

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## Investigations of Improper Activities by State Employees:

*July Through December 1999*



April 2000  
I2000-1

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# CALIFORNIA STATE AUDITOR

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April 11, 2000

Investigative Report I2000-1

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July through December 1999.

Respectfully submitted,

MARY P. NOBLE  
Acting State Auditor

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# SUMMARY

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## *Investigative Highlights . . .*

*State employees engaged in improper activities, including the following:*

- Jeopardizing the public's safety, by improperly releasing parolees from parole.*
  - Falsifying reports to obtain inappropriate overtime and travel payments.*
  - Claiming overtime improperly, costing the State more than \$78,000.*
  - Using state resources for personal benefit.*
- 

## RESULTS IN BRIEF

**T**he Bureau of State Audits (bureau) administers the California Whistleblower Protection Act (act) contained in the California Government Code, beginning with Section 8547. The act defines “improper governmental activity” as any activity by a state agency or state employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. To enable state employees and the public to report these activities, the state auditor maintains the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.** The bureau receives and investigates complaints of improper governmental activities.

If the state auditor determines reasonable evidence exists of improper governmental activity, the bureau confidentially reports the details of the activity to the head of the employing agency or the appropriate appointing authority. The employer or appointing authority is required to notify the state auditor of any corrective action taken, including disciplinary action, no later than 30 days after the confidential investigative report is transmitted and monthly thereafter until it completes corrective action.

This report details the results of the five investigations completed by the bureau and other state agencies between July 1 and December 31, 1999, that substantiated complaints. Following are examples of the substantiated improper activities:

## DEPARTMENT OF CORRECTIONS

Parole agents in the interstate parole unit of the Department of Corrections engaged in the following improper activities:

- Recommended that two parolees be discharged from parole without reporting they had been arrested for serious crimes within the previous year, thereby jeopardizing the public’s safety.

- Failed to conduct the appropriate reviews and forward them to the Board of Prison Terms within the specified time frames, resulting in the automatic release of six parolees from parole supervision.

## OFFICE OF EMERGENCY SERVICES

Employees of the fire and rescue branch of the Office of Emergency Services engaged in the following improper activities:

- Falsified reports to obtain thousands of dollars in inappropriate overtime and travel payments.
- Allowed employees under their supervision to claim overtime regularly for nonemergency events such as attending training sessions and meetings on regular days off or for time spent commuting.
- Used state resources and discounts for personal benefit.
- Circumvented restrictions on the number of days temporary employees can work.

## CALIFORNIA SCIENCE CENTER

Public safety employees engaged in the following improper activities:

- Thirteen claimed duplicate overtime hours, thereby receiving a total of \$4,224 for 168 hours they did not work.
- Four managerial employees claimed a total of \$74,638 for 2,325 overtime hours even though managerial employees are not entitled to overtime compensation.
- Twelve employees claimed \$730 for meals they were not entitled to receive reimbursement for.

Personnel department staff engaged in the following improper activities:

- Allowed one managerial public safety employee to accumulate 476 hours of compensatory time valued at more than \$13,000 even though managerial employees are not entitled to compensatory time.
- Failed to charge employees' leave balances for absences, resulting in the State incurring thousands of dollars in unnecessary and improper costs.

### CALIFORNIA CONSERVATION CORPS

- A manager signed a subordinate's name on a \$315 credit card charge to improperly pay for part of a farewell reception for another manager.

### EMPLOYMENT DEVELOPMENT DEPARTMENT

- An employee and her supervisor used state resources for personal benefit.

This report also summarizes actions taken by state entities as a result of investigations presented here or reported previously by the state auditor.

Appendix A contains statistics on the complaints received by the bureau between July 1 and December 31, 1999, and summarizes our actions on those and other complaints pending as of June 30, 1999. It also provides information on the cost of improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

Appendix B details the laws, regulations, and policies that govern the improper activities discussed in this report.

Appendix C provides information on actual or suspected acts of fraud, theft, or other irregularities identified by other state entities. Section 20060 of the State Administrative Manual requires state agencies to notify the bureau and the Department of Finance of such actual or suspected acts. It is our intention to

inform the public of the State's awareness of such activities and to publicize the fact that agencies are taking action against wrongdoers and working to prevent improper activities.

See the index for an alphabetical listing of all agencies addressed in this report. ■

# CHAPTER 1

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## ***Department of Corrections: Improper Release of Parolees From Parole***

### ALLEGATION I960094

**W**e received an allegation that parole agents in the interstate parole unit (parole unit) of the Department of Corrections (Corrections) failed to conduct the appropriate reviews before recommending parolees under their supervision be discharged from parole.

### RESULTS AND METHOD OF INVESTIGATION

Parole agent A at the parole unit recommended two parolees under his supervision be discharged from parole, reporting on annual discharge reviews that they had no new arrests even though both parolees had been arrested again during the previous year. In addition, because several parole agents failed to perform the required discharge reviews within the time allowed by law, Corrections automatically discharged six other parolees.<sup>1</sup> Of the six individuals who were released early, two committed other crimes, including assault with a deadly weapon and burglary, before their original parole period would have been up. We also found that 41 (19 percent) of the 217 field files we reviewed did not contain adequate evidence to support the parole unit's recommendation to discharge the parolees.

To investigate the allegations, we reviewed all of the parole unit's discharge files from December 1997 to April 1998 and a sample of the unit's active parole files. We then reviewed a sample of archived discharge files from October 1992 to December 1997. In addition, we obtained criminal history reports for parolees who were discharged without reviews or

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*Parolees released early  
committed additional  
crimes.*

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<sup>1</sup> State regulations require Corrections to release most parolees within 30 days following one year of continuous parole unless it finds good cause to retain them on parole. Because the parole agents failed to complete the necessary discharge reviews, Corrections lacked good cause to extend parole in these six cases. For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

who did not have criminal history reports in their files. We attempted to interview the parole agents assigned to the cases we reviewed, but these agents declined to speak with us on the advice of their union representative. Finally, we interviewed the parole agents' supervisor.

## BACKGROUND

California participates in a compact made under the Uniform Act for Out-of-State Parolee Supervision, which allows a parolee convicted of a crime in one state to be supervised by a parole agent in another state. Corrections' parole unit coordinates the supervision of parolees from California prisons who live in other states. Depending on the crimes and whether the parolees have previously been refused discharge, California parole agents must periodically determine whether to discharge or retain them on parole. Parole agents submit their recommendations to the California Board of Prison Terms (board), which makes the final determination.

As a rule, one of the unit's parole agents contacts the supervising parole agent in the state where a parolee lives and requests information regarding his or her progress. Parole agents also have access to California's Criminal Identification Information and the Federal Bureau of Investigation's computer databases that list all of the parolees' reported arrests and convictions.

## A PAROLE AGENT IMPROPERLY RECOMMENDED DISCHARGE FOR TWO PAROLEES

Parole agent A improperly recommended the discharge of two parolees by misreporting the facts on his reports to the board. Between November 1997 and February 1998, the parole agent reported that the two parolees' criminal history reports were clear of new arrests and recommended discharging them after their third year of parole. However, our review of the criminal history reports in the parolees' files showed they had been arrested for new crimes since their last discharge review. One parolee was arrested for possessing a firearm, and the other was arrested for battery.

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*Parole agent A misreported the facts by failing to disclose parolees' arrests for new crimes.*

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State regulations require parole agents to investigate all suspected parole violations and document all available facts. Additionally, the regulations require the parole and community services division to report to the board any parolee who is reasonably believed to have engaged in certain behavior including assault resulting in serious injury to the victim, possession of any firearms, and any other conduct it deems serious.

His supervisor agreed the parole agent should have reported the arrests on the discharge reviews. The supervisor stated that rather than recommending discharge, the parole agent should have requested an extension of parole so that an investigation of the arrests could be completed. Nevertheless, both parole agent A and his supervisor had reviewed and signed off on the discharge reviews without any mention of the parolees' most recent arrests.

The arrests, absent an investigation that might prove otherwise, were a violation of parole and would clearly be considered good cause for retaining the parolees under state regulations. However, the board granted discharge in both these cases because it did not have all the pertinent information it needed to make an informed decision. Due to the serious and violent nature of the new crimes the parolees were charged with, discharging them without an investigation jeopardized community safety.

#### **PAROLE AGENTS' FAILURE TO CONDUCT THE APPROPRIATE REVIEWS LED TO EARLY DISCHARGE OF PAROLEES**

California regulations require the parole hearings division of Corrections to discharge a parolee within 30 days following one year of continuous parole unless it finds good cause to retain the individual on parole. According to the regulations, the definition of good cause includes a parolee's involvement in criminal activity, drug use, gang activities, or a criminal investigation. The regulations also require that parolees have a discharge review by the 13<sup>th</sup> or the 25<sup>th</sup> month of continuous parole, depending on whether their incarceration was for committing a violent felony. In addition, if Corrections retains the individual

on parole, it must conduct an annual review until the effective discharge date. The effective discharge date is the date on which the board's and Corrections' jurisdiction over the parolee expires.

Because three parole agents failed to conduct the appropriate reviews between October 1995 and December 1996 and forward them to the board within the specified time frame, Corrections had to discharge six parolees.

In one instance, Corrections had to discharge a parolee incarcerated for child molestation because parole agent B did not complete her discharge review by the 25<sup>th</sup> month of his parole. The agent did not even attempt to conduct a discharge review until nearly one month after the parolee was required to be discharged.

In another instance, Corrections discharged a parolee previously convicted for making terrorist threats because parole agent C not only missed the discharge review deadline but apparently failed altogether to conduct the review. In this case, the agent should have completed an annual discharge review by the 13<sup>th</sup> month of parole. However, the case files lacked documentation showing the agent ever performed such a review.

In addition, of the six parolees previously mentioned, authorities arrested two (one for assault with a deadly weapon and another for burglary) after their release from parole but before their effective discharge dates. In both cases, these parolees, who were released after one year but subject to a maximum three-year parole period, were convicted of new crimes during what would have been the third year of their original parole sentence. Without conducting proper reviews prior to discharging parolees, which would include obtaining information from the supervising agent in the state in which the parolee lives and independently verifying the information through the criminal history reports, the parole unit jeopardized the safety of the communities where the parolees lived.

When we discussed the cases with the parole agents' supervisor, he stated that discharging parolees without a review is unacceptable. However, he also offered several reasons for these missed deadlines, including data entry errors related to the parolees' discharge dates, insufficient resources to handle the workload, and unintentional mistakes on the part of the assigned parole agents.

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*Failure to properly review parolee status can jeopardize community safety.*

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## PAROLE AGENTS DID NOT PROPERLY DOCUMENT OR JUSTIFY THE DISCHARGE OF PAROLEES

Parole agents sometimes failed to properly document and adequately justify their recommendation to discharge parolees from parole. Of the 217 files we reviewed for the period December 1997 to April 1998, files for 27 parolees lacked evidence that parole agents obtained any information from out-of-state supervising agents for at least 12 months before the parolees were discharged. Another 14 files did not contain evidence that parole agents obtained current information regarding the parolees' status from supervising agents in the state of residence. We defined current as being within 6 months of discharge because we saw evidence in other files that obtaining a progress report every 6 months was not only possible but in some states recommended. Further, 40 of the 41 files described above did not contain evidence that parole agents obtained and reviewed the criminal history reports even though they cited the reports in their final discharge reviews.

Individuals making discharge reviews must consider parolees' adjustment on parole and any other information relevant to determining whether to retain or discharge. However, the 40 files that lacked documentation of adequate review simply stated that the parolees would reach their effective discharge date soon and that their criminal history reports did not reveal any new arrests. Some of these parolees were convicted of serious offenses, including child molestation, burglary, assault with a deadly weapon, child cruelty, and manufacturing of controlled substances. We found no evidence that the parole agents had either obtained the criminal history reports or recently tried to contact the out-of-state supervising agents. As a result, the agents did not have adequate justification or documentation for recommending discharge.

We discussed the lack of documentation with the parole agents' supervisor. He told us that current progress reports are required from the other states at least once a year, but Corrections cannot enforce compliance from the other state. He also said that a file for a parolee discharged from the parole unit should contain a criminal history report.

Prudent management practices dictate that proper documentation accompany any decision or recommendation, especially one as important as discontinuing supervision of convicted

felons. Proper documentation creates a basis for parole agents' recommendations and shows the agents have ensured that, as best they can, they only release rehabilitated parolees back into the community.

#### AGENCY RESPONSE

Corrections is reviewing whether statute-of-limitation provisions prevent it from initiating an administrative investigation of the events reported here. If it can, Corrections will open an internal affairs investigation and, if appropriate, initiate adverse action. Corrections has developed an action plan to address the issues contained in our report. This action plan establishes time frames within which parole agents must collect information on parolees, documentation requirements, and supervisory responsibilities. Corrections also reported that the parole unit's staff have been trained on current policies and procedures and that the parole unit will routinely audit parole agent caseloads to ensure compliance. ■

## CHAPTER 2

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### ***Office of Emergency Services: False Claims for Overtime and Travel Costs, Other Incompatible Activities, and Mismanagement***

#### ALLEGATION I980041

**W**e received allegations that employees of the fire and rescue branch in the Governor's Office of Emergency Services (OES) engaged in improper activities related to use of state time and property.

#### RESULTS AND METHOD OF INVESTIGATION

Along with the California Highway Patrol (CHP), we investigated and substantiated these allegations and other improper governmental activities committed by eight employees.

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*Employee A improperly received \$8,652 for false expenses and questionable charges.*

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For example, two employees falsified reports to obtain overtime and travel costs they were not entitled to. Employee A received \$1,129 from OES for falsely claimed expenses even though he had already been fully compensated for these same expenses by another entity. He also received \$7,523 in questionable overtime. Employee B falsified overtime and travel expense claims to obtain additional per diem and overtime pay. In one instance that occurred in January 1997, the employee claimed to have worked 161 out of the total 168 hours (seven days) in response to an emergency.

In addition, employee A inappropriately used his position as a state employee for personal gain and discredited OES when he received state discounts totaling \$205 for personal items and then failed to pay the vendor. Employee A also benefited personally from state-paid travel by scheduling 24 airline flights that left on Fridays and returned on Mondays. While he claimed he made these trips to attend various meetings, CHP investigators concluded he arranged many of these weekend trips to get the State to pay for visits to his girlfriend. He also misused a state

corporate card to obtain numerous discounts for personal trips for himself and his girlfriend, even though state policy limits employee use of corporate cards to business use only.

Poor supervision and inadequate administrative controls allowed these and other abuses. The CHP concluded that supervisors could have detected many of these abuses had they employed even the most basic reviews. For instance, supervisors of the fire and rescue branch of OES allowed employees C and D to routinely incur excessive overtime and travel costs by scheduling nonemergency events on their regular days off. Employee C received \$3,000 and employee D received \$3,900 for overtime to participate in nonemergency events. A supervisor also allowed employee D to claim commute time as hours worked. Another employee—employee E—misused state property by failing to reimburse the State at least \$987 for personal use of his state telephone and calling card.

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*A manager violated state law by allowing employees to falsely report their hours.*

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In addition, a manager in the fire and rescue branch bypassed state law limiting the number of days emergency employees may work by allowing emergency hires to “bank” hours.<sup>2</sup> An employee banks hours when he or she works a certain number of hours over two or more days but falsely reports working all of these hours in one day. Furthermore, employee E, who was an emergency hire, did not formally track his hours and could not demonstrate tangible results of his work; therefore, we question whether the employee ever worked all the hours he reported. Additionally, although state regulations require that these employees work specifically on emergency tasks, the fire and rescue branch improperly used emergency hires for nonemergency tasks.

When we notified the director of OES that we would be investigating the allegations, he informed us that the CHP had begun a similar investigation at OES’s request. To avoid duplicating investigative efforts, we met with the CHP and concluded that the scope of their investigation was similar to ours. We shared information with the CHP and agreed to review their investigation upon its completion.

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<sup>2</sup> State law authorizes OES to hire temporary employees to work on emergency tasks to supplement permanent staff during disasters or emergencies. Emergency hires may work no more than 60 days during a 12-month period unless an exemption is granted by the executive officer. For a more detailed description of the laws and regulations discussed in this report, see Appendix B.

To investigate the allegations, the CHP interviewed OES employees, vendors, and past employees. The CHP also conducted a limited review of employee travel expense claims, attendance reports, telephone records, mileage logs, and other related documents. Because a previous review performed by the Department of Finance (DOF) prompted this investigation, the CHP reviewed the DOF report to identify any potential employee misconduct. In addition, the CHP reviewed pertinent laws and departmental policies. We reviewed the DOF report and the CHP investigation and obtained additional evidence as needed to substantiate issues raised in these reports. We also interviewed OES, CHP, and DOF employees. In addition, we reviewed pertinent laws and departmental policies for any issues requiring additional analysis.

## BACKGROUND

OES coordinates the various state agencies that support local governments' response to major disasters. It is responsible for assuring the State's readiness to respond to and recover from natural or man-made emergencies and assists local governments with emergency preparedness, response, and recovery efforts.

OES requested that the DOF conduct a review to determine if certain expenditures of its fire and rescue branch complied with state laws, regulations, and contract requirements. This review, completed in October 1997, disclosed internal control weaknesses, compliance issues, and improper governmental activities by certain OES employees. It also concluded that the underlying cause for these problems was lack of supervisory oversight and fiscal responsibility for expenditures. In response to this review, OES engaged the CHP to conduct an investigation. As a result of the CHP's investigation, some employees cited in this report resigned, faced criminal charges, or were demoted.

## EMPLOYEES FALSIFIED ATTENDANCE AND TRAVEL REPORTS

*Supervisors failed to detect obvious discrepancies.*

Because of loose supervision and lack of sufficient administrative controls, OES provided employees opportunities to falsify travel claims or attendance reports and receive travel and overtime payments they were not entitled to. Despite obvious discrepancies

between attendance and travel reports—and in one case, a supervisor’s prior knowledge of an employee’s location, which contradicted some of the employee’s travel claims—supervisors failed to detect instances when employees falsified documents. The CHP concluded that many of these abuses would have been detected had assigned supervisors performed even a cursory review of employee reports.

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*Employee A lied about his location and falsely claimed \$1,129 in travel costs.*

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State law provides that every person who presents any false or fraudulent claim for allowance or payment to an officer authorized to make the allowance or payment is punishable by imprisonment, by fine, or both. In addition, state law prohibits employees from using state resources such as equipment, travel, or time for personal enjoyment, private gain or advantage, or for an outside endeavor not related to state business.

Employee A reported to OES on six different attendance and travel expense reports, dated November 1996 through August 1997, that he had been on travel status within the State. However, he had actually attended unauthorized out-of-state training courses with all expenses paid by the event sponsor. The State paid this employee \$1,129 for his falsely claimed expenses. Employee A also claimed 193 hours, or \$7,523, of questionable overtime to attend these classes, including 36 hours of overtime out of a 48-hour period for attending one weekend class.

When the CHP contacted the sponsor’s special programs director to verify the claimed overtime, the director said it was unlikely that anyone would incur overtime at the training events. Although the CHP found no hard evidence to contradict the overtime claimed, the accuracy or legitimacy of the hours is suspect given employee A’s false travel claims and the CHP’s discussions with the special programs director. The employee’s supervisor told the CHP he knew of the employee’s actual location during these trips; therefore, he should have noticed the inaccuracy of the travel claims and attendance reports. Instead, the supervisor either approved the documents without reviewing them or knowingly allowed the employee to travel out of the State without authorization.

In a similar case, Employee B submitted attendance reports and travel claims with at least 10 significant discrepancies in overtime and travel expenditures. The CHP concluded employee B falsified these claims to obtain additional per diem or overtime

pay. For example, during seven days in January 1997, the employee claimed to have worked 161 out of the total 168 hours in response to an emergency. If this were true, the employee would have slept only 7 hours in one week. When questioned about his ability to remain awake during emergencies, the employee initially responded by saying he could remain awake and functioning about 36 to 40 hours straight before requiring at least 12 to 24 hours of rest. The CHP then asked the employee to explain how he could work an astonishing 161 out of 168 hours in one week taking no break in the first 76 hours, and then, even more incredibly, travel for 8 hours at the end of the week. The employee insisted he was awake and functioning at an OES emergency operations center the entire time he claimed to have worked. However, when confronted with evidence the CHP obtained, hotel receipts for two movies employee B rented during the same time period he claimed to have worked in the center, the employee could not explain the discrepancies, nor did he deny renting the movies.

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*Employee B claimed to have worked an astonishing number of hours, but could not explain evidence that contradicted his claim.*

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In another example, employee B completed a travel expense claim for an out-of-state trip beginning at 5 a.m. on February 2, 1997, the employee's regular day off. The employee claimed overtime pay and meal expenses for breakfast, lunch, and dinner. However, he completed other reports inconsistent with his travel expense claim. His attendance report indicated he started travel at 2 p.m., nine hours later, while his monthly travel log indicated he started at 8 p.m. and arrived at the airport at 8:30 p.m. To reconcile these obvious discrepancies, the CHP obtained the employee's airport parking receipt, which was stamped at 8:08 p.m. Considering that the employee lives approximately one-half hour from the airport, we concluded he left for this trip around 7:30 p.m., more than 14 hours after his travel claim indicated.

The above examples, as well as many others the CHP identified, show that employee B had a propensity for inflating his hours by adjusting his travel expense claim and attendance reports so he could receive travel and overtime pay he was not entitled to. The CHP found that even the simplest review of attendance and travel reports would have uncovered many of these discrepancies. Obviously, his supervisor did not question employee B's claims and thus allowed the manipulation to continue.

### EMPLOYEE A CHARGED PERSONAL PURCHASES AND TRAVEL TO THE STATE AND USED STATE DISCOUNTS FOR PERSONAL PURCHASES

State law and OES policy prohibit employees from engaging in any act that is clearly inconsistent, incompatible, or in conflict with their duties as a state employee. Incompatible activities include using the prestige or influence of the State for one's own private gain or advantage. They also include using state time, facilities, equipment, or supplies for private gain or advantage.

Employee A intentionally used his employment at OES for personal gain when he requested state discounts for personal items and charged the items to the State. He received a discount by combining a personal order for T-shirts and sweatshirts with an OES order. On another occasion, he received a discount after representing himself as an employee of the State. In total, he received personal discounts of \$205 and then sold the items for a profit. While the employee paid for part of his purchase, he still owed the T-shirt vendor \$302 as of the date of the CHP's report, November 1998, over a year after placing the order. This failure to honor his personal debt brought discredit to OES since a clear connection between the employee and OES had been established with the vendor.

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*Employee A took advantage of state-paid travel to make weekend trips to visit his girlfriend.*

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Employee A also made questionable travel plans. The CHP concluded that he benefited personally from scheduling numerous airline flights that left on Friday and returned on Monday. Specifically, between May 1997 and May 1998, employee A scheduled 24 such flights from Sacramento to Ontario, indicating on his travel reports that he was on OES business in Southern California. The employee remained in Southern California over the weekends, staying at his girlfriend's residence during most of these trips. Although he claimed he often extended his trips over the weekend because he had to attend meetings on both Fridays and Mondays, he admitted that staying through the weekend and claiming travel-related expenses was not always in the best interest of the State. Further, the CHP found his supervisor often failed to adequately oversee his activities and did not review or question the appropriateness of these weekend trips. As a result, the CHP concluded that while the employee may have conducted state-related business on Fridays and Mondays, he conveniently arranged many of these trips so the State could pay for visits to his girlfriend.

The CHP also found that employee A misused a state corporate card for personal gain when he purchased 30 airline tickets at the government rate, 24 for himself and 6 for his girlfriend. When asked to explain how he obtained the discounts, employee A stated he just asked for the government rate. He claimed he was told to use the corporate card as a normal credit card and “use it for anything you want because you’re responsible for the bill.” Employee A’s statements were consistent with those of other employees the CHP interviewed and further reveal the overall lack of supervision and administrative controls at the fire and rescue branch.

#### **GROSS MISMANAGEMENT CONTRIBUTED TO EXCESSIVE OVERTIME AND TRAVEL COSTS, MISUSE OF STATE PROPERTY, AND MISHANDLING OF EMERGENCY EMPLOYEES**

State law requires agencies to maintain effective systems of internal control to minimize fraud, errors, abuse, and waste of government funds. By maintaining internal accounting and administrative controls, state agencies gain reasonable assurance that those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies.

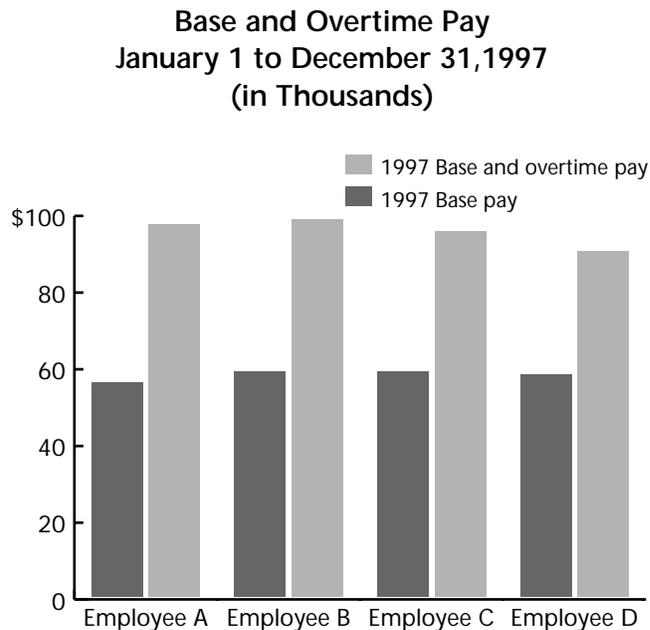
However, OES supervisors within the fire and rescue branch failed to maintain effective systems of control and instead allowed a lax environment that encouraged employees to claim excessive overtime and questionable travel, and to misuse state property. In addition, a manager of the fire and rescue branch bypassed state laws designed to limit the length and conditions of emergency hires’ employment by allowing these employees to bank hours by reporting fewer days than they actually worked, which maximizes the length of their employment, and by using emergency employees for nonemergency tasks. Furthermore, because employee E did not track his actual hours worked and could not provide the CHP with specific evidence to substantiate his claims, we question whether the employee actually worked all the hours he reported.

**Lack of Supervision Contributed to Excessive Overtime and Travel Costs**

*Despite management's attempted intervention, overtime abuses continued.*

Beginning in late 1996, OES management provided specific counseling and written directives to a manager of the fire and rescue branch to reduce and control overtime, but overtime abuses continued during 1997. We obtained 1997 payroll records for the four employees who claimed the most overtime pay and compared their base and total pay, as shown in Figure 1. For example, employee A's 1997 base salary was \$55,800. However, during 1997, he actually received \$97,145, of which \$41,345, or 43 percent, was overtime pay.

**FIGURE 1**



Although some travel costs and overtime were necessary to contend with emergencies, employees A and B, as previously discussed, exaggerated their costs by falsifying attendance and travel reports. Two other employees—employees C and D—incurred significant overtime and travel costs by regularly scheduling themselves for nonemergency events, such as meetings or training classes, on regular days off or by claiming commute hours.

*The supervisor of employees B, C, and D allowed them substantial latitude in their schedules without regard to the cost or benefit to the State.*

For example, in May 1997, employee C received \$3,008 for 71 hours of overtime. All 71 hours related to nonemergency events, including various meetings and one inspection. The employee worked 58 of these 71 hours on regular days off. In February 1997, the same employee received \$1,102 for 26 hours of overtime to attend a meeting in Napa held on his three regular days off.<sup>3</sup> Employee C claimed 10 hours of overtime to travel to the meeting despite the fact that he lived only two hours from Napa. When the CHP asked the employee for an explanation, he could not explain why he claimed 10 hours. The CHP concluded that the supervisor provided little direct supervision and allowed employee C and two other employees under his supervision—employees B and D—considerable independence when choosing which events to attend, regardless of necessity or amount of overtime incurred.

In another instance, employee D, who lived approximately 120 miles from his assigned region, regularly claimed the time he spent commuting as work time. Although neither the CHP nor our team calculated the total number of commute hours for which the employee was compensated, it was a significant amount because employee D lived a minimum of two hours from his assigned region. Again, the same supervisor allowed employee D to work an alternative schedule and regularly schedule nonemergency events on his regular days off.

For example, in April 1997, employee D claimed and received \$3,905 for 96 hours of overtime for nonemergency events. He claimed more than 30 of these hours to commute to and from his assigned region and spent the remaining hours in meetings or training. In March 1997, employee D claimed and received \$2,522 for 62 hours of nonemergency overtime, with more than 30 used to commute to work.<sup>4</sup>

Employee D told CHP investigators that he was allowed to claim commute time as a condition of his employment when he was hired in May 1996. However, a manager in the fire and rescue branch claims no such agreement existed. When the CHP asked the employee's immediate supervisor about the alleged agreement, he said he believed the manager agreed to allow

<sup>3</sup> The employee's supervisor allowed him to work an alternative work schedule that enabled him to have Friday, Saturday, and Sunday as regular days off.

<sup>4</sup> In addition to claiming overtime to commute to his assigned region, employee D also claimed per diem.

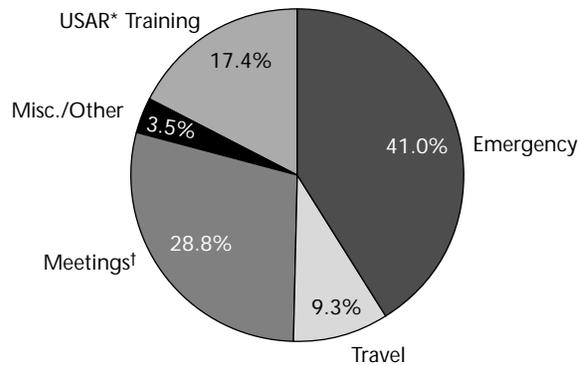
employee D to claim commute costs for no more than one year. At the end of that time, the employee would need to move within his region or transfer to a region closer to his home. Regardless of whether any such agreement existed, state policy prohibits OES from paying employees for commuting. Nevertheless, employee D claimed commute time and related travel expenses for more than two years after he was hired.

*A majority of the overtime claimed related to meetings, training, and travel.*

To assess the extent of nonemergency overtime OES employees incurred at the fire and rescue branch, the DOF, in a review dated October 1997, compared emergency to nonemergency overtime claims. Specifically, the DOF reviewed time sheets and overtime documents of nine employees, including employees A, B, C, and D, for the period November 1996 through June 1997. Based on this review, only 41 percent of the overtime claimed related directly to emergency conditions. The remaining 59 percent related to nonemergency activities, such as meetings and training, as shown in Figure 2.

**FIGURE 2**

**Emergency Versus Nonemergency Overtime  
Fire and Rescue Branch  
November 1996 through June 1997**



\* Urban Search and Rescue. Because USAR sponsors many training exercises, we presented its activity separately for comparison purposes.

<sup>†</sup> Meetings include all training events except USAR training activities.

We compared overtime claims at the fire and rescue branch with claims from OES’s law branch. The law branch also assists in the delivery of essential emergency services throughout the State.

However, using the same criteria and categories listed in Figure 2, the law branch reported 79 percent emergency and only 21 percent nonemergency overtime.

### Poor Supervision Contributed to Misuse of State Property

Because he had little or no direct oversight, and because of his supervisor's blatant disregard for administrative review, employee E took the opportunity to make or receive at least \$987 in personal telephone calls using a state-issued calling card and cellular telephone. Specifically, the employee talked more than 46 hours during at least 735 personal telephone calls, costing the State at least \$928. He also received at least 38 incoming personal calls on the state-issued cellular telephone, which cost the State an additional \$59. Investigators could not positively determine the appropriateness of hundreds of other calls that appeared on the employee's bills.

*Employee E blatantly abused his state telephone privileges to avoid paying for his personal telephone calls.*

Employee E told CHP investigators he understood state equipment was for state business only yet openly admitted to making numerous personal telephone calls using state property. When the CHP questioned his supervisor, he indicated he was not aware of these abuses. Another OES employee the CHP questioned who reviewed the telephone bills claimed that she had previously alerted the supervisor in March or April 1997 about the employee's exceptionally high telephone bills. She continued to inform the supervisor of the abuse, but he did nothing. She then contacted an OES deputy director in December 1997, who had the employee's telephone turned off. The CHP concluded that employee E consciously and deliberately abused his telephone privileges not only as a matter of convenience but to avoid paying for his own telephone expenses. Given the lack of supervision and the supervisor's disregard for administrative matters, he knew it was unlikely his supervisor would question his actions.

### OES Circumvented State Policies on Hiring Emergency Employees

As previously mentioned, state law permits OES to hire emergency employees during disasters or emergencies. These emergency employees help ensure the continuation of the public's business during fire, flood, or other extreme emergency. Emergency hires are limited to working no more than 60 days in a 12-month

period unless the executive office of OES grants an exemption. The purpose of the limit is to prevent the use of emergency appointments to circumvent state employment lists.

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*The CHP concluded employee E falsely reported his hours.*

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Despite these restrictions on the use of emergency employees, a manager in the fire and rescue branch circumvented state law limiting the number of days those employees may work by allowing them to bank their hours. For instance, from October 1996 to September 1997, employee E claimed to have worked a total of 60 days, the maximum number allowed under state policy. For each of these days, he claimed he worked exactly 16 hours for a total of 960 hours. However, the CHP concluded employee E rarely, if ever, worked 16 hours in one day as he claimed. When he accumulated 16 hours over a period of days, employee E would then claim he worked a single day, thus enabling him to work far more than the maximum 60 days.

When questioned about the practice of banking hours, which one supervisor stated had been ongoing for the last 10 years, the manager said he had no reason to question it because it was a standard practice within OES. He also admitted that no emergency appointee was ever terminated before the 60-day limit. However, when we spoke with OES's legal counsel and the current chief of its law branch, both contradicted the manager by stating it was not a standard or accepted practice for OES to keep emergency hires beyond the time allowed.

State law requires emergency employees to be used for specifically identified emergency situations. Notwithstanding those requirements, a manager of the fire and rescue branch allowed emergency appointees to work on nonemergency tasks. For example, the CHP discovered that employee E made three trips to serve as an Urban Search and Rescue (USAR) instructor. During each of these trips, he claimed both travel expenses and time worked as an emergency appointee. However, the CHP concluded that "his work as a USAR instructor appeared incongruent and outside the realm of his responsibilities as an emergency employee." When asked by the CHP why emergency hires performed duties unrelated to an actual emergency, the manager stated, "The kind of philosophy, I guess, that we use for [emergency] hires, is that an emergency causes all these problems, so these are all the things that we need to fix as a result of the emergency . . . That's the stretch, I guess . . ."

However, when we spoke with the chief of OES's law branch, he said it was inappropriate to use emergency hires for duties inconsistent with assisting with emergencies.

Due to the numerous concerns involving employee E, the CHP attempted to substantiate the hours he claimed to have worked for OES. They found that he never kept a log of actual hours worked and had no written evidence to substantiate his claims. In addition, his supervisor did not require him to work a set schedule and allowed him to work from numerous locations, including his home. These factors hampered the CHP's ability to verify where, when, or even if employee E actually worked. As a result, we question whether employee E was entitled to the entire \$16,493 in wages he received during 1996 and 1997.

#### AGENCY RESPONSE

Table 1, on the following page, summarizes each employee's misdeeds and action taken as a result of the investigation.

**TABLE 1**

**Employee Misdeeds and Actions Taken**

Findings	Action Taken
Employee A: <ul style="list-style-type: none"> <li>• False reports</li> <li>• Incompatible activities</li> <li>• Excessive overtime</li> </ul>	Employee resigned. He was convicted of a misdemeanor and ordered to pay restitution for falsely claimed expenses.
Employee B: <ul style="list-style-type: none"> <li>• False reports</li> <li>• Excessive overtime</li> </ul>	OES served employee with an adverse action. Employee resigned before effective date of action.
Employee C: <ul style="list-style-type: none"> <li>• Excessive overtime</li> </ul>	No action taken against employee.
Employee D: <ul style="list-style-type: none"> <li>• Excessive overtime</li> <li>• Improperly claimed commute time as time worked</li> </ul>	No action taken against employee for excessive overtime. OES told employee he could no longer claim commute time.
Employee E: <ul style="list-style-type: none"> <li>• Misuse of state property</li> <li>• Duplicate pay</li> </ul>	Employee paid restitution for the cost of his personal use of state property in exchange for the court dropping grand theft charges. OES served employee a letter terminating his services.
Manager of fire and rescue branch: <ul style="list-style-type: none"> <li>• Gross mismanagement</li> </ul>	Employee voluntarily demoted and given an informal reprimand.
Supervisor of employees B, C, & D: <ul style="list-style-type: none"> <li>• Gross mismanagement</li> </ul>	Employee voluntarily demoted and given an informal reprimand.
Supervisor of employees A & E: <ul style="list-style-type: none"> <li>• Gross mismanagement</li> </ul>	Employee resigned.
General finding: <ul style="list-style-type: none"> <li>• Excessive overtime</li> <li>• Questionable travel expenses</li> </ul>	OES developed and implemented the Monthly Administrative Package Submission, an administrative control system for overtime and travel costs.

## CHAPTER 3

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### ***California Science Center: False Claims for Overtime and Mismanagement of Leave Accounting***

#### ALLEGATION I990031

**D**uring the course of a 1999 audit of the California Science Center (Science Center), we found that 7 public safety employees falsely claimed overtime pay totaling \$2,324. We conducted a follow-up investigation to determine the extent of the improper activities.

#### RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated numerous additional improper activities that cost the State \$79,592. At least 13 more public safety employees at the Science Center improperly claimed duplicate overtime hours. As a result, the State paid the employees at least \$4,224 for 168 hours that they did not work. In addition, at least 4 managerial employees claimed \$74,638 for 2,325 overtime hours they claimed when state regulations prohibit them from receiving overtime compensation. One of the managerial employees was also in the group of 13 employees who claimed duplicate overtime. Further, at least 12 employees claimed reimbursement for a total of \$730 for meals they were not entitled to. Additionally, the Science Center improperly allowed one of the managerial employees to accumulate 476 hours of compensatory time valued at more than \$13,500.

The Science Center's accounting and personnel departments failed to detect these improper claims. In addition, the personnel department does not charge employees' leave balances for absences.

To investigate the allegations, we examined official duty logs for the months of December 1997 through March 1999, expense reports, overtime slips submitted for payment or compensatory time off, and payroll history documents for the individual

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*Lack of managerial oversight and internal controls allowed 16 Science Center employees to receive almost \$80,000 in payments they were not entitled to.*

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employees. In addition, we reviewed applicable state laws and regulations as well as Science Center policies and procedures. Finally, we interviewed the employees and their supervisors.

## BACKGROUND

The Bureau of State Audits reported in *California Science Center: The State Has Relinquished Control to the Foundation and Poorly Protected Its Interests (98115)* that 7 public safety employees at the Science Center falsely claimed 96 hours of duplicate overtime, costing the State \$2,324. The report also found that the chief of public safety improperly claimed more than 100 hours of overtime to which he was not entitled, costing the State an additional \$3,900.

## EMPLOYEES FILED FALSE CLAIMS FOR OVERTIME AND MEALS

Four of the 16 employees were designated as workweek group 4C employees. State regulations specify that the regular rate of pay for 4C employees, whose duties are administrative, professional, or executive, is full compensation for all time required for the employees to perform their duties.<sup>5</sup> They are not compensated for hours in excess of the minimum average workweek.

Further, according to the agreement between the State and the bargaining unit representing the public safety employees at the Science Center, employees receive an overtime meal allowance of \$7.50 only when required to work two consecutive hours prior to or following the regular work shift. To be eligible for this allowance on a holiday or regular day off, employees must work their regular work shift as well as the two consecutive hours. Over the period we examined, the State suffered a loss of \$79,592 because of the employees' improper claims. Table 2 gives the details of the improper payments.

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<sup>5</sup> For a more detailed description of the laws and regulations governing activities discussed in this chapter, see Appendix B.

TABLE 2

**Improper Claims and Payments for  
Overtime Pay and Meals**

Nonmanagerial Employees (December 1997 through March 1999)	Hours Claimed	Cost	Meal Reimbursement	Total Cost of Improper Payments
A	5.0	\$103.70	\$150.00	\$253.70
B	26.0	638.30	15.00	653.30
C	12.0	239.88	22.50	262.38
D	12.0	239.88	37.50	277.38
E	5.0	122.75	30.00	152.75
F	16.0	412.00	107.60	519.60
G	6.0	147.30	0.00	147.30
H	8.0	165.92	37.50	203.42
I	5.0	309.40	105.00	414.40
J	11.0	250.80	37.50	288.30
K <sup>*</sup>	47.5	1,248.93	90.00	1,338.93
L	14.5	345.10	30.00	375.10
<b>Subtotal for Nonmanagerial Employees</b>	<b>168.0</b>	<b>\$4,223.96</b>	<b>\$662.60</b>	<b>\$4,886.56</b>
Managerial Employees (July 1996 through March 1999)	Hours Claimed	Cost	Meal Reimbursement	Total Cost of Improper Payments
M	324.0	\$11,625.12	\$0.00	\$11,625.12
N <sup>†</sup>	1,015.0	30,611.20	67.50	30,678.70
O	629.0	18,811.89	0.00	18,811.89
P <sup>‡</sup>	356.5	13,589.85	0.00	13,589.85
<b>Subtotal for Managerial Employees</b>	<b>2,324.5</b>	<b>\$74,638.06</b>	<b>\$67.50</b>	<b>\$74,705.56</b>
<b>Grand Totals</b>	<b>2,492.5</b>	<b>\$78,862.02</b>	<b>\$730.10</b>	<b>\$79,592.12</b>

<sup>\*</sup> Science Center records for this employee indicate he requested payment for a total of 712.5 hours of overtime from January 1998 through April 1998. Of this, 47.5 hours were duplicative. However, State Controller's Office records indicate he was paid for 719 hours of overtime, an apparent additional overpayment of 6.5 hours. Because we were unable to locate some of the overtime slips the Science Center used to support overtime payments to employees, we could not always reconcile the overtime hours worked to the State Controller's Office records of overtime paid.

<sup>†</sup> Inappropriate hours for this employee include 5 hours duplicate overtime and 1,010 overtime hours as a 4C employee.

<sup>‡</sup> Not included in these figures is approximately \$13,800 worth of compensatory time off (CTO) this employee accumulated while a 4C employee. The State began paying the employee for the CTO when he separated from the Science Center in January 1999.

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*Twelve Science Center employees were paid for 168 hours of overtime they did not work.*

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### Nonmanagerial Employees

Between December 1997 and March 1999, at least 12 nonmanagerial public safety employees at the Science Center submitted duplicate overtime slips on 30 separate occasions and subsequently received compensation for overtime hours they had not worked. The total cost to the State for these duplicate claims was \$4,224 for 168 hours. For example, employee G submitted an overtime authorization slip for 6 hours of overtime worked on March 22, 1998, to a shift supervisor—employee I—who signed the slip on March 23, 1998. Two days later, employee G submitted and a different shift supervisor—employee F—signed another overtime authorization slip for the same hours.

A managerial employee—employee M—then signed both of the overtime authorization slips, certifying that the overtime was authorized. The manager told us that he did not review each slip he signed to determine duplication of hours. He thought existing controls would identify and remove any duplicate overtime slips. He also said that he relied on his shift supervisors and another manager—employee N—to ensure that the overtime hours claimed were appropriate and that no duplicates were submitted.

Many of the employees explained that they worked a lot of overtime and sometimes did not get paid for these hours. As a result, they were told to submit another overtime slip. In our review of the Science Center’s overtime records, we did find some overtime slips that said: “Employee not paid, resubmit.” However, since the employees are paid monthly and only 4 of the 30 duplicate slips that we discovered were dated more than a month after the original was signed, this explanation does not appear to be very plausible.

Other employees explained that they were told to submit another slip because the original slip was lost. However, the employees subsequently received payment for both the original and duplicate overtime hours. We found no evidence that any of the employees offered to repay the State for the duplicate payments.

We also found evidence that 11 of the 12 nonmanagerial employees mentioned above improperly claimed and received overtime meal allowances. As discussed earlier, these employees may claim these allowances under certain conditions. However, we found numerous instances when employees submitted claims without meeting those conditions. For example, 10 of the

nonmanagerial employees received 72 overtime meal reimbursements, yet we found no evidence that these employees worked any overtime at all. In fact, in some instances, records indicated that employees F, H, J, and K did not even work a complete shift on days when they claimed an overtime meal. Further, employees D and I submitted 17 duplicate overtime meal reimbursement claims.

We found that 5 other public safety employees had submitted either duplicate overtime claims or claims for overtime meals. However, these were isolated instances, and we therefore believe the claims may have, in fact, been made by mistake.

### Managerial Employees

We reviewed pay records for the 33-month period from July 1996 through March 1999 for employees M, N, O, and P. All of these employees were classified as 4C during at least a portion of that time, making them ineligible for overtime compensation. Nevertheless, they received overtime payments. Employee N submitted duplicate overtime slips as well as inappropriate claims for overtime meals on nine occasions. In total, these four employees received improper compensation of \$74,706. Each case is discussed below.

*Four managerial employees were paid \$74,706 in overtime payments they were not entitled to.*

#### *Employee M*

Employee M cost the State \$15,482 for 432 hours of overtime he improperly claimed while classified as a 4C employee. The employee stated that in May 1998, his manager told him he was eligible for overtime pay and to submit overtime hours worked dating back to September 1997. He also stated in a memo to the executive director that he was not aware that he was a 4C employee until March 1, 1999.

#### *Employee N*

From May through December 1998, employee N was temporarily placed into a 4C position, yet he continued to claim overtime compensation. The employee improperly claimed 1,010 overtime hours, which cost the State \$30,458. When we questioned him about the claims, he stated he was not aware he was a 4C employee and, therefore, ineligible for overtime pay.

In addition, on at least one occasion, employee N claimed duplicate overtime for which the State paid him \$153. When we questioned employee N, he stated that he could not recall submitting duplicate overtime slips but that it was unintentional. He also stated that it was possible he submitted an additional overtime slip because he was not paid for the original overtime.

Finally, on at least nine occasions during 1998, employee N claimed improper overtime meal allowances. Although the employee told us that if he submitted a request for an overtime meal, then he had worked overtime, he could not explain the lack of overtime slips for those days. These claims cost the State \$68.

#### *Employee O*

Employee O improperly claimed 629 hours of overtime while classified as a 4C employee, costing the State \$18,812. When we questioned him about these hours, he stated that he was not aware that he was a 4C employee. He also stated he was not told that he was ineligible for overtime payment and that those who approved the overtime payments should have been aware of his 4C status.

#### *Employee P*

As shown in Table 2 (page 27), employee P improperly claimed overtime from July 1996 through March 1999 while classified as a 4C employee. His claims of 357 hours cost the State \$13,590. In addition, from 1993 through 1998, this employee accumulated 782 hours of compensatory time off while serving in positions normally classified as 4C. According to the Department of Personnel Administration (DPA), from February 1990 until April 1994, individual departments had the authority to temporarily reallocate 4C employees into 4A positions, which are eligible for overtime compensation. However, we found no formal justification for the Science Center to reallocate this employee in October 1992.

Although the DPA resumed authority to reallocate 4C positions in April 1994, the Science Center did not return employee P to 4C status as it should have until April 1995. Moreover, we found no evidence that it requested authorization from the DPA to maintain his 4A status until then. Even excluding overtime accrued prior to April 1994, the employee still improperly

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*By allowing certain exempt employees to be compensated for overtime, the Science Center is vulnerable to claims of unfair labor practices.*

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accumulated 476 hours of compensatory time valued at more than \$13,500. Unfortunately, this employee separated from the Science Center before we had a chance to talk to him.

Because it allowed certain 4C employees overtime pay and compensatory time off, the Science Center is vulnerable to claims of unlawful labor practices. In fact, we learned from the DPA that a former Science Center employee did indeed file a claim against the State for unfair labor practices. The former employee, who had had 4C status, asserted that he should have received compensation for his overtime because other 4C employees at the Science Center had done so.

### THE SCIENCE CENTER MISMANAGED ITS PERSONNEL FUNCTION

State law requires each state agency to establish and maintain an adequate system of internal accounting and administrative controls to provide public accountability. They are designed to prevent errors, irregularities, or illegal acts. However, the Science Center has a grossly inadequate system of controls related to timekeeping, particularly documentation of overtime.

*The Science Center has a grossly inadequate system of controls related to timekeeping, particularly documentation of overtime.*

Shift supervisors often sign duplicate overtime slips, thus approving duplicate payments, a primary reason for overpayment. We even found one overtime slip with two claims for the same date and hours, yet the supervisor signed the slip and approved 10 hours of overtime pay for 5 hours of overtime work. Supervisors are responsible for ensuring that the hours submitted for payment are accurate. Since supervisors approve claims for overtime meals as well, they should verify that these claims are also accurate.

The Science Center's accounting and personnel departments also failed to discover the improper claims. In addition, the personnel department failed to ensure the Science Center followed state policies and procedures when it allowed 4C employees to receive overtime compensation. In February 1999, the Science Center acknowledged its prior failure to follow state policy for 4C employees and informed staff that these employees could no longer receive overtime compensation.

The personnel department also has a responsibility to accurately record balances for employees' vacation, sick, and annual leave; compensatory time off; and personal holidays. In August 1998, the Science Center began using the California Leave Accounting System (CLAS), which the State Controller's Office administers. The system automatically updates employees' monthly leave balances; however, the Science Center must enter the leave its employees have taken. Our review found that the Science Center only entered leave balances as of August 1998 and did not enter monthly leave taken until we brought the problem to their attention in May 1999. State Controller's Office records indicate that the Science Center only updated leave records in CLAS in May 1999. When we again reviewed CLAS records in September 1999, we found no evidence that the Science Center had entered monthly leave usage since May 1999.

Employees separating from state employment are paid for most types of accumulated leave. If the Science Center fails to update leave, the State can incur unnecessary personnel costs. For example, one Science Center employee—employee Q—took 176 hours of sick leave in August 1998 and 120 hours of sick leave in September 1998. However, the employee's leave account indicated only that he had accrued 8 hours of sick leave for each month. Consequently, the State paid the employee \$5,211 without charging his sick leave balance. As of September 9, 1999, the Science Center still had not updated CLAS to reflect any charges to this employee's sick leave balance.

In another example, the leave records of another employee—employee R—who separated from the Science Center in April 1999, indicated 352 hours had been added to his vacation balance. A note specified that this addition restored leave balances used while the employee was on industrial disability leave. This addition was made manually to the employee's leave card; however, as of September 9, 1999, the Science Center had not entered the information into CLAS. Additionally, the Science Center did not respond to our request for support for the transaction. We have no assurance the employee was entitled to the \$6,600 he received for these hours. Without an accurate and timely system of documenting and recording leave usage, the Science Center does not know whether it is appropriately compensating its employees, especially those who separate from state service.

## AGENCY RESPONSE

The Science Center reported that it has revised existing personnel policies or developed new policies to address concerns raised in our report. It also reported that it has developed an automated tracking system that will eliminate duplicate processing of overtime slips and payments. Further, the Science Center has notified all employees by certified mail of the salary overpayments, amounts due, pay periods affected, and reasons for overpayments. The Science Center will consider each employee's response before initiating collection procedures. It will work toward a mutually agreeable payment plan to recover all inappropriate overpayments and will take disciplinary action as it determines appropriate after consulting with legal counsel.

Finally, the Science Center reported that it updated the automated leave accounting system in December 1999. Because of staffing shortages, Science Center personnel staff have only been able to track leave balances manually. However, the Science Center has temporarily reclassified a vacant position to perform this work and is attempting to obtain budgetary approval for a permanent personnel analyst position.

The State and Consumer Services Agency has asked the State Personnel Board to conduct an independent review of the personnel practices of the Science Center. This review was scheduled to take place in February 2000. In addition, the State and Consumer Services Agency will forward these issues to the Attorney General's Office for review and advice. ■

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## CHAPTER 4

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### ***California Conservation Corps: False Signature and Misuse of a State Credit Card***

#### ALLEGATION I990061

**W**e received an allegation that a manager with the California Conservation Corps (Corps) used a subordinate's state credit card (CAL-Card) to pay for part of another manager's farewell reception and signed the subordinate's name on the bill.

#### RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. The manager signed her subordinate's name on a \$315 credit card charge to improperly pay for part of the reception. An associate who helped plan the event collected late payments from attendees, and one month later, she wrote a check for \$211 to the Corps because she did not know what else to do with the funds. The manager wrote a personal check to the Corps for \$104 to pay for the balance, but she did not write this check until after we began our investigation, over a year after the reception.

To investigate the allegation, we reviewed hotel invoices, accounting records, staff reports, and customer feedback reports. We also reviewed the Corps' accounting records and credit card policies and procedures. Additionally, we interviewed current and former Corps employees and staff at the hotel where the event was held.

#### THE MANAGER SIGNED A SUBORDINATE'S NAME AND MISUSED A STATE CREDIT CARD

According to one of the manager's subordinates, the manager asked her to obtain another employee's CAL-Card. The subordinate knew that the manager intended to use the card to pay part of the cost for another manager's farewell reception held at a local hotel. The cardholder did not discover the purpose of the misuse until after the fact.

The California Constitution prohibits gifts of public funds.<sup>6</sup> In determining whether the use of public funds is to be considered a gift, the primary question is whether the funds are to be used for a public or private purpose. State law also prohibits an employee from using the prestige or influence of the State for private gain. In light of these laws, state funds should not be spent for an employee's farewell party, the purpose of which is clearly private as opposed to the public purposes of state government.

The manager admitted that she signed the cardholder's name to the charge slip. She said that she did not remember if she obtained permission to sign his name, but she believed that his permission was inherent in his giving her the card. The cardholder said that he did not give anyone permission to sign his name.

The manager is responsible for the administration of the CAL-Card program within the Corps and should know that the cards can be used only for official business. Although the State's agreement with the CAL-Card company permits using the cards to purchase services, it is up to each agency to define what specific uses it allows. The Corps' policies and procedures prohibit using these credit cards to obtain services. Cardholders must ensure that the CAL-Card is used appropriately and must make purchases in person or by telephone. The policies and procedures also strictly prohibit use of the card for rental agreements. The manager noted, however, that the State's contract with the bank that services its CAL-Cards allows the State to use the card to purchase services. She stated that the Corps has allowed the card to be used for services on at least one other occasion, despite its policy prohibiting such use, and showed us Corps procedures for a pilot program that allows use of the CAL-Cards for purchasing services.<sup>7</sup>

The manager said that she used the card to pay the room rental cost of \$315 for the reception based on her understanding that the State sometimes pays for room rentals for these types of functions. She obtained this understanding from the planning committee for the farewell reception. She said that she took the card with her to pay for any remaining room rental charges if collections from attendees failed to cover those costs. However,

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*The department's senior CAL-Card manager did not comply with program requirements and restrictions.*

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<sup>6</sup> For a more detailed description of the laws and policies governing the activities reported in this chapter, see Appendix B.

<sup>7</sup> The Corps implemented the pilot program one month after we began our investigation.

the hotel waived the room rental fee because of excessive noise from adjoining function rooms. According to the hotel's invoice, the total hotel charge for the reception was \$1,983.

The invoice includes an annotation that \$1,668 was paid by check and cash. Another annotation refers to \$315 paid by credit card. This amount appeared on a second invoice that shows a charge of \$315 for the room rental. The hotel staff member told us that he created this invoice at the request of the Corps' event planner, but he could not tell us who the event planner was, stating that he dealt with a number of Corps employees. It appears that a Corps employee attempted to hide the true nature of the charges even though no use of the card appears to be allowable in this case.

In July 1998, two months after the manager used the card, the Corps changed its procedures. The cover letter accompanying these changes states that they improve, clarify, and enhance existing CAL-Card program procedures. The Corps also reiterated its continuing commitment to use the card for commodities only. The new guidelines state specifically that a cardholder's staff, family, supervisor, or anyone else may not use a CAL-Card and clearly indicates that use by anyone other than the cardholder is prohibited.

#### **THE MANAGER REIMBURSED THE STATE AFTER WE STARTED OUR INVESTIGATION**

According to the manager, she and a former employee realized they did not collect sufficient funds from attendees on the night of the reception to pay the total charges, so they decided to use the CAL-Card. She also said that the former employee agreed to reimburse the State from funds collected after the reception; however, the former employee denies any knowledge of use of the CAL-Card and said that she paid the funds she collected to the State only because she did not know what else to do with them.

The former employee paid the State a total of \$211 with a personal check just over a month after the event. According to her, this was all she had left of late collections after paying for balloons and other decorative items for the reception. After we began our investigation, and over a year after the reception, the manager paid the State \$104 with a personal check. This amount

is the difference between the \$315 charged to the CAL-Card and the amount the former employee paid. The manager said she paid at this time because one of her staff raised a question about the use of the credit card. When she found out the former employee had not reimbursed the total charge, she decided to pay the difference with her own funds. However, the subordinate asked about the CAL-Card charge at least two months before the manager paid the State and prior to the date we started our investigation.

### AGENCY RESPONSE

The Corps terminated the manager's career executive assignment. The Corps also prepared an adverse action against the manager, but before it could be served, the manager transferred to another state department. The Corps will hold the action in abeyance in the event that the manager returns to the Corps. The Corps issued a letter of correction to the individual who obtained the card from the CAL-Card holder and counseled the CAL-Card holder for allowing another person to use the card. ■

## CHAPTER 5

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### ***Employment Development Department: Personal Use of State Equipment and Time***

#### ALLEGATION I960129

**W**e received an allegation that an employee at the Employment Development Department (EDD) used state time and telephones on personal calls.

#### RESULTS AND METHOD OF INVESTIGATION

EDD investigated the complaint at our request and substantiated the allegation and improprieties on the part of the employee's supervisor as well. Specifically, EDD found that the employee placed at least 586 personal calls from state telephones. Between January 1996 and May 1997, the employee spent more than 48 hours on these calls. State law prohibits personal use of state time and equipment for personal advantage. EDD did not report the cost of the calls or the cost of the time spent by the employee.<sup>8</sup>

In addition, EDD reported that in early 1997, the employee submitted four claims totaling \$483 for mileage reimbursement even though she neither owned nor could have driven the vehicle she claimed to have driven.

EDD also found that the employee was in possession of confidential documents that were not addressed to her.

EDD further discovered that the employee's supervisor also engaged in improper activities. For example, even though the supervisor had notified her staff, including the employee discussed here, that they were placing an excessive number of personal telephone calls, the supervisor herself spent approximately 63 hours on 1,308 personal calls from January 1996

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*In addition to the excessive use of her state telephone for personal calls, an EDD employee submitted four false travel claims totalling \$483.*

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<sup>8</sup> For a detailed description of the laws pertaining to the improper governmental activities discussed in this chapter, see Appendix B.

through April 1997. At least 160 of the calls were related to a private business the supervisor owned. Again, EDD did not report the cost to the State for the calls or the supervisor's time.

Further, we believe the supervisor improperly provided copies of confidential documents to the employee and attempted to mislead EDD's chief deputy director about the personal use of state telephones.

### AGENCY RESPONSE

EDD served suspensions on the employee and the supervisor. The employee and supervisor exercised their rights to appeal under the law. As a result of the appeals, EDD modified both actions and issued informal letters of reprimand. Both employees have since left the EDD to work for other state agencies. ■

# CHAPTER 6

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## *Update on Previously Reported Issues*

### CHAPTER SUMMARY

**T**he California Whistleblower Protection Act, formerly known as the Reporting of Improper Governmental Activities Act, requires an employing agency or appropriate appointing authority to report to the state auditor any corrective action, including disciplinary action, it takes in response to an investigative report no later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the state auditor monthly until the action is complete. This chapter summarizes corrective actions taken by state agencies related to investigative findings since we last reported them.

### CALIFORNIA DEPARTMENT OF EDUCATION CASE I940262

On September 9, 1996, we publicly reported that a manager of the California Department of Education (Education) improperly managed the funds of a statewide student vocational club under its jurisdiction and the funds of a charitable corporation that received payments from Education contracts. Specifically, the manager illegally paid a total of more than \$44,100 of personal expenses out of funds from the California Association of Vocational Industrial Clubs of America Leadership Foundation (foundation) and the California Association of Vocational Industrial Clubs of America. He also submitted false claims that resulted in improper payments totaling over \$17,745 for travel and illegally exchanged at least \$4,100 in airline tickets purchased with federal funds for other tickets he used for personal trips. Further, among other improprieties, the manager failed to disclose his financial interests as required by the State.

As reported earlier, the manager retired from state service, effective August 8, 1996. Education strengthened controls over program operations and took action to recover more than \$75,000 from some of its fiscal agents. The Sacramento County District Attorney's Office prosecuted the manager, who, on

December 28, 1998, pleaded guilty to one felony violation of Penal Code Section 72. That code states that every person who, with intent to defraud, presents for payment to any state officer any false or fraudulent claim is punishable by imprisonment, by fine, or by both. The manager was sentenced to 90 days in the Sacramento County Jail and, among other things, was required to pay \$11,496 in restitution to five victims, including Education. He had already paid \$14,440 in restitution to other victims.

#### Action by the Fair Political Practices Commission

On August 17, 1999, through a stipulated order by the Fair Political Practices Commission, the manager admitted to seven violations of the Political Reform Act and agreed to pay an additional fine of \$14,000. These violations involved his failure to disclose his numerous financial interests in other entities and income from one of them.

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*The Fair Political Practices Commission has fined the subject of one of our earlier investigations \$14,000 for his improper activities.*

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#### UNIVERSITY OF CALIFORNIA, IRVINE CASE I950002

On March 25, 1998, we reported that, contrary to their contractual agreement, three physicians failed to report partnership revenues of \$7,830,000 to the University of California, Irvine (Irvine campus). Irvine physician faculty participating in the Clinical Compensation Plan receive a faculty appointment, competitive compensation, and malpractice insurance coverage while performing duties within the scope of their employment. In return, they agree to pay assessments to the Irvine campus out of their income from patient care activities. We concluded that the physicians failed to pay assessments of \$1,473,000 to the Irvine campus on the unreported revenues. We also determined that the physicians failed to pay assessments on some of the income they did report.

Before issuing our report, the Irvine campus told us that it was pursuing disciplinary action against the physicians. Later, it reported that it had terminated one physician, suspended the salary of another, and was considering additional disciplinary action. It also referred the issues in our report to the general counsel for the Regents of the University of California for further action to recoup the outstanding assessments. Furthermore, two of the physicians had fled the country following allegations

they had engaged in illegal activities, and the third was convicted of mail fraud. Finally, the Irvine campus revised its Clinical Compensation Plan to call for greater accountability. Unfortunately, we have since learned that we did not receive complete information from the Irvine campus; therefore, the methodology we used to come to our conclusions was flawed.

### Subsequent Action

The Irvine campus's Committee on Privilege and Tenure (committee) released a final disciplinary report on September 17, 1999. This report, which dealt with numerous complaints against one of the physicians, contained conclusions on the complaint that the physician failed to comply with the clinical compensation plan. The committee concluded that an employee of the Irvine campus withheld critical information from our auditors and, as a result, our finding that the physicians failed to report partnership revenues of \$7,830,000 was inaccurate.

We based our calculations on a written agreement between the Irvine campus and the physicians, which stated that the physicians must reimburse a percentage of "gross professional fee income." It further stated that "there will not be any expense of practice or other adjustments to this amount." We discussed the arrangements with Irvine campus staff and submitted our report for comment prior to publication.

However, we have since learned that "gross professional fee income" has a meaning that we did not fully understand. Under the definition widely accepted at the Irvine campus, physicians were allowed to deduct the portion of their revenues that covered medications, laboratory fees, and a "technical component." The one physician who remains in the country to answer charges testified that he and his partners made all deductions according to the agreement and did not underreport during the specified period. Because federal investigators seized the physicians' financial records, neither the physician nor the university presented proof of the claims. For this reason, neither we nor the committee can determine how much the physicians understated their income.

Nevertheless, the committee concurred in our opinion that the physicians owed the university \$216,000 in unpaid assessments on the income they did report. It did not, however, assess the physicians for the interest that we determined they should pay.

In March 2000, the Regents of the University of California (Regents) dismissed the physician, in part because they concluded he had failed to fully disclose his revenue. However, the Regents did not rely on our earlier report to reach their conclusion.

### CALIFORNIA STATE UNIVERSITY, DOMINGUEZ HILLS CASE I960143

We publicly reported the results of this investigation conducted at California State University, Dominguez Hills (Dominguez Hills campus), on April 21, 1998. We reported that two officials, husband and wife, had apparent conflicts of interest when they signed contracts that benefited official B. In addition, official B improperly accepted gifts totaling \$3,979 and did not disclose them. Official A also imprudently signed a contract on behalf of the Dominguez Hills campus without obtaining the proper approvals and despite provisions in the contract that were in violation of state law. Moreover, official A improperly deposited \$186,000 into a nonstate bank account even though state law required that the funds be deposited in a state account. Finally, official A improperly allowed more than \$18,000 to be used for food, entertainment, and other questionable expenses.

As previously reported, California State University (CSU) did not believe that official B benefited financially from the contracts. Moreover, CSU believed the \$3,979 paid on behalf of officials A and B was for expense reimbursements, not gifts. Nevertheless, CSU and the Dominguez Hills campus took numerous steps to strengthen controls over the use of state and foundation funds. The Dominguez Hills campus also reported that the same firm that audits the campus now also audits its auxiliary organizations to better integrate the auxiliaries into the financial framework of the campus.

In June 1998, the president of the Dominguez Hills campus resigned, and in March 1999 a new president was appointed. Official A resigned February 1, 1999, and official B retired September 1, 1999.

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*Officials A and B, both subjects of one of our earlier investigations, resigned and retired, respectively, during 1999.*

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## CALIFORNIA STATE UNIVERSITY, FULLERTON CASE I970051

We reported this case in a separate report issued on December 14, 1999. A manager of the business division of California State University, Fullerton (Fullerton campus), engaged in numerous improper and questionable activities, including depositing \$800,000 into trust accounts and using the funds for unauthorized purposes, and repeatedly circumventing controls over contracting and hiring.

We also reported that other Fullerton campus employees improperly created an unauthorized auxiliary called the University Advancement Foundation (UAF) and transferred millions of dollars in donations to it; spent \$100,000 in donations on entertainment, flowers, gifts, and other questionable items for themselves and other Fullerton campus employees; and violated their fiduciary duties over endowment funds.

The chancellor of CSU responded that review of our report and further investigation did not find any serious mismanagement at the campus. He concluded, "There were errors of judgment and mistakes in some instances." Nevertheless, he reported that, with the full support of the campus, he had initiated an evaluation of its fiscal management to ensure that it had appropriate internal control systems in place.

### Updated Information

The Fullerton campus hired a new director of internal audits, who will now report directly to the campus president. It has also initiated national searches to fill vacancies in the business division. In addition, the evaluation of campus fiscal management was completed in December 1999 and the Fullerton campus has appointed an independent task force to work with the consultant to implement the consultant's recommendations. The Fullerton campus is currently in the process of developing policies and procedures as required. It reported that the UAF will report net fund-raising revenues from its events, will forward quarterly budget reports on all budget accounts with the UAF to the campus president for review, and will provide its annual financial statements to the public. Finally, the Fullerton campus has established meetings with the Orange County legislative delegation to discuss audit issues.

**CALIFORNIA STATE UNIVERSITY, LOS ANGELES  
CASE I970120**

On August 19, 1999, we reported that a professor at California State University, Los Angeles (Los Angeles campus), improperly used equipment purchased with a grant to produce compact discs that he sold to students. The professor pocketed the profit of \$2,268. The Los Angeles campus reported that it had initiated a criminal investigation of the professor's actions.

**Additional Agency Action**

On January 26, 2000, the Los Angeles campus reported that it had completed its review of the case and found that the allegation was accurately stated. The campus counseled the professor, but found that his actions were mitigated by the fact that the professor had purchased other items needed to develop the class material. The Los Angeles campus concluded that there was minimal gain, if any, by the professor.

However, the compact discs are now distributed free of charge to students. In addition, the campus has reiterated its policies and procedures concerning campus sales activities and has drafted a new policy clarifying the proper use of campus equipment.

**BOARD OF COURT REPORTERS  
CASE I980099**

On March 16, 1999, we reported that the Board of Court Reporters (board) did not take disciplinary action against reporters who overcharged for transcripts. The board contended that it was hampered in its ability to take disciplinary action because some county courts allowed court reporters to charge rates in excess of the amounts permitted by law.

At that time, the board told us that it would survey county courts to seek additional information regarding their practices and concerns. The board stated that it would then meet with court administrators and come to an agreement on a course of action. The board has completed these steps and is now drafting policies and procedures.

### Additional Agency Action

In the summer of 1999, the board put its licensees on notice about the following: (1) it does not condone overcharging and (2) it will launch a campaign to educate consumers about the issue. In December 1999 the board notified the presidents of all the county court reporter associations, court reporter supervisors, and court administrators in each county what rates licensed reporters can charge. The board also issued a press release on the subject of proper rates for court transcripts and prepared an article on the subject for submission to *California Lawyer* and other legal publications.

### OFFICE OF CRIMINAL JUSTICE PLANNING CASE I980135

On August 19, 1999, we reported that an employee of the Office of Criminal Justice Planning (OCJP) claimed that she worked 259.5 hours for the State when, in fact, she was working for three other employers we designated as A, B, and C. The State paid the employee \$6,522 for this time. She also took less leave from the State than what she needed to work the total hours for which she was paid by employer A. At the employee's rate of pay, the 193.5 hours of leave she should have taken cost the State \$4,688. We also uncovered at least three instances where the employee was out of the State on personal business but failed to charge the time as leave. This cost the State \$949 for 40 hours.

In addition, on 10 occasions the employee claimed she was unable to work for OCJP because she was ill or had a medical appointment. However, on these 10 occasions, she worked for either employer A or employer B. The State paid the employee \$1,103 for 46.5 hours of improperly reported sick leave.

Finally, the employee charged the State for inappropriate travel expenses totaling \$1,175 and personal telephone usage totaling \$448. The employee was able to engage in all of these activities at least in part because OCJP did not exercise adequate control over attendance and travel expenses.

*The subject of one of our earlier investigations has been dismissed and was required to repay the State \$3,096 toward the cost of her improper activities.*

#### Agency Response

OCJP dismissed the employee and recovered \$3,096 from her final paycheck. In accordance with restrictions placed on it by state law, OCJP disregarded some of the improprieties we identified because they occurred more than three years prior to our report. In addition, OCJP acknowledged that an informal compensatory time off policy existed during some of the period covered by our review and that there was an office-wide practice of permitting employees to use state telephones for local calls as long as the amount of time used was not excessive. Consequently, OCJP did not recover some of the costs related to the employee's actions in these areas.

However, OCJP has instituted new policies and clarified old ones to increase control over attendance and travel expenses. For example, it produced a travel manual, detailing its policies on travel and reimbursable expenses, and issued a policy that prohibits informal compensatory time off.

#### DEPARTMENT OF TRANSPORTATION CASE I990022

Also on August 19, 1999, we reported that a Department of Transportation (Caltrans) superintendent improperly authorized the purchase and installation of drainage pumps from a vendor. Even though the pumps had already been installed, the superintendent directed another Caltrans employee to obtain bids from other vendors. Once the second employee obtained the bids, he altered one and omitted another, thereby creating the illusion that the pumps had been competitively procured and that the vendor who sold and installed the pumps had been the low bidder.

#### Agency Response

Caltrans has not completed its corrective action.

We conducted these investigations under the authority vested in the California State Auditor by Section 8547 and following of the California Government Code and in compliance with applicable investigative and auditing standards. We limited our review to those areas specified in the scope sections of the report.

Respectfully submitted,



MARY P. NOBLE  
Acting State Auditor

Date: April 11, 2000

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# APPENDIX A

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## *Activity Report*

**T**he Bureau of State Audits (bureau) has identified improper governmental activities totaling \$11.1 million since July 1993 when it reactivated the Whistleblower Hotline (formerly administered by the Office of the Auditor General). These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The bureau's investigations have also substantiated other improper activities that cannot be quantified in dollars but have had a negative societal impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau investigates improper governmental activities, it does not have enforcement powers. It reports the details of a substantiated activity to the head of the state entity or the appointing authority responsible for taking appropriate corrective action. The California Whistleblower Protection Act (act) also empowers the state auditor to report to appropriate authorities, such as law enforcement agencies or other entities with authority, that the state auditor deems appropriate.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 3 summarizes all of the corrective actions taken by agencies since the bureau reactivated the Whistleblower Hotline.

**TABLE 3**

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**Corrective Actions Taken  
July 1993 Through December 1999**

Type of Corrective Action	Instances
Referrals for criminal prosecution	65
Convictions	4
Job terminations	35
Demotions	8
Pay reductions	9
Suspensions without pay	9
Reprimands	102

In addition, dozens of agencies modified or reiterated their policies and procedures to prevent future improper activities.

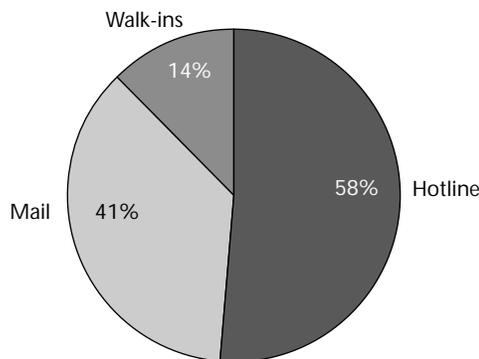
### New Cases Opened July Through December 1999

From July through December 1999, we opened 113 new cases.

We receive allegations of improper governmental activities in several ways. Callers to our Whistleblower Hotline at (800) 952-5665 reported 58 (51 percent) of our new cases.<sup>9</sup> We also opened 41 new cases based on complaints received in the mail and 14 based on complaints from individuals who visited our office. Figure 3 shows the sources of all cases opened from July through December 1999.

**FIGURE 3**

**Sources of 113 New Cases Opened  
July Through December 1999**



### Work on Investigative Cases July Through December 1999

In addition to the 113 new cases we opened during this six-month period, 33 previous cases were awaiting review or assignment, and 19 were still under investigation, either by this office or other state agencies, on June 30, 1999. As a result, 165 cases required some review during this period.<sup>10</sup>

<sup>9</sup> In total, we received 2,374 calls on the Whistleblower Hotline from July through December 1999. However, 1,818 (76 percent) of the calls were about issues outside our jurisdiction. In these cases we attempted to refer the caller to the appropriate entity. Another 498 (21 percent) were related to previously established case files.

<sup>10</sup> Also, seven cases were completed previously, but agencies were still taking corrective action.

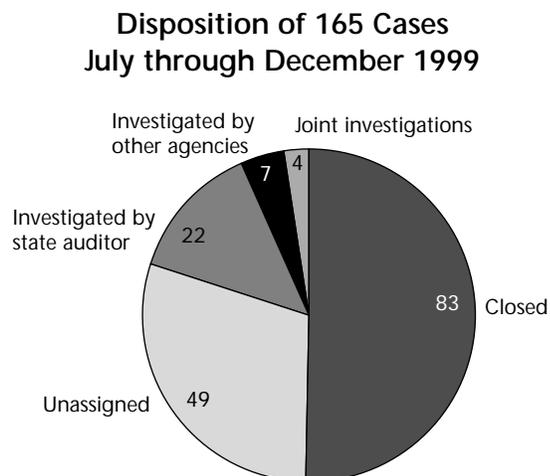
After reviewing the information provided by complainants and the preliminary work by investigative staff, we concluded in 83 of the 165 cases that not enough evidence existed for us to mount an investigation.

The act specifies that the state auditor may request the assistance of any state entity or employee in conducting an investigation. From July through December 1999, state agencies investigated 7 cases on our behalf and substantiated allegations on 1 (25 percent) of the 4 cases they completed during the period.

We jointly investigated 4 cases with other agencies during the period and substantiated allegations in the 1 case we completed.

In addition, we independently investigated 22 cases and substantiated allegations on 5 (56 percent) of the 9 cases we completed during the period. We publicly reported one of these cases on December 14, 1999. That report, I970051, is entitled, *Investigative Report: The California State University at Fullerton Mismanaged Trust Accounts, Contracts, and Donated Funds*. As of December 31, 1999, 49 cases were awaiting review or assignment. Figure 4 shows the disposition of the 165 cases worked on from July through December 1999.

**FIGURE 4**



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# APPENDIX B

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## *State Laws, Regulations, and Policies*

**T**his appendix provides more detailed descriptions of state laws, regulations, and policies that govern employee conduct and prohibit the types of improper governmental activities described in this report.

### REGULATIONS CONCERNING MONITORING PAROLEES AND RELEASING THEM FROM PAROLE

Chapter 1 reports the improper release of parolees.

The California Code of Regulations, Title 15 (regulations), Section 3901.9.6, requires the Department of Corrections (Corrections) to discharge a parolee within 30 days following one year of continuous parole, unless it finds good cause to retain the individual on parole. The definition of good cause as stated in Section 3901.13.1(d) of the regulations includes a parolee's involvement in criminal activity, drug use, gang activities, or a criminal investigation.

Section 2617 of the regulations requires parole agents to investigate all suspected parole violations and document all available facts relating to the charged violation. Additionally, Section 2616 requires the parole and community services division to report to the Board of Prison Terms any parolee who is reasonably believed to have engaged in certain behavior including assaultive conduct resulting in serious injury to the victim, possession of any firearms, and any other conduct it deems sufficiently serious to report, regardless of whether the conduct is being reported in court.

Section 3901.13.1(b)(1) of the regulations states that parolees shall have a discharge review by the 13<sup>th</sup> month of continuous parole if they were not imprisoned for committing a violent felony as defined in California Penal Code Section 667.5(c), or by the 25<sup>th</sup> month if they were imprisoned for such a crime. In addition, Section 3901.13.1(c) requires that if the parole hearings

division does not discharge a parolee, it must conduct an annual review until the mandatory discharge date, which is usually three years from the parole date.

## **THE LAW CONCERNING FALSE CLAIMS**

Chapters 2 and 3 report false claims.

California Penal Code, Section 72, states that every person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim or bill to any state board or officer authorized to pay the claim or bill is punishable either by imprisonment in the county jail or state prison, by fine, or both.

## **INCOMPATIBLE ACTIVITIES DEFINED**

Chapters 2 and 4 reports incompatible activities.

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official actions. Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. This law specifically identifies certain incompatible activities, including using the prestige or influence of the State for one's own private gain or advantage. They also include using state time, facilities, equipment, or supplies for private gain or advantage.

## **PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN**

Chapters 2 and 5 report misuse of state resources.

California Government Code, Section 8314, prohibits state officers and employees from using state resources, such as equipment, travel, or time, for personal enjoyment, private gain or advantage, or for an outside endeavor not related to state business. If the use of state resources results in a gain or advantage

to an officer or employee, or a loss to the State for which a value may be estimated, the officer or employee may be liable for a civil penalty not to exceed \$1,000 for each day the officer or employee is in violation plus three times the value of the unlawful use.

## **REGULATIONS CONCERNING ELIGIBILITY FOR OVERTIME COMPENSATION**

Chapter 3 reports ineligible claims for overtime compensation.

Section 599.703, Title 2, of the California Code of Regulations states that the regular rate of pay for workweek group 4C employees, whose duties are administrative, professional, or executive, is full compensation for all time required for the employees to perform the duties of their position. They are not compensated for hours in excess of the minimum average workweek. In addition, these excess hours are not deemed overtime for which extra pay or compensatory time off is provided.

## **CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES**

Chapter 3 reports weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983 contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain an adequate system of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, abuse, and waste of government funds. In addition, by maintaining internal accounting and administrative controls, state agencies gain reasonable assurance that those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies.

## THE PROHIBITION AGAINST MAKING GIFTS OF PUBLIC FUNDS

Chapter 4 reports what might have been a gift of public funds.

The California Constitution, Article XVI, Section 6, prohibits gifts of public funds. In determining whether an appropriation of public funds is to be considered a gift, the primary question is whether funds are to be used for public or private purpose.

## THE LAW CONCERNING FORGERIES

Chapter 4 reports what may be a forgery.

Section 470 of the California Penal Code specifies that any person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person to a due bill for payment of money, is guilty of forgery. Forgery is punishable by imprisonment in the state prison or in the county jail for not more than one year.

## POLICIES AND PROCEDURES ADDRESSING THE USE OF CAL-CARDS

Chapter 4 reports the misuse of a CAL-Card.

Although the State's agreement with the CAL-Card company permits using the cards to purchase services, each agency must define what uses of CAL-Cards it allows. Both the California Conservation Corps' *Performance Based Budgeting Implementation Binder*, Section H and paragraph 1-19.0 of the *Business Services Handbook*, prohibit using CAL-Cards to obtain services. The binder section also requires the cardholder to ensure that the card is used appropriately. Section H of the binder and paragraph 1-16.2 of the handbook require the cardholder to make purchases in person or by telephone. Both the binder section and the handbook also strictly prohibit use of the card for rental agreements.

# APPENDIX C

## *Incidents Uncovered by Other Agencies*

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*Three agencies notified the bureau of 22 instances of improper governmental activity including:*

- Selling of fraudulent driver's licenses to illegal immigrants.*
  - Passing of fraudulent checks.*
  - Unauthorized use of a procurement card to purchase and subsequently sell \$168,000 worth of goods.*
  - Improperly receiving compensation.*
  - Submitting false travel expense claims.*
- 

Section 20060 of the California State Administrative Manual requires state government departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents so reported from July through December 1999. While it is clear that many state agencies do not yet report such investigations as required by this section, it is equally obvious that some agencies not only vigorously investigate such incidents but also put considerable effort into creating policies and procedures to prevent future occurrences. It is important to note that reported incidents have been brought to conclusion; we will not publish any reports that would interfere with or jeopardize any internal or criminal investigation.

Three state entities notified the bureau of 22 instances of improper governmental activity they brought to conclusion during the last half of 1999. Those agencies were the Department of Motor Vehicles (DMV), five campuses of the California State University system, and the Richard J. Donovan Correctional Facility. Of the instances where financial irregularities were uncovered, 11 of the reported incidents resulted in referrals for prosecution. Those incidents that resulted in monetary loss to the State of California add up to \$251,673. In addition, as a result of DMV employees illegally issuing fraudulent driver's licenses or other documents, individuals paid the DMV employees and their accomplices \$23,250. The three entities were able to regain \$8,869 in restitution and reimbursement.

DMV is unique among state agencies in the heavy volume of contact its employees have with the public and the daily handling of money by its employees. As a result, its employees have the opportunity to improperly bestow or deny benefits to the public. For many segments of the population, from teenagers seeking their first driving permit, to recent immigrants for whom transportation to work sites is critical, to senior citizens determined to retain the privilege of driving as long as possible, DMV and its personnel play a pivotal role. For those reasons and

others having to do with access to information, the department must and does conduct vigilant special investigation and electronic oversight units that routinely investigate such issues as the alteration of government documents, sale of driver's licenses, and the theft of money intended for department coffers.

During the six-month period just past, DMV advised this office of 17 investigations completed by its investigative staff. Of those, more than a third involved the selling of fraudulent driver's licenses to illegal immigrants, who paid dearly for the privilege of driving to work sites but often did not take (or pass) written sign, vision, or driving tests. Actually, more than 75 percent of all incidents reported since the last half of 1993 have been submitted by DMV. According to DMV reports, illegal aliens, who could not provide the necessary proof of legal presence and were thus denied the privilege of licenses to drive in California, paid individuals at least \$23,250 for licenses and, sometimes, social security cards and birth certificates. Improper access and release of information from DMV databases and the theft of negotiable monetary instruments triggered the majority of the remainder of DMV investigations.

In a similar fashion, academic institutions such as the state university system provide unique problems and afford easy access to funds by a client population as well as employees of the institution. Improper governmental activities at these campuses, which ranged in location from Sacramento to San Diego, covered a broad spectrum of activities. Reported incidents went from the truly trivial to more clearly criminal acts, such as the passing of fraudulent checks totaling more than \$6,400 charged against an auxiliary foundation bank account and the unauthorized use of a campus procurement card to purchase and subsequently sell \$168,000 worth of goods on the Internet. The employee responsible for this last incident resigned under threat of termination and has been arraigned on criminal charges. The university department in question has deferred indefinitely any further procurement card use. When the department does resume use of procurement cards, however, budget review and cardholder status will not be vested in a single individual, thereby reducing the risk of such occurrences in the future. In addition, monthly statements are now being sent directly to authorizing officials, not to cardholders. The university controller will receive and review reports on delinquent cards, with delinquency resulting in timely card cancellation.

Three faculty members at another campus were found to have improperly received compensation from a campus foundation account, while a foundation employee submitted false travel expense claims related to the same program. This investigation revealed losses to the university totaling \$41,036. When the contract with the program under investigation was not renewed, all three faculty members and the foundation employee retired.

The sole investigation reported to us by a correctional facility related to a shortage of \$482 following reconciliation of a cash payment fund. The missing money was recovered, and the person responsible was removed from custodial and cashiering responsibilities and disciplined by means of a letter of instruction.

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cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
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Senate Office of Research  
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