

# **OFFICE OF THE INSPECTOR GENERAL**

**MATTHEW L. CATE, INSPECTOR GENERAL**



## **BUREAU OF INDEPENDENT REVIEW**

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**SEMI-ANNUAL REPORT**

**JANUARY - JUNE 2005**

**STATE OF CALIFORNIA**

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# FOREWORD

The Office of the Inspector General is the state agency charged with independent oversight of California's correctional system. Established in 1998, the office has undergone a significant number of changes in structure and staffing in recent years as its statutory mandate has expanded. One of the most important of these changes was addition of the Bureau of Independent Review in 2004.

The job of the Bureau of Independent Review is to ensure the integrity of internal affairs investigations into allegations of serious misconduct inside the state's adult prisons and youth correctional facilities. The bureau was established as a central component in a court-ordered remedial plan resulting from a federal civil rights action against the former California Department of Corrections — an action that had identified a number of serious deficiencies in the department's officer discipline process. To remedy the problems, bureau attorneys and investigators are assigned to provide real-time, on-the-scene, oversight of investigations carried out by internal affairs investigators from the new Department of Corrections and Rehabilitation to make sure the investigations are thorough and sound and that the discipline imposed is appropriate.

Among the chief goals of the Bureau of Independent Review is to make internal affairs investigations transparent to the public as a means of promoting accountability. Consistent with that purpose, California Penal Code section 6133 calls for the bureau to publish annual and semi-annual reports of its work. This report, covering the initial six months of the bureau operation is the first of those reports.

As Inspector General, it has been my responsibility and privilege to assist the bureau in its formation. Staffing of the bureau began in July 2004 with the hiring of David Shaw — a former Sacramento County prosecutor with extensive law enforcement experience at the federal, state and local level — as the bureau's chief attorney. By mid-January 2005, the bureau's three regional offices in Rancho Cordova, Bakersfield, and Rancho Cucamonga had been fully staffed with attorneys selected through a vigorous statewide recruitment effort, and at this writing the bureau is in the process of hiring investigators to pair with these attorneys in the oversight of internal affairs investigations.

With professional staff on board in its three regional offices, the Bureau of Independent Review immediately began monitoring the most serious investigations underway by the Department of Corrections and Rehabilitation's Office of Internal Affairs. In March 2005 the bureau also played a key role in a special review into the circumstances surrounding the murder of Correctional Officer Manuel Gonzalez at the California Institution for Men, and in June 2005, the bureau conducted a special review into the death of inmate Daniel Provencio at Wasco State Prison.

In addition to these activities, and along with completing an intensive training and liaison schedule during its initial months of operation, the Bureau of Independent Review also filled an important role in the reorganization of the Department of Corrections and Rehabilitation and in the development of policy affecting correctional employee discipline and other issues. By the

end of June 2005, with initial training completed, the bureau was ready to begin full monitoring of internal affairs investigations.

I would like to extend my thanks to the many individuals and organizations that have assisted us during the bureau's first months of operation. In particular, I would like to thank Special Master John Hagar of the U. S. District Court and Chief Attorney Michael Gennaco of the Los Angeles County Office of Independent Review—upon which the Bureau of Independent Review is modeled—for support and assistance during the bureau's formation. Having the Office of Independent Review model in place has provided the bureau with an excellent roadmap to follow as we began monitoring Department of Corrections and Rehabilitation's internal affairs operations.

On behalf of the attorneys, investigators, and support staff of the Bureau of Independent Review, I invite you to review this first semi-annual report and provide us with your feedback. The bureau will regularly post reports and other information to the Office of the Inspector General's website at [www.oig.ca.gov](http://www.oig.ca.gov).

— **MATTHEW L. CATE, INSPECTOR GENERAL**

## INTRODUCTION

The catalyst for establishing the Bureau of Independent Review inside the Office of the Inspector General was the federal district court decision *Madrid v. Hickman*, which stemmed from a civil rights lawsuit filed by a group of inmates incarcerated at Pelican Bay State Prison in northwestern California. In that decision, U.S. District Court Judge Thelton E. Henderson held that state officials had “permitted and condoned” the use of excessive force against inmates in violation of the Eighth Amendment and that internal affairs investigations into alleged misconduct were “counterfeit” and “were pursued to avoid finding officer misconduct as often as possible.”<sup>1</sup> Concluding that injunctive relief was both necessary and appropriate to ensure an effective remedy of the constitutional violation, the court appointed a special master experienced in prison administration to fashion an appropriate remedy and monitor the implementation of that remedy.<sup>2</sup>

In crafting a remedy for the shortcomings in internal affairs investigations and in the correctional peace officer discipline process at the California Department of Corrections (now the Department of Corrections and Rehabilitation), Special Master John Hagar consulted with Michael Gennaco, chief attorney of the Los Angeles County Office of Independent Review, which was created in 2001 to ensure the integrity of the Los Angeles County Sheriff’s Department’s internal misconduct investigations. As a result of that consultation, Special Master Hagar recommended to the court the creation of a similar office to perform real-time evaluations of internal affairs cases related to abuse of force and violations of employee ethics. The Governor’s Office proposed the creation of the Bureau of Independent Review within the Office of the Inspector General. The court and parties agreed and the bureau was established.

The Bureau of Independent Review was subsequently codified with the passage of Senate Bill 1400, (Chapter 736, Statutes of 2004), sponsored by Governor Arnold Schwarzenegger and authored by Senator Gloria Romero. In July 2004, the Governor signed the bill and formally announced the creation of the Bureau of Independent Review during a press conference at Mule Creek State Prison.<sup>3</sup>

To accomplish its goals, the Bureau of Independent Review was built on a solid foundation of several important components. The first has been the commitment of significant resources by the Office of the Governor, not the least of which was the granting of 13 gubernatorial appointments to the bureau so that experienced attorneys with diverse backgrounds could be rapidly hired. Following a statewide search and recruitment process, the Bureau of Independent Review now has 12 talented, full-time, highly experienced and well-qualified attorneys with extensive backgrounds in criminal law, civil rights, and public employment law.

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<sup>1</sup> 889 F.Supp. 1146 (N.D. Cal. 1990)

<sup>2</sup> For additional information about the *Madrid* case and creation of the Bureau of Independent Review, see Appendix A: The *Madrid* Litigation.

<sup>3</sup> For additional information concerning the legislation that led to the establishment of the Bureau of Independent Review, see Appendix B: Senate Bill No. 1400 (2004).

These dedicated professionals are developing a deep familiarity with the California Department of Corrections and Rehabilitation, a thorough knowledge of the inner-workings of the state correctional system, and expertise in best practices for addressing internal affairs investigations. This knowledge will allow the recommendations of the bureau's attorneys to have significant impact on the outcome of internal affairs investigations and the ultimate direction of the officer discipline process. The bureau also has a full complement of support staff and other resources in each regional office to assist it in the performance of its duties.

The next major addition to the bureau's professional staff will be deputy inspector general investigators to assist the staff attorneys in monitoring internal affairs investigations. These 11 permanent full-time positions, approved in the state budget passed in July 2005, will be hired as soon as the mandatory peace officer background investigations and associated civil service requirements are completed. An initial group of deputy inspectors general has been selected following a statewide recruitment effort and has begun the background clearance process.

The second key component in the success of the Bureau of Independent Review has been the cooperation and support of the internal and external stakeholders in the *Madrid* litigation. First and foremost, the Bureau of Independent Review has enjoyed the unqualified support of Inspector General Matthew Cate, who has made the activation of the bureau a top priority in his administration. Next, the contributions of Judge Henderson, Special Master Hagar, and Chief Attorney Gennaco of the Los Angeles County Office of Independent Review have been invaluable to the bureau, especially during its formative stages. The Bureau of Independent Review has also met regularly with senior management at the Department of Corrections and Rehabilitation and has received complete cooperation from Secretary Roderick Q. Hickman, Undersecretary Jeanne Woodford, and Chief Deputy Secretary Joe McGrath, as well as from both Mark Gantt and Martin Hoshino at the Office of Internal Affairs. The unqualified cooperation of these officials has greatly assisted the bureau in establishing itself as a respected organization within the correctional institutions and the regional internal affairs offices.

The bureau staff has also met with all of the wardens and investigative staff of the California Department of Corrections and Rehabilitation facilities, as well as with most of the parole offices in each of the respective regions. In addition, the bureau has been meeting with key stakeholders, such as the California District Attorney's Association's Prison Crimes Committee, and the Prison Law Office, as well as with law enforcement agencies in every jurisdiction in which a prison or institution is located.

Through these liaison activities, the Bureau of Independent Review has been able to fulfill an important role in the many changes made by the Office of Internal Affairs in 2005 and to contribute to other policy-making decisions. Of significant note is regular participation by the bureau in the newly formed Internal Affairs Central Intake Project, which will eventually review all requests for internal affairs investigations made statewide. The Bureau of Independent Review is also conducting an extensive review of all regulations, laws, practices and precedents affecting internal affairs investigations and the entire officer discipline process.

A third major component in the early success of the Bureau of Independent Review has been its close physical proximity to each of the regional internal affairs offices of the California

Department of Corrections and Rehabilitation in Rancho Cucamonga, Bakersfield, and Rancho Cordova. From the earliest stages of the bureau's inception, it was clear that for close and effective case monitoring to occur, it was necessary for the bureau's attorneys and investigators to be co-located with the Office of Internal Affairs regional offices. The close proximity allows the Bureau of Independent Review ready access to the people, files, and evidence needed to monitor Office of Internal Affairs investigations.

In the southern region, the Bureau of Independent Review was initially established in temporary quarters in the same building as the California Department of Corrections and Rehabilitation's Office of Civil Rights in Rancho Cucamonga. In May 2005, after renovation of a building immediately adjacent to the Office of Internal Affairs, the bureau moved into permanent space in that building.

In the central region, the Bureau of Independent Review office was initially housed in temporary offices in the same building occupied by the Office of Internal Affairs in Bakersfield while the bureau negotiated a lease for permanent space in the same building. After water damage was sustained to that office, and until renovation is completed, the Bureau of Independent Review has moved temporarily into another California Department of Corrections and Rehabilitation facility two miles away. The target date for the renovation to be completed is January 2006, at which time the bureau will establish permanent quarters in that office.

For the northern and headquarters regions, the bureau's permanent office will be located in a new two-story building adjacent to the Mather Business Park in Rancho Cordova. Move-in is targeted for January 2006. In the interim, the Bureau of Independent Review offices are co-located with the Office of Internal Affairs offices in Rancho Cordova and at the Office of the Inspector General's headquarters in Sacramento. In a significant development, the California Department of Corrections and Rehabilitation has made a decision to relocate all of its Northern California adult and juvenile internal affairs operations, including the legal staff of the Employment Law Unit, into the same new Rancho Cordova building with the bureau. That move will provide enhanced opportunities for the California Department of Corrections and Rehabilitation and the Bureau of Independent Review to meet face to face as often as necessary to make joint endeavors a success.

It is important to note that although the Bureau of Independent Review's attorneys work closely with the Office of Internal Affairs on a daily basis, the bureau has both the autonomy and the legal authority to effectively and independently monitor internal affairs investigations into serious misconduct. The bureau's attorneys do not fall within the chain of command of the California Department of Corrections and Rehabilitation, but rather report directly to the independent California Inspector General, who has a fixed six-year term of office. This independence and legal authority are central to the strength of the Bureau of Independent Review and provide it with the means to perform its oversight role with a high degree of professionalism.

— **DAVID SHAW, CHIEF ASSISTANT INSPECTOR GENERAL**

## **DEVELOPMENT OF THE BUREAU OF INDEPENDENT REVIEW**

The Bureau of Independent Review underwent rapid development during its first six months from January through June 2005, recruiting and hiring staff, meeting with other correctional entities and stakeholders, conducting training, and participating in internal and external policy development activities. At the same time, the bureau also began responding to critical incidents at the state's correctional institutions and monitoring internal affairs investigations into the most serious misconduct allegations. Those activities are summarized below.

### **STAFF DEVELOPMENT AND ORGANIZATION**

In addition to Chief Assistant Inspector General David R. Shaw, who heads the Bureau of the Independent Review, the bureau hired 11 full-time attorneys to staff its three regional offices in Rancho Cordova, Bakersfield, and Rancho Cucamonga. Senior attorneys, who are classified as senior assistant inspectors general, are distributed among three offices: one at the headquarters office in Sacramento, California, and the other three in the northern, central, and southern California regional offices. The staff attorneys, who are classified as special assistant inspectors general, were selected for each office so as to complement each other's legal expertise in criminal, civil rights, and public employment law. These attorneys also possess significant experience working with law enforcement officials throughout the state.

Following are brief biographical sketches of the attorneys presently serving in the Bureau of Independent Review, followed by an organization chart of the Bureau of Independent Review.

#### **HEADQUARTERS — SACRAMENTO, CALIFORNIA**

**David R. Shaw** was appointed chief assistant inspector general of the Bureau of Independent Review by Governor Arnold Schwarzenegger in July 2004. Before his appointment, Mr. Shaw served as the deputy executive officer of the Victim Compensation and Government Claims Board; executive director of the Governor's Office of Criminal Justice Planning; chief counsel to the Assembly Public Safety Committee; and a deputy district attorney for Sacramento County, where he was cross-designated as a special assistant U.S. Attorney for the Eastern District of California. Mr. Shaw is a Lieutenant Colonel in the United States Army Reserve and an adjunct professor at McGeorge School of Law.

**Howard E. Moseley** was appointed lead special assistant inspector general for the Bureau of Independent Review by Governor Arnold Schwarzenegger in January 2005. He previously served as a deputy attorney general in the Criminal Law Division of the California Department of Justice. While at the Attorney General's Office he was a member of the trial litigation team, was appointed the legal liaison for the California Witness Protection Program, and was the primary reviewer of criminal referrals from the California Department of Corrections. Before that, he was a linguist in military intelligence for the United States Army.

## **NORTHERN REGIONAL OFFICE, RANCHO CORDOVA, CALIFORNIA**

**Tim Rieger** was appointed senior assistant inspector general for the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in May 2005. Before his appointment, Mr. Rieger served as the deputy director and chief counsel for the California Attorney General's Department of Justice Firearms Division. He also served the California Attorney General for several years as a deputy attorney general in the Criminal Division. Before he began his ten years with the Attorney General's Office, Mr. Rieger worked as a prosecutor in the Sacramento County District Attorney's Office. Mr. Rieger is a major in the Judge Advocate General's Corps, serving in the 22nd Legal Support Organization, United States Army Reserve.

**Neil Robertson** was appointed special assistant inspector general for the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Robertson served as senior tax counsel in the General Counsel Section of the California Franchise Tax Board, where he represented the department in all aspects of public sector employment law and provided legal support to the Criminal Investigations Unit for prosecution of state tax crimes. He also served as staff counsel to the California Department of Corrections, Office of Internal Affairs and as legal counsel representing law enforcement agents with the California Union of Safety Employees and the California Correctional Peace Officer's Association.

**Abel D. Ramirez** was appointed special assistant inspector general for the Bureau of Independent Review, Northern Region, by Governor Arnold Schwarzenegger in January 2005. Before his appointment, Mr. Ramirez served as staff counsel for the California Youth Authority, where he represented the department in administrative hearings before the State Personnel Board. Mr. Ramirez also worked as a prosecutor for several years in the Sacramento County District Attorney's Office and as a deputy probation officer for the Sacramento County Probation Office.

## **CENTRAL REGIONAL OFFICE—BAKERSFIELD, CALIFORNIA**

**Robert Allen Barton** was appointed senior assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Mr. Barton began his career in law enforcement with the Fresno County Sheriff's Department. After obtaining his law degree, Mr. Barton became a deputy district attorney for Kern County, where he worked in the Special Prosecutions Unit and was the supervising deputy district attorney of the Juvenile and Truancy Units, Gang Unit, and Prison Crimes Unit. Mr. Barton has been an adjunct faculty member with California State University-Bakersfield and Bakersfield College, teaching courses in public speaking, criminal law, gangs and crime, and media law.

**Anna M. Ferguson** was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Before her appointment, Ms. Ferguson served as a deputy district attorney in Kings County, leading the Drug Crimes, Prison Crimes, Sexual Assault, and Domestic Violence Units. In addition, Ms. Ferguson has worked as a deputy public defender for Tulare County and has several years of civil litigation experience.

**L. Gordon Isen** was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Isen served as a deputy district attorney for San Bernardino County, prosecuting major felonies in San Bernardino and Santa Cruz counties. In addition to his criminal trial work, Mr. Isen served as lead attorney of a white-collar crime unit and as a narcotics team supervisor. Mr. Isen has served his community as a reserve police officer and as a Judge Pro Tem.

**Michael G. Allford** was appointed special assistant inspector general for the Bureau of Independent Review, Central Region, by Governor Arnold Schwarzenegger in July 2005. Prior to his appointment, Mr. Allford served as a deputy city attorney for the City of Bakersfield, where he was legal advisor to the Bakersfield City Council and served on numerous city commissions and boards. Mr. Allford has worked in private practice representing plaintiffs and defendants in the areas of employment law and land use.

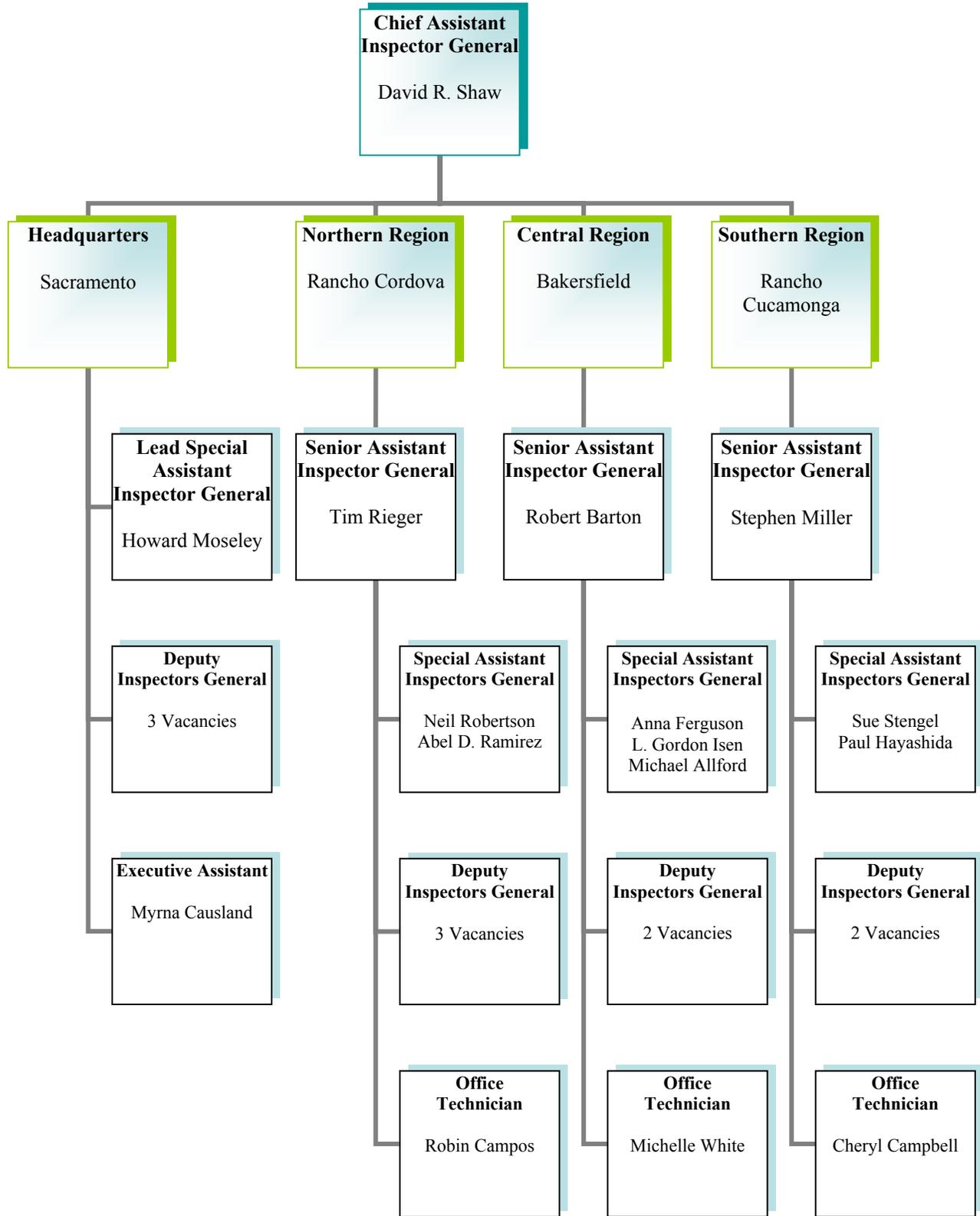
#### **SOUTHERN REGIONAL OFFICE—RANCHO CUCAMONGA, CALIFORNIA**

**Stephen Miller** was appointed senior assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Before his appointment, Mr. Miller worked as an attorney for 22 years in private practice litigating cases involving police misconduct, civil rights, medical malpractice, employment law, and other torts in state and federal court. He recently served as part-time U.S. Magistrate Judge in the Central District of California presiding over federal criminal matters. Mr. Miller has served as a school board member for a local school district and the County of San Bernardino. He was a reserve peace officer and continues to work as a crew chief/medic on an air rescue helicopter with a local sheriff's department in Southern California.

**Sue Stengel** was appointed special assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to her appointment, Ms. Stengel served as western states counsel for the Anti-Defamation League, a national civil rights organization. There she worked with law enforcement, educators, and community groups combating hate crimes and extremism and preserving religious liberty. She also served as a deputy public defender in Los Angeles County. Ms. Stengel has worked as an instructor for the California Commission on Peace Officer Standards and Training and the Federal Law Enforcement Training Center.

**Paul Hayashida** was appointed special assistant inspector general for the Bureau of Independent Review, Southern Region, by Governor Arnold Schwarzenegger in January 2005. Prior to his appointment, Mr. Hayashida worked as the officer-in-charge of the Complaint Intake and Review Section for the Los Angeles Police Commission's Office of the Inspector General, where he supervised a team of analysts during their review of hundreds of Los Angeles Police Department internal affairs investigations. He also worked as an associate attorney with Francell, Stickland, Roberts and Lawrence, where he represented the interests of law enforcement agencies and sworn officers in federal and state litigation. Mr. Hayashida served as a sworn member of the Glendale Police Department, retiring after twenty years as a police sergeant with significant patrol, major narcotics, personnel, and internal affairs experience.

**ORGANIZATION CHART**



## TRAINING ACTIVITIES

During the first six months of the bureau's operation, special assistant inspectors general and senior assistant inspectors general underwent intense training on the protocols of the bureau as well as a detailed introduction to the California Department of Corrections and the California Youth Authority (now consolidated as the California Department of Corrections and Rehabilitation), with an emphasis on internal affairs investigations. Experts in all aspects of California's penal system contributed to a comprehensive overview.

Beginning the week of January 24, 2005, the bureau staff participated in a week-long orientation at the bureau's headquarters in Sacramento. In addition to handling various administrative matters, including personnel matters and dissemination of equipment, the staff began its introduction to substantive issues. The group was addressed by federal Special Master John Hagar and was provided with a history and overview of the role of the special master as it pertains to the state's correctional departments. In addition, Michael Gennaco and Steve Connolly, of the Los Angeles Office of Independent Review addressed the mission of independent review. Mechanical issues, such as developing protocols, handling major incident scene investigations, "cradle to grave" monitoring, case reporting, and promotion of reform were also on the agenda. The week concluded with training in actual Bureau of Independent Review protocols, reporting on the case management system and handling of "roll outs"—response to incidents.

Because Bureau of Independent Review attorneys and investigators are sworn peace officers, in February they attended Penal Code section 832 training. The first week of training covered the laws of arrest, search, and seizure, and the second week covered weaponless defense, arrest and firearms familiarization, and firearms qualification at the firing range.

From March 14 to March 17, the Bureau of Independent Review held its first quarterly all-staff meeting in Sacramento. The staff received an introduction to the functions of Department of Corrections and Rehabilitation's Law Enforcement Investigations Unit and the Deadly Force Review Board. Included in this presentation was an overview of prison gangs and gang investigations. The quarterly meeting served as an opportunity for the bureau staff to be introduced to the Department of Corrections and Rehabilitation's vertical advocates, and to receive a briefing on the vertical advocate function. Included in this session was training on critical legal issues pertaining to internal affairs investigations and the disciplinary process. Topics such as statutes of limitations and how they are tolled, compelling subjects to give statements, and the Peace Officers Bill of Rights were covered. In addition to the vertical advocate role, the bureau staff was informed of the role of employee relations officers and litigation coordinators at the institutions. Finally, an overview of the newly created central intake process, used to evaluate and assign internal affairs investigations, was discussed.

Bureau of Independent Review staff attended additional and more in-depth training on the department's Law Enforcement and Investigations Unit from April 11 through April 15. Topics during this training included gang investigations, critical incident management, parole searches, search warrants, parolee-at-large investigations, officer-involved shootings, officer safety, and Department of Justice drug lab agent safety techniques.

From June 1 through June 3, the Bureau of Independent Review staff attended a seminar entitled "Prison Investigations, Evidence and Prosecutions," hosted by the California District Attorneys' Association. The seminar covered several relevant topics, including crime scene preservation, evidence collection and documentation, electronic surveillance in correctional settings, administrative searches, *Miranda* and interrogation in prison, and the Peace Officer Bill of Rights. The seminar also provided an opportunity for the Bureau of Independent Review staff to be introduced to many of the deputy district attorneys who prosecute prison crimes.

The week of June 20, 2005, the Bureau of Independent Review held its second quarterly meeting in Rancho Cucamonga. Many of the training topics previously addressed were revisited and addressed in more detail with respect to the bureau staff. The training included crime scene preservation, a presentation from the Los Angeles County Office of Independent Review on "cradle-to-grave" monitoring, the role of public reporting, and critical incident response. A presentation was also made to the bureau staff on the Department of Corrections and Rehabilitation's use-of-force policy, the inmate complaint process, access to inmate records, responsibilities of employee relations officers and litigation coordinators, legal admonishments during employee interviews, and the civil service disciplinary process through the State Personnel Board. In addition, the Bureau of Independent Review was given an overview of the training curriculum for correctional staff and for special agents of the Office of Internal Affairs. Finally, the bureau staff learned how to use the California Law Enforcement Tracking System and received training on the Office of Internal Affairs case management system.

## LIAISON ACTIVITIES

Attorneys in each of the Bureau of Independent Review's regional offices have visited and toured every California Department of Corrections and Rehabilitation institution in the region and held meetings with key personnel. Whenever possible, the bureau's attorneys in each region held these meetings as a group. At each meeting the Bureau of Independent Review introduced the attorneys, discussed the bureau's mission and protocols, and described its anticipated interaction with the California Department of Corrections and Rehabilitation staff. The following describes some of those face-to-face meetings.

***Adult Institutions.*** The Bureau of Independent Review has visited 28 of the 33 adult institutions in the California Department of Corrections and Rehabilitation. At the institutions, the bureau met with wardens, chief deputy wardens, associate wardens, and other executive staff members. The bureau also met with employee relations officers, investigative services unit personnel, institutional gang investigators and lieutenants, and sergeants responsible for conducting fact-finders and inquiries into allegations of employee misconduct. When the bureau has been unable to meet with the above personnel during initial visits, the bureau has returned to the institutions to engage in such meetings. The bureau has also taken comprehensive tours of many of the institutions, including some of the fire suppression and conservation camps.

***Youth Facilities.*** The Bureau of Independent Review has visited four of the Department of Corrections and Rehabilitation's eight youth correctional facilities and reception center/clinics. Visits included tours and meetings with the superintendent or other executive staff. Since the

initial visits, the bureau's attorneys have returned to some of the facilities to meet with appropriate personnel to discuss the inquiry, investigation, and disciplinary process involving alleged staff misconduct.

***Office of Internal Affairs.*** Bureau of Independent Review attorneys have met with all of the California Department of Corrections and Rehabilitation's Office of Internal Affairs staff in their respective regions in the both the adult division and the juvenile division. The bureau's senior assistant inspectors general and their counterparts, the California Department of Corrections and Rehabilitation's special agents-in-charge of internal affairs, have also met individually on numerous occasions.

***Law Enforcement and Investigations Unit.*** At the invitation of the Bureau of Independent Review, several senior staff members from the Law Enforcement and Investigations Unit of the California Department of Corrections and Rehabilitation attended a January training conference held at the Office of the Inspector General's headquarters and addressed the Bureau of Independent Review staff concerning the Law Enforcement and Investigations Unit's organizational structure and mission. In addition, bureau staff has attended Deadly Force Review Board meetings presented by the Law Enforcement and Investigations Unit, and several Bureau of Independent Review attorneys participated in a week-long Law Enforcement and Investigations Unit training academy in March 2005. Each of the Bureau of Independent Review regions has also held meetings with essential personnel at the local Law Enforcement and Investigations Unit office.

***Parole Administration.*** The Bureau of Independent Review staff has met with adult parole officials from the Department of Corrections and Rehabilitation's Division of Adult Parole Operations at the Fresno, Hanford, Bakersfield, and Visalia field offices, as well as with juvenile parole officials from the department's Division of Juvenile Parole Operations at the Bakersfield field office. In addition, the bureau met with regional officials responsible for both the adult and juvenile parole operations throughout the northern California area.

***District Attorneys' Offices.*** Because district attorneys prosecute the crimes that occur within California Department of Corrections and Rehabilitation institutions and facilities, including crimes committed by department personnel, the bureau recognized it is important to communicate with these prosecutors often and early in every case. Accordingly, during this reporting period, each of the bureau's regional offices held meetings with essential personnel at the district attorneys' offices in Sacramento, Los Angeles, Kern, Kings, San Bernardino, San Diego, and Monterey counties. Also, the bureau collaborated with the California District Attorneys Association to form the Prison Crimes Working Group, made up of representatives from the bureau, the association, and the department, as well as members of the Attorney General's Office, representatives from various district attorneys' offices, and local law enforcement officials. The working group meets every other month to address legal and procedural issues of mutual concern.

## **IMPACT OF THE BUREAU OF INDEPENDENT REVIEW ON CORRECTIONAL POLICY**

During its initial months of operation, the Bureau of Independent Review has actively participated in policy decisions affecting the California Department of Corrections and Rehabilitation.

### **CENTRAL INTAKE COMMITTEE**

In the fall of 2004, the California Department of Corrections and Rehabilitation (then the Youth and Adult Correctional Agency) established the Strategic Planning Internal Affairs Team to meet and review proposed changes to the employee disciplinary process. The team was made up of every major stakeholder in the department's disciplinary process, as well as Chief Assistant Inspector General David Shaw of the Bureau of Independent Review. After significant discussion and consideration, the team recommended that the department establish a centralized intake process to review requests for internal affairs investigations agency-wide, with the goal of reducing or eliminating confusion about which entity (institutional, regional, or headquarters) is responsible for conducting a given investigation. The team also concluded that a central intake process would improve consistency and fairness in the investigative process.

The team also recommended eliminating the designation of Category I and II internal affairs investigations and recommended instead that a central intake committee assess all investigative requests and assign investigations, eliminating the need for categorization. Under the proposal, requests for investigation would be either accepted and assigned to an investigator or returned to the referring entity for additional information or direct resolution by the employee's supervisor.

The central intake concept was approved by the California Department of Corrections and Rehabilitation and adopted in May 2005, and a Central Intake Committee has now been established. The Central Intake Committee is made up of California Department of Corrections and Rehabilitation investigators from the Office of Internal Affairs and California Department of Corrections and Rehabilitation employment law attorneys from the Employment, Advocacy and Prosecution Team, as well as representatives from the Bureau of Independent Review. Department experts, such as representatives from the Health Care Services Division staff, are also invited to participate to assist the Central Intake Committee with the specialized knowledge sometimes necessary for the committee to make an informed decision. California Department of Corrections and Rehabilitation hiring authorities, other senior management, employment relations officers, and institution investigators are invited to observe and participate in the process.

The Central Intake Committee now assesses each request for investigation as part of the intake process, determines whether a criminal or administrative investigation is appropriate, and assigns that case to the appropriate investigative unit (for instance, the Office of Internal Affairs, the institution's investigative services unit, or the Office of Civil Rights), depending on the nature and location of the investigation. Conversely, if a complaint does not warrant investigation, it is returned to the referring entity for disposition or closure at that level.

Since May 4, 2005, the Central Intake Committee has convened weekly to conduct this review. At these meetings the committee is briefed on the facts of each case by special agents assigned to the Office of Internal Affairs and is provided with a copy of the Internal Affairs Investigative Request (Form 989) and other supporting documentation. The committee then engages in a roundtable discussion of the request to determine whether an investigation is warranted. If appropriate, the case is then assigned to one of several investigative entities. Typically, the case is assigned to one of the Office of Internal Affairs regional offices, but it may instead be assigned to Office of Internal Affairs headquarters or to the Office of Civil Rights, depending on the sensitivity and nature of the allegation. That entity may in turn assign the case to an Office of Internal Affairs special agent or to an institution investigator who has been specially trained to conduct internal affairs investigations. If the case is assigned to an institution investigator, it is nevertheless supervised by a senior special agent from the Office of Internal Affairs regional office. Investigations involving alleged criminal violations, excessive force, inmate deaths or serious injury, officer integrity issues or other serious allegations made against California Department of Corrections and Rehabilitation supervisors, however, are generally assigned to an Office of Internal Affairs special agent.

Following assignment of the case, all of the investigative work that follows can be easily tracked using the case management system database developed exclusively for the Office of Internal Affairs. The case management system serves not only as a management tool for the Office of Internal Affairs, but is also accessible by the Bureau of Independent Review and the Employment, Advocacy and Prosecution Team to ensure real-time oversight by the Bureau of Independent Review and a smooth transition of the case to the Employment, Advocacy and Prosecution Team in the event a disciplinary action ensues.

In sum, the central intake process has already demonstrated significant advantages over the previous model in the relatively short time that it has been operational. Thus far, requests for internal affairs investigations are submitted to the Central Intake Committee by approximately half of all the adult institutions statewide. The California Department of Corrections and Rehabilitation is projecting that all of its institutions and facilities will be using the central intake process by December 2005.

#### **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATIONS MANUAL**

Along with the structural reorganization of the California Department of Corrections and Rehabilitation and the establishment of the Bureau of Independent Review, an extensive review and update of the department's Department Operations Manual was commenced by the Strategic Planning Internal Affairs Team in fall 2004. Article 22 encompassing the employee disciplinary process was the first section of the operations manual to be revised. The proposed changes were reviewed and edited by the Bureau of Independent Review and the chief legal counsel for the Office of the Inspector General to ensure compliance with the law, clarity of process, and appropriate input and oversight by the bureau. The court-appointed expert in *Madrid v. Woodford* also reviewed the proposed changes to verify conformity with the court's orders and objectives in that case. After several sessions with the team, a final draft of Article 22 has been submitted to the federal court for approval.

Highlights of the revisions include clarification of the vertical advocate model, which ensures legal representation for the California Department of Corrections and Rehabilitation during the entire investigative and disciplinary process. Incorporated into the system is regular and continuous contact between the department and the Bureau of Independent Review to address the bureau's statutory mandates of contemporaneous oversight of the adequacy of investigations and appropriateness of any discipline. An executive review process was established to resolve significant disagreements between the vertical advocates, department management, and the bureau related to investigative findings, imposition of disciplinary penalties, and settlement agreements.

Among other revisions was a change to the *Skelly* hearing process, which is an informal proceeding in which a disciplined employee has an opportunity to respond to an uninvolved manager before discipline becomes effective. In the past, the manager conducting the *Skelly* hearing had authority to modify the discipline without consulting with the manager who imposed the discipline. The new policy provides that the *Skelly* hearing officer only makes recommendations in writing to amend, modify, withdraw, or sustain the discipline, while the manager who imposed the discipline has the final authority as to what discipline is imposed. The Bureau of Independent Review is to be consulted before any modifications to discipline are implemented.

In addition to its work on policies affecting the employee disciplinary process, the Bureau of Independent Review is in the process of reviewing the policies governing internal affairs investigations, whistleblower retaliation, administrative immunity, subpoenaed witness notification, and incompatible activities. Every major stakeholder in each policy revision has had the opportunity to review and discuss each proposal and to suggest changes. Through this process, the interests of the various stakeholders can be identified and incorporated into the policies. The objective of this process is to ensure department-wide consistency and fairness in the application of the policies. The expectation is that the policies currently under review will be finalized by the end of the calendar year and can be submitted to the federal court for approval.

## **CASE MONITORING ACTIVITIES**

To accommodate the intensive training sessions necessary for the staff attorneys in this new endeavor, it was determined that full monitoring by the Bureau of Independent Review would not commence until July 1, 2005. Nonetheless, the Bureau of Independent Review elected to respond to critical incidents and to monitor selected cases during the initial January-June 2005 reporting period to familiarize bureau attorneys with the Office of Internal Affairs investigative process and the California Department of Corrections and Rehabilitation disciplinary process, as well as to evaluate the efficacy of the newly drafted Bureau of Independent Review protocols.

The tables below summarize the critical incidents to which the bureau staff responded and the criminal and administrative investigations monitored by the bureau during the initial reporting period. It is important to note that, depending on the circumstances, not all critical incidents result in a criminal or administrative investigation. It is also important to note that not all cases monitored during the reporting period are listed here. Although it is the goal of the Bureau of Independent Review to report on every case in a timely manner, there are several exceptions. For instance, criminal investigations will be included in public reports only after the local district attorney has reviewed the case. Likewise, administrative investigations will be reported only after the hiring authority has made its findings in the case. And in all instances, the Bureau of Independent Review retains discretion to delay reporting on a particular investigation if to do so will jeopardize the case. Most cases monitored, however, will be reported within the corresponding reporting period. With full monitoring under way as of July 1, 2005, the bureau's future reports will also include data on the number, type, and disposition of cases monitored during each six-month period.

### **CRITICAL INCIDENTS**

Critical incidents are those involving the significant use of force or incidents resulting in the death or serious injury of an inmate. Correctional officers at the California Department of Corrections and Rehabilitation are authorized and trained to use force, including deadly force, in certain circumstances. Correctional officers routinely encounter situations in which the use of force may be necessary, for example, in self defense, to protect others, to prevent an escape, or to control a riot. When the level of force used appears to exceed the legally justifiable level or results in disproportionate injuries to the recipient, however, the actions of the correctional officer involved require scrutiny.

The use of significant force in which an inmate is seriously injured or killed frequently result in public complaints and inquiries by legislators, the media, and prisoners' rights organizations. Such incidents, though infrequent, often result in civil actions against the officers and the California Department of Corrections and Rehabilitation. Occasionally, such incidents result in the filing of criminal charges at the state or federal level against the officers involved. The death or serious injury of an inmate is also an event in which the public has active interest and a right to know whether the officer's actions were appropriate.

Because the use of significant force is one of the most potentially controversial exercises of authority by correctional officers, the Bureau of Independent Review has a responsibility to

respond immediately to such incidents. The unexpected or unexplained death, murder, or suspicious suicide of an inmate at a correctional institution or facility may point to a related problem in staff supervision, training, or conduct as a contributing factor. Investigating inmate assaults upon staff, which can cause significant or life-threatening injuries, is also essential in bringing the perpetrator to justice and preventing similar occurrences in the future.

Due to the sensitivity of use-of-force incidents and inmate deaths from other than natural causes, coupled with the perishable nature of evidence in institutional settings, the Bureau of Independent Review makes every effort to respond to these incidents at once —meaning that the bureau dispatches an attorney to the scene immediately. Key to the success of this effort is early notification of such incidents by the institution staff to the Bureau of Independent Review and the Office of Internal Affairs. To facilitate early notification, it is now the practice of the California Department of Corrections and Rehabilitation to include the Bureau of Independent Review in its critical incident notification procedures. In addition, the Assistant Secretary of the Office of Internal Affairs and the Bureau of Independent Review Chief Assistant Inspector General regularly communicate with one another whenever a significant use-of-force incident occurs to determine whether the required notification has taken place.

Once notification is made, the Bureau of Independent Review attorney assigned to the institution is normally the one dispatched to respond to the incident. During non-business hours, including weekends, a Bureau of Independent Review attorney in each region is “on-call” at all times to receive the notification. The Bureau of Independent Review currently responds in such a manner to all incidents involving the use of significant force, serious assaults upon staff, and inmate deaths from other than natural causes. Bureau of Independent Review attorneys respond immediately to these events to get a first-hand look at the scene and to spot investigative and legal issues that may need special attention during the Office of Internal Affairs investigation.

When Bureau of Independent Review attorneys respond to an incident, whether a shooting, a riot, or serious injury to a staff member or inmate, the purpose is to ensure that the incident undergoes a thorough, unbiased, and objective investigation by the proper authorities when circumstances call for an investigation. Armed with the results of a thorough investigation, the California Department of Corrections and Rehabilitation can use the information not only to determine whether discipline is warranted, but also to assess training areas needing attention to improve the safety of the correctional institution, its employees, and the inmate population.

The following table summarizes the incidents to which Bureau of Independent Review attorneys responded during the January through June 2005 reporting period.

**SUMMARY OF CRITICAL INCIDENTS — JANUARY-JUNE 2005**

SUMMARY OF INCIDENT	BUREAU ACTIONS	BUREAU IMPACT	CONCLUSIONS & NOTES
<p>On August 28, 2004, the Office of Internal Affairs notified the Bureau of Independent Review of an inmate death that had occurred the previous day. The inmate died in the prison infirmary following two separate physical confrontations with correctional officers. The officers used a significant amount of OC pepper spray before applying a spit mask over the inmate’s head, but did not decontaminate the inmate following the second confrontation.<sup>4</sup></p>	<p>The bureau met with the institution warden and executive staff; consulted with the institution’s investigative services unit; viewed the scene; and reviewed preliminary reports prepared by the staff members involved concerning the incident.</p>	<p>The bureau took steps to ensure that the local sheriff’s department, in conjunction with the local district attorney’s office, conducted a homicide investigation of the incident (the sheriff’s department initially declined). In addition, at the bureau’s request, the director of the Department of Corrections and Rehabilitation issued a statewide policy memorandum restricting the use of spit masks on inmates after they have been sprayed with OC spray unless and until they have been thoroughly decontaminated.</p>	<p>The institution acknowledged the late notification to the bureau and took steps to remedy the problem.</p>
<p>On November 30, 2004, an inmate was observed on an exercise yard stabbing another inmate with a weapon. Despite verbal warnings and a warning shot, the inmate continued to assault the victim. A correctional officer fired one round from a rifle in response, striking the inmate in the ribcage. The inmate collapsed on the ground and died in the facility clinic shortly thereafter. The victim sustained three stab wounds in the neck and chest but subsequently recovered. Investigators from the Office of Internal Affairs and the Law Enforcement and Investigations Unit arrived on the scene within an hour of the shooting.<sup>5</sup></p>	<p>The Bureau of Independent Review arrived at the institution shortly after the incident. The bureau met with executive staff and the institution’s investigative services unit; viewed the scene, reviewed videotapes of the incident, reviewed evidence; and consulted with the responding Office of Internal Affairs and Law Enforcement Investigations Unit investigators.</p>	<p>The bureau provided independent oversight of the deadly force investigation and the review process.</p>	<p>The bureau noted that the investigators responded to the scene in a timely manner. The report prepared by the Law Enforcement and Investigations Unit was satisfactory. Also, the Deadly Force Review Board subsequently concluded that the shooting was within policy, a conclusion with which the bureau agrees.</p>

<sup>4</sup> This incident is included here even though it did not take place within the January – June 2005 reporting period in order to help provide a complete summary of the initial activities of the Bureau of Independent Review.

<sup>5</sup> *Ibid.*

SUMMARY OF INCIDENT	BUREAU ACTIONS	BUREAU IMPACT	CONCLUSIONS & NOTES
<p>On December 31, 2004, the Bureau of Independent Review received notification from the Office of Internal Affairs that an inmate had been pronounced dead the previous day following a use-of-force incident involving two correctional officers. The institution initially reported that the inmate's death was not the result of the force applied during the incident, but an autopsy conducted on January 1, 2005, determined that force may have contributed to the inmate's death. The autopsy findings were reported to the bureau immediately and the bureau was asked to attend a meeting scheduled for January 3, 2005, with the San Diego Sheriff's Department to determine the investigative strategy for the case.<sup>6</sup></p>	<p>At the January 3, 2005, meeting, the bureau consulted with the institution's warden and investigative services unit and actively solicited the assistance of the sheriff's department to take the lead in the investigation. The sheriff's department accepted that responsibility and conducted numerous staff interviews the same day. Before leaving the institution on January 4, 2005, the bureau toured the scene of the incident, conferred with the warden individually, and received a briefing on the investigative interviews from the sheriff's department.</p>	<p>Of significant note was the institution's untimely reporting of the incident and premature assessment that force was not a contributing factor in the inmate's death. Procedures were discussed to prevent a similar occurrence in the future—namely, that an investigation would commence for all use-of-force incidents in which an inmate dies or sustains serious bodily injury unless and until an autopsy determines that the cause of death was not the result of the force applied. The bureau also recommended and was involved in follow-up discussions that led to a memorandum of understanding between the institution and the sheriff's department clarifying their respective roles and duties in future use-of-force incidents.</p>	<p>The sheriff's department completed its investigation in a timely manner once the issue of its involvement in the investigation was resolved.</p>
<p>On March 13, 2005, the Bureau of Independent Review was notified of a suspicious inmate death. The inmate was found in his cell bleeding from the arm. He was removed from the cell, but life-saving measures were unsuccessful and he subsequently died.</p>	<p>The bureau responded to the institution immediately and found that the inmate had already died. It became evident as the investigation progressed that the inmate had purposely punctured an artery and that his death was a suicide. The bureau ensured that proper protocols were followed in preserving and processing the scene and in conducting witness and suspect interviews. The bureau also assisted in having the local district attorney's crime lab respond and process the physical evidence. The bureau followed up by reviewing all of the evidence and reports in the case.</p>	<p>The bureau provided independent oversight of the death investigation and evidence processing. The bureau's relationship with local agencies facilitated the timely response of the county crime lab, which greatly assisted in resolving the cause of death.</p>	<p>The institution's investigative services unit responded to the incident in a professional and thorough manner.</p>

<sup>6</sup> *Ibid.*

SUMMARY OF INCIDENT	BUREAU ACTIONS	BUREAU IMPACT	CONCLUSIONS & NOTES
<p>On March 20, 2005, an institution called the Bureau of Independent Review to report the homicide of an inmate who had allegedly been killed by his cellmate.</p>	<p>The bureau responded to the institution and was joined by employees from the institution's investigative services unit and investigators from the local district attorney's office. The bureau monitored the investigation to ensure proper collection of physical evidence, preservation of the crime scene, and planning for witness interviews.</p>	<p>The bureau provided independent oversight of the investigation and evidence processing and provided advice regarding witness interview order, scope, and depth. The bureau also identified a systemic problem with the release of inmate records by the California Department of Corrections and Rehabilitation in criminal investigations.</p>	<p>The district attorney filed a homicide case against the cellmate. That case is now pending.</p>
<p>On April 7, 2005, an inmate collapsed at an institution and was taken to a hospital, where he was pronounced dead at approximately 8:15 a.m. The institution contacted an investigator at the local district attorney's office that morning and reported that an inmate had died of unknown causes. The autopsy eventually ruled the cause of death to be natural and attributable to an existing condition, along with pulmonary embolism, thrombosis, and hypertension.</p>	<p>The bureau did not take action because it was not notified of the death.</p>		<p>The Bureau of Independent Review did not receive notice of the incident from the institution, but instead was notified by the investigator from the district attorney's office. The bureau clarified its call-out procedure with the institution to ensure timely notice of suspicious inmate deaths in the future.</p>
<p>On April 7, 2005, the Bureau of Independent Review joined investigators from the Office of Internal Affairs in response to a report that an inmate had been held in a phone booth-sized wire-mesh holding cell for approximately seven days. Shortly after the investigation began, the bureau learned that a second inmate had been housed in a similar but somewhat larger wire-mesh holding cell for the same period of time.</p>	<p>The bureau remained at the institution for a total of six days, during which time the bureau staff attended approximately 17 staff interviews, visited the scene, and ensured that photographs of the scene were taken and that physical evidence was collected.</p>	<p>The bureau suggested corrective action to the institution's holding cell policies. After consultation with the bureau, the institution took remedial measures to improve its holding cell policies. The Department of Corrections and Rehabilitation subsequently issued a statewide memorandum directing the development and implementation of revised procedures governing the use of all such holding cells.</p>	<p>Once the institution management discovered the issue, the bureau detected no deficiencies in the institution's response to the incident and no deficiencies in the response of the Office of Internal Affairs.</p>

SUMMARY OF INCIDENT	BUREAU ACTIONS	BUREAU IMPACT	CONCLUSIONS & NOTES
			Disciplinary action is now pending.
<p>On May 17, 2005, the Bureau of Independent Review responded to the alleged homicide of an inmate who reportedly had been beaten to death by his cellmate, who had been moved into the cell two days earlier. An hour before staff became aware of the assault, the victim had been seen by a medical technical assistant for diabetes testing. At that time, a correctional officer accompanying the assistant observed that the victim's speech was slurred and that he appeared to be shaking and sweating. When the officer checked on the victim's status 40 minutes later, he found the victim unconscious in the cell. The victim was declared dead at the scene.</p>	<p>The bureau consulted with the institution's investigative services unit, viewed the scene, and reviewed preliminary reports prepared by the institution staff concerning the incident.</p>	<p>The bureau ensured that the initial investigation was handled appropriately and then handed off to local law enforcement for supplemental investigation and prosecution. The bureau also identified a problem with the classification level of the inmate who conducted the assault. That matter is presently under investigation.</p>	<p>The Monterey County District Attorney's Office has initiated a criminal investigation into the matter. That matter is still pending.</p>
<p>On June 5, 2005, the Bureau of Independent Review received notification of a use-of-force incident that had occurred at approximately 9:00 p.m. the previous day. During the incident, two correctional officers fired less-than-lethal rounds using a 37mm rifle in the direction of four inmates who were engaged in a fight and one officer fired a less-than-lethal round using a 40mm launcher. One inmate was hit in the head and taken to the hospital. The institution's investigative services unit initially investigated the incident.</p>	<p>The bureau did not respond to the institution due to the late notification and the fact that the scene had already been cleared. Instead, the bureau made immediate contact with the hospital to determine the inmate's condition. The bureau then notified the Office of Internal Affairs of the situation. The bureau maintained telephone contact with the institution on a continuous basis and updates were provided to the bureau by the institutional staff for approximately two hours, until the bureau was advised by the staff at the hospital that the inmate was stable and no longer in critical condition.</p>	<p>The bureau discussed the issue of late notification with the institution, which readily acknowledged the error. Steps have been taken to remedy the problem.</p>	<p>The bureau is monitoring the criminal investigation by the Office of Internal Affairs and the management review undertaken by the Law Enforcement and Investigations Unit as a result of the incident.</p>

SUMMARY OF INCIDENT	BUREAU ACTIONS	BUREAU IMPACT	CONCLUSIONS & NOTES
<p>On June 22, 2005, the Office of Internal Affairs called the Bureau of Independent Review to notify the bureau that an inmate had been severely beaten at an institution by unknown suspects. Upon making direct contact with the institution's investigative services unit the bureau learned that the inmate was not expected to survive. The inmate died several days later.</p>	<p>Because of the life-threatening nature of the inmate's injuries, the bureau responded immediately to the institution.</p>	<p>During the bureau's consultations with the institution, the institution identified several concerns regarding its own response to the incident, particularly the need to improve its ability to protect crime scenes and collect evidence.</p>	<p>The bureau continues to monitor the criminal homicide investigation by the institution's investigative services unit, which has already resulted in the identification of at least five suspects.</p>
<p>On June 28, 2005, the Office of Internal Affairs called the Bureau of Independent Review to advise the bureau that it was responding to an institution where a non-sworn employee was being detained by the institution's investigative services unit for introducing contraband to an inmate at the institution.</p>	<p>Because the bureau was at a nearby institution on an unrelated matter, the bureau arrived at the institution before any of the internal affairs investigators. Upon arrival, the bureau received a briefing from the institution's investigative services unit. The bureau observed the activities of both the investigative services unit and the Office of Internal Affairs throughout the incident.</p>	<p>The bureau identified several issues of concern that arose during the investigators' initial response to the incident, including the length of the suspect-employee's initial detention, the procedures followed during the suspect-employee's initial interview, and the protection afforded the suspect-employee's right to union representation. The bureau provided recommendations at the institution concerning these and other issues.</p>	<p>The issues previously raised by the bureau are the subject of continued legal research and further discussion with the Office of Internal Affairs. A criminal prosecution of the employee is pending.</p>

## ADMINISTRATIVE INVESTIGATIONS

It is the mission of the Bureau of Independent Review to ensure that the right results are reached for the right reasons in every California Department of Corrections and Rehabilitation internal affairs investigation. Toward that end, the Bureau of Independent Review uses a variety of methods, techniques, and frequency of consultation to monitor internal affairs investigations conducted by the department into allegations of criminal or administrative misconduct by department employees.

Most internal affairs investigations involve allegations of administrative misconduct, which, if sustained, may result in corrective action or disciplinary action, depending on the severity of the misconduct. In the most severe disciplinary cases, the subject-employee may be terminated. The bureau is keenly aware of the serious consequences disciplinary action can have for the subject-employee, as well as the consequences to the department if misconduct is not promptly detected and adequately addressed. Therefore, the bureau seeks to ensure the timeliness, thoroughness, and fairness of every internal affairs investigation it monitors.

To accomplish that goal, the bureau reviews every written request for investigation submitted to the Office of Internal Affairs to determine the most appropriate method, technique, and frequency of consultation for reviewing and monitoring the investigation. If the allegation involves serious employee misconduct, the bureau will usually initiate its highest level of review—real-time continuous review—for the duration of the investigation. Serious employee misconduct includes employee dishonesty, lack of integrity, abuse of authority, sexual misconduct, use of deadly force, use of significant force with injury, and serious allegations against supervisors. Most criminal misconduct is also considered serious employee misconduct. The bureau may also conduct real-time continuous review of high-profile cases at its discretion. All other misconduct is considered general employee misconduct.

Real-time continuous review is the most rigorous type of monitoring conducted by the bureau. A bureau attorney conducting real-time continuous review remains in constant consultation with the investigator and attorney (vertical advocate) assigned to the matter by the California Department of Corrections and Rehabilitation to ensure among other things that the statute of limitations has been accurately calculated, that the investigative strategy developed is in compliance with all applicable statutory and constitutional obligations, and that measurable progress is made on the case. Upon completion of the investigation, the bureau attorney reviews the reports and the supporting evidence to assess the quality and adequacy of both. If the hiring authority proposes disciplining the subject-employee based on the evidence presented in the investigative report, the bureau attorney also consults with the hiring authority regarding the appropriateness of that action.

Investigations into general employee misconduct are subject to less-frequent monitoring by the bureau, but no less rigorous review. In those cases, the bureau normally initiates its second-highest level of review—critical juncture review. As in the real-time continuous review described above, the staff-attorney consults with the investigator and attorney assigned to the

matter by the department, but the frequency of consultation is not continuous and instead depends on the number of critical events that occur during the investigation, such as scene visits, evidence collection, and subject interviews. Similarly, if disciplinary action is proposed as a result of the investigation, the staff-attorney consults with the hiring authority and offers his or her reasoned and independent assessment of the merits of the case.

The following table summarizes the Office of Internal Affairs administrative cases monitored by the Bureau of Independent Review during the January through June 2005 reporting period.

**SUMMARY OF ADMINISTRATIVE INVESTIGATIONS — JANUARY-JUNE 2005**

<b>SUMMARY OF INCIDENT</b>	<b>BUREAU ACTION</b>	<b>BUREAU IMPACT</b>	<b>CONCLUSIONS &amp; NOTES</b>
<p>On September 19, 2003, a female inmate alleged that a correctional officer engaged in sexual relations with her during her previous incarceration at the institution. The inmate further alleged that the subject-employee deposited money in her inmate account and gave her marijuana in exchange for sex. She alleged that she became pregnant with the subject-employee's baby, but that the baby died while she was on parole.</p> <p>No medical records supported the female inmate's claim that she was pregnant at the time in question, nor did coroner records support her claim that a baby died in her care. Furthermore, institution records revealed that the subject-employee was not on duty on the days the female inmate allegedly engaged in sex with him. When confronted with the above evidence, the female inmate recanted all of her allegations.<sup>7</sup></p>			<p>On the basis of the investigative report, the hiring authority sustained none of the allegations against the subject-employee. The Bureau of Independent Review concurred with the hiring authority's decision.</p>
<p>On December 15, 2003, a telephone conversation between an off-duty correctional officer and her son, who at the time was incarcerated in the local county jail, was overheard by a sheriff's detective authorized to monitor such calls. During the telephone call the correctional officer allegedly conspired with her son to hide</p>	<p>The Bureau of Independent Review reviewed the investigative reports.</p>		<p>The subject-employee pled to misdemeanor possession of stolen property and resigned before the imposition of disciplinary action.</p>

<sup>7</sup> This incident is included here even though it did not take place within the January – June 2005 reporting period in order to help provide a complete summary of the initial activities of the Bureau of Independent Review.

SUMMARY OF INCIDENT	BUREAU ACTION	BUREAU IMPACT	CONCLUSIONS & NOTES
stolen property. When confronted by local law enforcement, the correctional officer at first denied the charge, but ultimately confessed. <sup>8</sup>			
Between January and September 2004, a supervising cook with the California Department of Corrections allegedly engaged in overly familiar relations with more than one inmate. <sup>9</sup>	The Bureau of Independent Review monitored the administrative investigation, as well as the parallel criminal investigation.		The subject-employee resigned before the imposition of any disciplinary action and that fact was noted in her employment file.
On June 13, 2004, an off-duty correctional officer was arrested for willful discharge of a firearm and assault with great bodily injury. The incident occurred while the subject-employee was attending a party. A fracas erupted among the guests, and witnesses allege that the subject-employee pulled out a handgun and fired three rounds overhead. Witnesses also allege that the subject-employee, without provocation, kicked another partygoer in the head and chest repeatedly, after which the victim lost consciousness and was transported to a nearby medical center. The victim received treatment for a split eyelid, lacerations, and bruising. <sup>10</sup>	The Bureau of Independent Review monitored the investigation.		The hiring authority imposed termination on the subject-employee. The bureau concurred in the hiring authority's decision.
On June 26, 2004, an off-duty correctional officer was arrested for vandalism and felony grand theft. <sup>11</sup>			The subject-employee resigned before the imposition of

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

SUMMARY OF INCIDENT	BUREAU ACTION	BUREAU IMPACT	CONCLUSIONS & NOTES
			disciplinary action, and that fact was noted in his employment file.
On July 15, 2004, a correctional officer was arrested for spousal abuse, assault with intent to commit great bodily injury, and felony mayhem. The subject-employee allegedly broke through his estranged wife's apartment door to confront her and her boyfriend. A fight broke out between the subject-employee and the boyfriend, resulting in injuries to the boyfriend. <sup>12</sup>	The Bureau of Independent Review monitored the administrative investigation, as well as the parallel criminal investigation.	At one point during the investigation the bureau intervened to ensure that it would be completed in a timely fashion.	As a result of the subject-employee's <i>Skelly</i> hearing, the proposed disciplinary action was reduced to a 5 percent reduction in pay for six months. The bureau concurred in the reduction on the basis of the quality of testimony by the victims in the parallel criminal case.
It was discovered in October 2004, that for several months in 2004, a correctional officer allegedly engaged in overly familiar relations with multiple parties, including inmates, parolees, and inmate/parolee family members. <sup>13</sup>	The Bureau of Independent Review monitored the investigation.		The bureau found the investigation to be thorough and prompt. The subject-employee resigned before the imposition of any disciplinary action, and that fact was noted in her employment file.
On October 10, 2004, a correctional officer was arrested for misdemeanor driving under the influence and felony possession of methamphetamine. <sup>14</sup>	The Bureau of Independent Review monitored the investigation.		The subject-employee resigned before the imposition of disciplinary action, and that fact was noted in

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

SUMMARY OF INCIDENT	BUREAU ACTION	BUREAU IMPACT	CONCLUSIONS & NOTES
			his employment file.
On or about October 14, 2004, a correctional officer allegedly engaged in sexual misconduct with an inmate and smuggled narcotics into the institution. <sup>15</sup>	The Bureau of Independent Review monitored the administrative investigation, as well as the parallel criminal investigation.		The subject-employee resigned before the imposition of disciplinary action, and that fact was noted in her employment file.
On December 17, 2004, an off-duty correctional lieutenant was arrested for spousal abuse, mayhem, and felony assault with force likely to cause great bodily injury. <sup>16</sup>	The Bureau of Independent Review monitored the administrative investigation.	The bureau recommended that the subject-employee be dismissed from his position as a peace officer in light of the fact that individuals convicted of spousal abuse are prohibited from possessing a gun under state and federal law.	The hiring authority demoted the subject-employee to a non-sworn position. The bureau concurred with the hiring authority's decision.
In January 2005, it was discovered that a correctional case supervisor had allegedly married an inmate by telephone on August 27, 2003 and had lied in order to have him paroled to her residence when he was released in 2005.	The Bureau of Independent Review monitored the investigation.		The subject-employee resigned before the imposition of disciplinary action, and that fact was noted in her employment file.
On January 12, 2005, a supervisor allegedly married an inmate.	The Bureau of Independent Review monitored the investigation.		The subject-employee resigned before the imposition of disciplinary action, and that fact was noted in her employment file.
On February 25, 2005, a correctional officer confessed during sworn testimony at a family court hearing that he was using illegal narcotics, including cocaine and methamphetamine. The subject-employee	The Bureau of Independent Review monitored the investigation.	Although the subject-employee's admissions did not result in criminal charges, the Bureau of Independent Review monitored the administrative investigation to ensure that his drug	The subject-employee accepted a demotion to a non-sworn staff position and is subject to random drug testing.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

SUMMARY OF INCIDENT	BUREAU ACTION	BUREAU IMPACT	CONCLUSIONS & NOTES
further admitted that he would fail a drug test if one were given.		problem would be addressed and institution safety would not be compromised.	The bureau concurred with the demotion.
A March 14, 2005 report authored by a medical review officer alleged that a correctional sergeant tested positive for amphetamines and methamphetamines.	The Bureau of Independent Review monitored the investigation.		The subject-employee resigned before the imposition of any disciplinary action, and that fact was noted in his employment file
On April 11, 2005, a correctional officer allegedly engaged in sexual misconduct with an inmate. It was also alleged that the officer had smuggled narcotics into the institution.	The Bureau of Independent Review monitored the administrative investigation, as well as the parallel criminal investigation.		The subject-employee resigned before the imposition of any disciplinary action, and that fact was noted in her employment file.

## CRIMINAL INVESTIGATIONS

As discussed in the previous section, the Bureau of Independent Review uses a variety of methods, techniques, and frequency of consultation to monitor internal affairs investigations conducted by the California Department of Corrections and Rehabilitation. Although the number of internal affairs investigations involving allegations of criminal misconduct is far less than the number involving alleged administrative misconduct, there is no greater detriment to institution security in the long term than when criminal allegations against department employees are found to be true. Therefore, it is the bureau's policy that internal affairs investigations into alleged criminal misconduct receive the most rigorous monitoring — that is, real-time continuous review. Moreover, criminal investigations must comply with numerous state and federal legal procedures upon which the bureau's attorneys are ideally suited to comment, given their extensive legal training. In light of the serious nature of these criminal investigations, the potential loss of liberty to the subject-employee if the allegations are sustained, and the department's legal responsibility to detect, investigate, and refer all criminal misconduct to local prosecutors, the bureau seeks to ensure through its monitoring activity that every internal affairs investigation involving alleged criminal misconduct is timely, thorough, and fair.

To accomplish this purpose, the bureau consults not only with the department's own investigators, but also with local prosecutors in numerous district attorneys' offices throughout the state, as well as other local law enforcement officials, such as sheriff and police departments. Among other things, the bureau strives to improve the department's crime scene preservation, evidence collection, and emergency response procedures by maintaining regular communication with local law enforcement agencies in the given community. In addition, the bureau has engaged in extensive training on criminal procedure issues with institution and internal affairs staff. It is the bureau's hope that as a result, every internal affairs investigation involving alleged criminal misconduct will be performed in a highly professional manner, consistent with all applicable state and federal laws and suitable for prosecution if the facts warrant such action. In short, it is the bureau's mission to ensure the truth is learned and justice is achieved in every criminal case.

The following table summarizes the Office of Internal Affairs criminal cases monitored by the Bureau of Independent Review during the January through June 2005 reporting period.

**SUMMARY OF CRIMINAL INVESTIGATIONS — JANUARY-JUNE 2005**

<b>SUMMARY OF INCIDENT</b>	<b>BUREAU ACTION</b>	<b>BUREAU IMPACT</b>	<b>CONCLUSIONS &amp; NOTES</b>
<p>On August 26, 2002, a recently paroled inmate alleged that another inmate incarcerated for a parole violation had repeatedly solicited the murder of his parole agent. The Law Enforcement and Investigations Unit assigned an investigator to assess the threat to the parole agent. When the investigator testified before the Board of Prison Terms regarding his investigation, the incarcerated inmate was denied parole. On June 24, 2004, the incarcerated inmate accused the investigator of committing perjury during the board hearing.<sup>17</sup></p>	<p>The Bureau of Independent Review monitored the administrative investigation.</p>		<p>The bureau concurred that there was insufficient evidence to sustain a criminal charge against the investigator.</p>
<p>On December 5, 2003 a control booth officer allowed two cellmates out of their cell to talk with him. That action violated institution security protocols, which required the presence of a floor officer. When the two inmates became disruptive and refused to return to their cell, the administrative officer-of-the-day approved a plan proposed by the facility lieutenant to extract the inmates with a team of officers armed with 37mm launchers and sponge rounds. A fight broke out during the extraction and numerous sponge rounds</p>			<p>The Office of Internal Affairs requested an extension of time to complete this investigation because of the multitude of subjects involved. The district attorney's office did not file charges in the case.</p>

<sup>17</sup> This case is included here even though it did not take place within the January – June 2005 reporting period because the monitoring activity of the Bureau of Independent Review did take place within that time period and this is the bureau's first opportunity to report on it.

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<p>were fired from the launcher. Eventually, one inmate surrendered and officers subdued the other inmate, placing him face down on the ground. The facility lieutenant then ordered a “cease fire,” but two correctional officers fired additional sponge rounds, at least one of which struck the subdued inmate. The injuries to the inmate included two broken fingers and a laceration to the neck/back area.<sup>18</sup></p>			
<p>On December 15, 2003, a telephone conversation between an off-duty correctional officer and her son, who at the time was incarcerated in the local county jail, was overheard by a sheriff’s detective authorized to monitor such calls. During the telephone call the correctional officer allegedly conspired with her son to hide stolen property. When confronted by local law enforcement, the correctional officer at first denied the charge, but ultimately confessed.<sup>19</sup></p>	<p>The Bureau of Independent Review reviewed the investigative reports and concluded that there was sufficient evidence to prosecute.</p> <p>The Office of Internal Affairs referred the case to local prosecutors for criminal charges, but the district attorney’s office initially rejected the case, citing a lack of sufficient evidence.</p> <p>The bureau then met with the district attorney’s office and requested reconsideration of the charges.</p>	<p>The district attorney’s office gave the matter renewed attention and subsequently filed a felony charge against the correctional officer for conspiracy to possess stolen property.</p>	<p>The subject-employee pled to misdemeanor possession of stolen property and resigned before the imposition of disciplinary action.</p>
<p>Between January and September 2004, a supervising cook with the California Department of Corrections allegedly engaged in overly familiar relations with more than one inmate.<sup>20</sup></p>	<p>The Bureau of Independent Review monitored the criminal investigation, as well as the parallel administrative investigation.</p>		<p>The subject-employee pled guilty to one misdemeanor count of unauthorized communication with an inmate.</p>

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

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<p>On May 12, 2004, two correctional officers failed to properly secure the cell doors of rival inmates, permitting them to exit and fight with one another. The officers took immediate action to stop the fight and secured the inmates without significant injuries to either. The internal affairs investigation found that a mechanical malfunction in the cell door locking devices occurred at the time of the incident, but faulted the officers for not properly following institution security protocols for such situations. It was also learned that one of the correctional officers involved was administratively reprimanded for a similar incident in March and again in August of 2003.<sup>21</sup></p>	<p>The Bureau of Independent Review obtained for review a copy of the investigative report, which was not completed until January, 2005.</p>		<p>The district attorney's office elected not to file criminal charges against the two officers, citing a lack of sufficient evidence to prove criminal intent on the part of either officer in the incident.</p>
<p>On June 13, 2004, an off-duty correctional officer was arrested for willful discharge of a firearm and assault with great bodily injury. The incident occurred while the subject-employee was attending a party. A fracas erupted among the guests and witnesses allege that the subject-employee pulled out a handgun and fired three rounds overhead. Witnesses also allege that, without provocation, he kicked another partygoer in the head and chest repeatedly, after which the victim lost consciousness and was transported to a nearby medical center. The victim received treatment for a split eyelid, lacerations, and bruising.<sup>22</sup></p>	<p>The Bureau of Independent Review monitored the criminal investigation.</p>		<p>The subject-employee pled guilty to misdemeanor discharge of a firearm and was granted probation. As a result of his conviction, the subject-employee may not possess a firearm pursuant to state and federal law.</p>
<p>On June 23, 2004, an employee overheard</p>			<p>The district attorney's</p>

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

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<p>inmates discussing another female inmate who had allegedly engaged in sexual acts with a correctional officer in exchange for contraband, including tobacco and cigarette lighters. When confronted with the information, the female inmate in question alleged that she and the subject-employee had engaged in oral copulation, digital penetration, and intercourse. She further claimed that the subject-employee gave her tobacco and cigarette lighters.<sup>23</sup></p>			<p>office filed two criminal counts against the subject-employee for engaging in a sexual act with an inmate. The subject-employee pled guilty to one count and resigned before the imposition of disciplinary action.</p>
<p>On July 6, 2004, a parole agent allegedly logged onto one of the office computers and accessed the criminal history of a parolee assigned to another parole agent for purposes of delivering a copy of the criminal history to a friend. The friend then used the criminal history information in family court during a child custody hearing involving the parolee. The Office of Internal Affairs referred the case to local prosecutors for criminal charges, but the district attorney's office initially rejected the case.<sup>24</sup></p>	<p>The Bureau of Independent Review met with the district attorney's office and the Office of Internal Affairs.</p>	<p>The district attorney's office gave the matter renewed attention and subsequently filed a misdemeanor charge against the parole agent for furnishing confidential information to an unauthorized person.</p>	<p>This case is pending the empanelment of a jury for trial.</p>
<p>On October 10, 2004, a correctional officer was arrested for misdemeanor driving under the influence and felony possession of methamphetamine.<sup>25</sup></p>	<p>The Bureau of Independent Review monitored the criminal investigation.</p>		<p>The investigation led to the subject-employee pleading guilty to both criminal charges.</p>
<p>On January 13, 2005, an institution instructor allegedly submitted a falsified travel expense claim concerning an off-site</p>			<p>The district attorney's office filed charges of forgery and petty theft.</p>

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

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<p>training event. The subject-employee requested reimbursement for the use of his personal vehicle to and from the training event, but the institution discovered that the subject-employee had received a ride from a co-worker.</p>			
<p>On January 18, 2005, a correctional officer was found among several inmates in the institution barbershop along with five bags of tobacco and a cell phone. The subject-employee was eventually detained. The subject-employee indicated he did not have a car on the premises, and after a car thought to be his was located in the parking lot, the subject-employee denied it was his. A key in the possession of the subject-employee unlocked the car door, however.</p> <p>The investigative services unit at the institution made numerous calls to the Legal Affairs Division of the California Department of Corrections and Rehabilitation in an attempt to determine if there was legal authority to search the vehicle, but to no avail. The unit then proceeded to search the car on the basis of a sign at the entrance to the facility indicating all cars are subject to search. Although the search of the car was initiated without the consent of the subject-employee, it did occur in his presence and in the presence of his union attorney. As a result of the search numerous items that corroborated the smuggling allegation were found in his car.</p>	<p>The Bureau of Independent Review monitored the criminal investigation.</p>	<p>The bureau met with investigators from the Office of Internal Affairs and the institution's investigative services unit, as well as the warden, to discuss the legal issues presented in the case. Specifically discussed was the inappropriateness of agreeing to withhold referral of criminal matters to the local district attorney's office, the need to complete an administrative investigation regardless of the subject-employee's resignation in order to ensure that the allegations were sustained in the event he applies at another institution, and the lack of sufficient guidance from the Legal Affairs Division concerning the proper search and seizure procedures to be followed in a given circumstance.</p>	<p>The bureau concluded that the work of the investigative services unit in this incident was commendable given the lack of guidance provided by the Legal Affairs Division. The institution erred, however, by not referring the matter to the district attorney's office. The bureau recommends that the California Department of Corrections and Rehabilitation make clear in its operations manual and future training curriculum that peace officers are obligated to refer all sustained acts of criminal misconduct to the district attorney's office. The bureau also recommends that the department remedy the responsiveness of the Legal Affairs Division</p>

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<p>The subject-employee offered to resign on the spot in exchange for a commitment by the hiring authority that the matter would not be referred to the district attorney's office. The warden accepted.</p>			<p>and pursue legislation criminalizing the possession of tobacco and cell phones by inmates.</p>
<p>On March 2, 2005, a correctional officer was arrested for spousal abuse, assault with intent to commit great bodily injury, and felony mayhem. The subject-employee allegedly broke through his estranged wife's apartment door to confront her and her boyfriend. A fight broke out between the subject-employee and the boyfriend, resulting in injuries to the boyfriend.</p>	<p>The Bureau of Independent Review monitored the criminal investigation, as well as the parallel administrative investigation, and at one point intervened to ensure that the investigation would be completed in a timely fashion.</p>		<p>The district attorney's office filed criminal charges and the case is currently pending empanelment of a jury for trial.</p>
<p>On April 11, 2005, a correctional officer allegedly engaged in sexual misconduct with an inmate. It was also alleged that the correctional officer had smuggled narcotics into the institution.</p>	<p>The Bureau of Independent Review monitored the criminal investigation, as well as the parallel administrative investigation.</p>		<p>The criminal case resulted in a guilty plea by the subject-employee to one misdemeanor count of unauthorized communication with an inmate.</p>

## SPECIAL REVIEWS

The Bureau of Independent Review participated in two special reviews during the January 2005 through June 2005 reporting period. The reviews are summarized below. The full text of the special reviews can be viewed on the Office of the Inspector General's website at [www.oig.ca.gov](http://www.oig.ca.gov).

- **Special Review into the Death of Correctional Officer Manuel Gonzalez, Jr.**

In March 2005, the Bureau of Independent Review participated in a special review by the Office of the Inspector General into the circumstances surrounding the death of Correctional Officer Manuel Gonzalez, Jr. who was fatally stabbed by an inmate at the California Institution for Men on January 10, 2005. A criminal investigation into the incident by the San Bernardino County Sheriff's Department resulted in murder charges against the inmate. The purpose of the special review was to identify systemic procedural and policy deficiencies, procedural violations, and other factors that may have contributed to the incident.

Four of the ten findings resulting from the review were prepared by the Bureau of Independent Review. Specifically, the bureau found the following:

- The medical clinic at the California Institution for Men's reception center, where the victim was taken after the stabbing, was poorly equipped and ill-prepared to handle the emergency.
- The institution management did not set up an emergency operations center or initiate an emergency operations plan in the wake of the stabbing due to ambiguous protocols. As a result, there was confusion in the chain of command, emergency operations policies were not implemented, the crime scene was destroyed, and an incident log was never initiated.
- The California Institution for Men did not implement important emergency procedures in the response to the incident, which led to contamination of the crime scene and loss of important evidence.
- The inmate accused in the incident was allowed to conduct a telephone conference with an attorney before he was indicted for the murder even though the attorney's request for the conference was not properly submitted in writing.

The Office of the Inspector General presented 19 specific recommendations to address the bureau's findings. The Bureau of Independent Review continues to monitor and report on the implementation of the corrective action plan prepared by the California Department of Corrections and Rehabilitation in response to the special review.

- **Special Review into the Death of Inmate Daniel Provencio**

In June 2005, the Bureau of Independent Review conducted a special review into the circumstances surrounding the death of inmate Daniel Provencio at Wasco State Prison. Provencio was struck in the head by a direct-impact sponge projectile fired by a correctional officer from a 40mm launcher on January 16, 2005 after a fight broke out among inmates during an evening meal. Provencio lapsed into a coma and died on March 4, 2005.

The Office of Internal Affairs of the California Department of Corrections conducted a criminal investigation into the incident and found no criminal misconduct by Wasco employees. The department's Law Enforcement and Investigations Unit conducted a use-of-force investigation into the incident and subsequently determined that the actions of the correctional officer who fired the direct-impact round were within department policy. The findings of the Law Enforcement and Investigations Unit were also presented to an independent Deadly Force Review Board, comprised of executive-level law enforcement officers from outside the department. The members of the Deadly Force Review Board determined that the officer's shooting of Provencio was reasonable under the circumstances and was in compliance with the department's policy governing the use of less-than-lethal direct-impact weapons. Warden P. L. Vazquez of Wasco State Prison also convened an "Institution-Head Review of Use-of-Force Critique and Qualitative Evaluation Analysis" Committee, which reviewed the matter and concluded there had been no employee misconduct during the incident.

The Bureau of Independent Review became involved immediately following the incident to ensure the timeliness, thoroughness, and objectivity of the investigations by the various entities and to identify any systemic policy or training deficiencies, procedural violations, or other factors that may have contributed to Provencio's death.

As a result of its review, the bureau determined that the investigations conducted of the incident were timely, thorough, and objective and that the conclusions reached by the investigative entities — that the actions of the officer did not involve criminal misconduct, that he acted in a reasonable manner, and that he complied with department policy in firing the 40mm direct-impact projectile — were supported by the weight of the evidence.

Although the bureau concurred with the findings described above, the special review revealed the following issues of concern:

- Inadequate training on the 40mm direct-impact launcher and lack of a consistent policy at the prison for qualification on the weapon may have contributed to the officer's inaccurate placement of the projectile.
- Wasco State Prison staff may not have regularly performed thorough security checks of the housing unit during shift changes; failed to conduct timely cell

searches of the housing unit after the incident; and failed to properly maintain the housing unit logbooks.

- Emergency notification procedures for use-of-force incidents at Wasco State Prison were deficient.
- Members of the Wasco State Prison staff improperly handled some of the evidence in the case, but that deficiency did not affect the investigation.
- None of the Department of Corrections entities investigating the incident was required to conduct an administrative investigation beyond the use-of-force review to determine whether corrective or disciplinary action of staff was appropriate. The Bureau of Independent Review voluntarily took on that task.

The Bureau of Independent Review issued six specific recommendations to address the findings. In response, the California Department of Corrections and Rehabilitation provided a corrective action plan designed to address the recommendations. The corrective action plan is now under review by the bureau.

## APPENDIX A: THE *MADRID* LITIGATION

### *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D. 1990)

The *Madrid* case resulted from a federal civil rights lawsuit filed by a group of inmates incarcerated at Pelican Bay State Prison in northwestern California. The inmates alleged that the State, the Department of Corrections, and several of its employees violated the First, Eighth, and Fourteenth amendments by (1) condoning a pattern and practice of using excessive force against inmates, (2) failing to provide inmates with adequate medical care, (3) failing to provide inmates with adequate mental health care, (4) imposing inhumane conditions in the security housing unit, (5) using cell-assignment procedures that exposed inmates to an unreasonable risk of assault from other inmates, (6) failing to provide adequate procedural safeguards when segregating prison gang affiliates in the security housing unit, and (7) failing to provide inmates with adequate access to the courts.<sup>26</sup> A court trial held in late 1993 before the Honorable Thelton E. Henderson, U. S. District Court, Northern District of California included testimony from 57 lay witnesses, numerous expert witnesses, and the presentation of more than 6,000 exhibits.

As to the inmates' claim that the defendants condoned a pattern and practice of using excessive force against inmates, the court recognized that the use of force must be carefully regulated and controlled in order to prevent abuses against inmates, as well as to ensure the overall safety and security of the prison.<sup>27</sup> The court noted: "Thus, adequate written policies provide the necessary framework for properly training staff and evaluating subsequent conduct. Yet, written policies alone serve little purpose unless staff is trained as to their content. Adequate supervision and investigation are necessary to ensure that, in practice, the staff is properly implementing written policies and principles learned through training. Finally, a meaningful disciplinary system is essential, for if there are no sanctions imposed for misconduct, the prison's 'policies and procedures' become a dead letter."<sup>28</sup>

After a thorough review and consideration of the testimonial and documentary evidence, the court concluded that the Eighth Amendment's restraint on using excessive force had been repeatedly violated at Pelican Bay State Prison, creating a conspicuous pattern of excessive force.<sup>29</sup> In many of the incidents testified to, the court found there was no justification for the use of force, or alternately, the use of force was appropriate, but the amount of force applied was strikingly disproportionate to the circumstances for which it was imposed. The court observed that it was more likely than not that force was used "for the very purpose of causing harm, rather than in a good faith effort to restore or maintain order."<sup>30</sup> The court also determined that despite a facially complex system for reviewing the use of force, the Department of Corrections demonstrated a lax attitude towards that review in both non-lethal and lethal force incidents, noting: "Indeed, meaningful firearm supervision of the kind that actually protects human beings is almost non-existent."<sup>31</sup>

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<sup>26</sup> *Madrid v. Gomez*, 889 F. Supp. 1146, 1156 (N.D. Cal. 1995).

<sup>27</sup> *Ibid.* at 1181.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* at 1161.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, at 1191.

The court also found that investigations conducted at the time by internal affairs personnel were “counterfeit investigation[s] pursued with one outcome in mind: to avoid finding officer misconduct as often as possible. [N]ot only are all presumptions in favor of the officer, but evidence is routinely strained, twisted or ignored to reach the desired result. The consequence is to reinforce an already clear message to line staff that unnecessary and excessive force will be tolerated, if not actively encouraged.”<sup>32</sup> “Given the lapses in supervision, and the unlikelihood that the IAD will find a misuse of force in any given case, officers rarely face the prospect of discipline for using excessive force against inmates.”<sup>33</sup>

Further aggravating the discipline arena, the court found, was evidence of a “code of silence” within the department. Designed to encourage prison employees to remain silent about the improper behavior of their fellow employees (particularly where excessive force has been alleged), the court noted that those who defied the code risked retaliation and harassment at the hands of their fellow employees.<sup>34</sup>

The court concluded that the defendants failed to provide: (1) clear and authoritative use-of-force policies; (2) any meaningful supervision of the use of force; (3) a bona fide investigatory process into allegations of misuse of force; and (4) consistent imposition of discipline in those cases in which misuse of force was found. “While a failure in one area might not raise any particular inference,” the court said, “the glaring deficiency in all of the above areas convinces us that such deficiencies are not accidental but the result of deliberate indifference. We agree that the extent to which force is misused at Pelican Bay, combined with the flagrant and pervasive failures in defendants’ systems for controlling the use of force reveal more than just deliberate indifference: they reveal an affirmative management strategy to permit the use of excessive force for the purposes of punishment and deterrence.”<sup>35</sup>

The court held that the defendants “permitted and condoned a pattern of using excessive force, all in conscious disregard of the serious harm that these practices inflict,” in violation of the Eighth Amendment.<sup>36</sup> Concluding that injunctive relief was both necessary and appropriate to ensure an effective remedy of the constitutional violations at issue, the court appointed a special master experienced in prison administration to fashion an appropriate remedy and to monitor the implementation of that remedy.<sup>37</sup>

***Madrid v. Woodford*, 60 Fed. R. Serv. 3d 56 (N.D. Cal. 2004)**

During his continued monitoring of the Department of Corrections, Special Master John Hagar discovered in July 2003 that the department had failed to conduct investigations of three correctional officers who had perjured themselves during the criminal trial of two other correctional officers. Hagar further discovered that the department had failed to follow a remedial plan (known as the “Post Powers Plan”), which had been specifically created to govern

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<sup>32</sup> *Ibid.* at 1192.

<sup>33</sup> *Ibid.* at 1196.

<sup>34</sup> *Ibid.* at 1156.

<sup>35</sup> *Ibid.* at 1199.

<sup>36</sup> *Ibid.*, at 1279-80.

<sup>37</sup> *Ibid.*, at 1282-83.

the internal investigations and discipline of employees who engaged in misconduct resulting from the criminal case.<sup>38</sup> The court directed Special Master Hagar to fully investigate the matter.

During his extensive inquiry, the special master determined that the three perjury investigations were delayed for months, were grossly understaffed, and were not completed within the one-year statute of limitations.<sup>39</sup> The special master further learned that the Office of Internal Affairs investigative agent and the Employment Law Unit attorney assigned to the cases were never told about the “Post Powers Plan” by their superiors at the Department of Corrections.<sup>40</sup> The special master also determined that the then-director of the Department of Corrections had ordered the three investigations “shut down” after it was disclosed to the California Correctional Peace Officers Association that one of the cases was being referred for criminal prosecution.<sup>41</sup> Finally, the special master discovered that at the meeting where the decision to close the three perjury investigations was made, it was also decided that the special master would be notified of the closures via a “fact finder” letter. The special master concluded that this letter, authored by the deputy director of the Office of Investigative Services, was sent to deceive the court by claiming the allegations lacked sufficient merit to warrant further investigation, when in fact, the “fact finding” emphasized only the weaknesses of the case without mentioning its strengths.<sup>42</sup>

The special master made several recommendations to the court to remedy the systemic deficiencies in the Department of Corrections’ investigation and disciplinary processes. Among these was the creation of the Bureau of Independent Review within the Office of the Inspector General to perform real-time evaluations of abuse-of-force and employee ethics-related internal affairs cases.<sup>43</sup>

The court agreed. “In short, the Special Master’s Report, in vivid and damning detail, documents that the CDC’s system for investigating and disciplining officers is broken to the core. Not only is the system dysfunctional from a managerial standpoint, but it is also subject to interference and obstruction from the CCPOA.”<sup>44</sup> “As this Court explained in its decision after trial, the ability to effectively investigate and discipline officers charged with abusing force (or interfering with abuse of force investigations) is essential to correcting the underlying constitutional violations found in this case, and thus to the final resolution of this long-standing litigation. Effective investigation and discipline is the final cornerstone of defendants’ use of force remedial plans since without effective investigation and discipline, all of the remedial policies, no matter how well conceived, and would eventually turn into little more than a “dead letter.”<sup>45</sup>

The court noted that since the issuance of the special master’s report, the Department of Corrections had made significant progress in addressing the systemic issues related to the disciplinary process. These steps included the development of a disciplinary matrix, the creation

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<sup>38</sup> *Madrid v. Woodford*, 2004 WL 2623924, at 1, 60 Fed. R. Serv. 3d 56 (N.D. Cal. 2004).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Madrid*, 2004 WL 2623924, at 2.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* at 9.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, at 8.

of a vertical advocacy model, and a policy of zero tolerance with respect to the code of silence.<sup>46</sup> The court concurred with the special master that civil contempt proceedings were unnecessary at that time to secure compliance with the court's orders. Instead, the court adopted the special master's recommendations to work with the department toward the development and implementation of an adequate remedial plan to address the problems with investigations, adverse action discipline, and the code of silence. Among these recommendations was the creation of the Bureau of Independent Review, which the court noted "will provide critically needed, systematic "real-time" monitoring of the investigative and discipline process in cases where there are charges of significant misuse of force."<sup>47</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* at 9.

## **APPENDIX B: SENATE BILL No. 1400 (2004)**

### **An act to add Section 6133 to the Penal Code, relating to corrections.**

[APPROVED BY GOVERNOR SEPTEMBER 24, 2004.  
FILED WITH SECRETARY OF STATE SEPTEMBER 24, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1400, Romero. Corrections: Internal Affairs.

Existing law provides for the administration of a system of state prisons under the Department of Corrections within the Youth and Adult Correctional Agency. Existing law establishes the office of the Inspector General, who is responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections and related state offices, as specified. Existing statutory and case law provides for some of the procedures by which public employees may be disciplined. Existing law limits the release of certain types of information relating to public employment, including special provisions that protect against the release of information concerning complaints against peace officers, including correctional officers in state prisons.

This bill would establish the Bureau of Independent Review within the Office of the Inspector General to provide public oversight of investigations conducted by the Department of Corrections and the Department of the Youth Authority, and to issue reports, as specified, to the Governor and the Legislature.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6133 is added to the Penal Code, to read:

(a) There is created within the Office of the Inspector General a Bureau of Independent Review (BIR), which shall be subject to the direction of the Inspector General.

(b) The BIR shall be responsible for contemporaneous public oversight of the Youth and Adult Correctional Agency investigations conducted by the Department of Corrections' Office of Investigative Services and by Internal Affairs for the Department of the Youth Authority. The BIR shall also be responsible for advising the public regarding the adequacy of each investigation, and whether discipline of the subject of the investigation is warranted. The BIR shall have discretion to provide public oversight of other Youth and Adult Correctional Agency personnel investigations as needed.

(c) (1) The BIR shall issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of Youth and

Adult Correctional Agency allegations of internal misconduct and use of force. The BIR shall also issue regular reports, no less than semiannually, summarizing its oversight of Office of Investigative Services and Internal Affairs investigations pursuant to subdivision (b). The reports shall include, but not be limited to, the following:

- (A) Data on the number, type and disposition of complaints made against correctional officers and staff.
- (B) A synopsis of each matter reviewed by the BIR.
- (C) An assessment of the quality of the investigation, the appropriateness of any disciplinary charges, the BIR's recommendations regarding the disposition in the case and when founded, the level of discipline afforded, and the degree to which the agency's authorities agreed with the BIR recommendations regarding disposition and level of discipline.
- (D) The report of any settlement and whether the BIR concurred with the settlement.
- (E) The extent to which any discipline was modified after imposition.

(2) The reports shall be in a form which does not identify the agency employees involved in the alleged misconduct.

(3) The reports shall be posted on the Inspector General's Web site and otherwise made available to the public upon their release to the Governor and Legislature.