

OVERVIEW OF CASE DISPOSITIONS (JULY-DEC, 2006)

Was there an appeal filed with the SPB?

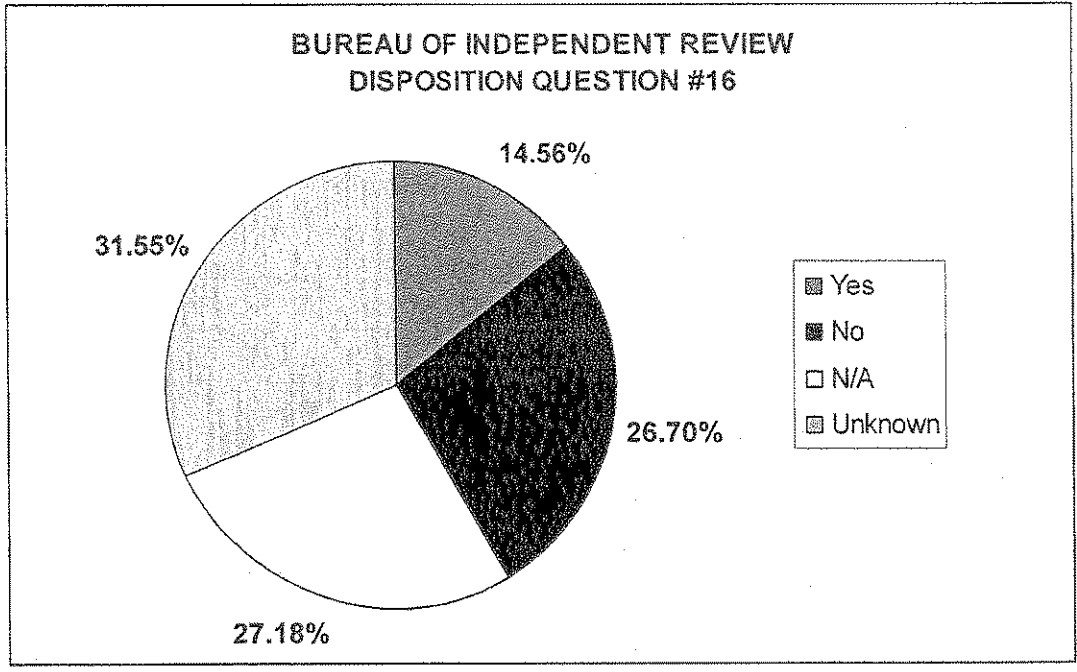
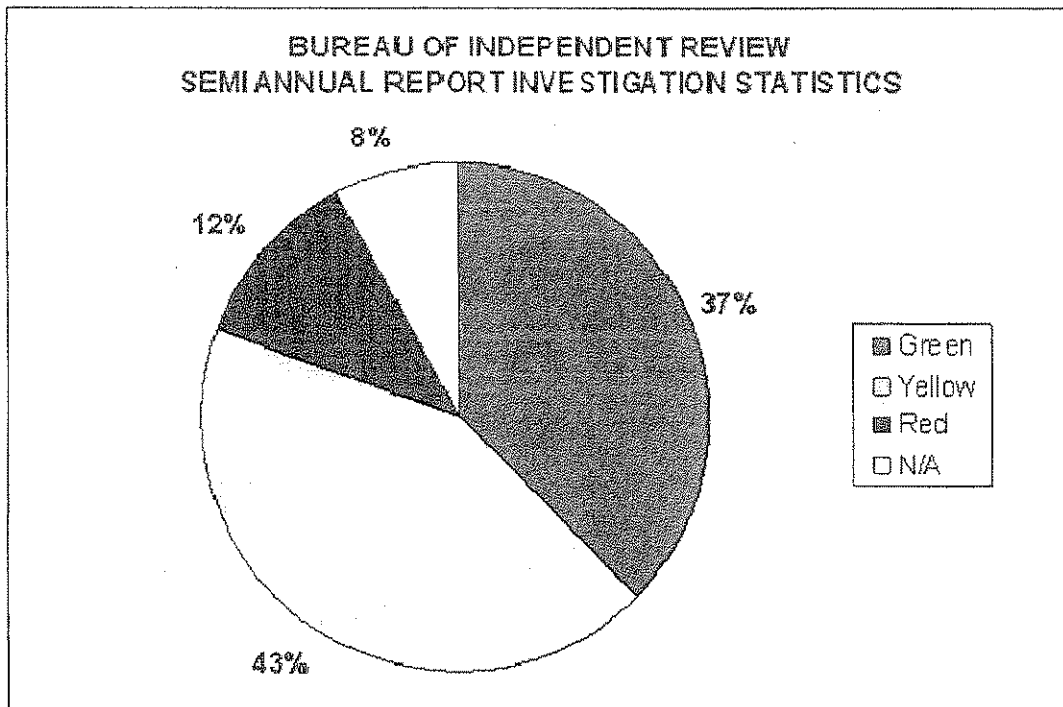


EXHIBIT 11

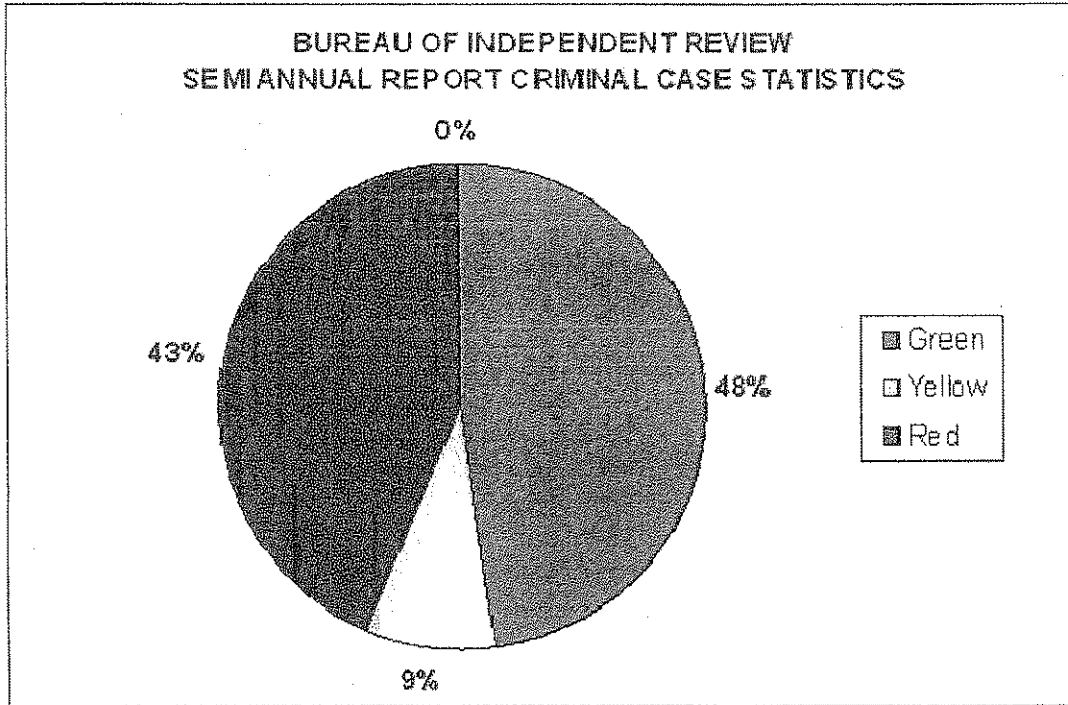
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)



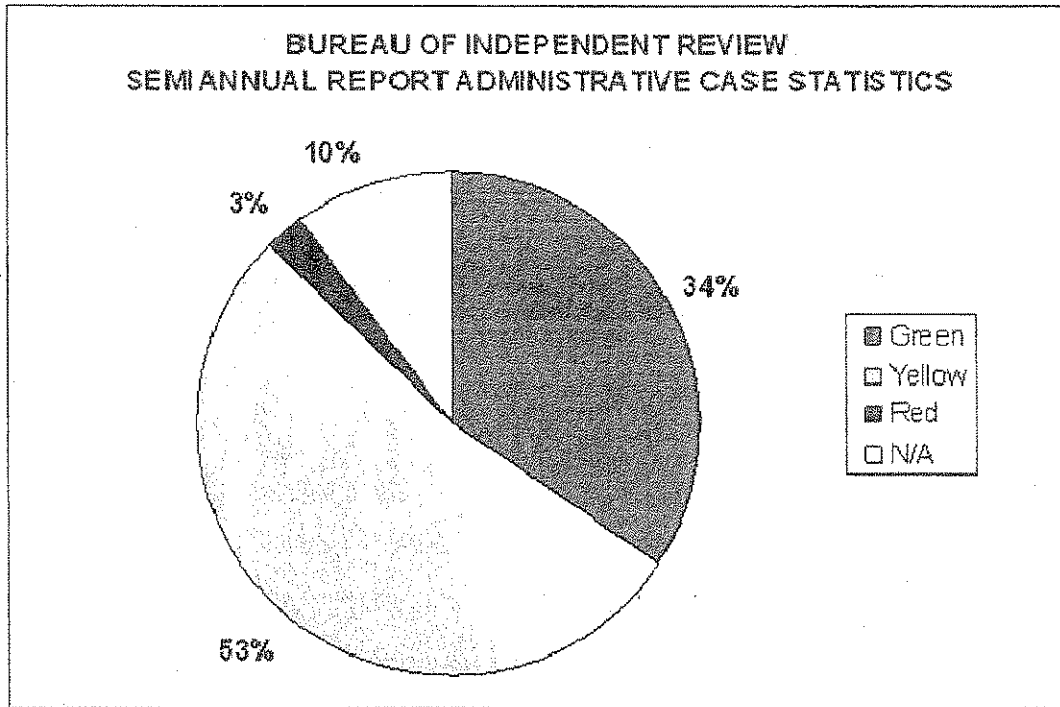
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Symbol	Rating Explanation
●	Given the totality of circumstances, the disposition of the case was reasonable and substantially consistent with the bureau's recommendations.
■	Given the totality of circumstances, the disposition of the case was unreasonable and inconsistent with the bureau's recommendations.
△	<p>Given the totality of circumstances, the initial disposition of the case was unreasonable and inconsistent with the bureau's recommendations but later rectified as a result of executive review;</p> <p>or</p> <p>The case eventually resulted in a finding that there was insufficient evidence of misconduct. However, had actionable misconduct been found, no action could have been taken because the time for a prosecutor to file charges (in a criminal case) or for the department to take disciplinary action (in an administrative case) expired before the case was resolved.</p>
⊘	The case monitored was a criminal case so there were no administrative charges, findings, or penalties imposed by the department for the bureau to assess.

OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

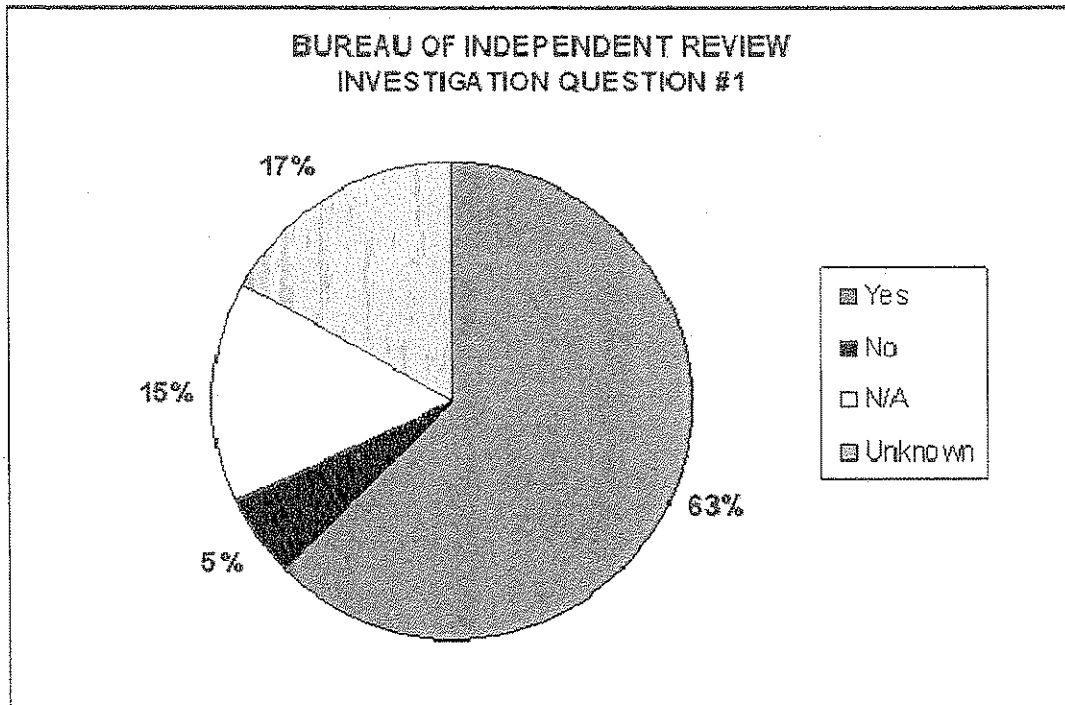


OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)



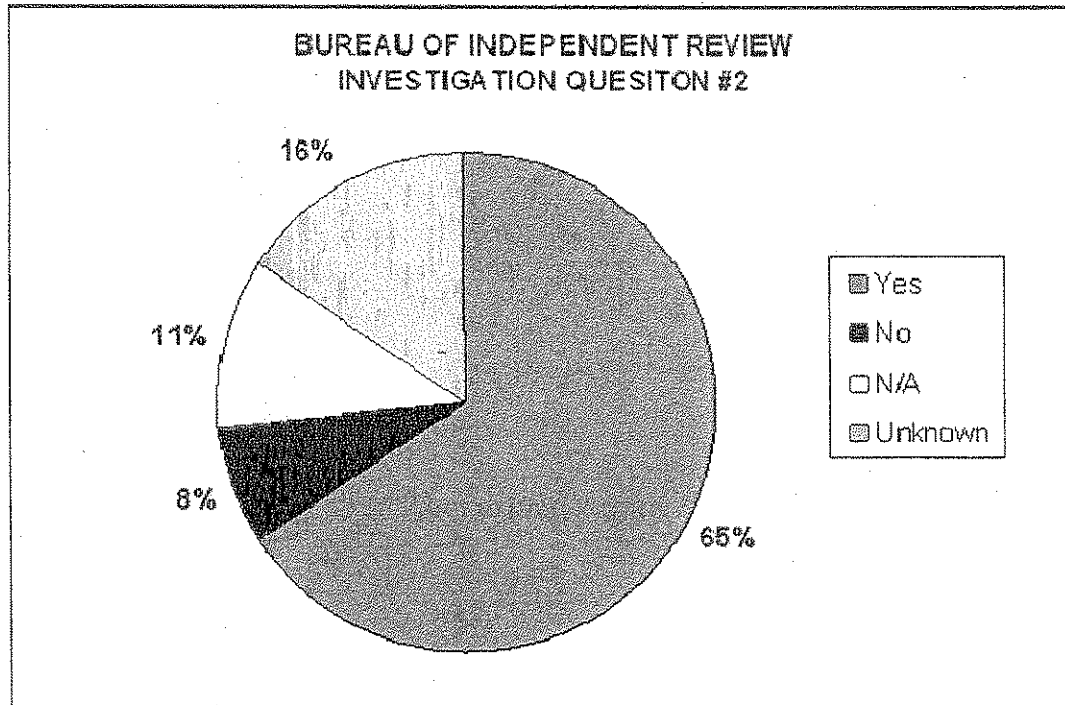
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the CIU evaluate the 989 and make a determination regarding the request within 30 calendar days?



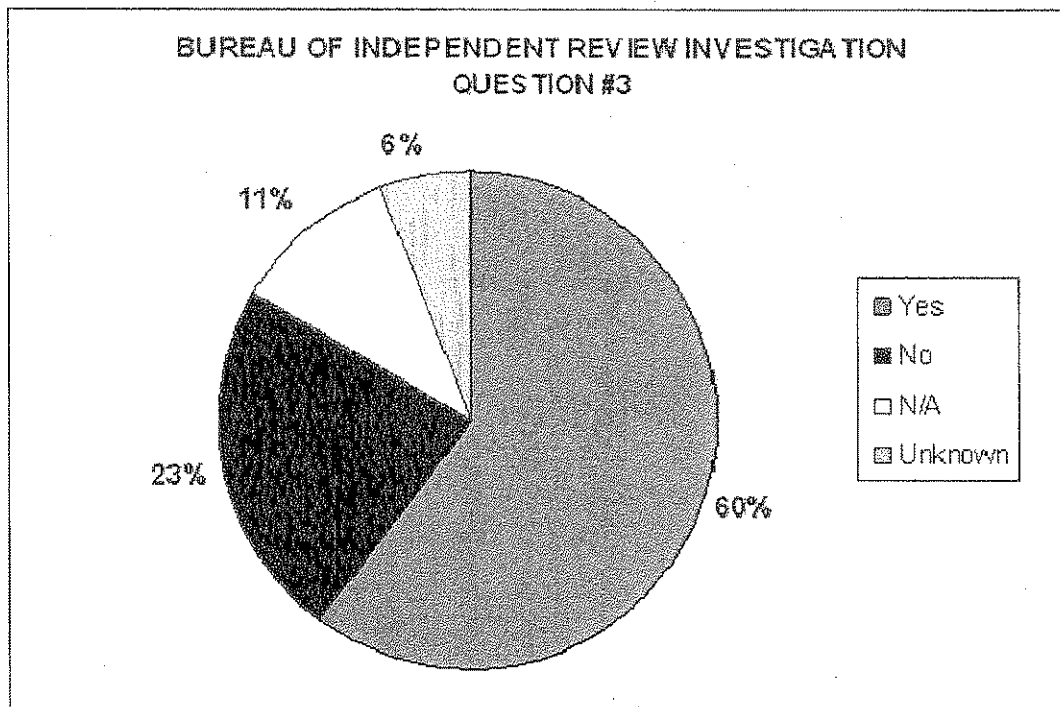
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the OIA regional office assign the investigation to a Special Agent or a locally designated investigator within 10 calendar days of receiving it from CIU?



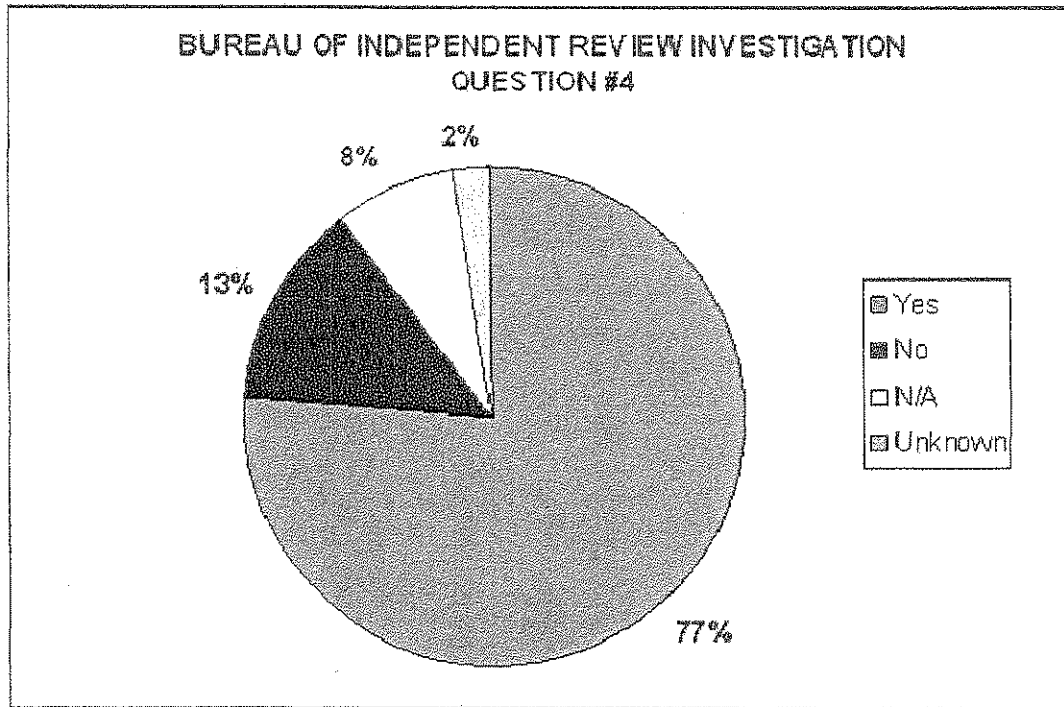
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the investigator confer with the SAIG upon case initiation?



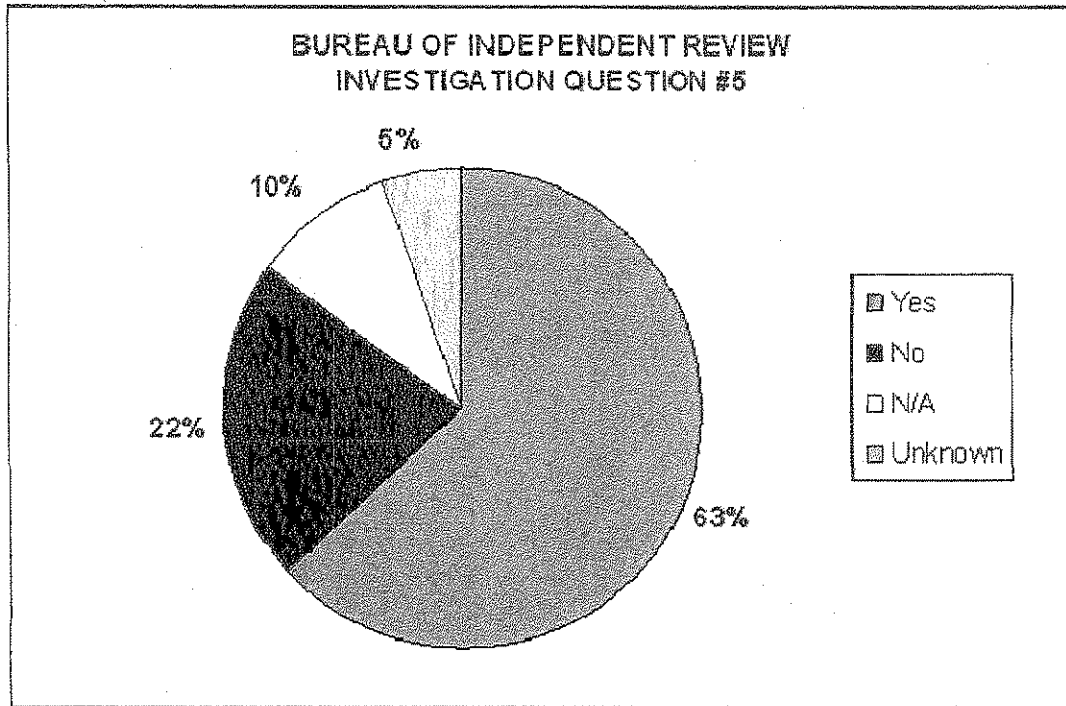
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the investigator(s) conduct a complete and thorough investigation of the allegation or complaint?



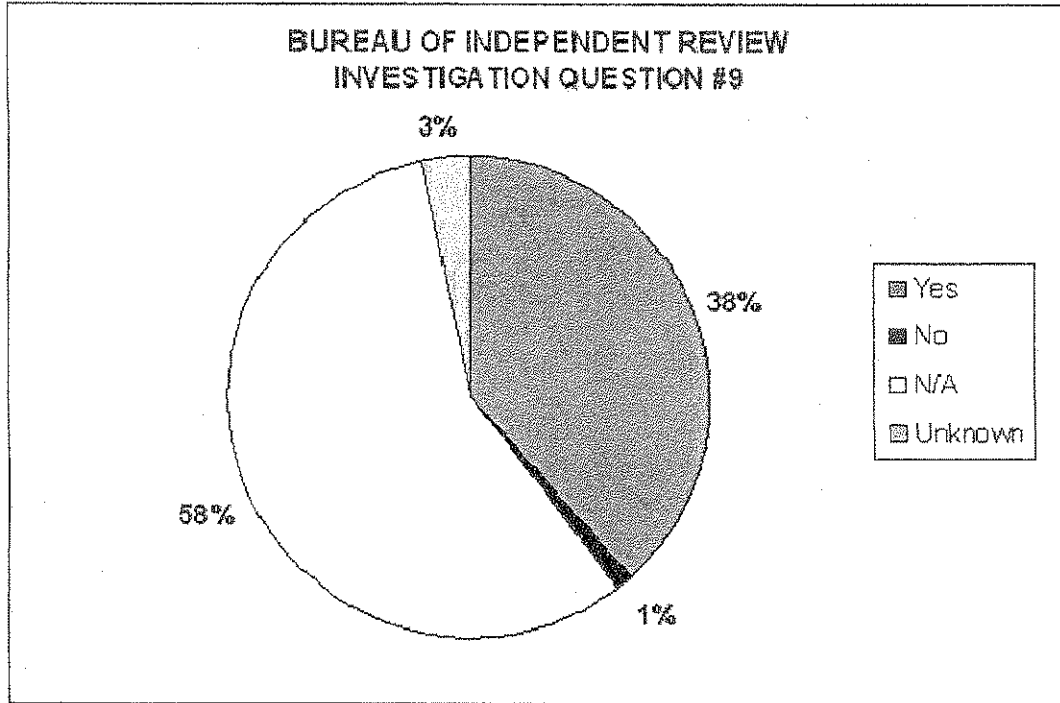
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the investigator(s) cooperate with and provide continual consultation among OIA, the VA (for designated cases) and the BIR?



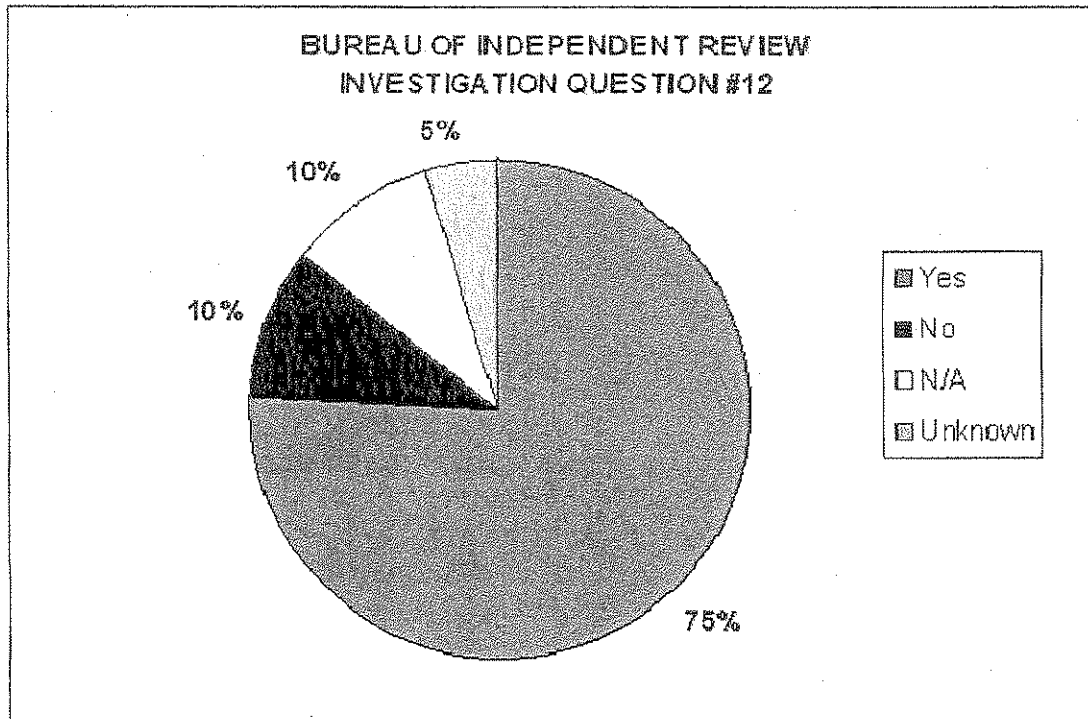
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

If there was a criminal and an administrative investigation, did OIA appropriately determine if the administrative investigation should be conducted concurrent or subsequent to the criminal investigation?



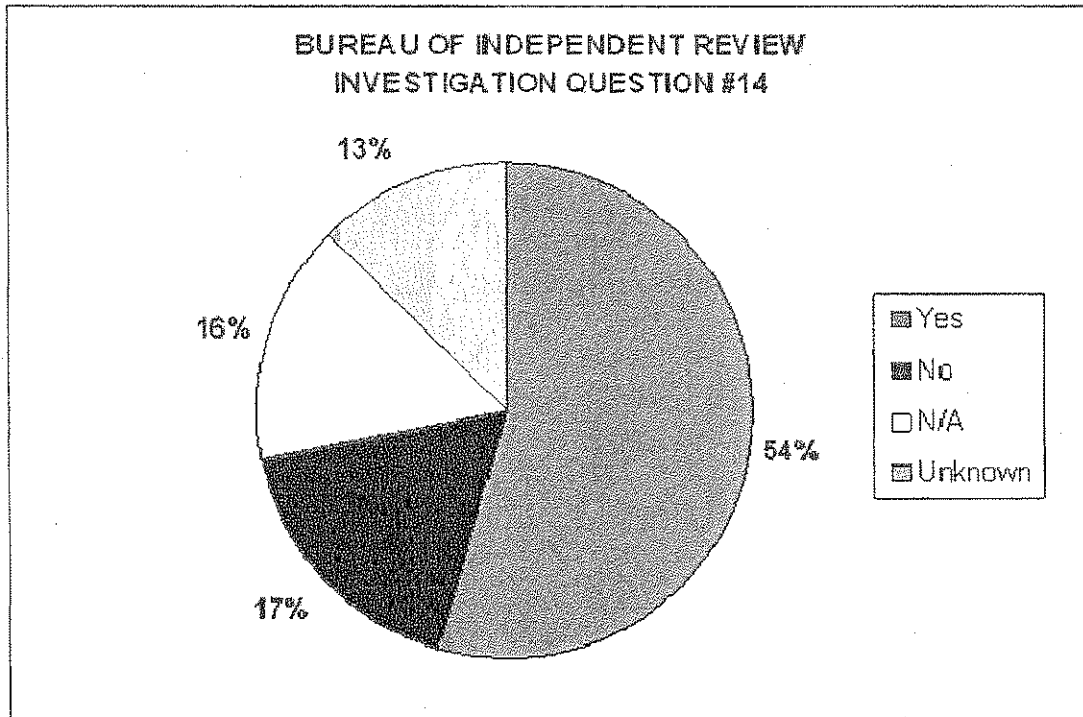
OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the investigative report provide all relevant facts?



OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Did the investigator(s) confer with the VA (if designated) and the SAIG prior to sending a copy of the investigative report to the HA?



OVERVIEW OF CDCR INVESTIGATIONS (JULY-DEC, 2006)

Was the investigation conducted with due diligence?

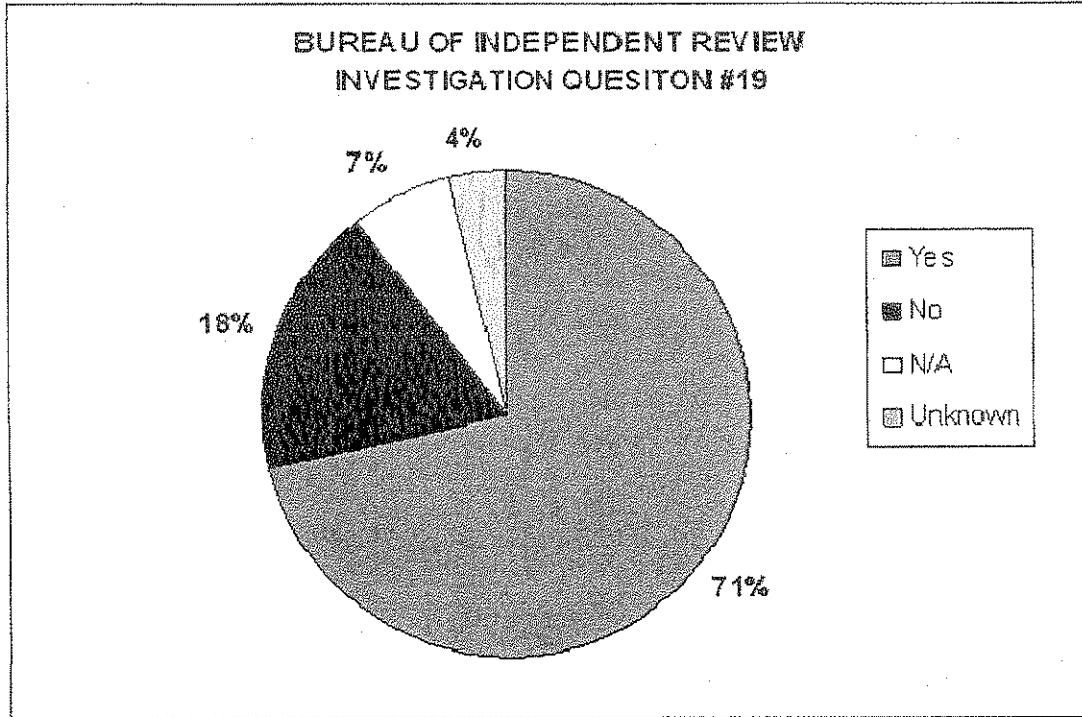
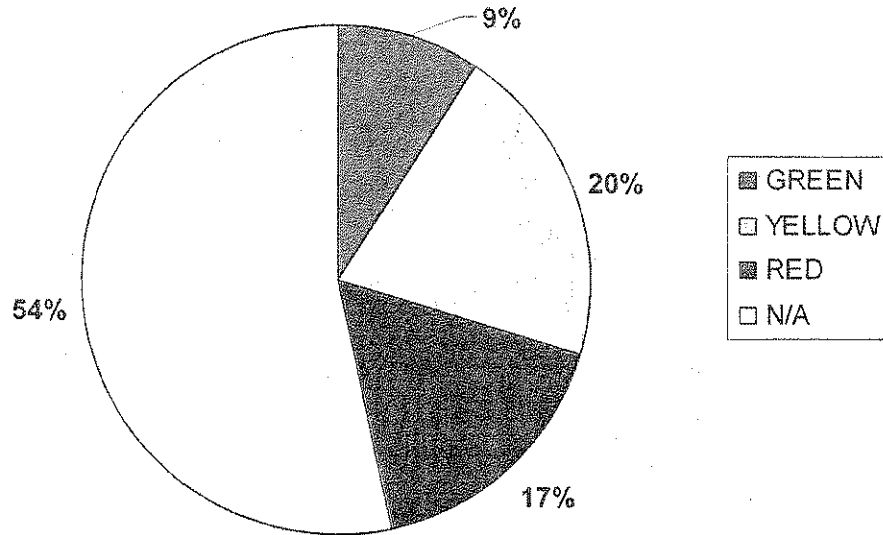






EXHIBIT 12

OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

BUREAU OF INDEPENDENT REVIEW
SEMI ANNUAL REPORT VERTICAL ADVOCATE STATISTICS

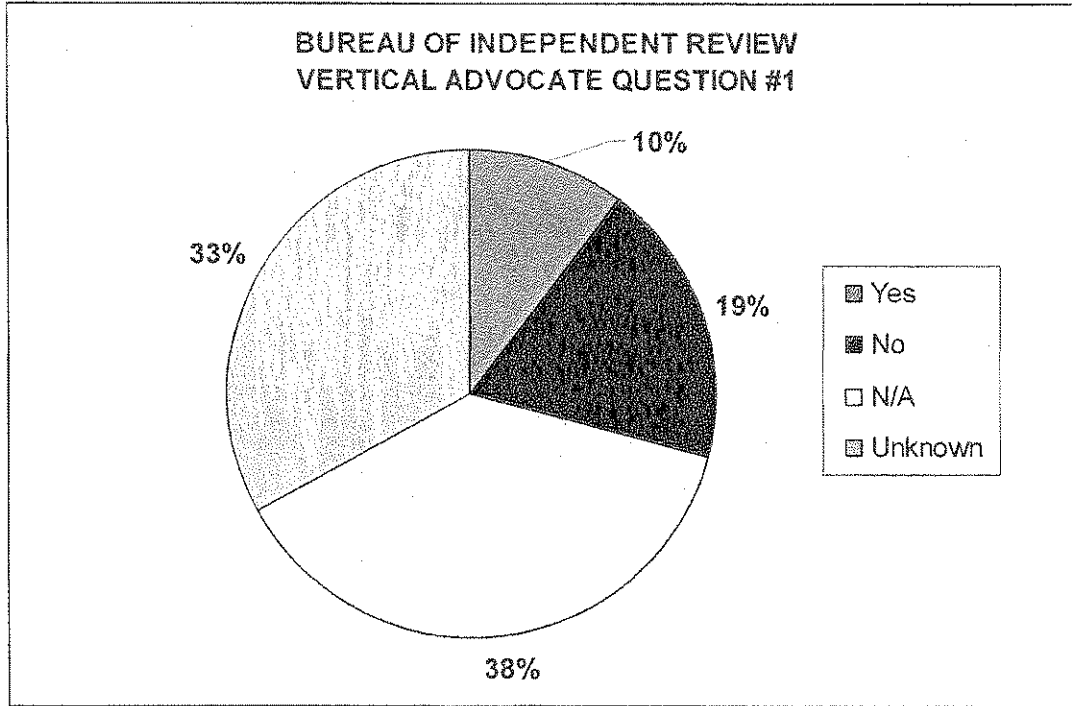


OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

Symbol	Rating Explanation
	Given the totality of circumstances, the disposition of the case was reasonable and substantially consistent with the bureau's recommendations.
	Given the totality of circumstances, the disposition of the case was unreasonable and inconsistent with the bureau's recommendations.
	<p>Given the totality of circumstances, the initial disposition of the case was unreasonable and inconsistent with the bureau's recommendations but later rectified as a result of executive review;</p> <p>or</p> <p>The case eventually resulted in a finding that there was insufficient evidence of misconduct. However, had actionable misconduct been found, no action could have been taken because the time for a prosecutor to file charges (in a criminal case) or for the department to take disciplinary action (in an administrative case) expired before the case was resolved.</p>
	The case monitored was a criminal case so there were no administrative charges, findings, or penalties imposed by the department for the bureau to assess.

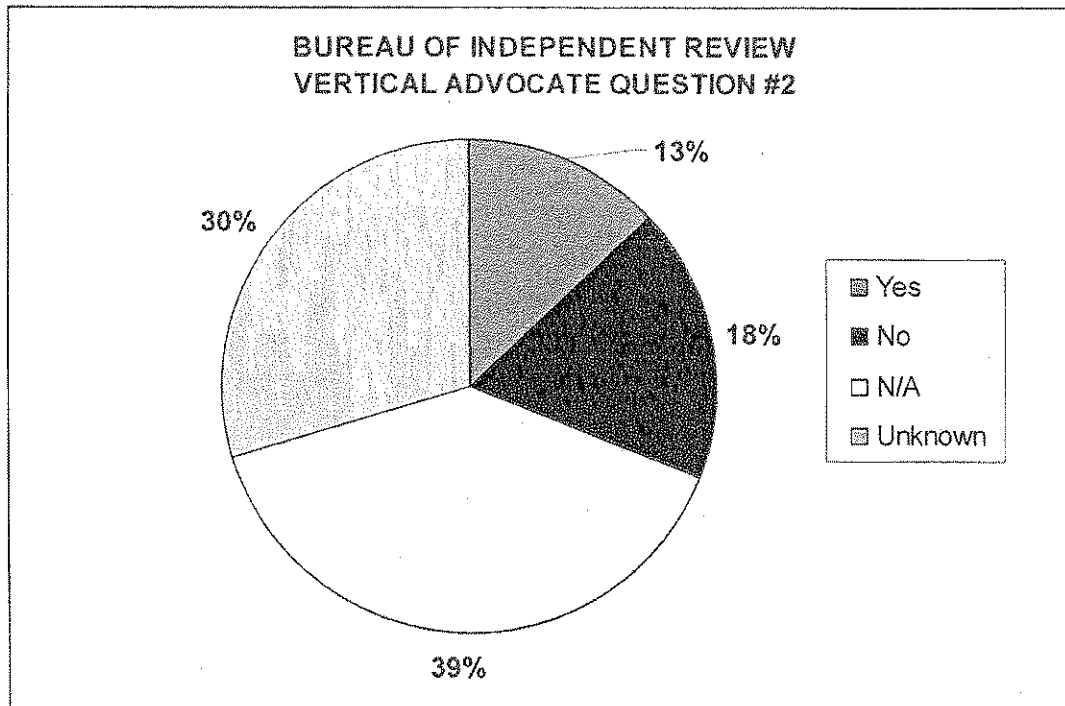
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: As soon as operationally feasible, but no later than 21 calendar days following assignment of the case, did the VA confirm in CMS the date of the reported incident, the date of discovery, the statute of limitations expiration date, and any exceptions to the statute of limitations known at the time?



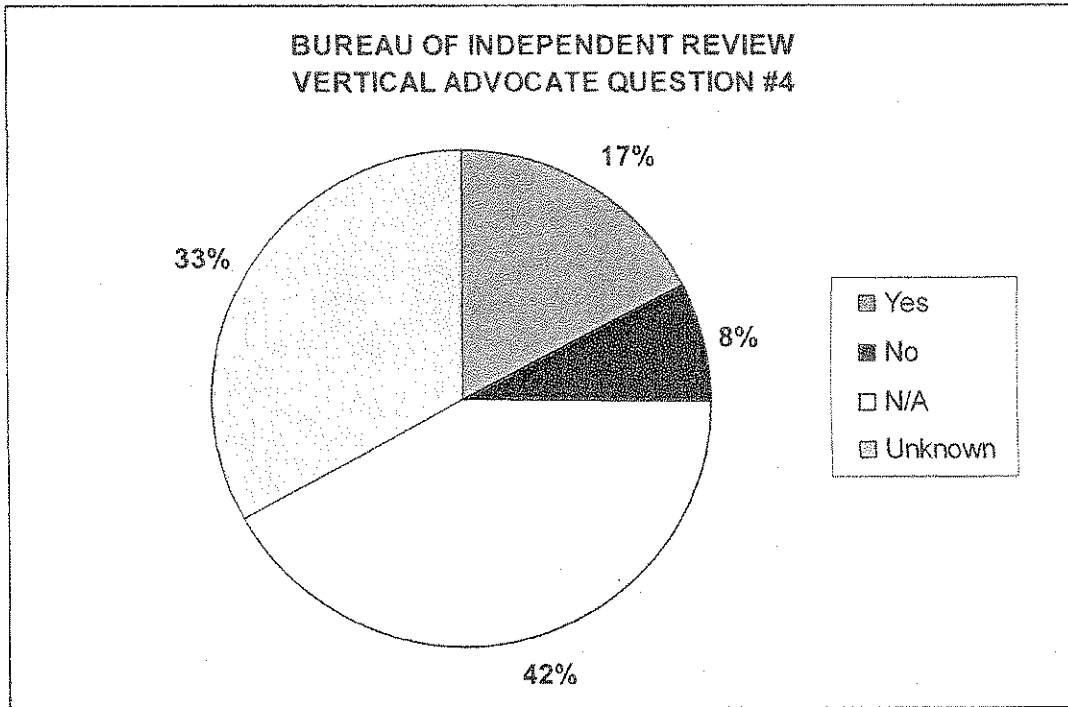
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: As soon as operationally feasible, but no later than 21 calendar days following assignment of the case, did the VA contact the assigned investigator and the SAIG to discuss the elements of a thorough investigation of the alleged misconduct?



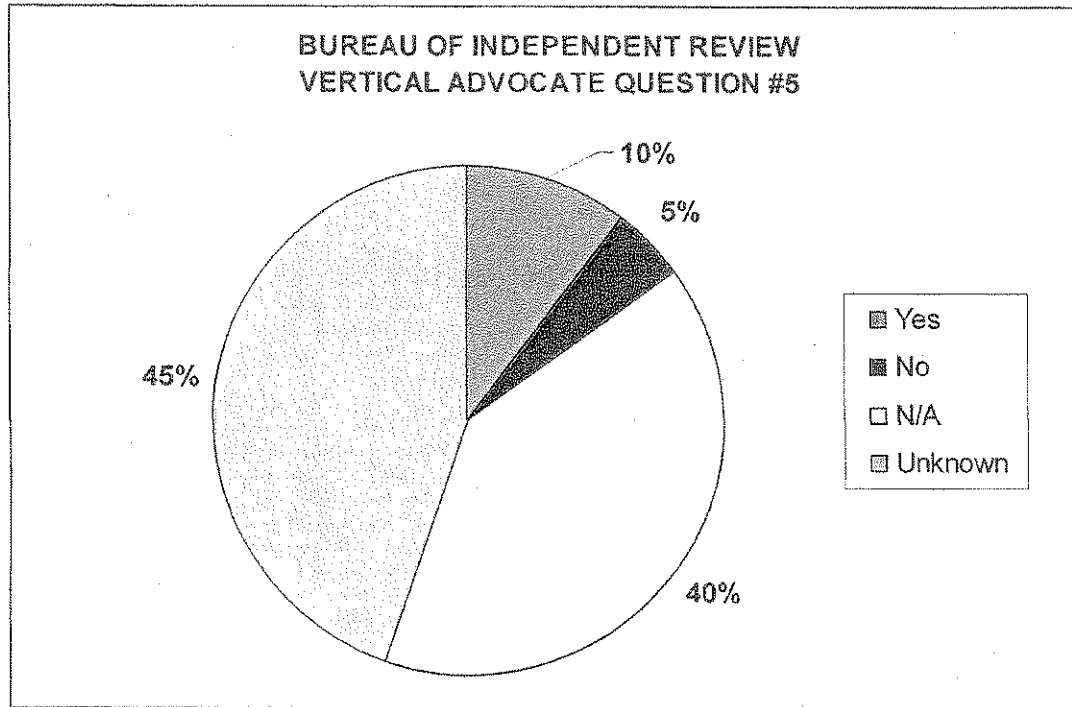
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: Did the VA provide legal consultation to the assigned investigator for the duration of the investigation?



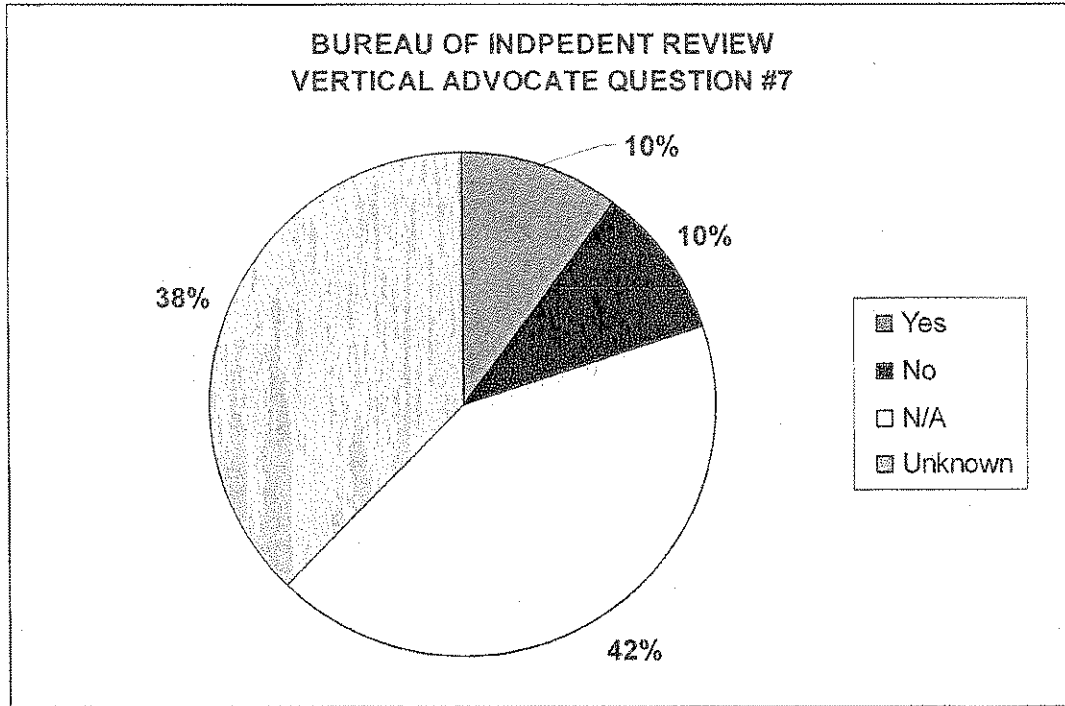
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: Did the VA provide legal consultation to the HA for the duration of the investigation?



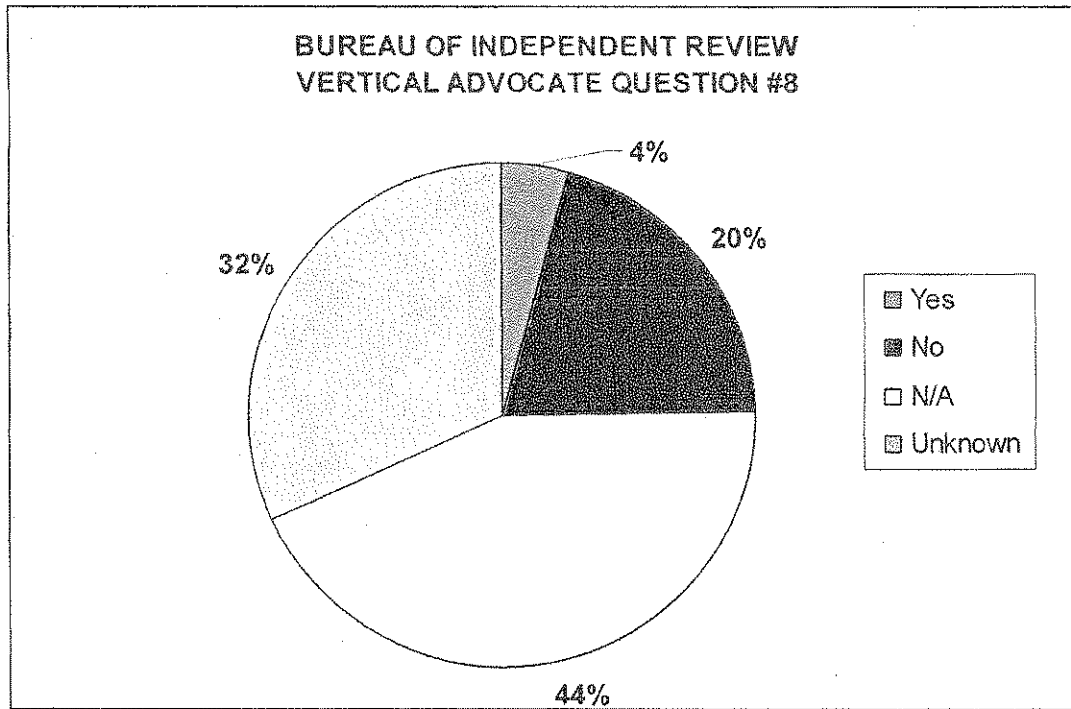
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: Did the VA provide legal consultation to the investigator for preparing investigative interviews, as appropriate?



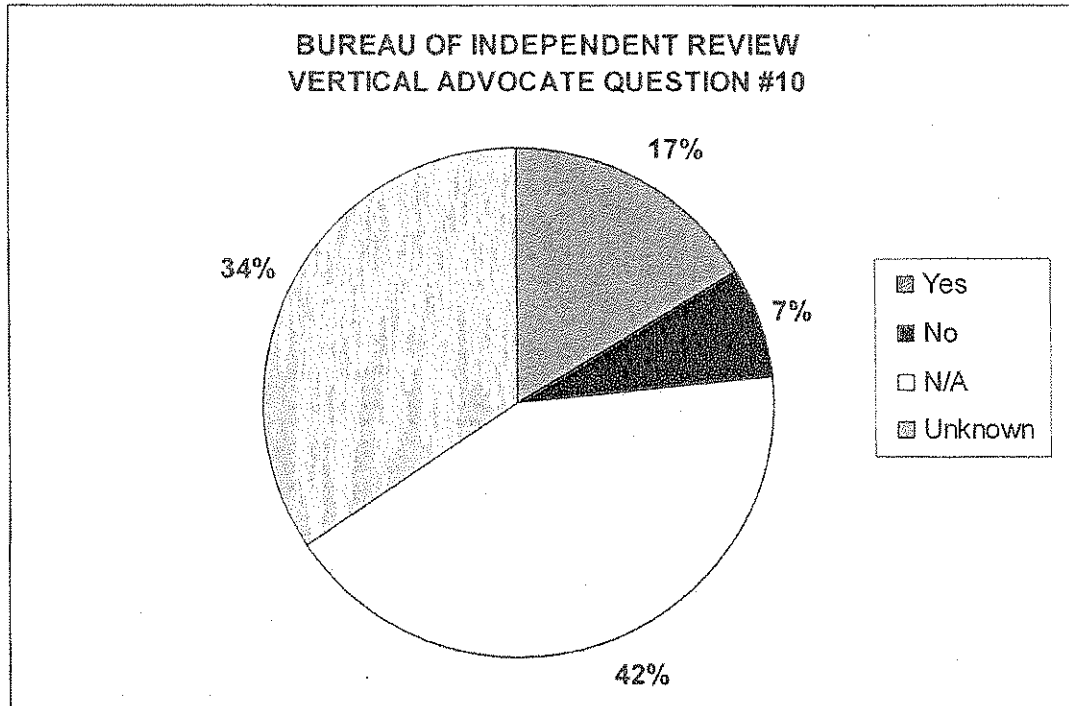
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated: Did the VA attend investigative interviews, as appropriate, to assess witness demeanor and credibility?



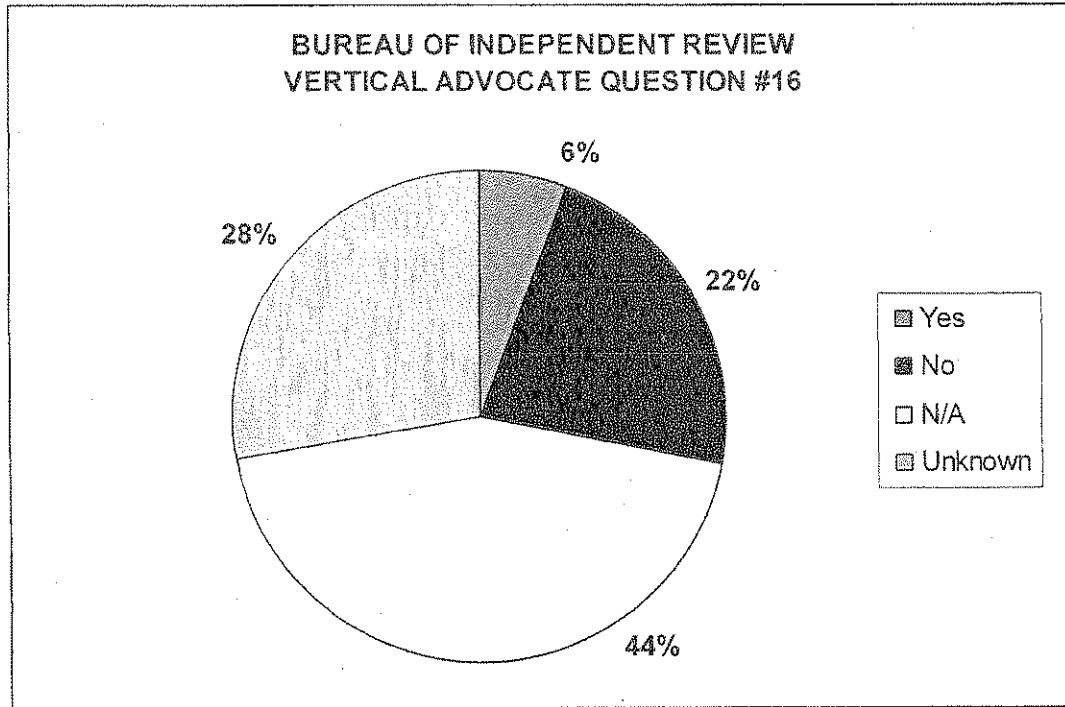
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated, as soon as operationally possible, but no more than 21 calendar days following receipt of the investigative report, did the VA review the report and supporting documentation and provide feedback addressing the thoroughness and clarity of the report to the assigned investigator?



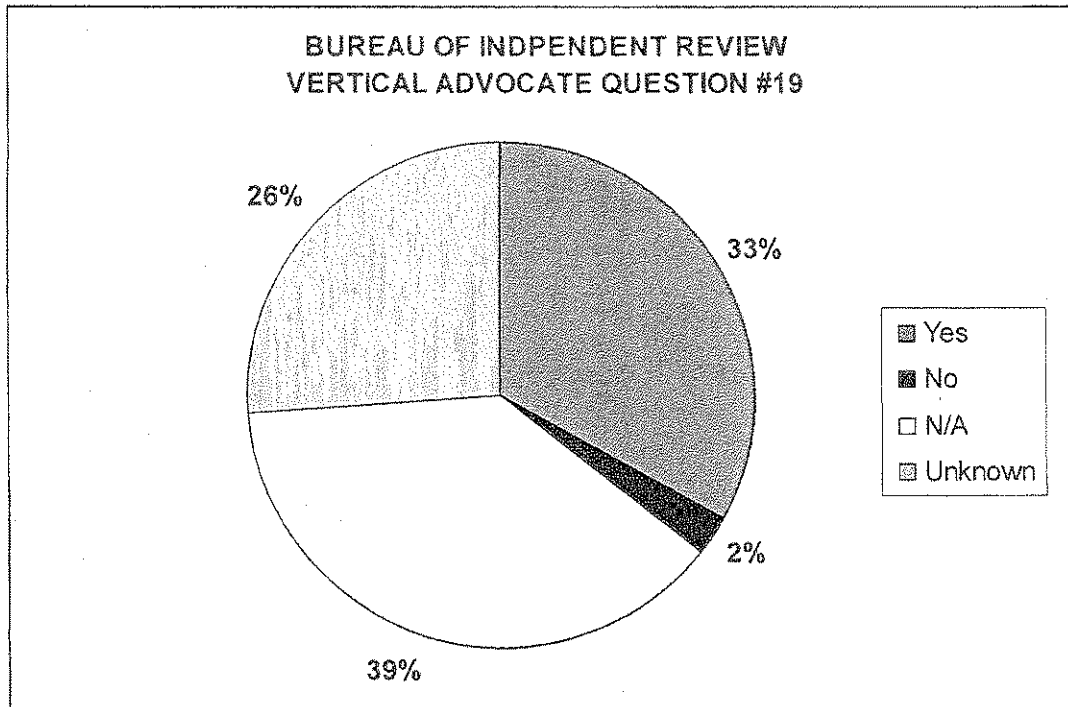
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

Did the VA provide to the HA, SAIG, and AGC written confirmation (memorandum or email) of penalty discussions with the SAIG?



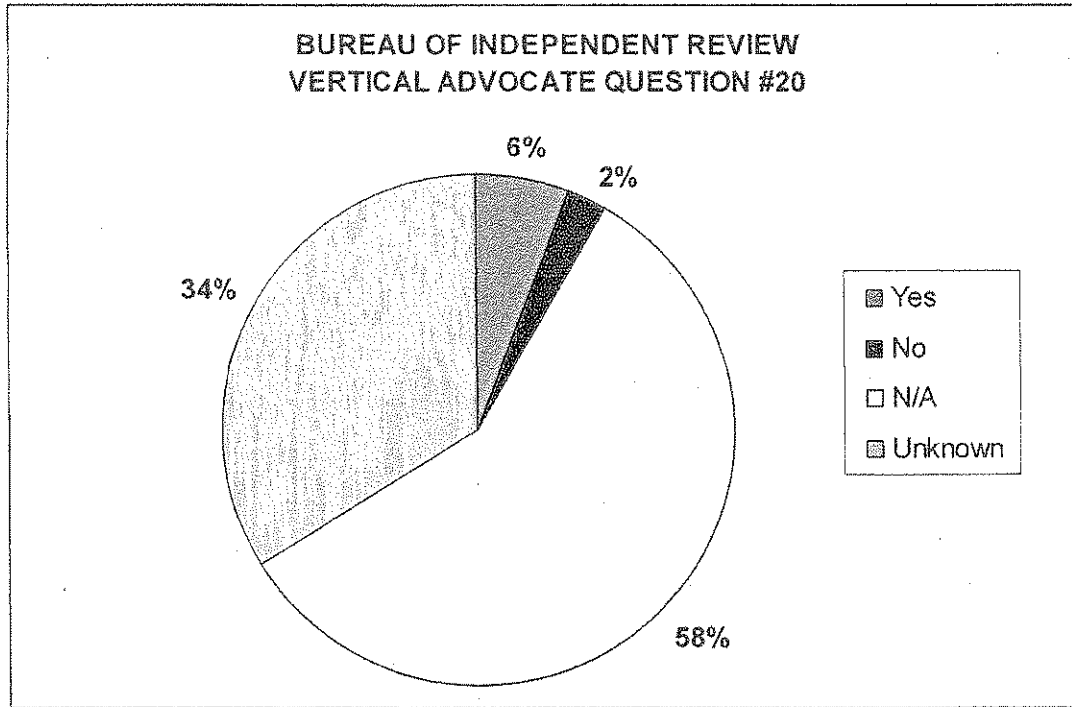
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

Did the VA/ERO/DO appropriately draft the NOAA as described in DOM 33030.22?



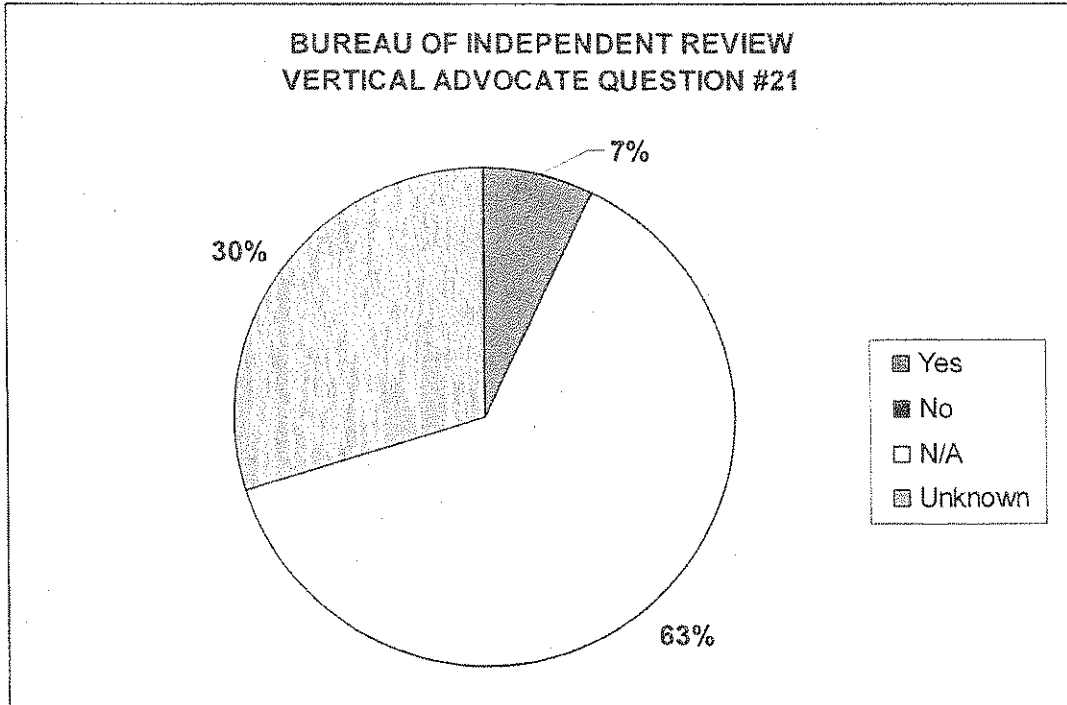
OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

If case was designated, did the VA attend the Skelly hearing (unless precluded by a scheduling conflict)?



OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

Did the VA review the form and substance of any proposed settlement agreement (if drafted by the HA and/or the ERO/Disciplinary Officer), prior to the HA entering into the settlement?



OVERVIEW OF CDCR ADVOCACY (JULY-DEC, 2006)

Did the VA coordinate with the SAIG at each critical step of the disciplinary process?

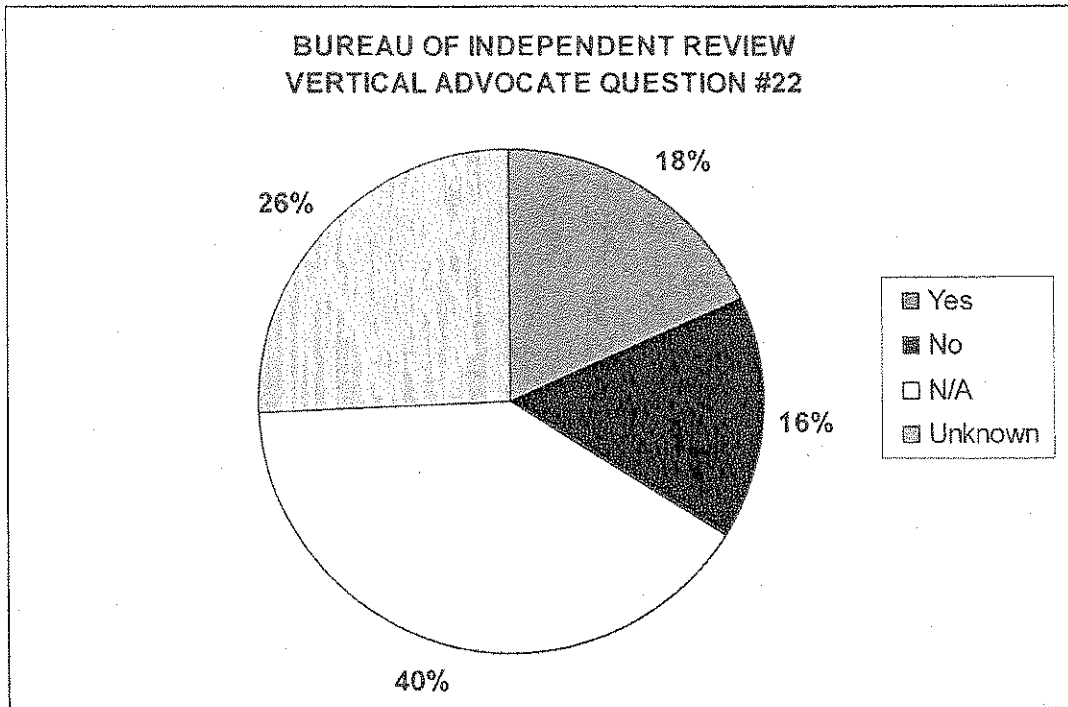
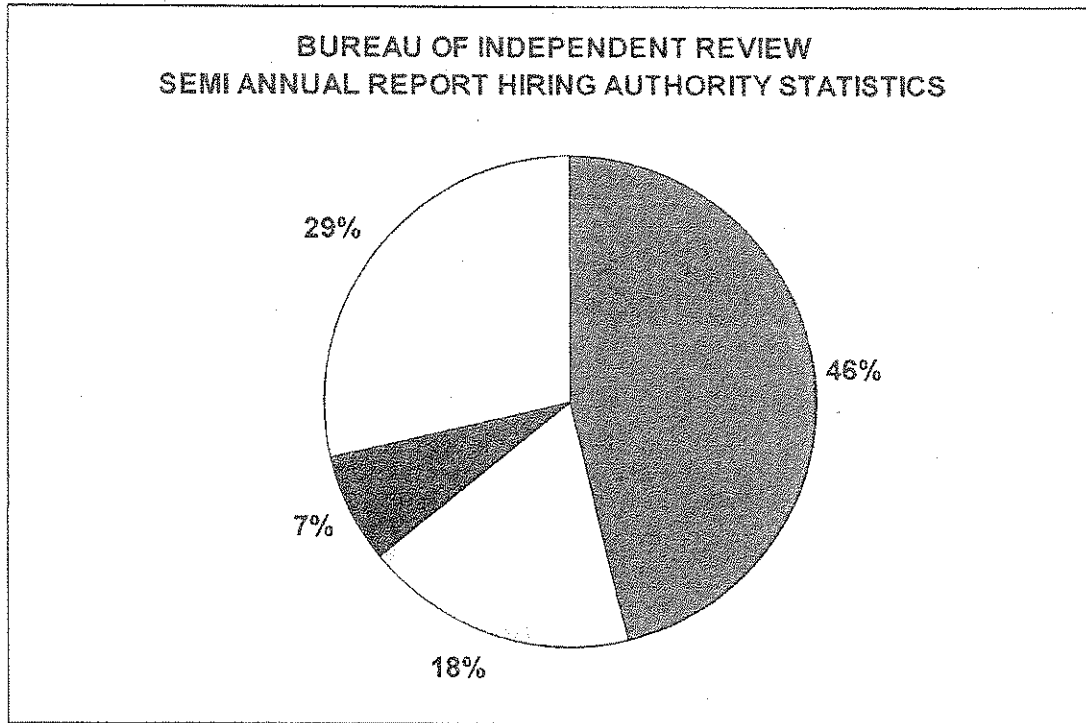






EXHIBIT 13

OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)



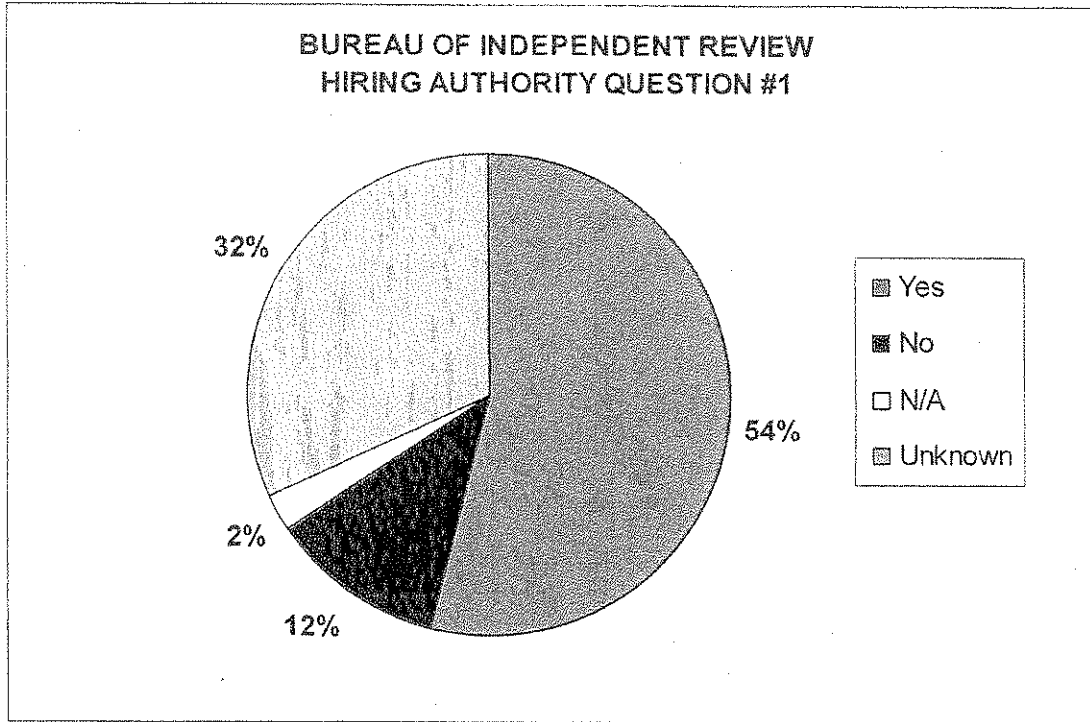
OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Symbol	Rating Explanation
	Given the totality of circumstances, the disposition of the case was reasonable and substantially consistent with the bureau's recommendations.
	Given the totality of circumstances, the disposition of the case was unreasonable and inconsistent with the bureau's recommendations.
	<p>Given the totality of circumstances, the initial disposition of the case was unreasonable and inconsistent with the bureau's recommendations but later rectified as a result of executive review;</p> <p>or</p> <p>The case eventually resulted in a finding that there was insufficient evidence of misconduct. However, had actionable misconduct been found, no action could have been taken because the time for a prosecutor to file charges (in a criminal case) or for the department to take disciplinary action (in an administrative case) expired before the case was resolved.</p>
	The case monitored was a criminal case so there were no administrative charges, findings, or penalties imposed by the department for the bureau to assess.

OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Did the HA complete and submit a CDC Form 989 for processing as soon as reasonably practical?

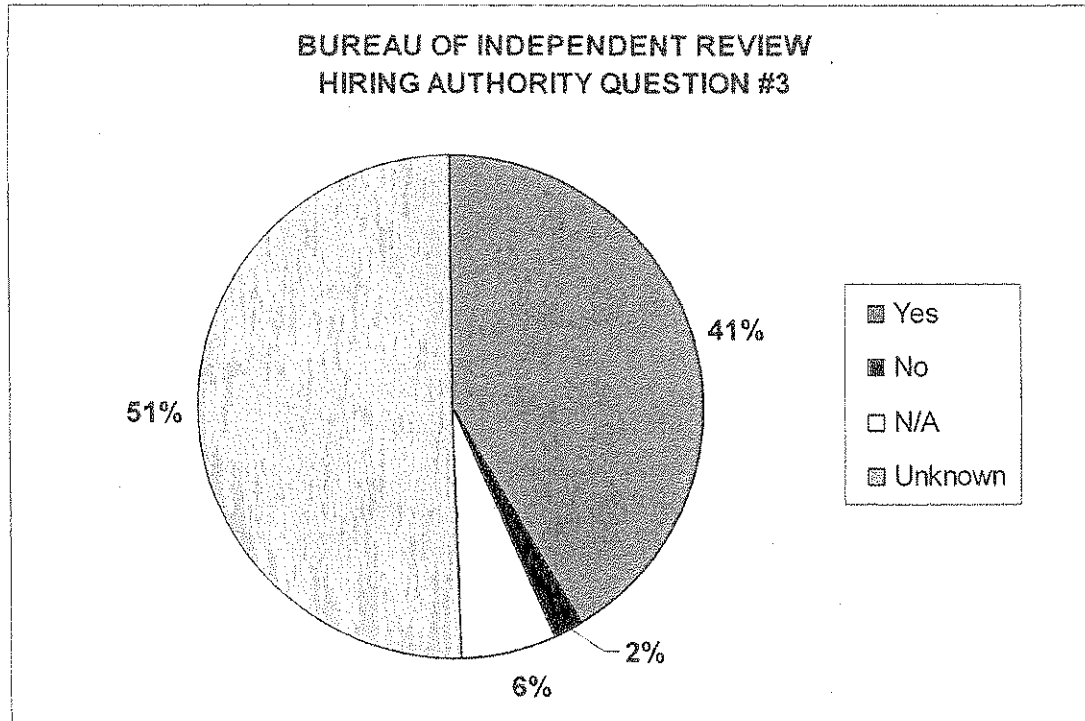
(Top "Yes" respondents: CCI & WSP; Top "No" respondents: COR, LAC, & RJD)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

As soon as operationally feasible, but no more than 14 calendar days following receipt of the final investigative report, did the HA review the investigative report and supporting documentation?

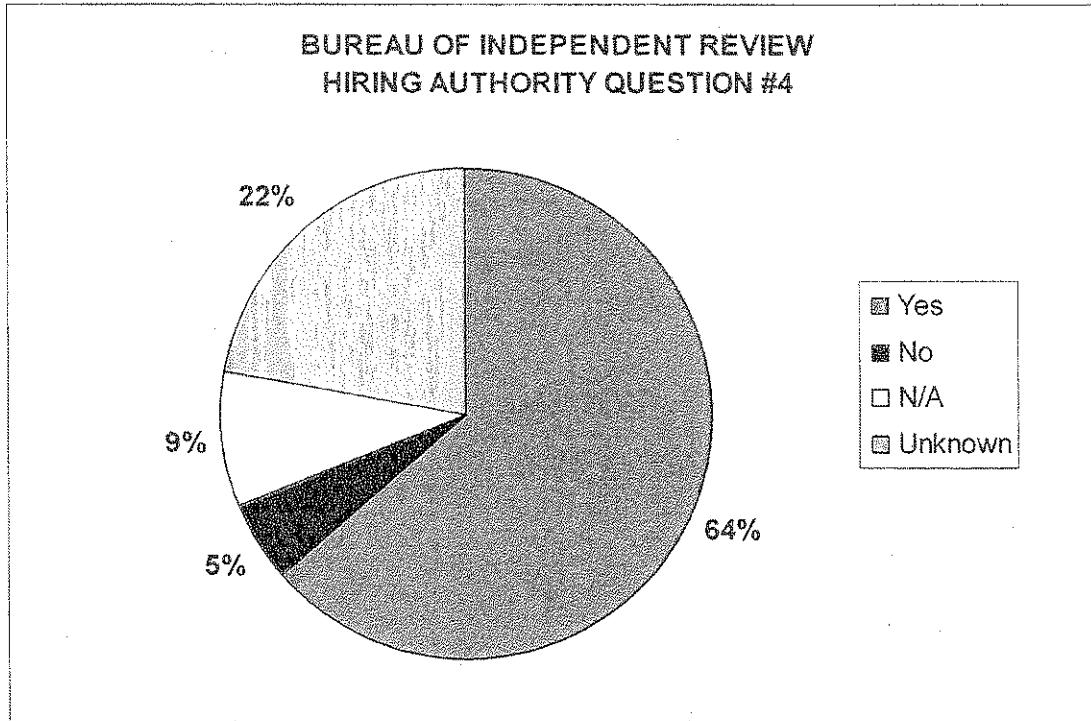
(Top "Yes" respondents: CCI, RJD, WSP)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Did the HA consult with the SAIG, regarding the sufficiency of the investigation?

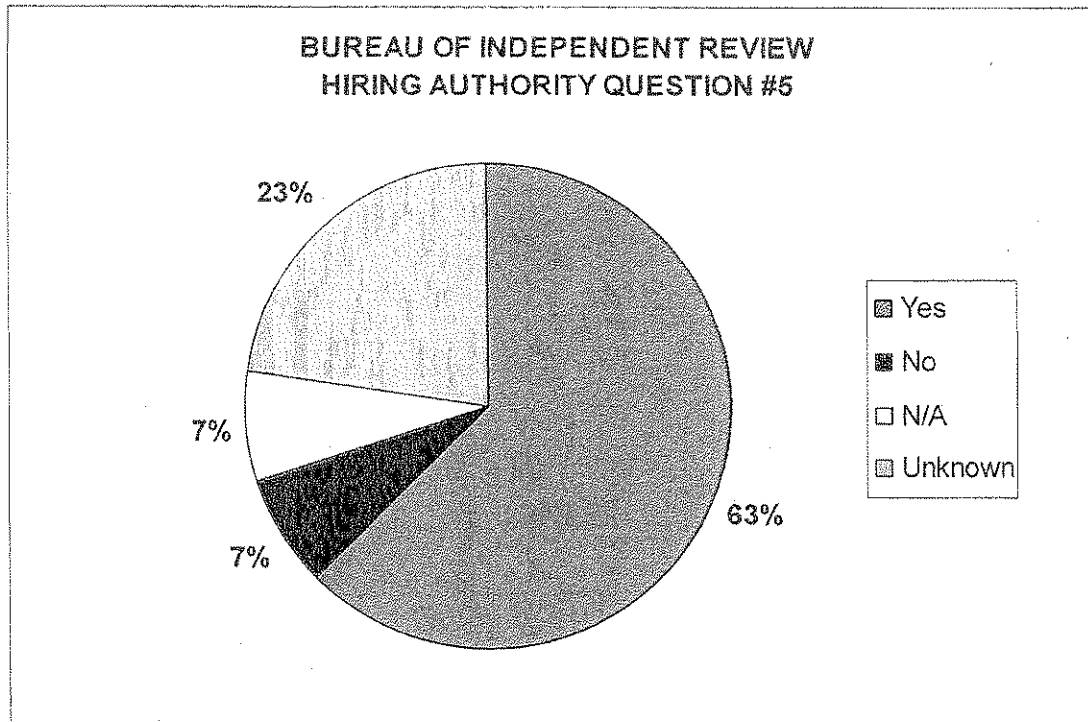
(Top "Yes" respondents: SATF & WSP; Top "No" respondents: COR & LAC)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Did the HA consult with the SAIG regarding investigative findings (including allegations) prior to making a final decision?

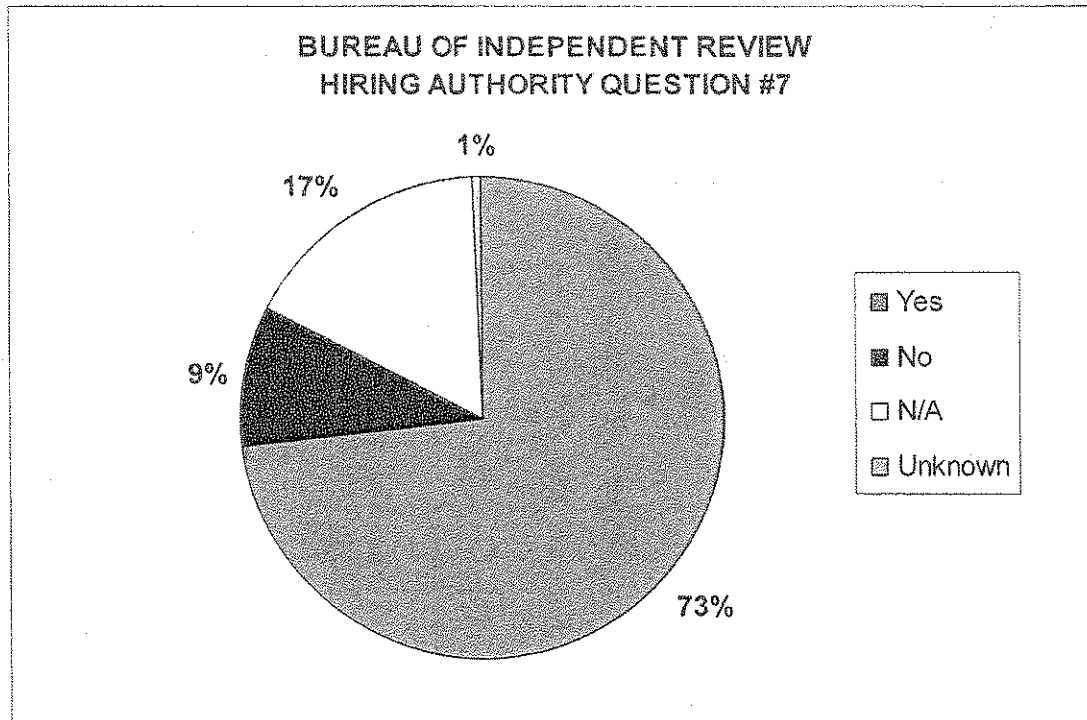
(Top "Yes" respondents: **HDSP, RJD, SATF & WSP**; Top "No" respondents: **COR & LAC**)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Did the HA consult with the SAIG regarding disciplinary determinations (including penalty level) prior to making a final decision?

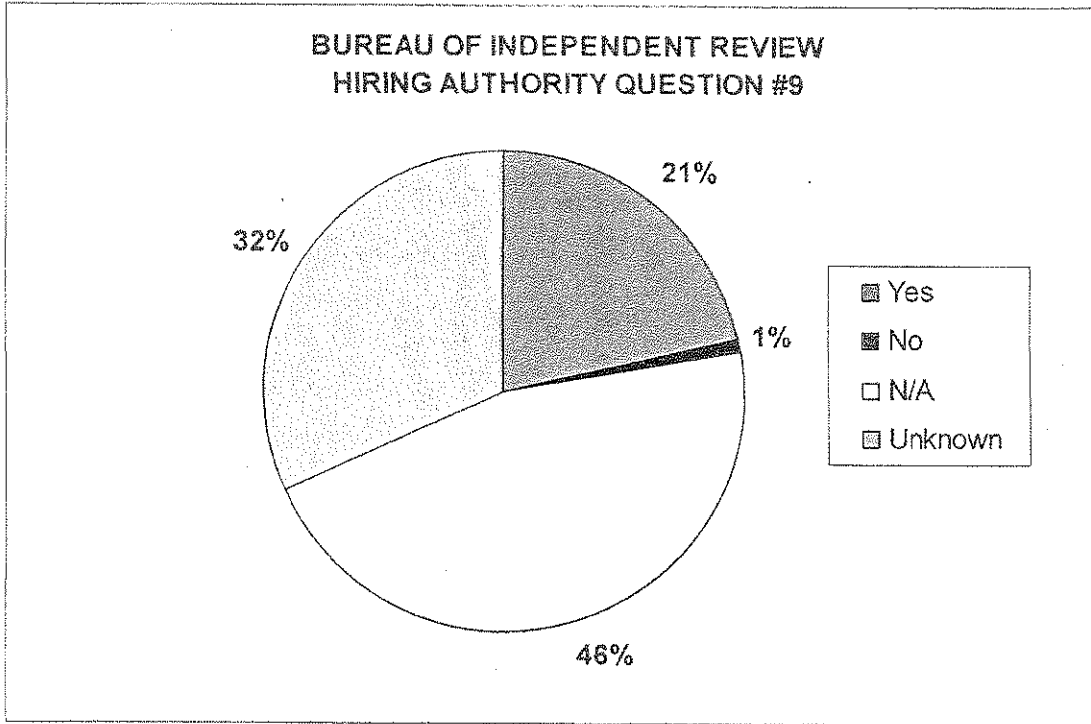
(Top "Yes" respondents: LAC & RJD; Top "No" respondents: COR, SATF, & WSP)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Was the Skelly hearing, if any, conducted pursuant to DOM 33030.24.2 - 33030.25?

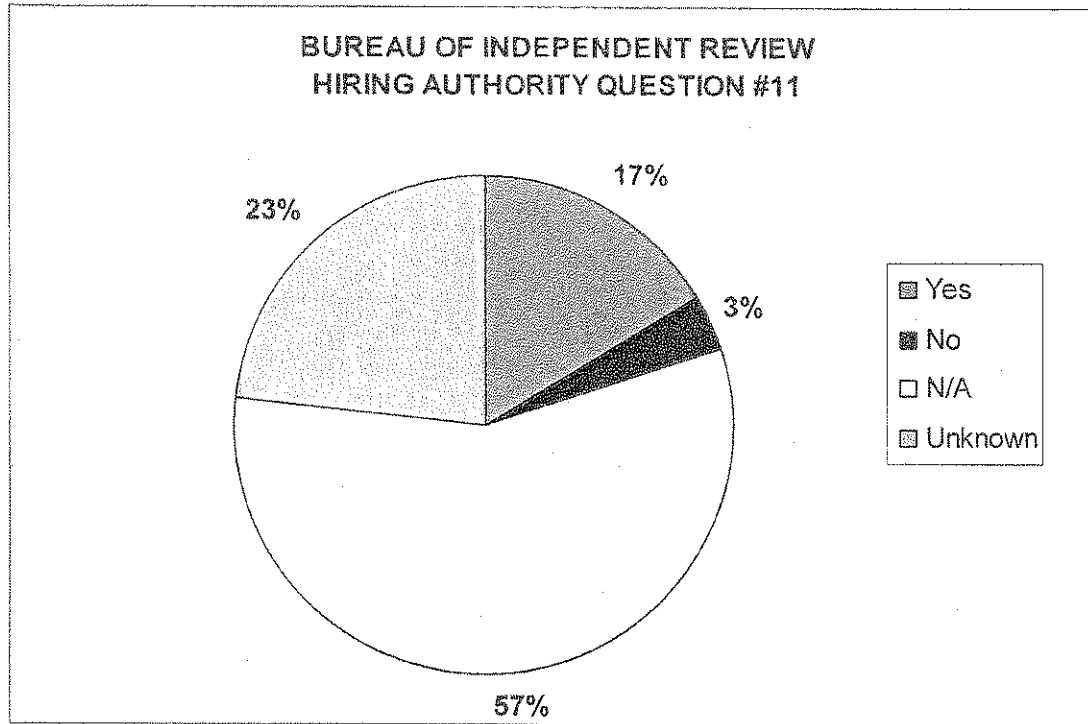
(Top "Yes" respondents: CCI, LAC & WSP)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Did the HA consult with the SAIG before agreeing to any modification, stipulation, or withdrawal of the disciplinary action?

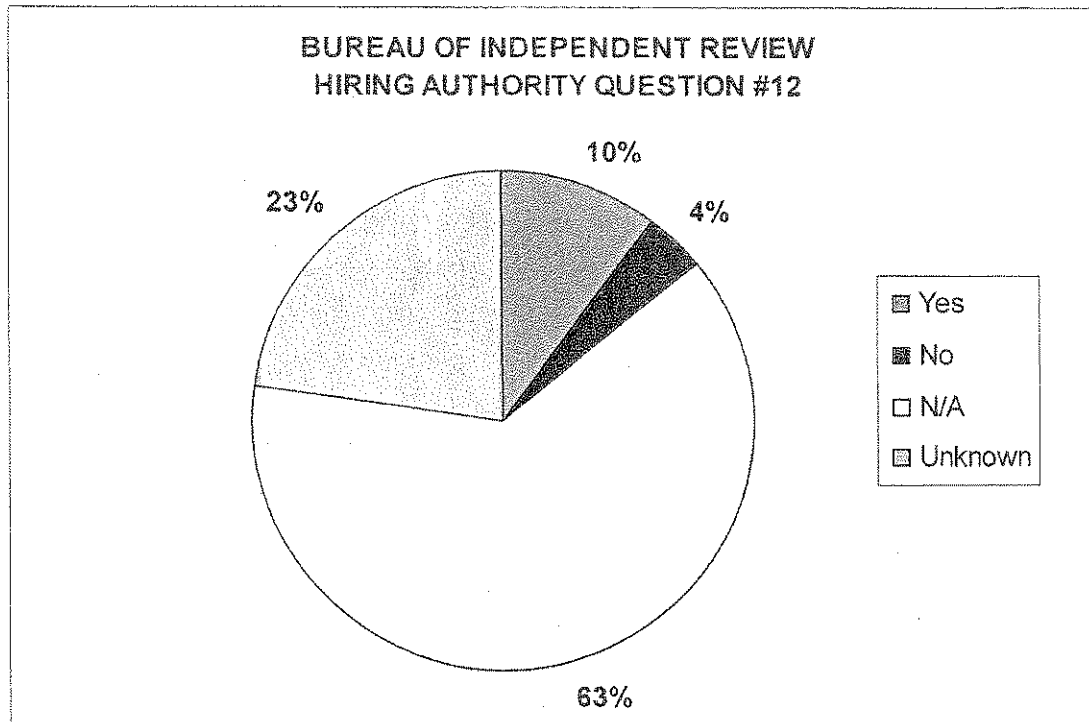
(Top "Yes" respondents: CCWF & LAC; Top "No" respondent: COR)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

Prior to approving a settlement agreement, did the HA consult with the SAIG regarding both the form and substance of the settlement agreement?

(Top "Yes" respondents: CCWF, LAC, & SAC; Top "No" respondent: COR)



OVERVIEW OF CDCR HIRING AUTHORITIES (JULY-DEC, 2006)

If an executive review was requested, was the executive review process followed?

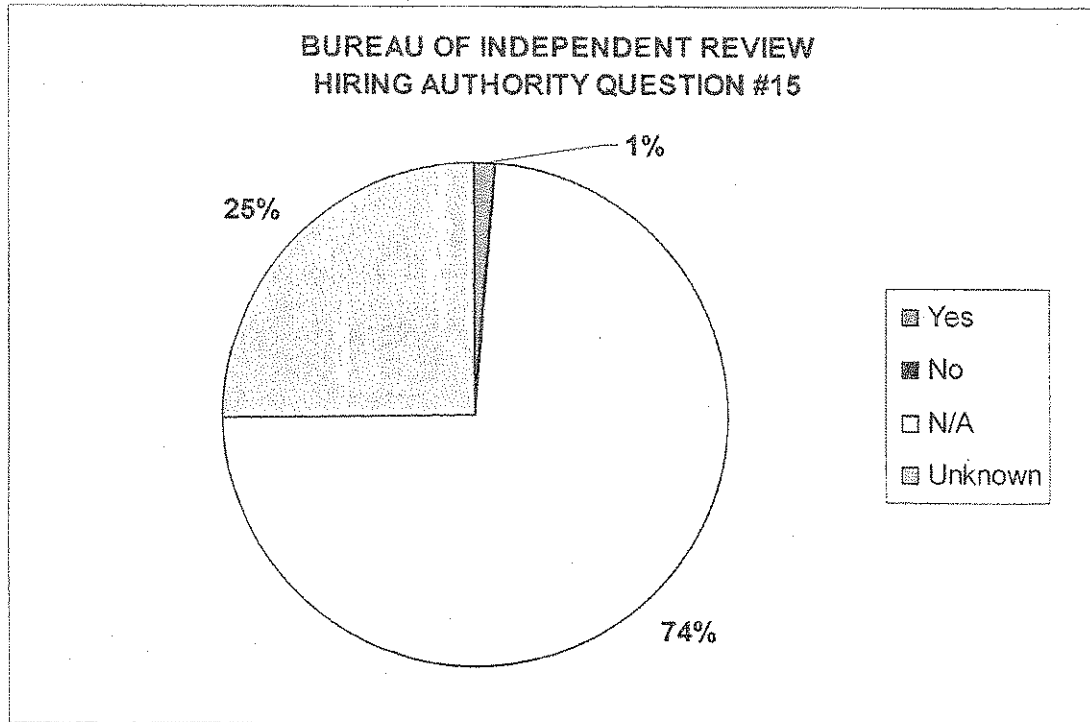
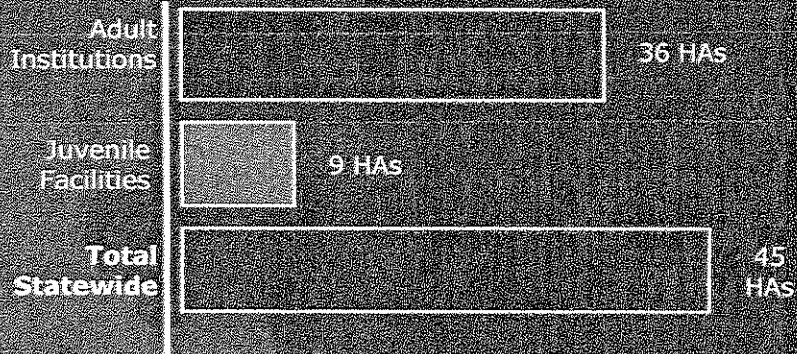


EXHIBIT 14

UOF Survey

Phase One - Workload

Relevant CDCR Hiring Authorities



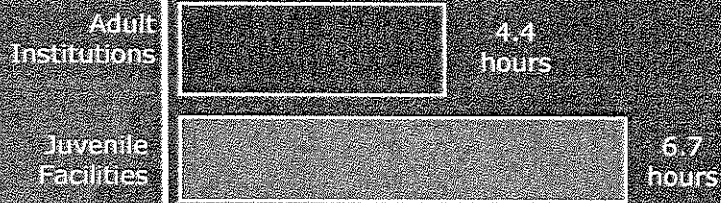
Average Time UOF Packets Distributed



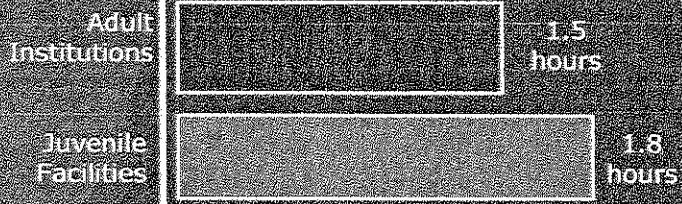
Average Preparation Time for Each UOF Meeting



Average Travel Time to Attend Each UOF Meeting



Average Length of Each UOF Meeting

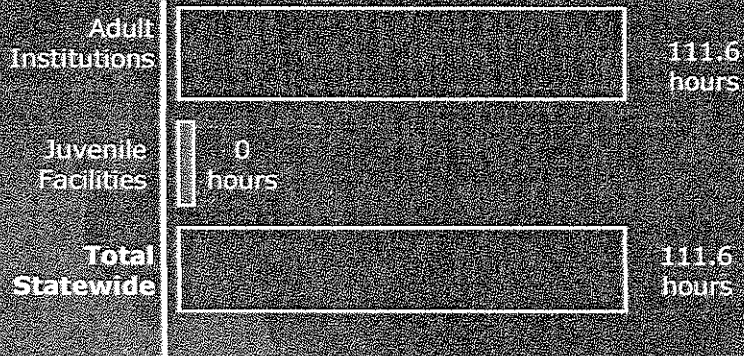


Total Average Time Required for Each UOF Meeting

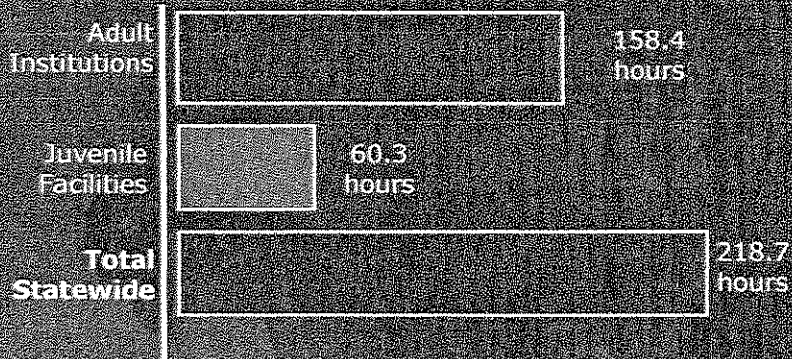
Adult Institutions	9.0 hours
Juvenile Facilities	8.5 hours

Variable One:
1 UOF Meeting per Month per HA

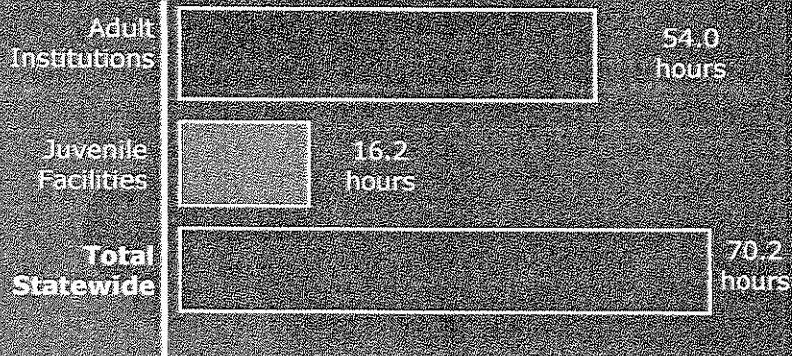
Monthly Preparation Time (1 UOF Meeting per Month per HA)



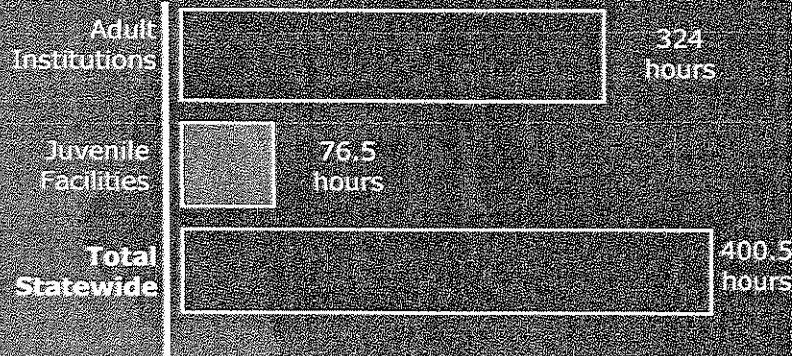
Monthly Travel Time for UOF Meetings (1 UOF Meeting per Month per HA)



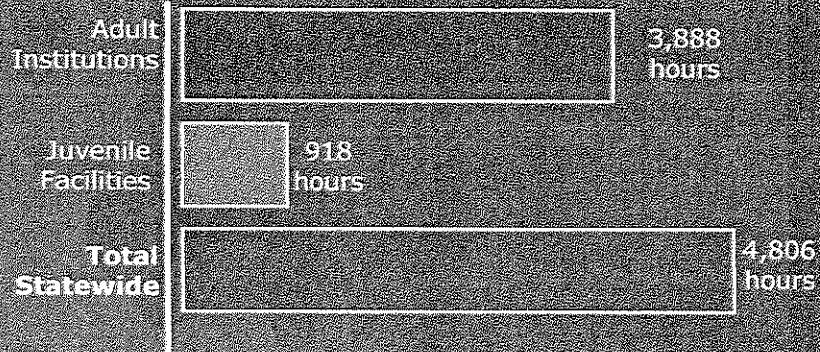
Monthly Meeting Time (1 UOF Meeting per Month per HA)



Total Hours Required Per Month (1 UOF Meeting per Month per HA)



**Total Hours Required Per Year
(1 UOF Meeting per Month per HA)**

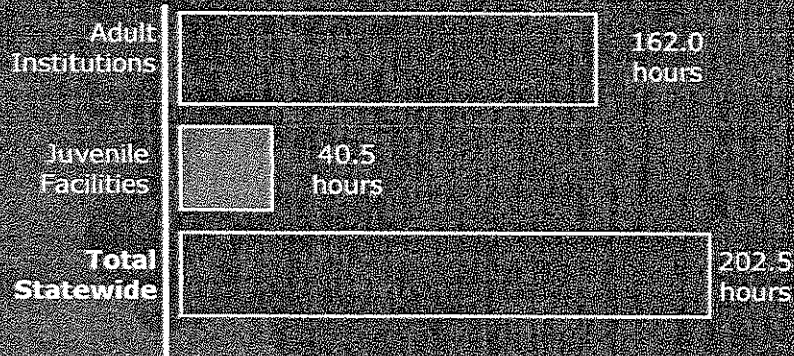


**Variable Two:
All UOF Packets In Advance
(20 Minutes Average Prep Per Case)**

Monthly Preparation Time
(1 UOF Meeting per Month per HA)
[Majority of UOF Packets in Advance]



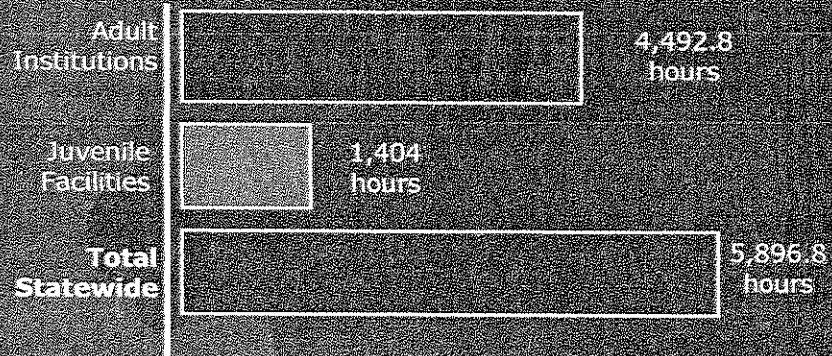
Monthly Preparation Time
(1 UOF Meeting per Month per HA)
[With All UOF Packets in Advance]



**Total Hours Required Per Month
(1 UOF Meeting per Month per HA)
[With All UOF Packets in Advance]**

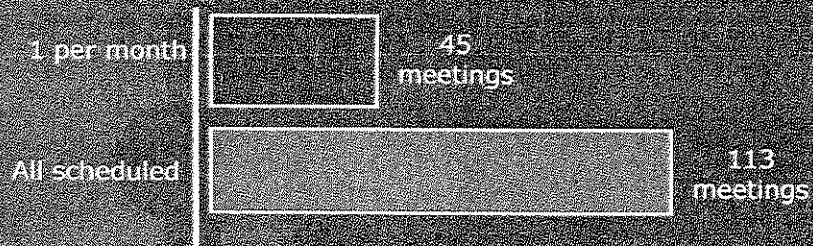


**Total Hours Required Per Year
(1 UOF Meeting per Month per HA)
[With All UOF Packets In Advance]**

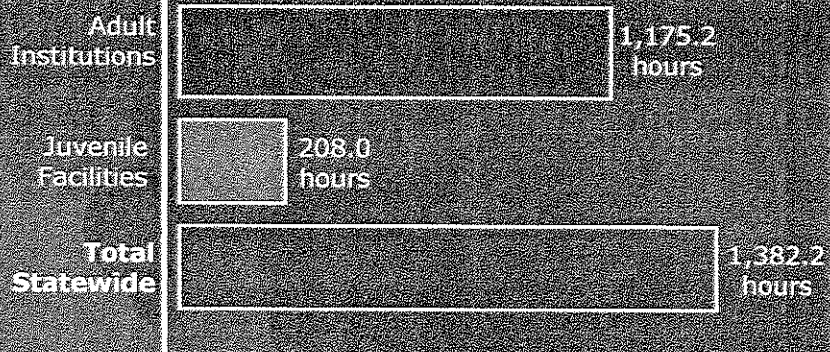


Variable Three:
All Scheduled UOF Meetings
[With All UOF Packets In Advance]

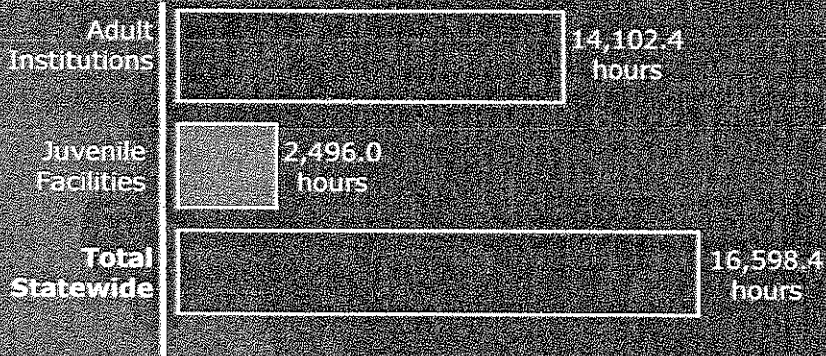
Total Number of UOF Meetings



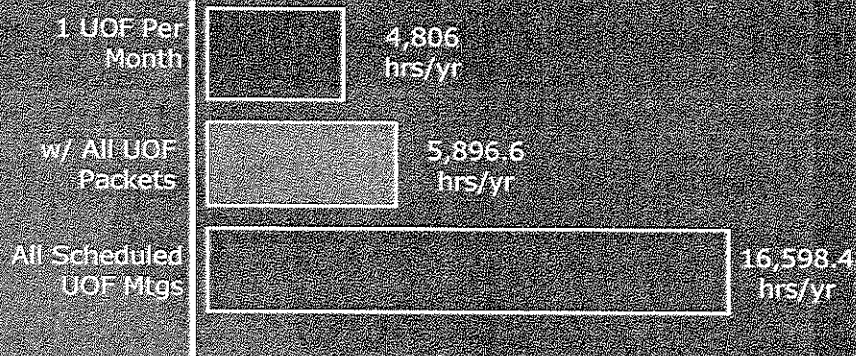
Total Hours Required Per Month (All Scheduled UOF Meetings)



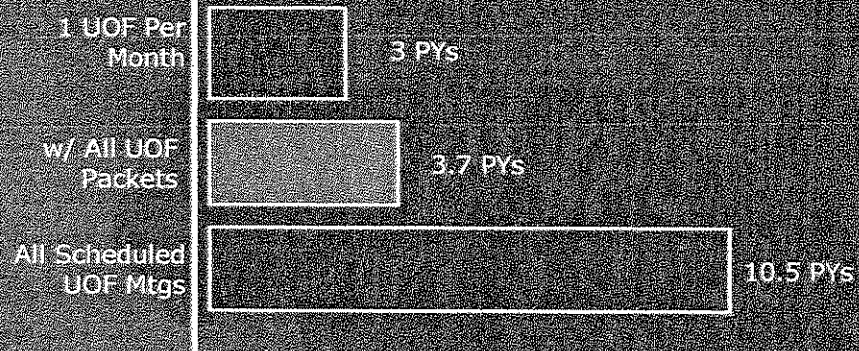
Total Hours Required Per Year (All Scheduled UOF Meetings)



Three Variables: Side-by-Side



Staffing Requirements: Side-by-Side [1,578 hours = One Personnel Year (PY)]



UOF Survey

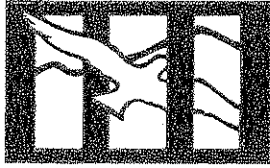
Phase One – Quantitative

Phase Two – Qualitative

Phase Two – Qualitative

- UOF Coordinator
 - Classification?
 - Qualified?
 - Preparation?
- Union Representative
 - Attendance?
 - Input?
 - Present during discussion of investigations or discipline?
- Quality of UOF Mtg
 - Attended by HA?
 - HA prepared for mtg?
 - Who leads mtg?
 - Quality of discussion?
 - Timeliness of cases heard?
 - Attendance by EAPT?

EXHIBIT 15



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964-0001
Telephone (415) 457-9144 • Fax (415) 457-9151
www.prisonlaw.com

Director:
Donald Specter

Staff Attorneys:
Susan Christian
Steven Fama
Rachel Farbiarz
Penny Godbold
Megan Hagler
Alison Hardy
Vibeke Martin
Millard Murphy
Sara Norman
Judith Rosenberg
Zoe Schonfeld
E. Ivan Trujillo

September 18, 2007

John Hagar
Special Master, Madrid v. Tilton
via e-mail only

Re: Special Master's Draft Report Re Status of Post-Powers Remedial Plan Monitor

Dear Mr. Hagar:

Plaintiffs offer the following comments and objections regarding the above-referenced report:

1. Section IV of the Report, titled "The Special Master's Concerns Re The Cessation Of Monitoring" should be modified to include a discussion of the CDCR's adoption and implementation of a statewide use of force policy and procedure, given the paramount importance of that policy to the continuing effectiveness of the Post-Powers remedial plan efforts.

As the Special Master knows – given the discussion of the issue at the two most recent 45-Day BIR status – the CDCR may be very close to adopting and implementing a statewide use of force policy and procedure. Drafts of this policy apparently have been circulating for many months within the CDCR, but as of September 3rd nothing had been adopted or shared with plaintiffs or, apparently, the Special Master. Presumably, the CDCR statewide policy will concern not only the actual use of force, but reporting and reviewing of use of force, as does the Court-approved policy currently used only at Pelican Bay. As such, the statewide policy, when adopted, will become – as it is at Pelican Bay – a core document with regard use of force/code of silence matters. If the provisions in the statewide policy regarding the reporting and review of force incidents are not adequate, it will significantly undermine the remedial efforts of the last two years regarding formal investigations and discipline. For example, if the policy does not include requirements for complete and timely reporting of force incidents by involved staff, and of allegations of unnecessary or excessive use of force, then policy provisions adopted as part of Post-Powers remedial plan regarding discipline for failing to do so will become essentially meaningless because there would be no adequate substantive requirement against which CDCR staff could be held accountable. The Report should be modified to set forth these concerns about the adoption and implementation of a statewide use of force policy.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Honorable John Burton • Felecia Gaston • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

Mr. Hagar
September 18, 2007
Page 2

2. The Report should be modified to include a discussion of events related to plaintiffs' concerns regarding the notification to prisoners who make complaints about staff misconduct.

As the Special Master is aware, the parties have for many months discussed whether and how prisoners who make staff misconduct allegations (including regarding use of force) are to be notified of the result of the review. These discussion arose because of plaintiffs' concern that although the policies approved by the Court as part of the Post-Powers remedial plan required, consistent with what had been CDCR policy for many years previously, that prisoners be notified of the ultimate result after a formal investigation is completed, an Administrative Bulletin issued in 2005 (AB 05-03) has caused confusion in the prisons, particularly when an allegation is reviewed via an administrative appeal inquiry or allegation inquiry as opposed to a formal investigation. As a result, prisoners currently are not being notified of the determination on a staff complaint when the review does not involve a formal internal affairs investigation.

Most recently, during discussions facilitated by Court Expert Michael Gennaco, the CDCR and plaintiffs reached agreement regarding clarifying the requirements for notification to prisoner of investigation results, including of determinations made as a result of administrative appeal inquiries. The parties and I believe Mr. Gennaco now agree on what needs to be clarified and related matters, including what specific language will be used when prisoners are notified of determinations made as a result of an administrative appeal or other inquiry. However, CDCR must still inform and educate the prisons and staff therein regarding the newly clarified requirements. Plaintiffs request that the draft report set forth these matters and state that a further update will be provided with the next monitoring report.

Thank you for considering these matters.

Sincerely,

Steven Fama
Attorney for Plaintiffs

cc: Mike Jorgenson, Emily Brinkman, Deputy Attorneys General
Bruce Slavin, CDCR Counsel
Barbara Sheldon, Howard Moseley, BIR
Michael Gennaco, Court Expert

EXHIBIT 16

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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 ALEJANDRO MADRID, et al.,

15 Plaintiff,

16 v.

17 JAMES TILTON, et al.,

18 Defendants.
19

C 90-3094 TEH

DEFENDANTS' RESPONSE
TO DRAFT REPORT ON
STATUS OF POST-POWERS
REMEDIAL PLAN
MONITORING

20 Defendants submit the following comments to the August 27, 2007 Special Master's Draft
21 Report on the status of the Post-Powers remedial plan monitoring.

22 The Draft Report is very positive about the steps taken by the California Department of
23 Corrections and Rehabilitation (CDCR) to make changes and implement policies and procedures
24 on investigating and monitoring use-of-force incidents within the prison system. The Special
25 Master made the following findings in the Draft Report: 1) "defendants are in compliance with
26 the staffing related requirements of the State's Post Powers remedial plan" (Draft Report 3:6-7);
27 2) "defendants are in compliance with the management and control of investigations and
28 discipline related requirements of the State's Post Powers remedial plan" (*Id.* at 3:18-20); 3)

Defs.' Comments to Draft Report

Madrid, et al. v. Tilton, et al.
C 90-3094 TEH

1 "defendants are in compliance with the "working together" requirements of the State's Post
2 Powers remedial plan" (*Id.* at 4:16-18); and 4) "defendants are in compliance in achieving the
3 bottom line of the State's Post Powers remedial plan, an overall effective use of force/code of
4 silence related investigation and discipline program." (*Id.* at 5:14-17.)

5 As the Draft Report indicates, significant strides have been made by Employment Law
6 Advocacy Team (EAPT), Office of Internal Affairs (OIA), and Bureau of Independent Review
7 (BIR) to comply with the Post-Powers remedial plan. For example, in March 2007, OIA had
8 21.5 attorney and staff positions available. By May, 2007, OIA filled all 21.5 positions.
9 (Governor's First and Second Quarter Reports.) Furthermore, by August 2007, OIA had
10 completed its annual training for all CDCR hiring authorities on the *Madrid* disciplinary reform
11 systems and completed the MOU 9.09 training within sixty days. (Governor's Third Quarter
12 Report.) As of August 31, 2007, OIA began training on the new code-of-silence and ethics
13 program. (*Id.*)

14 EAPT also made great improvements between March and August 2007 from having
15 approximately 21 attorney vacancies to five attorney vacancies. (Governor's First and Third
16 Quarter Reports.) In March 2007, the Office of the Inspector General created 27 attorney
17 positions within BIR and as of August 2007, it had filled all but one of those positions. (*Id.*)
18 Additionally, BIR has created four new attorney positions dedicated to monitoring the use-of-
19 force reviews at all CDCR institutions. (Governor's Third Quarter Report.) Furthermore, BIR
20 created four attorney and one investigator positions in order to monitor medical compliance in
21 *Plata v. Schwarzenegger*. (*Id.*) A significant factor associated with BIR oversight, is that as of
22 March 2007, 96% of the monitored cases had at least a satisfactory outcome. (Governor's First
23 Quarter Report.) All of these improvements show CDCR's commitment to complying with the
24 Court's orders in *Madrid*, and more specifically, the Post-Powers remedial plan.

25 The Special Master lists three specific concerns with ending the Post-Powers monitoring: 1)
26 turnover within CDCR (Draft Report at 6); 2) CDCR's failure to establish effective and
27 consistent Executive Review Committees (ERCs) (*Id.* at 6-7); and 3) CDCR's failure to correct
28 problems without a court order. (*Id.* at 7-9.)

1 Nonetheless, Defendants have addressed those concerns in the Draft Report. CDCR is
2 committed to ongoing support for EAPT and OIA. As reported at the 45-day Post-Powers
3 Remedial Plan meeting on September 4, 2007, the OIA has completed statewide training on the
4 *Madrid*-initiated disciplinary reforms and MOU 9,09 training. A new round of code-of-silence
5 training programs began on August 31, 2007. EAPT also continues in its trend towards filling
6 prior vacancies and newly created budgeted positions and the vacancy rate is now only 6%. They
7 continue to hire new attorneys. Additionally, EAPT and BIR have made commendable progress
8 in obtaining office space throughout the state. CDCR has also developed the Court Ordered
9 Articles 14 and 22 in the Department Operations Manual addressing investigations and employee
10 discipline within CDCR.

11 Finally, the Governor's Office has shown tremendous support for OIA, EAPT, and BIR.
12 (Governor's First, Second, and Third Quarter Reports.) Significant steps have also been made in
13 labor relations with CDCR and CCPOA. (*Id.*)

14 In any event, the concerns raised in the Draft Report are beyond the constitutional issues in
15 *Madrid*, and they should not be a basis for further monitoring. Moreover, the concerns do not
16 rise to the level of an Eighth Amendment violation, and any relief imposed cannot exceed the
17 minimum required to correct a constitutional violation. *Gilmore v. People of the State of*
18 *California*, 220 F.3d 987, 999 (9th Cir. 2000).

19 The Court must make written findings based on the record that prospective relief remains
20 necessary to correct a current or ongoing violation of a federal right, extends no further than
21 necessary to correct the violation of the federal right, and that the prospective relief is narrowly
22 drawn and courts impose the least intrusive means to correct the violation. 18 U.S.C. §
23 3626(b)(3). In order to determine if there is a current and ongoing violation, the court must look
24 at the conditions as they exist now, not as they existed in the past, or as they might possibly occur
25 in the future. *Castillo v. Cameron County*, 238 F.3d 339, 353 (5th Cir. 2001) (considering
26 termination motion for previously entered injunctions); *see also Cason v. Seckinger*, 231 F.3d
27 777, 783 (11th Cir. 2000) (violation must presently exist). If the court finds a violation, it must
28 make a detailed analysis of why the steps taken by the prison officials constitute a violation of a

1 federal right. *Hadix v. Johnson*, 367 F.3d 529 (6th Cir. 2004). And any relief afforded must be
2 "limited to enforcing the constitutional minimum." *Gilmore v. California*, 220 F.3d 987, 1000
3 (9th Cir. 2000).

4 Furthermore, courts are not allowed to substitute their judgments over those of prison
5 administrators in deciding the day-to-day minutiae involved with running a prison. *Hoptowit v.*
6 *Ray*, 682 F.2d 1237, 1251 (9th Cir. 1982). In order for this Court to order prospective relief there
7 must be current and on-going constitutional violations that are not based upon speculation.
8 *Lyons v. City of Los Angeles*, 461 U.S. 95, 111 (1983). Those findings have not been made by
9 the Draft Report. An ongoing constitutional violation is the only basis for which a court is
10 allowed to retain jurisdiction. 18 U.S.C. § 3626(b)(3); *Gilmore*, 220 F.3d at 1000.

11 Courts cannot "require prisons to have adequate recruiting, screening, and training
12 programs." *Id.* at 1251; citing *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). More specifically, this
13 Court cannot continue Post-Powers monitoring because the Draft Report is concerned about non-
14 constitutional issues, such as employee turnover or management, and issues that are not based
15 upon findings of fact. Any findings of fact regarding turnover or management lack a close
16 enough relationship with any constitutional violation to meet the prospective relief requirement
17 of the PLRA. *See Gilmore*, 220 F.3d at 1006.

18 A Plaintiff cannot simply assert an abstract right in order to show that the law is "clearly
19 established," but rather, must indicate that in the context of the facts before the court, that the
20 Defendants violated that right. *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987). For
21 example, the Draft Report expresses a concern about the high turnover rate of high-ranking
22 CDCR officials. But this concern is not evidence that CDCR has violated a constitutional right
23 of any kind. Rather, a constitutional violation must be established with a showing of specific
24 facts indicating a specific constitutional violation. The Draft Report has not made that required
25 showing for the three concerns raised by the Special Master.

26 This Court ordered that use-of-force monitoring cease, as well as the monitoring of the
27 ERC's evaluations of the use of force. (July 12, 2000 Order attached as Exhibit A.)
28 Furthermore, monitoring ceased on Level I Internal Affairs use-of-force investigations. (July 10,

1 2002 Order attached as Exhibit B.) There is nothing in the Draft Report to indicate any ongoing
2 Eighth Amendment violations statewide relating to the use-of-force. Monitoring on the use of
3 force at Pelican Bay ceased in 2000 and there is no evidence of class-based systemic violations.

4 Additionally, statewide monitoring of use-of-force ERCs is not a *Madrid* issue. There is
5 no justification for continued monitoring on the basis of a statewide rollout of ERCs. The Draft
6 Report does not include any findings that there are current and ongoing constitutional violations
7 related to ERCs. Without such a showing, this Court does not have jurisdiction to impose a
8 requirement for monitoring statewide ERCs. The PLRA allows for remedial measures only to
9 the extent "necessary to correct the violation of the Federal right of a particular plaintiff or
10 plaintiffs." 18 U.S.C. § 3626(a)(1). Additionally, the Draft Report must include facts indicating
11 that the injury is "widespread" in order to obtain system-wide injunctive relief. *Lewis v. Casey*,
12 518 U.S. 343, 359 (1996) (finding that only two inmates, who were illiterate or non-English
13 speakers, suffered actual injury as a result of inability to receive adequate legal assistance did not
14 support system-wide injunction relief.) The Draft Report makes no such showing concerning the
15 statewide implementation of ERCs. Any such finding would be beyond the *Madrid* class.

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CONCLUSION

Defendants agree with the Special Master's conclusions that CDCR, and more specifically, OIA, EAPT, and BIR, have taken significant steps towards compliance with the Post-Powers remedial plan. Those improvements show CDCR's commitment to following the Court's *Madrid* orders, including the Post-Powers remedial plan. However, Defendants object to the Draft Report's concerns of CDCR's ability to continue with its Post-Powers progress. The concerns are not supported by findings of fact which allow this Court to continue monitoring the Post-Powers remedial plan. Additionally, without evidence of concrete injury amounting to a constitutional violation, this Court cannot order prospective relief. Defendants therefore request that the Post-Powers monitoring end on January 1, 2008 and will continue to work collaboratively with the Special Master to address the concerns raised by the Draft Report.

Dated: September 18, 2007

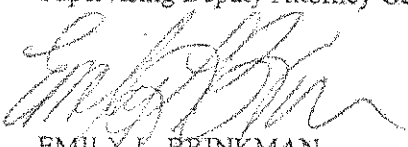
Respectfully submitted,
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

JUL 12 2000

RICHARD W. WICKI
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO MADRID, et. al., on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

C.A. TERHUNE, Director, California
Department of Corrections, et. al.,

Defendants.

NO. C90-3094 TEH

CLASS ACTION

ORDER RE: DEFENDANTS
REVISED USE OF FORCE
POLICIES, PHASE-OUT OF
USE OF FORCE
MONITORING, AND
PARTIAL TERMINATION
OF FORCE RELATED
ORDERS

BPSS

DOCKET

ADM-SF _____

CIV-SF _____

CR-SF _____

Entered by _____

Date 7-13-00

A. DEFENDANTS' PROPOSED REVISED USE OF FORCE POLICIES,
PROCEDURES, AND TRAINING MATERIALS

On June 6, 2000, the Special Master filed his report recommending that the Court adopt Defendants' Proposed Revised Use of Force Policies, Procedures, and Training Materials. As noted by the Special Master, defendants decided to modify their use of force policy, procedures, and training materials in early 1999, but to their credit, decided to obtain Court approval of these revisions prior to initiating any motion to terminate the use of force remedial order in this case.

In his report, the Special Master details the deliberative process by which defendants developed the proposed revisions in consultation with the office of the Special Master. The Court further notes that these revisions "received intensive scrutiny by plaintiffs, the Court expert, and the Special Master." June 6, 2000 Report at 3. No party has registered any objection to the proposed revisions. The Court is also satisfied that the proposed revisions (1) do not conflict with the Court's orders, (2) adequately address the operational problems that developed because of the format of the initial remedial plan, and (3) will adequately

1 address the use of force related constitutional deprivations identified by the Court in its
2 January 10, 1995 decision.

3 Accordingly, the Court HEREBY accepts in full the Special Master's
4 recommendation, and ADOPTS defendants' revised Use of Force Policy, Procedures, and
5 Training Materials, attached as Exhibits 1-6 to the Special Master's June 6, 2000 Report.
6
7

8 **B. PHASE-OUT OF USE OF FORCE MONITORING, AND THE PARTIAL**
9 **TERMINATION OF FORCE RELATED ORDERS**

10 Also on June 6, 2000, the Special Master filed his Report and Recommendations Re
11 Phase-Out of Use of Force Monitoring, and the Partial Termination of Force Related Orders.
12 As explained in his report, his recommendations follow-up on the Court's September 9, 2000
13 Order which set forth guidelines for the gradual phase out of use of force monitoring. The
14 Court has carefully reviewed the Special Master's recommendations, to which neither party
15 has objected, and is satisfied that they are consistent with both the spirit and letter of the
16 Court's September 9, 2000 order. Accordingly, the Court ADOPTS the Special Master's
17 recommendations in full.

18 Good cause appearing, the Court therefore further ORDERS as follows:

19 1. *Use Of Force ("UOF") policies and procedures.*

20 A. The Special Master shall cease monitoring paragraphs 3 and 6 of the
21 Court's Remedial Order of June 17, 1996, as they pertain to the overall use of force.^{1 2}
22

23
24 ¹ Paragraph 3 of the Force Order requires the following: "Defendants shall file a
25 notice with the Court, within 7 days of the date of this order, if the Force and Investigation
26 Policies adopted by this Order are in conflict with other Department of Corrections policies,
procedures, administrative law, contracts, or other state administrative or legislative actions.
Defendants shall also promptly notify the Court should any such conflicts arise with respect
to any future policies or modifications to policies relating to the use of force."

27 ² Paragraph 6 of the Force Order provides for the following: Defendants are
28 permitted to modify policies, procedures, training material, post orders, and other documents
related to the Use of Force and Investigation Policies adopted by this Order provided that:

1 While defendants will no longer need the Court's approval to effect modifications to their
 2 use of force policies, procedures, and training materials, because other elements of the
 3 remedial plan continue in full force and effect, and will continue to be monitored, defendants
 4 should continue to keep the Special Master and plaintiffs' counsel *informed* of modifications
 5 to policy, procedure, and training. Defendants shall also provide the Special Master and
 6 plaintiffs, for as long as monitoring of FBSP use of force discipline continues, those use of
 7 force database outputs described on page 3, paragraph 3 of the Stipulation and Order
 8 attached as Exhibit 1 to the Special Master's Report of August 24, 1999.

9 B. The Special Master shall cease monitoring paragraphs 1, 2, 4, 5, 7, and 10
 10 of the Court's Remedial Order of June 17, 1996.³ The Special Master shall, however,
 11 continue to monitor the PFAB process under the terms described in the Report of November
 12 16, 1998.

13 C. Within ten (10) days of this Order, counsel for the parties shall meet and
 14 confer, and prepare a draft notice for review by the Special Master that informs the plaintiff
 15 class of the partial termination and the partial cessation of monitoring of use of force issues,
 16 as called for by paragraph 11 of the Order of June 17, 1996.

- 17
- 18 (a) defendants submit, with a copy to plaintiffs, a copy of the revised policy, document,
 19 etc. to the Special Master 7 days prior to its effective date. If there is a bona fide
 20 emergency, this time period may be reduced by an appropriate amount but in no event
 shall the revised policy, document, etc. be submitted to the Special Master later than
 its effective date.
 - 21 (b) If the Special Master determines that the modifications conflict with any of the
 Court's orders, he shall work with the defendants to reconcile the conflict.
 - 22 (c) If reconciliation is not possible, the Special Master shall file a report with the Court
 23 which sets forth his findings as to why defendants modifications to policy violate the
 Court's order(s). He shall also make recommendations as to what actions should be
 taken concerning the modifications.

24 ³ Paragraphs 1, 2, and 4 of the June 17, 1996 Order called for one-time actions that
 25 defendants have met. Paragraph 5 refers to inspector general reviews that are now
 26 superseded by the PFAB audit program, as documented in the Special Master's November
 16, 1998 report. Paragraph 7 calls for a hearing re use of force discipline, that has been
 27 superseded by the April 21, 1998 Use of Force Discipline Order. Paragraph 10 calls for
 providing staff with copies of the June 17, 1996 Order. Given defendants' compliance with
 28 their use of force training requirements, the Special Master shall be ordered to cease
 monitoring this paragraph, as described below.

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2. *Training of correctional officers concerning the proper use of force*

The Special Master's monitoring in this area has been limited to ensuring that Pelican Bay State Prison ("PBSP") staff have been trained concerning the use of force policy. The Special Master shall cease monitoring this use of force related training.

3. *Supervision of the use of force to ensure that it is consonant with departmental and institutional policies and procedures.*

Consistent with the Court's opinion of January 10, 1995, the Special Master has separated this monitoring into three components:

A. Leadership at PBSP concerning the management of force.

The Special Master shall cease his monitoring of the leadership at PBSP concerning the management of force. The Special Master shall, however, continue to monitor the PFAB process.

B. The executive review of use of force incidents.

The executive review of use of force incidents consists of three programs:

- i. ERC (Executive Review Committee) evaluations of the use of force
- ii. The Warden's review of completed internal affairs investigation and shooting reviews
- iii. Shooting reviews

The Special Master shall cease monitoring ERC evaluations of the use of force, and the Warden's review of completed Office of Internal affairs IA cases and shooting reviews.⁴

The Special Master shall conduct an evaluation of defendants' shooting reviews concerning the incidents of March 1999 and thereafter (*after* defendants' reviews are completed), including the shooting reviews related to the disturbance of February 2000.

⁴ This order shall not preclude or limit the Special Master's review of the Warden's decisions concerning internal affairs investigations or shooting reviews as they pertain to use of force discipline matters. This includes pending OIA criminal and administrative investigations concerning shooting incidents of 1999 and February 2000.

United States District Court
For the Northern District of California

1 When those evaluations are completed, the Special Master shall report to the Court whether
 2 it is appropriate to consider phasing-out the monitoring of this element of the use of force
 3 remedial plan.

4
 5 C. Follow-up BRC audit.

6 The parties have agreed to a six month "follow-up" audit of the PBSP ERC. Dr.
 7 Maher and Madrid Unit force analysts have agreed to the format for that audit. The Special
 8 Master shall commence such an audit within one hundred and eighty (180) days of the date
 9 of this Order.

10
 11 4. Investigation of the use of force

12 A. OIA (Office of Internal Affairs) Investigations.

13 The Special Master shall cease his monitoring of use of force investigations conducted
 14 by the Office of Internal Affairs.

15 The Court further terminates that distinct section of the Remedial Order Re Use Of
 16 Force Investigative Policies filed April 21, 1998 that pertains to the Office of Internal
 17 Affairs.

18
 19 B. PBSP Internal Affairs Investigations.

20 The Special Master shall continue monitoring IA casework in light of continuing
 21 problems with timeliness and quality.

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 23
 24 5. Re-Opening of Monitoring

25 The Court does not anticipate a need to re-open monitoring. In the event, however,
 26 that serious problems arise, it may become necessary for the Special Master to evaluate the
 27 need to re-open an element of the remedial plan where monitoring has ceased, but the
 28 underlying order is not terminated. Continued flexibility on the part of the Special Master

United States District Court
 For the Northern District of California

1 and good faith on the part of defendants is required concerning use of force monitoring at
 2 PBSP because of the inter-relatedness of each of the above cited elements of the remedial
 3 plan. See Madrid v. Gomez, 889 F. Supp 1146, 1181 (N.D. Cal, 1995)

4 In the Special Master's August 24, 1999 Recommendations Re Phase-Out of Use of
 5 Force of Monitoring, which the Court adopted on September 9, 2000, the Special Master set
 6 forth agreed upon standards governing the re-opening of monitoring in this action. See
 7 August 24, 1999 Recommendations at 9. As contemplated by the parties, the Court now
 8 formally adopts those standards as follows:

9 1. Those elements of the remedial plan where monitoring has ceased shall not be re-
 10 opened absent evidence of class-based systemic problems which implicate a constitutional
 11 deprivation. Applications to re-open monitoring shall first be submitted to defendants for
 12 evaluation, and then to the Special Master for evaluation, prior to plaintiffs requesting that
 13 the Court re-open the matter (should such a problem arise, the parties shall work together,
 14 and with the Special Master, to focus the areas of the plan in dispute as much as possible and
 15 submit this information to the Court).

16 2. No element of the plan for which monitoring has ceased shall be re-opened except
 17 by the Court. If a element of the plan needs to be re-opened, the parties, working with the
 18 Special Master, shall submit to the Court a corrective action plan which calls for the repair of
 19 the underlying systemic problem in as expeditious manner as possible. Elements of the plan
 20 for which monitoring has been re-opened shall be reviewed by the Special Master at least
 21 every six months, and thereafter, the Special Master shall issue a written report to the Court
 22 as to the need, if any, for continued monitoring.

23
 24 **C. SUMMARY**

25 In summary, the Court has herein adopted defendants' revised Use of Force Policy,
 26 Procedures, and Training Materials, attached as Exhibits 1-6 to the Special Master's June 6,
 27 2000 Report. In addition, upon the filing of this Order, the Special Master's use of force
 28

1 monitoring at PBSP shall be limited to the following: (1) use of force related discipline and
 2 defendants' implementation of the discipline remedial plan; (2) the evaluation of the PFAB
 3 audits; (3) the evaluation of defendants' completed shooting reviews concerning the
 4 incidents of March, 1999 and thereafter; (4) the one-time, 6-month ERC follow up audit
 5 discussed above, (5), the one-time use of force database audit discussed in the Court's July
 6 14, 1999 Order; and (6) the evaluation of use of force related internal affairs investigations
 7 force conducted by PBSP. In all other respects, the Special Master shall cease use of force
 8 monitoring at PBSP. Finally, that section of the Remedial Order Re Use of Force
 9 Investigative Policies filed April 21, 1998, that pertains to the Office of Internal Affairs is
 10 hereby terminated.

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IT IS SO ORDERED.

DATED 7/16/00



 THELTON E. HENDERSON
 UNITED STATES DISTRICT JUDGE

United States District Court
 for the Northern District of California

EXHIBIT B

714

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED
2002 JUL 10 AM 11:03

RICHARD W. WISSE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOCKETED
SAN FRANCISCO
JUL 15 2002
By: J. HOGAN
No: CP 02-50002

ALEJANDRO MADRID, et. al., on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

EDWARD ALAMEIDA, et. al.,
Director, California Department of
Corrections, et. al.,

Defendants.

NO. C90-3094 TEH

CLASS ACTION

ORDER TO CEASE MONITORING
OF LEVEL I INTERNAL AFFAIRS
USE OF FORCE INVESTIGATIONS

The Court is in receipt of the Special Master's Report Re Pelican Bay State
Prison ("PBSP") Use of Force Investigations Completed From March 2001 Through
March 2002, filed June 7, 2002. The Special Master recommends that given the
consistent improvement that has taken place in this area, the current high level of
performance, and the manner in which the PBSP internal affairs unit fits into the overall
controls on the use of force that are in operation at PBSP, that the Court cease
monitoring of PBSP Level I internal affairs investigations of violations of PBSP use of
force policy. No party has objected to the Special Master's report and recommendations,
and the Court finds that the Special Master's findings and recommendations are well
reasoned and supported by the record.

Accordingly, and good cause appearing, it is HEREBY ORDERED that:

1. The Special Master's above-captioned report is adopted in full.
2. Effective the date of this Order, the Special Master shall cease monitoring

1 Level I internal affairs investigations of violations of the PBSP use of force policy.

2 3. Given the inter-relatedness of elements of the remedial plan, the Court orders
3 this cessation of monitoring with the understanding that there is a need for continued
4 flexibility on the part of the Special Master and good faith on the part of defendants.

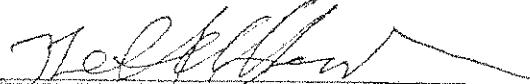
5 Monitoring of internal affairs investigations of Level I violations shall not be re-
6 opened except under the following standard:

7 Evidence of class based systemic problems which implicate a constitutional
8 deprivation. Applications to re-open monitoring in this area shall first be
9 submitted to defendants for evaluation, and then to the Special Master for
10 evaluation, prior to plaintiffs requesting that the Court re-open the matter
(should such a problem arise, the parties shall work together, and with the
Special Master, to focus the areas of the plan in dispute as much as possible
and submit this information to the Court).

*Re-opening
standard*

11 The monitoring of internal affairs investigations of Level I violations of the
12 remedial plan shall not be re-opened except by the Court. If monitoring of
13 internal affairs cases needs to be re-opened, the parties, working with the
14 Special Master, shall submit to the Court a corrective action plan which
15 calls for the repair of the underlying systemic problem in as expeditious
16 manner as possible. Elements of the plan for which monitoring has been
17 re-opened shall be reviewed by the Special Master at least every six
18 months, and thereafter, the Special Master shall issue a written report to the
19 Court as to the need, if any, for continued monitoring.

17 DATED 7/10/02


SHELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

United States District Court
for the
Northern District of California
July 10, 2002

rbe

* * CERTIFICATE OF SERVICE * *

Case Number: 3:90-cv-03094

Madrid

vs

Dept Of Corrections

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 10, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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