate Andrews again didn't say anything. McMillin said he was making his statement jokingly, but because inmate Andrews did not respond, he began to "wonder." He said they resumed the escort and notified Reynoso to meet him in the 'A' Facility Medical Clinic. McMillin recalled inmate Andrews muttering, "they did it," but also was making statements that he had done it to himself to "cover himself with the fellas" that were on the 'A' yard. McMillin said that he didn't suspect that IAU staff had hit him at the time, but now suspects "something" might have occurred. McMillin claimed that a couple of weeks later, Lieutenant Roussopoulos gave him a tape of an interview with inmate Andrews conducted by the IAU. He stated that he initially wasn't sure why Roussopoulos would have given him an IA tape. He said the tape did contain some information concerning drug activity, but no information concerning staff misconduct. McMillin stated that several months ago, he began hearing about the allegations of inmate Andrews and listened to the tape. He said he recalled inmate Andrews

started getting "cocky" with Smith, Roussopoulos, Franklin, and "suddenly the tape quit." McMillin said that immediately prior to the tape quitting, "there is a pause and a kind of a shuffle," then there is silence and when the interview resumes, Andrews is very cooperative. McMillin stated, "It makes me wonder what happened." McMillin denied that he was ever approached by IAU concerning his observations but had heard that Officer Roy Alvarado was conducting "his own little investigation on it." McMillin did not recall if he had escorted inmate Andrews to the IAU interview, but he did write a memorandum to Reynoso concerning his observations. McMillin denied he (McMillin) was angry or telling anyone he was angry concerning the incident. He stated, "At the time, I didn't believe inmate Andrews had been assaulted by IA." McMillin said he spoke to Lieutenant Thomas G. Arneson about his feelings approximately five or six months ago and that Arneson had told him to go forward and let someone know about it. McMillin said he wasn't sure, it was just speculation on his part, and he didn't pursue it. McMillin didn't recall any allegations about the CDC-7219 being lost or not being done. McMillin further recalled an incident concerning an inmate Simpson who had informed him that he knew of a weapon that was supposed to be used against him (Simpson). McMillin said that he instructed inmate Simpson to let him have it, or to tell him where it was, and he (McMillin) would go get it. He stated that inmate Simpson told him that he couldn't get it at the time because it was in a common area and "everyone" would know that it was him who gave up its location. McMillin said it was then determined that inmate Simpson would give Officer James Dagenais the weapon on the following morning. McMillin said he didn't like doing it that way, but it was the only way to get the weapon off the yard, and arranged it to happen. McMillin said that on the following morning, he told Dagenais that Simpson would bring him the weapon. He stated he later received the weapon from Dagenais and prepared a confidential memorandum for Simpson's file, gave the report to Reynoso, and disposed of the weapon. McMillin said he remembered that Officer Rick Newton approached Dagenais and told him that he could get a "reprimand" concerning the way "we" had gotten the weapon off the yard. He stated that Newton told Dagenais that he needed to tell him (Newton) everything that was going on. McMillin said that Newton then approached him (McMillin) and asked if he had written a report, and he showed it to him. McMillin said that later the same day, he walked to 'B' Yard and saw Newton talking to Dagenais and Sergeant Carla Sekula. He stated Sekula called him over to the office and Newton informed him he was conducting an investigation, stating, "Mac, there's allegations by another staff member that a weapon was given to an Officer by an inmate." McMillin stated that he told Newton, "As far as I am concerned, you are not an investigative authority. You can take that Union stuff and shove it up your ass." He said he knew the allegation was coming from Alvarado and he subsequently wrote a memorandum to Captain Charles Carroway concerning the incident, but never heard anything more about it. McMillin stated he began to feel he was being attacked and not getting any support, particularly after Alvarado's testimony with inmate Bui as well as the more recent allegations with the Dagenais incident. He said he approached CDW Ayers who told him that it was being looked at. McMillin claimed that prior to arranging for the weapon to be delivered by Inmate Simpson, he believed he told Reynoso and Lieutenant James R. Long. McMillin acknowledged that Simpson did not go to the hole for the weapon, however, he did recommend that he be locked up approximately two weeks later for safety concerns. McMillin recalled another incident where Alvarado confronted him after he had testified in court concerning the drug trafficking prosecution of inmate Bui. McMillin said that Alvarado had told inmate Bui that he (Alvarado) was "hot," and that he would not be surprised that IA would "set him up". McMillin said that inmate Bui was subsequently found in possession of narcotics during a visit, and during the prosecution, inmate Bui arranged

for Alvarado to testify on his behalf. McMillin said Alvarado crossed the line as far as he was concerned. He recalled at one point walking past Alvarado and he shook his head at Alvarado, who asked him, "What's wrong with you." McMillin said he replied, "You're a stupid son of a bitch." He claimed Alvarado replied, "Well, your days are coming, there's going to be an investigation and your ass is going to be nailed." McMillin said he then replied to Alvarado, "All you are is a drunken little old man." McMillin said there had been rumors about a big investigation against IA staff for beating up and "planting" inmates, and he believed they had been coming from Alvarado. McMillin stated he had no other direct knowledge of Alvarado gathering information inappropriately.

Interview with Correctional Sergeant Judy Glover

Correctional Sergeant Judy Glover was interviewed on July 30, 1997, at PBSP and stated that she was previously assigned as a S&I Officer at PBSP during late 1995 and early 1996. She recalled Inmate Andrews but didn't recall anything specific, nor did she recall ever hearing about his allegations of assault by IAU staff. She stated she believed Officer Alvarado left the S&I Unit around January 1996. Glover said that Alvarado used to call her after he left "about a lot of things," but didn't recall anything specific. She stated that he had called a lot after he had first left the unit, but eventually "cut everybody loose." Glover claimed that she didn't recall Alvarado requesting a copy of a CDC-7219 or any other documents, nor did he request her to do anything inappropriate.

Interview with Correctional Officer James H. Dagenais

Correctional Officer James H. Dagenais was interviewed on July 30, 1997, at PBSP and stated that he was assigned as the B Facility Yard Crew Work Officer on July 16, 1996. He stated he had come to work and didn't recall how or who had contacted him, but the information became known to him that Inmate Simpson was going to give him a weapon and that he was going to take it and deliver it to S&I Officer James McMillin. Dagenais stated he didn't remember talking to any of his supervisors before the weapon was delivered and said that approximately 7:30 a.m., Inmate Simpson came into his office area and placed a brown paper bag on his desk. He said he subsequently took the bag, which contained an inmate manufactured weapon constructed of inmate belt buckles, to Officer McMillin. Dagenais said he asked McMillin if he should write a report and McMillin told him no he didn't have to. Dagenais claimed he didn't write a report until a couple of weeks later, after Officer Richard Newton had approached him. He stated Newton told him it was really important that he write a report because it could be a violation of the Madrid Order. He recalled asking Newton if he (Dagenais) was in trouble and Newton replied that he could be if he didn't document the incident. He stated Newton also made statements concerning S&I "doing things" and not documenting them and that "other people" were getting in trouble for doing the same thing. Dagenais said that at some point during the same day, he approached McMillin concerning Newton's comments and McMillin showed him a copy of the report that he (McMillin) had generated that was on file in the S&I Office. Dagenais believed that he had told Sergeant Carla Sekula and Lieutenant James Long immediately after the incident, and that neither requested a report. He said that during the same day, he recalled a meeting with himself, Sekula and Newton, outside the B Facility Program Office where they were discussing the same concerns that Newton had expressed earlier. He remembered McMillin showing up and Newton began talking with him. He recalled McMillin being angry, and telling Newton that he (Newton) was putting his nose into something that didn't concern him. Dagenais said that Newton was very calm and didn't say anything back to McMillin. Dagenais stated that he wrote

his report, (CDC 128B) on that same day as a result of the inquiry. He also recalled, at some point during the same day, that he told Newton (who was standing with Officer Paul Wenning) that he (Dagenais) had informed his Supervisor (Sekula) about the incident on the day that it occurred. Dagenais said he recalled Newton approaching him on two other occasions about the same incident, but he didn't feel that Newton had threatened or attempted to intimidate him. Dagenais also recalled working with Officer Roy Alvarado at one point and that he (Alvarado) had some knowledge of the incident, but didn't recall any specific details about their conversation. Dagenais stated that no other staff has approached him concerning this incident.

Interview with Correctional Sergeant Carla S. Sekula

Correctional Sergeant Carla S. Sekula was interviewed on July 30, 1997, at PBSP and stated that during September 1996, she was assigned to the B Facility Yard Sergeant on second watch. She stated that she was aware of an incident in which Inmate Simpson had approached Officer James Dagenais concerning his knowledge of a weapon (or where a weapon might be), information about him (Simpson) being hit, as well as information about who was going to do it, and where they lived. She stated that Dagenais informed her about the information and that the inmate wanted a guarantee of his safety, including possibly a cell or facility move, prior to surrendering the weapon or releasing the information. Sekula said she was not present when the weapon was exchanged, but Dagenais did show her the weapon after he had obtained it. She recalled Dagenais asking her if he should write a report and she replied yes, due to inmate Simpson's previous informant status, and referred Dagenais to S&I with the weapon for disposal. Sekula claimed she notified Lieutenant James Long, after initially talking to Dagenais, but only recalled telling Long that inmate Simpson had information that he was going to release. She stated that she found out later from McMillin and Dagenais, that inmate Simpson originally was going to identify where a weapon was and who it was intended for, in order to get a cell move. She claimed she instructed Dagenais to write a report and is aware that McMillin wrote a report. Sekula said that on July 24, 1996, Officer Charles Alexander approached her in the facility and told her that he wanted her to talk to Officer Richard Newton. She said that he directed her to Newton and left the area before the actual meeting began. Sekula recalled Newton having some questions about the incident and Dagenais not writing a report. She said that Newton was concerned that Dagenais had accepted the weapon in the first place and believed that "we" had totally mishandled the incident. Sekula said that Newton had brought up Madrid and that the PBSP administration would also be concerned about what had happened. Sekula felt that Newton believed that no reports had been written concerning the incident and felt that he was trying to intimidate her. She stated that the intimidation came from Newton attempting to tell her what she should have done and implying that she would hear more about it by him going to the Administration. She stated that because Alexander had originally arranged for the meeting, she believed it was clearly a union matter. She stated at some point during the conversation, she observed McMillin and asked him to step into the meeting. She recalled McMillin having his report with him. She also recalled Newton wanting to know whether she or Lieutenant Long knew about the incident in advance. Sekula stated that Newton didn't appear to know McMillin's role in the incident and recalled McMillin attempting to explain what had happened. She recalled Newton and McMillin getting into a "heated argument," specifically concerning McMillin's allegation that Officer Roy Alvarado had initiated Newton's inquiry, and recalled McMillin utilizing the term "investigation". She remembered them yelling that McMillin felt Newton was conducting his own investigation that he had no right to do, and that he (Newton) was looking for "something else" other than what his actual line of questioning was. She recalled confronting

Newton regarding his concerns, stating that "this has happened before," referring to inmates surrendering weapons to staff. She also questioned Newton as to why he was talking to her about this when he had never talked to her before. Sekula said she was not clear, and still not clear, why Newton was questioning her about this incident. She also stated that Newton did not work in the area. Sekula said she generated a memorandum concerning the incident to Facility Captain Teresa Schwartz and delivered a copy to the IAU. (see Attachment Q) She stated that no one has approached her since the incident regarding the circumstances of what had occurred.

Interview with Correctional Counselor II Sasha Upton

On September 23, 1997, Correctional Counselor II Sasha Upton was interviewed by telephone at PBSP and stated she was assigned as the PBSP Employee Relations Officer during "part of the time" that Warden Cambra was going through the confirmation process. She did not recall Charles Alexander ever discussing Cambra's confirmation. Upton did recall Richard Newton saying something about Cambra's conversation in regards to the David Lewis investigation. She claimed Newton said something to the effect that Cambra "was going to listen to what their complaints were." Upton said she took his comments to mean that there might be some opposition to Cambra's confirmation depending on what happened regarding their complaint. She said she told the PBSP PIO Mike McDonald and later discussed the conversation with Cambra. She did not recall discussing this incident with Barbara Sheldon.

Interview with Associate Warden Joe McGrath

Associate Warden Joe McGrath was interviewed at PBSP via telephone on September 22, 1997, and recalled Officer Newton approaching him sometime in December 1996, while he (McGrath) was acting Warden. McGrath stated that Newton told him that he (Newton) had been approached by a female Correctional Officer who had information related to the Jose Garcia investigation. He believed the conversation took place on a Thursday ("possibly" December 12, 1996) and occurred just prior to Warden Cambra returning. He said that Newton further told him that the information was of a nature that, "I (Newton) can't sit on it. I have to give it to you. I have to turn her over to you with the information. I have a Peace Officer duty to do that." McGrath said he wasn't familiar with the Garcia case and he told Newton that Warden Cambra was scheduled to return to the institution on the following Monday. He claimed that Newton said he didn't mind waiting a few days but that he (Newton) felt he needed to come and make contact, and let him (McGrath) know. McGrath stated that Newton did not give him any specific details of the Officer's information and said that to this day, he still didn't know the information that the officer revealed.

Interview with Warden Steve Cambra Jr.

Warden Steve Cambra Jr. was interviewed on September 22, 1997, at PBSP via telephone and recalled Officer Newton telephoning him and informing him that an officer had come forward that might have information concerning the investigation of Joe Garcia. He said Newton requested to bring the Officer in to talk with him, which he scheduled for the following day. Cambra didn't recall the exact date, but remembered that he was called away on a trip the same day and instructed CDW Ayers to be available for Newton on his scheduled appointment the following day. Cambra denied that Newton gave him any specific details about the Officer's information, including information concerning Garcia "setting up child molesters." Cambra stated he was away from PBSP during the first and second week of December 1996, and believed that Newton's phone call occurred at the end of November 1996 or first Monday of December 1996. He

recalled meeting with Newton, Alexander, and Freitag on or about December 19, 1996, when Freitag discussed her specific knowledge of Garcia and he referred Freitag to the District Attorney's Office. Cambra said he did not talk to Newton between his (Newton's) original call and the December 19, 1996, meeting.

Interview with Correctional Officer Roy J. Alvarado

Correctional Officer Roy J. Alvarado was interviewed on June 20, 1997, at PBSP and stated he was assigned to the B Facility Clinic between June 1996 and August 1996 and knew inmate Bui, who was assigned as the Clinic Porter. Alvarado stated he recalled having a conversation with inmate Bui about being "careful around my clinic". Alvarado didn't recall telling inmate Bui to be careful around S&I. He stated he told inmate Bui that there were rumors that he (Bui) was stealing from the clinic and "I wasn't going to allow that." Alvarado claimed he told him, "If he (Bui) was going to involve himself in anything illegal, then he had to go." When asked if he had a conversation about inmate Bui being careful around him, Alvarado stated "Yeah, don't bring no heat down on me." Alvarado said he told inmate Bui that he was "under the gun from Administration". He stated "I told inmate Bui something like...If there was something wrong take it somewhere else." Alvarado claimed he said this to inmate Bui because it was his (Alvarado's) work area and he felt that there would be "heat" on him because his worker was "dirty", and so he "jammed" him. Alvarado denied he meant that he was condoning illegal activities by telling inmate Bui to "take it somewhere else". He stated that he didn't know that he was being investigated at the time, but thought he might be. Alvarado said he brought forth information to SSU concerning his perception of illegal activities by Captain Dan Smith. Alvarado said, "I didn't tell inmate Bui that he was being watched, I told inmate Bui that I felt I was being watched". He stated that "yard staff" had told him that inmate Bui was suspected of removing hypodermics from the Clinic, but he had no knowledge of inmate Bui doing anything inappropriate or illegal. Alvarado was then asked about his testimony during the drug trafficking prosecution of inmate Bui on December 3, 1996, in which he stated..."I basically told him (Bui)...I was under the gun from Investigations...if I was under the gun, then the Medical Clinic was under the gun...if there is anything going on...that shouldn't be happening, then he would make sure it didn't happen... I basically told him (Bui) that I was being watched...and if I was being watched then everybody was being watched." (see Attachment R and Enclosure III) Alvarado replied, "That meant don't do it, you could turn the words around, but what I meant, don't do it here. That doesn't mean go do it somewhere else". Alvarado denied he was warning inmate Bui or telling him that he (Alvarado) was under investigation. Alvarado said that, "I did it (told Bui), I wasn't trying to tip my hand, I was trying to protect my area. I had no intent to have him take it somewhere else." Alvarado denied he was conducting his own investigation of staff, but did acknowledge that he was "suing people". He stated that he understood what a personnel investigation was as he had initiated one when he was in S&I Unit. He said that he was removed from S&I Unit approximately in October 1995, as he was deemed untrustworthy. Alvarado felt that he was and is currently being set-up by PBSP Administration, specifically Captain Dan Smith. He said, "I had Officers come up to me concerning IA setting up staff and I referred them to the Union". He said this occurred between October 1995 through January 1996. Alvarado claimed he went to SSU, but when they "showed their true colors, I went to a Lawyer". Alvarado also claimed that inmates were coming up to him telling him that he, Sergeant Michael Powers, and Officer Jose Garcia were "dirty cops". Alvarado acknowledged that he reported this to the Union, but not to his Supervisor. Alvarado stated that the "information" he was referring to in the transcript on December 3, 1996 was tapes, interviews, and inmates coming out of the "hole". When asked what tapes he was referring to in

the transcript, he stated the tapes his lawyer had. Alvarado said that his lawyer was the same as Officer Garcia and the lawyer got the tapes from Garcia. When asked what interviews he was referring to in his testimony, he stated that he was referring to the tapes. When asked about his court testimony, "we're still investigating that" referred to an incident he believed occurred in September 1996, in which involved S&I Officer James McMillin. He stated that Officer Lesina had told him that Officer McMillin had an inmate give Officer James Dagenais an inmate manufactured weapon in a bag, and Officer Dagenais subsequently gave it to Officer McMillin. He stated that this occurred in the B Facility Yard, however, he didn't recall the inmate's name. Alvarado said he gave the information to the Union, but did not tell his Supervisor as he "did not trust" a lot of the Administration. Alvarado said the information was reported to his supervisor by "the Union". When asked what the term "we're" is referring to in his testimony, Alvarado stated "the Union" and later stated, "I don't know what I meant." Alvarado said he felt that Officer John A. McKinney was conducting his own investigations of staff that were not authorized. He said that when he became aware of this, "I didn't do nothing," because it had already been brought to the Union. When asked why he brought this information up during his testimony, he said that he'd used it as an example, however, his information was second hand. Alvarado denied that he had gathered investigatory information and all that he testified about came to him from officers approaching him. When asked about his August 1 & 2, 1996 deposition (Castillo vs Gomez) in which he was asked if he possessed any documents that indicated altering or obstruction of justice, he had replied, "I'm not, my lawyer is." Alvarado denied that he had ever had a copy of the original Bacos CDC-115. When reminded of his testimony, "I have the paperwork," Alvarado said, "I don't have it available." When reminded that he was under oath during his testimony, he stated, "well yeah, I don't have any paperwork, I have access to the paperwork, I never had the paperwork, I could get the paperwork. It didn't come out that way, I was under a lot of pressure, I was nervous." Alvarado said that he also possessed documents about himself that he believes are inaccurate. Alvarado said officers were telling him that inmates were saying "they" (IAU) were setting up officers by cutting deals with inmates for transfers and televisions. He said that one inmate told him personally about IAU setting up staff, and that's why he "stressed out." Alvarado stated that an inmate Cornell (# unknown) approached him in approximately January 1996, telling him that the Administration had convinced the FBI that "we (PBSP staff) were setting up inmates to be assaulted and he felt that I was being set up because he knew me and that I wasn't that kind of guy." Alvarado said he never documented that conversation, at least "not to his knowledge," but did write the information in his notebook. When reminded of his August 2, 1996 testimony, he stated, "I have got a rough draft of that, I never submitted it because I ended up stressing out over it." Alvarado said, "But I documented it for myself and my lawyer. I did not submit it to my supervisor." When asked why he didn't tell his supervisor, Alvarado said, "I stressed out and was off for six months and I didn't return until June of 1996." He said the inmate also told him that the Captain of IAU was cutting deals with the inmates to keep their mouths shut. Alvarado said he didn't submit the information to his supervisor because he didn't trust his supervisors, the PBSP Administration, or anything that had to do with the State of California. He did state that it was documented on his worker's compensation form. He acknowledged that he was approached by Officers D'errico, Coffman, and Freeman concerning information they had about inmates making allegations about IA. He stated that he told them that "you're not the only one" and to take it to the Union. When asked if he had advised them to write reports, he stated, "If they asked me what to do." Alvarado said he recalled the incident with Sergeant Teda Boyll which occurred approximately October 1995 and did report this information as he was interviewed by SSU on "four different times." Alvarado said

that after he was removed from S&I, he filed an EEO complaint and recalled meeting with Captain Paul Dillard, Lieutenant Miller, and Sgt. Reynoso concerning his complaint. He did acknowledge that nothing was ever done, to his knowledge, about the complaint. Alvarado said that he was aware that McMillin and McKinney were testifying against Bui when he was giving his testimony. Alvarado said he was subpoenaed by the defense because he was inmate Bui's Supervisor, and he didn't volunteer to testify. Alvarado denied he was participating in an investigation with the Union nor was he gathering tapes and documents for the Union.

Correctional Officer Roy Alvarado was re-interviewed on July 31, 1997, at PBSP and was questioned again about his December 3, 1996 testimony during the Del Norte County vs inmate Bui case. When questioned about his allegations concerning Officer McKinney, he stated that he was informed by Officer Chris Wilkins that McKinney was trying to get information on him. Alvarado said he felt that McKinney was attempting to conduct an illegal investigation on a fellow Officer, which was against the investigative procedures and violated Wilkins' POBR. Alvarado did acknowledge that McKinney was testifying on behalf of the State. Alvarado acknowledged that he further testified that a weapon was given by an inmate to an Officer who passed it to an S&I Officer and that no documentation was done. He stated he reported it to the Union and the documentation was subsequently completed. Alvarado said when he testified, he was accusing McMillin of not documenting the incident as well as allowing the incident to occur with prior knowledge. He stated he told the Union that Officer Dagenais was being manipulated by McMillin and claimed he (Alvarado) got involved because what happened was illegal. When asked why he was testifying about McMillin, who was a State witness, he replied that it was based on the information that he had as well as his personal knowledge of McMillin. Alvarado stated he didn't recall talking to inmate Bui's attorney prior to testimony. Alvarado could not explain why inmate Bui's attorney was questioning him about McKinney or how the attorney knew about the incident concerning Dagenais receiving a weapon from Inmate Simpson. Alvarado denied he talked to Bui about either incident. Alvarado further acknowledged that during his December 3, 1996 testimony, he had made a broad allegation against the S&I Unit about inappropriate activities, including that Dan Smith was in charge of conducting illegal investigations. Alvarado acknowledged that both McMillin and McKinney and the S&I Unit were involved in the prosecution of inmate Bui. He denied that his impeaching testimony was done as a favor to inmate Bui, or to get even with the IAU, or due to his friendship with Jose Garcia, or because of his being "kicked out of S&I." Alvarado stated that he didn't think what he had done was unethical or discourteous despite him not having all the facts. He claimed he does know Correctional Sergeant Judy Glover and that she was on the S&I Squad as an Officer with him. He acknowledged that he did keep in contact with her after he was removed from the S&I Unit. He described the frequency of his contact as "here and there" and when asked if he called her, he stated "occasionally." When asked about what, he stated, "If there is something going on, they need to check it out" referring to normal inmate activities. When asked if he called Glover and asked for inmate Andrews CDC-7219, he stated, "I don't recall." Alvarado said he did ask McMillin if a CDC-7219 was done on inmate Andrews and that McMillin "Spun out," claiming that inmate Andrews was "all right" when he went in there (referring to the IAU Office). When asked why he asked McMillin, Alvarado stated, "Fishing." Alvarado denied that CCPOA was assisting him with his law suit or providing him any tapes, documents or any information. He stated that when he testified on December 3, 1996, "we're" referred to himself, Sergeant Michael Powers, and former Correctional Jose Garcia. He stated that the tapes, documents, and information he was referring to was obtained from Jose Garcia. When asked about his August 2, 1996 testimony concerning Officers D'errico, Coffman, and Freeman, he stated he did not instruct

them to write reports, that they had asked him for advise and he told them to write reports to protect themselves. Alvarado then clarified the August 2, 1996 testimony, stating he did talk to Coffman and possibly Freeman, but didn't recall talking to D'errico. He stated he also informed them to make sure they gave a copy of the reports to the "Union." When informed that Coffman didn't recall speaking to him, he said he remembered Coffman being present with a group of people discussing the same issue. When asked about his August 1, 1996 testimony concerning the alleged forged CDC-115 (Bacos) and alleged promise of reduction of the CDC-115 (Bacos), he stated he was referring to Captain Dan Smith. When asked how he had knowledge of this information, he claimed he observed the CDC-115 or had talked with Jose Garcia about it, as well as listened to tapes in the possession of Garcia. When asked to clarify where he had factual information concerning these allegations, he stated he could not recall where he had heard this information. He also stated the term "they" utilized in his August 1, 1996 testimony (concerning the Bacos CDC-115) referred to IAU. Alvarado denied he conducted any investigation of the Bacos CDC-115 allegations which he was referring to in the August 1, 1996 testimony. When asked about his August 2, 1996 testimony concerning information relayed to him by inmate Cornell, he again claimed that he reported it during his stress claim to Worker's Compensation. He acknowledges he did not report the information to this supervisor. When informed that inmate Cornell is not mentioned in his Worker's Comp claim, he stated that whether or not he used his name or not, the incident was reported. When asked about his previous alleged EEO complaint that he had filed, and that Captain Diller denied that he had discussed any discrimination issues with him, Alvarado stated, "I wasn't discriminated against, It was a complaint about being untrustworthy." When asked about additional allegations contained in his Worker's Compensation claim, he stated that he alleged he had witnessed Correctional Sergeant Teda Boyll assault an inmate in the presence of himself and, Lieutenant Dan Smith. He stated that he turned that information over to SSU on or about October of 1995 and was interviewed concerning his information. When asked about his statements that he had initiated an IA investigation on a staff member for "bringing in steak knives," he stated that he was referring to information he had developed and turned it over to his supervisor while he was in the S&I Unit. When asked about his statement in his Worker's Comp claim that "The Union confirmed that I was being set up by my supervisors," he stated, "It wasn't that. I was stressed out and the Union told me I was just being paranoid. After I went out on stress, I was being told that maybe there was something up." When asked if he had ever been in a verbal confrontation with Officer James McMillin, he stated that he and McMillin did not get along, did not like each other, and did, in fact, exchange words on several occasions.

Interview With Correctional Officer Richard Newton

Correctional Officer Richard Newton was interviewed on August 5, 1997, at CCPOA Headquarters and stated that he was the CCPOA Vice-President at PBSP. He admitted that he had asked Lieutenant Jean Rupert to obtain a copy of a CDC-115 from inmate Bacos and she subsequently gave it to him by leaving it in an envelope at one of the Sallyport Gates in the SHU Facility. Newton acknowledged that he informed SSU during his interview on April 4, 1996 that he had obtained copies of CDC-115's on inmates Towler and Andrews and others from the AWC file at PBSP. Newton stated that he didn't personally get them, but identified the AWC file as where he had obtained the copies from, but claimed that he had given the copies to Warden Cambra and Brian Parry. When asked who had pulled the documents, he stated that it was "other Officers" whom he did not remember, except possibly the A-Facility Disciplinary Officer (unnamed). Newton then clarified his statement, stating that he assumed that the A-Facility

Disciplinary Officer got them from the AWC files, but did acknowledge that he had asked him to look for them. Newton stated he was working on the Officer Mark Piland Skelley case and that Officers David Lewis and Jose Garcia were on ATO at the time. Newton said that he recalled that Garcia once came over to his house and played some tapes that he had in his possession as a result of his disciplinary action, but claimed he told Garcia that he didn't have time to review his case, and referred him to Charles Alexander. Newton said that one of the tapes that Garcia played for him was an interview with inmate Bacos and claimed that this was where he had originally heard the information concerning the CDC-115 that was re-classified. When Newton was asked what the Bacos CDC-115 had to do with the Piland case, he stated, "Nothing." Newton later recanted and believed inmate Bacos may have been part of the Piland case, but wasn't sure. When asked about proper discovery procedures at PBSP, Newton acknowledged that there was a discovery process through the ERO's office. Newton said he didn't see the copies of the CDC-115's as being anything confidential as the Officers worked with the documents all the time. He attempted to mitigate his actions by stating that he had surrendered all of the documents he had obtained to the Warden's office. Newton acknowledged the statement that he had made during his April 4, 1996 interview with SSU that he asked Sergeant Cello if he had signed one of the Bacos CDC-115's. When asked what investigation he was conducting, he stated at that time the Piland case was completed and he was not sure what Skelley he was working on, but he believed it was David Lewis. Newton stated that he was assigned as the Infirmary Escort Officer in the Specialty Clinic and primarily worked in B-Facility. He claimed that he is able to conduct his CCPOA business while on his post and during escorts. Newton stated it wasn't always a matter of leaving his post for Union business, but he routinely left the unit to escort inmates. He said that his supervisor did maintain a log for leaving his post. He acknowledged that when he called and requested the copies of CDC-115's from the A-Facility Disciplinary Officer, he did not request permission from his Supervisor because he was on his post and doing his job. He again attempted to mitigate his actions by stating that all the information he obtained was relayed to the Warden. He stated that at the time of these events, his supervisor was Sergeant Donna Miller. He did acknowledge that he was moved to Family Visiting for about six months during 1996, and was subsequently moved back to the Specialty Clinic. When asked again about his April 4, 1996 testimony to SSU, that he felt the discussion between IAU and inmate Bacos was a "negotiation process," he stated that it was his opinion. He stated that he felt the reduction of the Bacos CDC-115 was a "hammer" to get information from him (Bacos) and this is what he perceived from the tapes, "I'm not saying it's wrong, it's just some strange stuff that needs to be looked at." When asked why he claimed that all four IAU staff collectively negotiated the reduction of the CDC-115, in exchange for his cooperation, he stated that his "perception" was based on what he heard on the Bacos tapes. When asked why he continuously made reference to the Bacos CDC-115 being back-dated and reissued, he stated that he understood it was a routine process. Newton then identified this investigator's copy of his SPB Complaint dated December 12, 1996, as well as all attachments (A through L) as complete. Newton also identified his signature on the complaint and his representative, Daniel Lindsay, acknowledged that CCPOA legal counsel assisted in preparing the SPB Complaint. Newton acknowledged that his SPB Complaint consisted of allegations and that he was asking for a hearing. Newton did not feel that the statement in the SPB Complaint that James Gomez and Brian Parry "admit wrong doing on that part of the PBSP Internal Affairs Department," and that "they refuse to take adverse action," was not a misrepresentation of fact. Newton said that because of some of the circumstances concerning statements being omitted in the Piland and Lewis cases, particularly exculpatory information, he felt adverse action was warranted on those

involved. Newton identified the transcriptions of inmate Bacos contained in his SPB complaint, and acknowledged that the tape was obtained during the Skelley discovery process of the Lewis case, that he had obtained it as a Union Representative, and had it transcribed himself. Newton identified the Officer Lewis 989A, dated December 15, 1995, contained in his SPB complaint, and acknowledged that he had obtained it during the Skelley process as a Union Representative. He identified inmate Wilson's interview transcript contained in his SPB complaint, in which he stated that he also obtained as a CCPOA Representative during the Skelley process. Newton identified Officer Evan's transcript dated September 25, 1995, contained in his SPB complaint in which he stated he obtained as a CCPOA Rep during the Lewis Skelley. Newton further stated that he believed he had permission from Officer Evans to use his tape. Newton identified Officer Piland's 989A, dated August 16, 1995 contained in his SPB complaint, and stated that he had obtained it during the Skelley process as a CCPOA Representative and that Piland knows that he used it for his SPB complaint. He further identified a copy of the original Bacos CDC-115 contained in his SPB complaint, which he claims he obtained from Lieutenant Rupert and made his request to Rupert as CCPOA Representative. Newton further identified a copy of the revised Bacos CDC-115, contained in his SPB complaint, which he stated he also obtained from Lieutenant Rupert at the same time in which she delivered a copy of the original, via a manila envelope left at the SHU Gate. Newton identified a subsequent Bacos CDC-115 dated March 19, 1996 contained in his SPB complaint, and was brought to him from an Officer Tatro, in which Tatro alleged that IAU had held the CDC-115 in order to let time constraints run out. Newton acknowledged that he received this copy of the CDC-115 as a Union Representative. Newton finally identified a transcript of Officer Collver, dated November 13, 1995, contained in his SPB complaint, in which the tape was obtained as a union representative during the Lewis Skelley process. He didn't, however, think that Officer Collver knew he used the tape in the SPB complaint. Newton acknowledged that he obtained all supplemental documents as a Union Representative and filed his SPB Complaint as a Correctional Officer. He again emphasized that he had taken all documents that he utilized in his SPB Complaint to the Warden. Newton claimed that anyone could go into the PBSP AWC file and remove documents to address any particular issues that they may have. Newton did acknowledge that he had more access to information because he is a CCPOA Representative. He believed that Officer Lewis paid for the transcriptions concerning his case, but denied that he (Newton) had arranged to have them done. He believed that the inmate Bacos transcriptions were arranged for by Alexander, but didn't know how he did them. When asked about the CCPOA memorandum dated October 25, 1995, concerning Del Norte County District Attorney interviews at PBSP, Newton stated he didn't recall if he had helped initiate the memorandum or if Alexander had initiated the memorandum. When asked about inmates approaching Officers concerning allegations about IAU staff, Newton stated that Officers at both A and B Facility were calling him and telling him about the allegations. He stated that he told Officers that called him to write down and submit a copy to him (Newton) and to their supervisor. He claimed that he took any copies that he received to the Warden. He specifically recalled receiving a copy of a report from Officer Salvatore D'errico and believed that Alexander had "gotten some". He didn't specifically recall receiving Officer Mark Connelly's, but did remember hearing about it. Newton could not explain the various letter heads that was utilized in the reports from Officers Mark Connelly, Salvatore D'errico, Gina Coffman, Paul Wenning, and Monroe Freeman. He did recall an incident where he called one of the officers after he heard about the information second-hand, but he didn't recall what the Officer's name was. He stated that his concern was to get the information to the Warden. Newton acknowledged that he did use "the big picture of information" on the SPB Complaint concerning the inmate allegations to the

officers, but later minimized his role. Newton cited an example on his reporting of information to Warden Cambra. He stated that there was an incident in which he had heard Captain Smith had made a statement to several staff, "You guys finally did it, you killed someone." He believed this incident occurred during the Inmate Silk murder. Newton said he informed the Warden, and in this particular incident, the Warden asked who witnessed the statement. Newton said he discovered that Officer Wenning and Lieutenant Long were present and relayed this information to the Warden. When asked if he had made a statement to then ERO Sasha Weaver concerning opposing Warden Cambra's confirmation if action was not taken against the IAU staff, he stated, "I don't remember and I don't know why I would." Newton stated he knew of inmate Andrews and recalled that Warden Cambra had spoken to him that inmate Andrews had made an allegation that he had been beat up by IAU staff. He said he believed the first time he heard someone was looking for inmate Andrews' CDC-7219 was when Alexander told him, or when he read it in Brian Parry's letter. Newton said he remembered listening to the tape of the inmate Andrews interview and heard Roussopoulos and inmate Andrews yelling at each other, chairs moving around in the room, and the tape going off during the noise. Newton stated that he remembered Officer Haynie calling him on the phone, but didn't recall when. He did recall the conversation with Haynie concerned "something" about inmate Andrews, but didn't remember specifically what it was about. Newton denied that he offered to talk to inmate Andrews. He stated that he never saw any documentation that Haynie may have generated and has not spoken to Haynie about that incident since. Newton stated that he didn't recall making the allegation that IAU had destroyed the original Bacos CDC-115. He acknowledged that he was advised that it was subsequently found by Officer Freeman or D'errico. Newton denied that he worked in conjunction with Officer Roy Alvarado and stated that Alvarado was not assigned any work to do for the Union. Newton said he did not give Alvarado any tapes, transcripts or documents and suggested he may have gotten the items from Jose Garcia. Newton acknowledged that Alvarado's attorney did contact him and wanted to talk and obtain a copy of the SPB Complaint. Newton claimed he told the Attorney that he could get it from them (SPB). When asked about his comments concerning the results of the Inspector General's (IG) report, Newton stated that word came in a very general basis out of the IG's Office, but he didn't believe he had seen the IG report. Newton felt that there was an inadequate investigation of his original allegations and that prompted the SPB complaint. He acknowledged that he had received a letter from Brian Parry, but felt that Parry didn't speak to all of his issues, and he was dissatisfied with the response. Newton stated that when Piland first went on ATO, he did talk to Dan Smith on the general issues of the ATO and later discovered missing information from the investigative report. He stated that the IA summary didn't match the conclusion and he confronted CDW Ayers, and Piland was subsequently returned from ATO. Newton stated that he was not aware of any IA staff being involved in exposing an exculpatory information or Piland's return from ATO. Newton denied releasing any part of the SPB complaint to the Sacramento Bee which appeared in articles dated January 5, 1997 and March 22, 1997. Newton also denied releasing inmate Bacos' name to the Sacramento Bee. He acknowledged that he and Charles Alexander had spoke to Bee Reporter Andy Furillo, and informed him that there was a "forged CDC-115" that the Department was investigating. Newton claimed that he didn't know if there was an investigation of the forged CDC-115 until he had received a letter from Gomez and Parry. Newton stated that he didn't feel that he was impeding the investigation of Garcia, Lewis, Piland, or the alleged forged CDC-115 by talking to Furillo. Newton stated that the reference to the "forged reports against several inmates, who they (IAU) wanted to cooperate with their investigation," referred to inmate Bacos and was based on his perception. Regarding another Bee article, dated December 1, 1996, he stated that the quote,

"dirtiest internal affairs investigation I've ever seen," referred to the Piland, Lewis and Garcia case as a whole. Newton did recall Garcia admitting that he did do some of the issues that were in his adverse action package. Newton stated that the reference to "falsified reports", "deliberate misrepresentation of Officer interviews", and "induced inmate testimony that was suspect," referred to leaving information out of IA reports and the Bacos CDC-115, all of which he claims he reported to the Warden prior to the SPB Complaint. He stated the reference to the Management level memos in the January 5, 1997 article referred to the Gomez and Parry memos, and denied that he turned over the memos to Furillo, but did speak about them. Newton stated that he originally heard about the incident concerning Officer Dagenais from Alvarado and two other Officers whom he didn't recall. He stated he heard from Alvarado that "an Officer" received a weapon from an inmate and "the Officer" didn't write a report, and the inmate (Simpson) wasn't locked up. He stated he went and asked Dagenais if it was true, and after he (Dagenais) acknowledged it, "I told him he had to write a report". He said that Dagenais told him that he felt like he was kind of "shoved off", and was told not to write a report. Newton said he went with Dagenais to submit the report to Sergeant Sekula who refused the report, saying it's wasn't necessary and "we do this all the time." He stated that he confronted Sekula and stated that all he (Dagenais) wanted to do is submit his report, attempting to persuade her to take it. Newton said that Sekula then opened the door and Officer James McMillin came in. Newton stated that McMillin became loud and boisterous and said something to the effect of "threatening to kick my ass" and that "I was a self-serving Union person". Newton said he didn't feel threatened, but he did think that McMillin was combative, and did report this incident the Warden Cambra. Newton stated that he didn't know at the time that McMillin had written a report, but Sekula said that there was a report that McMillin had authored and McMillin showed up later on the yard with it. Newton said that he understood that Captain Caraway prepared a CDC-989 to investigate the incident, but didn't know what the outcome was. Newton said that he wasn't trying to intimidate Sekula. He stated he believed that he originally asked Alexander to handle the situation, but denied that Alexander was even in the area. Newton stated that he didn't recall what date he took Officer Freitag to the Warden's office. He believed Alexander was with him and that was the first time he had heard about her allegations concerning Lieutenant Boyll. Newton said Freitag originally came to him in regards to Officer Garcia while he was assigned to the Family Visiting Unit. He said that Freitag said she was referred to him by Sergeant Rice and informed him that she had had a personal relationship with Garcia and that she had knowledge of him "setting up child molesters." She was concerned about his return from ATO and that she would be in danger if he came back. Newton said he called Alexander, informed him of the information and Alexander said "you need to be talking to the Warden." Newton said he called Warden Cambra and informed him that they had a female who had a relationship with Garcia and had information concerning his "setting up child molesters." He said he was going to send Freitag talk to the Warden, but she wanted him to go with her, and the appointment was scheduled for the next day. Newton said that Cambra canceled later that afternoon and referred them to CDW Ayers. Newton said he decided to go to Associate Warden Joe McGrath instead and informed him (McGrath) that he had a female officer that had a relationship with Garcia and had knowledge of him "setting up child molesters." He claimed at that point, McGrath gave a "time-out sign" and told him that Cambra would be back in a couple of days and to bring her in then. Newton said this occurred at the same time that Garcia's SPB hearing was going on and that he was assisting Garcia's attorney. Newton said that at the time of the SPB hearing, he ran into Barbara Sheldon and informed her, "that a new female witness had materialized". He stated that they did eventually meet with Warden Cambra and that is when she brought up the information concerning

Teda Boyll Newton said approximately two and one-half weeks before Freitag first had approached him, Sergeant Rice had told him that he was referring a female Officer to him concerning sexual harassment by Ted Boyll. Newton said that no one had ever showed up regarding that allegation and it didn't ring a bell that Freitag was that same individual until she brought up the issue in front of Warden Cambra. Newton said he called Rice back (after Freitag had first approached him) and said something like, "Thanks for this missile. Why did you send her to me?" He said he proceeded to tell Rice that she had "dumped" several issues (including Garcia) and Rice replied that Freitag had never said anything about Garcia to him. When informed that Freitag said that she had informed him (Newton) of her information in October of 1996, he didn't believe that that was accurate. Newton also denied Freitag's allegation that she was with him when they first attempted to contact Cambra, claiming that he himself called Cambra to set up the meeting. When asked about assisting Freitag with writing her reports, Newton stated that Freitag had asked him to read her report on Teda Boyll, regarding punctuation and sentence structure. Newton said he didn't change or edit anything and verbally gave her advise on what EEO was. Newton said that he never saw the reports on Garcia and claimed that his review of the report on Boyll was after the meeting with Cambra. Newton claimed he didn't recall the exact time, but he remembered being informed by CCPOA attorneys that there was a conflict of interest concerning his representation of Freitag. Newton stated he believed that it was shortly after Barbara Sheldon and SSU attempted to interview Freitag. Newton said that everything Freitag wrote, she wanted to bring to him. He stated he recalled that Freitag had documents in her hands concerning Garcia when she talked to him about the Boyll report, but denied that Freitag had handed them over to him. Newton stated that she brought the reports to him and he referred her to the Warden, claiming "I didn't want no part of the Garcia reports". Newton stated he also prepared a grievance on behalf of Freitag concerning her issue with SSU Agent Bruccoleri. Newton acknowledged that he never notified the District Attorney about his knowledge of Freitag's information concerning Garcia. Newton denied that he had told Freitag that Ayers could not be trusted, and had only told her that he didn't feel comfortable talking to Ayers. Newton denied that he had any other contact with Sergeant Rice concerning Boyll, Garcia, or Freitag. Newton stated that his conversation with inmate Phillips (concerning Inmate Phillips' comments about his interview with this investigator) was an unsolicited conversation in which he documented on June 26, 1997, and gave to the Warden. Newton claimed he had no knowledge of the incident surrounding the Lee and Pofahl investigatory interviews on November 14, 1995.

Interview With Correctional Officer Charles Alexander

Correctional Officer Charles Alexander was interviewed on August 5, 1997, at PBSP and identified himself as the CCPOA Chapter President at PBSP. When questioned about his April 4, 1996 interview with SSU, he recalled discussing "some" CDC-115's during the interview, but did not recall the specific inmates. Alexander did recall giving copies of the CDC-115's to Brian Parry, but did not recall which specific ones. Alexander stated that his issues with the CDC-115's concerned allegations against staff at PBSP relative to several ongoing investigations. Alexander acknowledged that he and Rick Newton, either together or separate, contacted Lieutenant Long about two of the CDC-115's. Alexander said "we" showed Lieutenant Long two CDC-115's and asked if it was his (Long's) signature on them or not. Alexander stated that Lieutenant Long identified one of the signatures as his, but denied the other. He stated that he did not recall the inmates names that were on the CDC-115s. When asked where he obtained the CDC-115's, he stated he believed that he was preparing for the Jose Garcia Skelley, however, he was not sure.

When asked to confirm his statement during the SSU hearing that he had personally pulled copies of CDC-115's from the AWC file. He stated, "I might have pulled one or two 115's personally from the AWC file." He acknowledged no one authorized him to do so, however, he stated there was no violation of policy that he was aware of. Alexander stated that he didn't recall making an allegation in his April 4, 1996, SSU interview concerning collusion amongst the PBSP Lieutenants regarding the CDC-115's that had been issued to the inmates. He stated that all statements in his SPB Complaint are facts as he saw them. Alexander said that he is not aware that the investigation into his April 1996 allegations is concluded, but did acknowledge that he had possession of the Jim Gomez's (November 8, 1996) and Brian Parry's June 7, 1996) letters. Alexander acknowledged that staff at PBSP were calling him with information concerning inmates that were talking to them about their IAU interviews. He stated that he told them to write reports, turn one into their supervisor, and send one to himself. Alexander claimed that he gave copies of every report he received to the Warden. He could not recall how many reports, but indicated "there were several". Alexander stated he did not know why staff were coming to him instead of their supervisors, but suggested it was possibly because he was the Chapter President. Alexander denied he was soliciting the reports and denied that he was attempting to interfere with any IA investigation that was occurring at the time. Alexander originally stated he didn't remember that Officer Salvatore D'errico telling him that the Bacos CDC-115 was lost, but later recanted and stated, "I do remember him telling something about it." He didn't, however, remember how the contact was made, and stated that he believed that he received a memorandum from D'errico. He denied soliciting D'errico for the information and could not explain why he (D'errico) came to him, or if D'errico had reported it to his own supervisor. Alexander stated that he believed D'errico was a Disciplinary Officer in B-Facility. Alexander identified the SPB complaint dated December 12, 1996, and stated he was aware of the denial by SPB. Alexander identified his SPB complaint Attachments A and B as letters from Jim Gomez and Brian Parry and Attachment D as a transcription of a tape involving inmate Bacos. He stated he received the inmate Bacos tapes from the Garcia Adverse Action package in his role as a CCPOA Representative. He stated that he had the tape transcribed locally and implied that the local CCPOA Chapter had paid for it. Alexander identified his SPB complaint Attachment E as the Lewis CDC-989 dated December 15, 1995, and stated he obtained it during the Skelley process from Richard Newton, with Lewis' knowledge. He identified his SPB complaint Attachment F as a transcription of an interview with inmate Wilson and although he was not sure which "case" he obtained it from, he did acknowledge he received it as a CCPOA Representative. Alexander identified his SPB complaint Attachment G as an interview with Correctional Officer Robert Evans and believed he received it as part of the Lewis Skelley process and obtained it as a CCPOA Representative. He stated he believed that both Wilson's and Evan's interviews were transcribed by the attorney representing Lewis. Alexander identified his SPB complaint Attachment H as the Piland CDC-989A, dated August 16, 1995, and obtained it during the Skelley process as a Union Representative. He then identified his SPB complaint Attachment I as a transcription of Officer David Collver and believes he obtained it preparing for the Lewis case. Alexander said he obtained it as a CCPOA Representative, but did not know if "they" had received permission from Officer Collver to utilize it. He identified his SPB complaint Attachment J as the original Bacos CDC-115 which he stated he received from Officer Newton. Alexander identified his SPB complaint Attachment K as the re-issued Bacos CDC-115, but could not recall how he received it, but acknowledged he did not receive it through discovery with ERO. He identified his SPB complaint Attachment L as a separate Bacos CDC-115 and also did not recall where he had gotten a copy of it, but did acknowledged it was not through discovery

with the ERO office. Alexander acknowledged that he filed his SPB Complaint as a Correctional Officer. He did not feel it was inappropriate or unethical to utilize his role as a CCPOA Representative to access documents and information and then file his SPB Complaint, as a Correctional Officer. When asked under what authority he had to utilize the information in the manner which he did, he replied "the contract" (Unit 6). He further stated that, "I am the CCPOA Representative. I'm the only Chapter President in the whole state on an out-of-post job. My job is...Union." Alexander did not recall having any conversations with Lieutenant Miller regarding his concerns with the interview tactics of Lieutenant Roussopoulos. He did not recall having a conversation with Lieutenant Miller regarding the Local CCPOA Chapter strategy was to keep the IAU on the defense. Alexander denied that he told anyone that he was going to raise allegations to impede IAU from conducting investigations. Alexander also denied that he referred to his tactics as the OJ defense or that he told anyone anything similar. When asked about the CCPOA (D.A. investigation) memo dated October 25, 1995, he acknowledged that at the time, the DA was investigating Officers. When asked if he had anything to do with initiating the document, he stated, "I may have" but then denied he solicited it from CCPOA. When shown the memorandums from Officers Connelly, D'errico, Coffman, Wenning, and Freeman, he "vaguely" recalled having seen all of them. He acknowledged conversations with all of the Officers except for Connelly and did not recall if he conducted the conversations over the phone or in person. He stated he remembered advising the Officers to write reports and submit a copy to himself and their supervisor. He again stated that he turned the reports into the Warden, but indicated they didn't all go at the same time, that the submission of the reports occurred over a period of time. Alexander first claimed he did not know why the Officers were coming to him rather than their supervisors and denied that he solicited any staff to question inmates as they came out of the IA interviews. Alexander stated he was aware of inmate Andrews and his allegations of staff brutality. He recalled being questioned about inmate Andrews' CDC-7219 and believed it was possibly by SSU. Alexander did acknowledge seeing a copy of inmate Andrews' CDC-7219 as it was "shoved under his door or left at the gate." Alexander claimed he "didn't go get it (CDC-7219)," but then acknowledged he had gone to the Infirmary to see if "it" was hanging on "the clip board." Alexander stated he might have talked to Brian Parry or Warden Cambra about the alleged missing CDC-7219, but didn't recall having any conversations with Dan Smith regarding the issue. He also did not recall Dan Smith offering a copy of the CDC-7219, stating, "I'm not saying it didn't happen, I just don't recall." Alexander stated he didn't recall making a statement that the CDC-7219 was destroyed and that he didn't know if it was. When asked if had made any statements to then ERO Sasha Weaver, that if the Local CCPOA Chapter would oppose Warden Cambra's confirmation if he didn't do anything about the IA Unit. He initially stated, "No," but then later stated, "Not that I recall." When questioned if he ever made an allegation that PBSP IAU destroyed the original Bacos CDC-115, he stated, "I don't know, I may have. I don't recall." Alexander stated he is aware that the Bacos CDC-115 was found, but didn't remember who told him. Alexander denied that he told Linda Brown that she would be "considered a rat" if she told on other staff. He also denied asking her (Brown) for copies of her IAU interview tapes, but believed he did ask her Union Representative, Jerry Griffin, to request the tapes. When asked why he needed the tapes, he stated, "I was asked to acquire them by CCPOA legal council for purposes of their own." He said he believed that CCPOA Legal was looking at an unfair labor practice. Alexander then recalled talking to Linda Brown at least twice on the phone, one of which explaining why the representative had asked for the tapes. Alexander denied that he threatened or attempted to intimidate Brown during that conversation. Alexander denied that Roy Alvarado was working on behalf of the Union during the time period referenced by

Alvarado's statements in the inmate Bui and Castillo testimonies. He denied that he had given Alvarado any documents or tapes, and also denied assisting Alvarado with his law suit. When asked about his statements referencing the Inspector General (IG) report being critical of the PBSP IA Unit, he stated, "That's my opinion based on what I read." When asked if he read had the report, he said, "I scanned it, I didn't read every word." He acknowledged reading the "Executive Summary," but stated he was basing his opinion on scanning the entire document, and didn't feel he was misrepresenting the IG Findings in his SPB complaint. Alexander acknowledged the allegation that Dan Smith was negotiating with inmate Bacos was based on several interviews of inmate Bacos. Alexander said that he was aware of the investigation into his (Alexander) allegations based on the letters from Jim Gomez and Brian Parry. He acknowledged that the investigative findings did not substantiate his allegations and the forgery issue was still in progress. Alexander stated he didn't know if the findings were "correct or not, that's what the department says." He stated that his allegation of the Bacos CDC-115 was reduced solely as exchange for his (Bacos) cooperation was not a misrepresentation, although he did acknowledge that he was aware of the departmental findings at the time he filed the SPB complaint. When asked about the reopening of the Mark Piland case, he stated he didn't believe he represented Piland, but was aware that the investigation had left out exculpatory information. He believed that the discovery of the exculpatory information was initiated by Richard Newton and thought he (Alexander) may have been involved with the reopening of the IA investigation. Alexander recalled Lieutenant Roussopoulos being involved, didn't know where he had heard it, but speculated that Roussopoulos was assigned to redo the investigation. Alexander claimed he didn't recall PBSP IAU's involvement of the reopening of the Piland case, but "assumed" he became aware of Roussopoulos' role was after he (Alexander) had filed his SPB complaint. When asked about Officer Freitag's information, he stated he had first heard about her allegations concerning Lieutenant Boyll "third or fourth hand...through the grapevine." Alexander said he didn't recall ever seeing any of Freitag's reports. Alexander denied that he received any information from Freitag concerning Garcia, but did receive information from Newton. He stated Newton informed him that he had an Officer who had knowledge about Garcia's case, and felt it should be taken to the Warden. He didn't recall the exact date, but believed it was after Garcia's SPB hearing. Alexander also didn't recall the initial information from Newton getting into Garcia's involvement with child molesters. He stated he was in the Warden's office when he heard Freitag say that she had lived with Garcia and he (Garcia) bragged about child molesters being beat up. Alexander said the conversation didn't go very far as Cambra stopped it and referred Freitag to the D.A.'s Office or SSU. Alexander said he personally did not go to the DA with any information. He further stated he did not represent Garcia at the SPB hearing, but acknowledged he was present. Alexander denied having knowledge of Freitag's information before or during the SPB hearing. Alexander stated he had heard about the Officer Dagenais incident from several Officers who's names he didn't recall. He heard that Dagenais received a weapon from an inmate and the inmate wasn't locked up. He stated he did not talk to Dagenais and did not recall ever approaching Sergeant Sekula to arrange a meeting with Newton and Dagenais. He further didn't recall being involved in organizing an inquiry into the incident. Alexander denied ever releasing his SPB complaint to the Sacramento Bee and denied that he had released any other documents to the Bee. While he acknowledged talking to Andy Furillo (Bee Reporter), he didn't recall giving him inmate Bacos' name. When asked about the allegations in the 12/1/96 Bee article concerning "falsified reports," "deliberate misinterpreting Officer interviews," and "induced inmate testimony that was suspect," he stated that those were not his quotes and that he didn't remember what he had told Furillo. Alexander did acknowledge that his

SPB complaint was similar, however. When asked what he was basing these allegations on, he cited excerpts from inmate Wilson's testimony during the Officer Lewis investigation, and specifically the omission of two Officer's names. He also cited the Bacos CDC-115 being lost, reissued, and missing two of the original CDC-1030 forms. When asked if these issues were investigated, he stated, "supposedly, that's the Department's position." Alexander did not acknowledge why he would be making statements to the press while his SPB complaint was under review. When asked about the statement that the Department had a "vendetta to get somebody for a statistic," he didn't recall making that statement. Alexander said he believed that "they" (PBSP Management) needed to "get somebody" based on the Madrid Law Suit. When asked about the January 5, 1997 Bee article concerning forged reports against several inmates, he believed that Furillo had gotten that information from the SPB Complaint. Alexander acknowledged that there was an ongoing investigation of alleged forgery of a CDC-115 when he was interviewed by Furillo about that allegation. Alexander didn't feel his interview with Furillo was impeding the investigation, claiming that "the Department does it all the time." When asked if he testified in the inmate Castillo hearing, he said he was deposed one time by Del Norte County concerning an inmate case, but didn't recall the inmate's name. He also didn't recall getting out of any other planned deposition of any inmate in Del Norte County. Alexander did not recall any conversation with Dan Smith after the inmate deposition and denied making a comment, "they didn't ask the right questions" when returning from the deposition. Alexander did not recall representing or talking to Officers Steven Lee or Jimmy Pofahl during the Garcia investigation on November 14, 1995 or arranging for a conference call for their representative during their interviews. Alexander also denied arranging for a conference call after Lee's first interview, claiming he didn't have (nor ever had) a speaker phone. Alexander acknowledged that the SPB complaint was prepared with assistance from CCPOA Legal Council and concluded his interview by stating that all of the issues that he had brought forward in SPB complaint had been discussed with Warden Cambra, Brian Parry, Eddie Meyers, Jim Gomez, and Joe Sandoval, and that not one of them had ever said anything about how he had obtained the documents he was using to present his issues.

FINDINGS OF FACT:

- I. It is sustained that Officer Richard Newton was aware of Deanna Freitag's knowledge of Jose Garcia's illegal and inappropriate behavior on or before November 24, 1996, and failed to properly report the information until December 19, 1996. Freitag claimed she told Newton about her knowledge of Garcia's illegal and inappropriate activities during October 1996. Rice claimed that Newton telephoned him approximately three (3) weeks after his (Rice's) initial conversation with Freitag (October 26, 1996), informing him (Rice) that Freitag claimed knowledge Garcia's misconduct and unlawful behavior. Newton said Freitag first approached him concerning her information about Garcia when he (Newton) was assigned to Family Visiting (which ended on November 24, 1996). It is also sustained that Newton possessed this information during the on-going criminal prosecution of Garcia and while he (Newton) assisted in representing Garcia during his SPB Hearing on or about December 11 and 12, 1996. Newton claims he notified Warden Cambra via telephone of Officer Freitag's information immediately after she informed him (on or before November 24, 1996). Cambra remembered that Newton called him during the last week of November 1996, or the first Monday in December 1996, but said that Newton did not divulge any specific details of Freitag's information. Newton claims he

notified Associate Warden Joe McGrath of Freitag's information shortly after his initial phone call to Cambra. McGrath recalls Newton approaching him on or about December 12, 1996, but denies Newton gave him any specific details of Freitag's information. Newton claimed he informed Barbara Sheldon, during Garcia's SPB hearing, that a "new female witness had materialized." Sheldon denies that this occurred. (see Interview Summaries of Newton, Rice, Freitag, Cambra, and McGrath.)

II. It is sustained that Officers Charles Alexander and Richard Newton engaged in inappropriate and questionable activity, under the guise of Union business, during 1995, 1996, and 1997. Specifically;

- Newton admitted he obtained a copy of the original Bacos CDC-115 (Log #A95-11-037) on or about January 26, 1996, from Lieutenant Jean Rupert, in lieu of normal discovery processes. Newton attempted to mitigate his actions by claiming he submitted a copy of the document to Warden Cambra. (see Interview Summary of Newton and Rupert.)
- Newton admitted he routinely conducted Union business while on his post (B-Facility infirmary) and while escorting inmates to and from other areas of the institution. He acknowledged that he did not always notify his Supervisor and that his Union activities were not always accounted for (logged) by his Supervisor. (See Interview Summary of Newton.)
- Newton assisted Officer Freitag in preparing her reports concerning Teda Boyll's behavior. This was after he had excluded himself as her representative because a conflict of interest existed due to her information on Jose Garcia. (See Interview Summaries of Newton and Freitag.)
- Newton challenged Sergeant Carla Sekula regarding the manner in which she had handled the inmate Simpson incident during a meeting on July 24, 1996. Sekula felt that Newton was attempting to intimidate her by threatening to go to the PBSP Administration. Newton minimized his actions, claiming he was trying to persuade Sergeant Sekula to accept Officer Dagenais' report, but denied trying to intimidate her. While Alexander denies it, Sekula claims that Alexander initially set-up the meeting between her and Newton, personally requesting her presence. (See Interview Summaries of Sekula, Newton, and Alexander, as well as Attachment Q)
- Alexander admitted removing documents (CDC-115's) for copying from the PBSP AWC file without going through normal PBSP discovery processes. (See Interview Summary of Alexander.)
- Alexander and Newton both admit to informing staff to write reports concerning their information of inmate allegations regarding PBSP IAU Staff. Alexander admitted requesting copies of the reports, however attempted to mitigate his actions by claiming he turned all reports over to Warden Cambra. Alexander denied on-going attempts to solicit documents, and claimed he only responded to staff who approached him. (See Interview Summaries of Alexander and Newton.)

III. It is sustained that Officers Alexander and Newton prepared their State personal Board Request for Adverse Action with malice, as the "complaint" contained misrepresentation of facts and inappropriately obtained documents (Bacos CDC-115) as attachments. In addition, both Alexander and Newton misused their authority, (as CCPOA representatives), in accessing confidential information and documents to support their complaint, as well as utilizing the assistance of CCPOA Legal Counsel in the preparation of their complaint.

- Alexander and Newton both acknowledged that they obtained all supplemental documents in their SPB complaint due to their role as CCPOA Representatives, yet filed the SPB Complaint as Correctional Officers. (see Interview Summaries of Alexander and Newton)
- Alexander acknowledged he had read the Inspector General's Report but did not feel he had misrepresented it in his SPB Complaint, despite a serious conflict between his allegations and the contents of the actual report. Newton claimed he had not read the IG Report. (see Interview Summaries of Alexander)
- Both Alexander and Newton state their allegations in their SPB complaint were based on their perception of information available to them. (see Interview Summaries of Alexander and Newton)

IV. It is sustained that Correctional Sergeant Robert Rice failed to properly report allegations made to him by Correctional Officer Deanna Freitag on October 26, 1996, concerning serious overfamiliarity by Correctional Lieutenant Teda Boyll. Based on his own admission, he only reported the allegations verbally to Officer Richard Newton and failed to document the information or notify a Supervisor. Rice denied that Freitag informed him about her knowledge of former Officer Jose Garcia's illegal and inappropriate activity during their conversation on October 26, 1996. Freitag was evasive and contradictory during her interview, but eventually claimed she did not recall if she informed Rice about her knowledge of Garcia. Officer Les Spouse, who was witness to the conversation, recalled a brief discussion between Rice and Freitag that did include Jose Garcia, however, he could not recall any specific details. While suspect, it is inconclusive if Rice obtained specific knowledge of Garcia's illegal and inappropriate activity from Freitag on October 26, 1996. (See Interview Summaries of Rice, Freitag, and Sprouse.)

V. It is sustained that Correctional Lieutenant Jean Rupert instructed Sergeant Gregory Lewis to obtain a copy of a CDC-115 (Log #A95-11-037) from inmate Bacos on January 26, 1996, at the request of Officer Richard Newton. Sergeant Lewis acted on what he believed was an official duty. Rupert admitted she delivered the copy of the Bacos CDC-115 (Log #A95-11-037) to Richard Newton (who also verifies this admission) via an envelope left at the SHU Entrance Gate. Alexander and Newton also identify Rupert as giving them a copy of the reissued Bacos CDC-115 (Log #A95-11-037), however, Rupert was not questioned about this action. (See Interview Summaries of Rupert, Lewis, Newton, and Alexander.)

VI. It is sustained that Correctional Officer Roy Alvarado failed to notify his supervisor or properly document allegations made by inmate Cornell during January 1996, concerning the PBSP IAU "setting-up" staff. He did attempt to minimize his actions by claiming he departed the institution on stress immediately after the conversation with Cornell, and reported the information on his Worker's Compensation Form. A review of Alvarado's Worker's Compensation file does not indicate any disclosure of this information, either to his supervisor or to the treating Psychiatrist. He claimed he didn't submit this information to his Supervisor because he didn't trust his Supervisors. (See Interview Summary of Alvarado.)

VII. It is sustained that Correctional officer Roy Alvarado attempted to impeach officers James McMillin and John McKinney, as well as Captain Daniel Smith and the PBSP IA Unit, during his testimony (under oath), at the criminal prosecution of inmate Bui in the Del Norte County Superior Court on December 3, 1996. While his testimony was not allowed, Alvarado's groundless allegations, particularly against McMillin and McKinney,

be alone in the Office. (see Interview Summaries of Alexander, Newton, Lee, Pofahl, and Attachment S)

- Six (6) Officers (Coffman, Connelly, Wenning, D'errico, Haynie, and Freeman) documented conversations with different inmates regarding allegations of misconduct by PBSP IA Staff within a relatively short period of time (September 1995 through January 1996). Five (5) of the Officers gave a copy of their report to Alexander and/or Newton at their request, and all reports were in possession of PBSP management. The motive for these reports, how they were generated, and who they were given to, is highly suspicious. No evidence was obtained to sustain the allegation that these six officers approached these inmates at the direction of Alexander and Newton. (see Interview Summaries of Weaver, Newton, and Alexander and Attachments K and P)
- Alexander and Newton denied informing PBSP ERO Sasha Upton (Weaver) that they (CCPOA) would oppose Warden Cambra's confirmation unless action was taken against PBSP IA Investigators. Upton (Weaver) stated that Alexander did not make any such statements to her. Upton (Weaver) did recall Newton implying that there would be opposition if there was an unsatisfactory response to his complaint regarding the David Lewis investigation. She could not, however, recall his specific statements. (see Interview Summaries of Alexander, Newton, and Upton)
- There was no evidence to sustain that Alexander, Newton, or Salvatore D'errico deliberately misplaced or "hid" the original Bacos CDC-115 (Log #A95-11-037). (see Interview summaries of Alexander, Newton, and D'errico)
- While Alvarado made statements in court that he was working with the "Union", there was no evidence to sustain that allegation. Both Alexander and Newton denied that Alvarado was an "agent" of CCPOA and claimed he was acting independently. It appears that Alvarado's knowledge of confidential information, and his claims of evidence (tapes, documents, etc.), were obtained for his friend, Jose Garcia. These items were all appropriately discovered during Garcia's disciplinary action. (see Interview Summaries of Alexander, Newton, Alvarado, and Enclosures II and III)
- Officer Robert Evans denied that he was "intimidated" to withhold information during the David Lewis investigation. Evans stated he didn't believe he gave any additional information during his second interview, but possibly "clarified" some issues. Evans said he was reluctant to discuss his knowledge of Lewis' as "nobody wants to be called a rat," but he "did it anyway." (see Interview Summary of Evans)
- The State Personnel Board released the SPB Complaint and Rebuttal to the Sacramento Bee at the request of Reporter Andy Furillo. While Alexander and Newton both interviewed with Furillo, there was no evidence they provided the Sacramento Bee with any documents. (see Attachment T)
- The inmate Bacos interview transcript contained in the SPB Complaint does contain some minor errors, however, there appears to be no deliberate misrepresentation of his (Bacos') statements.
- The allegation that SPB representative Carol Dobbins reported that Alexander had admitted to her (Dobbins) that he (Alexander) had misrepresented the IG report in his SPB Complaint is not sustained based on discussion with Departmental Legal Counsel Barbara Sheldon.

CASE STATUS:

No further involvement by this investigator is anticipated at this time.



M. E. KNOWLES
Chief Deputy Warden
High Desert State Prison



P. D. PALMER
Facility Captain
Folsom State Prison

MEK:gg1aVdck

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- A. Letter to James H. Gomez by Charles Alexander (12/5/96)
- B. Allegations of Misconduct by Dan Smith (12/19/96)
- C. Allegations of Misconduct by M. T. Pickett (2/10/97)
- D. Possible Misconduct of PBSP Staff by Barbara Sheldon (2/25/97)
- E. Rebuttal to Allegations by Barbara Sheldon (3/6/97)
- F. Request for Review by Attorney Thomas M. Hagler (4/18/97)
- G. SPB Decision (6/26/97)
- H. CCPOA "Flyer" concerning D.A. Investigation (10/25/95)
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- O. Memorandum to Newton from Jean Rupert (2/4/96)
- P. Documentation Concerning Inmate Andrews' E-05734 Allegations (7/18/96)
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- R. Testimony of Roy Alvarado (State of California vs Bui) (12/3/96)
- S. Telephone Records During Officers Lee's and Pofahl's Interviews (11/14/95)
- T. Sacramento Bee Articles and SPB Discovery Records (7/31/97)

LIST OF ENCLOSURES

- I State Personnel Board Request to File Charges (dated December 12, 1996, actually filed December 19, 1996)

- II Inspector General Report - Audit of Pelican Bay State Prison Investigative Services Unit (dated October 31, 1996)

- III Sealed Testimony of Officer Roy Alvarado (Jesse Shane Castillo vs James Gomez, et. al., dated August 1 & 2, 1996)

EXHIBIT 24

Office of the Special Master Memorandum

TO: John Hagar, Special Master
FROM: Patrick T. Maher, D.Crim.
DATE: May 31, 2004
SUBJECT: Qualitative Review of 1997 Internal Affairs Investigations of PBSP CCPOA
Personnel Investigation 105-96

Per your request, I have conducted a further review of an investigation dated September 22, 1997 containing allegations that Subject Officer #1 and Subject Officer #2, functioning as both correctional officers and as PBSP California Correctional Peace Officer's Association (CCPOA) union officials, were alleged to have engaged in "illegal and inappropriate activities."¹

Allegation I: During 1995, 1996, and 1997, [Subject Officer #1 and Subject Officer #2] initiated and perpetuated a campaign to impeach the Pelican Bay State Prison (PBSP) Internal Affairs Unit (IAU) in order to impede several on-going personnel investigations.

Allegation II: [Subject Officer #1 and Subject Officer #2] submitted false information to the State Personnel Board (SPB) in their Request for Adverse Action, dated December 12, 1996.

Allegation III: [Subject Officer #1 and Subject Officer #2] inappropriately released privileged and confidential information to the SPB and to the Sacramento Bee.

Allegation IV: [Subject Officer #1, Subject Officer #2, and Subject Officer #3] were aware of and withheld information concerning [Subject Officer #6's] knowledge of [a non-subject officer's] criminal activity before his [State Personnel Board] hearing, as well as before his Preliminary Hearing in Del Norte County."²

¹Because of the deficient manner in which the investigation was conducted and reported, as well as the unusual manner in which it was initiated (explained in more detail below), it is difficult to ascertain the exact nature of the allegations that the investigation dealt with.

²It is not clear from the file as to exactly when or why Subject Officer #4, Subject Officer #5, and Subject Officer #6 became subjects. The investigation did state that "additional issues were identified during the investigation and . . . addressed in the Findings of Fact." However, there is no specific documentation as to when these "additional issues" became a formal part of the investigation or exactly when Subject Officer #4, Subject Officer #5, and Subject Officer #6 became subjects.

The investigators sustained that:³

- Subject Officer #2 had knowledge that Subject Officer #7 had knowledge of the “illegal and inappropriate behavior” of another officer not a subject of this investigation and failed to report that information in a timely manner. This allegation was sustained.⁴
- Subject Officer #1 And Subject Officer #2 engaged in “inappropriate and questionable activity, under the guise Union Business” during 1995 through 1997. This activity included using their positions as correctional officers to obtain documents that were later used in their role as union officials or for purposes other than required in their duties as correctional officers.⁵
- Subject Officer #1 and Subject Officer #2 prepared a State Personal Board Request for Adverse Action against PBSP internal affairs staff “with malice” and through the “misuse of their authority in accessing confidential information and documents to support their complaint.”⁶
- Subject Officer #3 “failed to properly report allegations made to him by [Subject Officer #6] concerning serious overfamiliarity by [a non-subject lieutenant].”
- Subject Officer #4, at the request of Subject Officer #2, instructed a non-subject sergeant to provide Subject Officer #2 with an inmate's disciplinary record (CDC-115) and then transmitted that record to Subject Officer #2. It is unclear to me if this “sustained” finding is stating which Subject Officer #4 has engaged in misconduct, and if this is an additional sustained finding of misconduct against Subject Officer #2, or merely a factual finding in support of other sustained findings against Subject Officer #2.
- Subject Officer #5 failed to notify his supervisor or properly document allegations made by an inmate that “during January 1996 the PBSP IAU ‘setting up’ staff.”
- Subject Officer #5 attempted to impeach the testimony of three other peace officers and the “PBSP IA Unit, during his testimony (under oath), at the criminal investigation of [an inmate] in the Del Norte County Superior Court on December 3, 1996” and that he attempted to “impeach the PBSP IA unit (with groundless allegations) during his testimony” in a U.S. District Court Case.
- Subject Officer #5 engaged in overfamiliarity with an inmate when he warned the inmate that Subject Officer #5 was “under the gun,” was “being watched” and to be “careful” and

³Because the investigators did not restate the specific allegations when sustaining or not sustaining various actions of the officers, it is very difficult to determine which of the 4 allegations were or were not sustained.

⁴It appears as though the investigators are sustaining Allegation IV as it pertains to Subject Officer #1 and Subject Officer #2. It is not clear to me whether or not they sustained any misconduct against Subject Officer #3 because they did not specifically make a finding concerning him, but indicate that Subject Officer #3 did admit to having been told by Subject Officer #6 of her knowledge of criminal misconduct by an uninvolved subject and that Subject Officer #3 also admitted that he did not tell any of his superiors of this information.

⁵This sustained finding may be related to Allegation III.

⁶This sustained finding may be related to Allegation II.

by discussing his own personal problems with the inmate.

Copy of Investigation Forwarded to Special Master

To my knowledge, this investigation was not forwarded to the Special Master through the existing Orders and procedures in place for receiving internal affairs investigations.⁷

It is an investigation that should have been forwarded to the Special Master for review because it does address failure of staff to report information involving inappropriate force and concerns allegations that certain staff, in particular Subject Officer #1, Subject Officer #2, and Subject Officer #5, were engaged in "reprisals" against those who report the inappropriate use of force.⁸ All of the allegations that would have been covered by the Use of Force Policy or the Discipline Policy had been submitted by PBSP as their remedial plan prior to all acts that would or could be sustained as reported in the investigation.⁹

The most serious allegations are that the subject officers (1) knew of misconduct and failed to report it to superiors in a timely manner and (2) staff falsely and maliciously accused internal affairs investigators and other staff of misconduct in order to undermine their credibility and effectiveness. Both of these allegations are, in my opinion, directly covered by the remedial plan and by the Court's Conclusions of Law that addressed use of force. Therefore, this investigation should have been produced to the Special Master as part of the regular production of investigations involving "use of force"¹⁰ investigations.

Remedial Plan's Affect on Allegations

To the extent that the investigation dealt with allegations that the subject officers's actions involved actual or potential acts constituting taking "reprisals against anyone who reports the inappropriate use of force,"¹¹ the remedial plan was controlling and involved. The following allegations were a part of the investigation:

⁷Following the time that the investigation was completed, Thomas F. Lonergan was the Special Master until 1998. I don't know if he may have been provided with a copy of this investigation, but I have not previously reviewed it and don't recall ever discussing it with him.

⁸Use of Force Disciplinary Policy I.A., and Use of Force Policy Section I.D., Use of Force Investigation Policy Section I.A.3-5.

⁹All of the acts occurred after January 1, 1996. In September 1995, the final remedial plan on use of force issues had been formally submitted to Special Master Thomas F. Lonergan and defendants had assured Special Master Lonergan that they were immediately implementing the remedial plan rather than waiting for the Court to make a final ruling on the plan. In June 1996, the Court then adopted the Use of Force Policy and Procedure as a partial remedy for the Constitutional deficiencies related to use of force, and order the defendants to implement it's remedial plan on discipline pending further review and action by the Special Master and the Court.

¹⁰Both PBSP and the Special Master has used the term "use of force investigations" generically to refer to investigations specifically related to allegations of misconduct concerning misconduct related to violations of the use of force remedial plan, even is such violations did not involve the actual use of force. That is the same meaning that I am using it in this report.

¹¹ *Discipline Policy* Section IV.A.6

- Subject Officer #1 was alleged to have “made threats” to “get even” with a PBSP internal affairs investigator over an unrelated investigation. This allegation not was sustained.
- Subject Officer #1 was alleged to have stated that the local CCPOA Chapter strategy was to keep the PBSP internal affairs unit “on the defense” and that he had informed others that he was going to raise allegations to impede the PBSP internal affairs unit from conducting investigations. This allegation was not sustained and it was further deemed by the investigator that “even if true, these statements do not appear to violate any regulations.”¹²
- An issue was that a CCPOA “flyer” distributed in October 1995, instructing staff that they did not have to talk to the Del Norte District Attorney “did not violate any laws or regulations.”¹³ Subject Officer #1 acknowledged that he “may have had something to do with initiating” the flyer. This allegation not was sustained.
- It was alleged that Subject Officer #1, Subject Officer #2, and 2 non-subject officers collaborated testimony with CCPOA legal counsel “via a speaker phone” in an unrelated internal affairs investigation. This allegation was not sustained.

Adequacy of Investigation

The investigation was assigned to a Chief Deputy Warden and Facility Captain who were not assigned to PBSP or the Law Enforcement and Investigations Unit.¹⁴ This assignment was in compliance with the remedial plan provided that the investigators had been trained in internal investigations as required by the remedial plan.¹⁵

It is not clear from the investigation if the investigators had knowledge of and used the use of force remedial plan in making findings that misconduct did or did not occur. Both investigators were from outside of PBSP and may not have had the specific knowledge of the requirements and limitations of the remedial plan. It is my opinion that some of the findings that certain acts did not or would not be a violation of any policy is at odds with the remedial plan.

The investigation did not specifically address the PBSP use of force remedial plan that directly governed many of the allegations. Some of the allegations that were unfounded seemed to be sustainable if the remedial plan was a factor in the investigation. Other allegations that were sustained should have referenced the remedial plan.

The investigators did sustain certain allegations that the subject officers engaged in acts that were contrary to policy and therefore amounted to misconduct. These sustained findings of

¹²It is my opinion that if such threats were made, they amounted to “retaliation” under *Use of Policy* Section 1D and *Use of Force Discipline Policy* Section I.A.

¹³There may have been a violation of the remedial plan's *Use of Force Discipline Policy* Section IV.A.4 if the distribution of the flier was a part of “Any involvement in a coordinated effort with other staff to prohibit factual information from being reported as required in the *Use of Force Policy* (Code of Silence).”

¹⁴Subsequent to the completion of the investigation, CDC created an Office of Internal Affairs to replace the internal affairs investigations that would have been conducted by the Law Enforcement and Investigations Unit.

¹⁵The file does not indicate if the investigators had received the requisite training.

misconduct invariably involved the officers wearing the dual hats of a CDC state peace officer and of an employee representative.

While the investigators sustained that subject officers 1 and 2 used their position as state peace officers to obtain information that they subsequently used in their role as employee representatives, the investigation did not identify specific violations of policy that would have prohibited such actions. The investigation did refer to written policy or procedure that prescribed how the officers could obtain the same information when acting as a union representatives. I have attempted to locate the CDC policies and procedures, as well as any memorandums of understandings that would set forth the limitations and the proscribed methods that the dual roles would involve, but no one that I contacted was able to provide a written document that supported investigative findings that the subject officers engaged in misconduct. Such documentation is essential evidence in supporting any finding that the subject officers engaged in misconduct.

Although the investigation did sustain that the subject officers “collaborated testimony with CCPOA legal counsel ‘via a speaker phone’ in an unrelated internal affairs investigation” it is my opinion that the factual basis for this finding is invalid. The basic facts in support of this finding was that the parties to this alleged act met in an office that did not have a speaker phone. The absence of a speaker phone is not sufficient to find that the parties did not collaborate testimony since they could have done so by talking among themselves while one of the persons present was on the phone. Or, the collaboration could have taken place among the parties present without consultation with anyone by telephone. The investigation did not reveal an effort to look at the outside calls from PBSP, especially to Sacramento on the date in question. And, in my opinion, the investigation was too narrowly focused on a conference call as constituting the entire “collaboration.”

Disciplinary Action

Although the investigation sustained allegations of misconduct against Subject Officer #1 and Subject Officer #2, the matter was closed with no “further action” being taken. It is my opinion that to the extent that the investigative findings involved actions that involved the remedial plan's governing allegations that subject officers (1) knew of misconduct and failed to report it to superiors in a timely manner and (2) staff falsely and maliciously accused internal affairs investigators and other staff of misconduct in order to undermine their credibility and effectiveness, the failure to take significant adverse action against the subject officers was not in accord with the disciplinary policy in effect at the time of the investigation and alleged misconduct.

Further Appeals by Subject Officers #1 and #2

Following the completion of the investigation, Subject Officers #1 and #2 embarked on a series of legal courses to nullify the investigation. Specifically, the file charges with the PERB and the State Personnel Board (SPB) alleging that the investigations were retaliatory due to their actions as “whistle blowers.”

It is important to note that a major aspect of the alleged investigative misconduct surrounded the internal affairs investigation of Jose Garcia, who was subsequently tried in state court and subsequently tried and convicted in federal court for criminal acts arising out of at least some of the matters that led to the charges of improper misconduct.

PERB Decision¹⁶

The California PERB Administrative Law Judge (ALJ) found that the CDC had “discriminated against officers because of their participation in protected activities where State subjected officers to investigatory interviews after they criticized internal affairs unit and requested to file charges with state personnel board seeking discipline or removal of managerial and supervisory employees.”¹⁷ The ALJ found that the “only act at issue here is the investigatory interview conducted on August 5, 1997, and the events leading up to it.”¹⁸ The ruling essentially finds that the mere act of conducting the investigatory interview was retaliatory and therefore prohibited.

The ALJ did note that “The events at issue followed a lawsuit in federal court in which the Department was ordered to make significant changes at Pelican Bay [fn omitted]. The court’s decision contained many harsh criticisms about the conduct of prison staff toward inmates.”

The ALJ continued to briefly summarize some of the findings of the Court’s original order and noted that some changes had been made in response to the Court’s findings, including noting that a Special master had been appointed, and that there had been an approved policy that “spells out the circumstances in which force can be used against an inmate.” There was also brief reference to additional staff being added to investigate possible misuses of force.¹⁹

However, the ALJ did not consider in his decision any of the many findings and hearings conducted by the Special Master, or any of the many reports and meetings concerning the fact staff misused force were often not held accountable due to either the fact that investigations were so deficient that charges could not be sustained, or that if sustained, that disciplinary action was inadequate. This was true both at the time of trial as well as for some considerable period of time after the Court issued orders to implement remedial plans on discipline and investigations.

On the other hand, the complaints allegedly made by Subject Officers #1 and #2 were that the investigators were over-zealous in their investigations, coercing statements, ignoring exculpatory information, and otherwise intentionally engaging in investigative misconduct. In all of my reviews of investigative files and disciplinary actions, I found not one iota of evidence that investigative staff assigned to investigations surrounding allegations of staff misconduct in the use of force had ever engaged in such forms of misconduct. I did find that investigators were conscientious in performing their duties, but that there were systemic issues that resulted in

¹⁶ *CCPOA v CDC* (2000) 25 PERC ¶ 32015, p.46.

¹⁷ *CCPOA v CDC* (2000) 25 PERC ¶ 32015 at p.46. The interviews were those of Subject Officers #1 and #2 that were conducted pursuant to the investigation.

¹⁸ *CCPOA v CDC* (2000) 25 PERC ¶ 32015 at p.55.

¹⁹ *CCPOA v CDC* (2000) 25 PERC ¶ 32015 at p.47.

inadequate investigations or in investigations in which allegations of misconduct were inappropriately not sustained.

However, I did find instances in which investigators were too lenient in both interviewing staff and in permitting the CCPOA representatives, in particular Subject Officers #1 and #2 serving as representatives, with undue control and interference with the investigations.

State Personnel Board Decision²⁰

The Subject officers also took the matter to the State Personnel Board (SPB). The SPB rejected the *Proposed Decision of the Administrative Law Judge*. The SPB found “that the Department retaliated against appellants when it initiated an Internal Affairs investigation into appellants’ actions after they submitted the [Request to File Charges requesting that adverse action be taken against four PBSP internal affairs investigators] to the Board.”

The record shows that Subjects #1 and #2 had first taken the following actions with the following results:²¹

1. The subjects met with then director James Gomez concerning their allegations. Mr. Gomez responded in writing on November 6, 1996.²² He “indicated that some deficiencies had been identified and corrected in the ISU, that the investigative Captain had been reassigned, that the remaining investigative staff had received additional training, and that several issues were being reinvestigated. . . ‘In several areas, your concerns proved correct and corrective action has been taken.’”
2. The subjects then met with Brian Parry, then Assistant Director of the Law Enforcement and Investigations Unit. On June 7, 1996, Mr. Parry responded in writing to the subjects.²³ Mr. Parry “concluded that there were deficiencies in the investigation conducted by the four investigators, but that those deficiencies. . . ‘did not have a serious impact on the investigative conclusions and are being rectified through training.’”
3. The subjects also met with Eddie Meyers, then the Chief Deputy Director of Field Operations, to discuss to their concerns. On June 6, 1996, Mr. Meyers provided a written response²⁴ “wherein he indicated that there was insufficient evidence to pursue appellants’ concerns further, and that the matter was closed. In his letter, Meyers advised appellants that the appropriate forum to pursue the matter was with the Board.

²⁰ SPB Case Nos: 98-2768 and 98-2769

²¹ Page 3. None of these actions or their results were disclosed to the Special Master, even though during this period of time the Special Master was conducting on-going analyses of the internal affairs investigations and these investigations showed significant deficiencies that were allowing staff potentially involved in misconduct involving force to escape any disciplinary action.

²² This document was never disclosed to the Special Master.

²³ This document was never disclosed to the Special Master.

²⁴ This document was never disclosed to the Special Master.

4. The subjects, in December 1996, then filed their RFTC with the SPB and the Office of the State Auditor, alleging misconduct on the part of the four PBSP internal affairs investigators. "Appellants sought a hearing or hearings to determine whether or not the four investigators had engaged in conduct that warranted the imposition of discipline with State civil service rules.

Subsequent to the SPB rejecting the request by the subjects, the internal affairs investigation into their actions surrounding their filing of the charges was initiated. According to the record, the internal affairs investigative interviews were held at the CCPOA headquarters at the request of the CCPOA attorneys.²⁵

The SPB decision makes no mention of the Court's various orders concerning use of force, the remedial orders in effect to correct investigative deficiencies, or otherwise shows that the matters under jurisdiction of the Court were directly involved in the matters the Subjects 1 and 2 requested that the SPB investigate.

PERB and SPB Findings

PERB found essentially that merely conducting an investigatory interview of the subjects constituted impermissible retaliatory actions by CDC. Yet, PERB found that the "alleged failure to timely bring forward a witness in the Garcia case was a proper inquiry." The SPB, in its initial review of the complaints by the subjects, found that the subjects' "allegations were not well founded" but still found that their "disclosures to the Board were, nonetheless, protected by the Act." However, the SPB never considered that the fact that the "allegations were not well founded," and the fact that the subjects had persistently but unsuccessfully tried to get CDC to make findings of investigatory misconduct may well have constituted an effort to institute a code of silence by deterring effective internal affairs investigations. Conduct fostering a code of silence was clearly prohibited by the Court's June 1996 remedial order on force and clearly, under the Court's orders, a proper inquiry by CDC. Indeed, failure by CDC to investigate conduct that was intended to interfere with internal affairs investigations into inappropriate force was contrary to the orders.

Opinions

Based on my review of the investigative report (attachments and supporting documents were not a part of this review), it is my opinion that:

- The allegations involved essential parts of the use of force remedial plan and should have been submitted to the Special Master for review as part of the regular production of the use of force internal affairs investigations.
- The sustained findings of facts involve the use of force remedial plan and that plan should

²⁵ This agreement to hold investigative interviews at the headquarters of the CCPOA is highly irregular from an investigative perspective.

have been an essential element of the basis for making investigative findings of whether or not there was misconduct.

- The sustained findings involved critical Conclusions of Law addressed by the Court in its 1995 Order involving a “code of silence” and related issues. Under the remedial plan, adverse action was called for. The decision to not take any disciplinary action for those aspects sustained in the investigation were not in conformance with the remedial plan.
- The investigation did not meet “industry standards.”
- The statute of limitations for administrative actions against the subject officers, or for conducting further investigation into the allegations has expired under State law, CDC administrative law, and the Memorandum of Understanding.
- The CCPOA, in bringing the actions before the State Personnel Board and California PERB aggressively fought to protect its staff as alleged “whistleblowers.” However, the overwhelming evidence in both decisions is that subject #2 engaged in code of silence actions by withholding information about misconduct by an officer and that the actions of bringing charges to SPB were “not well founded.” Thus, Subjects #1 and 2 both actively engaged in a code of silence that violated the remedial plans on force.
- The CCPOA, and the Subject Officers 1 and 2, by waiting for more nearly 6 months, and after having successfully forced staffing changes in internal affairs staff before filing charges with SPB that were “not well founded” engaged in an effort to conceal inappropriate force in violation of the Court’s remedial orders on force.
- CDC had an obligation, under the remedial orders of the Court, to investigate an allegation of misconduct that CCPOA representatives were attempting to halt investigations into allegations of inappropriate force by filing spurious or unfounded charges and that they were using their positions as representatives of CCPOA to further their actions under the guise of conducting official union business. Had it not done so, CDC would have not been complying with the remedies aimed at preventing the code of silence in conducting investigations of misconduct.
- I never found that any of the investigators that were identified by Subject Officers 1 and 2 had acted at any time in any manner that indicated malice toward staff in the conduct of internal affairs investigations. I did find that there were systemic problems that hindered adequate investigations, but these systemic issues resulted in officers that appeared to have used inappropriate force escaping any disciplinary action. I never found and never had any reason to suspect that any subject officer in any internal affairs investigations that I reviewed ever was subjected to an effort to falsify evidence or otherwise conduct an investigation with the intent of violating the rights of staff. Indeed, I found an over abundance of caution and protection of subject staff that often far exceeded that required by industry standards.

I recommend that the Special Master consider recommending to the Court a remedy that

protects true “whistle blowers” from retaliation for reporting misconduct concerning force while preventing spurious accusations from being filed when investigators and supervisors and managers attempt to control excessive and unnecessary force.

EXHIBIT 25

OFFICE OF THE INSPECTOR GENERAL

MATTHEW L. CATE, INSPECTOR GENERAL



**SPECIAL REVIEW INTO
MANAGEMENT OF UNION LEAVE TIME
BY THE
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

JULY 2006

STATE OF CALIFORNIA

Matthew L. Cate, Inspector General



Office of the Inspector General

July 20, 2006

James E. Tilton, Secretary (A)
California Department of Corrections and Rehabilitation
1515 S Street, Room 502 South
Sacramento, California 95814

Dear Mr. Tilton:

Enclosed is the final report of the Office of the Inspector General's special review into the management of union leave time for employees of the California Department of Corrections and Rehabilitation.

The special review found that the department has failed to account for and control the use of union leave. As a result, the department has mismanaged millions of dollars in public resources. While the department has recently taken positive steps to begin properly managing union leave time, there is still much to do.

The report makes nine recommendations to remedy the problems and deficiencies found during the special review. The key recommendation is that the department develop policies and procedures to accurately record and account for union leave time. In addition, the department should reconcile union leave time internally and work with the California Correctional Peace Officers Association to regularly reconcile the release time bank with the union's records. My office will monitor the department's progress in implementing all recommendations.

The department's written response to the special review appears as an attachment to the report.

Thank you for the cooperation extended to my staff during the course of this review.

Sincerely,

A handwritten signature in cursive script that reads "Matthew L. Cate".

MATTHEW L. CATE
Inspector General

Enclosure

cc: Kim Holt, External Audits Coordinator, Department of Corrections and Rehabilitation


Arnold Schwarzenegger, Governor

OFFICE OF THE INSPECTOR GENERAL

MATTHEW L. CATE, INSPECTOR GENERAL



SPECIAL REVIEW INTO
MANAGEMENT OF UNION LEAVE TIME
BY THE
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JULY 2006

STATE OF CALIFORNIA

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<i>The California Department of Corrections and Rehabilitation has mismanaged millions of dollars in public resources and created an operational burden on itself and the institutions by failing to accurately control and account for union leave time.</i>	
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EXECUTIVE SUMMARY

This report presents the results of a special review conducted by the Office of the Inspector General of the management of union leave time by the California Department of Corrections and Rehabilitation. The review was conducted under the authority of California Penal Code section 6126, which assigns the Office of the Inspector General responsibility for oversight of the Department of Corrections and Rehabilitation.

California Government Code sections 3512 through 3524 (the Ralph C. Dills Act) require state agencies to allow a reasonable number of representatives of employee unions a reasonable amount of time off without loss of compensation to meet and confer with state representatives on matters within the scope of union representation. The amount and type of union leave time is subject to negotiation between the state and its 21 recognized bargaining units.

With a fiscal year 2005-06 budget of \$7.7 billion, the Department of Corrections and Rehabilitation has 58,600 budgeted employee positions, approximately 49,000 of which are classified as rank-and-file employees affiliated with 19 of the state's bargaining units. About 30,000 of the department's employees are assigned to Bargaining Unit 6, which is represented by the California Correctional Peace Officers Association.

Consistent with the Ralph C. Dills Act, contracts between the state and the department's 19 bargaining units include provisions establishing various types of union leave time. In general, these union leave arrangements fall into five main categories: release time bank; official business-informal; official business-union; union-paid leave; and union activist release time, descriptions of which appear on the following page. Some of the union leave categories provide for the state to absorb the cost of the employee's absence from the job, while others call for the union to compensate the agency for the lost time, either monetarily or through hours donated by union members.

From January 2000 through December 2005, Department of Corrections and Rehabilitation employees used a total of 318,317 hours of union leave time of all types, equating to approximately \$12 million in staff resources.¹ The most significant of the union leave categories for the department is the Bargaining Unit 6 release time bank for rank-and-file members of the California Correctional Peace Officers Association, which accounted for 197,802 hours of union leave time between 2000 and 2005—62 percent of the 318,317 hours of union leave time recorded by department employees during that period.² All of the hours in the Bargaining Unit 6 rank-and-file release time bank are donated by the union's members for the use of its members.

¹ The \$12 million figure is based on a rate of \$37.66 per hour, which averages the salary and associated employee benefits for a mid-step correctional officer for fiscal years 1999-00 and 2005-06.

² Data obtained from the California Leave Accounting System maintained by the State Controller's Office.

UNION LEAVE CATEGORIES

Release time bank. Employees donate accrued vacation, annual leave, and other leave time to allow union members to be released from their jobs to conduct union work without loss of compensation. The Bargaining Unit 6 contract provides for a release time bank for rank-and-file members of the California Correctional Peace Officers Association. The California Correctional Supervisors Organization and the California Correctional Peace Officers Association each have separate release time banks for supervisors of Bargaining Unit 6 employees. Bargaining unit contracts with other state agencies also include release time banks. Section 10.13 of the Bargaining Unit 6 contract expressly limits use of the rank-and-file release time bank to 10,000 hours over the six-year life of the contract, but the department has not enforced the cap and its validity is presently under dispute in the courts. Under the terms of the contract, the granting of release time is "subject to the approval of the employee's supervisor, operational needs, emergencies, or other standards limiting usage." The contract also provides that the department is not required to release an employee if that release would require filling the employee's position at time-and-a-half or if the release time bank does not have time credits available at the time of the leave request. The Department of Corrections and Rehabilitation is responsible for tracking overall donations and use of time bank credits, and that data is entered into the California Leave Accounting System managed by the State Controller's Office. The State Controller's Office tracks leave balances only of individual members and does not maintain a running balance of release time bank donations and use, although the California Leave Accounting System is capable of reporting cumulative totals by special query. According to the State Controller's Office, the supervisors' time banks accounted for 24,687 union leave hours from January 2000 through December 2005, 7.8 percent of the total hours used by department employees during that period for all types of union leave, while the Bargaining Unit 6 rank-and-file release time bank accounted for 197,802 hours — 62 percent of the total union leave hours.³

Official Business – Informal. Allows union members release time to provide individual union members with preparation and representation during supervisory interviews, investigatory interviews, grievance conferences, *Skelly* hearings, and State Personnel Board hearings. The state absorbs the cost and the Department of Corrections and Rehabilitation does not track the time involved. All of the state's 21 recognized bargaining units are allowed some form of informal leave for union business.

Official Business – Union. Allows union members to participate in official union business, including labor-management meetings, arbitration hearings, and state contract negotiations without loss of compensation. This provision applies to all of the state's unions pursuant to the Ralph C. Dills Act. The Bargaining Unit 6 contract with the California Correctional Peace Officers Association allows three of the union's executive vice presidents to be released full time for union activities and for the union's 43 chapter presidents to be released for union activities one day a week. The state's contracts with the CAUSE Statewide Law Enforcement Association and the Fire Protection Firefighters union also provide release for union executives. The department tracks the time involved, but the state absorbs the cost of the lost time and therefore incurs additional costs for any relief coverage needed. Accounted for 2.5 percent of union leave time used by department employees from January 2000 through December 2005.

Union-Paid Leave. Allows union members to participate in union functions not approved by the Department of Personnel Administration as official union business. The union bears the cost. The department must track the time and bill the union for the employee's salary and benefits. All but three of the state's 21 bargaining unit contracts include this provision. Accounted for 2 percent of union leave time used by department employees from January 2000 through December 2005.

Union Activist Release Time. Allows rank-and-file members of the California Correctional Peace Officers Association to attend the union's annual conference without loss of compensation. The department has been funded \$368,000 annually to pay for associated costs and must track to avoid exceeding that amount. No other union contracts contain this provision. Accounted for 0.2 percent of union leave time used by department employees from January 2000 through December 2005.

³ Usage percentages have been corrected to account for errors identified in data submitted by the department to the State Controller's Office and therefore do not total 100 percent.

The Office of the Inspector General found from the review that the Department of Corrections and Rehabilitation has failed to provide adequate oversight of union leave time in accordance with state law, wasting potentially millions of dollars in public resources and creating an operational burden on state correctional institutions. The department's failure in this regard violates the Financial Integrity and State Manager's Accountability Act of 1983, which requires state agencies to maintain systems of internal accounting and administrative control to safeguard assets, maintain data accurately and reliably, and to minimize fraud, errors, abuse, and waste of government funds.

While the Office of the Inspector General was able to estimate the fiscal impact of specific union leave accounting errors, the department's failure to maintain accurate and reliable records on union leave precluded the Office of the Inspector General from quantifying the total fiscal impact of the department's mismanagement of union leave or identifying monies that may be owed to the state as a result.

Specifically, the review determined the following:

- ***The department did not establish sound accounting for the release time bank.***
The department did not plan for implementation of the rank-and-file release time bank and failed to develop the checks and balances necessary to accurately track time donated and used, leaving it unable to accurately reconcile its internal release time bank records. Failure to do so violates provisions of the Financial Integrity and State Manager's Accountability Act of 1983. The department also has only recently instituted standardized coding procedures to ensure that release time bank donations and usage are accurately recorded and has not adequately trained staff responsible for entering the data. As a result, the records are laden with errors and there are vast discrepancies between the department's release time bank records and those of the State Controller's Office.
- ***Errors make it impossible to tell whether the release time bank is overdrawn.***
Because of errors in the department's coding of union release time and because the department has not effectively tracked donations and use, it is not possible to tell for certain whether the release time bank is overdrawn. According to State Controller's Office figures, rank-and-file release time bank usage for the period January 2000 through December 2005 exceeded time donations by 30,373 hours — the equivalent of \$1.1 million in staff resources. It is possible, however, that the excessive use of time donations may have resulted from the department erroneously charging other types of union leave time to the release time bank and that no deficit actually exists.
- ***The department cannot reconcile its time bank records with those of the union.***
Since at least 1992, the Bargaining Unit 6 union contract has required the department to reconcile its release time bank records with the union's records as often as the department and the union agree is necessary, although no more often than once a quarter. The California Correctional Peace Officers Association

reports that the department and the union performed quarterly reconciliations under the previous administration, and the department reports that its former labor chief met with the union at least once a year to reconcile the release time bank records. Yet, the department's Office of Labor Relations told the Office of the Inspector General during this review that the department began monthly reconciliations to track donations and use only with the period beginning July 2005 and did not continuously track donations and use before that time. Moreover, differences in the way the department and the union record and track donations and usage make reconciliation impossible. According to the Office of Labor Relations, the department tracks the time after it has been used, while the California Correctional Peace Officers Associations tracks usage at the time it is requested. The union also complains that the department delays posting donations to the release time bank, sometimes for months, but charges for release time bank usage immediately. In any case, the department cannot successfully reconcile its records with those of the union until it can achieve an accurate internal reconciliation.

- ***The department did not enforce the release time bank cap.*** Current language in section 10.13 of the Bargaining Unit 6 contract expressly limits the use of the rank-and-file release time bank to 10,000 hours over the six-year life of the contract. Yet, the department did not raise the issue of the cap until 2005, four years into the contract and after Bargaining Unit 6 members had used 122,367 hours from the release time bank. The California Correctional Peace Officers Association maintains, and the Department of Personnel Administration's chief negotiator testified regarding the 2001 contract, that the intention of the parties during negotiations was to eliminate the cap and that it remained in the contract by error. An arbitrator ruled, therefore, that the presence of the 10,000-hour cap in the contract was due to a transcription error. The arbitrator's decision was subsequently vacated by the court, and the California Correctional Peace Officers Association in a separate action is seeking removal of the cap. Because of the pending litigation, the department continues to grant time from the release time bank without regard to the cap.
- ***The department has failed to manage the supervisors' release time banks.*** The Office of the Inspector General found that until recently the Department of Corrections and Rehabilitation mistakenly believed that the Department of Personnel Administration was responsible for monitoring the release time banks established for supervisors affiliated with the California Correctional Peace Officers Association or the California Correctional Supervisors Organization. As a result, the department did not attempt to track time donations and usage to the supervisors' release time bank or to reconcile the release time bank records. The Department of Personnel Administration informed the department this year, however, that it does not monitor the release time bank and lacks the ability to do so because it does not have the necessary personnel time records. Accordingly, the department's Office of Labor Relations has now begun to track the

supervisors' release time bank donations and usage and reported a positive leave balance of 3,602 hours for the period July 2005 through January 2006. The Office of the Inspector General found that the California Leave Accounting System shows 29,389 hours in donations and 24,687 hours of usage in the supervisors' release time banks for the period January 2000 through December 2005, resulting in a positive balance of 4,702 hours, if the figures are accurate.

- ***The department has allowed release time without verifying authorization.*** The department has allowed a significant number of employees to be released indefinitely from job assignments to conduct union functions without supporting documentation to verify that the time was authorized. In an October 28, 2004 memorandum, the department's Financial Services Division identified 19 employees who had been released full-time or part-time for union activities and who had used the largest amount of union leave time. Although three of the employees were entitled to full-time release under the union contract, evidence of release authorization for some of the other employees was lacking. For one employee, the department was unable to provide documentation either of a request for release from the union or an authorization for release from the state. For another employee, the department provided evidence of release authorization for only 712 hours for official business and 1,576 hours from the union for use of release time bank credits, leaving 2,738 hours with no evidence of release authorization.
- ***The department has not consistently charged time to the release time bank.*** In checking the personnel records of nine of the 19 employees described above, the Office of the Inspector General found that 14,707 hours reported as release time bank hours during the period reviewed were not shown as charged to the release time bank in the State Controller's Office records. The value of the time lost in that instance is estimated at \$554,000.
- ***In some instances, the department has failed to account for time at all.*** In the sample of the nine employees described above, the Office of the Inspector General found that 10,970 hours — the equivalent of approximately \$413,000 — were not charged to either work time or any other type of leave.
- ***The department has not controlled the individual use of union release time.*** The department has not controlled the individual use of union release time despite language in the Bargaining Unit 6 contract providing for limits on some types of union release time where necessary to prevent hardship to the department. In one instance, for example, the department allowed an employee to continue on full-time release for union activities for 6½ years even though the institution to which he has been assigned reported that it had raised objections about the situation every year since 1999. Although the employee was on the institution's payroll the entire time, he had never worked at the institution.

- ***The department has not required timesheets for employees on union leave.*** According to the department's Office of Labor Relations, the union interpreted a side letter to the Bargaining Unit 6 agreement to mean that rank-and-file employees on union leave were not required to submit monthly timesheets. The department disagreed, and the issue is still under dispute. The Office of the Inspector General found that as a result, some employees on union leave did not submit timesheets and others submitted timesheets several months late and without a supervisor's signature to verify the accuracy of the information. This practice allows employees on union leave to report they worked on holidays without verification that they actually did so and to not report the use of sick leave, vacation time, or annual leave. Employees are thereby able to collect holiday pay and credit in addition to regular pay and to accrue large leave balances from unused vacation and sick time, which creates a fiscal liability for the state when the employees separate from state service.

For example, two of the nine employees discussed earlier submitted no timesheets for any of the 29 months reviewed, while the employee described above, who was on union leave for 6 ½ years, submitted some timesheets months late and without a supervisor's signature. That employee reported no sick leave or vacation time for the entire 6 ½ year period and claimed to have worked every holiday since April 1999 even though the union request for the release time specifically excluded holidays. As a result, he had received his regular pay, eight hours of holiday credit, and four hours of holiday pay for all of those holidays, which, in 2005 alone, according to the hiring authority, resulted in compensation totaling \$8,000 and 104 hours of holiday credit. He had also accumulated a leave balance for unused vacation time of 2,376 hours by November 2005, which if unchanged, would result in a lump sum payment at retirement of \$116,000. Without an effective time-accounting system, it is not possible to verify that the employee validly claimed that time and was entitled to the resulting compensation.

- ***The department has failed to consistently bill for reimbursable union leave time.*** The Office of the Inspector General found instances in which the department may have failed to bill the union to obtain reimbursement for union-paid leave, although because of coding errors in the department's records it is not possible to determine for certain whether all of the time in question was billable. In attempting to verify payments for a sample of 1,620 hours recorded as union-paid leave, the Office of the Inspector General found that the department had billed for only 354 hours, 21.9 percent of the 1,620 hours in question — a loss of up to \$48,000. Staff from one of the department's eight regional accounting offices told the Office of the Inspector General in the course of the review that the office had never billed the California Correctional Peace Officers Association for union-paid leave.
- ***The department failed to request funding to cover leave for union officials.*** The department has not requested funding to cover union leave time required in the

Bargaining Unit 6 contract to allow three executive vice presidents of the California Correctional Peace Officers Association to be released full-time from their job assignments and for the union's 43 chapter presidents to be released one day a week for union purposes.⁴ Because the activities constitute official union business, either the positions remain unfilled or the cost of providing relief coverage — the value of which in this instance totals more than \$900,000 — is an unfunded obligation borne by the department.

- ***The department has exceeded its funding for the union's annual conference.*** The department has exceeded the \$368,000 provided in its yearly budget to cover the cost of releasing employee delegates to attend the California Correctional Peace Officers Association annual conference. According to records obtained from the department's Office of Labor Relations, the costs exceeded the budgeted amount for the annual conferences from 2002 through 2005 by more than \$400,000. The Office of the Inspector General found evidence, moreover, that the \$400,000 figure may be understated because annual conference release time may have been incorrectly coded by the department as deductible from the rank-and-file release time bank.

The Office of the Inspector General has issued the following nine recommendations to correct these and other deficiencies identified in the review.

RECOMMENDATIONS

In order for the California Department of Corrections and Rehabilitation to correct the deficiencies in its management of union leave time, the Office of the Inspector General recommends that the department take the following actions:

- **Reconcile union leave time internally on a monthly basis. Include in the reconciliation the authorization of release time for union business and any other documentation that would capture the time authorized, used, and billed.**
- **In conjunction with the California Correctional Peace Officers Association, develop uniform policies and procedures that facilitate reconciling the release time bank balance each quarter with the union's records.**
- **Standardize the policies and procedures used for approving union leave time and processing transactions and distribute those policies and procedures throughout the department.**

⁴ According to the Office of Labor Relations, during the negotiations over this provision, the Department of Personnel Administration had identified the necessary funds to cover leave for union officials.

- **Establish policies and procedures for accurately recording union leave time throughout the department. Provide training throughout the department on the use of timekeeping codes.**
- **Conduct periodic audits to ensure that time is recorded accurately and union leave time is reconciled monthly.**
- **To minimize fiscal and operational impacts, negotiate and enforce a reasonable annual cap on release time bank usage with the California Correctional Peace Officers Association.**
- **Enforce the requirement that all employees, unless specifically exempted under labor contracts, submit monthly attendance sheets to account for any absences and time worked. In the alternative, obviate the need for monthly time reporting by negotiating a new leave system wherein state employees working full time on union business neither accrue nor use sick leave and vacation time, with the understanding that the state may need to compensate the employees for the loss of those benefits. As a third alternative, work with the unions to develop another solution that provides the necessary accountability.**
- **Collect full reimbursement, including benefits where applicable, when union employees are released from work to perform union activities unless the release is specifically addressed in labor contracts or requested by the state.**
- **Request funding from the Legislature for union issues addressed in labor contracts, such as compensation for Bargaining Unit 6 executive vice-presidents and chapter presidents.**

INTRODUCTION

This report presents the results of a special review conducted by the Office of the Inspector General into the management of union leave time for employees of the California Department of Corrections and Rehabilitation. The review was conducted under the authority of California Penal Code section 6126, which assigns the Office of the Inspector General responsibility for oversight of the Department of Corrections and Rehabilitation.

BACKGROUND

California Government Code sections 3512 through 3524 (the Ralph C. Dills Act) provide a means of resolving disputes concerning wages, hours, and other conditions of employment between the state and public employee unions. Section 3518.5 of the California Government Code requires a reasonable number of employee representatives to be allowed a reasonable amount of time off without loss of compensation to formally meet and confer with representatives of the state on matters within the scope of representation. The amount and type of release time allowed is subject to negotiation with individual public employee unions. Employees may also use their own leave credits or take leaves of absence for union activities:

The Public Employment Relations Board, which oversees administration of the Ralph C. Dills Act, has designated 21 bargaining units for represented state employees. Issues relating to union members' wages, hours, and terms and conditions of employment are negotiated between the Department of Personnel Administration and union representatives for each bargaining unit. The negotiations result in a memorandum of understanding (contract), which is presented to the Legislature for approval. After the contract is approved, the members of the public employee union and the state employer must abide by the provisions specified in the contract.

With a fiscal year 2005-06 budget of \$7.7 billion, the Department of Corrections and Rehabilitation has 58,600 budgeted employee positions encompassing numerous trades and professions. Approximately 49,000 of the positions are classified as rank-and-file and are affiliated with 19 of the state's 21 recognized bargaining units. About 30,000 of the department's employees are assigned to Bargaining Unit 6, which is exclusively represented by the California Correctional Peace Officers Association.

Consistent with the Ralph C. Dills Act, the contracts with the 19 bargaining units representing Department of Corrections and Rehabilitation employees define arrangements for union leave time. These arrangements fall generally into five main categories or types: release time bank; official business-informal; official business-union; union-paid leave; and union activist release time. Under some of the arrangements, the department absorbs the cost of the employee's absence from the job; in others, the union compensates the department for the lost time either monetarily or in time returned. From January 2000 through December 2005, the department's employees used 318,317 hours

of union leave time in all categories — equating to approximately \$12 million in staff resources.⁵

By far the most significant of the union leave categories for the Department of Corrections and Rehabilitation is the Bargaining Unit 6 release time bank, which applies to rank-and-file members of the California Correctional Peace Officers Association and which has accounted for 62 percent of the hours used by department employees for union activities over the past six years.

OBJECTIVES, SCOPE AND METHODOLOGY

The purpose of this special review was to assess whether the Department of Corrections and Rehabilitation adequately manages the union leave time used by its employees and whether the department has been adequately reimbursed for the time involved. The review concentrated primarily on use of the release time bank for rank-and-file members negotiated by the department with the California Correctional Peace Officers Association because that release time bank accounts for most of the union leave time affecting the department, but the review also examined the department's controls over other types of union leave used by the department's other bargaining units. To this end, the Office of the Inspector General examined the department's management of and controls over the rank-and-file release time bank and other types of union leave, the department's management of its fiscal resources, and its management of other administrative functions. The review did not include an examination of the Department of Personnel Administration's role, if any, in the administration of union leave. The review concerned only the actions of the California Department of Corrections and Rehabilitation. The Office of the Inspector General did not audit any of the bargaining units or their records.

During the course of the special review, the Office of the Inspector General performed the following procedures:

- Conducted site visits at one juvenile and two adult institutions to gain an understanding of the procedures practiced at institutions.
- Conducted site visits at department headquarters for both juvenile and adult programs to gain an understanding of procedures and controls used to manage union leave time.
- Interviewed various headquarters and institution staff in the areas of labor relations, personnel, financial services, and institution services.
- Interviewed staff of other agencies, including the State Controller's Office, to gain an understanding of the capabilities available in existing systems used to manage and report on employee pay and leave data.

⁵ The \$12 million figure is based on a rate of \$37.66 per hour, which averages the salary and associated employee benefits for a mid-step correctional officer for fiscal years 1999-00 and 2005-06.

- Met with the California Correctional Peace Officers Association leadership to discuss issues related to union leave.
- Reviewed budgetary documents, accounting reports, timekeeping reports, leave reports, payroll information, union agreements, arbitration reports, legal decisions, a June 2005 report of an investigation by the Bureau of State Audits on union leave issues, and other pertinent documents.
- Calculated the monetary equivalent of staff hours for various transactions. Depending on the circumstances, the calculations were based on the average of a mid-level correctional officer's salary and benefits, a current year mid-level correctional officer's salary and benefits, or the actual salary of a particular employee.
- Reviewed internal automated systems related to timekeeping and external systems related to payroll and leave information as well as the reporting capabilities of the systems.
- Analyzed the information gathered, reconciled selected transactions, and conducted testing as appropriate to formulate conclusions.

While the Office of the Inspector General was able to estimate the fiscal impact of specific union leave accounting errors, the department's failure to maintain accurate and reliable records on union leave precluded the Office of the Inspector General from quantifying the total fiscal impact of the department's mismanagement of union leave or to identify monies that may be owed to the state as a result.

Throughout the special review, the Office of the Inspector General received excellent cooperation and assistance from the department and its staff and other stakeholders.

FINDING

The Office of the Inspector General found that the California Department of Corrections and Rehabilitation has mismanaged millions of dollars in public resources and created an operational burden on itself and the institutions by failing to accurately control and account for union leave time.

According to State Controller's Office records, Department of Corrections and Rehabilitation employees used 318,317 hours of union leave time from 2000 through 2005, the equivalent of approximately \$12 million in staff resources. Yet, the department has done a poor job of overseeing union leave time use — failing to set up a sound and accurate accounting system for the rank-and-file release time bank; failing to track and control the time used; failing to collect reimbursements owed to the state; failing to enforce or clarify the 10,000-hour cap on release time bank usage; and failing to request funding for state-paid union leave time required under the Bargaining Unit 6 contract. It also appears that the department may have allowed the release time bank to be overdrawn by the equivalent of approximately \$1.1 million in staff resources, but coding errors in the department's records make it impossible to know for certain, and, in fact, the deficit may not exist. The department also has not controlled the use of union release time to prevent hardship to the department despite language in the bargaining unit contracts allowing it to do so. The Office of the Inspector General found numerous other problems in the department's management of union leave time, most of them attributable to the failure on the part of the department to make sound and timely decisions concerning union leave.

The failure to adequately manage union leave time has imposed direct costs on the department, adding to the department's overall fiscal problems and wasting potentially millions of dollars in state resources, although the precise amount involved is not quantifiable because of the department's inadequate record keeping. The failure to manage and control union leave time has also created an operational burden on institutions and on the department as a whole.

State law requires state agencies to maintain accounting and administrative controls. The Financial Integrity and State Manager's Accountability Act of 1983, codified in California Government Code sections 13400 through 13407, requires that state agencies establish and maintain systems of internal accounting and administrative control to safeguard assets, maintain data accurately and reliably, promote operational efficiency, and encourage adherence to prescribed managerial policies. Section 13401 specifically requires that the systems of internal accounting and administrative control be evaluated on an ongoing basis and that weaknesses be corrected promptly when they are detected. Section 13401 further provides that "all levels of management of the state agencies must be involved in assessing and strengthening the systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of government funds."

Despite those requirements, the Department of Corrections and Rehabilitation has failed to establish the internal accounting and administrative controls necessary to accurately and effectively manage the union leave of its employees. The Office of the Inspector General found that the department has repeatedly delayed addressing issues related to union leave when such issues were brought to its attention by legislators, a federal court monitor, the Bureau of State Audits, and others. When it has acted, the department has made numerous poor decisions and errors in planning for and managing union leave time.

The Office of the Inspector General found the following:

- ***The department did not establish an accounting system for the release time bank.*** According to State Controller's Office records, the department's employees used 197,802 hours from the Bargaining Unit 6 rank-and-file release time bank from January 2000 through December 2005, accounting for 62 percent of all types of union release time used by department employees during that period. The approximate value of that time amounts to \$7.4 million. Yet, when the release time bank was established in the Bargaining Unit 6 contract, the department did not plan for its implementation and failed to establish a sound accounting system for accurately tracking donations and usage, including developing the checks and balances necessary to enable it to reconcile its internal release time bank records. Failure to do so violates provisions of the Financial Integrity and State Manager's Accountability Act of 1983.
- ***The department delayed issuing coding procedures needed to ensure accuracy.*** The department delayed issuing standardized coding procedures to ensure that union leave time of all types is recorded accurately and consistently, finally issuing the procedures in February 2006. Training for staff on coding procedures has also been lacking. The absence of policies and procedures and the lack of training have caused the coding to be inconsistent and error-laden. For example:
 - ***Different codes are used for juvenile and adult institutions.*** Juvenile facilities and adult institutions use different codes to designate leave time. The juvenile facilities reviewed by the Office of the Inspector General use two codes in their internal time-keeping systems and cannot further differentiate union leave types, while adult institutions use six codes.
 - ***Leave time for annual union conferences was coded incorrectly.*** The Office of the Inspector General found that leave time for annual union conferences was not coded correctly and was therefore under-reported in the State Controller's Office California Leave Accounting System. One institution used a variety of codes to record union annual conference time, none of them correct. And while the California Leave Accounting System showed only 587 hours recorded as union conference time for the 14 months from August 2004 through September 2005, which included two annual conferences, requests from the union for annual conference release time for 11 institutions for the

August 2005 conference alone totaled 2,252 hours, an average of 205 hours per site. Applying this average to the department's 41 institutions, the total would come to 16,800 hours for the two conferences, far more than the 587 hours reported in the system. The Office of the Inspector General also found evidence that annual conference leave time may have been incorrectly coded as deductible from the rank-and-file release time bank.

- ***Union leave usage codes differ by facility.*** The Office of the Inspector General found that different facilities used different codes for the same type of union leave. Some institutions used the correct code for union conference time, while others used incorrect codes.
- ***Personnel staff and supervisors used incorrect codes.*** The Office of the Inspector General found instances in which supervisors used the wrong code on daily timesheets to record an employee's absence for union leave, but because the code was valid for other types of union leave, the system accepted it. In other instances, personnel staff failed to enter correct codes from attendance sheets. In one case, for example, a personnel timekeeper entered into the system the code "DD," designating "detached duty," even though other documentation showed that the code "UTB," designating the release time bank, should have been used.
- ***Errors make it impossible to tell whether the release time bank is overdrawn.*** Because of errors in the department's coding of union release time and because the department has not effectively tracked donations and use, it is not possible to tell for certain whether the rank-and-file release time bank is overdrawn. According to the State Controller's Office records, rank-and-file members of the California Correctional Peace Officers Association donated 167,429 hours to the release time bank between January 1, 2000 and December 31, 2005, but used 197,802 hours, resulting in a negative balance for that period of 30,373 hours. If accurate, that negative balance is the equivalent of \$1.1 million in staff resources. A review of more recent figures revealed a similar deficit. Again, according to State Controller's Office records, from August 2004 through February 2006, hours used from the release time bank appear to have exceeded donations by 19,105 hours, the equivalent of \$719,000 in staff resources. But the Office of the Inspector General found numerous coding errors in the department's records that may have caused other types of union leave time to be erroneously charged to the release time bank. During the review, for example, the Office of the Inspector General found that 80,888 hours of union leave time used by non-Bargaining Unit 6 employees had been erroneously charged to release time banks. Although the Office of the Inspector General corrected for those hours in calculating the 30,373-hour release time bank deficit, that error and other coding errors identified during the review open the possibility that the deficit may not exist or may be offset by other errors.

- ***The department cannot reconcile its time bank records with those of the union.*** Since at least 1992, Section 10.13 of the contract between the state and the California Correctional Peace Officers Association has required the release time bank of the department and the union to be reconciled — compared, verified, adjusted, and corrected — as often as the parties agree is necessary, although not more than once per quarter. The process is meant to ensure that donations and usage are accurately recorded and are consistent within the two systems. The California Correctional Peace Officers Association reports that the department and the union performed quarterly reconciliations under the previous administration, and the department reports that its former labor chief met with the union at least once a year for that purpose. Yet, the department's Office of Labor Relations told the Office of the Inspector General during this review that the department began monthly reconciliations to track donations and use only with the period beginning July 2005 and did not continuously track donations and use before that time. Moreover, differences in the way the department and the union record and track donations and usage make reconciliation impossible. The department compares authorization slips completed by employees when they donate time to the employee's available leave balance and then compares the release time bank requests from the union to the usage data posted in the California Leave Accounting System at the State Controller's Office. According to the Office of Labor Relations, the union instead records the leave usage at the time it requests the leave. In effect, the department tracks usage after it has been used, while the union tracks usage before it has been used. The union has also complained that the department delays posting donations to the release time bank, sometimes for months, but charges for release time bank usage immediately. Until those differences are resolved, it will not be possible to reconcile the leave balances between the two entities. In any case, the department cannot successfully reconcile its records with those of the union until it can achieve an accurate internal reconciliation.
- ***The department's records conflict with those of the State Controller's Office.*** Widespread errors in the department's union leave records and in its coding of release time bank donations and usage not only make the department's data unreliable, but result in vast discrepancies between the department's release time bank records and those of the State Controller's Office. When the department made its first attempt to reconcile the release time bank records, it was obliged to begin with a July 2005 balance provided by the California Correctional Peace Officers Association — 17,254 hours — because it lacked data of its own. As it attempted the reconciliation, the department found the task to be nearly impossible because of errors in the way usage of union release time had been recorded. For example, in January 2006, beginning with the union's reported balance of 17,254 hours for rank-and-file employees, adding time donations of 8,324 hours, and deducting usage of 17,346 hours, the department reported a positive release time bank balance of 8,232 hours. Yet, the State Controller's Office data for the same period reported release time bank usage to be more than

26,500 hours — 53 percent higher than the department's usage total. As a result, again beginning with the union's reported balance of 17,254 and using the State Controller's Office data, the release time bank would reflect a negative balance of 1,087 hours as of January 2006, instead of the positive balance of 8,232 hours calculated by the department.

- ***The department did not enforce the release time bank cap.*** Current language in section 10.13 of the Bargaining Unit 6 contract expressly limits the use of the rank-and-file release time bank to 10,000 hours over the six-year life of the contract. Yet, the department did not raise the issue of the cap until 2005, four years into the contract and after Bargaining Unit 6 members had used 122,367 hours from the release time bank. The California Correctional Peace Officers Association maintains, and the Department of Personnel Administration's chief negotiator testified regarding the 2001 contract, that the intention of the parties during negotiations was to eliminate the cap and that it remained in the contract by error. An arbitrator ruled, therefore, that the presence of the 10,000-hour cap in the contract was due to a transcription error. The arbitrator's decision was subsequently vacated by the court, and the California Correctional Peace Officers Association in a separate action is seeking removal of the cap. Because of the pending litigation, the department continues to grant time from the release time bank without regard to the cap.
- ***The department has failed to manage the supervisors' release time banks.*** The Office of the Inspector General found that until recently the Department of Corrections and Rehabilitation mistakenly believed that the Department of Personnel Administration was responsible for monitoring the release time banks established for supervisors affiliated with the California Correctional Peace Officers Association or the California Correctional Supervisors Organization. As a result, the department did not attempt to track time donations and usage to the supervisors' release time bank or to reconcile the release time bank records. The Department of Personnel Administration informed the department this year, however, that it does not monitor the release time bank and lacks the ability to do so because it does not have the necessary personnel time records. Accordingly, the department's Office of Labor Relations has now begun to track the supervisors' release time bank donations and usage and reported a positive leave balance of 3,602 hours for the period July 2005 through January 2006. The Office of the Inspector General found that the California Leave Accounting System shows 29,389 hours in donations and 24,687 hours of usage in the supervisors' release time banks for the period January 2000 through December 2005, resulting in a positive balance of 4,702 hours, if the figures are accurate.
- ***The department has allowed release time without verifying authorization.*** The department has allowed a significant number of employees to be released indefinitely from job assignments to conduct union functions without supporting documentation to verify that the time was authorized. In an October 28, 2004

memorandum, the Financial Services Division of the Department of Corrections and Rehabilitation called attention to the fact that 19 department employees, including two executive vice presidents of the California Correctional Peace Officers Association and one former executive vice president, had been granted full-time or part-time release to conduct union business. Although the union executive vice presidents were entitled to full-time release under the union contract, evidence of release authorization for some of the other employees was lacking. For one employee, the department was unable to provide documentation either of a request for release from the union or an authorization for release from the state. For another employee, the department provided evidence of release for only 712 hours for official business and 1,576 hours from the union for use of release time bank credits. The department had no documents showing authorization for the release of the employee's remaining 2,738 hours and it did not record any of the employee's time because the employee submitted no timesheets.

- ***The department has failed to properly account for some union leave time.*** In some instances, the department has simply failed to account for union release time at all. In a sample of nine of the 19 employees described above, the Office of the Inspector General found that 10,970 hours — the equivalent of approximately \$413,000 — were not charged to either work time or any other type of leave. Over the 29-month period reviewed from May 2003 through September 2005, regular work time would have totaled approximately 5,026 hours per employee, or a total of 45,234 hours for all nine employees. Yet only 34,264 hours (76 percent) of the 45,234 hours were accounted for. The department recorded 4,139 hours (9 percent) as time worked on the employees' state jobs; 28,867 hours of release time were authorized for union activities; and 1,258 hours were used for holidays, sick leave, or vacation, leaving 10,970 hours of release time unaccounted for.
- ***The department has not consistently charged hours to the release time bank.*** In checking the personnel records of the nine employees described above for the period May 2003 through September 2005, the Office of the Inspector General found that 14,707 hours that should have been reported in the records as release time bank hours were not recorded in the California Leave Accounting System. The timesheets of one of the employees alone reported 4,528 hours as used from the release time bank, but none of that time was recorded in the State Controller's Office records. The value of the 14,707 hours not properly charged to the release time bank in this instance totaled \$554,000.
- ***The department has not controlled individual use of union leave time.*** The Office of the Inspector General found that the department continues to grant union leave time without regard to provisions in the Bargaining Unit 6 contract providing for limits where necessary. In one such example, the department allowed an employee to continue on full-time release for union activities for 6 ½

years even though the institution to which he was assigned reported it had raised objections about the situation at every fiscal review since April 1999. In that case, the employee was added to the payroll of an adult institution on a 90-day temporary assignment, but was immediately released by the department to work full-time on union business. The employee was still on the institution's payroll 6 ½ years later in March 2006 even though he had never worked at the institution.

- ***The department has not required timesheets for employees on union leave.*** According to the department's Office of Labor Relations, the union interpreted a side letter to the Bargaining Unit 6 agreement to mean that rank-and-file employees on union leave were not required to submit monthly timesheets. The department disagreed, and the issue is still under dispute. The Office of the Inspector General found that as a result, some employees on union leave did not submit timesheets and others submitted timesheets several months late and without a supervisor's signature to verify the accuracy of the information. This practice allows employees on union leave to report they worked on holidays without verification that they actually did so and to not report the use of sick leave, vacation time, or annual leave. Employees are thereby able to collect holiday pay and credit in addition to regular pay and to accrue large leave balances from unused vacation and sick time, which creates a fiscal liability for the state when the employees separate from state service.

For example, two of the nine employees discussed earlier submitted no timesheets for any of the 29 months reviewed, while the employee described above, who was on union leave for 6 ½ years, submitted some timesheets months late and without a supervisor's signature. That employee reported no sick leave or vacation time for the entire 6 ½ year period and claimed to have worked every holiday since April 1999 even though the union request for the release time specifically excluded holidays. As a result, he had received his regular pay, eight hours of holiday credit, and four hours of holiday pay for all of those holidays, which, in 2005 alone, according to the hiring authority, resulted in compensation totaling \$8,000 and 104 hours of holiday credit. He had also accumulated a leave balance for unused vacation time of 2,376 hours by November 2005, which if unchanged, would result in a lump sum payment at retirement of \$116,000. Without an effective time-accounting system, it is not possible to verify that the employee validly claimed that time and was entitled to the resulting compensation.

- ***The department appears to have failed to bill for reimbursable union leave time.*** The Office of the Inspector General found instances in which the department may have failed to bill the union to obtain reimbursement for union-paid leave, although, again, because of coding errors in the department's records it is not possible to determine for certain whether all of the time in question was billable. In one example, the Office of the Inspector General attempted to verify payments for a sample of 1,620 hours recorded in the California Leave Accounting System as union-paid leave and found that the regional accounting

offices had billed for only 354 hours, 21.9 percent of the hours in question. Although the Office of the Inspector General found some coding errors, the remaining 1,266 hours, for which the department did not bill, amounts to almost \$48,000. Staff from one regional accounting office told the Office of the Inspector General in the course of the review that the office had never billed the California Correctional Peace Officers Association for union-paid leave. When the Office of the Inspector General pointed out that error, the regional accounting office billed and received from the union almost \$23,000, but miscalculated the amount owed by failing to include employee benefits. The actual amount owed totaled more than \$25,000.

- ***The department failed to request funding to cover leave for union officials.***
The Bargaining Unit 6 contract provides for three executive vice presidents of the California Correctional Peace Officers Association to be released full time from their job assignments to conduct union business—a provision similar to those found in other agreements with state safety and fire protection labor organizations. In addition, effective June 30, 2004, the 43 chapter presidents of the California Correctional Peace Officers Association are allowed one day a week off for union purposes. Because the activities constitute official union business, either the positions remain unfilled or the cost of providing relief coverage — the value of which in this instance totals more than \$900,000 — is an unfunded obligation borne by the department because it failed to request the necessary funds.⁶
- ***The department has exceeded its funding for the union's annual conference.***
Since fiscal year 2003-04, the department has been funded with \$368,000 annually to cover the cost of releasing the California Correctional Peace Officer Association's delegates to attend the union's annual conference. Records from the department's Office of Labor Relations, however, show that for the 2002 through 2005 conferences, the costs have exceeded the budgeted amount by more than \$400,000. The Office of the Inspector General found evidence, moreover, that the \$400,000 figure may be understated because annual conference release time may have been incorrectly coded by the department as deductible from the rank-and-file release time bank.

⁶ According to the Office of Labor Relations, during the negotiations over this provision, the Department of Personnel Administration had identified the necessary funds to cover leave for union officials.

RECOMMENDATIONS

To correct the deficiencies in the management of union leave time, the Office of the Inspector General recommends that the California Department of Corrections and Rehabilitation take the following actions:

- Reconcile union leave time internally on a monthly basis. Include in the reconciliation the authorization of release time for union business and any other documentation that would capture the time authorized, used, and billed.
- In conjunction with the California Correctional Peace Officers Association, develop uniform policies and procedures that facilitate reconciling the release time bank balance each quarter with the union's records.
- Standardize the policies and procedures used for approving union leave time and processing transactions, and distribute those policies and procedures throughout the department.
- Establish policies and procedures for accurately recording union leave time throughout the department. Provide training throughout the department on the use of timekeeping codes.
- Conduct periodic audits to ensure that time is recorded accurately and union leave time is reconciled monthly.
- To minimize fiscal and operational impacts, negotiate and enforce a reasonable annual cap on release time bank usage with the California Correctional Peace Officers Association.
- Enforce the requirement that all employees, unless specifically exempted under labor contracts, submit monthly attendance sheets to account for any absences and time worked. In the alternative, obviate the need for monthly time reporting by negotiating a new leave system wherein state employees working full time on union business neither accrue nor use sick leave and vacation time, with the understanding that the state may need to compensate the employees for the loss of those benefits. As a third alternative, work with the unions to develop another solution that provides the necessary accountability.
- Collect full reimbursement, including benefits where applicable, when union employees are released from work to perform union activities

unless the release is specifically addressed in labor contracts or requested by the state.

- Request funding from the Legislature for union issues addressed in labor contracts, such as compensation for Bargaining Unit 6 executive vice-presidents and chapter presidents.

**RESPONSE OF THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

Memorandum

Date : July 14, 2006

To : Matthew L. Cate, Inspector General
Office of the Inspector General
PO Box 348780
Sacramento, CA 95834-8780

Subject: **RESPONSE TO THE OFFICE OF THE INSPECTOR GENERAL'S SPECIAL REVIEW INTO MANAGEMENT OF UNION LEAVE TIME BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

This memorandum is prepared as the California Department of Corrections and Rehabilitation's (CDCR) response to the Office of the Inspector General's (OIG) Special Review into the Management of Union Leave Time. After careful review and much discussion, CDCR concurs with the overall findings and the intent of the recommendations.

The CDCR has been proactive during the course of this audit and has already taken steps to address and correct the deficiencies in areas where significant improvement in oversight is necessary. CDCR began a multi-faceted plan which, when modified to accommodate the OIG recommendations and when fully implemented, will provide for accurate tracking and reporting of all union leaves provided for in the labor agreements and Government Code sections. This process was initially broken into 10 overall steps that are identified below:

1. In partnership with the State Controller's Office (SCO), transaction coding methods needed to be developed to allow for the tracking of each type of union leave.
2. Modify the CDCR Personnel Post Assignment System (PPAS) to allow for the recording and tracking of each type of union leave usages.
3. Develop an internal tracking system of the various types of union leave to be used as an auditing tool against the SCO and PPAS tracking systems. This system should also allow for the lag in reporting of the SCO and PPAS Systems.
4. Develop a statewide CDCR policy on the proper procedures for requesting, reporting, utilizing, and reimbursement (where appropriate) of union leaves.
5. Develop worksheets to be utilized throughout the process from initial request for leave usages, recording leave, reporting, and reimbursement (if available).
6. Provide official notification, and meet and confer with the respective exclusive representatives and bonified organizations as provided for under the Dills Act and the various labor agreements.
7. Begin implementation of the new process.

Matthew L. Cate, Inspector General
Page 2

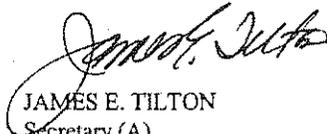
8. Provide training to the entire CDCR of the new policy/process and its use.
9. Reestablish a formalized process for seeking reimbursement of Union paid leave and accurately tracking the reimbursement for such leave.
10. Reevaluation and modification of these processes as implementation continues.

Since 2005 the CDCR has been actively working to complete this 10 step plan. As of the date of this report, the Department has successfully reached Step 7 (Implementation) and is in the process of implementing Step 8 (Training) of this plan.

Based on the OIG's recommendations the CDCR is now in the process of incorporating the OIG recommendations which is not a part of CDCR's original action plan. For example, regular and specific auditing tools will need to be incorporated into out action plan.

It should be noted that in order to complete several of the OIG recommendations it will be necessary to have the cooperation of the various labor organizations representing State employees, as well as the Department of Personnel Administration and the SCO. The CDCR will be contacting and attempting work in partnership with these groups to make the necessary modifications.

We would like to thank the OIG for its continued professionalism and guidance in CDCR's efforts to improve its operations. Should you have any questions or concerns, please contact me at (916) 323-6001.



JAMES E. TILTON
Secretary (A)
California Department of Corrections and Rehabilitation

EXHIBIT 26

Date: February 2, 2006

To: K. Mendoza-Powers
Warden (A)
Avenal State Prison

Obj: 1) Your Letter Dated January 12, 2006 - Re: Avenal State Prison - Union
Leave/Training Requirements, 2) Your Failure To Respond To My Letter To
You, Dated January 26, 2006 - Re: Basic Questions

This correspondence is being forwarded to you as a request for your immediate attention and response to my letter to you, dated January 26, 2006. My letter was a series of questions asking for some specific and necessary information for compliance with your directives of January 12, 2006.

Your failure to respond to my letter has forced me to incur significant financial damages, which will continue unless and until you provide clarification to your orders. Please also note that I did not receive my check or CDC 998A until today because you failed to mail them via overnight mail. Accordingly, I am forced to fax you this letter and my CDC 998A, unclear as I am about the information you require. I will follow up with a hard copy to you via overnight mail.

Attached to this correspondence, you will find my CDC 998A, which I have attempted to complete without your assistance, per your prior instructions. The CDC998A enclosed with my check was different than any other 998 that I have received over the years. I am totally unsure of any of the codes that are present on this pre-printed document, nor am I certain of the proper code(s) to confirm or deny the use or non-use of any or all identified leave credits. Please note that I have listed the use of my own personal leave credits in an effort to avoid any chance that you would accuse me of misuse of the Union Paid Leave (UPL) and/or DD (?) that you pre-approved.

I would also like the opportunity to correct other pre-printed information on the CDC998A form that I know is inaccurate. However, your lack of attention and your failure to respond clearly demonstrates the lack of preparation prior to the implementation of your new procedure. Please provide me direction on how to properly correct the pre-printed information as soon as you are able. Forgive my ignorance, but I remain totally oblivious to the intent, the necessity, and proper protocol for this new process.

I would appreciate your immediate attention and subsequent response so that I can avoid additional, inappropriate and unnecessary personal property penalties. I hope that until I receive your response, that you make certain that any billing to CCPOA for the use of UPL does not occur. If you have already received payment in either time or by check, please see that it is immediately returned to CCPOA. I continue to eagerly await your response.

Please forward this document as well as my CDC 998A to whoever is appropriate in your procedure and provide me a copy with the answers to the questions from my previous

02-03-2006 16:23

From-AVENAL STATE PRISON

+559 386 0767

T-686 P.006/011 F-456

Feb-03-06 14:10

From-CCPOA Logistics Department Fax

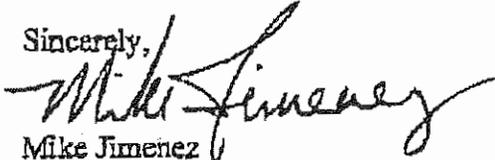
+3726623

(-137 P 003/005 F-322

correspondence. If you find it necessary to alter the information in any fashion, please send me a new document with clear directions and expectations. Please do not change anything on my signed documentation.

I apologize for any grammatical or language errors contained in this correspondence. I am currently traveling and am unable to access my normal equipment for correspondence. Thus far, without your follow through, this has been a very time consuming process. Your continued non-responses add personal hardship and financial difficulty to my family and me. Unless this is consistent with your intent and expectations, please remedy the situation immediately.

Sincerely,



Mike Jimenez
Correctional Officer ASP
State President CCPOA

EXHIBIT 27

**OFFICE OF THE SECRETARY
OFFICE OF LABOR RELATIONS**

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



February 7, 2006

Mr. Mike Jimenez
State President
California Correctional Peace
Officers Association
755 Riverpoint Drive, Suite 200
West Sacramento, CA 95605-1634

Dear Mr. Jimenez:

In reference to your letters dated January 12, 2006, and February 2, 2006, the Office of Labor Relations (OLR) provides response on behalf of Avenal State Prison (ASP). The following represents the list of questions submitted to ASP and the corresponding response relative to attendance reporting procedures and the submittal of the California Department of Corrections and Rehabilitation (CDCR) 998-A/634. These procedures are in accordance with established policy.

1. Who should sign my 998/634 form and verify my use and proper application of leave credits?

As indicated in the January 12, 2006, letter sent by ASP, the 998/634 should be sent to either the Personnel Assignment Sergeant or Lieutenant.

2. Do you want me to record all hours worked in accordance with the FLSA inclusive of RDO's and holidays?

As a Fair Labor Standards Act (FLSA) covered employee of the State, the hours worked at ASP performing the duties of your position are to be recorded as hours worked on the 998/634. Since you would not be performing these duties on a Regular-Day Off (RDO) or a holiday there are no hours to be recorded

3. Is being on "Unions Paid Leave" considered a use of "leave credits"?

No. Union Paid Leave is a leave type which is utilized to cover absences away from the job site. There is no employee accrual, therefore it is not a leave credit to be accrued or debited. An example of an employee's leave credits would be sick leave, vacation, annual leave, etc.

4. Do I need prior permission to record the use of personal leave credits?

Yes. The utilization of leave credits is subject to supervisory approval. This approval would be obtained at the time such leave was requested.

5. Can I work for the Union during hours that are recorded as Vacation or Holiday?

Yes. The time designated as your scheduled vacation, RDO, or a holiday is your time off. As such the activities you engage in on these days is personal to you and is not compensable by the State.

6. If I am out-of-state, or otherwise unavailable to receive my paycheck and 998/634 within your specific timelines, how can I avoid adverse consequences?

A blank 998/634 should be filled out and submitted to the appropriate contact by the specified timeframes. The submittal does not have to coincide with the receipt of your paycheck. A copy of the CDCR 998-A is attached and provided for your use.

7. Will I be punished for delays that occur as a result of mail service and mail processes inside the prison?

If sent via certified mail, the date on the certified receipt would serve as proof of mailing. It is expected that the 998-A is submitted within the specified timeframes.

8. Should days spent testifying in the legislature, or meeting with legislators at their request, be recorded as Official Business?

No. Official Business can only be authorized by the OLR.

9. Am I required to record my use of leave credits on a more than daily basis?

It is not understood what is meant by this question. Please provide more clarifying information. If you are inquiring as to the requirement to use leave credits in less than full-day increments; the answer is yes; as a FLSA covered employee, you are required to use leave credits/dock to cover any absences of 15 minutes or more.

10. How would I record four hours of work and four hours of sick on an RDO?

When on an RDO it is your scheduled day off. If you are ill that day, you do not charge leave credits as it is your personal time, not work time. That is the case whether you conduct union business or are sick. In either scenario, no leave time is charged and no work hours are recorded.

11. Who and where should I call for permission to use my sick leave in order to properly record it on my 998/634?

Please see #1 above.

12. When I work hours different than those pre-entered on my 998/634, am I subject to adverse action if I don't alter printed start and stop times?

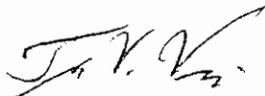
It is the employee's responsibility to submit a 998/634 that accurately represents the employee's monthly attendance, including accurate start and stop times.

13. What information do you obtain from my 998/634 that is not available on the Union request (pre-authorized by you) for Union Paid Leave?

The Union's request for leave represents a request for an employee's release utilizing a specific leave type. It does not however, reflect leave usage or an employee's monthly attendance.

Should you have any questions regarding the above information, please contact Donald R. Champ, Institutional Personnel Officer, ASP, at (559) 386-0597 ext. 5088.

Sincerely,



TIM V. VIRGA, Chief
Office of Labor Relations

Attachment

cc: Brigid Hanson, Assistant Secretary, Labor Relations
Donald Champ, Institutional Personnel Officer, ASP
Labor Relations Managers, OLR

EXHIBIT 28

OFFICE OF THE SECRETARY

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



April 3, 2006

Mr. Michael Jimenez
President
California Correctional Peace
Officers Association
755 Riverpoint Drive, Suite 200
West Sacramento, CA 95605

Dear Mr. Jimenez:

This is in response to the concerns you brought forward at a meeting with Senator Gloria Romero and Jeanne Woodford, Secretary (A), California Department of Corrections and Rehabilitation, in relation to you being asked to complete the Employee Record of Attendance Form 998. On January 26, 2006, you sent a letter to Warden Mendoza-Powers asking several questions on the completion of the 998. A response was provided to you by Tim Virga, Chief, Office of Labor Relations dated February 7, 2006, responding to your questions.

In a subsequent meeting with Secretary Woodford, Chuck Alexander and me, there was a discussion as to how you request vacation, sick leave, or other use of leave credits. At that time, Secretary Woodford advised you it was not necessary to call the Warden at Avenal State Prison to utilize leave credits, however, it is expected if you utilize leave credits it will be recorded on your 998 for the month used.

You also stated you were utilizing vacation as your current status of leave. Please note on December 15, 2006, a letter (enclosed) was sent to Avenal State Prison from your organization requesting you be on union paid leave until June 30, 2006. The Warden approved the request for union paid leave on your behalf. As such, the Department currently has you on union paid leave status. With that in mind, you are only required to report vacation, sick leave or other types of leave credits on your monthly 998.

If you have any questions, please contact Tim Virga, Chief, Office of Labor Relations, at (916) 445-7167.

Thanks much,

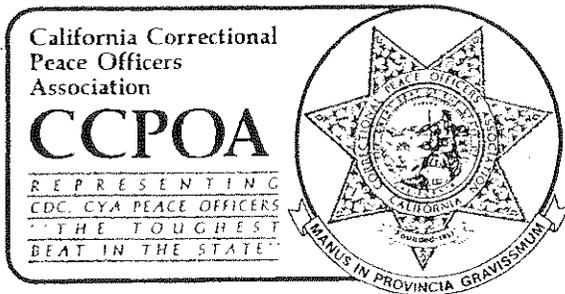
A handwritten signature in cursive script that reads 'Brigid Hanson'.

BRIGID HANSON
Assistant Secretary

Enclosure

cc: ~~Gloria Romero, Senator~~
Tim Virga, Chief, Office of Labor Relations

EXHIBIT 29



755 Riverpoint Dr., Ste. 200 • West Sacramento, CA 95605-1634 • (916) 372-6060

July 3, 2006

Michael Navarro, Director
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814

Re: Negotiations Pursuant to the Ralph C. Dills Act between the California Correctional Peace Officer Association and the State of California (Sunshine Package).

Dear Mr. Navarro:

We submit herewith the sunshine proposals of the California Correctional Peace Officers Association (CCPOA), exclusive bargaining representative for employees in the state bargaining unit 6.

CCPOA reserves the right to introduce additional proposals within the confines of the sunshine process.

Please note, in regards to those articles of the present Memorandum of Understanding (MOU) that are not sunshined, CCPOA proposes to roll them over into the next MOU.

CCPOA looks forward to the continuing of the negotiation process.

Sincerely,

Steve Weiss
Chief of Labor
California Correctional
Peace Officers Association

SJW/mmr
h:\2006 MOU\Sunshine Letters\First Sunshine Ltr.wpd

California Correctional Peace Officer's Association

Bargaining Unit 6

**Sunshine Collective Bargaining Proposals for inclusion in the
Agreement with the State of California**

CCPOA Proposes to enhance and clarify the following sections and/or articles of the Memorandum of Understanding:

- CCPOA proposes to enhance the section pertaining to CDC MTA Survey since it was never done, and management doesn't seem to be concerned with the results of a non-existent survey.
- CCPOA proposes to enhance the section pertaining to CDC/CYA DOT Drug Testing to include the entire agreement within this contract so management ceases violations of this section.
- CCPOA proposes to enhance the section pertaining to Overtime. CCPOA intends to enhance this section of the contract in order to better reward employees who work extra time in order to ensure the safety of other employees.
- CCPOA proposes to enhance the section pertaining to Employee Assistance Program to assure Unit 6 employees this section is no longer utilized by management for adverse treatment when using this

right reasons, not just for a chosen few.

- CCPOA proposes to enhance the section pertaining to Post Assignment by Seniority for Youth Correctional Officers. Management continues to attempt to deny staff the rights they have earned by their seniority. Management does this by portraying post and bid as a detriment to managing institutions, while in fact post and bid is an asset.
- CCPOA proposes to enhance the section pertaining to Commute Program. With soaring gas prices, this section needs to be enhanced to bring the MOU in line with reality.
- CCPOA proposes to enhance the section pertaining to Catastrophic Time Bank. CCPOA intends to enhance this section of the contract in an attempt to protect employees from losing their homes, family and health, due to illness or injuries.
- CCPOA proposes to enhance the section pertaining to MTA (CYA) Program to better enhance the series.
- CCPOA proposes to enhance the section pertaining to Moving and Relocation Expenses. CCPOA intends to enhance this section to make it fair and equitable for line staff.
- CCPOA proposes to enhance the section pertaining to CYA Living

Unit, due to the varying nature of missions, treatment goals, and objectives of each living unit.

- CCPOA proposes to enhance the section pertaining to Post and Bid by Seniority for CCI's to allow seniority to be meaningful and to do away with the "kid" system.
- CCPOA proposes to enhance the section pertaining to Employee Services, because Wardens/Superintendents continue to utilize services for profit with little regard for Unit 6 members in posted positions.
- CCPOA proposes to enhance the section pertaining to Correctional Counselor Workload to allow for a reasonable model based on work load impact not dollars.
- CCPOA proposes to enhance the section pertaining to Shift and/or Assignment Changes. CCPOA intends to enhance this section of the contract in order to protect employees from being unnecessarily harassed.
- CCPOA proposes to enhance the section pertaining to PPPA (Post and Bid). Management continues to attempt to deny staff the rights they have earned by their seniority. Management does this by portraying post and bid as a detriment to managing institutions, while in fact post

and bid is an asset.

- CCPOA proposes to enhance the section pertaining to CDC Continuous Hours of Work/Dead Time/Emergencies. CCPOA intends to enhance this section of the MOU in order to stop the continued grievances being filed when employees are not paid in accordance to this MOU.
- CCPOA proposes to enhance the section pertaining to Protected Activity. During the term of this contract this administration has consistently attempted to use strong-arm tactics to abridge this section.
- CCPOA proposes to enhance the section pertaining to Firefighter Annual Leave Accrual Rate to bring the time earned to the same standard as other law enforcement agencies.
- CCPOA proposes to enhance the section pertaining to CYA Field Parole Agent Safety Equipment and Procedures to bring the required equipment to a level of other outside agencies doing the same job.
- CCPOA proposes to enhance the section pertaining to Firefighter Physical Fitness to allow this classification to further their health and fitness.
- CCPOA proposes to enhance the section pertaining to Benefit Trust

Contributions. Bargaining Unit 6 employees continue to suffer from the lack of special treatment shown to other bargaining units.

- CCPOA proposes to enhance the section pertaining to Tax Deferral of Lump Sum Leave Cash Out Upon Separation. A plan needs to be developed that allows the member to cash out leave credits upon separation without incurring an enormous tax hit.
- CCPOA proposes to enhance the section pertaining to Personal Leave Program. CCPOA intends to enhance this section to establish a method for cashing out unused PLP time.
- CCPOA proposes to enhance the section pertaining to Permanent Intermittent Appointments. This is due to the states inability to properly manage and provide equal and adequate work time uniformly for the PIE classification.
- CCPOA proposes to enhance the section pertaining to Employee Rights so management is fully aware of this section and will stop continued violations of the Ralph C. Dills Act.
- CCPOA proposes to enhance the section pertaining to Formal Appeal — Step 2 to make clearer the requirements due under this section since management and labor relations continue to violate or twist this section to suit their desires.

- CCPOA proposes to enhance the section pertaining to Member Retirement Contribution Rate for Peace Officers. Bargaining Unit 6 continues to pay the highest rate imaginable for their retirement, in comparison to the other badge units.
- CCPOA proposes to enhance the section pertaining to Firefighter Emergency Response Vehicles to allow for actual continued upgrade of response equipment.
- CCPOA proposes to enhance the section pertaining to K-9 Duty Compensation and Overtime. CCPOA intends to enhance this section in order to ensure Unit 6 employees are fully compensated in accordance with other law enforcement agencies.
- CCPOA proposes to enhance the section pertaining to CDC/CYA Camp Files to make certain the information contained is correct and not lies.
- CCPOA proposes to enhance the section pertaining to Night Shift Differential/Weekend Differential. CCPOA intends to enhance this section to better reward those who give up prime time with their families.
- CCPOA proposes to enhance the section pertaining to CDC Decision/Settlement to strengthen the accountability of the state for

bad decisions.

- CCPOA proposes to enhance the section pertaining to Health and Safety Committee in order for CCPOA to be on the front end of safety decisions not the back end. During the term of this contract, Health and Safety issues have been reduced to a bureaucratic paper shuffling. CCPOA intends to enhance this section of the contract in order for CCPOA to be involved in issues that continually affect the safety of staff and the institution.
- CCPOA proposes to enhance the section pertaining to Emergency Care. The state has indirectly influenced emergency medical service providers into prematurely releasing injured employees to return to work status. CCPOA intends to enhance this section of the contract in order to protect employees. The state fails to ensure staff safety in the name of cost savings.
- CCPOA proposes to enhance the section pertaining to Industrial Disability Leave to make certain this program is utilized without harassment.
- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Use of State Vehicles to ensure the Parole Agent has the proper vehicle to perform his/her duties.

- CCPOA proposes to enhance the section pertaining to Firefighter Training to assure Unit 6 Firefighters are allowed to take part in up to date training without loss of compensation.
- CCPOA proposes to enhance the section pertaining to Employee Suggestions. In order for employee suggestions to be read and not “round filed”, the state shall meet with CCPOPA to review all suggestions submitted concerning Bargaining Unit 6 members. Suggestions shall be admitted and accepted by the Warden or Superintendent of each facility.
- CCPOA proposes to enhance the section pertaining to Ward Medication. Management has no clearly defined state-wide policy or procedure for the distribution of medication. The state is clearly subjecting rank and file to potential law suits by wards.
- CCPOA proposes to enhance the section pertaining to Access to Employees. During the term of this MOU, the state has continued to harass and intimidate union officials when trying to exercise their rights under this section.
- CCPOA proposes to enhance the section pertaining to Youth Correctional Counselors/Shift Duties to better facilitate the treatment and training objectives.

- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Training to provide meaningful up to date training.
- CCPOA proposes to enhance the section pertaining to Firefighter Vacation Leave to bring the accrual rate in line with other law enforcement organizations.
- CCPOA proposes to enhance the section pertaining to CDC and CYA Infectious Disease Control Plans. Like most committees, the Infectious Disease Control labor/management committee is all but defunct.
- CCPOA proposes to enhance the section pertaining to Bilingual/Sign Language Pay. CCPOA intends to enhance this section in order to pay those who are actually trained and actually use this talent. The state continues to use members that speak a particular language as interpreters without providing the appropriate monetary benefit.
- CCPOA proposes to enhance the section pertaining to Institutional Vacancy Plan. The state continues to violate this section by running positions vacant in an effort for salary savings. This is a blatant misuse of public funds approved by the Legislature. CCPOA intends to strengthen the accountability of the state for violations of this section.

- CCPOA proposes to enhance the section pertaining to Shift Starting Time at Youth Authority to ensure employees are the first consideration when scheduling time, not wards happiness.
- CCPOA proposes to enhance the section pertaining to IST Overtime. CCPOA intends to enhance this section of the contract to ensure employees are properly compensated for training during their off duty hours.
- CCPOA proposes to enhance the section pertaining to Training Program. The state has bastardized the entire training procedure in an effort to balance their budgetary shortfalls by trading training for dollars and plausible deniability. This policy severely undermines the safety and security of all institutions.
- CCPOA proposes to enhance the section pertaining to CYA Staffing/Ward Population to improve Bargaining Unit 6 staff to youthful offender ratios in regard to treatment, training, safety, and rehabilitation.
- CCPOA proposes to enhance the section pertaining to Early Intervention Program/Work Injuries to strengthen this program that has been diluted by management.
- CCPOA proposes to enhance the section pertaining to Overtime Meal

Benefits and Allowances. CCPOA intends to enhance this section since many institutions have failed to provide a snack bar for employees to obtain food when they are forced to work additional hours due to management's failure to hire enough employees.

- CCPOA proposes to enhance the section pertaining to Unused CTO. CCPOA intends to bring this section in line with actual accounting procedures.
- CCPOA proposes to enhance the section pertaining to Voluntary Overtime by Seniority. CCPOA intends to strengthen this section to provide more accountability for violations of this section.
- CCPOA proposes to enhance the section pertaining to Firefighter Safety Equipment to be certain the equipment utilized in this section is the best possible equipment and not outdated as is usually the case.
- CCPOA proposes to enhance the section pertaining to Course and Scope Protection. CCPOA intends to enhance this section of the contract to provide protection to its members from unnecessary and biased investigations.
- CCPOA proposes to enhance the section pertaining to Senior Peace Officer Pay Differential.
- CCPOA proposes to enhance the section pertaining to Classification

Proposals to allow for liability when this section is not followed.

- CCPOA proposes to enhance the section pertaining to Requests for Reinstatement After AWOL Separation to ensure management does not violate this section as they have done in the past.
- CCPOA proposes to enhance the section pertaining to CYA Field Parole Agent Training to bring the quality to the standard of other outside agencies doing the same job.
- CCPOA proposes to enhance the section pertaining to Bulletin Boards. The state has taken great liberties with this section. CCPOA endeavors to move in accordance with first amendment rights.
- CCPOA proposes to enhance the section pertaining to Random Substance Testing Program. The drug testing program to this day only applies to rank and file members and any supervisor who doesn't happen to be in "the car." A great deal of tax payer money is forfeited for very little result.
- CCPOA proposes to enhance the section pertaining to CYA Incident Debriefing. Management's half hearted implementation of this section has little to do with actual concern for employee's well-being as well as safety and security of the institution.
- CCPOA proposes to enhance the section pertaining to Flight Pay.

Flying is a dangerous affair; this compensation needs to be up-graded in line with the actual danger.

- CCPOA proposes to enhance the section pertaining to Firefighter Sick Leave in an attempt to stop the continued harassment of these employees for utilizing time they have rightfully earned.
- CCPOA proposes to enhance the section pertaining to CYA, CDC and DMH Information Documentation to allow that the proper and correct information is disseminated.
- CCPOA proposes to enhance the section pertaining to Disability Retirement Allowance. CCPOA intends to enhance this section of the contract to protect employees who have received injuries or illnesses requiring them to leave state service.
- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Caseload Audits to make sure this is done fairly and not as an adverse move.
- CCPOA proposes to enhance the section pertaining to CYA IPA/Casework Specialist Workload to enhance the staffing ratios.
- CCPOA proposes to enhance the section pertaining to Unpaid Leaves of Absence. CCPOA intends to enhance this section of the contract since the state does not allow employees to take time off to further

their education and better enhance their career.

- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Work Week to bring it in line with what is actually happening in the field.
- CCPOA proposes to enhance the section pertaining to Court Appearances to strengthen the accountability for violations of this section.
- CCPOA proposes to enhance the section pertaining to CYA IPA/Casework Specialist Orientation to create an existing policy that actually represents the intent of this section.
- CCPOA proposes to enhance the section pertaining to Subpoena to provide more accountability for violations of this section.
- CCPOA proposes to enhance the section pertaining to PIE Usage Behind Youth Correctional Counselors. Management has continuously misused this section, thereby creating vacancies and increasing the workload on Youth Correctional Counselors.
- CCPOA proposes to enhance the section pertaining to Release Time Bank. The state refused to honor their word with the last Memorandum of Understanding regarding this section.
- CCPOA proposes to enhance the section pertaining to Union Paid

Leave. CCPOA intends to enhance this section of the contract in order to facilitate CCPOA business without constant harassment from Labor Relations.

- CCPOA proposes to enhance the section pertaining to Management Rights. During the term of this contract management has abused their authority, and continually failed to use this section in accordance with section 27.01 of the MOU.
- CCPOA proposes to enhance the section pertaining to Youth Correctional Counselor/Youth Correctional Officer Use of Leave Credits. CCPOA intends to enhance this section of the contract in order to ensure YCC's and YCO's are able to utilize credits due to them.
- CCPOA proposes to enhance the section pertaining to Absences for Duty in Uniformed Services. CCPOA intends to enhance this section of the contract in order to take care of issues that constantly arise regarding our service people.
- CCPOA proposes to enhance the section pertaining to Firefighter Holidays.
- CCPOA proposes to enhance the section pertaining to Transfer of Leave Credits between Family Members to allow a wider range of the

type of credits that can be transferred.

- CCPOA proposes to enhance the section pertaining to Release Time for State Civil Service Examinations & Interviews to allow Bargaining Unit 6 employees sufficient time to travel, and prepare for the examination/interview.
- CCPOA proposes to enhance the section pertaining to Continuous Hours of Work/Dead Time. CCPOA intends to enhance this section of the contract to provide more accountability of violations of this section.
- CCPOA proposes to enhance the section pertaining to Firefighter Training Committee. CCPOA intends to enhance this section of the contract to provide more accountability of violations of this section.
- CCPOA proposes to enhance the section pertaining to Exchange of Days Off – Shift Assignment (Mutual Swaps). The state continues to leave a tool, which would drive over time and sick leave costs down, in a locked shed. They have made the process as burdensome as trying to cash an out of state check with no ID.
- CCPOA proposes to enhance the section pertaining to Out-of-Classification Assignments, and allow for proper and speedy compensation when working out of class.

- CCPOA proposes to enhance the section pertaining to Overtime Checks so that employees are not hassled and harassed for wanting their money when it is due them. Management has no problem forcing employees to work overtime, however payment should be prompt and delivered on the due date.
- CCPOA proposes to enhance the section pertaining to Reduced Work Time in order to allow all employees the same luxury that a few now enjoy.
- CCPOA proposes to enhance the section pertaining to No Strike. The right to strike is a basic principal that all union organizations are founded on.
- CCPOA proposes to enhance the section pertaining to 7k Exemption to strengthen the conditions under which 7k was founded.
- CCPOA proposes to enhance the section pertaining to Priority Time Off Requests to strengthen this section to make it a viable option. The state has ignored this section to the point of non-existence.
- CCPOA proposes to enhance the section pertaining to Callback Time. CCPOA intends to enhance this section to reward employees for the inconvenience they are forced to endure due to errors made by management.

- CCPOA proposes the development of a comprehensive Complaint Procedure to hold management accountable for biased, arbitrary, discriminatory and bad faith investigations.
- CCPOA proposes to enhance the section pertaining to Minimum Work Time for Intermittent Employees to ensure that the arbitrary usage of PIE's will cease.
- CCPOA proposes to enhance the section pertaining to Recognition. CCPOA proposes to clarify the intent of this language.
- CCPOA proposes to enhance the section pertaining to Permanent Involuntary Transfer by Inverse Seniority to utilize this section in a fair and impartial manor, not just the "kids".
- CCPOA proposes to enhance the section pertaining to Firefighter Facilities to make certain the facilities are up to date, not falling apart and uninhabitable in an order to save the state money.
- CCPOA proposes to enhance the section pertaining to Location Of, And Employee Access To, Files to ensure that the conditions of this section are implemented properly and that the state is forthcoming in the location and access of **all** files.
- CCPOA proposes to enhance the section pertaining to Involuntary Overtime by Inverse Seniority. The state continues to violate this

section daily. CCPOA intends to enhance this section of the contract to provide stronger accountability for violations of this section.

- CCPOA proposes to enhance the section pertaining to Layoff and Reemployment. The process is currently so cumbersome even state personnel employees can't follow it.
- CCPOA proposes to enhance the section pertaining to Health Benefit Plan to receive the same benefit as other Bargaining Units currently enjoy.
- CCPOA proposes to enhance the section pertaining to Supervisory File in order that Unit 6 staff are able to keep track of the lies perpetrated by management against staff.
- CCPOA proposes to enhance the section pertaining to Dental/Vision Erisa Trust to receive the same benefit as other Bargaining Units currently enjoy.
- CCPOA proposes to enhance the section pertaining to Use of State Telephones. The restrictions placed on job stewards have severely inhibited their duties of fair representation.
- CCPOA proposes to enhance the section pertaining to Arbitration to ensure that an issue is brought before an arbitrator within six months of filing.

- CCPOA proposes to enhance the section pertaining to Long-Term Care Insurance Plans to provide stronger accountability for violations of this section.
- CCPOA proposes to enhance the section pertaining to Probation & Annual Performance Reports to make management liable for false statements towards staff they just simply don't like.
- CCPOA proposes to enhance the section pertaining to Quarterly Labor-Management Meetings. The current Quarterly Labor-Management meetings have become nothing more than smoke and mirrors, as under the previous Agency Secretary's administration labor relations has become an oxymoron.
- CCPOA proposes to enhance the section pertaining to Alternate Pre-Retirement Death Benefit in an attempt to take care of Unit 6 employees and give them what is due.
- CCPOA proposes to enhance the section pertaining to Informal Discussion — Step 1, to stop the harassment of employees who exercise their rights.
- CCPOA proposes to enhance the section pertaining to Survivors' Benefits. In light of the escalating violence in under manned institutions this benefit unfortunately will most likely be used more

often and needs to be increased. This is the only situation where a donation becomes a tax liability instead of a tax credit.

- CCPOA proposes to enhance the section pertaining to Out-Service Training (For Training Not Mandated by CPOST) to ensure the reimbursements are being credited to the employee in an appropriate manner.
- CCPOA proposes to enhance the section pertaining to Business and Travel. There are two sets of rules – one for rank and file and one for management. Managers are allowed to subsidize their sizable incomes by attending non public entity training such as “Future Focused Leadership” on the public’s dime, while rank and file employees can’t find a government rate at a hotel.
- CCPOA proposes to enhance the section pertaining to Agency Shop to make certain members are given the correct information.
- CCPOA proposes to enhance the section pertaining to Uniform/Uniform Accessories Replacement Allowance. For years the state has refused to do an actual uniform survey, which is required by law. The reason the CDCR continues to violate the law with complete disregard is to deny our members the right to a proper uniform allowance. The allowance set forth in this section should not be

utilized and considered as compensation for the states arbitrary changes to patches, etc.

- CCPOA proposes to enhance the section pertaining to Badges. With the move to the new Agency name, this section needs to be clarified as to the expectations of the member. There also needs to be financing for the badge changes.
- CCPOA proposes to enhance the section pertaining to Firefighter Continuous Hours of Work to make certain they are paid for the time they work.
- CCPOA proposes to enhance the section pertaining to Dues Deduction in an effort to be assured all eligible members are accounted for.
- CCPOA proposes to enhance the section pertaining to State Vice Presidents. Under the state's veiled attempt to portray the CCPOA leadership as being on permanent vacation, this section needs to be changed to reflect reality instead of politically biased opinion.
- CCPOA proposes to enhance the section pertaining to Vacation Leave. CCPOA intends to enhance this section of the contract to allow employees the opportunity to use all the time they earn. The caps in the current MOU need to be raised so they are consistent with other

law enforcement agencies.

- CCPOA proposes to enhance the section pertaining to MTA Certification and License Renewal to make certain the proper laws are followed and to take care of an important part of CCPOA membership.
- CCPOA proposes to enhance the section pertaining to Representation on Committees. Under the current administration, this section of the MOU has become nothing more than a bookmark as the state bends to the Federal Courts and their whims.
- CCPOA proposes to enhance the section pertaining to Sick Leave as management continues to misrepresent the actual numbers to the Legislature and the general public. Management continues to over inflate the actual sick leave numbers to meet their self serving interests. CCPOA intends to enhance this section of the contract in an attempt to give sick time a value.
- CCPOA proposes to enhance the section pertaining to Performance Salary Adjustments. CCPOA intends to enhance this section to better reward those deserve an increase. The state will cease harassment of new employees by withholding their Merit Salary Adjustment's.
- CCPOA proposes to enhance the section pertaining to Employer-Paid

Retirement Contributions to ensure Unit 6 is treated as fairly by the state as other bargaining units.

- CCPOA proposes to enhance the section pertaining to Disciplinary Process to ensure that the state does not engage in direct discipline thereby infringing on the rights of Bargaining Unit 6 members.
- CCPOA proposes to enhance the section pertaining to Class B Driver's License in order to allow more staff to qualify for positions notoriously used by management.
- CCPOA proposes to enhance the section pertaining to Letters of Instruction /Work Improvement Discussions to stop management's continued use for the purpose of adverse treatment.
- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Workload to establish a fair and equitable workload.
- CCPOA proposes to enhance the section pertaining to Physical Fitness Incentive Pay. This section needs to be changed to mirror the requirements set forth by the American Medical Association. In addition this incentive needs to be 'persable.'
- CCPOA proposes to enhance the section pertaining to Distribution of Literature. CCPOA proposes to move in accordance with state and

Federal law as to the distribution of literature to its members and remove the restrictions that hamper the duty of fair representation.

- CCPOA proposes to enhance the section pertaining to Firefighter Classification Name Change to bring this classification to the standards held in the public sector.
- CCPOA proposes to enhance the section pertaining to Bereavement Leave. CCPOA intends to enhance this section of the contract due to the continued harassment of employees during a very emotional time in their lives.
- CCPOA proposes to enhance the section pertaining to Adverse Action and Citizen Complaint Documents to make certain staff are treated as fairly as inmates.
- CCPOA proposes to enhance the section pertaining to MTA (DMH) Program to strengthen the series.
- CCPOA proposes to enhance the section pertaining to 401k Plan. CCPOA intends to strengthen Unit 6 employee's retirement benefit.
- CCPOA proposes to enhance the section pertaining to Time Limits in an attempt to ensure all employee grievances are given fair and impartial treatment since management continues to violate this section.

- CCPOA proposes to enhance the section pertaining to Salary Definitions. This section needs modification to bring the salary definitions into real world scenarios.
- CCPOA proposes to enhance the section pertaining to MTA (CDC) Training Program to ensure this series is not left behind.
- CCPOA proposes to enhance the section pertaining to Overpayments/Payroll Errors (Accounts Receivable). CCPOA intends to enhance this section in order to protect the paychecks of its members.
- CCPOA proposes to enhance the section pertaining to Selection and Authority of Arbitrator to ensure fair, impartial and binding decisions.
- CCPOA proposes to enhance the section pertaining to Recruitment — Avenal, Ironwood, Chuckawalla Valley, Calipatria, and Centinela State Prisons. The state has done nothing to promote the profession of the Correctional Officer series. In fact, they have gone out of their way to stay uninvolved when defending the profession in the Legislature as well as the main stream media. In an effort to fill the thousands of existing vacancies, a program must be developed that increases the institutions listed in this section.
- CCPOA proposes to enhance the section pertaining to Correctional

Officer Cadet Pay. At the present time, the state does what ever it can to actually discourage prospective new employees from joining the department. As it is now during the academy the state doesn't pay any medical or dental coverage for a new employee. This pay range is too low.

- CCPOA proposes to enhance the section pertaining to Peace Officer Bill of Rights to find a way to stop the CDCR and management from continually violating this section of the contract.
- CCPOA proposes to enhance the section pertaining to Use of State Facilities. Union officials, in their capacities as such, need the use of state facilities from time to time. Local management teams continue to circumvent this section.
- CCPOA proposes to enhance the section pertaining to Report of Injury to ensure all injuries are actually reported.
- CCPOA proposes to enhance the section pertaining to Educational Incentive Pay. The state has continued to renege on their obligation to establish a CPOST certified certificate program for the purposes of advancing the correctional officer series to the level of other law enforcement agencies.
- CCPOA proposes to enhance the section pertaining to Definitions to

make certain management fully understands the positive intent of this section.

- CCPOA proposes to enhance the section pertaining to Questionnaires. During the term of the current MOU, the state has taken great liberties with this section. CCPOA proposes to strengthen the conditions of this section and guarantee the results, in writing, of each survey/questionnaire.
- CCPOA proposes to enhance the section pertaining to Substance Abuse – Reasonable Suspicion Testing to stop the CDCR and their management from abusing this section with their continued disparate treatment of Unit 6 employees.
- CCPOA proposes to enhance the section pertaining to Purpose. During this administration, the grievance process has been rendered to little more than a meaningless paper shuffle.
- CCPOA proposes to enhance the section pertaining to Research Projects to further corrections and its employees, rather than being stymied by management.
- CCPOA proposes to enhance the section pertaining to Gun Lockers & State Firing Ranges. CCPOA intends to expand the number of gun lockers made available at each facility.

- CCPOA proposes to enhance the section pertaining to CDC & CYA Smoking Policies to make certain all employees are treated the same.
- CCPOA proposes to enhance the section pertaining to Post Orders/Duty Statements. Post orders and duty statements are a vital portion of the day to day operations of CDC and CYA facilities, yet management refuses to make them realistic and reflective of actual events. This section needs to provide a look at reality when it comes to these important documents. CCPOA should be notified every time post orders and duty statements are changed, modified, or updated.
- CCPOA proposes to enhance the section pertaining to Work and Family Labor Management Committee. The Work and Family Labor Management Committee was an inspirational idea that would have borne fruit as it pertains to the member feeling a sense of respect from the departments. However, the departments have shown that respect is not in their vernacular.
- CCPOA proposes to enhance the section pertaining to Safety Equipment (Institutions & Camps). Safety equipment is sorely lacking in both institutions and camps. The equipment is out dated and in dire need of replacement at most institutions.
- CCPOA proposes to enhance the section pertaining to Firefighter

Hours of Work and Compensation to ensure they are fully paid for the work they do.

- CCPOA proposes to enhance the section pertaining to Formal Appeal — Step 3. Under the current administration, responses at this level have reverted to little more than a rubber stamp process.
- CCPOA proposes to enhance the section pertaining to Access and/or Release of Employee Files to Non-Departmental Persons to ensure employee confidentiality.
- CCPOA proposes to enhance the section pertaining to Firefighter License Renewal to assure the proper licenses are held by those required to do the job.
- CCPOA proposes to enhance the section pertaining to Formal Appeal — Step 4. Under the current administration, responses at this level have reverted to little more than a rubber stamp process.
- CCPOA proposes to enhance the section pertaining to Copies of Memorandum of Understanding, to clarify the guidelines governing this section.
- CCPOA proposes to enhance the section pertaining to Temporary Involuntary Reassignments and Transfers to make certain management does not utilize this section for the purpose of salary

savings as they have done in the past.

- CCPOA proposes to enhance the section pertaining to Firefighter Vacation Leave to increase the accrued hour levels.
- CCPOA proposes to enhance the section pertaining to Definition of Third Watch. The state continues to manipulate start and stop times in an effort to avoid FLSA requirements. CCPOA intends to enhance this section to recognize employees who are forced to work hours that take them away from their families.
- CCPOA proposes to enhance the section pertaining to Replacement of Damaged Personal Clothing and/or Articles. CCPOA intends to enhance this section since the state continues to refuse to replace clothing that is damaged in the daily activities of a Bargaining Unit 6 member.
- CCPOA proposes to enhance the section pertaining to Stewards' Rights. During the life of this contract, management has albeit unsuccessfully, attempted to abridge and infringe upon this section numerous times. With numerous academies running the Chief Job Stewards role needs to be redefined.
- CCPOA proposes to enhance the section pertaining to Training Enhancement to allow firefighters to increase their life saving

knowledge.

- CCPOA proposes to enhance the section pertaining to Access to New Employees. With the Departments move to place academies all over the state, at any Community College that chooses to hold academy classes, this section needs to have clarification as to what exactly constitutes a 'new employee.'
- CCPOA proposes to enhance the section pertaining to Jury Duty. CCPOA intends to ensure Unit 6 members do not lose compensation by performing their civic duty.
- CCPOA proposes to enhance the section pertaining to CYA Field Parole Agent, YOPB Board Coordinating Parole Agent and Community Service Consult and Work Hours.
- CCPOA proposes to enhance the section pertaining to Union Related Activity Related to Collective Bargaining. The state has attempted to manipulate, and subsequently misrepresent the intent and implementation of this section.
- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Safety Equipment and Procedures to make certain the state is not allowed to violate this section for the purpose of saving money.
- CCPOA proposes to enhance the section pertaining to Holidays. This

section should be enhanced to match the private sector.

- CCPOA proposes to enhance the section pertaining to CDC Parole Agent Standby to reflect the actual demands placed on Parole Agents.
- CCPOA proposes to enhance the section pertaining to Parental Leave to bring the departments up to Federal guidelines governing this time off.
- CCPOA proposes to negotiate a Field Training Officer Program.
- CCPOA proposes to enhance the section pertaining to Correctional Counselor Work Hours to ensure fairness and equitability and avoid manipulation by management.
- CCPOA proposes to enhance the section pertaining to Employee Requested Transfers between Appointing Authorities to strengthen this section to prevent the state from turning this section on and off like a light switch.
- CCPOA proposes to enhance the section pertaining to Annual Leave - Enhanced NDI by raising the caps and accrual rates to match other bargaining units.
- CCPOA proposes to enhance the section pertaining to Printing Contract to enhance the reasonable amounts set forth in the current MOU.

- CCPOA proposes to enhance the section pertaining to Peace Officer/Firefighter Retirement Plan. CCPOA intends to strengthen this section of the MOU.
- CCPOA proposes to enhance the section pertaining to MTA PPPA to allow MTA's the ability to utilize the seniority they have worked hard to earn, and to stop management from manipulating this section.
- CCPOA proposes to enhance the section pertaining to CYA IPA and Casework Specialist Work Hours in order to more fairly reflect what is actually happening in the field.
- CCPOA proposes to enhance the section pertaining to CDC/CYA Transporting Officers Hours in order to ensure schedules and work hours are not manipulated by management.
- CCPOA proposes to enhance the section pertaining to Youth Correctional Counselor Workload in order to facilitate the treatment and training objectives as well as established national standards.
- CCPOA proposes to enhance the section pertaining to Safety Equipment (Escapes and Escorts). Vehicles maintained by the institutions are for the most part not road worthy.
- CCPOA proposes to enhance the section pertaining to Post and Bid by Seniority for Youth Correctional Counselors. Management continues

to attempt to deny staff the rights they have earned by their seniority. They do this by portraying post and bid as a detriment to managing institutions, while in fact post and bid is an asset.

- CCPOA proposes to enhance the section pertaining to Rural Subsidy Program. Bargaining Unit 6 members in rural areas are in dire need of a health care program that actually works for the member and their families without having to jump through hoops, much like a circus animal, or go to another state to receive the required care.
- CCPOA proposes to enhance the section pertaining to Youth Correctional Counselor voluntary demotion. Management continues to attempt to deny staff the rights they have earned.
- CCPOA proposes to enhance the section pertaining to Personnel Investigations to ensure all investigations are completed in a timely and professional manner. To ensure all investigations are not completed in a biased, capricious and arbitrary manner.
- CCPOA proposes to enhance the section pertaining to Mini-Arb to include sections not included at this time.
- CCPOA proposes to enhance the section pertaining to State-Owned Housing, due to the department's decision to construct prisons in areas where Bargaining Unit 6 members can not afford to live. Even

with this in mind the department continues to subsidize upper management teams with no, to low cost, housing where it is available.

- CCPOA proposes to enhance the section pertaining to Referral of Staff Assaults. Under the current administration, staff assaults are “down graded” in an effort to not report the assault to the local District Attorney (DA). At female institutions, inmates on staff assaults are swept under the carpet as well. In the CYA, staff assaults are at an all time high due to the lack of DA referrals.
- CCPOA proposes to enhance the section pertaining to Chief Job Steward Assignments. Due to the states unwillingness to actually recognize the duty of fair representation to our members, CCPOA is proposing enhancements.
- CCPOA proposes to enhance the section pertaining to Savings Clause to ensure that the MOU is protected from outside sources, and individuals with private agendas.
- CCPOA proposes to enhance the section pertaining to 7K Compensation to modify the MOU in a manner consistent with the 7k guidelines.
- CCPOA proposes to enhance the section pertaining to Waiver of Steps to allow more flexibility to waive steps when a grievance decision

cannot be reached at that level.

- CCPOA proposes changes to the Preamble to bring Bargaining Unit 6 in line with other state bargaining units.
- CCPOA proposes to enhance the section pertaining to Enhanced Industrial Disability Leave (EIDL). The state continuously denies EIDL to staff that have been injured during a disturbance with inmates, or while responding to an alarm or an emergency.
- CCPOA proposes to enhance the section pertaining to Presentation to ensure the sanctity of the grievance process itself.

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21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on August 22, 2006 at San Francisco, California.

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24 Kristina Hector

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