

California State Auditor

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

Investigations of Improper Activities by State Employees:

February Through June 1999



August 1999
199-2

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CALIFORNIA STATE AUDITOR

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August 19, 1999

Investigative Report I99-2

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

Dear Governor and Legislative Leaders:

Pursuant to the Reporting of Improper Governmental Activities Act, the Bureau of State Audits presents its investigative report concerning investigations of improper governmental activity completed from February through June 1999.

Respectfully submitted,

for Philip Jelicich

KURT R. SJOBERG
State Auditor

BUREAU OF STATE AUDITS

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SUMMARY

Investigative Highlights . . .

Over the past five months, we discovered that state employees committed a variety of inappropriate acts including:

- Receiving \$14,885 for improperly claiming wages and travel expenses, among other inappropriate activities.*
 - Authorizing an equipment purchase of \$40,000 plus without obtaining bids.*
 - Interfering in a civil service exam that a state employee's son and daughter were taking.*
-

RESULTS IN BRIEF

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

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

This report details the results of the six investigations completed by the bureau and other agencies between February 1 and June 30, 1999, that substantiated complaints. Following are examples of the substantiated improper activities:

OFFICE OF CRIMINAL JUSTICE PLANNING

An employee engaged in the following improper activities:

- Falsely claimed 259.5 hours of work for the State that she in fact worked for one of three other employers, costing the State \$6,522.
- Failed to take leave to cover 233.5 hours she was away from work, costing the State an additional \$5,637.

- Claimed 46.5 hours in sick leave that she actually worked for two of her three other employers, costing the State another \$1,103.
- Charged the State for inappropriate travel expenses totaling \$1,175 and placed personal telephone calls costing \$448 on state telephones.

DEPARTMENT OF TRANSPORTATION

- A superintendent improperly authorized the purchase and installation of pumps costing more than \$40,000 without first obtaining competing bids and then directed a subordinate to obtain bids after the fact.
- The subordinate altered one of the bids and did not include another in his documentation.

DEPARTMENT OF DEVELOPMENTAL SERVICES

A manager of the Frank D. Lanterman Developmental Center engaged in the following improper activities:

- Interfered in a civil service examination, which his son and daughter were taking.
- Lied about his interference in the examination.
- Failed to remove an examination panel member from interviewing a candidate the manager knew to be the panel member's brother.

DEPARTMENT OF HEALTH SERVICES

The Laboratory Field Services Branch mismanages cash, resulting in the State losing interest of at least \$10,000 and increasing risk of theft.

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

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

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

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CHAPTER 1

Office of Criminal Justice Planning: Improper Claims for Travel and Wages and Misuse of State Equipment

ALLEGATION I980135

We received an allegation that an employee at the Office of Criminal Justice Planning (OCJP) did not charge to vacation the time she was away from her state job to work for other employers. Additionally, the employee was alleged to have misused state property.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegations and other improprieties. From January 1995 through March 1999, the State paid the employee at least \$6,522 for 259.5 hours she claimed she worked for OCJP that she in fact worked for three other employers we have designated as A, B, and C. We also found that she took less leave from the State than what she needed in order to work the total hours for which she was paid by employer A. At the employee's rate of pay, the 193.5 hours of leave she should have taken cost the State \$4,688. We also uncovered at least three instances where the employee was out of the State on personal business but failed to charge the time as leave. This cost the State \$949 for 40 hours.

The employee's abuse resulted in a loss to the State of more than \$14,000.

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

Finally, the employee charged the State for inappropriate travel expenses totaling \$1,175 and personal telephone usage totaling \$448.

To investigate the allegations, we examined signed time sheets submitted by the employee to OCJP and employer A, expense reports submitted to employer B, and board meeting attendance records for employer C. Because employer A lost some of the daily time sheets, we analyzed monthly summaries of hours the employee worked for employer A from January 1996 through December 1998. We also examined the employee's travel expense claims, personal banking records, records of calls from her state telephone, and logs of the use of her electronic card keys to enter the OCJP office. In addition, we reviewed applicable state laws and regulations and OCJP policies and procedures. Finally, we interviewed the employee and some of her superiors. For a more complete description of the laws and regulations discussed in this chapter, see Appendix B.

The total effect of the employee's improper activities was a loss to the State of \$14,885 over the period we examined. Table 1 shows the number of hours the employee falsely claimed by year and overpayments made to her or on her behalf as a result of her improprieties.

TABLE 1

Total Effect of Employee Overpayments and Inappropriate Reimbursements*

| Year | Hours Falsely Claimed | Improper Pay | Improper Use of Sick Time | Unreported Vacation | Inappropriate Travel Expense Claims | Misuse of State Telephone [‡] | Totals |
|---------------|-----------------------|-----------------|---------------------------|---------------------|-------------------------------------|--|-----------------|
| 1995 | 64.5 | \$ 1,621 | \$ 456 | \$197 | \$ 0 [†] | \$ 0 | \$ 2,274 |
| 1996 | 91.5 | 2,275 | 0 | 0 | 355 | 0 | 2,630 |
| 1997 | 140.0 | 3,334 | 235 | 564 | 653 | 83 | 4,869 |
| 1998 | 130.0 | 3,322 | 412 | 188 | 130 | 365 | 4,417 |
| 1999 | 27.0 | 658 | 0 | 0 | 37 | 0 | 695 |
| Totals | 453.0 | \$11,210 | \$1,103 | \$949 | \$1,175 | \$448 | \$14,885 |

* Because detailed time sheets from employer A for the periods of January through February 1995, May through July 1995, and January 1996 through March 1998 were not available, we could not determine actual hours that overlapped between OCJP and employer A, nor could we match the employee's sick leave during these time periods against the days worked at employer A.

† We only received phone records from November 1, 1997, through December 31, 1998.

‡ We were not provided with travel expense claims for calendar year 1995.

BACKGROUND

In addition to the employee's position at OCJP, she holds positions with at least three other employers—A, B, and C. Employer A is a community college where law enforcement officials receive training on subjects such as crime prevention, supervision, probation, and arrest procedures. Employer B is a private firm that offers continuing professional education classes to law enforcement officials throughout the State on subjects such as gangs and crime prevention. The employee teaches classes for both employers A and B, and is an elected board member of employer C, a local school district.

The Employee Charged Both the State and Other Employers for the Same Time

With some exceptions, state law prohibits employees from engaging in any employment, activity, or enterprise that is clearly incompatible or in conflict with their duties as state officers or employees. Prohibited activities include failing to devote full time, attention, and efforts to their jobs during hours of duty as state employees. Another state law prohibits employees from using state equipment, travel, or compensated time for personal advantage.

The employee falsely claimed she was working for the State when she was actually working for and getting paid by other employers. As a result, the State paid her \$6,522 for 259.5 hours she did not work.

We were unable to obtain daily time sheets from employer A for 33 of the months from January 1995 through March 1999. However, during the 18 months for which we had daily time sheets from employer A, the employee claimed she was working at OCJP in 37 instances when she was working for employer A instead. This resulted in the State paying her \$4,227 for 165.5 hours she did not work.

In addition, the employee claimed she was working for OCJP when she was actually working for employer B on nine separate instances from January 1995 through December 1998. This resulted in the State paying her an additional \$1,731 for 70 hours she did not work.

The employee further claimed that she was working for OCJP but was actually working for employer C two separate times in 1997. On the first occasion, the employee was in another state attending a conference for employer C. While on this trip, she failed to claim leave for the time she was absent from her state job. On the second occasion, the employee reported to the State that she was attending a professional association meeting out of town on behalf of OCJP. However, she also reported to employer C that she was attending a curriculum conference in the same town and at the same time on that employer's behalf. The executive director of the professional association informed us that it had no record of any meetings during that period. We believe the employee falsified her state travel documents to avoid using leave to attend the curriculum conference on behalf of employer C.¹ These two trips for employer C resulted in the State paying her an additional \$564 for 24 hours she did not work.

The employee signed all of the OCJP time sheets, certifying that to the best of her knowledge and belief, they were accurate and in full compliance with legal requirements. The employee claimed the leave she should have shown on her time sheets when she worked for the other employers was unofficial time off that she had earned. According to the employee, she and her previous supervisor had an arrangement where she was compensated with unofficial time off whenever she had to work overtime. She stated that at the end of each month she would advise her supervisor of this unofficial time off not reported on her time sheet.

However, she could not provide us with evidence that she had accumulated the unofficial time off. We tried to talk with the employee's previous supervisor, who is no longer in state service; however, the supervisor refused to talk to us. When we asked an employee in the personnel unit at OCJP about unofficial time off slips that supervisors used to reconcile the leave taken by employees, she told us OCJP has not allowed its employees to be compensated with unofficial time off since the last bargaining unit agreement ended in 1995.

¹ The employee's current supervisor, who assumed his position in November 1998, told us he never allowed the employee to be compensated with unofficial time off for working overtime. He further stated that he follows the OCJP's official reporting procedures when approving overtime and time off.

OCJP POLICY VIOLATIONS

The employee said she understood OCJP policy on incompatible activities but did not report her other three employers.

OCJP policy states that employees who plan to or actually engage in any other employment that might be inconsistent, incompatible, or in conflict with their duties as state employees must submit a written statement of circumstances and request a ruling prior to commencing the employment.² However, the employee we investigated did not comply with this requirement. Although she signed statements in October 1990 and February 1998 indicating that she had received and understood the incompatible activities policy, the employee told us that she felt her outside employment was not incompatible, and, therefore, she did not need to submit a request for a determination of circumstances.

In addition to the times we were able to definitively show that the employee worked for other employers on days she claimed to be working for the State, we found that she did not take sufficient leave to work all of the hours employer A paid her. This cost the State another \$4,638 for 193.5 hours.

Due to missing daily time sheets from employer A during the period we examined, we were not always able to determine actual days on which the employee worked there. Consequently, we do not know whether she always took leave from her state job on days she worked for employer A. However, we obtained monthly summaries of her hours, which allowed us to compare the total time she worked at employer A to the vacation time the employee claimed on OCJP time sheets. Since her regular work hours at OCJP and employer A are essentially the same, we believe she falsely reported the number of hours she worked at employer A in excess of hours of leave she took from OCJP.³ The employee again attributed any time she was away from her state job to work for employer A to the unofficial time off discussed earlier.

² OCJP's policy in effect in 1990 did not require employees to submit a written request for a ruling.

³ The employee's regular work hours at OCJP are 7:30 a.m. to 4:30 p.m. When she works for employer A, she works from 8:00 a.m. to 5:00 p.m. The employee's state office is only 2.5 miles from employer A's location. Consequently, we believe it is highly unlikely that she worked a half-hour at OCJP before traveling to her other work site. As a result, we did not modify our estimates due to the insignificant difference in work times.

The employee took sick leave from the State to work for other employers.

THE EMPLOYEE IMPROPERLY REPORTED ABSENCES AS SICK LEAVE

When we compared the employee's detailed state time sheets to those she submitted to employer A, we found at least six instances in which she claimed she was either at a dentist appointment or was sick to account for her absence from her state job. She also claimed sick leave on four occasions when she was working for employer B. We question how she could work for her other employers if she was at dental appointments or too sick to work at her state job. The State paid the employee \$1,103 for 46.5 hours of improperly reported sick leave.

The distinction between using sick leave and vacation for time off is an important one. The State pays for unused vacation but does not compensate employees for unused sick leave when they leave state employment. The employee told us she does not believe she used sick leave to cover the times she worked for other employers. However, when we provided her with the exact dates where we noted improper use of sick leave and asked for an explanation, she did not respond.

THE EMPLOYEE DID NOT TAKE LEAVE WHEN SHE WAS ON VACATION

On three separate occasions, the employee was in another state on vacation but charged only 96 of the total 136 hours as vacation leave. Specifically, from July 14 through July 20, 1995, July 26 through August 1, 1997, and July 10 through July 18, 1998, her bank records show she was in another state. In addition, her electronic card key entry logs indicate that she did not enter her workplace for the dates in 1997 and 1998.⁴ The employee told us that she used either vacation leave or the unofficial time off described earlier to account for the time she was on vacation. The State paid her \$950 for 40 hours of vacation she claimed she did not take.

THE EMPLOYEE SUBMITTED IMPROPER TRAVEL EXPENSE CLAIMS

The employee also submitted travel claims for expenses even though she was not entitled to do so. As a result, the State improperly paid a total of \$1,175.

⁴ Electronic card key entry logs were not available for periods prior to September 1995.

Improper Mileage Claims

The employee inappropriately submitted travel expense claims for mileage from her residence to her reported destinations. According to the agreement between the State and the bargaining unit representing the employee, if travel begins or ends one hour before or after her workday, she is allowed to claim mileage for travel to and from her residence. Otherwise, she is only entitled to reimbursement for the lesser of the mileage between her headquarters and the destination or her home and the destination. The policy also states that when she is authorized to use her own vehicle to or from a common carrier terminal, and her vehicle is not parked at the terminal during her absence, she may claim double the number of miles between the terminal and her headquarters or residence, whichever is less. The employee lives approximately 40 miles north of Sacramento, and her headquarters are in Sacramento. From 1996 through 1998, she improperly claimed mileage from her residence when she was only entitled to mileage from her headquarters to another site. As a result, the State overpaid her \$549 for 2,288 miles.

The employee claimed she never received formal instruction on appropriate mileage charges.

In addition, as discussed earlier, the employee reported that she traveled to another city from July 10 through July 13, 1997, to attend a meeting on behalf of OCJP, yet for the same period she reported to employer C that she traveled to the same city to attend a curriculum conference. She did not claim reimbursement for lodging or meals for this trip from OCJP but did claim reimbursement for mileage from both employers. Since she had already been reimbursed by her other employer, the employee should not have sought reimbursement of \$108 from OCJP for the 450 miles she drove to attend the meeting. This is especially true since, as mentioned earlier, she did not conduct legitimate state business during this period.

The employee stated that she has received no formal training regarding allowable mileage reimbursement. In total, the employee inappropriately claimed mileage reimbursements of \$675 during the period we reviewed.

Improper Claims for Meal Reimbursements

The labor agreement between the State and the bargaining unit representing the employee allows reimbursement for actual costs up to a maximum allowance for each meal, incidental, and lodging expense for each 24 hours of travel, beginning with the traveler's time of departure. Table 2 shows when meal expense reimbursements are allowed.

TABLE 2

Meal Reimbursement Rates for Trips of 24 or More Hours

| Meals | Maximum | May be claimed under these restrictions: |
|-----------|---------|--|
| Breakfast | \$ 5.50 | Travel began at or prior to 6 a.m. and ended at or after 9 a.m. |
| Lunch | 9.50 | Travel began at or prior to 11 a.m. and ended at or after 2 p.m. |
| Dinner | 17.00 | Travel began at or prior to 4 p.m. and ended at or after 7 p.m. |

On several occasions, the employee claimed and received meal reimbursements when not appropriate. For example, records show that on January 31, 1997, the employee completed her trip to Salinas, California, at 2:36 p.m. when she returned her rental car. However, she improperly claimed reimbursement for dinner. In total, the employee inappropriately requested and received \$261 for meals.

Improper Payments for Rental Cars and Gasoline

State regulations specify that officers and employees will be reimbursed for necessary out-of-pocket expenses incurred during travel on official state business. The employee violated this regulation by wrongfully requesting and accepting reimbursement for rental car and gas expense while traveling for personal convenience. These unnecessary charges cost the State \$239.

On four occasions, the employee inappropriately submitted requests for rental car and gas reimbursements while on constructive travel. Constructive travel is the altering of business-related travel for personal convenience. For example, for September 8, 1996, the employee wrote “leaving at 12:00 to stay with family members” on her itinerary for a weekend trip to Santa Barbara. However, she did not return the rental car until September 9 and charged the full amount to her state credit card. The cost of her personal use of the rental car was \$65. In addition, she improperly requested and received reimbursement for gas totaling \$4.

As another example, the employee remained out of town over a weekend and kept the rental car as a personal convenience. We found no evidence of any state business after May 23, 1997, yet she did not return the car until May 25, 1997. Although she did not claim reimbursement for meals, lodging, or incidental expenses for the weekend days, she improperly claimed

The employee submitted car rental claims that included weekends when she did not work.

reimbursement of \$48 for her personal use of the rental car. The employee stated that she thought the OCJP accounting office would deduct the amount related to her personal use of the rental car from her reimbursement check. However, her travel expense claim did not indicate any personal use of the vehicle.

THE EMPLOYEE PLACED PERSONAL CALLS AT THE STATE'S EXPENSE

Although state agencies recognize that employees must sometimes place or receive personal calls while at work, personal calls should be kept at a minimum. OCJP provides telephones for the conduct of its business. Further, state law prohibits employees from using state equipment for personal or other purposes that are not authorized by law.

The employee made at least 308 personal toll calls from her assigned state telephone, including 29 long distance calls to a relative in the Santa Barbara area, from November 1997 through December 1998. These calls cost the State \$122, and the State paid the employee \$326 for 13 hours and 25 minutes she spent on these personal calls.

THE OFFICE OF CRIMINAL JUSTICE PLANNING DOES NOT EXERCISE ADEQUATE CONTROL OVER ATTENDANCE OR TRAVEL EXPENSES

State law requires each agency to establish and maintain an adequate system of internal controls for public accountability designed to prevent errors, irregularities, or illegal acts. However, OCJP does not adequately control time keeping, travel expense reimbursement, and use of state telephones.

Informally accounting for time off, as the employee said her prior supervisor allowed her to do, violates federal law. The Fair Labor Standards Act requires employers to keep records of wages, hours, and other conditions and practices for employees. It also requires that employees be compensated for overtime either through payments or time off. Allowing employees to work overtime without proper compensation may create a liability for the State. In addition, all public servants have a responsibility to accurately account for their time with a formal, written record.

Even a cursory review of the employee's travel would reveal inappropriate items.

Both the prior supervisor and her current supervisor approved the employee's time sheets even though they did not accurately reflect the time she worked. The employee's current supervisor told us that he follows state regulations and department procedures when reviewing subordinates' travel claims. However, as described in the above examples, he clearly did not enforce appropriate mileage and parking reimbursement rules, failed to adequately review travel expense claims, and approved all of the employee's time sheets, even when errors were evident. We believe that a cursory review of the travel claims would have revealed the inappropriate items. The supervisor's failure to adhere to departmental policies, coupled with the employee's calculated orchestration of her schedule, allowed her a monetary gain and has subjected the State to substantial losses.

We reviewed nine travel expense claims of other OCJP employees to determine if inappropriate mileage and meal reimbursements are a problem throughout the department. Of these nine claims, four contained meal reimbursements that the employee was not entitled to. Only two of the employees included their normal work hours, private vehicle license numbers, and mileage rate claimed on the travel expense claims as required. This information is important in determining the mileage, meal, and lodging reimbursements to which the employee is entitled. Without a system to monitor and control travel expense claims, OCJP is putting itself at risk for widespread abuse.

AGENCY RESPONSE

The OCJP has not completed its corrective action. ■

CHAPTER 2

Department of Transportation: Contracting Improprieties and Alteration of Documents

ALLEGATION I990022

We received an allegation that a superintendent in the Department of Transportation (Caltrans) participated in improper contracting procedures by approving a purchase through a preferred vendor without first obtaining bids as required.

RESULTS AND METHOD OF INVESTIGATION

Our investigation substantiated the complaint. After the superintendent improperly authorized the purchase and installation of equipment from a vendor, he then instructed an employee to obtain bids even though the work had already been done. Once this employee obtained these bids, he altered one and omitted another. As a result, Caltrans' purchase documents erroneously displayed the vendor chosen by the superintendent as the low bidder.

To investigate the allegation, we reviewed purchase orders and service contracts Caltrans entered into with the vendor. We interviewed Caltrans staff from the purchasing, contracts, and engineering divisions. We also interviewed the vendor that performed the work as well as the other vendors that submitted bids. In addition, we reviewed state laws and Caltrans policies related to purchasing and contracting procedures.

THE SUPERINTENDENT CIRCUMVENTED CONTRACTING PROCEDURES

In May 1998, the superintendent discovered that one of two drainage pumps within his jurisdiction had failed and the other was operating poorly. These pumps are designed to prevent flooding of freeways, particularly during the rainy season. The superintendent considered the pump's failure an emergency

***A superintendent
replaced two pumps
without requesting bids
from other vendors.***

condition. He contacted vendor A to remove the failed pump and determine the extent of the damage, and on June 23, 1998, the vendor confirmed that it had considerable damage. The superintendent, with input from the vendor and his supervisor, decided it was best to replace both old pumps with new ones and purchase them from vendor A. He obtained several bids for different pumps from this vendor on July 2, 1998. On October 13, 1998, over three months later, vendor A installed the new pumps and made final repairs by October 20, 1998.

The superintendent stated he did not know he was required to obtain any bids initially because he believed he was working with an emergency service contract, as opposed to an emergency purchase. Although an emergency purchase usually requires bids from three vendors, emergency service contracts typically have less stringent bidding requirements. According to the superintendent, he was later notified by purchasing staff that bids were required. He then instructed an employee to obtain additional bids for the pumps, but the employee did not solicit these bids until December 1998 and January 1999, more than two months after the pumps had been installed.

Laws governing contracts and purchases are intended to eliminate favoritism as well as provide all qualified bidders a fair opportunity to enter the bidding process. This stimulates competition in a manner conducive to sound fiscal practices.⁵ State laws and policies generally require Caltrans to solicit competitive bids when contracting or when procuring equipment, supplies, or other commodities that cost over a certain amount.

THE EMPLOYEE ALTERED AND OMITTED BIDS

By altering a vendor's bid, an employee effectively doubled the final proposal.

Our review found that the employee altered one vendor's bid and failed to list another on the purchase order. As a result, the Caltrans purchase order incorrectly listed the vendor chosen by the superintendent as the low bidder. When we verified their actual bid amounts with these vendors, we found that both the vendor omitted from the purchase order and the vendor whose bid was altered actually offered pumps for a lower price.

⁵ For more specific information on the laws discussed in this chapter, see Appendix B.

As shown in Table 3, vendor B's bid for two pumps was \$22,091, plus freight costs. However, the employee added the word "each" to the vendor's bid, implying it represented the price for only one pump. As a result, Caltrans purchasing staff doubled vendor B's bid to \$44,182, slightly higher than the \$43,050 charged by vendor A, the vendor chosen by the superintendent. The employee stated, under penalty of perjury, that he made this change after he called the vendor representative and confirmed that the price of \$22,091 was for only one pump.

When we called the vendor representative to verify this change, he stated, under penalty of perjury, that the bid of \$22,091 was for two pumps and that it should not have been changed. He also stated that he tried several times to speak with the employee after submitting his bid, but no one ever returned his phone calls. When we told the employee that the vendor's statements contradicted his own, he provided no explanation other than to say he must have made a mistake.

TABLE 3

Comparison of Actual Purchase to Bids Obtained After the Fact

| Vendors | Actual Bid Price | Bid per Caltrans' Purchase Order * | Date Bids Obtained | Pump Impeller Material |
|----------|--------------------------|------------------------------------|--------------------|------------------------|
| Vendor A | \$43,050 | \$43,050 | 7-2-98 | Ductile Iron |
| Vendor B | 22,091 (Plus Freight) | 44,182 | 1-12-99 | Cast Iron |
| Vendor C | 38,600 | Not Included | 12-29-98 | Stainless Steel |
| Vendor D | 53,812 | 53,812 | 12-30-98 | Unknown |

* Caltrans only requested pump costs from vendors B, C, and D. We excluded labor costs and sales tax for comparative purposes.

We spoke with one of the engineers who approved the pumps installed by vendor A to determine if the pumps offered by vendor B would have been acceptable. Without additional information, he could not say for certain but did note that vendor B's pumps appeared comparable to vendor A's with one exception. The impellers on the pumps installed by vendor A were made of ductile iron, and the pumps offered by vendor B had cast iron impellers. In this case, ductile iron is preferred over cast iron because it is more durable. Caltrans may have opted to pay an additional \$20,000 for vendor A's pumps because they

were of superior construction. However, Caltrans was never offered the chance to decide because the superintendent obtained this bid after vendor A's pumps were installed.

Vendor C submitted a bid of \$38,600 for two pumps, \$4,450 less than vendor A's bid. These pumps contained stainless steel impellers. According to the Caltrans engineer previously mentioned, stainless steel may be comparable to the ductile iron offered by vendor A. When we asked this engineer if vendor C's pumps were acceptable, he stated that he needed more information to make a complete evaluation. We also asked the employee who obtained the bids why he did not include this bid on the Caltrans purchase order. He explained that vendor C would not install the pumps. We spoke with the vendor and verified that it does not do installations but could have arranged to have the pumps installed. Also, Caltrans could have considered purchasing vendor C's pumps and contracting with another vendor to install them. Vendor A, for example, charged \$6,066 to install its pumps.

Although it is possible that neither of the two low-bid vendors would have been chosen due to product or cost considerations, Caltrans was not afforded the opportunity to examine these alternatives. As a result, Caltrans cannot be certain whether it received the best price for this purchase and vendors were denied the opportunity to legitimately compete for this business.

AGENCY RESPONSE

Caltrans has not completed its corrective action. ■

CHAPTER 3

California State University, Los Angeles: Use of University Equipment for Personal Gain

ALLEGATION I970120

We received an allegation that a professor used university equipment to make compact discs he sold to his students and that he kept the profit from the sales.

A professor made instructional discs with state equipment and sold copies to students, pocketing the profit.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. Specifically, the professor improperly used equipment purchased with a grant to produce compact discs that he sold to students. The professor pocketed the profit of \$2,268.

To investigate, we reviewed applicable laws, grant request and award documents, invoices for the production of compact discs, and invoices the professor submitted to the campus bookstore. Additionally, we interviewed the professor as well as staff in the School of Business and Economics and the campus bookstore.

BACKGROUND

The California State University, Los Angeles (CSULA) furnished \$25,200 in state lottery funds for a proposal submitted by two professors of the Computer Information Systems Department of the School of Business and Economics. The proposal outlined a plan to develop audio and video instructional material on compact discs for teaching a class in the School of Business and Economics. The plan envisioned the students using the compact discs in the classroom in the early stage of the program and later buying them to use on their home computers.

The proposal identified various costs including equipment. Furthermore, it specified that some of the equipment would be used to produce a master and classroom compact discs. According to the proposal, compact discs would be commercially copied from the master and sold to students.

A PROFESSOR USED STATE EQUIPMENT FOR PERSONAL GAIN

The professor used the equipment the university purchased with the lottery funds to produce master compact discs for two classes other than the business computer systems class described in the proposal. He then had the masters duplicated by a commercial source and sold the copies to students in the two classes in the winter and spring sessions of 1998 and the winter session of 1999.

According to the professor, to the best of his recollection, total sales for the winter 1998 session were \$400. Additionally, total sales of CDs for the spring 1998 session were \$896. He provided copies of invoices in the amount of \$542 for compact disc duplication services. He told us that he personally paid the invoices and deposited the proceeds from these sales into his personal bank account. Therefore he had a net personal gain of \$754. In addition, the professor sold duplicate compact discs through the university bookstore in the winter session of 1999 for a total of \$1,731. According to an invoice that he provided, duplication services cost him \$217, giving him a net gain of \$1,514 for this session. The professor did not tell us what he did with this money.

AGENCY RESPONSE

CSULA has initiated a criminal investigation of the professor's actions. ■

CHAPTER 4

Department of Developmental Services: Interference in Civil Service Examinations

ALLEGATION I970135

We received an allegation that a manager at the Frank D. Lanterman Developmental Center (center), which is under the Department of Developmental Services (DDS), improperly interfered with a civil service examination for a position for which two of his family members applied.

RESULTS AND METHOD OF INVESTIGATION

The center's Personnel Services and Labor Relations units investigated the complaint on our behalf by interviewing various center employees and obtaining written statements, and substantiated the allegation and other improprieties. Specifically, they found the manager improperly interfered with the hiring process when his son and daughter applied to take an examination for a vacant position. In addition, the manager initially denied that he interfered with the process but later admitted to his actions.

The units also found that the manager failed to properly carry out his responsibilities as chairperson of the hiring committee for another vacant position. Although he was responsible for exam security and confidentiality of the hiring process, the manager failed to excuse a panel member from interviewing a candidate who the manager knew to be her brother.

A manager interfered with the hiring process when his son and daughter applied for state jobs.

BACKGROUND

The center provides acute, skilled, and intermediate care to persons with developmental disabilities. It defines these as disabilities related to mental or neurological impairments originating before a person's 18th birthday that are expected to continue indefinitely and constitute a substantial handicap. DDS's administrative and support services is responsible for operation of the center.

To fill its positions, the center follows the policies of the State Personnel Board, Department of Personnel Administration, and DDS, as well as its own directives and policies, to ensure all prospective employees participate in competitive examinations. Most examinations include an oral interview administered by a qualification appraisal panel (QAP). The QAP rates competitors against specific critical requirements for each job classification.

A CENTER MANAGER IMPROPERLY INTERFERED WITH THE HIRING PROCESS AND ENGAGED IN OTHER IMPROPRIETIES

State regulations prohibit anyone from taking examination questions out of the exam area or otherwise providing any unauthorized assistance. Regulations also prohibit the presence of any person who is a blood relative of the candidate in the interview or during any discussion about, or rating of, the candidate. The center's policy clearly prohibits work situations that include nepotistic relationships. The policy defines nepotism as the practice, by any employee, of using personal power or influence to aid or hinder another in the employment setting because of personal relationships by blood, adoption, marriage, or cohabitation.

In spite of these prohibitions, in July 1998, the manager, who knew that both his son and daughter were scheduled to take an examination for a position at the center, visited the testing area on the day of the examination. Although the center's investigation confirmed that the manager read the examination questions and discussed them with the QAP members, it could not confirm that he gave the questions and answers to his family members. However, his son and daughter were two of three applicants with the highest scores. The investigators concluded that the manager, who has been trained to be a QAP chairperson, took inappropriate actions and concluded that these actions constituted inexcusable neglect of duty. Under California Government Code, Section 19572, inexcusable neglect of duty is a cause for discipline.

The manager later denied he interfered in hiring his son and daughter.

The center investigators also concluded that the same manager misrepresented his involvement in the examination by denying that he visited the testing area and discussed the questions and answers with the QAP members. Ultimately, in February 1999, the manager admitted that he might have done

so. The investigators deemed the manager's behavior to be a misrepresentation of the truth, which is also cause for discipline under California Government Code, Section 19572.

In another incident, the manager failed to excuse a QAP member from participating in an interview in which the member's brother was the candidate. The manager, who knew about their relationship, was the chairperson of the QAP for that examination and had responsibility for the security and confidentiality of the examination.

AGENCY RESPONSE

The center abolished the exam list for the position in which the manager's family members participated and formally reprimanded the manager. In addition, the center advised the manager and the QAP chairperson for that exam that they will not participate in future QAPs or hiring panels until further notice. The center also advised the QAP member who interviewed her brother to excuse herself from panels when appropriate. ■

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CHAPTER 5

Department of Social Services: Contracting Improprieties, Misuse of the State’s Prestige, and Personal Use of State Telephones

ALLEGATION I980059

We received an allegation that a manager in the Children and Family Services Division of the Department of Social Services (DSS) improperly used her influence to pay her niece through a contract between DSS and another state entity. The same manager allegedly used state equipment for her personal benefit.

RESULTS AND METHOD OF INVESTIGATION

DSS investigated the allegations on our behalf and substantiated them. It concluded that the manager violated state law when she used the prestige of the State to benefit her niece.⁶ Specifically, she used a DSS contract with California State University, Sacramento (CSUS), to provide income for her niece. She also implied that the State recommended that her niece be accepted for admission to a private university. She also violated state law by using state equipment for her own and her niece’s personal benefit.

To investigate the allegations, DSS reviewed its contract with CSUS, invoices and payments, and documents related to the contract. It also reviewed records of telephone calls placed from the state telephone assigned to the manager and examined the state computer assigned to her.

⁶ For a more detailed description of the laws discussed in this chapter, see Appendix B.

THE MANAGER IMPROPERLY INFLUENCED THE HIRING OF HER NIECE

DSS contracted with CSUS to obtain self-esteem training for individuals in the foster care community and to recruit foster parents. At the time, the manager worked in the unit responsible for these activities. DSS concluded that the manager influenced or intentionally facilitated her niece's selection by meeting with a CSUS representative and expressing her desire to have her niece provide the training under the contract with CSUS. The manager also wrote or rewrote a letter to CSUS specifying that her niece was the only person who could furnish the training. The manager then directed a subordinate to fax this letter, her niece's resume, and a description of the training to CSUS. In total, DSS paid the niece \$7,200 through the contract with CSUS.

THE MANAGER USED STATE EQUIPMENT FOR PERSONAL BENEFIT

The manager used her state computer and state letterhead to support her niece's acceptance at a private university. In her letter to the university, the manager stated, "we at the California Department of Social Services, Foster Care Branch, feel the time is right for submitting this letter of recommendation . . .". She also identified herself by her DSS position in the letter.

In addition, the manager placed 174 personal long-distance telephone calls from her state telephone from July 1997 through November 1998. These calls lasted more than 29.5 hours and cost the State \$163.

The manager also wrote a letter of recommendation for her niece on state letterhead.

AGENCY RESPONSE

DSS reduced the manager's salary by 10 percent for six months, effective June 8, 1999. At the manager's salary, this reduction totals \$2,950. ■

CHAPTER 6

Department of Health Services: Mismanagement of Cash

ALLEGATION I990016

We received an allegation that the Laboratory Field Service Branch (branch) of the Department of Health Services (DHS) does not promptly record and deposit checks.

RESULTS AND METHOD OF INVESTIGATION

After we began our investigation, we discovered that DHS's internal auditor recently completed an examination of the branch's handling of cash receipts. The auditor concluded that, due to a lack of internal controls and delayed handling of cash receipts, the branch leaves money vulnerable to theft. This finding substantiates the allegation. The State is also losing between \$10,000 and \$15,000 in interest due to the length of transit time and backlogs in handling checks.

The State lost \$10,000 to \$15,000 in interest on undeposited checks.

BACKGROUND

The branch administers state regulations pertaining to laboratories and the personnel who work in them. It licenses 2,300 clinical laboratories in California and 500 more outside the State that perform tests on California specimens. It also licenses 22,000 clinical laboratory personnel and inspects clinical laboratories, blood banks, plasma centers, cytology laboratories, and tissue banks. The branch receives payments for each of its activities. For example, in fiscal year 1996-97, the cytology laboratory program collected more than \$300,000, and the tissue bank program collected more than \$136,000.

State law requires agency heads to establish and maintain a system of internal and management controls. Internal controls are necessary to provide public accountability and are designed to prevent errors, irregularities, or illegal acts.

THE BRANCH NEITHER ADEQUATELY DOCUMENTS NOR PROMPTLY DEPOSITS RECEIPTS

The branch's daily deposits cannot be traced from its accounts receivable log back to the source documents. Because the process lacks an audit trail and accountability over the receipts is not established immediately, opportunity exists for loss or theft. Also, the same employees who prepare invoices also receive checks, making the potential for misappropriation of funds relatively high.

Further, the branch does not always restrictively endorse checks it receives before the end of the day, again leaving the checks vulnerable to theft. In addition, it issues licenses before the checks clear the bank. Consequently, checks could be stolen and neither the licensee nor the branch would know they were missing. Moreover, checks for tissue bank licensing were held for up to a month before being forwarded to the accounting section, and the accounting section took an additional 9.3 days on average to finally deposit the checks. It is the State's policy that agencies deposit receipts within 10 working days.

Finally, DHS requires branches to send their receipts to Sacramento for deposit. The combination of delays in depositing checks is causing the State to forego between \$10,000 and \$15,000 in interest that it could earn if the checks were promptly deposited.

The branch claims it does not have enough staff to appropriately handle checks.

The internal auditor recommended that the branch develop adequate records so deposits can be traced back to the source documents. The branch responded that it currently receives about 27,000 checks each year, many of them between November 15 and March 1. The branch claims that it would be very difficult to create the documentation necessary to implement this recommendation and that it does not know how to accomplish the task. It stated, however, that it would seek advice from another program with similar demands that has been able to establish such a system.

The internal auditor also recommended that the branch separate duties for initiating or preparing invoices from the duties of receiving checks, and the branch agreed to do this. However, in response to the internal auditor's recommendations that it secure checks during processing and restrictively endorse them by the end of the day of receipt, the branch stated that it was

impossible to do so because of the volume of mail during some periods and its lack of staff.

Finally, in response to the internal auditor's recommendation that it deposit its checks no later than the day following receipt, the branch stated that it could not do so without adding more clerical staff and developing a full-blown cashiering process. It intends to use the internal audit report, however, as support for hiring more staff and gaining DHS permission to deposit checks directly rather than sending them to Sacramento.

AGENCY RESPONSE

The branch met with staff of another branch that receives payments and reviewed that branch's procedures for handling cash. The branch reported that, if it receives additional funds, it will establish a similar system for handling cash. After the new system is in place, it will consider requesting DHS permission to deposit its receipts directly rather than routing them through Sacramento. ■

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CHAPTER 7

Update on Previously Reported Issues

CHAPTER SUMMARY

The Reporting of Improper Governmental Activities Act requires an employing agency or appropriate appointing authority to report to the state auditor on any corrective action, including disciplinary action, it takes in response to an investigative report not later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the state auditor monthly until the action is complete. This chapter summarizes corrective actions taken by state departments and agencies related to investigative findings since we last reported them.

DEPARTMENT OF INDUSTRIAL RELATIONS CASE I970063

On March 16, 1999, we publicly reported that employees of the State Mediation and Conciliation Service Division of the Department of Industrial Relations (industrial relations) engaged in incompatible activities. Specifically, a mediator was improperly involved in soliciting outside employment as an arbitrator. Other division employees were aware of and perpetuated the mediator's incompatible activities by including his name on lists of potential arbitrators. Finally, the mediator and his colleagues created at least the appearance of a conflict of interest.

Industrial relations is reviewing its conflict of interest code, including disclosure requirements for its mediators. Also, industrial relations is revising its procedures for selecting individuals for panels of potential arbitrators. Finally the director of industrial relations will require the mediator to either resign from his position as a state employee or withdraw his name from possible inclusion in the lists of potential arbitrators circulated by industrial relations.

**BOARD OF COURT REPORTERS
CASE I980099**

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

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

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

Respectfully submitted,

for Philip Jelichich
KURT R. SJOBERG
State Auditor

Date: August 19, 1999

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APPENDIX A

Activity Report

The Bureau of State Audits (bureau) has identified improper governmental activities totaling \$11 million since July 1993 when it reactivated the Whistleblower Hotline (formerly administered by the Office of the Auditor General). These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The bureau's investigations have also substantiated other improper activities that cannot be quantified in dollars but have had a negative societal impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

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

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 4 summarizes all of the corrective actions taken by agencies since the bureau reactivated the Whistleblower Hotline.

TABLE 4

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

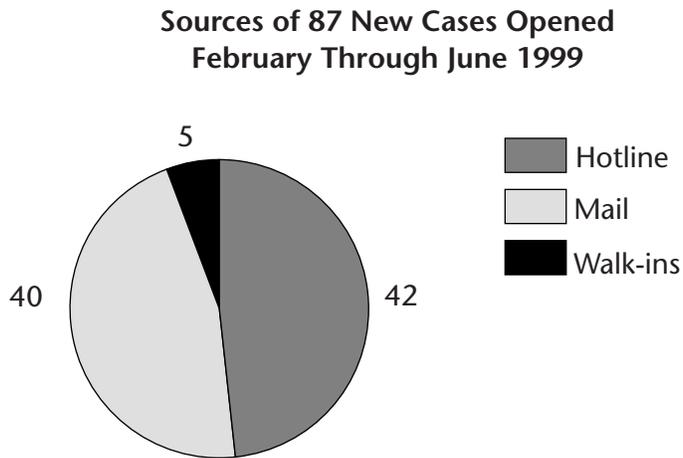
| Type of Corrective Action | Instances |
|------------------------------------|-----------|
| Referrals for criminal prosecution | 65 |
| Convictions | 4 |
| Job terminations | 30 |
| Demotions | 6 |
| Pay reductions | 9 |
| Suspensions without pay | 9 |
| Reprimands | 102 |

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

NEW CASES OPENED FEBRUARY THROUGH JUNE 1999

From February through June 1999, we opened 87 new cases. We receive allegations of improper governmental activities in several ways. Callers to our Whistleblower Hotline at (800) 952-5665 reported 40 (46 percent) of our new cases.⁷ We also opened 42 new cases based on complaints received in the mail and 5 based on complaints from individuals who visited our office. Figure 1 shows the sources of all cases opened from February 1 through June 30, 1999.

FIGURE 1



WORK ON INVESTIGATIVE CASES FEBRUARY THROUGH JUNE 1999

In addition to the 87 new cases we opened during this five-month period, 34 cases were awaiting review or assignment, and 15 were still under investigation, either by this office or other

⁷ In total, we received 2,141 calls on the Whistleblower Hotline from February 1 through June 30, 1999. However, 1,671 (78 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. Another 430 (20 percent) were related to previously established case files.

state agencies, on February 1, 1999. As a result, 136 cases required some review during this period.⁸ Figure 2 shows the disposition of these cases.

After reviewing the information provided by complainants and the preliminary work by investigative staff, we concluded in 76 of the 136 cases that not enough evidence existed for us to mount an investigation.

The act specifies that the state auditor may request the assistance of any state entity or employee in conducting an investigation. From February through June 1999, state agencies investigated 9 cases on our behalf and substantiated allegations on 2 (33 percent) of the 6 cases they completed during the period.

In addition, we independently investigated 18 cases and substantiated allegations on 4 (80 percent) of the 5 cases we completed during the period. As of June 30, 1999, 33 cases were awaiting review or assignment.

FIGURE 2

**Disposition of 136 Cases
February Through June 1999**



⁸ Also, 2 cases were completed previously, but agencies were still taking corrective action.

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APPENDIX B

State Laws, Regulations, and Policies

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

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 1, 3, and 5 address incompatible activities.

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official actions. Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. Incompatible activities include using state time, facilities, equipment, or supplies for private gain or advantage. Subject to any other laws, rules, or regulations as pertain thereto, prohibited activities also include not devoting full time, attention, and efforts to his or her state job during hours of duty as a state employee. In addition, a state employee is prohibited from receiving or accepting, directly or indirectly, any gift, money, service, gratuity, favor, entertainment, hospitality, loan or any other thing of benefit or value from anyone who does, or seeks to do, business of any kind with the employee's department, under circumstances from which an intent to influence the employee in the performance of official duties or an intent to reward an official action could be reasonably substantiated. Finally, state employees are prohibited from using the prestige or influence of the State for private gain or advantage.

OTHER CRITERIA GOVERNING PERSONAL USE OF STATE RESOURCES

Chapters 1, 3, and 5 report personal use of state resources.

Section 8314 of the California Government Code prohibits state employees from using state equipment, travel, or time for personal advantage or for an endeavor not related to state business. If such use results in a gain or advantage to the employee or a loss to the State for which a monetary value can be estimated, and if the employee negligently or intentionally violates this section, he or she shall be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs, plus three times the value of the unlawful use.

THE LAW CONCERNING FALSE CLAIMS

Chapter 1 reports false claims.

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

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 1, 5, and 6 report weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983, contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain an adequate system of internal controls. Internal controls are necessary to provide public accountability and are designed to prevent errors, irregularities, or illegal acts.

The California Code of Regulations, Title 2, Section 599.615(a), states that officers and employees will be reimbursed for necessary out-of-pocket expenses incurred because of travel on official state business.

CRITERIA GOVERNING CONTRACTS

Chapters 2 and 5 report contracting improprieties.

State laws governing contracts and purchases are intended to eliminate favoritism as well as provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound state fiscal practices. To ensure this, state laws and policies generally require agencies to solicit competitive bids when contracting or when procuring equipment, supplies, or other commodities that cost over a certain amount.

CRITERIA GOVERNING CIVIL SERVICE EXAMINATIONS

Chapter 4 reports interference in civil service examinations.

Section 178 of Title 2 of the California Code of Regulations prohibits anyone from taking examination questions out of the exam area and providing any unauthorized assistance in the examination. Further, Section 197.5 prohibits the presence of any interviewer who is a blood relative of the candidate in the interview or during any discussion about, or rating of, the candidate.

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Asssembly Majority/Minority Consultants
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Capitol Press Corps