

CALIFORNIA LEGISLATURE
SENATE JUDICIARY'S SUBCOMMITTEE
ON VICTIMS' RIGHTS
Senator Art Torres, Chairman

Interim Hearing on
VICTIM COMPENSATION PROGRAM



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VICTIMS' RIGHTS

AGENDA

SENATE JUDICIARY SUBCOMMITTEE ON VICTIMS' RIGHTS

Senator ART TORRES, Chairman

Hearing on the Victims Compensation Fund

Thursday, November 12, 1987
10:00 p.m. --

State Capitol, Room 4203
Sacramento, California

SUBJECT: The administrative effectiveness of the State's
Victim Compensation Program as it relates to its
current backlog and its administrative practices.

FORMAT: Opening statement by Senator Art Torres
Opening statement by members of the Committee
Opening statement by Assemblyman Charles Calderon

Each panel participant will make a brief opening
statement, followed by a more extensive question
and answer discussion period.

I. VICTIMIZED VICTIMS

- °Deborah Spence
- °Susan Aguilar
- °Martha Neuman

II. PROVIDERS

- °Nancy Kless, Executive Director of the Crime Victim Center, Los Angeles
- °Eduardo Escobar, private therapist in Los Angeles who specializes in abused children.
- °Suzanne Baxter, LCSW, private therapist in Sacramento

III. VICTIM REPRESENTATIVES

General considerations

- °Alex Vargas, Los Angeles City District Attorney's Victim-Witness Center
- °Michael Siegel, Victim advocate, attorney

Conflicts in the Law: child molestation

- °Linda Siegel, Children's advocate
- °Jane Callahan, Director of Childrens' Network for Solano County and Legislative Chairperson for California Consortium of Child Abuse Councils

IV. DEPARTMENT OF GENERAL SERVICES INTERNAL AUDIT

- °P.G. Agarwal, Acting Chief, Office of Management Technology and Planning
- °Carolyn Robinson, Audit Manager
- °Ignacio Hernandez, Department of Finance

V. EMPLOYEES OF THE BOARD OF CONTROL

VI. SUPERVISION OF THE BOARD OF CONTROL

- °Austin Eaton, Executive Officer
- °Judith Embree, Deputy Executive Officer
- °Elizabeth Yost, Chief Deputy Director, Department of General Services

**PUBLIC TESTIMONY

- °will be allowed if time permits.

CHAIRMAN ART TORRES: The Subcommittee on Victims' Rights of the Senate Judiciary Committee will come to order. We'd like to welcome the members of the Assembly who are with us: Assemblyman Stan Statham, I'd like to welcome you to the committee; Assemblyman Charles Calderon, I'd like to welcome you to the committee as well; and to my dear colleague in the Senate, Senator Milton Marks, the chairman of the Democratic Caucus, we'd like to welcome you to the Subcommittee as well.

To my left is Mr. Alan Gordon, who is counsel to the committee. To my far right is Miss Gloria Anthony, who is a national urban fellow assigned to my office in the Senate. And to my immediate right is Mr. Keith Higginbotham, who is the consultant to the Subcommittee on Victims' Rights.

We'd like to welcome everyone to the State Capitol this morning. As chairman of this committee, I regret that it is even necessary to call this hearing on the California Victims of Crime restitution fund. Two years ago, officials of the fund were summoned before this very subcommittee to answer many of the same charges that are with us today; about the shameful treatment that victims of crime are receiving from a fund that was set up to serve them.

In 1986, the Legislature approved budget augmentations that allowed the Victims of Crime program more personnel and updated computers. So I am aghast that here again in 1987 the program is again in a serious state of affairs. The confidential review of the program conducted during the first four months of 1987 by the State Department of General Services determined that nearly 750,000 was misspent as a result of lax procedures, a failure to follow laws, and administrative rules and the overriding of internal controls by fund management.

There is an estimated 10-month backlog with 10,000 claims yet to be assigned to a claims specialist. The program is backlogged due, we believe, to inadequate procedures for handling of regular claims and supplemental claims. Even though the computer system that was installed in April of 1986 is state of the art, the Board has failed to get properly trained staff to maintain it and to train the current staff on its use. Even though each desk in that office has a terminal, the system is used mostly for mere inquiry as to the status of claims. There are no easy-to-use programs for staff to cross-reference claims, to detect overpayments, or to aid in managerial tasks. Needless to say, there are no hookups to Victim Witness centers as promised.

The 1986-87 budget of this Legislature approved 64 new positions to add over a 50% increase in staff, but the current management and the administration failed to allot for additional space so that they were unable to hire.

This program, I believe, is revictimizing crime victims with long delays and inconsistent administrative policies.

Today, we have called those responsible for this fund before this Legislature, both the Assembly and the Senate, so that we can act quickly to end the shameful treatment the crime victims are receiving. This hearing will serve as the initial investigation of the mismanagement of the restitution

program for crime victims, and if we feel further hearings are necessary, we shall proceed accordingly.

But the goal of this subcommittee is not to conduct a witch hunt, not to defame or shame people into determining what interactions may have taken place in offices. The purpose of this inquiry is to find out why these funds are not being paid to those people who are eligible for them. That's our only interest; to get to the facts and to get to the matter and to get to the solution of this problem. The goal of this subcommittee has been to reduce this backlog and ensure that the processing of claims is completed within the statutory range of 90 days.

Assemblyman Calderon, who has provided extreme leadership on this issue for the last 2½ years in the Assembly, has also requested, along with this subcommittee, an intensive administrative and fiscal audit to be completed on this program by the Auditor General. You will find copies of the focus of this audit on the table before you.

Several witnesses, however, have been subpoenaed before this subcommittee to testify. Many of these witnesses are terrified of future harassment and retaliation by their supervisors for being here at all today. Let me put all on notice that if any member of this subcommittee or any member of the Legislature is notified that any individual here before us today has any actions, formal or informal, taken against them because of their presence here today, we will take all necessary and appropriate actions to ensure that a full investigation into those matters is initiated.

This crime fund was established by Senator McAteer in 1965 to compensate innocent victims of crime for documented financial losses incurred as a direct result of that crime. It is a first in/and(?) the largest program in the nation. Since 1978, the Board of Control has administered all aspects of the program, including verification of claims which was formerly performed by the Department of Justice. During this time, the Board opened three offices: one in Sacramento, Los Angeles, and San Francisco. Their main responsibilities were to develop ongoing working relationships with local law enforcement agencies to provide direct assistance to victims.

In the '85-86 budget, this program was augmented by an additional 24 positions, and additional funding was included to allow for joint powers agreements for local Victim Witness centers for full verification of claims and to enhance computer capabilities, including linkage with local Victim Witness centers.

We hope that this hearing will produce solutions, not hysteria. We hope that this hearing will produce direction and focus and in the end vision to resolve a problem that we all want to resolve. Whether you're an employee of the state, whether you're a legislator, we all work for the same taxpayer, and we owe responsibility to him and to her to provide the best service possible. And even more so in those cases where people have been victims of crime, violent crime in California, we owe them even a higher standard to complete and to fulfill.

Senator Milton Marks for comments.

SENATOR MILTON MARKS: I don't have too much to add to what you just said. I think it's a very important matter that we're undertaking. I am the successor to Gene McAteer, who started this program, and therefore I am obviously very interested in this program. I'm very pleased that the the

chairman has made a statement with reference to the witnesses who are testifying here. There must not be any retaliation against those witnesses. We must make certain that the witnesses who come here who give their testimony are permitted to operate hereafter in their department as they have done before, and that no action will be taken whatsoever to penalize them or make it more difficult for them, and I'm going to watch to see that that does occur.

CHAIRMAN TORRES: Assemblyman Calderon.

ASSEMBLYMAN CHARLES CALDERON: Thank you, Mr. Chairman. I'd like to commend your efforts with regard to this hearing. I think it's extremely important that we do exactly as you have outlined, and that is to figure out how we can make the victims restitution program work in California.

In 1965, when California first established a victims restitution program, it was considered a model program and the first in the country that focused on victims' rights and attempted to understand the victims' problems as they moved through the criminal justice system. That program, since 1965, although it was new and visionary, has not worked properly since then.

We have now seen, I think, in the media, and I must commend Channel 10 because I think they are the first in the media to have focused on the significance and importance of this issue insofar as the people of California are concerned, but we have seen that there have been very, very serious problems.

Two years ago, I introduced legislation that would have reorganized the victims restitution program; would have removed jurisdiction from the Board of Control; and would have set up a separate victims agency to administer victims programs to focus entirely and exclusively on the problems of victims. That legislation did not make it through the process. I hope to introduce it -- or will introduce it again, and I hope that we can discover better ways to improve on that legislation through this hearing, and I hope that the testimony that will be provided will help us in that regard.

But we must not, I think, underscore the gravity of the situation that exists now. I have requested, as has the chairman of this subcommittee, internal audits by the Auditor General, but in addition, have requested that the Attorney General look into the possibility of criminal conduct in connection with the administration of the victims restitution program. And whereas, I don't think we should have a witch hunt. I think we should never forget the gravity of the situation here and the extreme need that we have to set up a program that will work.

Thank you, Mr. Chairman.

CHAIRMAN TORRES: Thank you, Mr. Calderon. Mr. Statham?

ASSEMBLYMAN STAN STATHAM: Thank you, Mr. Chairman, and thank you for letting me participate, not being on your committee, and to participate in your hearing today. I wanted everyone in the room to know that what happens here today will have more than just California implications. California had the first victims restitution program and now states across the United States are copying this program. Less than two months ago, I met with the director of the victims restitution program in the State of Utah. They're very excited about their program, and it is totally based on what's happening here in California. So we must make sure, not just for victims here in

California but victims across the United States of America, that our program works best because ours is the model.

Thank you.

CHAIRMAN TORRES: Thank you, Mr. Statham. I'd like to have Mr. Clint DeWitt explain the swearing in procedures for the various witnesses. Mr. DeWitt, Legislative Counsel.

MR. CLINT DeWITT: Yes, Senator Torres. The witnesses that are appearing here voluntarily will be sworn and will give their testimony without any immunity. Those that are under subpoena, that are compelled to testify by the committee, will be governed by immunity under Section 9410 of the Government Code which precludes any criminal prosecution for anything that may come out in their testimony.

SENATOR MARKS: May I ask one question?

CHAIRMAN TORRES: Yes, Senator Marks.

SENATOR MARKS: Are you going to notify us as to which witnesses are here under immunity beforehand?

MR. DeWITT: I believe the chairman is going to notify each witness of which ones are appearing under subpoena and which are not.

CHAIRMAN TORRES: Thank you, Mr. DeWitt. Our first set of witnesses is Miss Deborah Spence and Martha Neuman. Would you please come forward?

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm the testimony that you're about to give before this committee is the truth, the whole truth, and nothing but the truth?

Please be seated.

CHAIRMAN TORRES: Thank you very much. Miss Deborah Spence, would you like to begin? Just speak into the mike. Bring the mike forward and just speak directly into it, and just take a deep breath and relax. Everything's going to be okay. And we'll proceed.

MS. DEBORAH SPENCE: Okay.

CHAIRMAN TORRES: Just tell us your story.

MS. SPENCE: My name is Debbie Spence. I'm 28 years old. I have three daughters. I am raising them alone. I'm a full-time student at a clerical training program. My goal is to become financially independent, as I am an AFDC recipient.

I became aware of the Victim Witness program through my -- as a result of my eldest daughter's molest. I applied for assistance in December. I received a notice in April of '87 saying that my application was received in April of '87.

CHAIRMAN TORRES: So in April of '87, your application process began for you.

MS. SPENCE: Right.

CHAIRMAN TORRES: How did you feel this first meeting went?

MS. SPENCE: My first meeting was in December of '86.

CHAIRMAN TORRES: And how did it go for you?

MS. SPENCE: I left there feeling that I was eligible, with the impression that I qualified, and that there would be no problem getting assistance, only finding a therapist that would accept it.

CHAIRMAN TORRES: And what communication have you received from the program staff as a result of that first application?

MS. SPENCE: Just the one letter I just talked about.

CHAIRMAN TORRES: Have you received additional correspondence since December of '86?

MS. SPENCE: No.

CHAIRMAN TORRES: How much in counseling fees do you owe your therapist now?

MS. SPENCE: My last bill that I opened was September '87. It was \$1,890.

CHAIRMAN TORRES: So, since December of that time -- is that when you began the counseling in respect to the incident?

MS. SPENCE: I initially saw my therapist in December in one session with my husband. Then I began seeing her regularly in January of '87.

CHAIRMAN TORRES: What plans are you making now since the fund, as I understand it, has not forwarded any money to you? Is that correct?

MS. SPENCE: Right. I haven't received any funds.

CHAIRMAN TORRES: You haven't received any funds. How are you trying to make payment with the therapist now, who obviously has not been paid for some time?

MS. SPENCE: I'm unable to make payments to her.

CHAIRMAN TORRES: And what has she said to you?

MS. SPENCE: She said that I should be covered under Victim Witness, not to worry about it.

CHAIRMAN TORRES: What's been the response? I'm sure you've called the Victims program since then to find out why there has been such a delay in any payments to you. What has been their response to you?

MS. SPENCE: I have not called them myself, but Suzanne Baxter, my therapist, has inquired quite a bit.

CHAIRMAN TORRES: Your therapist has inquired quite a bit. And what has she found out?

MS. SPENCE: That they keep putting the blame on one person or the other.

CHAIRMAN TORRES: All right.

MS. SPENCE: Or the responsibility.

CHAIRMAN TORRES: Okay. Are any other members of your family involved in the Victims of Crime program?

MS. SPENCE: My eldest daughter.

CHAIRMAN TORRES: Your eldest daughter is. What kind of treatment is she receiving at this point?

MS. SPENCE: We both receive group therapy and individual therapy.

CHAIRMAN TORRES: So she's receiving group and individual therapy in terms of the initial crime.

MS. SPENCE: Right.

CHAIRMAN TORRES: Is Miss Baxter here today?

MS. SPENCE: Yes.

CHAIRMAN TORRES: All right. Would you please come forward, Miss Baxter? You'd better swear her in.

(SWEARING IN OF WITNESS)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm that the testimony that you're about to give before this committee is the truth, the whole truth, and nothing but the truth?

Please be seated.

CHAIRMAN TORRES: Welcome to the committee, Miss Baxter.

MS. SUZANNE BAXTER: Thank you.

CHAIRMAN TORRES: Miss Spence has indicated to us that you really were the one who was communicating with the Victims of Crime on her behalf. Is that correct?

MS. BAXTER: Yes.

CHAIRMAN TORRES: And what were your experiences in those communications, and when did they begin and how many have they been since you've been seeing Miss Spence?

MS. BAXTER: I communicated with the Sacramento County office shortly after she went in and applied and brought me back the forms to fill out, talking with them, and they indicated that it was their opinion she would meet the eligibility requirements. So I completed the papers that I had to -- the verifications and forms that I needed to and sent them in, I think it was early April of '87. I waited quite a while and made numerous phone calls -- I didn't date in the beginning -- starting this summer to the local office. They would refer me to the state and it went back and forth.

Then I started documenting my phone calls and my efforts to see what was going on, and if I could look at my notes, at the time that her account was 9 months in arrears is when I started writing down -- I had contacted both the state and Sacramento earlier, but in August I started calling Mr. Lawler and Maria Keller, who was the analyst assigned to Debbie's case. Mr. Lawler indicated that he had sent in the forms in April -- April 22. He sent in other requests, or supplemental claims, on June 11th and August 11th of '87. Mrs. Keller never returned any of my calls. Eventually, I was able to get directly through to her and she told me the problem was with Sacramento County, that they had not followed the procedures in this case. So when I called Sacramento County back to say that the problems seemed to be with them, they said no, that the Board's always changing their requirements and doesn't tell them and then they find out later so it really wasn't the county, it really is the state. And I just felt like I didn't know where to go at that point.

CHAIRMAN TORRES: You were in essence a bureaucratic ping pong going back and forth?

MS. BAXTER: Uh huh. And that's what Sacramento County said, that the providers are caught in the middle.

CHAIRMAN TORRES: How many other cases do you handle besides Miss Spence that are dependent upon payment from this Victims of Crime fund?

MS. BAXTER: Well, currently I have four, because I have stopped taking Victim Witness. I

have not taken anyone since Miss Spence in January. I used to have more but what's happening now is I'm kind of -- I've withdrawn from the program but I am continuing services with those clients that I accepted.

CHAIRMAN TORRES: And why have you withdrawn from the program?

MS. BAXTER: Because you don't get paid. Eventually, they assure us, that we will be paid, but it's been 11 months since I accepted Mrs. Spence's case, and with the other victims, every single Victim Witness case I have ever taken, it has -- payment has always been 10 months, and in one case 16 months, before I got my first payment. And when you do get a payment, it's usually -- I'm going to say it like a token payment. The bill may be 2,000 and you will get a -- I will receive a check for 250. And because I -- I wrote a letter, finally, out of frustration, citing Mrs. Spence's case, but it's just typical. All of my Victim Witness clients were willing to allow me to cite their cases as examples in my letter. I'm in private practice so I'm unable to continue providing services to clients where I don't get paid for a year.

CHAIRMAN TORRES: Has this been the experience with other therapists that work with the program in the Sacramento area?

MS. BAXTER: Yes. All of them. Everyone I know.

CHAIRMAN TORRES: How would you seek to improve the program, given your personal experience?

MS. BAXTER: Well, back in '85, I had a problem and I contacted the director of the Board of Control then, and they indicated that there were steps taken to streamline this process so there would be a 90-day turnaround, and then based on that, I feel very comfortable in accepting clients where I will not be -- you know, where I'm going to wait 90 days for payment. That's not a problem. I don't know really how to administrate, but I would think if there must be some way that claims can be denied or granted sooner than 11 months -- with Mrs. Spence they have not even indicated yet if she's going to be eligible. So it's possible that I'm not...

CHAIRMAN TORRES: They have not even determined whether she is eligible?

MS. BAXTER: Right. So either I will not be paid or she's going to be stuck with a large bill that will -- I don't think she's able to pay her bill.

CHAIRMAN TORRES: All right. Is there anything else you'd like to add?

MS. BAXTER: I would like to say that originally when I decided not to accept Victim Witness cases, I was able, at the time that new clients would call me for services, I was able to refer them. This was maybe back in January. And in fact, I attempted to refer Mrs. Spence at that time. I know I have not been able to even refer the clients who call and ask for my services because I have no therapists that I know who are accepting Victim Witness clients, and so I refer them back to the county. I'm sure there are therapists that do accept them, but I've been practicing for five years -- I know a number of therapists -- and I don't know anybody. So I don't even refer anymore.

CHAIRMAN TORRES: All right. I'm going to ask for your professional opinion now as a therapist. The program was established to provide help for those victims to deal with their specific problems. Does the lack of payment, does the lack of determining eligibility, what impact does that

have on the stress that's already been created by the crime itself, and what impact does that have with ongoing therapy?

MS. BAXTER: The victims that I'm seeing have significant trauma from the crime, such as fear and anger and shame. When -- first of all, if they have to go from therapist to therapist trying to obtain services and are repeatedly told I don't accept it, I think that that just makes them feel more victimized, that they aren't able -- you know, that they are almost rejected.

In terms of when they do find a therapist that will accept them and then the therapist isn't paid, from my experience, there has been embarrassment, there's been concern whether their services will be terminated before their treatment is concluded. One of my clients has been very reluctant to ever contact me in between appointments -- there were times of crisis -- because of feeling embarrassment that the bill isn't being taken care of. They should not have to worry about these kinds of issues when they have much more significant problems that they could be dealing with.

CHAIRMAN TORRES: So there appears to be a double victimization: first by the defendant, who has been convicted of the crime or accused of the crime, and then by our own state government.

MS. BAXTER: I think so. I feel real bad when someone calls me. I get about three to four referrals a month for victims, and I feel real bad when I tell them that I cannot take them, and I know that they are going to experience that as they keep looking for therapists. They do feel victimized again.

CHAIRMAN TORRES: So in Sacramento County then, and that's your frame of reference and expertise, the victims that find themselves in this situation, are there any victims who can never find a therapist to help them deal with their problem because there is no confidence by the therapy community in Sacramento for payment?

MS. BAXTER: I don't know. I don't know. Sometimes I've been recontacted two or three weeks later by a victim saying that she has been unable to find someone, would I reconsider. But I can't say whether or not they can never find one.

CHAIRMAN TORRES: And upon that reconsideration, your answer still is no.

MS. BAXTER: Yes, it's still no.

CHAIRMAN TORRES: Senator Marks, then Assemblyman Calderon.

SENATOR MARKS: Let me ask a question of the chairman, if I may. Or maybe I should -- I'm not sure who I should ask this for. Is there money appropriated to pay these programs? Is there money appropriated by the State of California? Is that one of the problems? They haven't appropriated enough money? (Answer inaudible.) We have not?

CHAIRMAN TORRES: Senator Davis apparently passed a piece of legislation to provide for funding for the bill now?

SENATOR MARKS: And what happened to that bill?

ASSEMBLYMAN CALDERON: We both did.

CHAIRMAN TORRES: And Assemblyman Calderon. That was signed, I believe.

ASSEMBLYMAN CALDERON: Yeah, it was signed.

SENATOR MARKS: And how much was appropriated into that bill?

CHAIRMAN TORRES: About 24 million, I believe, Assemblyman? Is that correct?

SENATOR MARKS: There's \$24 million in the fund now?

ASSEMBLYMAN CALDERON: No, no, no. The fund is -- I don't know what is in the fund. I don't know what is going on with the fund right now or how much money is left, but it was scheduled to go bankrupt unless we provided additional revenues. And so we -- Senator Davis and I --coauthored legislation -- it was double-joined -- that provided for an additional penalty assessment to provide more dollars for the restitution fund.

SENATOR MARKS: And what happened to that bill?

ASSEMBLYMAN CALDERON: And that bill was signed by the Governor. So now it's just a question of whether or not the courts will be able to -- will collect that additional penalty assessment from the defendants.

CHAIRMAN TORRES: It was an additional penalty assessment, Senator, of \$2 which would, in most good circumstances, would have allowed for about 24 million to be appropriated.

SENATOR MARKS: What I'm trying to find out is the problem -- and I don't think the problem is this -- is the problem for paying her, is it related to the fact that there isn't enough money in the fund?

CHAIRMAN TORRES: Apparently not, but we'll be listening from witnesses to testify to that point.

SENATOR MARKS: Because if there is money in the fund, it should be paid. It certainly should be paid quicker.

ASSEMBLYMAN CALDERON: Well, I certainly agree and I think that this is what this hearing is about as well. I've authored legislation that would reduce the backlog, which is currently anywhere from nine months to one year and has been longer in the past in terms of meeting victims' claims. I've attempted to introduce -- or pass legislation that would require that claims be processed within 90 days upon the time -- from the time they're submitted. The Governor vetoed that legislation.

I want to ask, Miss Baxter, whether or not you have taken on victims -- well, I think you indicated that you do see victims. I assume that you have not been compensated for your services. Do you have any outstanding debts, victims that...

MS. BAXTER: Oh, yes. But I must say that I have been compensated for some of my services, other victims, not Mrs. Spence, but other people I have received payment. But I do have an outstanding...

ASSEMBLYMAN CALDERON: Well, that's what I'm asking. I assume that you have advanced countless hours in services and you have not been compensated by the Board.

MS. BAXTER: Yes.

ASSEMBLYMAN CALDERON: And the reason why I want to raise that issue is because in my dealings with the victims restitution board, there's an attitude, an attitude that when we point out the fact that there are people who are willing to provide counseling services, medical services, and other services to victims of crime and wait for the money and they're not being paid, that's a problem. They seem to suggest that the program's not for the providers, it's for the victims. Well,

the fact of the matter is, without the providers there is no victim services. There is nothing for the victims. And this attitude sort of permeates the victims restitution program, and I think it's important to point that out in addition to everything you've testified to, Miss Baxter.

ASSEMBLYMAN STATHAM: Mr. Chairman? Just an add-on to what the chairman asked you, if I could ask you a question, Miss Baxter. Have you had an opportunity to commiserate with other therapists in the Greater Sacramento Area, and if so, have they had a similar experience with the Board when you talk to your colleagues?

MS. BAXTER: Yes. Without exception.

ASSEMBLYMAN STATHAM: All right, thank you.

CHAIRMAN TORRES: All right. Thank you very much, Miss Baxter. Miss Neuman.

MS. MARTHA NEUMAN: My name is Martha Neuman. I work as a student research assistant for the Department of Food and Agriculture, and last February, on February 5th, I was beaten up in an attempted rape in Sacramento and I applied to the Victim Witness program for assistance to deal with my medical bills at U.C. Med Center. To date, those bills have gone to collection.

CHAIRMAN TORRES: What was the date of your first visit to the program? Did you make application at that time?

MS. NEUMAN: I did make application. I don't remember the first date; it was within a week of February 5th.

CHAIRMAN TORRES: And what were you advised at that time and by whom? Do you remember?

MS. NEUMAN: I talked to Diane Chapin(?), and she told me that I qualified for the program and that all my expenses would be taken care of, and that if I needed to see a counselor, there would be no problem, they would take care of my bills, that they would look for the police report. And I told her that I have insurance but that I have a \$500 deductible, and she said go ahead and apply with my insurance company, but then when I received my other bills for follow-up visits to just submit them to her and she would take care of them.

CHAIRMAN TORRES: On what date did you go to that first visit, the month or year? Do you recall?

MS. NEUMAN: In February.

CHAIRMAN TORRES: Of what year?

MS. NEUMAN: Of 1987.

CHAIRMAN TORRES: February of 1987. And when did you receive correspondence from the program after that?

MS. NEUMAN: October 1st from the State Board of Control. I've never received any correspondence from the Sacramento program.

CHAIRMAN TORRES: So you went directly to the State Board.

MS. NEUMAN: No, I went through the Sacramento program but they have never contacted me.

CHAIRMAN TORRES: So no correspondence from either program to you until October of 1987.

MS. NEUMAN: Mm hmm.

CHAIRMAN TORRES: And what did that correspondence say?

MS. NEUMAN: It's just a form letter that says it will take six months to process my application.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Isn't there any time -- there is no -- I find it incredible. You mean to say there is no time limit in which this Board must act? I've been a judge and we get criticized, I think appropriately, for delaying cases. At least they go forward or seek to go forward. I can't understand it. There's no time limit?

CHAIRMAN TORRES: Two years ago we held a hearing in Los Angeles wherein at that point, Lane Richmond, who was the director of the program, indicated they would comply with a 90-day requirement. And I believe they had for a while and then it just -- as soon as Mr. Richmond left, apparently that backlog started increasing again. At least that was my experience.

Mr. Calderon?

ASSEMBLYMAN CALDERON: With this 1223, which was legislation that provided more money for the restitution fund, we leveraged the department and the Governor's office into signing in now a strict 90-day time period within which the Board must meet the claims of victims. But as it will become apparent, I think, in this hearing, they're incapable of meeting that.

CHAIRMAN TORRES: Or else what? If they didn't comply with the 90 days, what was the sanction?

ASSEMBLYMAN CALDERON: Then they'd -- well, they'd be in violation of the law, and they were to report to the Legislature and the Legislature would take further action but through the budgetary process. But there was a legal standard, a mandatory legal requirement, that claims be satisfied in 90 days.

CHAIRMAN TORRES: And that standard has not been met.

ASSEMBLYMAN CALDERON: That's correct. It has never been met. Well, I shouldn't say never, but traditionally, historically, has gone unmet.

CHAIRMAN TORRES: Senator Marks?

SENATOR MARKS: Well, there are provisions of law that relate to a judge not complying with the cases in a certain period of time. You can hold up the salary, and there are many other things you can do. You're telling us, me, that there is nothing at the moment we, in the Legislature, can do to require that action take place within 90 days? I find it inconceivable.

CHAIRMAN TORRES: It's not inconceivable nor is it improbable if it's not just been enforced and that's what we need to look at.

Miss Neuman, please continue.

MS. NEUMAN: My insurance company paid -- my original bill was about \$1,097, and my insurance company paid \$550 of that in May. So in May, I submitted that much to Diane at the Sacramento County program. And then I -- you know, I kept getting bills from the Medical Center with the same balance and I submitted those in July and then in September. And then in September I got really angry and I wrote a letter to the District Attorney's Office, and it was forwarded to

Brendon Lawler and he called me and he said that the problem and the hold-up was at the state level, but he didn't tell me why it took them from May until the end of September to file my claim with the State Board of Control. And he said I should write to my elected officials and not even deal with the State Board of Control.

CHAIRMAN TORRES: And did you do so?

MS. NEUMAN: Mm hmm.

CHAIRMAN TORRES: And who did you write to?

MS. NEUMAN: Phil Isenberg.

CHAIRMAN TORRES: And what date was that?

MS. NEUMAN: It was...

CHAIRMAN TORRES: Was that October 7, 1987?

MS. NEUMAN: Mm hmm.

CHAIRMAN TORRES: And he wrote back to you October 19, 1987 and letting you know that he was going to try and do something about it. Do you know of other victims that you may have encountered in your experiences that have dealt with the program and been dealt with in the same way?

MS. NEUMAN: No, not at all.

CHAIRMAN TORRES: You don't know any victims that are...

MS. NEUMAN: No.

CHAIRMAN TORRES: How are you doing now?

MS. NEUMAN: I'm doing okay. I mean, I just wish my bill would be paid. I'd like to forget about this but I can't because everytime I get a statement from the hospital, it says your bill has gone to collection.

CHAIRMAN TORRES: And it reminds you of everything.

MS. NEUMAN: Yes.

CHAIRMAN TORRES: How big is your bill now, Miss Neuman?

MS. NEUMAN: \$657.

CHAIRMAN TORRES: I want to thank you both for being with us today. I know it's been very difficult for you to go through this and I hope it's -- we've tried to make it as comfortable as possible and we appreciate you coming here. And just let me say to you, and I think I speak on behalf of the members of this subcommittee, that your voices will not be unheard. We will do something. Thank you very much.

Miss Nancy Kless, Eduardo Escobar? Do you want to come forward, Mr. Escobar, so we can swear you in and get moving? Welcome to the committee. Miss Kless? Please identify yourself.

MS. NANCY KLESS: I'm Nancy Kless. I'm a licensed clinical social worker and the director of the Crime Victim Center in Los Angeles.

CHAIRMAN TORRES: How has the current backlog affected your program, Miss Kless?

MS. KLESS: We've had a backlog for a long time, and in the last...

CHAIRMAN TORRES: What is a long time?

MS. KLESS: For the last year on a cash basis, our expenditures have been greater than our income; and for the last six months, we've been in a financial crisis to the point that we've had to lay off staff and we've been threatened to close our doors.

CHAIRMAN TORRES: Now, how much is your crime center owed by the state?

MS. KLESS: Well, according to my most recent calculations, and when we talk about overdue claims, we're talking about claims where they were initiated before April of 1987. So when Miss Spence was talking about an April of '87 initiation, that seemed like a new claim to me. So when I calculated those figures, taking into account problem cases that we may not collect on, I found that we had close to \$150,000 in cases where there's never been payments, and on supplemental claims over \$150,000.

CHAIRMAN TORRES: Now, on those figures, are all those claims eligible for reimbursement?

MS. KLESS: We can't know for sure on every single claim, but we have gotten status reports, and all those claims have applications in Sacramento and are being processed. On the supplementals, they've already been approved and have been awarded, and we've gotten the bill and we're just waiting for further payment.

CHAIRMAN TORRES: When's the last time you received the status of a client account by the Board?

MS. KLESS: We received a big report on October 26th.

CHAIRMAN TORRES: Does that include a payment?

MS. KLESS: Well, would you like me to give a little history about what's happened, how we...

ASSEMBLYMAN CALDERON: Mr. Chairman?

CHAIRMAN TORRES: Yes, Mr. Calderon.

ASSEMBLYMAN CALDERON: You provide services in advance of payment. Do you also advance money? Do you advance any money?

MS. KLESS: No, we don't advance money. We provide all different kinds of services to victims of violent crime, and the only kinds of people we -- only clients that we help are victims of violent crime. And we see all kinds of victims and we also work with other providers in the community. So if we can't provide something directly -- for example, certain kinds of medical services, pharmacies, hospitals, dentists -- we also -- they will take patients on our word and offer them services and wait for payment as well. So we have obligations to many different providers in the community because we coordinate all the services because we want to meet crime victims' needs very comprehensively.

ASSEMBLYMAN CALDERON: And you also take private contributions as well?

MS. KLESS: Yeah, we have grants, donations, lots of loans, and we also bill insurance, of course.

ASSEMBLYMAN CALDERON: And so you're using that money in order to provide services, originally in hopes of being reimbursed once the claim's to be submitted to the state. Is that right?

MS. KLESS: Most of the money that we've -- we have a debt of over \$300,000. We have bank loans, personal loans. Most of our therapists are independent contractors and they provide service and wait for payment, and recently some of them have been so upset that they're unwilling to take

anymore clients until they get paid on the clients they've already treated; because they've put in hours and hours and hours of service, and often by the time we -- we've had very few denials, but by the time we even know what the status of the case is, whether it's going to be approved or denied, that person -- the therapist has already put in months and months of psychotherapy.

ASSEMBLYMAN CALDERON: How long is your -- when was your organization established and how did it come to be?

MS. KLESS: I'm the founder of the organization and we're a nonprofit organization, and we founded in May of 1984; so we've been around for 3½ years.

ASSEMBLYMAN CALDERON: And how was it that you came to establish this particular service for victims?

MS. KLESS: Well, as a social worker, I had worked in various different agencies and hospitals and outpatient clinics. I've worked with battered women, child abuse; and while working in a hospital, since I spoke Spanish, I was once called to a floor where there was a Spanish speaking gunshot victim. And it turned out that she had been shipped through the emergency room up to the medical floor and hadn't been given any special intervention for the trauma. Whereas, if she had been a rape victim, she would have. And I realized that a lot of crime victims were slipping through the cracks and decided that that was a service that was very badly needed in the community.

ASSEMBLYMAN CALDERON: And now you will go bankrupt if you don't get some -- if you're not able to get some of your bills paid?

MS. KLESS: Well, my board has been meeting regularly, and the board is determined to keep us open if at all possible. What happened, we began asking the Board of Control to help us to expedite our claims, that we were in financial crisis, in May. And we were promised that they would expedite our claims, that they would pull our claims and give us status reports and push them through as fast as they could so we would not have to close our doors. And at that point, it was very crucial and we thought we would have to close.

And what happened was, over the months since May, instead of having an increase in income and claims paid, we actually had an overall decrease; and in fact, October was our lowest month of all time. We received under \$5,000 for only six claims in October, and we have outstanding hundreds and hundreds of claims because we see many, many people over the years.

During that month, one of our board members lent the agency \$10,000. We laid off a couple of staff people and we did meet finally -- we met with Miss Embree and Mr. Eaton on October 26th because we did get a status report at that time after we made a lot of noise in the community. I was very patient and I felt that they were promising that they would help and that they would, and then when they didn't, the board directed me to start contacting legislators to help us. And once I did that, we got a very good response actually; 15 pages of status reports. And in fact, the last hearing, they said that we were going to be paid about \$30,000 but that was out of about \$300,000 that we calculate due.

CHAIRMAN TORRES: Now, did Miss Embree and Mr. Eaton come down to your offices?

MS. KLESS: Yes, they did, and they also met with the district attorney's Victim Assistance

program at the same time.

CHAIRMAN TORRES: Whose buttons did you push to make that happen?

MS. KLESS: A lot of people. I wrote and called various Assemblymen, your office, Mr. Calderon's office, the Secretary of State, the Governor's office, various different State Senators and Assembly people.

CHAIRMAN TORRES: I'd like to get into the basic policies of the Board of Control and to understand what the impact has been of the change in those policies on your program. Can you give us two examples before the rush of support came around in October of this year for your program; what had happened up to that point? You've given us the amounts of money that are owed to you. Not all of those may or may not be eligible, so we don't know that for sure because eligibility has not been determined on all the cases, but what has been those policies and how would you change the frustration that's out there that we've been experiencing in our offices?

MS. KLESS: Well, I think one of the main problems is that there's no consistent communication or no guidelines, or there are no policies told to us or to any other providers. And what Mr. Calderon just said about -- that the program always says, "Well, we are only obligated to the victim," that's exactly what gets carried out. And I keep saying, "But you're not taking care of the victim if you don't take care of the providers." So therefore, we never know really what the policy and guidelines are, and if we ask our Victim Assistance program, "Well, what about this case, what's going to happen," they'll say they really don't know. All they can do is base it on what kinds of things have happened in the past.

CHAIRMAN TORRES: Well, can you give me an example?

MS. KLESS: Yes. Well, there are different kinds of examples. Some have to do with eligibility of clients, and we see clients who are eligible or ineligible, but because we use so many independent contractors who have to get paid, we have to determine who's going to treat them.

But there are other situations that have come up recently that has to do with kinds of fees they're going to pay. For example, always in the past, we were told if a person was a Medi-Cal recipient and we weren't Medi-Cal providers, that we didn't -- we could just bill the program, get paid, and we always did. Also, if someone was an HMO member but wanted specialized treatment through the crime victim center, the Victim Assistance program said just bill the HMO, and if it's denied, the victims program will pay, and they did. Now we're being told that no, you have to have gotten a referral from the HMO, which we could do easily but we can't retroactively, and that if we didn't bill Medi-Cal we may not get paid. And those kinds of things have great impact because all our therapists have provided services in good faith and we've always gotten paid, and no one told us the change in policy.

CHAIRMAN TORRES: What was the response from Eaton and Embree when they came to your offices and you asked them -- I presume you asked them -- those questions?

MS. KLESS: Well, actually, they're the ones that brought that up. When they brought in the status report, they said, "Well, these were things that the Board had to decide," that they weren't sure what would happen in those cases. But my concern about that is it's okay to have policies like

that and guidelines but let us know and don't act on the cases we treated and completed treatment with if there's going to be a change in policy. Let us know before you start implementing it and only start...

CHAIRMAN TORRES: Who told you about those policies initially? I'm trying to...

MS. KLESS: I never heard about that until October 26th.

CHAIRMAN TORRES: You never heard about the problems with the HMO's and...

MS. KLESS: No. No, not until we got our status report where they were saying, "Well, these might not be reimbursable," because of this or that or the other thing.

CHAIRMAN TORRES: Well, it wasn't until October that you realized what was eligible and what was not.

MS. KLESS: Yeah. And those decisions aren't even clearly made yet. It's just a matter of the -- now it has to go to the Board themselves for them to decide, is my understanding.

CHAIRMAN TORRES: They stated to you at that October 26th meeting that the problem is the Board of Control and its three members in deciding on uniform policies and guidelines?

MS. KLESS: Yes. Though I believe that the program makes recommendations regarding those issues to them.

CHAIRMAN TORRES: I can't imagine the three nominees sitting on that Board of Control making all the decisions about intimate guidelines regarding an administrative agency. I would presume those recommendations would come from the staff and the directors of those agencies.

MS. KLESS: I expect so.

CHAIRMAN TORRES: You expect so or you know so?

MS. KLESS: I don't really know.

CHAIRMAN TORRES: Mr. Escobar?

MR. EDUARDO ESCOBAR: Yes, good morning, Mr. Chairman. Good morning, members of the committee. Thank you for having me here today. I came here with the hope that my testimony will be helpful in lending credence to the fact that the victims' claims need to be expedited.

I'm also here to strongly object to the excessive delays in payment; and secondly, to the arbitrary manner in which claims are approved or not approved.

Over the last couple of years, I've been working with the Victims of Crime program. At the present, I have about -- I'm the provider for about 22 claims with an outstanding balance of \$48,000 plus.

CHAIRMAN TORRES: You have an outstanding balance of \$48,000?

MR. ESCOBAR: \$48,000.

CHAIRMAN TORRES: How many clients does that represent?

MR. ESCOBAR: That represents about 22.

CHAIRMAN TORRES: Twenty-two clients and all of them, as far as you know, are eligible for reimbursement from the Victims fund?

MR. ESCOBAR: That's right. A couple of the claims were denied and I'm in the process of appealing those. As you can imagine, that has created a financial crisis for myself, and I won't get

into that too much.

I also wanted to state I understand and I respect what Miss Baxter said before, how some therapists, you know, just refuse to take those claims. However, my position is different. Even though I've continued to have difficulties in collecting those claims, I believe in this committee and I believe that they will be paid eventually, and I see it as my responsibility to be sitting here before you today. I prefer to be here myself instead of having some of my patients come and be here.

CHAIRMAN TORRES: Who are your patients, Mr. Escobar? What kind of practice do you have?

MR. ESCOBAR: I'm an independent practitioner. I'm a marriage, family, and child counselor, and the majority of my patients are children. These are children who've been victimized and molested.

CHAIRMAN TORRES: Sexually abused and molested.

MR. ESCOBAR: That's right. And I'm sure that you're familiar with what the process is like for children. By the time that the crime is reported, they talk to approximately 6-10 people. You know, investigators, Children Services' worker, police. Children are asked to -- subpoenaed to court, sometimes asked to testify. And I think it's very countertherapeutic for patients to be changing therapists. I myself have gotten a couple of patients who basically other therapists refused to see them. I've gotten patients who saw other therapists for a period of time and then the therapists basically had it with not receiving any payment. Again, I not only see myself as a therapist for these children but also as an advocate, surrogate parent, and things like that.

But I believe that, as was stated here before, that the process, as it is now, is really a deterrent to therapists like myself who are committed to working with economically disadvantaged population; victims of crimes.

Just a footnote. I originally began working with offenders, and I've seen over 300 offenders in my practice, and not a one of those adult pedophiles was ever treated for their own sexual victimization as a child.

I think it's also perplexing that -- I have associates that work for the California Youth Authority and I know that offenders go into the Youth Authority and they have a sex offenders program, and as soon as they go into the Youth Authority, offenders get evaluated, they begin an intensive treatment program, they leave on parole, and they get therapy and they don't pay one cent.

Without using any psycho babble like, you know, transference and countertransference, I like the question that you asked before: how these delays and all these problems, what kind of an impact that has on treatment. First of all, some of the patients -- well, the patients are basically up in the air. You know, they don't know if their claim is going to get paid. They don't know if tomorrow I'm going to say forget it, I can't see you anymore.

I know that most of you probably have an appreciation for how very difficult it is for victims to come forward; you know the immense amount of shame and guilt and helplessness that they feel. And I think that this very inefficient lengthy process basically exacerbates their feelings of helplessness, and it -- one of the phenomena that always happens in therapy is that people, no matter how much

they want help, there is some level of resistance, and I think all these problems also reinforce that resistance. You know, why should I get -- I'm talking from the patient's point of view -- why should I get involved in this treatment process where I might not be able to continue?

And you asked before if -- you asked the other therapists if they had any suggestions. I hope you'll allow me. I had one suggestion that I thought of as I was sitting there listening earlier. In the same way that insurance companies have a preferred provider kind of program where they have clinicians who have been already checked out, their licenses, their credentials, their experience, and I'm wondering if there could be some kind of process which will make the program more aware of who the providers are, and I think maybe that might expedite things or be helpful.

MS. KLESS: I don't think the problem is the providers. The problem is verifying the claims and getting the claims through the process. I don't think it makes any difference who the provider is as far as the holdups go.

I'd like -- could I just say one thing?

CHAIRMAN TORRES: I haven't finished with Mr. Escobar.

MS. KLESS: Oh, I'm very sorry.

CHAIRMAN TORRES: That's all right. What kind of personal dealings have you had with the Victims fund? Have you called on behalf of clients asking what was going on?

MR. ESCOBAR: Yes. I've called many, many times and have all these -- you know, I live in Los Angeles so I have all these long distance telephone bills. I call many times regarding claims, and as you stated before, I get ping-ponged back and forth; you know, call the local office. And then they say, "Well, we sent the claim up," and then I call up. And basically one of the places where I've seen that it gets held up the most is in like a claims verification. The claims are there for, you know, four, five months.

CHAIRMAN TORRES: That's what Miss Kless was referring to.

MR. ESCOBAR: At a time, yes.

CHAIRMAN TORRES: And what's been the attitude of the employees that you speak to? Is it cooperative, is it helpful, is it arrogant, is it cold, is it impersonal, is it warm?

MR. ESCOBAR: In all fairness, in all fairness, I must say that I've experienced, you know, both people who have been very polite and courteous, and also people who made it very clear that they were very busy and they didn't have time to deal with my calls and that just to wait, and that they were overwhelmed with all the claims and all the work. And so they were asking me for sympathy and understanding.

CHAIRMAN TORRES: So you provided them therapy at no expense.

MR. ESCOBAR: Almost.

CHAIRMAN TORRES: Only at yours. Mr. Calderon, then Senator Marks.

ASSEMBLYMAN CALDERON: Thank you, Mr. Chairman. Have you ever requested to have a copy of the manual that the Board uses to determine what process will be used to facilitate these claims?

MR. ESCOBAR: Honestly no, I have not.

ASSEMBLYMAN CALDERON: Miss Kless, have you ever requested a copy of the manual?

MS. KLESS: No.

ASSEMBLYMAN CALDERON: Has one ever been -- as you've dealt back and forth with the Board, have they ever offered to send you a manual to sort of clarify things?

MS. KLESS: No. There's no guidelines. We've never gotten anything in writing and very little verbally as far as guidelines go.

ASSEMBLYMAN CALDERON: Well, Mr. Chairman, I would just simply point out that there really are no -- and I will acknowledge that there's something in the form of administrative regulations that are so broad; however, they're broad to the extent that they really provide no guidance at all, and all the money is dispersed through this policy manual that the Board has. Now, in the first instance, every agency that distributes money to the public must do so pursuant to administrative regulation. To not do so is probably a denial of due process.

But in addition to that, I know other providers that have requested to receive a copy of the manual and have been refused, which, in my estimation, is a denial of the Freedom of Information Act. And so here we have a provider system that is the core and the heart of the Victims program attempting to function, advancing in effect dollars in hopes that some of the claims, or most of the victims will be compensated; and then not only being put on a five, six, nine month, one year, and sometimes more backlog, but they're not even told what the process is. They have to call in periodically, run up their telephone bills for long distance calls, without getting any kind of guidance, without getting -- not in every instance but many instances -- any kind of word about how the process works, how they can streamline their activities so as to make the process work faster; and meanwhile, the person being victimized by the Victims program, as you so aptly pointed out, is sitting there in a quandary wondering whether the services are going to be cut off, wondering what the status of their own financial condition is going to deteriorate to if they don't get the services. It is an incredibly intolerable situation.

I just wanted to point that out while we have these people here before us, because they not only provide a vital service, as I've indicated; they are caring people. They care about victims. They care about helping individuals. And we're discouraging even nonprofit agencies that provide services, pursuant to grants and other donations that they get, from providing the services to help victims, and I think it's an atrocity.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Let me just ask a question of you, Mr. Chairman, or one of your members of your staff. The money is handled by the Board of Control, or who handles the money?

CHAIRMAN TORRES: It's the fund itself that handles the money. Well, the Board decides but the fund is.

SENATOR MARKS: I mean, I've been sitting here listening to this testimony and it disturbs me terribly. I think the people are entitled either to compensation or denied; one or the other. I hope they would get the money, but at least they have no reason in the world to delay this time and time again. And it seems to me that we in the Legislature have the power to do something about it. I'm

quite sure that the people who are in charge of this program are themselves being paid while they're delaying everybody else. I think we have the power, through the Budget Committee, to institute a budget act which would say that the people shall not be paid unless the action's taken within 90 days. I think we have that power. I think we should do it. I can't conceive of why we don't do it. I'd be very glad to participate in anything that will make it possible, because I think there's no reason in the world why they should not act within a certain period of time. They may not -- it's possible they may deny the claim. I don't know enough about each individual claim, but there's no reason in the world to delay it and delay it and delay it for this long period of time while they're being paid for their services, or nonservices, and we're waiting. I think we ought to do something about it.

CHAIRMAN TORRES: Well, as a member of the Budget Committee, we will be doing something about it once the budget process starts.

SENATOR MARKS: We should.

CHAIRMAN TORRES: We'd also like to supply for the record a letter from the Community Treatment Center of Fairfield, California, dated today, November 12, 1987. "To date, our agency has \$39,605 in outstanding claims in process in this fund, and some of these claims date back as far as December of 1986." Assemblyman Tom Hannigan also submits a letter in support of their position and we'd like to enter that as part of our record as well.

Any further questions of Miss Kless or Mr. Escobar? Anything further you'd like to add before we move on?

MS. KLESS: Yes, I would just like to say that we've had claims of over 500 crime victims, but I'm able to really see the pattern because so many claims go through our office and it really horrifies me that there's so many victims all over the state not getting reimbursed for their own out-of-pocket. People that come to us get the services they need, but people that have to pay out-of-pocket and then have to wait for reimbursement are in a much sorrier state.

I'd also like to say that the State Board of Control says the reason why things are so slow is that they've had a 56% increase in claims over the last year, but I still don't understand why it -- it seems that since we've been around, and we've been billing for over three years, that at least the old claims from a year or two ago should be coming through. Why is it constantly decreasing? It should be at least somewhat holding it's own, and we've just had a constant reduction.

CHAIRMAN TORRES: All right. Thank you very much. Thank you for being here.

Mr. Alex Vargas from Los Angeles City District Attorney's Victim Witness Center; Mr. Michael Siegel, victim advocate and attorney; and Miss Linda Siegel and Jane Callahan. Please come forward.

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm the testimony that you are about to give before this committee is the truth, the whole truth, and nothing but the truth?

Please be seated.

CHAIRMAN TORRES: Okay, Mr. Vargas? You can speak from that mike. If you prefer to stand, that's fine too. It's up to you. Just press the button. Welcome to the committee.

MR. ALEX VARGAS: Good morning. Well, one of the things that I want to stress is that although there's delays and valid concerns are being voiced here today, what concerns me also is the fact that some of our cases -- some of the cases that we feel are extremely valid cases are being denied by the Board. Once we go before the committee, the three members of the Board, we feel that there are cases that are very valid that are being denied.

Some of the cases that we're talking about, we feel, or I personally feel, have...

CHAIRMAN TORRES: Give us an example of which cases you feel have been denied but should merit eligibility.

MR. VARGAS: Hit-and-run cases. We had received policies from the State Board of Control that a victim cannot contribute to the run, which is a violation of the law. We went with that premise and it was approximately two hearings ago in Los Angeles that they started to deny cases, or take these cases into consideration again. We really need to know what the policies are in order to process these claims. Giving false hope is very, very damaging to our victims. So we really need to have a clear understanding of what the policies of the Board are.

ASSEMBLYMAN CALDERON: Have you ever requested anything in writing from the Board as to what exactly is their policy, vis-a-vis particular or specific victims?

MR. VARGAS: Well, this was a written policy that we received from the Board, and when we accepted that as being the policy for the future until it was going to be changed, and we went to a hearing and all of a sudden -- we had a case that was being presented there where a hit-and-run was an issue. So we weren't prepared for that.

ASSEMBLYMAN CALDERON: But do you know if it was a California administrative regulation or just simply an internal policy?

MR. VARGAS: Internal policy.

CHAIRMAN TORRES: Please continue.

MR. VARGAS: We have concerns with the money issues. We have heard the three Board members in the past requesting to know the amount of the claim. We feel that all claims -- we in Los Angeles in the program, the City Attorney specifically -- feel that a case should -- each claim should be decided based on its merits, not in terms of the amount of money that the claim will cost the fund.

The other issue is domestic violence. We in the City of Los Angeles, City Attorney's Office specifically, handle a great deal of domestic violence cases. I have a deep concern that some of our domestic violence cases are going to be brought before the Board hearings on a discuss item where there is a question in terms of prosecution, successful prosecution. In domestic violence cases, it's usually a long-term type of environment that they're living in, and if the police department feels that they do not have enough information to press charges, these cases are set before the Board and set for discuss, and we feel very concerned that these cases -- although the statutes are very clear that successful prosecution is not necessary.

I've had one of my domestic violence victims informed that she should have done more to have this case brought before the municipal court or one of the other bodies. So we have a concern that domestic violence is an area that is sometimes overlooked.

Child abuse cases, and I think somebody's going to be talking on that. One of the things that we're concerned with is when the Board members are present, that they chastise our victims or, in this case, a family member, a mother, who was chastised and informed that she should have done more to protect her child. We don't feel that's the answer. If you're going to discuss or deny a case, do so with the merits before you; don't allow any type of personal concerns in basing your decisions. That has happened in the past. We have had a mother leave one of the Los Angeles hearings crying. So that is not unusual.

We have cases -- and we understand that the Board has very limited information before them, specifically police reports, to make determinations. We have had cases denied where the rationale for denial was based on the defendant's statement. Now, we feel that that's somewhat harsh on our victims when you're denying their eligibility based on the statement made by the defendant. One would assume that a defendant's statement would be contrary to the victim's. But when you accept that defendant's statement over the victim's, then we have a problem. And all of these cases will be suffered denial.

CHAIRMAN TORRES: What were the circumstances in that case where the Board accepted the defendant's version over the victim's?

MR. VARGAS: Well, this is -- a number of cases have gone that way, where the only basis they'll use is a statement within the police report, and they use that on a regular basis when denying these cases. So there's a number of cases, and if...

CHAIRMAN TORRES: Give me an example where a defendant's statement would have denied accessibility or eligibility for a victim?

MR. VARGAS: Okay. Assuming that there's a fight and the victim says he was walking down the street and he was attacked by the defendant from behind. The defendant says, "That did not occur; I was in front of him and I turned around and I struck this person." Now, the defendant is basically saying it was mutual combat, and that will allow the State Board of Control to deny these claims. And we have, no doubt, cases that we can pick up from our office to substantiate these.

CHAIRMAN TORRES: Does that same statement have the impact in terms of a conviction in a courtroom with respect to that defendant?

MR. VARGAS: No.

CHAIRMAN TORRES: Why should it have the same impact on determining eligibility for a victim?

MR. VARGAS: I don't know. That is not something that I can answer, but I can tell you that many of these cases go to trial and there is -- these defendants will usually plead out.

CHAIRMAN TORRES: Plead out.

MR. VARGAS: Meaning that they'll plea bargain.

CHAIRMAN TORRES: Mr. Calderon for a question.

ASSEMBLYMAN CALDERON: In connection with the issue raised by the chairman and by this witness, and I understand there is also a lawyer here that represents victims? Maybe that individual might be able to respond. What is the standard used to determine credibility with respect to claims

that are submitted by victims?

MR. VARGAS: It should be the merits of the case based on the statutes and to ensure that these folks qualify. We review all our cases before we submit them to the State Board of Control. We don't want to get into a confrontation, if you will.

ASSEMBLYMAN CALDERON: I'm talking about once the claim is submitted to the Board. My understanding is they use a proof standard of preponderance of the evidence.

MR. VARGAS: Perhaps Mr. Siegel would better be able to answer that.

ASSEMBLYMAN CALDERON: Mr. Siegel?

MR. MICHAEL SIEGEL: On that point. Michael Siegel. The standard of proof in a criminal case is beyond a reasonable doubt and it's a much stiffer standard for the district attorney. The standard of proof for the Board is supposed to be a preponderance of the evidence, but they tend to take the fact that the district attorney did not prosecute to be evidenced -- or proof that there was not sufficient evidence of a crime, and they deny the cases based on that.

ASSEMBLYMAN CALDERON: Now, there's also another burden of proof in law and that's clear and convincing evidence. Are there lawyers working for the Board that make the determination whether or not a claim meets this standard of preponderance of the evidence?

MR. SIEGEL: The Board has an attorney who advises them. He actually is not the Board's attorney. He works for the General Services Department and he's not there all the time. I mean, he is at the hearings but he's not regularly available.

The Board makes its own decisions. It listens sometimes to what the attorney says and sometimes they'll even ask him questions, but generally, they make their decisions based on their own belief...

ASSEMBLYMAN CALDERON: Are there any lawyers that sit on the Board?

MR. SIEGEL: Actually yes. The appointee of the Controller is a lawyer.

ASSEMBLYMAN CALDERON: I see. And there are three members of the Board. Is that right?

MR. SIEGEL: That's right.

ASSEMBLYMAN CALDERON: Okay. Is this preponderance of the evidence standard that is used by -- basically, I guess, a lay Board -- is that administrative law or Board policy?

MR. SIEGEL: That's in the law. I mean, the phrase, "preponderance of evidence", I believe is in the statute.

ASSEMBLYMAN CALDERON: Is in the statute.

MR. SIEGEL: I believe so.

ASSEMBLYMAN CALDERON: All right. Thank you.

CHAIRMAN TORRES: Are you finished, Mr. Vargas?

MR. VARGAS: Yes.

CHAIRMAN TORRES: Mr. Siegel, Michael Siegel, would you identify yourself?

MR. SIEGEL: Michael Siegel. I'm an attorney and practice in California and have been since 1974. I served as a legislative assistant in the State Senate for about four years in the late '70s and then I served in the Department of Consumer Affairs for a couple of years in the '80s. For the past

six years, I've specialized in representing crime victims before the victim restitution program which is administered by the Board of Control.

I first learned about the fund in 1981 when I was asked by a child care and child abuse prevention agency in Humboldt County to learn about the fund and how child abuse victims might apply. I filed a few claims back then and got more and more involved until now I file between 350 and 400 new claims a year. And at the end of 1986, I still had open and active several hundred claims. I believe I once checked, and if I were a Victim Witness office, I'd be ranked about 15th in the state in the number of claims I process.

I get my referrals from some Victim Witness offices, word of mouth by victims who tell their friends, and from therapists who have clients who have been represented by me. I should tell you that very few attorneys practice this because of the low amount they can make on each claim, the amount of time it takes on each case, and the constantly changing rules under which the program seems to operate. My own experience shows that the cases average less than \$200 in attorneys fees for each one. Most attorneys won't bother -- in fact, I get referrals from attorneys who have clients and they call me and say, "How do I apply," and I tell them how much they can make and they say, "Forget it." They just send it over to me.

CHAIRMAN TORRES: What's the average time frame between filing of an initial claim and subsequent claim in receipt of payment?

MR. SIEGEL: Lately it seems to be 10 months or longer.

CHAIRMAN TORRES: Ten months or longer?

MR. SIEGEL: From initial filing to a determination by the Board, and subsequent awards, and those are awards after a claim has already been approved, sometimes take that long. Again, another year.

CHAIRMAN TORRES: In your opinion, is the staff adequately trained to abide by the regulations they're administering?

MR. SIEGEL: I believe that there are some staff training and sensitivity to victims that probably needs to be done, but I...

CHAIRMAN TORRES: I'm not talking about therapy; I'm talking about are they trained and competent in dealing with the regulations and the rulings that they have to administer.

MR. SIEGEL: That's what I'm referring to, too. I'm not talking about sensitivity to hand-holding over the phone, that type of thing. I'm talking about issues -- child abuse is a rough one. There's often not the same kind of evidence that you have in a rape or a shotgun wound.

My criticism, though, I think must be leveled at the guidance, or lack of guidance, given by the Board itself to the staff. The Board takes pride in handling cases on a case-by-case basis, which might be appropriate in their government claims division, which is the other thing they do a lot of, and that's claims against the state.

CHAIRMAN TORRES: So you appear before the full Board of Control, right?

MR. SIEGEL: Yes, the three-member Board.

CHAIRMAN TORRES: You appear before them. Have you ever appeared before them when

Elizabeth Yost has served on that Board?

MR. SIEGEL: Yes, I have.

CHAIRMAN TORRES: What has been your experience when she served on that Board?

MR. SIEGEL: Does immunity extend to... (Laughter.)

CHAIRMAN TORRES: You are not under immunity.

MR. SIEGEL: That's what I thought. Well, Miss Yost serves as the chair when Mr. Anthony is not available.

CHAIRMAN TORRES: Is that usually a case or not often?

MR. SIEGEL: No, usually it's Mr. Anthony is there, but she does occasionally when he is indisposed or out of town or something.

CHAIRMAN TORRES: Why is that? Why does she serve as...

MR. SIEGEL: I never questioned it; I don't know.

CHAIRMAN TORRES: She just shows up.

MR. SIEGEL: She shows up and has a vote, and I assumed there was some legislation but I don't know. I assumed because the Controller, who sits on the Board, has a designee, that perhaps worked for the chair as well, but now that you mention it, I don't know that that's in fact true.

Because of the relative infrequency of her sitting on the Board, in my opinion she doesn't have a sense of the policies that the Board has adopted or the kinds of cases that it has approved in the past and often makes a decision that's contrary to what we all expected the Board to be voting on or having a position on. Is that subtle enough?

CHAIRMAN TORRES: No, I don't think -- I'm not looking for subtlety, I'm looking for the truth. That's why you were put under oath, Mr. Siegel. But I'd like to know just what kind of actions and what kind of actions led to certain decisions. I want to know how people operate on these boards. What leads up to their decision making? What happens in there? And you, as you've testified before us, carry quite a bit of cases before that Board. I want to know how it operates.

MR. SIEGEL: Well, the Board itself -- you...

CHAIRMAN TORRES: I'm talking about Miss Yost who sits on that Board. I just want to have an idea of what kind of decisions she's come up with and how she's conducted herself, because that's important to all of us. If Mr. Anthony is not available, then his No. 2 person should be responsible, as we would be held responsible for our staff if they're not behaving properly or not conducting themselves professionally.

MR. SIEGEL: Well, perhaps I could just give you a recent example of a case I had with her within the last month or so. It was a case where the Board was approving my client's claim, but Miss Yost insisted that there be extra strings attached to the award. She required that my client submit a letter and I objected. I said, "Well, I'm sure my client won't have trouble with the letter you want but there's nothing in law that allows you to require that." Mr. Pelkofer, who is the Controller's representative, agreed with me, but that was the order of the Board. It was two votes to one of abstention in favor of awarding it but only if there is a submission of additional documentation for which there was no -- no other case has required that and the law does not provide for that.

CHAIRMAN TORRES: And what was the nature of the victim's crime?

MR. SIEGEL: That particular? That was a child abuse case. There was no problem with the award of the case itself. That one involved whether the mother, who was attending Parents United meetings, could get reimbursed for the child care expenses in leaving her 3 or 4 other children at home while she went to the meetings.

CHAIRMAN TORRES: And Miss Yost wanted to have a letter from the child care provider?

MR. SIEGEL: Miss Yost wanted -- no, because that would be okay; that'd be like a receipt. No, she wanted a letter from the client that the client had no other resources or family available to take care of these children while she was gone.

CHAIRMAN TORRES: Isn't that already required in the eligibility requirements, whether they have the money to pay or not for them to comply with...

MR. SIEGEL: No. There's no...

CHAIRMAN TORRES: There's no requirement that they state whether they've had insurance or not before?

MR. SIEGEL: Well, yes. But when you're talking about child care while someone goes to a meeting, that's not going to be covered by any insurance I've ever heard of.

That would be okay, but that's not the -- the issue was did she have a family member or someone else who could take care of the kids for free as opposed to paying someone \$2 an hour to watch her kids.

CHAIRMAN TORRES: So Miss Yost was assertive in trying to save the state money then. Is that correct?

MR. SIEGEL: That's one way to look at it. I look at it as giving a victim an additional hard time when there's no legal authority for that requirement.

CHAIRMAN TORRES: Had she done that before or since?

MR. SIEGEL: Well, certainly not since because I haven't been before her since. I don't always agree with her decisions but this is the first time that she actually imposed something that was not in law.

CHAIRMAN TORRES: From your experience, had that been the common practice of other Board members to be that independent and arbitrary?

MR. SIEGEL: No.

CHAIRMAN TORRES: Mr. Marks for a question?

SENATOR MARKS: Did we pass a statute giving the Department of General Services control over this Board? Why does she sit on this Board?

MR. SIEGEL: My understanding, and again, this is part of the law I've never looked up, is that the Board is composed of three members: one government appoint -- a Governor's appointee of a public member, the Controller or his representative, and the head of General Services. That comprises the three-member Board. Because the director of General Services sits as the chair, I guess he has taken the responsibility of having his staff be in charge, or get involved more with the day-to-day operations than others. And again, I don't know what the legality is for Miss Yost sitting

on the Board.

SENATOR MARKS: I would like some member of your staff to determine whether or not Miss Yost has the authority to sit on the Board at all. Historically, you might be aware -- maybe you're not aware -- of the fact that several hundred years ago I was the author of the bill that established the Department of General Services. I didn't put her on.

CHAIRMAN TORRES: You'll be our next witness, Senator Marks, thank you.

SENATOR MARKS: That was several hundred years ago.

CHAIRMAN TORRES: Oh, okay. The statute of limitations has passed.

MR. SIEGEL: May I continue?

CHAIRMAN TORRES: Yes, please.

MR. SIEGEL: I'm trying to keep my testimony short because I know you have lots of witnesses and little time.

CHAIRMAN TORRES: Yes, thank you.

MR. SIEGEL: I wanted to point out that because of the amount of cases that I do have, I am frequently on the phone to the Board to try to find out what's going on with cases, and I'm sure that some staff members take exception to the frequency of my telephone calls, but...

CHAIRMAN TORRES: Yes. We've heard that you're not well liked over there, Mr. Siegel.

MR. SIEGEL: You heard that too.

CHAIRMAN TORRES: Yes.

MR. SIEGEL: I'm very sorry actually for the people who don't have advocates in Sacramento; Victim Witness or private attorneys or themselves. We've heard from Mr. Escobar that it's costing him a lot of money to call long distance and I wish there were a better system, but that's the way it works. I'm fighting for my clients the best I can, and I try to work out and make the calls less frequent, but the show must go on.

CHAIRMAN TORRES: All right. Well, let's talk about that very specifically before you go on, and that is you've talked to us about the fact that there are problems in terms of people not being trained properly to deal with the rules and regulations. You've talked about inconsistency. You've talked about some arbitrary decision making on one member's -- Board of Control member's participation or their representative. What barriers do you see for the victims in general other than that? I think that's important for us to find out. Or are there any other barriers?

MR. SIEGEL: Well, the one you've heard over and over, the length of delay and the uncertainty of whether the case is going to be awarded is certainly one. Then the subsequent award and the delay in that is another. Either the therapist is bearing that burden or the victim.

CHAIRMAN TORRES: What's been the shortest time that you've had -- that your client has had to wait for reimbursement?

MR. SIEGEL: The shortest?

CHAIRMAN TORRES: Yes.

MR. SIEGEL: Are you counting emergency claims?

CHAIRMAN TORRES: No, I'm not counting emergency claims.

MR. SIEGEL: Probably 2 or 3 months.

CHAIRMAN TORRES: Two or three months.

MR. SIEGEL: It was not recently that that happened, however.

CHAIRMAN TORRES: Did you find it -- did you practice before the Board when Mr. Richmond was director of it?

MR. SIEGEL: Yes.

CHAIRMAN TORRES: Did you find any difference in the administration or the process or the experience with the Board operation as opposed to this Board operation?

MR. SIEGEL: No. I see it as basically the same. The problems existed long before the last couple of years.

CHAIRMAN TORRES: Even though there was some backlog removed during that period of time? You didn't find any difference?

MR. SIEGEL: Well, the backlog got down and then went up, but it was also, from what I understand and I have no reason to doubt it, the publicity about the existence of the fund and the increase in the number of claims. There is a problem, and I think that other panelists will address it, about when there is an increase in caseload; why it takes another year or two to get the budget change proposal and to get additional staff, and maybe there's some remedies for that. I'm not sure that you walk into the rings(?) of a committee or a board that suddenly a month later problems are occurring. I'm not sure that it's due -- I think you have to look at the whole history of the Board. In my experience, as I said, is that the problem with information about who qualifies for the fund, and that's another barrier -- you were asking me about barriers -- has been going on for as long as I've been involved with the fund.

CHAIRMAN TORRES: All right. Thank you very much. We'd like to move on. If there's anything else you'd like to add?

MR. SIEGEL: Yes, I wanted to give you a few examples of what I consider arbitrary decisions of the Board, and I'll go very quickly through these, to give a sense of the frustration that advocates feel in trying to advise clients of whether their cases are going to be approved or not.

One decision that the Board has made is to only pay part of a therapist's bill if it thinks the bill is too high. There's no legal authority for this decision and I have challenged it, but the Board continues to award only a part of the bill when they think it is excessive.

The Board routinely denies victim claims, especially child abuse victim claims, when the perpetrator remains in the household, even though under SB 14 requirements, and that will be discussed later as well, that's almost a mandatory situation. The law allows the Board to deny a claim when the victim fails to cooperate with law enforcement in the prosecution of the perpetrator, but when the victim is a minor and the mother is trying to protect the victim from further harrassment by a defense attorney or perhaps just doesn't want to press charges against the boyfriend or stepfather, the Board will deny the claim. Not because the victim has failed to cooperate but because the parent has. I'm sure that that is a correct decision and probably should be appealed.

Another ground for denial is contribution to the crime. We had that example from Mr. Vargas.

Usually it's a case of mutual combat, but application of this policy has gone quite askew. Recently the Board denied a claim of a fellow who had an argument with someone at a party. The guy left, got a gun and came back and shot him, and the Board denied it because they said they shouldn't have gotten into the fight in the first place. And I think excessive response to an argument makes it a valid -- should be a valid claim.

There's another one, it was about three months ago. A student was trying to study, heard a loud commotion in the street, told the people to pipe down, they ignored him. He went downstairs to see if he could get them to be quiet. He was attacked; he was beaten with a board and several people attacked him. He put in the claim, they denied it, because they said he shouldn't have gone downstairs.

SENATOR MARKS: Can I ask one question, please?

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: I'm not sure I fully know the procedure. If the Board denies a claim, can you go to court?

MR. SIEGEL: Yes. The law allows that an appeal, or a petition for a writ of mandamus can be filed within six months of the denial.

SENATOR MARKS: Have you done that?

MR. SIEGEL: No.

SENATOR MARKS: Why?

MR. SIEGEL: Because there's no incentive. The law also provides that there's a limit on what an attorney can make, and it's in the statute. It's in Government Code Section 13965 and it says that, "The law prohibits an attorney from charging, demanding, receiving, or collecting any amount for services rendered in connection with the proceedings," and that includes filing for a petition or writ of mandate, except as awarded under the law. So this miniscule amount of money, which -- okay, it's \$500. The claim receives -- it could be a lot of money but, as I said, the average is less than 200, and why attorneys don't take these claims. The added expense of going and filing a writ of mandate and the hours expended, there'd be no additional reimbursement for that. So you'll see virtually none, and if you look in the code book, you'll see that there's only a half a dozen cases that've ever gone to a court of appeal on that.

My solution for that, by the way, would be to provide for attorneys fees in excess of that allowed in law only when the attorney files a successful petition. In other words, reverses a Board decision. It wouldn't cost the fund any money if he fails, but it would give incentive both to file on bad cases and give the Board incentive to make good decisions that aren't going to be appealed and reversed.

SENATOR MARKS: Does the Attorney General have the authority to go to court?

MR. SIEGEL: I don't know. Perhaps so.

CHAIRMAN TORRES: I would think so. We need to research that.

SENATOR MARKS: You might look at that to see whether the Attorney General can do it if there's been denial.

CHAIRMAN TORRES: All right?

MR. SIEGEL: Yes, thank you.

CHAIRMAN TORRES: Thank you. Miss Linda Siegel?

MS. LINDA SIEGEL: My name is Linda Almdale(?) Siegel and I've been involved in improving services for child abuse victims for some 25 years and for 15 years in California. I was also trained by a company called Ernst and Winney(?), which is a prominent CPA and management services firm internationally, and learned how management structures work from that experience.

As an appointee for Governor Brown from 1976 to 1982 and for Governor Deukmejian from 1982 to 1984, I was heavily involved in advocacy for children, mostly dealing with creating funding sources and increasing services for children. From these efforts came the text checkoff box for child abuse services, AB 1733, which gave 10 million to child abuse services.

Between 1980 and 1982, I began to discover this resource for child abuse victims. At that time, there were -- 5% of the cases were filed by child abuse victims. That has now grown to about 30%. That's been a major source of growth in the fund is the applications by child abuse victims, and I think it's led to a lot of the confusion.

I found that the fund was the most mystified source of funding that I'd ever dealt with in state government. There was a mystique about where you could not get any answers. There weren't any publications; there weren't any policies that were published. It wasn't in a state department.

I'd like to address that issue of improper placement of the program. I think one of the real problems is that it is placed under the Board of Control, which is the last resort for Californians that want to make an appeal to the state. And as such in that placement, that Board tends to be unsympathetic to the people that come before that, and I think those attitudes have somehow carried over to this program. When you go into the Board hearings, you can see that their function is to hang onto the money to release it only if they're absolutely sure, have absolute proof, and to delay the giving out of state money as long as possible. I think an appropriate placement for this Board could be in the Attorney General's Office, could be in the Office of Criminal Justice Planning, could be under its own administration, but I see that the fund would be greatly improved by moving it.

The second area that I would like to stress is the caseload, that you need to do something about the caseload management. I think there are a lot of very dedicated staff in the Board of Control but they've been overwhelmed, if in fact the child abuse victims alone have gone from 5% to 19% of the claims and the claims have risen -- the escalation has been such that it's been impossible to keep up with it.

I was one of the advocates who came to the Legislature in the budget act in 1984, '85, '86 and said they're going under, they have to have more staff. I went to Maxine Waters' subcommittee and asked for more staff for the Board. But it's been sort of a bandaid measure. We see it coming and we throw staff in there, untrained staff, staff that doesn't, as you say, have any space. There's been no concrete plan made to adjust the staffing demands to...

CHAIRMAN TORRES: Have you ever discussed this lack of training with management?

MS. SIEGEL: I have discussed it with management, and unfortunately, it's been at a time when

there's such a crisis and such an overwhelming need for staff to process claims that they have been unable to respond.

CHAIRMAN TORRES: Who have you spoken to?

MS. SIEGEL: I've spoken to Judith Embree about it.

CHAIRMAN TORRES: And what was her response?

MS. SIEGEL: Her response was that she agreed that it was needed for them. We've talked about specific training for child abuse because the average age of children in this state who are abused is four years old.

CHAIRMAN TORRES: How long ago did you have that conversation?

MS. SIEGEL: Maybe six months ago.

CHAIRMAN TORRES: And have you followed it with oversight on your own part to see whether it's been carried out or some effort has been made?

MS. SIEGEL: No, because the overwhelming crush of applications has kept the staff so busy that they're -- I can't see that they've had a time for training.

CHAIRMAN TORRES: What's been the scuttlebutt around there as to why space hasn't been found?

MS. SIEGEL: I think the Board of Control just had a recent move from their old space where they were a bifurcated office; they were in two sections and then they moved into the new space and it seemed very spacious, and I don't think the overwhelming increase in applications was anticipated by the Board.

CHAIRMAN TORRES: Why?

MS. SIEGEL: Certainly when the bill was coming, they could see that there was going to be more money and a move could have been made, but I'm not sure how that works in government to find additional office space to set it up. I'm not sure how far in advance of a signature on a bill they can take that action of going out and securing space.

CHAIRMAN TORRES: Have you seen the Board of Control in operation?

MS. SIEGEL: Oh, I have. It's very sad. I consider myself a hardened tough lady in terms of children's services, but I leave those hearings weeping for the people that come to them.

CHAIRMAN TORRES: Why?

MS. SIEGEL: I can give you one example of a woman who came in and she was on her own; she had no representative; there was no Victim Witness person with her; no one. She came in. She was a mother of a very young child who had been abused. The evidence of abuse included taking the bloodied blankets of the child out and blood typing that it was the child's blood. It was a horrible gruesome crime and her claim was denied because there had been no prosecution.

When you sit in these hearings, you see one case after another of pathetic victim cases, and...

CHAIRMAN TORRES: Who sat on the Board when that decision was denied?

MS. SIEGEL: I think the usual three members. I think Dr. Pelkofer was there, Dr. Jaffey, and Tony Anthony.

CHAIRMAN TORRES: What other examples where you feel that the decision was wrong?

MS. SIEGEL: I think that most of the decisions that I've seen that I feel that are wrong are those that involve very young children. The age of a child in California that's abused, the average age is four years old, so you have a lot of children that aren't able to be good witnesses. And the D.A.'s offices routinely don't prosecute those cases; and yet, those children are battered, raped, sodomized, injured very badly. The cases that come to the Board are very bad cases of child abuse.

CHAIRMAN TORRES: Where is it in the statute that prosecution is a condition precedent to receiving funds?

MS. SIEGEL: I don't believe that it is in the statute...

CHAIRMAN TORRES: No, it's not.

MS. SIEGEL: ...but as the funds began to look dry, like they were going to dry up, the Board began to develop an attitude that a prosecution was more important in determining whether or not there had been a crime.

CHAIRMAN TORRES: More important than coming to the Legislature for help in getting more money or did you feel there was "calls from on high" to cut the costs as much as possible?

MS. SIEGEL: I do believe that the Governor's office has imposed freezes that have affected this program and that I do believe that that's where that authority would come from is from the Governor's office. I don't think that the people there would come to the Legislature.

CHAIRMAN TORRES: Do you think people are afraid to come to the Legislature for more money?

MS. SIEGEL: I certainly never have been.

CHAIRMAN TORRES: I wasn't referring to you. I was referring to people who work within the department.

MS. SIEGEL: I know. I believe that they are below an administrative level where they go to the Board of Control, and administratively, there's a line of command that stopped at perhaps Lane Richmond or perhaps Tony Anthony, and that they were looking at how they could cut the expenditures rather than how they could help victims.

CHAIRMAN TORRES: Where did Miss Yost fit into that category?

MS. SIEGEL: She has sat in as Tony Anthony's person and has generally been unsympathetic to crime victims, child crime victims.

CHAIRMAN TORRES: Have you had any experience with her decision-making process?

MS. SIEGEL: I've only watched, only been an observer.

CHAIRMAN TORRES: And what's been your impression of the Board when she served on it?

MS. SIEGEL: I think that she has been a Board of Control staff member and has perpetrated the typical Board of Control attitudes that I discussed earlier which is hang on to the money.

CHAIRMAN TORRES: Are you aware of a comment made by Miss Yost while on the Board to the effect that in a specific interfamily molestation case, the parents, she said, should take the children home and spank them?

MS. SIEGEL: Yes. Sandy Baker, who is the director of the Sacramento Child Abuse Treatment Program, advised me of this case which was at an L.A. hearing. She brought in a family that had

suffered some -- a younger, a very much younger child had been molested by an older child, and the family had gone through great therapeutic efforts, and Mrs. Baker told me that was Miss Yost's comment, was that she should -- she said you can -- deny the claim and you take these children home and spank them and everything will be better.

CHAIRMAN TORRES: And was the claim denied?

MS. SIEGEL: I believe it was.

CHAIRMAN TORRES. All right. Mr. Marks.

SENATOR MARKS: How much money does the Board of Control have to act upon? What's their budget?

MS. SIEGEL: Prior to -- I believe it was around 40 million prior to the new bill, the Davis bill/Calderon bill.

SENATOR MARKS: And \$40 million is to be used for this purpose?

MR. SIEGEL: Forty million was for all purposes: awards to victims and staff expenses.

SENATOR MARKS: How much is staff expenses?

MS. SIEGEL: I'm not sure. I think that the Board of Control probably has the answers for you on administrative expense both through the Victim Witness offices and through the staff.

SENATOR MARKS: And all these people are appointed by the Governor?

MS. SIEGEL: No. The Controller has an appointee. Mr. Pelkofer is the Controller's appointee.

MR. SIEGEL: Are you referring to the Board itself?

SENATOR MARKS: Board of Control.

MS. SIEGEL: Yes. Controller has one, General Services is the other, and the Governor has the other one. The Governor, in effect, has two out of the three.

SENATOR MARKS: Has the Controller's appointee acted the same way as the Governor's appointees in all cases?

MS. SIEGEL: No. In cases where there's a split vote, the Department of General Services will generally oppose the claim, and the Department of General Services will generally not vote unless there is a split vote. The Controller's vote is usually legally determined. He usually reads the cases in advance of the hearings and he usually votes in favor of the victim when it's a clear-cut case.

SENATOR MARKS: Well, you have three members of the Board of Control?

MS. SIEGEL: Mm hmm.

SENATOR MARKS: And two are appointed by the Governor and one is appointed by the Controller. Has the Controller's appointee been frozen out of those hearings?

MS. SIEGEL: No. Because he's an attorney, I believe...

SENATOR MARKS: Does the Controller's appointee vote with the Governor's appointees all the time?

MS. SIEGEL: No.

SENATOR MARKS: Does he rarely vote with them?

MS. SIEGEL: No. Often the decisions are made by consensus between the members. He votes in favor of the victim whenever it is possible to do so legally.

SENATOR MARKS: I'm curious to know how you do something by consensus. How do you do that? We don't do it, the Legislature. At least I don't think we do.

MS. SIEGEL: I'm not sure how they chair it, what their procedures are. They generally -- Tony Anthony asks if they agree, if they're both in agreement, and they move and second. It's all on tape.

MR. SIEGEL: It's by vote. It's by vote but it's usually motion by one member, second by the other, and then Mr. Anthony will say approved without voting -- usually not voting, or denied but not voting.

SENATOR MARKS: They are -- I gather that your impression is that they're trying to save the state money?

MS. SIEGEL: I believe that the Department of General Services felt if they could...

SENATOR MARKS: For what purpose in saving the money?

MS. SIEGEL: Well, so that it would spread among more victims, or could be given to those victims with the most needs and that they could develop some standards for that.

SENATOR MARKS: Have they given the money in all cases to victims, or have they just sat there?

MS. SIEGEL: I believe that it's been given out to the extent that it's there. Originally it reverted to the General Fund if it wasn't spent, and then the Legislature enacted a carryover provision so that they could carry it over if they didn't spend it. But as you know, we had a crisis this year on the fund running out of money.

ASSEMBLYMAN CALDERON: \$740,000 was improperly -- \$750,000 improperly given out.

SENATOR MARKS: Do people come -- does someone come as an expert witness to testify for the Board of Control as to why the money should not be allocated?

MR. SIEGEL: I think they're on your agenda.

CHAIRMAN TORRES: Yes, we'll be talking to them. We'll get to those points.

MS. SIEGEL: In terms of the money that has been overspent, I think it was over a period of years, the expenditure of the 700,000, and I would encourage you to take a hard look at how much per year that is and what percentage of the fund that constitutes.

SENATOR MARKS: Thank you.

CHAIRMAN TORRES: All right. Mr. Calderon.

ASSEMBLYMAN CALDERON: You indicated that you thought it prudent to remove the victims restitution program away from the Board of Control and vest it in some other agency -- the Attorney General, OCJP. Do you have an opinion as to whether or not such a service could -- or such a program could be administered through a separate board?

MS. SIEGEL: I believe it could. However, I think there may be political resistance to setting up new agencies.

ASSEMBLYMAN CALDERON: Well, there will be political resistance by the Governor's office to set up a whole new agency, but my problem is is that if you move -- I'm not opposed to the concept, but one of the problems that -- if you move the victims restitution program into OCJP, you have now vested in OCJP not only the function of dispersing monies to Victim Witness centers, you've

also now placed in their hands the ability to approve and deny claims. And you've already indicated that the Governor had made reductions in personnel years that the Legislature had allocated. And so the Governor may well -- or could well exert his influence through OCJP in terms of the running of the program. I'm not saying we should take the Governor's influence out of the process, but it seems to me that if he appointed a board, he's had adequate input. So I just wanted to raise that issue with you.

MS. SIEGEL: I really believe that the Board of Control, though, is a different kind of an animal. It was a board that was set up originally to protect the state's funds, and so it's different from OCJP which has been known for its management processes, which are okay, or the Attorney General's Office, which may be where the program appropriately belongs.

CHAIRMAN TORRES: Thank you very much, Miss Siegel. Anything else you'd like to add before you...

MS. SIEGEL: No, thank you.

CHAIRMAN TORRES: Thank you very much. Miss Jane Callahan, director of Children's Network for Solano County, and legislative chairman for the California Consortium of Child Abuse Councils. Is that correct?

MS. JANE CALLAHAN: That's correct. Good afternoon. Jane Callahan. I have about three pages of written testimony, and I realize that it's lunch time. Would you like me to summarize what I'm here to say today?

CHAIRMAN TORRES: I would like you to summarize, but my intent is to work through lunch, members, if we can do that.

MS. CALLAHAN: First of all, I represent the Children's Network of Solano County and I'm their coordinator. In other words, I act as staff to them. They are the designated advisory body to the board of supervisors in Solano County on children's service issues. As such, we have 25 appointed members who represent all county departments that serve children, as well as private agencies that provide services to children; and we also have members at large who are from the private sector.

Solano County, like other counties in California, has seen a dramatic increase in the past five years in the number of children reported for child abuse and neglect. In 1982, there was a total of 1,069 reports. By 1986, which is the last year we have statistics for, those reports had increased to 1,800. So almost doubling in reports in five or six years.

As you know, the crime of child abuse involves a very different set of dynamics than most crimes that are committed against adults. In the vast majority of these cases, the crime is committed by someone who is either related to the child or has established a position of trust with that child. It is characterized by coercion, intimidation, secrecy, and shame. Typically, disclosure of abuse precipitates a crisis within the family itself. If the child is removed from the home, it is a child who must endure the shame, guilt, and embarrassment for disclosing the "family secret."

In the vast majority of cases, the abused child either stays within the home or is returned home after placement for less than a year in foster care, and I think that's real important to remember. These kids go home. Many of these children repeat the cycle more than once due to reabuse. Most of

these children come from families where abuse has established itself as a generational cycle. Those are some real important things to remember when you think about this fund, I think.

The county welfare department in each county in California is the agency that's responsible for all of these cases. Each county receives an annual allocation from the state which has a required minimum match of county dollars. These funds, which is called a "child welfare service allocation," which is for our child abuse and neglect cases, must be stretched to cover the cost of investigation, case management, and interface with one or more court systems. They also are available to provide direct services to abused children and their families based on an individual case plan that is designed to change the family's abusive behavior.

California does not keep statistics as to what percentage of these funds go to providing direct services to these individuals, nor do we know to what extent these funds are used for therapeutic intervention. However, we do know that funding increases have not corresponded to caseload growth, and the county welfare departments rarely, if ever, use a portion of their county welfare service allocation for treatment.

So I really think it's important to establish those treatment dollars aren't out there for these kids in any other system. That question comes up a lot: Well, why isn't welfare paying for these kids when they're mandated to serve them?

CHAIRMAN TORRES: Where do those questions come up? In hearings of the Board of Control?

MS. CALLAHAN: No. This is more in terms of legislative discussions, community discussions. I have never attended a Board of Control hearing. I simply act as a child advocate on the county level and I do some statewide advocacy.

I do believe Solano County is typical, however. First, only the most severely abused children enter the system. If a petition is filed with the juvenile court for dependency action, the welfare department is required to make a reasonable, never been defined in statute effort to provide services in order for the parents to attempt to regain physical and/or legal custody of their children after abuse has occurred. Usually the court, and this is in juvenile court, are its counseling and therapy for the family. It then becomes the job of the social worker, who manages this case, to ensure that the order is followed. Social workers' caseloads very dramatically can run from a caseload of 25 abusive families to 130 at any one time.

The challenge is to first find someone who is qualified and has experience with child abuse, either in the public or private sector. The second is to find a way of paying for this court-ordered service. Although the law does not prevent a parent from paying for these services, it is illegal to not provide the service if the parent refuses to pay. And that's a real important thing to remember as well.

If the child and their family qualifies for Medi-Cal, which many of the families are, they are allowed a maximum of two visits a month for counseling. Solano has approximately 70 individuals in private practice at any one time. I can count on one hand the number that accept Medi-Cal. Okay? It's just impossible to find therapists who take Medi-Cal anymore today. Part of the reason is because of the ceiling that's imposed for the hourly costs for a therapist.

Mental health charges on a sliding scale. We do have a mental health department in our county and they do deliver counseling services. However, when we looked into mental health's waiting list about a year ago, they had 15 sexually abused children who were waiting on a waiting list for therapy and treatment. So again, that's a resource that is really heavily overutilized in the county and is often not available to these kids.

Earlier this year we did a needs assessment. That's one of the jobs of the Children's Network; to find out where the gaps in services are for kids, especially "at risk" children.

CHAIRMAN TORRES: We're aware of that but that's not why we wanted you to testify today. We want to know what this has to do with the issue of backlog of payments and what impact that has on children, and that's what we wanted to get to.

MS. CALLAHAN: Okay. I can talk about that very briefly. First of all, last year in Solano County we had about 10-15 therapists that were accepting Victim Witness. That is now down to two. We have one treatment program in the county. It serves parents who are court-ordered for sexual abuse. They have a \$40,000...

CHAIRMAN TORRES: Excuse me. In Solano County, there were 10-15 therapists who were treating Victim Witness...

MS. CALLAHAN: Who were willing to accept victim reimbursement.

CHAIRMAN TORRES: Reimbursement. Now there are only...

MS. CALLAHAN: Two or three.

CHAIRMAN TORRES: All right.

MS. CALLAHAN: And then the second thing is there's a private nonprofit treatment program that is currently owed almost \$40,000. It was a program that you mentioned. They took a loan from the board of supervisors that is now due and payable and they are really looking at closing their doors next month. Two examples.

CHAIRMAN TORRES: All right. Any questions? Senator Marks.

SENATOR MARKS: Why are there less people now than there were before? Why has the number been reduced from 15, or whatever it was, to two?

MS. CALLAHAN: Because of the fact that the therapists that were willing to wait for reimbursement now have claims, some of them, you know, 15, \$20,000 in outstanding claims. And they just are having such a cash flow problem, they're reluctant to take anymore clients that could conceivably get victim reimbursement. They will not...

SENATOR MARKS: They go before the Board of Control to get their money?

MS. CALLAHAN: No, they generally don't.

SENATOR MARKS: Who do they go to?

MS. CALLAHAN: The way that it happens in our county is the claims are either filed through our county victim coordinator, who works out of the D.A.'s office, and she does an excellent job of filing those claims and trying to get them out.

SENATOR MARKS: With whom? Who does she file...

MS. CALLAHAN: With the Board of Control. With the state.

SENATOR MARKS: And the Board of Control acts individually upon all these items and either turns them down or accepts them?

MS. CALLAHAN: As I understand, each claim is looked at individually.

CHAIRMAN TORRES: Thank you very much, Miss Callahan. Thank you all for being with us this morning and afternoon. We're now going to move to the Department of General Services' internal audit of the program, and I'd like to call on P. G. Agarwal, acting chief, Office of Management Technology and Planning; Miss Carolyn Robinson, the audit manager; and Mr. Ignacio Hernandez, Department of Finance, who was subpoenaed for this committee.

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm that the testimony that you are about to give before this committee is the truth, the whole truth, and nothing but the truth?

Mr. Hernandez, are you here because you were served with a subpoena of the committee?

MR. IGNACIO HERNANDEZ: That's correct.

MR. DeWITT: Since you were subpoenaed and you have taken the oath, do you understand that you are granted immunity, as was previously stated, under Section 9410 of the Government Code?

MR. HERNANDEZ: I understand.

MR. DeWITT: Do you further understand that such immunity requires you to answer questions which you think may incriminate you in a criminal proceeding or may subject you to disgrace or infamy?

MR. HERNANDEZ: I understand.

MR. DeWITT: From the previous statement, is it also your understanding that the immunity does not extend to perjury as a result of your testimony here or the production of documents here?

MR. HERNANDEZ: I understand.

MR. DeWITT: Please be seated.

CHAIRMAN TORRES: Thank you very much, gentleman and lady. Mr. Agarwal, you're acting chief of the Office of Management Technology and Planning, and according to the May 1987 audit of the Victims of Crime program, the audit unit was requested to study and evaluate the system of internal accounting and administrative controls of the Victims of Violent Crime administered by the Board of Control.

Is that the only reason why you were asked to conduct and prepare this audit?

MR. P. G. AGARWAL: That's my understanding, yes.

CHAIRMAN TORRES: Understanding from whom?

MR. AGARWAL: From my audit staff.

CHAIRMAN TORRES: From whom?

MR. AGARWAL: From the audit staff.

CHAIRMAN TORRES: From the audit staff. Who instructed you to conduct the audit?

MR. AGARWAL: It is my understanding, again, that it was instructed by Tony Anthony to conduct the audit.

CHAIRMAN TORRES: Was it Mr. Anthony who spoke to you directly requesting the audit?

MR. AGARWAL: I was not in the acting position at the time the audit was requested, so I could not speak precisely; but my as my audit staff tells me, that it was Tony Anthony who requested the audit.

CHAIRMAN TORRES: Not Miss Yost.

MR. AGARWAL: No, that's not my understanding.

CHAIRMAN TORRES: What was your role in the May 1987 audit of the Victims of Crime program?

MR. AGARWAL: Personally, I did not have much of a role because I did not take the acting responsibility until June.

CHAIRMAN TORRES: Of this year.

MR. AGARWAL: That's right.

CHAIRMAN TORRES: Did you receive assistance from the General Services staff?

MR. AGARWAL: It is the General Services staff that conducted the audit.

CHAIRMAN TORRES: And so you received their assistance in the preparation analysis of the audit document.

MR. AGARWAL: That is correct.

CHAIRMAN TORRES: Who were these individuals?

MR. AGARWAL: The two people sitting on my right are the audit manager for General Services and also one of the auditors for General Services.

CHAIRMAN TORRES: Was there any assistance or input provided by the Victims of Crime program staff?

MR. AGARWAL: I do not know.

CHAIRMAN TORRES: You do not know.

MR. AGARWAL: No.

CHAIRMAN TORRES: Briefly outline the significant findings, if you will, for the committee relative to controls established in the audit and how accurate are these findings; and finally, were there any changes requested to be made by managerial staff of the agency in question, and if so, to what extent?

MR. AGARWAL: We issued the draft audit report to Tony Anthony. Again, since I was coming in at that time when this was happening, there were no changes requested to the audit report. There was a pre-exit briefing made to the audit report, and that's the normal process in the audit. And at that time, the draft audit report was issued. So to my knowledge, no alterations were made to the audit report. It was presented as per the findings of the audit staff.

CHAIRMAN TORRES: Never any requests made to you?

MR. AGARWAL: Not to me, no.

CHAIRMAN TORRES: And why was this audit never published?

MR. AGARWAL: I could not -- well, the normal process for audits is that the audit is conducted and it's given to the organization the audit is on, and they normally respond to the audit;

and at that point, the audit is published along with the responses. And since the due date for the response to the audit is November 18th, the audit is not yet publishable.

CHAIRMAN TORRES: The final audit results then will be received for public review when?

MR. AGARWAL: Following -- we expect the response from Board of Control on November 18th and we'll combine that with the audit report and then be published.

CHAIRMAN TORRES: How many drafts have been prepared of this audit?

MR. AGARWAL: I do not know.

CHAIRMAN TORRES: You've taken over this responsibility since June for this audit?

MR. AGARWAL: That's right.

CHAIRMAN TORRES: How many drafts of the audit had been prepared since you assumed responsibility for the audit?

MR. AGARWAL: The only draft that I know of is the draft that I signed. If there were any audit drafts prepared before that time, I do not know.

CHAIRMAN TORRES: So you never saw the May 1987 audit draft?

MR. AGARWAL: No, I did not.

CHAIRMAN TORRES: Isn't that kind of strange, if you were in charge of the audit, not to have seen an audit that was prepared, or a draft that was prepared just a month prior?

MR. AGARWAL: The reason is not surprising is because we conduct a lot of routine audits of a number of different agencies, and we did not treat it as anything different. So it was treated just like any other audit.

CHAIRMAN TORRES: Well, I realize that, sir, but there was an audit, that I have in my possession, cited with "Draft" and "Confidential", dated May 1987, Department of General Services. You do work for the Office of Management Technology and Planning, do you not?

MR. AGARWAL: That's correct.

CHAIRMAN TORRES: And you never saw this document that was dated May of '87?

MR. AGARWAL: It's because I took the responsibility in that position in June.

CHAIRMAN TORRES: I understand that, sir, but I took the responsibility of being a legislator in 1974. I certainly have known what's happened before in this Legislature in '73 and '72. And when I've introduced legislation, I always look back to what the statutes say to have a frame of reference as to what I'm doing in future legislation. I would think that you, as the chief auditor, would look back at least 30 days for an audit that was prepared in draft form regarding the very subject matter over which you were given jurisdiction. And you state to this committee, and I remind you that you are under oath, that you never saw this nor ever heard of this audit document?

MR. AGARWAL: No, I did not.

CHAIRMAN TORRES: Who assigned you to your position to head up the office?

MR. AGARWAL: It was Miss Elizabeth Yost.

CHAIRMAN TORRES: Miss Elizabeth Yost. Did Miss Elizabeth Yost ever tell you that this document existed?

MR. AGARWAL: No.

CHAIRMAN TORRES: Did you ever hear, as a matter of rumor, in the department or in your operation from employees of the Victims Crime that this document existed?

MR. AGARWAL: No, I did not. However, I was aware of the fact that we are conducting an audit of the Board of Control, and the audit essentially had been completed by April or so, and we were in the process of preparing a draft response to the Board of Control and which is the one I signed in August.

CHAIRMAN TORRES: All right. Let me -- if I may, Senator Marks -- I just want to find out how you people operate over there. If my staff had prepared for me a report that was dated May of 1987 and I hire a new staff person to take over that staff person's responsibilities, I would give that new staff person as much information as they would require to make the best report possible. Wouldn't you think that'd be the logical thing to do?

MR. AGARWAL: That I agree with.

CHAIRMAN TORRES: Did it ever strike you that perhaps you should have been given this draft so that you might look it over and maybe figure out what had been done up to the point when you arrived on the job?

MR. AGARWAL: Well, the reason I can see why that did not happen is that it was not until the August date that we presented the draft audit report to the Board of Control, and since audits is not my only responsibility -- much of the audit activity that goes on I rely a lot on the audit manager, who's Carolyn Robinson sitting next to me.

CHAIRMAN TORRES: Then why was this report prepared at all? Do you know?

MR. AGARWAL: No, I could not go into that either.

CHAIRMAN TORRES: Senator Marks.

SENATOR MILTON MARKS: May I look at the report just one moment, please? Senator Torres, may I look at that just a second? This report was prepared by state employees? This is what is prepared by state employees?

MR. AGARWAL: That's correct.

SENATOR MARKS: How is a report, which is prepared by state employees, labeled "Confidential"? It's public. It's a public document. It's not confidential at all.

MR. AGARWAL: As I understand, audit reports are public, the ones the auditors complete, which is at the point that the response is made by the agency upon which the audit is being conducted. Until that time, we do treat them as confidential because there may be...

SENATOR MARKS: What right do you have to treat them as confidential? There is a whole series of bills -- whole series of laws that declare that public; that documents which are prepared by public employees are public, not confidential at all. So what right do you have to declare them confidential?

MR. AGARWAL: I could not speak on the legal business for doing so, except for the fact that if we don't give the organization a chance to respond to the audit, there may be some errors in the audit itself, and we feel it would be unfairly treating the organization.

SENATOR MARKS: Well, I would like somebody on the staff to look at that, because I've

handled -- the days I used to practice law, I've handled a number of cases involving matters which are public documents. These are public documents. They're not confidential. Any member of the public is entitled to see them. Whether you saw them or not, any member of the public is entitled to see them. I'd like to know what authority, if any, is given to a state agency to declare or to seek to have these documents made confidential, because I don't believe they are.

CHAIRMAN TORRES: We'll look into that, Senator. Thank you. Mr. Agarwal, I want to remind you again that you've been sworn to testify to the truth of the matters before this committee. Sergeant, would you please come forward? I want you to look very carefully at this draft again -- it's dated May 1987 -- because your name appears on it, sir, as the acting chief, Office of Management and Technology. And there's a statement that says, "If you have any questions, please call me," referring to yourself, "or Carolyn Robinson, audit manager."

Now, you've testified, and your memory may be fuzzy, you testified just a few moments ago that you had never seen this document dated May 1987, which is the audit of the Victims of Crime program, yet your name appears on it. Would you please take a look at it very carefully.

MR. AGARWAL: Senator, to the best of my recollection, I have signed the audit report -- I don't remember the exact date in August, and again, I'll have to rely upon Carolyn Robinson as to what the date of the audit was -- but the audit report that I signed -- sometimes these documents are prepared beforehand; it may be a while before they get for the signature -- but my best recollection is that the audit report that I signed was -- the cover memo was dated August 18, or somewhere thereabouts.

CHAIRMAN TORRES: Have you seen this document before?

MR. AGARWAL: Without going through the document in detail, I could not say. I have seen obviously an audit report that we have formerly transmitted to Tony Anthony, and I could not precisely say this is exactly the same document or not.

CHAIRMAN TORRES: All right. Miss Robinson...

SENATOR MARKS: Could I ask one -- I'm sorry, Mr. Chairman.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Are you telling me that documents are prepared in advance, that you then sign before they are attached to the report? Is that what you just told us? You told us just a moment ago that this document -- that your signature might have been put upon a piece of paper which was not appended to this report. Is that correct?

MR. AGARWAL: No. What I'm saying is that this is a copy of the audit report, and the audit report I've been referring to is the one that we formerly transmitted to Tony Anthony in August. And what I'm saying is that I'm not sure if this is exactly the same report or not.

SENATOR MARKS: But your name's on it.

MR. AGARWAL: My name is on that cover memo that is not signed at this point, and that's why I was questioning if this is exactly the same report that I signed or not.

CHAIRMAN TORRES: Excuse me, sir. Do you sign reports that you have not read before?

MR. AGARWAL: No, I do read reports that I sign. But what I'm saying, this is a bulky

document and there's a very similar report that we formerly transmitted and I'm not sure this is precisely the same one or not.

CHAIRMAN TORRES: I'm going to give you some time to look through it to see whether you're familiar with that document or not.

MR. AGARWAL: All right.

CHAIRMAN TORRES: I understand his signature is not on it, just his name is on it, which was why I was wondering if his name appears on documents that he has not seen. If that is the practice, then we need to know that. If it is not, we need to know that as well.

Miss Robinson.

MS. CAROLYN ROBINSON: Yes, sir. My name is Carolyn Robinson. I'm one of the supervisors in the audit section of the Office of Management Technology and Planning within the Department of General Services.

CHAIRMAN TORRES: What was your role in the results of the May 1987 document that I have in front of me? Are you familiar with this document?

MS. ROBINSON: I was the supervisor in charge of creating that document.

CHAIRMAN TORRES: All right. Now, when Mr. Agarwal came on board, I assume he took jurisdiction of your -- he was your supervisor at that point?

MS. ROBINSON: He was.

CHAIRMAN TORRES: Did you hand him this document to let him know what was going on beforehand?

MS. ROBINSON: Whether I handed it to him, I couldn't say. We discussed it on a number of occasions.

CHAIRMAN TORRES: You discussed it on a number of occasions. Well, he doesn't seem to remember that you discussed it at all. How many number of occasions did you discuss this audit?

MS. ROBINSON: Well, the Board of Control obviously is a topic of some interest throughout the Department of General Services and to this committee. I couldn't say precisely how many times.

CHAIRMAN TORRES: All right. Miss Robinson, I'm going to ask you a very important question now, and I remind you you're under oath. Was this document reviewed by managerial staff of this program for the purpose of modifying findings to reflect a more positive tone in the final document? Did someone say, "Miss Robinson, this doesn't sound too good. Can we fix it up a little to make it sound a little better, to make us look a little better?"

MS. ROBINSON: Absolutely not.

CHAIRMAN TORRES: No one ever approached you with that recommendation?

MS. ROBINSON: No.

CHAIRMAN TORRES: In your experience as an auditor, do you feel that the audit properly reflects the current situation of the Victims of Crime program?

MS. ROBINSON: What it is is an internal control opinion of the accounting systems which reflect the claims payment from the assessment fund from the time that they receive notification of a claim until the claim assessment fund is charged, and in that context, yes, I do believe that it's

accurate as of April 30th. .

CHAIRMAN TORRES: Mmm hmm. Was there any other reason to provide or to conduct this audit other than to tell us that?

MS. ROBINSON: I'm not sure what you mean.

CHAIRMAN TORRES: Just answer the question. Has there been any other reasons as to why this audit was initiated other than to provide the findings that you've articulated?

MS. ROBINSON: Not to my knowledge.

CHAIRMAN TORRES: Have you had a chance to review the document?

MR. AGARWAL: Yes, I had a chance to look at it, and again, to the best of my recollection, this does not look like the report that I signed for transmittal to Tony Anthony.

CHAIRMAN TORRES: Miss Robinson said she spoke to you on a number of occasions regarding this document.

MR. AGARWAL: Regarding the Board of Control audit, yes; but specifics to this document, again, in a normal course of audit, we discuss the audit report or the findings of the audit.

CHAIRMAN TORRES: Are you her supervisor?

MR. AGARWAL: Yes.

CHAIRMAN TORRES: And she has communicated to you -- at least she's stated before this committee she's communicated to you regarding the findings in this document and you still say that you never had those kinds of conversations with Miss Robinson?

MR. AGARWAL: No, I'm not denying the fact that we had conversations regarding the Board of Control audit, and some of the things that are in this document, but what I'm saying is that this is not the document that I formerly signed as transmitted to Tony Anthony as part of the audit report.

CHAIRMAN TORRES: Mr. Calderon.

ASSEMBLYMAN CHARLES CALDERON: Sir, have you been threatened in any way in terms of retaliation that may be taken against you if you admit that this document is the document that you had approved and was precedent to whatever final document came out?

MR. AGARWAL: No, not at all. There's nothing of that sort at all.

CHAIRMAN TORRES: All right. Senator Marks, since you're the other member of this committee, I would like permission to issue a subpoena duces tecum for all notes, drafts, memorandum, etc. in connection with this audit from the Board of Control and from the Victims of Violent Crimes Fund.

SENATOR MARKS: I agree.

CHAIRMAN TORRES: All right. Would you prepare such a subpoena then, Mr. Gordon?
Is there anything else you'd like to add, Miss Robinson?

MS. ROBINSON: Possibly by way of clarification, something about the growth of the draft which I believe you have before you.

CHAIRMAN TORRES: That would be helpful to us.

MS. ROBINSON: That is that for various reasons, the situation regarding the health of the assessment fund and the accounting systems, which produced management information, became of

extreme concern to Elizabeth Yost and to Tony Anthony. They communicated that concern to Jack Smith, who was then the chief of Office of Management Technology and Planning who gave me the instructions in November of '86.

CHAIRMAN TORRES: They communicated what concern, Miss Robinson?

MS. ROBINSON: That they were concerned about whether or not the fund was going to run out of money, whether or not there were problems with internal controls, whether the accounting reports that were being created internally accurately reflected the condition; and what they wanted to know was if there was anything else. They obviously -- nothing that the audit disclosed is in conflict with any of the testimony that you've had this morning, especially Linda Siegel's comment about how she approached the Board on a number of occasions towards making administrative corrections, but they were buried under such a crush of claims, that it was really almost unfeasible for them to come to any reasonable understanding about changing the systems. And what Mr. Anthony and Miss Yost wanted to know was was there anything else going on. They wanted an independent appraisal.

We began the audit work in January. It immediately came to our attention that there were some fundamental breakdowns in internal controls in this system, and we produced an abbreviated management letter for the Board of Control which we presented in March. As a result of extensive discussions with the Board of Control and the management, we did some additional work and we expanded that report from 9 pages to the approximately 80 that you have now, and in that context, yes, certainly we were asked to expand upon the functions. The report that you have before you now I can't see how anybody could possibly understand that as in any way abbreviating the findings since the report did go from 9 pages to the document that you see. And maybe there's some misunderstanding with that.

But in terms of the document that you see before you now, the difference between the report that was produced in May and the one that was finally exited with the Board of Control as the official draft audit report, as far as I am aware, the only changes were editorial and typographical.

CHAIRMAN TORRES: And did Miss Yost have a hands-on relationship with your staff in ensuring that the audit come out as quickly as possible?

MS. ROBINSON: No, she did not.

CHAIRMAN TORRES: So she just talked to you as a matter of casual conversation?

MS. ROBINSON: We had a number of -- as we progressed through the audit report, we had a number of formal meetings.

CHAIRMAN TORRES: A number of formal meetings where she and Mr. Anthony were present?

MS. ROBINSON: Yes.

CHAIRMAN TORRES: And all those formal meetings, they were merely requesting -- their concern regarding the potential deficiency of the fund?

MS. ROBINSON: Yes.

CHAIRMAN TORRES: And wanted to know if there was any other problems that they might consider being part of the audit.

MS. ROBINSON: Yes.

CHAIRMAN TORRES: Of course, at this time, you are aware, that this audit was not public and still is not public.

MS. ROBINSON: That's correct.

CHAIRMAN TORRES: All right. Mr. Calderon.

ASSEMBLYMAN CALDERON: Miss Robinson, would you be surprised to find a final report made public that would be different in substance from this draft report that has been circulated today at this hearing?

MS. ROBINSON: Yes, I would.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: What makes this report not public?

MS. ROBINSON: At the point where we begin our field work, and we were discussing internally, the report does talk about a number of breakdowns in internal control, such that if they were disclosed to the general public, the funds might be further misappropriated. In addition to that, there are some matters which we uncovered which have to do with administration/personnel matters. We felt those were inappropriate for disclosure. So for that reason, we made particular effort to keep the distribution of the draft to the Board of Control itself and to the management of the Board of Control until those actions could be corrected.

SENATOR MARKS: I wish you would advise me in writing as to what -- on what grounds you have the right to keep this private.

MS. ROBINSON: Yes, sir.

SENATOR MARKS: Because I believe they are public documents and the public's entitled to see them.

MS. ROBINSON: We did seek the opinion of legal counsel, and I will be happy to provide you with that opinion.

SENATOR MARKS: Independent legal counsel?

MS. ROBINSON: My own house counsel.

SENATOR MARKS: I'd like to see it.

CHAIRMAN TORRES: Thank you, Senator. Mr. Hernandez, Ignacio Hernandez, you're the actual auditor for the Victims of Crime program as a representative of the Department of General Services?

MR. HERNANDEZ: Yes, I was the auditor in charge from mid-January through, I guess, until the end of October when I transferred over to the Department of Finance.

CHAIRMAN TORRES: At any time were you involved in high level administrative meetings whereby the direction or the weight of the audit was changed?

MR. HERNANDEZ: By the time we met with Elizabeth Yost and the director, Tony Anthony, we had pretty much decided -- my audit manager and myself -- that we needed to stop the audit because things were -- things seemed to be getting out of hand at the Board.

CHAIRMAN TORRES: What do you mean "getting out of hand"? Why does that mean?

MR. HERNANDEZ: Well, we're now in a northrup(?) situation. Unfortunately, there were a

number of problems, you know, as far as personnel, supervision of employees who were either conducting fraudulent activities or incompetent. There was management overriding staff decisions, things of that matter. We decided that if we continued there, nothing was going to get fixed. We could be there the rest of the year and we would just get bogged down and the problems would persist. So my audit manager and I decided to bring it to the attention of Elizabeth Yost and Tony Anthony. It was at that point that it was agreed that we would go ahead and prepare a management letter and...

CHAIRMAN TORRES: What is a management letter?

MR. HERNANDEZ: Well, because normally when you do an audit, you prepare an audit report, but because of the serious nature of the findings, we decided that we needed to outline, in a very brief summary, the findings which we had come across, and our intent was to present that to the members of the Board of Control, the three-member board chaired by the director.

CHAIRMAN TORRES: At any time was the audit used, in your opinion, to bring disfavor upon any officer of the Board of Control and/or the Victims of Crime program?

MR. HERNANDEZ: Not while I was involved.

CHAIRMAN TORRES: That implies it had occurred another time when you were...

MR. HERNANDEZ: No. I mean -- what I'm saying is -- your question leads me to think that something may have happened. As far as I know, nothing like that happened. I was not involved in any type of discussions along those lines. I would have thought -- I'm formerly from the Auditor General's Office. I spent a little over two years there. So I wanted to see this done in a very independent manner. I did not want to get involved in any kind of politics. I did not see anything to that effect as far as the writing of the report or the conducting of the audit.

CHAIRMAN TORRES: So in your dealings with the audit, did you at any time become aware of any direct administrative role by Elizabeth Yost in the operation of the Victims of Crime program?

MR. HERNANDEZ: Yes, my understanding was Elizabeth Yost acted in Tony Anthony's place whenever he was not available. Also, she was at numerous meetings with us, as far as the discussion of the audit report.

CHAIRMAN TORRES: When you mean "numerous meetings" regarding the discussion of the audit report, how many meetings are those in numbers?

MR. HERNANDEZ: Well, I may have to take back numerous. Two to three. There were numerous meetings; I think she attended two or three. We had numerous meetings with staff of the Board of Control, which included Lane Richmond at one point when he was the acting head there, and Austin Eaton and Jack Smith when he was a head, but I believe two or three meetings with Elizabeth Yost.

CHAIRMAN TORRES: And what was the attitude and role that Miss Yost played at those meetings?

MR. HERNANDEZ: At the very first meeting when we took the management letter to her, she was visibly upset and disappointed. I think she felt like she had been let down. I think she was shocked. The audit unit at General Services had conducted an audit in 1983, I believe the report

number of that was R83-1200, and in that report, it was brought to the attention of management that there were numerous internal control weaknesses and possible abuses in delays and backlogs. I think Elizabeth Yost had believed, from whatever information she was receiving from individuals over there, that the problems had been cleaned up. And so when we went in to conduct our audit and came back with a very negative report, I think she was genuinely shocked.

CHAIRMAN TORRES: What other role did Mr. Anthony play in respect to this audit?

MR. HERNANDEZ: He was -- as I recall at the very first meeting that we spoke to Elizabeth Yost, she immediately, once we started on the management letter to discuss the items, she left the room to bring in the director, who -- I believe he was to be at this meeting but he was momentarily discussing something with somebody, so she made sure that he came in before we started. He sat down and listened to what we had, and again, he showed the same signs of being shocked at our report.

CHAIRMAN TORRES: Being shocked at the report or wanting to do something about it or being shocked because it might show something he didn't want to show? What was the shock about?

MR. HERNANDEZ: No, I think he was shocked in that...

CHAIRMAN TORRES: "He" meaning whom?

MR. HERNANDEZ: Tony Anthony. He was shocked in that there were these problems, which evidently somewhere along the lines over at the Board somebody had led him to believe that the problems had been taken care of. I believe in January of 1987, the backlog had been eliminated, and I guess the feeling was that they were over their problems.

CHAIRMAN TORRES: Who do you feel misled him? Who did he say he felt misled him?

MR. HERNANDEZ: He never said who he felt to be misled, but...

CHAIRMAN TORRES: Did you have an idea as to who might have misled him?

MR. HERNANDEZ: Well, two days later we had a meeting, again with Elizabeth Yost and Tony Anthony, and they called in Lane Richmond and Judith Embree and they were both, I guess for want of a better word, called on the carpet for what was going on there.

CHAIRMAN TORRES: Do you think, according to your audit report, justifiably or unjustifiably?

MR. HERNANDEZ: Oh no, I think it's very justifiable.

CHAIRMAN TORRES: And give me some examples to justify that statement.

MR. HERNANDEZ: There were numerous problems. I don't have the audit report in front of me, but what we did is we divided the audit into two sections: a claims review section to review the handling of claims, and an EDP portion to review that new EDP system.

As far as the review of claims, we found that there were some claims which had been approved by either -- well, in a couple of cases by Lane Richmond which did not comply with the Government Code. For instance, if an individual voluntarily agreed to fight and got involved in an altercation. There was one specific one that I can recall where an individual freely challenged four individuals into a fight and evidently he must have known some karate because he was able to keep them at bay, but at some point, he tired; the four individuals knocked him down. They did not do any damage to

him, as the coroner's report indicated. The death was due to atherosclerosis. There was no bruises or visible marks on the body.

So you have this individual who freely challenged four individuals to a fight, lost, died because of a hardening of the arteries, and it was approved for payment automatically by Lane Richmond. That did not fit with the code which says that if you, you know, if I decide to challenge you into a fight and I get hurt, I'm not eligible, I'm not a victim.

So there were those kinds of things where claims were paid that were not properly verified, and we found those kinds of items.

CHAIRMAN TORRES: What accounted for the backlog, in your opinion?

MR. HERNANDEZ: As far as the backlog, you know, that was an area that as we decided to leave the -- to back out of the audit because we needed to inform management of the seriousness of the problems, that was an area we did not get into. I had been informed by eye level staff there, certain managers, that there was no backlog, but I had heard from the staff themselves, the working level staff, that there was a backlog. I'm not sure what it's due to. Obviously, more people are filing claims. As to whether the staff is able to handle that load or is properly trained, we did not get into that area.

CHAIRMAN TORRES: All right. Any further questions? Mr. Calderon.

ASSEMBLYMAN CALDERON: You examined 30 claims. Is that correct?

MR. HERNANDEZ: Yes, we attempted to pull a judgmental sample.

ASSEMBLYMAN CALDERON: The sample was random?

MR. HERNANDEZ: Yes, it was random.

ASSEMBLYMAN CALDERON: And based on your evaluation of those 30 claims, you determined that -- how much money was lost?

MR. HERNANDEZ: In addition to that random review of 30 claims, we pulled a second set of approximately 30 emergency award claims, and in doing so, we attempted to test to see that they were properly verified and that the payment went out within 90 days. We spoke to an EDP person there -- Laura -- and we asked her to prepare for us an EDP report of emergency award overpayments, and we gave her some parameters, a description, of what we believed would create an overpayment listing; and in doing so, we came up with a listing of \$600,000 worth of claims that had not been collected or reported on the financial statements and had not been reported to the Legislature.

ASSEMBLYMAN CALDERON: So you took a look at 60 claims; 30 emergency work claims and 30 other claims.

MR. HERNANDEZ: As I can recall.

ASSEMBLYMAN CALDERON: Now, with respect to the emergency award claims, I guess in all fairness we ought to point out that there would be a percentage of money that would be uncollectable that would be due to the nature of the emergency award program. Is that fair to say?

MR. HERNANDEZ: I'm sure there's some amounts that would not be worth collecting.

ASSEMBLYMAN CALDERON: But in your opinion, not \$600,000 worth.

MR. HERNANDEZ: No. As I understand, in testing some of that emergency award claims that

we judgmentally selected, we traced them back into this report. At the time we were doing this, it was approaching March 17th when we had decided that there was no further good to be done by our continuing there; we needed to report to management. We did not test that whole report. I believe there were 1,200 items on there. There was no way we were going to test them all.

In its response to our management letter, management at the Board assumed responsibility for finding out what the -- if there were any claims on there that were not overpayments; if there were any errors or any amounts not worth collecting.

ASSEMBLYMAN CALDERON: All right. With respect to the 30 claims that were not emergency award type claims, you found a loss of approximately \$130,000?

MR. HERNANDEZ: The loss -- \$110,000 came from claims that had been -- appeared to have been deliberately overpaid by one of the -- a former staff member who has since been arrested. I don't know if I'm free to give out that name, so at this point, I'll just refrain from mentioning his name. But there was an individual who was arrested for taking kickbacks. I was informed that there were 20 claims that were submitted to the Department of Justice. I took a look at those claims and I calculated the loss out of 13 of them and it was \$110,000. I then went back to find out if management was reviewing the rest of this employee's claims. I think there were 384 total, and I found that management had only looked at 30% and had stopped investigating those claims. So that \$110,000 comes from that.

ASSEMBLYMAN CALDERON: Now, wait a minute. You said you picked these claims randomly. How did you happen to get...

MR. HERNANDEZ: I'm sorry. What we did was we -- when we became aware of this employee, we took some more -- looked at some more claims, and that's how we came up with \$110,000. That's a separate issue in the report.

ASSEMBLYMAN CALDERON: What's this \$130,000?

MR. HERNANDEZ: It includes -- obviously \$110,000 is this employee's overpayments which involved some fraudulent activity, and the rest, 20 some odd thousand, I guess the balance, is due to overpayments on the part of staff.

ASSEMBLYMAN CALDERON: So let me see if I understand. You picked -- of the 30 cases that you picked randomly, 20 of these cases, amounting to \$110,000 in loss of money, just happened to be...

MR. HERNANDEZ: No, I'm sorry. The 30 we picked did not involve this employee. These were brought to our attention.

ASSEMBLYMAN CALDERON: All right. What was the loss volume on those 30?

MR. HERNANDEZ: On the 30? Fifteen to twenty thousand dollars. But what we were doing there was not looking to see if there were overpayments. We were looking to see if there was compliance with Government Code statutes, whether or not -- just operational type review to make sure that the claims were properly verified.

ASSEMBLYMAN CALDERON: All right. So you have no idea if there's any other employees throughout the system that are committing fraud.

MR. HERNANDEZ: That was part of the problem. In reviewing those 30 claims, we found that the staff's work is not reviewed by a supervisor, and as a result, the former employee was able to commit this fraud since he was able to approve claims and nobody knew that he was approving these massive claims without any proper verification.

ASSEMBLYMAN CALDERON: So in fact -- well, just of those 30 claims amounting to \$15-20 thousand, you found an error rate of 37%?

MR. HERNANDEZ: As I recall, we calculated an error rate approximately of that.

ASSEMBLYMAN CALDERON: All right. So the Board processes about 20,000 claims a year?

MR. HERNANDEZ: I recall that figure. Yes, I believe that's correct.

ASSEMBLYMAN CALDERON: And so is it fair to assume that there could be a 37% error rate that applies to the 20,000 claims that the Board does process? Strictly as suggested from your audit, does it not?

MR. HERNANDEZ: Well, it's certainly suggested from an audit standpoint. We would properly do some sort of statistical testing if we were going to state something like that, but it certainly indicates something along those lines.

ASSEMBLYMAN CALDERON: Thank you.

CHAIRMAN TORRES: Are you familiar with the Mary Vincent case?

MR. HERNANDEZ: I don't recall that case. Oh, is that the individual who lost her arms below the elbow?

CHAIRMAN TORRES: Yes. Was that part of your audit as well?

MR. HERNANDEZ: No, it was not.

CHAIRMAN TORRES: Any further questions? One last question. Which of the managers had said that there was not a backlog? You mentioned that there were managers who said there was not a backlog. Who said that?

MR. HERNANDEZ: That was Ray Banion, who is now deceased.

CHAIRMAN TORRES: Anyone else who said that?

MR. HERNANDEZ: Yes. In talking to Judith Embree, she had led me to believe that there was no longer a backlog in early January. I did not -- somewhere in January. I did not pursue that because we were getting into other areas.

CHAIRMAN TORRES: So there may have not been a backlog in early January is what you're saying?

MR. HERNANDEZ: No. What I'm saying is I was told there was not. We did not investigate it. I understand from the staff that -- later I understood from the staff that there was a backlog.

CHAIRMAN TORRES: Did it ever come to your knowledge that there was in fact a backlog at that time from your audit?

MR. HERNANDEZ: Not from the results of my audit, but from ongoing conversations with the staff.

CHAIRMAN TORRES: Ongoing conversations with...?

MR. HERNANDEZ: With the staff.

CHAIRMAN TORRES: And what was the morale of the staff during that period of time that you were involved in this audit?

MR. HERNANDEZ: When I went in in January, they were eager to call the Auditor General -- well, actually, at first they thought we were Auditor General and I explained to them that we were not. They were eager to call them in...

CHAIRMAN TORRES: Were they disappointed that you were not?

MR. HERNANDEZ: Very disappointed.

CHAIRMAN TORRES: Why?

MR. HERNANDEZ: I think they wanted somebody who had the appearance of independence or who would be objective. For some reason, they felt we might not be. I attempted to assure them that as far as my role, that I would be, and I asked them at that point, since there was no known fraud going on that we knew of, to allow us to continue our work and to allow us to publish a report.

CHAIRMAN TORRES: Did you gain their confidence and respect thereafter?

MR. HERNANDEZ: I believe I still have their confidence. Yes, I did.

CHAIRMAN TORRES: Mr. Calderon.

ASSEMBLYMAN CALDERON: I do have some follow-up questions. I want to -- you've already testified regarding your meeting with Mr. Anthony, Miss Embree, and Mr. Richmond wherein you indicated that you had noticed what appeared to you to be some type of surprise on the part of Mr. Anthony when he discovered the results of the preliminary audit. Do you recall that statement?

MR. HERNANDEZ: Yes, I do.

ASSEMBLYMAN CALDERON: The reason why it's important for you to recall is because Mr. Richmond and Miss Embree made the same statements to legislative committees in the Assembly about the backlog being taken care of and having been eliminated. Over what period of time does your audit cover? In other words, what is the period of claims that your audit covered?

MR. HERNANDEZ: We selected the claims as of January -- I believe January 27th. That was our sample. We pulled samples as of January 27th.

ASSEMBLYMAN CALDERON: Of what year?

MR. HERNANDEZ: 1987. So it does not include anything then.

ASSEMBLYMAN CALDERON: So your audit didn't include evaluation of any claims that were processed, or are in the process of being processed before January 27th of 1987.

MR. HERNANDEZ: Well, it did include claims that had already been completed as of January 27th. It would not have included claims February, March, April.

ASSEMBLYMAN CALDERON: Oh, okay. So in other words, claims that had been completed as of January 27th of 1987.

MR. HERNANDEZ: Right. We were only looking at completed claims.

ASSEMBLYMAN CALDERON: All right. Do you have any idea of how -- of the original application date of those claims? How far did they go back?

MR. HERNANDEZ: I don't exactly recall, but I know what point -- area you're trying to get into. I do -- in doing our work, the Government Code states that 90 days from verification a claim

must be paid, and in talking to the staff, I was told that as long as verification was not complete, that meant if a staff member had not finished verifying the claim, that countdown to 90 days did not start. So theoretically, you could have claims sitting there for 10 months, and as long as a staff member had not started, that 90-day clock does not start. So it appears that there's a loophole in the law, and I think that's part of the problem.

ASSEMBLYMAN CALDERON: All right. Well, that's been cured in 1223. But let me ask you this. There are management defects in supervision, management, a number of other administrative defects that you identified. Do you have any reason to believe that those problems have not been ongoing for several years?

MR. HERNANDEZ: Well, I think part of the problem was that -- I can go back to this individual who committed the fraud. There were documents to indicate that they -- that management had a problem with this employee going back to, oh boy, 1985 and that this employee had -- was told that from now on, all claims that he denied or requested discussed by the Board were going to be reviewed but not claims that were being approved by him. He subsequently started having other problems, attempting to pay approved claims that were not properly verified, and yet, management failed to supervise him, discipline him, or remove him.

I never did understand why that occurred. Eventually this person was arrested but he had done a lot of damage. He had -- you know, he had taken funds for his own personal use. I never understood the thinking behind that. I never got a complete answer as to that. I tried to find out what the thinking of management was, and I just -- maybe it goes back to something I think Judith once said to me: You know, they're trying to get the money out to victims and they're not auditors or lawyers, they're program people and they just sometimes -- the regulations aren't complied with in that rush to get the money out.

ASSEMBLYMAN CALDERON: I think we'll end with that statement. I think it's rather profound.

CHAIRMAN TORRES: All right. Any further questions of these witnesses? Thank you very much for your cooperation and your assistance.

I'd like to call -- counsel, these witnesses have been subpoenaed so you may want to apply(?) their oath. Miss Mary Graff, Miss Mary Harold, Chris Lackey.

(SWEARING IN WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm that the testimony that you're about to give before this committee is the truth, the whole truth, and nothing but the truth?

Are each of you here because you were served with a subpoena of the committee?

Since you were subpoenaed and you have taken the oath, do you understand that you are granted the immunity, as was previously stated, under Section 9410 of the Government Code?

Do you further understand that such immunity requires you to answer questions which you think may incriminate you in a criminal proceeding and may subject you to disgrace or infamy?

From the previous statement, is it also your understanding that the immunity does not extend to

perjury as a result of your testimony here or the production of documents here?

Please be seated.

CHAIRMAN TORRES: Miss Graff, would you please identify yourself?

MS. MARY GRAFF: I'm Mary Graff.

CHAIRMAN TORRES: Tell us about yourself, your work experience.

MS. GRAFF: Okay. I was the staff service analyst with the Board of Control up to the time that I transferred from the Victims program to the State Personnel Board, which was...

CHAIRMAN TORRES: October 21, 1987, I believe.

MS. GRAFF: Right.

CHAIRMAN TORRES: How long were you with the Victims of Violent Crime program?

MS. GRAFF: I worked in the Victims program for 12 years.

CHAIRMAN TORRES: You were there for 12 years.

MS. GRAFF: Right.

CHAIRMAN TORRES: You need to speak into the mike; it's not coming up. Just pull the mike up to you. Relax, take a deep breath. We're here just to ask a few questions.

Were you assigned to review the claims assigned to Mr. Larry Callahan?

MS. GRAFF: Yes. I was assigned by Judith Embree to review claims that could be identified by the computer as having been at one time assigned to him. Those claims did not include the ones for which the criminal proceedings were going on. I was not involved in the review of those particular claims. These were claims remaining in the office.

CHAIRMAN TORRES: And tell us what you found.

MS. GRAFF: I found a lot of procedural errors on a lot of different staff members, whether they were claims specialists or staff analysts, the Victim Witness program staff, management staff of the Board, and the program manager.

CHAIRMAN TORRES: And what problems did you find specifically? Give us some examples from the manager on down.

MS. GRAFF: Okay. Do you want to start with the manager? Okay. I found several cases where staff had made a recommendation that was to be presented to the Board, either independently or during the pre-meeting briefing that is done by staff with the program manager for claims that are presented to the Board.

CHAIRMAN TORRES: Now, who was the program manager at this time?

MS. GRAFF: Judith Embree. She would go against the staff recommendation and place the claim on a consent calendar to be awarded.

I also found one case -- I think there was only one of this type -- where the claim was discussed by the Board. Based on staff's recommendation, the Board awarded the medical expenses and denied payment of the victim's income loss because he could not substantiate it. As I recall, there's a note in the file thereafter where the claim was placed on a consent agenda and awarded the income loss.

CHAIRMAN TORRES: Now, the audit that you did, which was dated October 21st, to Judith Embree, who was the program manager, signed by you -- your initials appear on the memorandum --

are you familiar with that memorandum?

MS. GRAFF: Yes.

CHAIRMAN TORRES: And they were to review the claims analyzed by Larry Callahan which was under question at that time. Is that correct?

MS. GRAFF: Right.

CHAIRMAN TORRES: What was the reaction by Miss Embree to the conclusions of that audit review?

MS. GRAFF: That was my last day working there. I completed the review of those claims and I put the report in her secretary's office and then I didn't see her. That was my last day working there so I'm not aware of any reaction to it.

My knowledge as of Tuesday was that the files that I reviewed that are the basis of that report are still sitting in my old office.

CHAIRMAN TORRES: So no action has been taken on this memorandum.

MS. GRAFF: Not to my knowledge.

CHAIRMAN TORRES: Why do you think that is?

MS. GRAFF: You want an opinion?

CHAIRMAN TORRES: I want the truth. I don't want...

MS. GRAFF: Okay. My opinion is they don't know what to do with it. They don't know what to do with those claims.

CHAIRMAN TORRES: What do you mean they don't know what to do with those claims?

MS. GRAFF: Management does not know how to handle overpayments, collection. They don't know how to handle internal controls. I don't believe that anyone currently in management level is technically familiar enough with the claims to do anything with them at all.

CHAIRMAN TORRES: But your report indicated you found over 400,000? Is that correct?

MS. GRAFF: \$400,000 worth of overpayments, given a specific definition of overpayment.

CHAIRMAN TORRES: And what -- we say an overpayment. That means someone got paid for something that they were not eligible to get paid for.

MS. GRAFF: Right.

CHAIRMAN TORRES: And those claims that you articulated in your memorandum dated October 21, 1987 indicated that those claims that fit that definition totaled 400,000.

MS. GRAFF: Approximately.

CHAIRMAN TORRES: And that report was given to Miss Embree on October 21st of 1987 by you placed in her secretary's box?

MS. GRAFF: Right.

CHAIRMAN TORRES: And as far as you know at this point -- I'm sure we'll ask the question -- no action has been taken on that \$400,000 report?

MS. GRAFF: Right.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Why did you change office?

MS. GRAFF: I was ready for a change. Specifically, I chose that time to make the change because I was really having serious problems living with the decisions that were being made concerning the program.

SENATOR MARKS: Were you asked to change office?

MS. GRAFF: No.

CHAIRMAN TORRES: Mr. Calderon.

ASSEMBLYMAN CALDERON: Were you ever aware of the work that was being done in the Legislature to try and reduce the backlog, to try and reorganize the Victims restitution program, try and streamline the process?

MS. GRAFF: I was aware of it, yes.

ASSEMBLYMAN CALDERON: Were you ever instructed not to have any direct conversations with any legislators that may be working on -- with respect to these issues?

MS. GRAFF: I think the Board policy is for staff persons not to discuss anything with legislators.

ASSEMBLYMAN CALDERON: Were you ever told specifically, or was it ever hinted that you ought not to speak to legislators who are attempting to address problems in the Victims restitution program?

MS. GRAFF: No.

ASSEMBLYMAN CALDERON: I see other heads nodding. Was there...

MS. GRAFF: I don't know if you mean me specifically, did someone come into my office.

ASSEMBLYMAN CALDERON: You know, were there veiled threats? Was it directly? Was it suggested?

MS. GRAFF: We were told not to speak to legislators period.

ASSEMBLYMAN CALDERON: I see some other heads nodding over here. Do you have -- either of you have specific incidents or some information you can shed on this issue?

MR. CHRIS LACKEY: My name is Chris Lackey. Basically, there is a Board policy which specifically states employees are not to speak to the press or to legislators regarding cases or anything involved with the Victims program; that those questions are to be directed to your immediate supervisor who will then take whatever -- go to their immediate supervisor for, I guess, advice on how to handle this particular situation.

ASSEMBLYMAN CALDERON: I was informed by staff within your department that they were specifically told not to speak to me upon threat of losing their job.

MR. LACKEY: Are you talking about today, or are you talking...

ASSEMBLYMAN CALDERON: Not today, but in the past.

MR. LACKEY: Not to my knowledge. I'm not aware of anything.

ASSEMBLYMAN CALDERON: How about today?

MR. LACKEY: Well, I would like to state that -- I don't know if I'm free to state the person's name or not, but I would also like to say -- let me give you my title. It would kind of help things a little bit maybe.

CHAIRMAN TORRES: Yes. Are you finished with your questions?

ASSEMBLYMAN CALDERON: Well, what I want to do -- well, let me ask you the question. First of all, why don't you state your name and title.

MR. LACKEY: Okay. My name is Chris Lackey. I'm a senior claims specialist with the Victims of Crime program. I'm also a job steward with Unit 1 for the employees and for the Board of Control.

ASSEMBLYMAN CALDERON: Now, as a claims specialist, what do your responsibilities include?

MR. LACKEY: I'm a senior claims specialist, and as a senior claims specialist, my duties are to train and review -- I train staff and review work of new employees -- staff that has just come onto the Board -- to make sure that what they were taught in training and what they interpret from the law is what they put down on paper so that a claim could be processed according to the law.

ASSEMBLYMAN CALDERON: And you were subpoenaed to testify here today. Is that correct?

MR. LACKEY: That's correct.

ASSEMBLYMAN CALDERON: And you're currently testifying under oath pursuant to that subpoena. Is that correct?

MR. LACKEY: That's correct.

ASSEMBLYMAN CALDERON: Now, you indicated in previous conversations that you may have been admonished about testifying at this hearing today.

MR. LACKEY: I would like to state that there's an employee at the Board -- and I don't know if I'm free to mention his name or not...

CHAIRMAN TORRES: Certainly.

MR. LACKEY: By the name of Miguel Torres, who, prior to this hearing this morning, went to numerous of us who were subpoenaed and told us that -- I mean, I don't know if it's a joke or not but he says he's related to Mr. Art Torres here. Maybe he is, I don't know.

CHAIRMAN TORRES: A lot of people say they're related to me.

MR. LACKEY: He was inferring to employees that if they were to testify, that possibly they may not have a job when they come back; that, you know, they would be blackballed. I myself was not one of those employees, but there are some employees here today who were told the statement, whether it was a kidding comment or not, but I do know that the employees that it was directed at do feel that it was not a kidding type of situation.

ASSEMBLYMAN CALDERON: All right. Any of the witnesses at the witness table now have that experience? (Answered no.) Are you aware of any facts surrounding that experience? (Answered no.) Thank you, Mr. Lackey.

CHAIRMAN TORRES: Since my name has been invoked here, I would like to ask you a little further, has this person indicated that he is acting on anyone's behalf?

MR. LACKEY: Not to my knowledge. I don't know if this is pertinent information or not, but the person does happen to be on the list for a manager position. I'm not saying he's doing it for that reason, but I'm just speculating.

CHAIRMAN TORRES: Now, you've been a job steward with the Board of Control for a year and

a half now?

MR. LACKEY: That's correct.

CHAIRMAN TORRES: And what is your function as a job steward there?

MR. LACKEY: As a job steward, my duties are to ensure that the employees are treated fairly underneath the contract, the Government Code section, as well as the Board policies regarding employees' rights.

CHAIRMAN TORRES: How many grievances have been filed against Miss Embree that you are aware of?

MR. LACKEY: In 1986, a period from April until December, approximately 80-85 actions were initiated against Judith Embree, as well as -- a portion of those were directed against Lane Richmond. But it was between 80-85 actions. And by actions, I mean that when issues come up, an employee, whether they file on an individual basis or whether they file as a class action, it still is considered a grievance for each one of those people. So between 80-85.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Were you here when the Chairman read his opening statement?

MR. LACKEY: Yes, I was.

SENATOR MARKS: And you recall that he said that anybody who's retaliated against should come to us and discuss this matter with us, and that we'll see that no retaliation takes place? Did you recall that?

MR. LACKEY: Yes, I did.

SENATOR MARKS: Will that be your intention that if any retaliation is taken against you, you will come to this committee?

MR. LACKEY: Whether it's directed towards me or any other person that was subpoenaed today, yes.

SENATOR MARKS: Or any member of the staff.

MR. LACKEY: Well, for a number of reasons, people are afraid to speak up a number of times, and that's why I became a job steward, because I noticed that there were circumstances where employees were intimidated, were harrassed; they were afraid to speak up for themselves. I don't know if I'm a fool or whatever, but I feel that we not only have victims that we're helping, but yet we have victims working within the victims program, and I felt that somebody needs to take a stand. And yes, again, if circumstances warrant that somebody else rather than comes to you comes to me, I will report those particular situations.

SENATOR MARKS: I do not think you're a fool by any means. I think all of you who are testifying, we appreciate your testifying. We appreciate the fact that you had to testify under oath, but anybody, any member of this staff who's any way -- any recriminations taken against them is a disgraceful thing and we want you to let us know.

MR. LACKEY: Okay. Thank you.

CHAIRMAN TORRES: Have you ever approached the executive officer or the deputy executive officer with suggestions to help remedy the situation, and if so, what was their reaction?

MR. LACKEY: Everytime a situation comes up, what I first try to do is try to bring the parties involved together to try to see if we can work out some type of agreement without having to follow through the grievance procedures. Sometimes I'm successful, sometimes I'm not. If I'm not successful, and I still feel that the employee's rights are being violated and that the employee has a justifiable complaint, I will then follow the proper procedures involved with the grievance procedures.

Do you want specifics?

CHAIRMAN TORRES: Yes.

MR. LACKEY: Okay. Probably April 1986, a claims specialist, who had been performing the duties of analyst since 1984, had been working out of class -- I'm sorry, since 1985 -- had been working out of class, performed the duties of analyst. Time and time again we had asked that we get this information in writing so we could get compensated salarywise for doing analyst duties. They refused to acknowledge that so I filed a grievance at that point with between 20-25 people.

August of 1986, employees were told that they were -- the issue was production standards. Their names are openly published on monthly statistic reports. And I had been getting complaints from staff that they'd been getting harrassed by management because either their figures were too low, although there are no standards for that employee to reach. I mean, we all have to have goals. The employees did not know what the highs and the lows were. It was causing extraordinary stress among the employees.

CHAIRMAN TORRES: The highs and the lows of processing claims that have come to the fund.

MR. LACKEY: Well, the amount of claims that you should close each month. I think we all need to have goals, and if you don't know what the high is, you can kind of strive for that goal. I'm not saying that people are going to reach that goal and stop. I think that we all need to have a range so we know where we fall in. I mean, one month you could do 30 and that was okay. The next month you did 25, the next month you did 20 and you were called on the carpet because you were told that you weren't meeting production standards. And then I informed them there were no production standards. We were told just to do the best job we could, yet the employees were still harrassed and had letters written and put in their files in regards to those issues.

CHAIRMAN TORRES: I still ask again, what was the reaction of the executive officer or the deputy executive officer when you approached them with suggestions to help remedy problems?

MR. LACKEY: For that particular situation, their answer was, "That's the way we're going to do it." You know, you either live with it or find another job, in essence.

CHAIRMAN TORRES: Was that their response on most of the issues that you brought before them?

MR. LACKEY: The ones that got to the grievance procedure, I would say yes.

CHAIRMAN TORRES: And what do you think their perception is of employees' rights?

MR. LACKEY: I don't believe that they feel the employee has rights. I have seen that -- regarding employees' rights, when you have violations of not only the contract but their own Board policy as well as Government Code sections, they continue to violate those with total disregard for the law.

CHAIRMAN TORRES: Do you have any personal knowledge that a non-state employee was hired as a state employee without prior state certification for a job classification?

MR. LACKEY: Yes, I am.

CHAIRMAN TORRES: Could you give us the circumstances regarding that issue?

MR. LACKEY: A couple of months ago there was a flyer passed out among state agencies that they were seeking limited-term employees -- I believe the number was six -- to help with the Board of Control. My understanding was that they had to be state employees only since this was a limited term type of situation. I'm not familiar with personnel work but I am telling you this specific thing.

One of the employees there, who had a friend of hers who she felt was qualified involving the victims' rights, came to me afterwards and stated that there was a person that was hired who was not a state employee. I since found out, upon further looking at the situation, that this person was in fact a contract employee with the California Youth Authority working underneath James Embree, and when notified -- originally he was notified that he would be hired, and that was under the assumption that he was a state employee, which apparently he stated he was in the interview. However, later on when they found out he wasn't a state employee, he called to talk to the supervisor, one of the supervisors involved in the hiring procedures, and she told him that there was nothing she could do about it, he was not a state employee, they were specifically looking for state employees.

CHAIRMAN TORRES: Was he hired?

MR. LACKEY: Yes, he was.

CHAIRMAN TORRES: Is Mr. Embree that you refer to any relation to Miss Judith Embree?

MR. LACKEY: Yes, he is.

CHAIRMAN TORRES: And what is the relation?

MR. LACKEY: Husband.

CHAIRMAN TORRES: Okay. How has this affected this interaction between management and not following the rules or the laws as you indicated? How has this impacted upon the staff morale in getting these claims processed, that what we're concerned about here?

MR. LACKEY: I would like to say one thing, too, on behalf of the employees. The employees of the Board of Control give 110%. They're frustrated by the fact that they are told to follow certain rules and regulations in the law and they see direct violation by supervisors; by that I mean management. They feel reluctant to -- I mean, they're beaten down. The morale is very low there. The people are just -- sometimes what it leads to in regards to the production figures, for instance, if you're constantly harrassed about your production, in order to get somebody off your back, you're going to increase your production; and maybe sometimes during this time you may take a few shortcuts that you shouldn't normally take. But I think that they're -- the people are just tired of being badgered. And again, the morale is very low.

CHAIRMAN TORRES: All right. Mr. Calderon?

ASSEMBLYMAN CALDERON: Mr. Lackey, I have been for many -- I shouldn't say many -- several years, I suppose over the last three and a half years, been attempting to reduce the backlog in terms of the claims process by the Board. I've had some rather spirited discussions occurring between

myself and Mr. Richmond and Miss Embree, sometimes in private, sometimes in the press, but the Legislature has attempted to reduce this backlog and to place as much pressure as we can in terms of getting that backlog down.

Did you see any evidence on the part of Miss Embree or Mr. Richmond or any supervisorial type to attempt to just simply disperse the money, just to get it out and be able to say that they have gotten the money out and they've reduced the backlog, without regard to the quality of claims that were being aborted?

MR. LACKEY: Yes. I believe it was back in 1983-84, 84, when you first started with this particular situation. We were told to pay the claims in essence and, you know, if you see something that you question, if it's not that big of a deal, just kind of let it go by and pay the claim.

The employees are inundated with claims. One employee told me that he feels like he's digging a hole in dry sand because for every one shovel he pulls out, four more fall in, and that there's just not enough people to take care of the amount of cases we have and the type of work we do.

A lot of it has to do also with direction. Specifically involving child molest cases, we're kind of up in the air. One month one week, as people have testified before, is that the Board is very indecisive in what they do. That makes our job very difficult. We don't know, for instance, if what we're preparing today will be acceptable when the case is presented to the Board. A lot of times we don't know what we're supposed to do with the case. We process it based upon what we think should be done or what has been done in the past and then it's sent back to us and told us that no, in fact, that policy has now changed and that this is the way it's to be done now.

ASSEMBLYMAN CALDERON: Do Board employees pass out the policy manual or portions thereof to help people understand -- I should say do they pass it out to their own employees is probably the first question, because apparently the employees don't know how to process claims. How in the heck are individuals filing those claims supposed to know how to do it?

MR. LACKEY: I agree. There are memorandums passed around. Sometimes people get them, sometimes people don't. One of the things that claims specialists use to do their work, you've discussed it, and it's basically the claims specialist manual. Claims specialists use that manual for specific situations which come up with regards to contribution which was mentioned: medical reimbursements, psychotherapy. They go to those manuals; they look at them to see on a particular situation, if it warrants this, what do you do? Sometimes because the person never received a memo or nothing was clarified in writing, the employee does not know what to do. They go to the senior claims specialist, which is what I am; I attempt to answer the question or find the answer. If I'm not able to answer it, then I attempt to find it and try to get back to them on it.

ASSEMBLYMAN CALDERON: Is there any administrative regulations that are in place that would help process claims that you know of?

MR. LACKEY: Are you talking about as far as Government Codes or...

ASSEMBLYMAN CALDERON: Yes. Government Codes and formal administrative regulations adopted pursuant to the process, the administrative law process.

MR. LACKEY: The administrative law process I'm not aware of. We do have Board directives.

We do have the Penal Code as well as the Government Code section which we attempt to try to decipher what this particular case is involving.

CHAIRMAN TORRES: Is there anything else you'd like to add, Mr. Lackey?

MR. LACKEY: No, thank you.

CHAIRMAN TORRES: All right. I would also like to know -- would you turn around? Can you point out Mr. Miguel Torres, because I don't know who that person is. Is he here in the room?

MR. LACKEY: No, sir. I do not see him at this time.

CHAIRMAN TORRES: What is his title at the Board?

MR. LACKEY: He is the associate government program analyst.

CHAIRMAN TORRES: Associate government program analyst?

MR. LACKEY: Yes.

CHAIRMAN TORRES: All right. Staff, would you please see if we can have him appear before this subcommittee?

Miss Mary Harold, you've been employed as an analyst for the last eight years?

MS. MARY HAROLD: No, I've been with the program for eight years. I've been an analyst for four years.

CHAIRMAN TORRES: For four years. What is your position at the Board of Control then? What do you do there?

MS. HAROLD: Staff services analyst. I process claims and do other duties -- bill analysis.

CHAIRMAN TORRES: Bill analysis, process claims, etc. What was your role in the General Services' audit that we referred to earlier today?

MS. HAROLD: The auditors, through their investigation on the claims, found that I'm -- they used me as a resource person. When they had questions, they came to me.

CHAIRMAN TORRES: Who used you as a resource?

MS. HAROLD: The two auditors. The one who testified previously -- Ignacio Hernandez -- and another one who is not here -- Greg Gunderson.

CHAIRMAN TORRES: Have you looked at the May 1987 draft, confidential audit that we have before us?

MS. HAROLD: Yes, I have.

CHAIRMAN TORRES: Do you agree with the findings therein?

MS. HAROLD: Regarding the claims, yes, I do.

CHAIRMAN TORRES: Has there been any changes that you are aware of to that audit?

MS. HAROLD: No, not that I'm aware of.

CHAIRMAN TORRES: You're not aware of any changes that have occurred in that audit since you've been associated with it or had exposure to it?

MS. HAROLD: The draft copy that I have, I just received that, I believe, six weeks ago, and I read it. I don't know what was in the original, but the one that I have that I read dated May of '87 is the only one I'm aware of.

CHAIRMAN TORRES: Okay. Do overpayments exist that cannot be captured by the current

computer system, in your opinion?

MS. HAROLD: Yes, they do.

CHAIRMAN TORRES: And why is that?

MS. HAROLD: Well, we don't have any established procedure for turning in the overpayments so they show up on the computer. I worked a claim two weeks ago and I discovered a \$15,000 overpayment. I'm the only one that knows about that.

CHAIRMAN TORRES: Did you report it immediately to Miss Embree?

MS. HAROLD: There's no procedure for reporting. I've now taken it upon myself to contact the people involved to try and get clarification and possibly collect.

CHAIRMAN TORRES: What do you mean there's no procedure for reporting? If you found an error of 15,000 in overpayment, it just sits there at your desk?

MS. HAROLD: Well, I take the steps to try and rectify the problem or get the money back; to give the victim or their representative a chance to rectify the situation.

CHAIRMAN TORRES: So you take -- the level of authority rests with you at that point.

MS. HAROLD: It rests with the analyst, yes.

CHAIRMAN TORRES: With the analyst.

MS. HAROLD: Yes.

CHAIRMAN TORRES: To try and recover that amount.

MS. HAROLD: Yes.

CHAIRMAN TORRES: And there is no process by which you report that to management as to what's been taken care of and what hasn't been.

MS. HAROLD: I have no procedure for that.

CHAIRMAN TORRES: No procedure for that.

MS. HAROLD: The only claims that are identified on the computer are those that go to hearings. Since this claim has been to four different hearings and now it's come to me, there's -- you know, it's not going to another hearing because I've discovered the overpayment.

CHAIRMAN TORRES: So the level of authority by claims analysts affects the processing of those claims. Is that correct?

MS. HAROLD: Yes, it does.

CHAIRMAN TORRES: Have there been situations of conflicting directions from management or the Board of Control to the staff?

MS. HAROLD: The Board of Control itself to me is the ultimate source. I mean, once a claim goes to them and they make their decision, we're out of it so to speak, because they've already made the ruling on it.

We do get conflicting information from management as far as we have been instructed to pay major providers before we pay other victims, and I know you heard the testimony this morning from some of the major providers. Staff has asked for clarification on why we have to pay them when the next 10 claims might be someone who doesn't have a place to live because they need their wage loss. But these major providers, those claims are identified and pulled and we have to work them before we

work other claims that we received before them.

CHAIRMAN TORRES: How do you like working there?

MS. HAROLD: I don't.

CHAIRMAN TORRES: Why?

MS. HAROLD: I am — I used to like working there. It's a very good program, and I've been there in the various levels, you know, for quite a while. But anymore, it's gotten to a point where there is a lot of pressure. I have...

CHAIRMAN TORRES: What kind of pressure?

MS. HAROLD: Well, I have 500 claims in my office alone waiting for my attention. And then when I get direction to pull this one, this one, and this one and pay this before you do the others that you got first, I have a real conflict with that because I work my claims in the order I get them in my office.

CHAIRMAN TORRES: So why are some claims pulled out? Because of political pressure, from legislators calling in, or from other pressures?

MS. HAROLD: Some of it I don't know. When I'm talking to the major providers, the different therapists that have given a list to whomever, because like they're going bankrupt and they might be shutting their doors, and I can sympathize with their needs. However, we have other victims, too.

CHAIRMAN TORRES: So you don't think the compensation for the victims has been equitable.

MS. HAROLD: Correct. As far as timewise.

CHAIRMAN TORRES: What needs to happen to make that occur?

MS. HAROLD: Well, process them first-come first-served.

CHAIRMAN TORRES: Doesn't that also mean more staff?

MS. HAROLD: Yes.

CHAIRMAN TORRES: Talk to us about that.

MS. HAROLD: Well, I do the joint powers claims. Those are the claims that the county verifies and turns in, and there are three of us that do them. I know one of the other people that does the joint powers claims has over 600 claims in his office, and now we're going on mandatory overtime.

CHAIRMAN TORRES: Senator Marks and then Assemblyman Calderon.

SENATOR MARKS: Who asked you to change the order? You said some don't go in order as someone asks you to specifically -- who is it that talks to you?

MS. HAROLD: Well, we get this little memo.

SENATOR MARKS: From whom?

MS. HAROLD: It originates from our supplemental verification team, and their instructions are coming from Judith Embree.

SENATOR MARKS: Judith Embree is the one that gives you this information?

MS. HAROLD: Right.

SENATOR MARKS: So she'll tell you that you must pay this claim out of order even though it's not in the order in which you have it.

MS. HAROLD: Yes.

SENATOR MARKS: And what do you do about that?

MS. HAROLD: I have no choice. I work it.

SENATOR MARKS: Thank you.

CHAIRMAN TORRES: Mr. Calderon.

ASSEMBLYMAN CALDERON: I take it that problems which you and others at the witness table have identified have been ongoing for some period of time. Is that a fair statement?

MS. HAROLD: Yes.

ASSEMBLYMAN CALDERON: Several years? Is that fair?

MS. HAROLD: Not the major provider issue. Other issues. Numerous other issues.

ASSEMBLYMAN CALDERON: Like categorized -- can you categorize them?

MS. HAROLD: Fraud. We have no procedure for reporting fraudulent activity. We also don't exchange information with other agencies that also might be affected by the fraud going on.

ASSEMBLYMAN CALDERON: All right. What other areas? I mean, why has there been a backlog for such a long period of time? Why was there a period of time that the fund grew literally to a size sufficient to meet all the claims that had been filed against it but the claims simply couldn't be processed?

MS. HAROLD: Well, personally speaking, the claims that we're getting are not simple anymore. The type of incident is a lot more complex than it used to be. The new legislation is requiring us to do more to the claim that we don't have time or the staff to do more.

ASSEMBLYMAN CALDERON: Have you ever expressed your concerns about the inefficiency and the poor quality or degenerating quality of the processing of these claims to any supervisors?

MS. HAROLD: Yes.

ASSEMBLYMAN CALDERON: And what was the reaction?

MS. HAROLD: Well, we have a lot of claims.

ASSEMBLYMAN CALDERON: Who have you expressed your feelings to?

MS. HAROLD: My supervisor is no longer -- he's deceased, Ray Banion.

ASSEMBLYMAN CALDERON: Did he leave voluntarily?

MS. HAROLD: No. But he's now deceased.

ASSEMBLYMAN CALDERON: Oh. I guess it was involuntarily.

MS. HAROLD: Yes.

ASSEMBLYMAN CALDERON: Now, you knew -- you were instrumental in helping the audit, the internal audit committee, to attempt to identify these problems.

MS. HAROLD: Yes.

ASSEMBLYMAN CALDERON: And in that way, I take it you felt finally you were getting an opportunity to help the process.

MS. HAROLD: Yes.

ASSEMBLYMAN CALDERON: Was there any reason, however, that before that time you didn't go outside to try and find help somewhere so that you could take care of these problems?

MS. HAROLD: Well, the problems that -- within the -- I don't quite know how to answer this

question. It wasn't a point of when I assisted with the technical advice to the auditors. It wasn't like getting even with anybody because I enjoy my job.

ASSEMBLYMAN CALDERON: But it was a chance to speak to somebody else where it might make a difference for the better.

MS. HAROLD: Because we were going to have a concrete document afterwards.

ASSEMBLYMAN CALDERON: Well, I mean, how many times did you express yourself in terms of the changes that should be made in order to make the system more effective, more efficient? How many times did you express yourself to supervisors?

MS. HAROLD: I consistently -- I'm a heavy memo writer and I'm always -- when something comes up, I write a little memo to my supervisor and ship it off, and then I feel that I've done my part. If they choose to ignore that, which half the time is the case, then that's their problem. I have done my part and identified a problem.

One thing I can tell you, as far as collecting overpayments, in 19 -- let me get my dates straight -- in 1985, I contacted the Controller's office and Franchise Tax and gathered every bit of information that the program needed to attach tax returns for collection of overpayments, and that has not been done until just recently.

ASSEMBLYMAN CALDERON: And to what do you attribute that to?

MS. HAROLD: I don't know.

ASSEMBLYMAN CALDERON: How long have you been writing memos regarding defects in the process?

MS. HAROLD: Since I started with the state.

ASSEMBLYMAN CALDERON: Five years?

MS. HAROLD: Eight years.

ASSEMBLYMAN CALDERON: Eight years.

MS. HAROLD: Always. That's just the way I operate. I like to cover everything so no one can accuse me of letting it slide.

ASSEMBLYMAN CALDERON: Thank you.

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Are each of you members of the California State Employees' Association?

MS. HAROLD: I am.

MR. LACKEY: Yes.

MS. GRAFF: Yes.

SENATOR MARKS: Have you ever brought up these problems with them?

MR. LACKEY: Some of the circumstances are beyond our scope of authority. By that I mean sometimes without specific -- see, what it is, you divide grievances -- or your divide problems into two areas: you divide it into grievances, which involve the contract or complaints which involve Board policy, whether that be written or verbal. And there's really no -- outside of doing fraudulent claims, there's nothing that I am aware of at this point where you would, you know, point the -- direct management in regards to the specific areas.

SENATOR MARKS: Well, I'm referring -- I forget your name, I'm sorry.

MS. HAROLD: Mary Harold.

SENATOR MARKS: Mary Harold. You testified as to a number of things that you've written memos on. Why wouldn't you give those memos to the CSEA?

MS. HAROLD: Because they're of a procedural nature and not of an employee/employer relationship.

SENATOR MARKS: I see. Thank you.

CHAIRMAN TORRES: So there are no changes in the May 1987 audit that you are aware of to tone down the report or to any way change its report before publication?

MS. HAROLD: No. There hasn't been any work on the audit.

CHAIRMAN TORRES: So you're not aware of anything like that.

MS. HAROLD: No.

CHAIRMAN TORRES: All right. Thank you very much. Appreciate your testimony today.

Mr. Mike McCormick, Suzanne Alexander, Beverly Shaw.

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm that the testimony that you are about to give before this committee is the truth, the whole truth, and nothing but the truth?

Are each of you here because you were served with a subpoena of the committee?

Since you were subpoenaed and you have taken the oath, do you understand that you are granted immunity, as was previously stated, under Section 9410 of the Government Code?

Do you further understand that such immunity requires you to answer questions that you think may incriminate you in a criminal proceeding or may subject you to disgrace or infamy?

From the previous statement, is it also your understanding that the immunity does not extend to perjury as a result of your testimony here or the production of documents here?

Thank you very much. Please be seated.

CHAIRMAN TORRES: Thank you very much. Mr. McCormick, you're an employee of the Victims of Crime program. Is that correct?

MR. MIKE McCORMICK: Yes, I am.

CHAIRMAN TORRES: Please explain the nature of your employment.

MR. McCORMICK: I'm currently a clerical supervisor over mail room/file room areas and forms, supplies.

CHAIRMAN TORRES: And how long have you been doing that?

MR. McCORMICK: Officially as a supervisor since July 1.

CHAIRMAN TORRES: July 1 of 1987?

MR. McCORMICK: Right.

CHAIRMAN TORRES: And before that?

MR. McCORMICK: Before that I was working in that same area as a lead clerk.

CHAIRMAN TORRES: For how long?

MR. McCORMICK: That was since the end of January 1987.

CHAIRMAN TORRES: So how long have you been with the Victims Crime Fund?

MR. McCORMICK: Overall with the Victims program, I've been with them since February 1986.

CHAIRMAN TORRES: February of 1986. Are there any weaknesses in the record management process that you're aware of?

MR. McCORMICK: We really don't have a real record management program occurring at the time being. We've addressed it and we have not really received much guidance in that area.

CHAIRMAN TORRES: So procedures have been changed without notice in writing to employees of the file room?

MR. McCORMICK: That's separate of the record management area. Yes, quite frequently in the past few months even, I will go into my file room and find out about a new procedure in an area that I am supposedly supervising.

CHAIRMAN TORRES: What's been the effect of these kinds of decisions on staff morale?

MR. McCORMICK: Basically it's not a big effect on the file room staff themselves as far as that they are pretty much willing to comply with what they're asked to do and try to get the work out. We know it's a vital function of the Board.

CHAIRMAN TORRES: Have you experienced any harrassing or harrassment at your place of employment within this program?

MR. McCORMICK: Yes, I have. I have -- currently I have some grievances pending in that area.

CHAIRMAN TORRES: Grievances? How many grievances do you have pending?

MR. McCORMICK: I have -- personally, I have three grievances pending right now.

CHAIRMAN TORRES: Against whom?

MR. McCORMICK: Against Judith Embree.

CHAIRMAN TORRES: And what are the nature of those grievances? Do they relate to the fact that this program is not paying claims on time?

MR. McCORMICK: No. They are basically related to being accused of being belligerent towards management and also on a sick leave issue that occurred earlier this year.

CHAIRMAN TORRES: Does that belligerency towards management have anything to do with the claims processing system or getting claims paid to victims on time?

MR. McCORMICK: No, it doesn't.

CHAIRMAN TORRES: Any questions?

ASSEMBLYMAN CALDERON: You heard some of the other questions presented -- or posed by myself or the other members of this committee. Specifically with respect to being instructed not to speak to legislators, are you aware -- have you been instructed not to talk to legislators either now or at any other time up to this point?

MR. McCORMICK: Not directly, no.

ASSEMBLYMAN CALDERON: All right. What about indirectly?

MR. McCORMICK: Just from scuttlebutt or whatever you want to call it. We are guarded in

what we say to legislative staff. As a former phone receptionist also, I can testify to that.

ASSEMBLYMAN CALDERON: What do you mean you are guarded?

MR. McCORMICK: Basically, we are told to refer above, as far as I understand it.

ASSEMBLYMAN CALDERON: Thank you.

CHAIRMAN TORRES: Miss Beverly Shaw, what is your present employment at the Board?

MS. BEVERLY SHAW: I am a Victims of Crime claims specialist and have been since August 31st of '84.

CHAIRMAN TORRES: What basic training did you receive when you became a claims specialist?

MS. SHAW: The basic training that I received was based on the manual that we use to verify the claims, and there is a section for the statutes that have changed over the years. And what occurs during a two-week process is the claims specialists are read the procedures out of the manual. Those procedures basically tell you this is the application, review it, capture the basic information from the crime report on the cover page, and then verify the losses and wage losses that are -- medical losses and wage losses, etc. that are claimed. It's a two-week period where they read to us out of the manual.

CHAIRMAN TORRES: Has there been any kind of committee formed to deal with the backlog in the operation that you work in?

MS. SHAW: Excuse me? Could you say that again?

CHAIRMAN TORRES: Has there been any type of committee formed to deal with the backlog in your operation?

MS. SHAW: A committee formed?

CHAIRMAN TORRES: A committee, a group of people, formed to deal with the backlog in the 90-day mandate.

MS. SHAW: The only 90-day mandate that I've been made aware of is as it applies to the contracted counties. We were made to understand that that applies only to the contracted counties and not to the Victims of Crime staff itself. The loophole, as you revealed earlier, is that it's upon a fully verified claim; then the staff has 90 days to process it for payments.

Backlog, as I know it and understand it, between the claims specialist staff, their pending, and the analyst staff that is pending, there are approximately 10,000 -- 8,500 to 10,000 claims waiting to be worked on. That is not including the claims that are currently on somebody's desk to work.

CHAIRMAN TORRES: So you're not familiar with the special committee that was formed about a year ago to deal with the backlog problem?

MS. SHAW: Okay. We have -- if you're referring to the backlog mail, we have a supplemental verification unit that deals only with additional awards. There's been an ongoing problem with mail accumulating in massive amounts that the staff, the claims specialists, could never get to because of the inundation of regular claims, emergency awards, special projects that were given to them with absolutely no controls over how they requested them -- they were just dumped in our in-baskets -- so that there were some claims specialists that had up to 250 claims on their desks at given times.

I personally wrote a memo to management in June of 1986 asking them to give us a two-week break in assignment of these types of claims, except for the emergency awards and the special projects and joint power projects, to allow us a two-week time to work on just the backlog mail. I received no response to that. The backlog mail continued and continued and continued. It was passed around and shuffled from one point to another; until in May of 1986, a memo was put out by Mike Patterson, who indicated that all the mail that had been accumulated would be dispersed to each claims specialist and it was to be worked on. It still did not occur. It was passed out. The claims specialists felt just totally out of control, and in June of 1987, the supplemental verification unit was finally put into place. There were 10 claims specialists who volunteered to work in this unit and their assignment was to work just with the backlog mail and the additional payments of bills.

CHAIRMAN TORRES: Have there been problems with hiring and promotions or harrassment? Have you experienced any of those problems?

MS. SHAW: I have personally not experienced any problems of harrassment but I have observed numerous, numerous events of this. I've observed OSS I's yelling and screaming at their employees in full public view. I have observed Judith Embree yelling and screaming at Mr. McCormick in full public view. I have observed manager Alan Kline talking in loud demeaning tones to Ray Banion, who was his peer, the other program manager. I have observed Judith Embree talk in demeaning tones to Mr. Banion during group meetings. And apparently this is an acceptable form of management that is very upsetting and demoralizing to the entire staff.

Hiring practices, I have been aware of the previous employee that Mr. Lackey referred to as not being a state employee, being allowed to come on even though the requirements listed on the hiring flyer required that they be a state employee. There was an analyst brought over also from the Youth Authority that was an OSS I; to my knowledge, that did not qualify her to be a staff service analyst. There are at least six claims specialists that are on the top three ranks of the staff service analyst list that are employed at the Victims of Crime program. We are not acknowledged with that particular status and we are not considered acceptable candidates for staff service analyst positions at the agency.

The woman who was brought over from the Youth Authority was brought over on a limited term. She took the staff service analyst test, did not pass it, and so now she's there as a training and development position.

Again, this is apparently through the association of Miss Embree's former employment there, the Youth Authority, and/or her husband's.

And then another incident that occurred was a claims specialist that was hired as a limited term and took the claims specialist test and came out either last or next to the last on the list -- she was number 79 on the list -- and she was picked up as a trainer for our agency. And I would think that the interview that was given for evaluating their qualifications for the claims specialist list would be indicative of the ability or the knowledge, and to take somebody who's the last or next to the last off of the list and place them as a trainer seems kind of out of touch with what should be being done.

CHAIRMAN TORRES: All right. Senator Marks for a question.

SENATOR MARKS: Well, it seems to me the things you've just recited are the way in which the office is running, and that's the type of thing that I would assume that the CSEA would be notified of. Have they ever been notified?

MS. SHAW: I do not know that.

SENATOR MARKS: Are you a member of CSEA?

MS. SHAW: No, I am not.

SENATOR MARKS: Any of you a member?

MR. McCORMICK: Yes.

SENATOR MARKS: Why haven't you notified the CSEA of your problems, for example? Maybe you have.

MR. McCORMICK: I have with my problems. I have requested representation and those are pending right now.

SENATOR MARKS: I would assume that the matters that you're referring to are matters that CSEA would look at. I can't understand why -- other than the fact that you may have done so -- why they weren't notified.

MS. SHAW: Even if they were notified, pretty much what the stance of most agencies are, as I understand it, is that once a person is placed in the position, you can't just kick them out unless they are -- failed on probation or deemed unsuitable.

SENATOR MARKS: Well, I'm not a member of CSEA, although I'm a state employee. But it seems to me that...

CHAIRMAN TORRES: Who's our job steward?

SENATOR MARKS: Maybe I should join. But it seems to me that CSEA is -- they would be notified. Maybe they wouldn't.

CHAIRMAN TORRES: Have you been given specific special projects in addition to your regular duties which interferes with your processing of claims?

MS. SHAW: I have specifically. Not all the claims specialists have. I identify areas that I feel need improvement that affect our program, and I have discussed these on different occasions with supervisors and made suggestions, and I've realized over a period of years that supervision and management is not going to act on suggestions. So I can profit by two ways: ensuring that they have to look at it and review it and also reap a monetary reward by going through the Merit Award Board.

The last two proposals that I have made, one of them was given to me in a written memo September -- either 21st or 25th -- of this year directing me to find, as a special project, to find out what the monetary savings would be for this particular suggestion. I last week received a call from a fellow who identified himself as "Carl" from the Merit Award Board and he wanted to advise me that the recommendation of the person who did the review of my suggestion said that it was an excellent suggestion and it should be implemented but that they were recommending that it be turned over again as a special project to me to evaluate the monetary savings. And he was concerned with this

because he wanted to know if I was aware that it was illegal for the person making the suggestion to also do the monetary evaluation. And I explained to him that yes, I felt it was and even if it wasn't regulated on, that morally I didn't feel that it was correct, and that was precisely why that I had not acted on the previous directive that I had been given by Judith Embree. And he advised me that he would respond to management to make them aware that that was an illegal procedure and that he would also address the previous memo that had been given to me.

CHAIRMAN TORRES: What are some of the safety violations of the Board regarding the employees?

MS. SHAW: Going hand-in-hand with some of the safety violations, when the agency made its move from the two previous locations on J Street and in Old Sacramento to the new location, I do not believe, in all fairness, that management made provisions for floor space, for adequate supplies, or forms for our agency, which greatly impacts on the work flow and efficiency of handling of the claims. We run out of supplies and forms frequently.

And as staff has been added in stop-gap measures, the forms and supplies have been moved out into the main hall, which is our sole fire exit for the agency, which I believe would be in direct violation of any safety purpose.

CHAIRMAN TORRES: And how do the employees react to all of these violations that you've pointed out?

MS. SHAW: They're concerned but they've given up hope of getting anybody to comply with what they should. Just last week fire extinguishers were mounted after being in the current location a year and a half. Computer cords are stretched out and covered over.

CHAIRMAN TORRES: Are people coming to work with no expectation of being prideful of their work or committed to their work?

MS. SHAW: Constantly. Coworkers say they just don't care; if it gets done, it gets done.

CHAIRMAN TORRES: Do you think that's contributed to the backlog?

MS. SHAW: Absolutely.

CHAIRMAN TORRES: Has personal information regarding employees ever been discussed by management in public?

MS. SHAW: Yes. Two specific instances were surrounding Ray Banion's death. During a group gathering, Miss Embree pointed out that Mr. Banion had had severe psychological problems far greater than any of us would ever realize, and I don't feel that this is the type of thing that should be discussed openly. These are confidential areas that should not be brought out in public. And during a time that we went to a sensitivity training session, she openly explained what was going on with Larry Callahan's criminal case, which I felt was a breach of his right to confidentiality.

CHAIRMAN TORRES: Do you want to transfer to another department, Miss Shaw?

MS. SHAW: I like the work that I'm doing. I feel that it's very necessary to help the victims, and I feel that I'm extremely competent in the work that I do. I am not seeking to get out. I do have a job interview tomorrow, but I'm not seeking to get out. It is for promotion.

CHAIRMAN TORRES: Interview with whom?

MS. SHAW: State Personnel Board.

CHAIRMAN TORRES: All right. Well, we wish you luck. Have you been threatened not to come to this hearing to testify?

MS. SHAW: Not by management, but again, the same fellow that has gone around and made comments to other staff that had been subpoenaed has made remarks to me. The last one was this morning.

CHAIRMAN TORRES: Where?

MS. SHAW: In my work cubicle. He appeared and indicated to me that I should comply with the questioning the same way that Ollie North did at his hearing, that I should take the Fifth Amendment. I was insulted by that because that was to imply that I have some sort of criminal activity that I needed to cover up.

CHAIRMAN TORRES: Were any threats made to you?

MS. SHAW: No.

CHAIRMAN TORRES: All right. Thank you very much. Miss Alexander, welcome to the committee. Please identify yourself.

MS. SUZANNE ALEXANDER: I'm Suzanne Alexander.

CHAIRMAN TORRES: And what is your role at the Victims of Violent Crime?

MS. ALEXANDER: I'm the office services supervisor II at the State Board of Control Victims of Crime program.

CHAIRMAN TORRES: Are you on disability now?

MS. ALEXANDER: Yes, I am.

CHAIRMAN TORRES: How long have you been on disability?

MS. ALEXANDER: Since August 17th.

CHAIRMAN TORRES: Was it work related?

MS. ALEXANDER: Yes, it was.

CHAIRMAN TORRES: Did your physician write a letter regarding your physical problems to the State Board of Control?

MS. ALEXANDER: Yes, he did.

CHAIRMAN TORRES: And what did your doctor request?

MS. ALEXANDER: Well, I had been going to him over a year since August of '86 because I was experiencing some physical problems due to stress. My supervisor was kind of intimidating me in that her verbal and her oral communication towards me made me feel very intimidated, and so I started having problems because I was always going to work wondering what is going to happen today and I started having physical problems. And I went to the doctor, and since the doctor had seen me over a year, he had written the State Board of Control stating that he felt that since my problems had overall been a year, that I should be removed to a stress-free environment.

CHAIRMAN TORRES: And what did your supervisors do with this request?

MS. ALEXANDER: Well, I thought maybe that they would call me in and say, you know, could we help you with this problem, could we remove you from your job site, or could we restructure your

job duties, but nothing was done. It was ignored. So my doctor took me off on stress disability about a couple of weeks later.

CHAIRMAN TORRES: So is there anything else that you think this committee ought to know regarding the Board of Control or the Victims Rights Fund?

MS. ALEXANDER: In what way?

CHAIRMAN TORRES: In what your perceptions are.

MS. ALEXANDER: Well, I know that I love my job very much and I worked very hard while I was there, and I believe that the reason Miss Embree treated me in the manner she did is that our strategies for supervision are different. I've always believed that you get more bees with honey and she believes that you rule with an iron fist, and I just don't agree with some of her techniques. And I for one at the Board, a lot of times when she would give me an order, and I say that in all honesty --it was always an order, it was never a request -- I would tell her that I didn't agree with her and then all of a sudden the memos would start coming: work improvement memos, intimidating. They were never requesting, they were always demanding; she never spoke to me, it was always at me. And many times I was requested to discipline my staff when I felt there wasn't need for discipline, only to speak with staff. And since I didn't comply, there was a lot of times that I got memos I felt were unfair. I have gone through the grieving process. I've gone to Labor Relations, and I'm here now. So.

CHAIRMAN TORRES: Any questions? Mr. Calderon?

ASSEMBLYMAN CALDERON: Only that I had many conversations with Miss Embree and Mr. Richmond, as I've indicated, where I would point out there was sufficient money in the Victims restitution fund at one time. This was, you know, one or two years ago. It's been a long time that I've been making this claim. But probably about two years ago there was sufficient money to meet the claims that were outstanding against it.

I then found later that Miss Embree and Mr. Richmond came before a legislative committee and indicated that the backlog was gone, that the money was out, that claims were being paid. Then we heard from them that the fund was on the verge of bankruptcy. At that time, it appeared to me as though there was a rather cynical effort to get the money out, so regardless of whether or not it reached the right hands in the right manner, as a way to come back and say to the Legislature, "There. Are you happy? We got the money out so get off our backs." That was my impression. Did you see any evidence of that?

MS. ALEXANDER: Are you speaking just specifically about the backlog?

ASSEMBLYMAN CALDERON: Yes.

MS. ALEXANDER: Okay. I will tell you how I -- what I did to try to help the backlog, and this is -- I'm speaking for myself, for the program, for the interest of the victims.

A year ago we moved from one building to another. I planned, organized, and implemented a system called the terminal digit system. It was supposed to cut down on errors. And I have worked in two prisons and I know that unless you have control of files, that you will never have a complete smooth processing of any claims. So I had many meetings with Miss Embree to tell her that the files were getting out of control. When people would call for status checks, that the files were all over

the Board. One of my coworkers, my subordinate coworkers, it takes her two and a half to three hours to find a file when it's lost. All of this cuts down on production, all of this causes backlog. At this present time, the files are all over the Board. They need to be in a controlled environment so that when they're asked for, that you can go directly to them, pick them up, and then you have the information before you. I feel that you can only work on one claim at a time and I see no need to have 500 files in one cubicle. But because my supervisor, Judith Embree, never recognized any of my suggestions, here we are with a huge backlog, the files are all over, and it's out of control.

ASSEMBLYMAN CALDERON: And the fund's on the verge of bankruptcy. But, I want to know if there was a cynical -- if you know of any evidence that would suggest that there was an effort on the part of Board management to just get the money out and who cares who gets it or if it gets to the right people so we can go back and tell the Legislature.

MS. ALEXANDER: In all honesty, I can't answer that question.

ASSEMBLYMAN CALDERON: All right. Any other witness have any evidence to that effect?

MS. SHAW: I can address somewhat to the backlog of the mailers I indicated earlier. It was shuffled from place to place to place, and there were management memo meetings and also memos that went out to the victim centers that said that there was no more backlog of mail when in fact there was several thousand pieces of mail. And they said that if in 30 days you find that payment or something hasn't been made, then give us a list and we will check it out. That was a blatant lie.

ASSEMBLYMAN CALDERON: All right. So now we have in effect a lie to the Victim Witness centers that there is no backlog. We have representation to the Legislature that there is no backlog.

MS. SHAW: I cannot -- I do not specifically know what the date was on that memo, but I believe it was in 1986. We have gotten funding for overtime periodically with the intent of cleaning up the backlog but it never has gone away; it never has been controlled. There always has been a backlog.

ASSEMBLYMAN CALDERON: Thank you.

CHAIRMAN TORRES: All right. Thank you very much, gentleman, ladies. Miss Elsa Espejo, Miss Chris Yoshida, and Sherry Hernandez, and Mr. Richard Goodgast. Is that correct? Godegast. I'm sorry.

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm the testimony that you are about to give before this committee is the truth, the whole truth, and nothing but the truth?

Are each of you here because you were served with a subpoena of the committee?

Since you were subpoenaed and you have taken the oath, do you understand that you are granted immunity, as was previously stated, under Section 9410 of the Government Code?

Do you further understand that such immunity requires you to answer questions which you think may incriminate you in a criminal proceeding or may subject you to disgrace or infamy?

From the previous statement, is it also your understanding that the immunity does not extend to perjury as a result of your testimony here or the production of documents?

Please be seated.

CHAIRMAN TORRES: Thank you very much, ladies and gentleman. Have any of you witnesses before this committee been threatened in any way, shape or form to testify before this committee?

MR. RICHARD GODEGAST: No, sir.

CHAIRMAN TORRES: Miss Espejo, I believe?

MS. ELSA ESPEJO: Yes.

CHAIRMAN TORRES: Have you been threatened in any way to come before this committee?

MS. ESPEJO: Well, I don't know if it was a threat or was joking around, but earlier at the office, I was in the break room and an analyst, we were talking about it, two other people, and the analyst came in and said -- you know, I said was going to tell the truth, and they said, "Well, yeah, you tell the truth because after you leave there you won't be back here."

CHAIRMAN TORRES: So did that person elaborate anymore to that?

MS. ESPEJO: No. I didn't say anything because I didn't want to argue.

CHAIRMAN TORRES: All right. Would you turn around and see if that person is in this room now?

MS. ESPEJO: He's raised his hand.

CHAIRMAN TORRES: He's raised his hand. All right. Have you been threatened, Miss Yoshida, to come before this committee?

MS. CHRIS YOSHIDA: No, I haven't, but I was approached by the same individual as Bev Shaw had stated. I was told to invoke -- to plea the Ollie North case, too. I stated I've got nothing to hide.

CHAIRMAN TORRES: All right. Is that person in this room?

MS. YOSHIDA: It's the same individual.

CHAIRMAN TORRES: Have you been threatened to come before this committee? (No audible response.) Would that individual who raised his hand please come forward? Please come forward and identify yourself.

MR. MIGUEL TORRES: My name is Miguel Torres.

CHAIRMAN TORRES: All right. Mr. Torres, what is your position?

MR. TORRES: I'm a program analyst with the Victims of Crime program.

CHAIRMAN TORRES: Victims of Crime program.

MR. TORRES: Yes.

CHAIRMAN TORRES: All right. Do you know these individuals that have just testified?

MR. TORRES: Yes, I do.

CHAIRMAN TORRES: Did you make those comments to these individuals?

MR. TORRES: I made comments to them.

CHAIRMAN TORRES: And what comments did you make to these individuals?

MR. TORRES: I made comments in regards to this hearing. I think the comments I made were humorous.

CHAIRMAN TORRES: Were humorous?

MR. TORRES: Yes. There were a lot of comments going around in the office regarding these

hearings, and my comments were meant to be humorous.

CHAIRMAN TORRES: Well, some people did not interpret them as such, Mr. Torres.

MR. TORRES: For that I apologize.

CHAIRMAN TORRES: All right.

MR. TORRES: I don't think that I have the authority within the Victims of Crime program to affect anybody's job, and I think that they realize that, and that if I was to make a threat, it would only be humorous. I don't have hiring authority to affect their jobs.

CHAIRMAN TORRES: Mr. Torres, do you know in the weeks that I've been working on this issue, it has become clear to me that there is a very low morale in that operation over there, and I don't know if you're aware of it or not. And sometimes statements that are made in humor may very well affect people in different ways, and I think it's important for you and others who continue to make such statements ought to be very seriously affected and reflecting the kind of statements and the impact they may have on people who feel they are vulnerable, people who feel they are powerless in a situation because they've had to endure that employment for some time. So I hope you take that into account in the future and warn anyone else, that if any such statements occur again, that I will continue this investigation of that Board and anyone else who makes those statements.

MR. TORRES: Okay.

CHAIRMAN TORRES: Thank you very much for voluntarily coming to the committee.

MR. TORRES: Thank you.

CHAIRMAN TORRES: Miss Hernandez? Please identify yourself and what you do at the office.

MS. SHERRIN HERNANDEZ: My name is Sherrin Hernandez and I'm the office services supervisor I with the clerical section.

CHAIRMAN TORRES: Do your personnel practices within the office make it difficult for you to comply with your job, which is to pay claims on time?

MS. HERNANDEZ: No, it doesn't.

CHAIRMAN TORRES: Pardon me?

MS. HERNANDEZ: No, it doesn't.

CHAIRMAN TORRES: No, it doesn't. So at any time you've not been a victim of personnel violations, or you have had a 100% wonderful experience working for the Board and you enjoy working there.

MS. HERNANDEZ: No, I have not had -- I have had some personnel experiences, yes.

CHAIRMAN TORRES: Well, I think we need to know that, and if you could speak into the mike, that would be very helpful to us. Take a deep breath. You're among friends. Just relax. Okay.

MS. HERNANDEZ: I was assigned in January 1987 by Judith Embree to work under Ray Banion, who was an office services manager, because his office technician was promoted to a claims specialist. My personnel problems at that time were with Ray Banion, who was the office services manager. I went to Judith Embree a number of times to ask how long I would have to work under Ray.

CHAIRMAN TORRES: All right, Miss Hernandez, we're going to have to switch you to the

other mike, if you'll please stand, because we can't hear you in that microphone. Either you're not getting too close or it's not working properly. Just speak right in. There you go.

MS. HERNANDEZ: Where do you want me to start at?

CHAIRMAN TORRES: You started in January of 1987 working under Mr. Banion. You referred to Miss Embree that you had personnel problems with Mr. Banion.

MS. HERNANDEZ: Yes.

CHAIRMAN TORRES: And what was the response of Miss Embree to that request?

MS. HERNANDEZ: I had asked her how long I would have to work under Ray, and she told me until they could get someone else to replace me. At that time, there was a problem with the budget in hiring someone else, and until they could get someone to replace that -- or to fill that position, I would have to stay there. She did ask me if I could possibly work along with Ray.

CHAIRMAN TORRES: So you felt Miss Embree took into consideration your needs and your concerns and was helpful in making sure that your problem was taken care of. Is that correct?

MS. HERNANDEZ: At that time, yes.

CHAIRMAN TORRES: At that time. Is there any other time that she has not taken that into account?

MS. HERNANDEZ: There were a few other things but they were personal. They had nothing to do with this here.

CHAIRMAN TORRES: I'm sorry?

MS. HERNANDEZ: They were personal. They had nothing to do with this particular hearing.

CHAIRMAN TORRES: I'm going to remind you very carefully and very directly that you are under oath and we expect the truth today.

MS. HERNANDEZ: Yes.

CHAIRMAN TORRES: Not conjecture, not stories, not anecdotes but what you know to be the truth, and that's extremely important for you to understand. At any time were any biases raised in front of you or about you or in your office personnel?

MS. HERNANDEZ: None that I am aware of. I was told certain things that were said by Judith Embree. The only other encounter that I had was I did file a grievance against Ray Banion. My grievance was rejected by Judith Embree as a complaint.

CHAIRMAN TORRES: And you think that was fair?

MS. HERNANDEZ: No, I don't.

CHAIRMAN TORRES: Why?

MS. HERNANDEZ: Because at the time, I was filing a grievance. She knew of all the things that were going on between Ray and I.

CHAIRMAN TORRES: What do you do at the Victims program? Do you process claims?

MS. HERNANDEZ: I supervise the payment section and receptionist area.

CHAIRMAN TORRES: You supervise the...?

MS. HERNANDEZ: Payment section.

CHAIRMAN TORRES: Payment section. So if I have a claim, you're the one I would have to

see to make sure that I'd get my payment?

MS. HERNANDEZ: No. No. Payment section involves inputting the payment information into the computer.

CHAIRMAN TORRES: So you're not aware of any racial prejudices within the office that you work in then.

MS. HERNANDEZ: Oh, yes.

CHAIRMAN TORRES: Well, that's what I've been trying to ask, Miss Hernandez. Can we get to that? Would you please tell us what those experiences have been?

MS. HERNANDEZ: The racial prejudice that I encountered was with Ray Banion.

CHAIRMAN TORRES: And you feel that that was not taken care of by Miss Embree.

MS. HERNANDEZ: No, it wasn't.

CHAIRMAN TORRES: Do you feel that she expressed any racial bias towards you or to others in the office?

MS. HERNANDEZ: Maybe toward others but I never experienced it toward me -- other than hearsay.

CHAIRMAN TORRES: All right. Well, we don't want to deal with hearsay so we want to know what your personal experiences were. That's why you've been asked to testify. Are there any other things you'd like to add to this testimony on your part?

MS. HERNANDEZ: No.

CHAIRMAN TORRES: Any questions? Mr. Calderon.

ASSEMBLYMAN CALDERON: Well, since the issue's been raised, what was the racial conduct, discriminatory conduct, that you were concerned with?

MS. HERNANDEZ: Concerning Ray Banion?

ASSEMBLYMAN CALDERON: Yes.

MS. HERNANDEZ: Ray did not like the idea that I came over as a supervisor to work under him. He tried numerous times to demote me to an office tech. There were also statements that were made concerning my color and me being a woman.

ASSEMBLYMAN CALDERON: What statement?

MS. HERNANDEZ: There was a statement that Ray had made regarding have-nots, and to him, Black people were considered have-nots.

ASSEMBLYMAN CALDERON: All right. Any other racial statements?

MS. HERNANDEZ: No.

ASSEMBLYMAN CALDERON: And what about your sex?

MS. HERNANDEZ: Ray had this thing against women being in a certain position, and he felt that women were being used to be in a certain place.

ASSEMBLYMAN CALDERON: Well, were they statements that he made to everyone or just statements he made to you? I mean, how do you know you're not -- you just...

MS. HERNANDEZ: They were statements that Ray had made to me. Ray and I had numerous conversations. He was the type that when he got upset, he would -- there was an outburst.

ASSEMBLYMAN CALDERON: All right. Well, I don't want -- the only thing I'm trying to establish -- all right now, the issue of racial discrimination has been raised insofar as what Judith Embree's opinion was relative to a complaint that you voiced with her, an employee, that you voiced with her about racial discrimination. That is relevant in my mind because many of the victims are of color who apply for claims. If there is an attitude on the part of Miss Embree that's racially discriminatory, then it affects the way she processes or manages the processing of claims. For instance, if she thinks Blacks deserve it, then maybe she doesn't process Black claims. Or if she thinks Blacks or Mexicans put themselves into the position to be victims, then maybe she's not as sensitive about processing those claims effectively and efficiently.

Now, you've raised the issue -- I'm just trying to determine whether or not you think that that's something we ought to explore or not.

MS. HERNANDEZ: As I stated earlier, to my knowledge, I don't know of any racial prejudice in paying claims as far as Judith Embree is concerned; only against Ray Banion. Ray Banion would be the only one that I have had knowledge of that would be prejudiced against Blacks.

ASSEMBLYMAN CALDERON: All right. Thank you.

CHAIRMAN TORRES: Did Miss Embree ever indicate to you that she was prejudiced against overweight people or fat people?

MS. HERNANDEZ: No.

CHAIRMAN TORRES: She never made that statement to you?

MS. HERNANDEZ: Not to me, no.

CHAIRMAN TORRES: Did you at any time throw a camera crew out of your office or out of the offices that came to do a story during this last few weeks or months?

MS. HERNANDEZ: I asked them to leave, yes.

CHAIRMAN TORRES: And what was the basis to asking them to leave?

MS. HERNANDEZ: Well, I wanted to know why they were there, number one. Around that time, Ray Banion, it was his death, and I just wanted to know why they were there.

CHAIRMAN TORRES: And you asked them to leave.

MS. HERNANDEZ: Yes, I did.

CHAIRMAN TORRES: Okay. Thank you very much, Miss Hernandez. Miss Espejo, what is your role in the office?

MS. ESPEJO: I'm a word processor in the payment section.

CHAIRMAN TORRES: Uh huh. How would you describe the morale in the office?

MS. ESPEJO: It's low, very low.

CHAIRMAN TORRES: Very low. Why?

MS. ESPEJO: Due to the working conditions.

CHAIRMAN TORRES: What personal experiences that you have had might affect your attitude towards your job or the program?

MS. ESPEJO: Well, last year my mother was terminally ill. She had a rare kind of cancer and there was no cure for it. So I'd taken a leave of absence because she was at the hospital and there

was nothing more they could do for her, so she wanted to come home to die. So I took a leave of absence to be home with her and take care of her until she died.

CHAIRMAN TORRES: How long was that?

MS. ESPEJO: About a month. So then she died on a Tuesday night and the funeral was on Friday and then on Monday, I was called by my supervisor, per Judith, you know, that she was demanding for me to come in, and if I didn't come in, I would be put down on AWOL. And so, I was already still grieving from my mother and all that, because I was so close to her. I tried to call Judith that day. I left a message. You know, I thought well, maybe if I talked to her she might understand how I'm feeling, and she never returned my call. So that week I got a doctor's excuse for that week but I was forced to come in the week after that, and I really wasn't ready to come back to work, and when I did, I was just -- you know, I couldn't work. I was still grieving.

CHAIRMAN TORRES: And what was the end result, Miss Espejo?

MS. ESPEJO: Well, she had said that I had taken too much time off for that.

CHAIRMAN TORRES: And you explained to her what you were doing during that period of time?

MS. ESPEJO: Well, I'm sure she knew because, you know, she wanted to know what was going on through my supervisor. She had my supervisor call me at home a couple days after the funeral and said, you know, that Judith demands that you come in or else she'll put you down for AWOL because she said I had taken too much time off.

CHAIRMAN TORRES: Have you ever been harrassed by management in other occasions?

MS. ESPEJO: Well, I don't know -- well, when I first got to the Board of Control, I was put on phones, and I guess they wanted the phone people to work until five and stuff and I couldn't work until five on certain days because I was going to a chiropractor. Well, she wanted the proof that I was going to see the chiropractor so I had to come up with that proof.

CHAIRMAN TORRES: What's unreasonable about that, in your opinion?

MS. ESPEJO: Oh, I didn't really think it wasn't, you know. I had the proof so she knew that I had the appointments. But, you know, when she did that, when she wanted me to come in when I was still grieving over my mom -- I mean, everybody is different, you know, but I mean it's like she didn't have any feelings at all, you know, nothing.

CHAIRMAN TORRES: All right. Is there anything else you'd like us to know?

MS. ESPEJO: No. That's it.

CHAIRMAN TORRES: All right. Thank you very much for coming. Miss Yoshida?

MS. YOSHIDA: Yes. My name's Chris Yoshida. I've been with the Board of Control since January of '83 and I am currently a senior claims specialist in the supplemental verification unit.

CHAIRMAN TORRES: Since '83?

MS. YOSHIDA: Yes.

CHAIRMAN TORRES: And what was the supplemental verification unit established and what is its purpose?

MS. YOSHIDA: The supplemental verification unit was started in July of this year because

prior to it, specialists had all the claims through the entire process. They had them as emergencies, they had them as regulars and supplementals, and they didn't know how to prioritize their work. A lot of them felt, as I do, that the people who need it are the ones who haven't been paid yet and, you know, you don't want to put ahead the people who have already gotten money; let's get these people money who haven't got it. Management was very hung up on statistics. So what they did, what a lot of specialists did, was during the early parts of the month, they worked regular claims, and because supplementals were so easy, they did those during the latter part of the month. But yet, if you only work it during the last one or two weeks of the month, they'll sit until then.

So we started the supplemental verification unit in July -- I'm sorry, June of this year to deal just with additional payments on claims. There are currently 11 specialists, myself as a senior, and one supervisor to deal with all claims throughout the entire Board that are supplemental.

You've got 10 -- a minimum of 10 people on three teams, so 30 people who do the initial claims who'll never see them again. The people in the supplemental unit will see it again and again and again until either the patient no longer -- or the claimant no longer requires the money or the claim has paid out at its maximum.

My current capacity is to review all supplemental reports submitted by the counties that are under a joint power or special project contract. The three other seniors review the initial claim under the joint powers/special project contract and I then review all the other ones. I currently review approximately 50 claims a day whether I pay them -- you know, authorize payment or send them forth as something else. But I'm reviewing currently 50 a day.

CHAIRMAN TORRES: 50?

MS. YOSHIDA: Yes.

CHAIRMAN TORRES: How does a request from preferred service providers affect the processing of claims?

MS. YOSHIDA: One Saturday -- I had been in training all week and I came in Saturday because I knew no one had touched my desk and there was a backlog of mail for supplemental reports that needed to be paid. I wanted to get there to do it and when I came in, we were told that we had to get these claims for a crime victim center put out because they were making a big ruckus about it.

CHAIRMAN TORRES: Stink.

MS. YOSHIDA: Right. So for eight hours we worked on it. Of approximately the 30 or 40 claims I reviewed, there was not one that I could even pay because I -- and I'm the only one -- and I'm so current. As the claims -- or the reports come in the office, they're stamped in the mail room. The claims are then delivered to me personally and I go pull my files and I review them. Within 24 hours they're out. Or I used to, but until all of this came about, I'm a little backlogged maybe one or two days. So if it's there, it's being paid.

CHAIRMAN TORRES: If you were Tony Anthony, head of General Services, what would you do after you've heard the testimony -- you've been here all day, as well as all of us have -- what would you say to Judith Embree when you'd call her in and tell her to do about the program? What would you advise her to do? How would you help her to make the program more effective?

MS. YOSHIDA: Promote me, maybe. (Laughter.) Sorry.

CHAIRMAN TORRES: You would tell Miss Embree to promote you.

MS. YOSHIDA: Yes. From where I stand, because we work with joint powers/special projects, and we pay the counties to do the work, in two weeks I reviewed over 400 claims, and of those, 200 went back because they don't comply with our manual. I think we are spending money on -- you know, to have the counties do claims that they don't do adequately. In turn, they come in house. We have to review it, we have to send it back, and the claim itself gets bounced back and forth before it can physically get paid.

CHAIRMAN TORRES: And why is that happening? Because nobody reads the manual?

MS. YOSHIDA: Partly. And the manual changes, and when the manual is updated, a lot of people don't bother putting manual revisions in there, or you get your little memos and memos get put elsewhere besides in the manual, so you're not current with procedures. A lot of times -- one time we were in a crunch where we were told to pay the claims. Just get them through. So a lot of the procedures went lax. That's when everybody in the department were doing supplemental reports. I am the only senior who does supplementals, and from me, I filter any claims over \$3,000 or questionable issues to three analysts. I don't feel that I can correct or make phone calls on all these claims and correct them myself, and I went to Judith and I said, "I can't do this, I have to send them back to the county they're getting paid to do," which she agreed. So I think we should just do away with the contract counties and bring more people in house where we are -- because people in house have the expertise which the people in the county don't have. When we hire specialists on board, they have direct contact with us and we can then help them and advise them how to process these claims correctly.

CHAIRMAN TORRES: What would you do about morale in the office?

MS. YOSHIDA: Well, I know morale in the office is really low. A lot of people who are there are there because they like the job. They just don't like the way things are being run. I'm one of them. I like the concept of the program. I just don't know what to do. I went to Miss Embree about two and a half weeks ago with my concerns because I am putting in between 9 and 10 hours a day and 8 hours on weekends. I see a lot of staff -- there's a lot of dead weight there with people who don't do anything. Management is aware of these people, yet they don't do anything to them. Currently, there are four senior specialists and only two of us are required to do something similar. The other two are kind of like oh well, you know, they're there; they've got the title; they get the pay; but because they don't -- aren't as efficient, they aren't required to do the same things. I went to her and said, you know, I'm really frustrated. On Saturdays I come in and I put in my 8 hours, or my 9 or whatever is required, yet I see analysts who are higher paid sitting in their office reading the paper. My supervisor, who is required to be there because I can't be there without one, is in the smoking room 6 out of the 8 hours maybe. I'm at my desk almost constantly. My staff knows where to find me. As much as I am at my desk, my supervisor is away from her desk. And I brought this all out to her. I don't know if you're aware of this, but at least in me telling you, then I know you know it and you can deal with it with any way you choose.

CHAIRMAN TORRES: Was she responsive?

MS. YOSHIDA: Well, she thanked me and said that there were changes that were going to come about. Quite a few months ago, I expressed my concern to her also because I'm over the supplemental verification unit which has trained staff. The newer people are put out into regular verification and it takes approximately a year to learn the process, and I said I didn't think it was proper or right for these new staff to be given inadequate seniors to go to who they wouldn't go to anyway because they don't have any faith in them. So instead, they sit at their desk and they ponder over a claim, which if they had a faith in a person they could go to, they could tell them how to remedy it. I was told that there are structural changes that are being done and to wait. I had requested to go out there because I would personally like to help these people. I told her that the new people aren't even being given a chance to be good specialists because they don't have the proper guidance.

CHAIRMAN TORRES: Have you had any personal problems in the office?

MS. YOSHIDA: Not with Miss Embree, no.

CHAIRMAN TORRES: With whom?

MS. YOSHIDA: Mr. Ray Banion.

CHAIRMAN TORRES: All right. Do you think you need to discuss that?

MS. YOSHIDA: No.

CHAIRMAN TORRES: Any questions? Anything else you'd like to add to us?

MS. YOSHIDA: No.

CHAIRMAN TORRES: All right. Do you feel comfortable now that you've come here?

MS. YOSHIDA: Yeah. I'm fine.

CHAIRMAN TORRES: You're relieved now.

MS. YOSHIDA: Yes. Thank you.

CHAIRMAN TORRES: It's a very stressful experience and we appreciate you all taking the time to be with us.

Mr. Godegast?

MR. GODEGAST: Yes, sir. My name is Richard Godegast and I have been with the State Board of Control since March of 1972 in various capacities. I'm presently an associate governmental program analyst in the Victims of Violent Crime program.

CHAIRMAN TORRES: When you were the manager in the government claims unit, did you ever see an organization chart?

MR. GODEGAST: Yes, sir.

CHAIRMAN TORRES: And was the Board of Control directly reporting to Miss Elizabeth Yost, chief deputy director of the General Services Department?

MR. GODEGAST: Yes, sir. I saw an organization chart put out by the Department of General Services indicating the Board of Control reporting directly to and through Mrs. Yost.

CHAIRMAN TORRES: Have you seen the new chart?

MR. GODEGAST: No, sir, I have not.

CHAIRMAN TORRES: It was issued on November 3rd, I believe? November 9th, I believe,

which no longer shows Miss Yost as having any direct contact with the Victims Crime unit. Have you seen that new chart?

MR. GODEGAST: No, sir, I have not. I have not seen an organization chart in approximately two years.

CHAIRMAN TORRES: Okay. Has the Board of Control always reported to and through the chief deputy director of General Services that you know of?

MR. GODEGAST: To my knowledge, yes, sir. I, at one time, held the capacity as deputy executive officer of the State Board of Control, both as the deputy executive officer and manager of the victim indemnification program from 1972 until early 1981, and then I was the deputy executive officer in the government claims unit. During the time I was in both those capacities, it was routine for us to report to and through the deputy. In particular, in the case you're asking about, I reported personally to Mrs. Yost in that capacity to brief her on sensitive issues or certain things that it was conveyed to me that either she would be sitting or that she would personally convey that information to Mr. Anthony after she had reviewed it and it was in a format that she approved. Or my staff, at the time, would report to Mrs. Yost's staff to brief them so they could brief her.

CHAIRMAN TORRES: Um hmm. So who runs the fund? Miss Embree or Miss Yost?

MR. GODEGAST: In my opinion, all rules, guidelines, and the organization is run by Mrs. Yost.

CHAIRMAN TORRES: By Mrs. Yost. So Miss Embree really is sort of like a caretaker for Miss Yost?

MR. GODEGAST: She's the on-site administrator of the program, yes, sir.

CHAIRMAN TORRES: In your experience, does that mean that she has full authority or does she always have to check her actions with Miss Yost?

MR. GODEGAST: I would say that she has to check her actions, yes, sir.

CHAIRMAN TORRES: What is the nature of training, as you've experienced it, inside and outside the organization?

MR. GODEGAST: The nature of training I do not believe is sufficient. During my capacity as deputy executive officer in the Victim program, I also personally participated in that training, or assured that those people that were doing the training had full knowledge of the program. I do not see that occurring, and I think earlier testimony by Miss Yoshida exemplifies that in that part of that training includes training outside people, the contract counties. From both materials I've seen personally that cross my desk that I have to review, and comments from my peers, it's very evident that while they're doing the best job maybe they're capable of, that capability does not match the task.

CHAIRMAN TORRES: What kinds of things would Miss Embree check in with Miss Yost about?

MR. GODEGAST: Well, any rule or guideline as to how the claims would be processed or as to how the policy -- the staff would review the claims...

CHAIRMAN TORRES: Personnel issues as well?

MR. GODEGAST: Personnel issues as well, yes, sir.

CHAIRMAN TORRES: She would have jurisdiction over personnel issues, claims...

MR. GODEGAST: Yes, sir.

CHAIRMAN TORRES: ...procedures within the office itself?

MR. GODEGAST: Yes, sir. That's been my experience.

CHAIRMAN TORRES: So a pretty hands-on interaction.

MR. GODEGAST: I don't know about day to day, but I think in the major policy issues or major staff, yes, sir, or disciplinary actions as well.

CHAIRMAN TORRES: Disciplinary actions as well?

MR. GODEGAST: Yes, sir. I know my own case, it was personally reviewed and controlled by Mrs. Yost.

CHAIRMAN TORRES: And what personal experiences have you had on the job that would affect your job performance?

MR. GODEGAST: I have not had any personal experiences directly with Mrs. Embree in that I dealt directly with Mr. Banion, who was my immediate supervisor. I do know that I was the only analyst, that I'm aware of, that had all of my claims -- I was a little surprised when I came into the organization, back into the organization, as an associate analyst in April of '86 that only claims that upon which I would make a recommendation of deny or for the Board to discuss would be reviewed, that no-allow claims were under such scrutiny. I was advised by my peers that that was in order to process more claims, period. They didn't care about anything else but processing claims.

However, all of my claims happened to be under review by Mr. Banion. He conveyed to me -- I was not told this personally -- but he conveyed to me that those orders came down from above and through -- above but through Mrs. Embree.

CHAIRMAN TORRES: Now, it's fair to say that Miss Yost signed your demotion notice. Is that correct?

MR. GODEGAST: That's correct, sir.

CHAIRMAN TORRES: She also testified against you at your hearing before an administrative law judge?

MR. GODEGAST: That's correct, sir.

CHAIRMAN TORRES: Why do you think she did that?

MR. GODEGAST: It would be speculation on my part. I believe it was a personal attack on her part, that she personally wanted to see that that demotion occurred.

CHAIRMAN TORRES: Why is that?

MR. GODEGAST: I believe our style of management is quite different. I believe in utilizing all the key members of my staff, and I was very fortunate to have some extremely -- we do have at the Board of Control very dedicated and very key intelligent people at the Board of Control. And I believe that they should have full authority to act within the scope from which they're paid; the analysts in particular.

CHAIRMAN TORRES: Well, what policy decisions was there disagreement on between you and Miss Yost?

MR. GODEGAST: Well, I was also the labor relations officer at the Board of Control for a brief

period of time and I handled all personnel issues, or labor relations issues, and in that capacity, I had to deal with Department of General Services to and through their unit. So there were many areas in which I had to touch base, not only as the deputy executive officer and acting executive officer at times. I had to deal with that department through Labor Relations, and also as the manager of the government claims, the toxic program, and the local mandated program. There were many issues in which Mrs. Yost disagreed with my method of allowing staff to give their opinion, both in writing and verbally, freely, to the point so we could utilize their expertise.

CHAIRMAN TORRES: Do you think that interfered with the operation of the agency and the fund?

MR. GODEGAST: In not allowing that flow of information? I definitely do. I think in my present capacity as an associate governmental program analyst in working with the indemnification program and nor my peers allowed to do an analysis of a claim where there are major issues. We're allowed to put down maybe one or two brief sentences; preferably no more than that.

CHAIRMAN TORRES: Is there anything else you'd like to add before this committee?

MR. GODEGAST: Only in that I was fortunate to be involved early on in the program, from 1972 until '81, and some of the people that have testified here today and others who have not, were also around during some of that period of time. And I can personally testify to their dedication to the program in what they believe in and what they're trying to achieve. I don't want the committee to go away with a feeling that because you have seen some results of claims being not processed in a real timely manner, or maybe the staff even stating that they do object to times to providers being given precedent over victims, that they in any way are not dedicated to what they're doing. They are dedicated to victims, and I think that is their primary goal, or they wouldn't have stayed as long as they have within this program.

CHAIRMAN TORRES: So what would you tell Miss Yost on how to improve the program?

MR. GODEGAST: I think, number one, we have to look at the structure, the management structure, that is presently enforced. It needs to be looked at as far as the capabilities of the people that are in the position; expanding that present management, broadening the base, utilizing more key people that we do have within the program. Training should be looked at extensively, not only the material that's being trained but the people that are providing the training. And I would have to agree that I think that bringing more of the processing within and under the umbrella of the administrative arm of the Board of Control, or whatever agency administers the program, will be much more effective. I think that legislation might be pursued in looking at expanding the Board to include it to have people that have maybe medical knowledge, either psychotherapy -- or psychotherapy and straight medical knowledge would be beneficial. There's a number of areas.

CHAIRMAN TORRES: All right. Thank you very much. Thank you all very much for being with us.

I'd like to call on Mr. Austin Eaton, Miss Judith Embree, and Miss Elizabeth Yost. Would you please come forward?

ASSEMBLYMAN CALDERON: Mr. Chairman? I just want to -- Miss Hernandez' testimony, I

didn't really understand exactly what it was. I don't think that -- I don't want to indicate that I think that there's -- that that -- whatever she testified to was any evidence of any racial discrimination on the part of Miss Embree, but I wanted to explore that in any event. Thank you.

(SWEARING IN OF WITNESSES)

MR. DeWITT: Please raise your right hand. Do you solemnly swear or affirm the testimony that you are about to give before this committee is the truth, the whole truth, and nothing but the truth?

Please be seated.

CHAIRMAN TORRES: I want to thank each of you for coming voluntarily, without the necessity of subpoena. We welcome your cooperation in this hearing today. Mr. Eaton, please.

MR. AUSTIN EATON: Mr. Chairman and members of the committee, I think you have before you perhaps the prepared remarks that I had today. I don't want to bore you with reading through those again, but I would like to highlight some of those areas.

Again, the program is about 20 years old and it has seen phenomenal growth, almost without fail, through that period; growth in terms of the number of claims received and in the number of types of victims who can qualify for this program. It started out as a violent victim program and has progressed from there to other types of victims, so that we have a more broad base clientele, or whatever expression you want to use for that.

As has been expressed earlier, we did have over a 50% growth last year, and you've heard considerable testimony today and questioning about the backlog, and I think that that is today the major contributor to that backlog is that significant and somewhat unanticipated growth. We had been experiencing a 15-20 percent growth in the program and last year we had a 56% growth, and that, I think, in any kind of a program, creates a backlog and creates strain in terms of the resources that are available.

CHAIRMAN TORRES: How long have you been executive director of the Board of Control?

MR. EATON: I was appointed on August 18th of this year.

CHAIRMAN TORRES: And what was your previous management experience?

MR. EATON: I was the -- most recently the state's purchasing manager for six years, and in that capacity managed all of the state's purchases for all the state departments, amounting to about 700 million a year.

CHAIRMAN TORRES: Who actually runs the Victims of Crime program?

MR. EATON: The direct program manager is Judith Embree.

CHAIRMAN TORRES: And what role does Miss Yost play in that?

MR. EATON: Miss Yost is the chief deputy of the Department of General Services, and as such, in the absence of Mr. Anthony -- you know, my understanding always has been, working in that department, that in the absence of the director, the chief deputy assumes the duty of the director. And so, in that capacity and some occasions she sits as chair of the board, and in other instances where Mr. Anthony is not available, she acts as chair and exercises those duties.

CHAIRMAN TORRES: How would you characterize the morale in the Board of Control and the

Victims of Crime fund as you've been able to find out?

MR. EATON: Based on my own personal experience, I've had some comments by some staff that things are not that great here, but overall, the people there seemed to be willing and dedicated and don't -- you know, there seems to be a mix of people, but in general, I'd say it's, you know, maybe typical.

CHAIRMAN TORRES: The testimony that we've heard today is typical of most state offices?

MR. EATON: You asked me for -- pardon me, but you asked me for what my experience had been there and that's...

CHAIRMAN TORRES: And you've been there since August?

MR. EATON: Since August. For about two and a half months.

CHAIRMAN TORRES: The state administrative handbook, are you familiar with that?

MR. EATON: The state administrative manual? Yes.

CHAIRMAN TORRES: Yes. And do you use that manual in determining discipline, or do you use another manual?

MR. EATON: Normally, in terms of determining disciplinary actions, we would follow the state contracts with the various represented groups.

CHAIRMAN TORRES: There isn't a manual called, "The Progressive Discipline" that you follow or refer to?

MR. EATON: I'm not familiar with that specific manual.

CHAIRMAN TORRES: You've never seen it nor read it?

MR. EATON: No, sir. I've had instruction on and been a part of the progressive disciplinary process in my previous job and in this current position.

CHAIRMAN TORRES: And you're comfortable with that approach?

MR. EATON: Yes.

CHAIRMAN TORRES: Why?

MR. EATON: Well, I think it works. I think it gives the employee an opportunity if there are some disciplinary proceedings, be they at an informal level, which is where discipline should normally start, as with a conversation between the supervisor and the employee who they feel may have either a performance or an attitude problem, and on up through the more formalized grievance and/or complaints, depending on the nature of the problem, through any adverse action if necessary throughout that process; it gives the employee an opportunity to discuss the problem with their supervisor and with upper levels of management within that department, and gives them an opportunity to be represented by whoever their labor union might be, if that's the case.

CHAIRMAN TORRES: So in terms of dealing with the problems of processing the claims, your feeling is it has more to do with the fact that there isn't space, that there isn't enough employees, or is it morale or is it both?

MR. EATON: I think there's always a combination of those factors. Obviously, if everyone's morale is pumped up to the highest level possible, you get more production out of people. They do more work and it's better quality work. If there are morale problems, those influence it. But I think

the primary things we're looking at now is that increase in workload and the normal built-in delays in terms of adding staff when you've identified those workload problems.

CHAIRMAN TORRES: Are you familiar with any of the complaints regarding that there isn't enough guidance or support or consistency in terms of some of these guidelines?

MR. EATON: I am familiar with those complaints.

CHAIRMAN TORRES: What are you doing about them?

MR. EATON: I've been working over the last few weeks with the -- we have a contract with General Services where they do personnel management for us, and I've been working with the personnel officer and the assistant personnel officer to create a unit which would address those issues within the Board of Control to make sure that we do have consistent policy, that people are aware of what those policies are. Again, you know, that isn't something that gets created overnight, and as I said, I've been there about two and a half months, and you need some time on the job, I think, to figure out what the lay of the land is and see who's doing what and who isn't doing what, and I think that I've reached that point and have some plans in mind that will change the processes that the Board uses.

CHAIRMAN TORRES: Who interviewed you for your position?

MR. EATON: Tony Anthony, Dr. Elmer Jaffe, and Peter Pelkofer, who's the State Treasurer's representative on the board.

CHAIRMAN TORRES: How did you find out about it? Just in a notice?

MR. EATON: It was on a general exam announcement.

CHAIRMAN TORRES: And you applied.

MR. EATON: I did.

CHAIRMAN TORRES: There was no one from within the department or the agency that recruited you or said that you ought to look into it because of your qualifications?

MR. EATON: I think -- I had conversations with a number of people within the department who...

CHAIRMAN TORRES: Of General Services?

MR. EATON: Yes. Who said, you know, that's a good job for you, you ought to apply. And as a matter of fact, I had applied three or four years ago for that position when Lane Richmond was chosen. So I was aware of the Board activity.

CHAIRMAN TORRES: Mr. Calderon?

ASSEMBLYMAN CALDERON: Yes, Mr. Chairman. Mr. Eaton, the Victims restitution fund program, or Victims restitution program, has been plagued with a series of revolving door executives. I don't know if it's within your power to stay there for a year or so, but do you have intentions to stay there for a while?

MR. EATON: That's my hope.

ASSEMBLYMAN CALDERON: All right. What are you going to do to solve the problems of this program? Specifically, how are you going to solve the morale problems, how are you going to solve the contractor problems, the joint partnership agreements, in terms of the claims that are being

submitted through that process and apparently is breaking down when it was designed to facilitate the process? How are you going to reduce the backlog? And I want to commend you because at least you are acknowledging that there is a backlog. How are you going to reduce the backlog, and how are you going to put this program back on course?

MR. EATON: Okay, let me try to answer those questions. One portion of that was the joint powers agreements and the work that's done by those folks. We started those, and I wasn't there but I identify with the Board at this point after two and a half months, but we started that program in an effort to try to process claims more expeditiously; and to a certain extent it has worked, because more claims are being processed than if we didn't have those people.

But that program, in my opinion, has never been controlled. We've never had people at the Board level who are responsible for managing the joint powers agreements, contracts, and assuring that the work being done by those people is thorough and adequate, and looking at what are the economics of having JPA staff do that work versus Board staff. And so I'm looking at that, so even if we conclude that there is a reason for the JPA's to be there and to do that work, I want that to be managed work and managed by the Board from a central point so that we know what those various JPA counties are producing, what quality level they're producing, and if it's not up to a standard that we would expect, then we would take action; work with them to improve that, and if it doesn't improve, then it would be my recommendation that we add staff at the Board and process those centrally if we cannot get them done there.

ASSEMBLYMAN CALDERON: All right. Is it your opinion that there are enough staff people to manage the Victims restitution program?

MR. EATON: I'm not sure if I understand that question. It's my opinion that to date we have not had enough people working at the Board. We have had a major budget revision that was in the form of a finance letter and BCP that would add approximately 60 staff in this fiscal year at the Board.

ASSEMBLYMAN CALDERON: All right. Are those the 60 staff that the Legislature included in the budget that the Governor ultimately -- initially blue-penciled?

MR. EATON: I have no information that he ever blue-penciled those. They've been, as far as I know, in the budget and they were budgeted contingent upon the passage initially of Senator Davis' bill, 738, and your bill and then the other companion bill.

ASSEMBLYMAN CALDERON: So you're going to request -- are you going to request additional staff?

MR. EATON: I very likely will request additional staff. I look at the program and I feel there's a need for additional management staff at the Board to assist with coordinating our own staff, the JPA people, and assuring that those policies and procedures are in place. The audit has been talked about extensively here today, and statements have been made that nothing is happening on that audit; and I would like to counter that with the fact that we have had a group of people working on that audit. We've had a person almost full time on loan from the Controller's office, who's a senior auditor. She and I have been working very closely together. As you know, our response to that audit

is due on the 18th, which is next week, and it's my intention that tomorrow I will have transmitted a draft response so that the Board can consider that next week so that that can become our official response to that. And that addresses each of the areas identified in the audit and gives our plan as to how we're going to address those.

ASSEMBLYMAN CALDERON: All right. Are you going to submit a memo indicating to employees that it's okay for them to talk to members of the Legislature which oversee your budget for this exact reason, so we can make sure that the money we spend gets spent effectively and efficiently?

MR. EATON: The policy at the Board when I arrived there, and I endorse that policy, is that contacts with members of the press and members of the Legislature should be directed to my attention so that I can speak for the program in total. I don't consider that a gag order on staff or a muzzle. I consider that a way to ensure that you're getting the response you need and I don't have a dozen people responding to a dozen different answers and maybe they're not privy to all the information they need. So I would plan to continue that policy that legislative and press contacts be directed to my office.

ASSEMBLYMAN CALDERON: Well, there are indications -- you see, your end of the job hasn't been doing very well. I mean, the supervisors have not been doing real well in terms of being forthright, it appears, with the Legislature. And it's no good to just keep firing the executive director so that a new one can come in and say I've just got here guys, give me a chance. Because that doesn't solve the problem either. So I just want to know that as a member of the Legislature and a member of the budget committee that oversees the budget for this program, when I ask a question whether or not there's a backlog, that I'm not going to be lied to. Will you make that commitment?

MR. EATON: I'll make that commitment.

ASSEMBLYMAN CALDERON: Thank you.

SENATOR MARKS: Can I just ask one question?

CHAIRMAN TORRES: Senator Marks.

SENATOR MARKS: Why is it -- maybe you believe it's a question of staff, but why is it we've heard -- were you here all day? Did you hear the testimony?

MR. EATON: Yes.

SENATOR MARKS: We heard testimony from many people who testified how long it took for any of these programs to come about; to have verification. One woman testified that she was -- her problem with the care that she was trying to receive and that she hadn't heard for months and months and months. Why is that? Why is there this tremendous delay? I've been in government for a long period of time and it seems to me that I've always tried to expedite things as best I could. Why do we take so long?

MR. EATON: I don't know that I can give you a complete answer to that, Senator Marks.

SENATOR MARKS: Well, give me a partial answer.

MR. EATON: I think -- again, I'll go back to the fact that during this year the workload has increased, and that means that a lot of things -- we had staffing that was adequate to process claims

at a given level, and then they started coming in at a much higher level and that means you automatically -- you start to generate a backlog unless you some way increase your through-put. So those have been backlogged. There have -- I think there are many instances where you heard this morning, the victims themselves were here, and in many cases, they had contacted their local Victim Witness center and had been given some instructions and then there was flow of information back and forth with each of us pointing the finger at the other. And I think that has happened and people have wanted to get the onus off of their back and so they say maybe someone else did it. That's why I think that the solution to that is to control the process so that you know who's doing what, and if someone calls and wants an answer, they can get that answer and they don't have to call you so that they can get an answer out of our office. They're to get that answer straightforwardly and directly.

SENATOR MARKS: Are you satisfied with how slow this process is going?

MR. EATON: I'm terrified by how slowly it's going. I don't think victims, anymore than I think any of you do, should wait 10 months, 8 months, 6 months, however long that is. I think there's a reasonable process that has to go in. I think, you know, we're sort of being on the horns of a dilemma here today because we're hearing that we're doing things inappropriately in order to get things processed quickly and not doing a thorough job; and yet, at the same time, we're hearing that we're -- that even doing that we're too darn slow.

ASSEMBLYMAN CALDERON: I'm not sure that that -- that may be what you're hearing.

CHAIRMAN TORRES: I don't think he was finished.

SENATOR MARKS: I'm sort of finished. I'm not sure that I'm finished but I'm hearing your testimony.

CHAIRMAN TORRES: All right. Mr. Marks yields to Mr. Calderon.

ASSEMBLYMAN CALDERON: Thank you, Senator. I'm not sure that that's what's being -- that's not what I'm hearing. What I'm hearing is that the system is so inefficient. It is degenerating to such a point that your staff is relegated to simply putting up with whatever priorities management has so that management can protect its ownself in terms of being exposed to the public and to this Legislature of what a poor job they're doing. That's what I'm hearing. Because in the last analysis, you have had since 1965, and again, we can't say you because you've only been here a couple of months, but this program's had since 1965 to get its act together and it has not. And in fact, instead of solving the problems, it has come and misrepresented the problem and perhaps even lied to the Legislature whose job it is to put this program back in order. So that's what I'm hearing. I don't feel sorry at all that you have to go and pull cases out in order to meet your obligation, because you wouldn't have to do that if you were running the program properly.

CHAIRMAN TORRES: Let me remind Mr. Eaton -- I know you were just recently on the job, but in the 1985-86 budget the Victims program was augmented by an additional 24 positions and additional funding was included to allow for joint powers agreements with local Victim Witness centers for the full verification of claims and to enhance computer capabilities, which is the computer program that you have now at every desk and terminal, but nobody knows how to use it and it's not being used for what it was intended to be used for. The '86-87 budget approved 64 new

positions to add over a 50% increase in staff but the current management failed to allot for additional space so they were unable to hire.

Now we see from your own projections that the percentage of increase that you'll be asking from the Legislature won't even meet what backlog there is already. So when are we going to close the gap? It's absolutely incredible that here we have a Legislature who is more than willing, going overboard, to give you as much money as you need to resolve this problem, to give you as much staff as you need to resolve this problem; and this administration, whether it's Yost, whether it's Embree, whether it's you, whether it's Deukmejian, doesn't seem to find the space to put in the people that we've authorized you to hire. Why? What are you going to do about it?

MR. EATON: Well, number one, we are working for more space, and I've recently instructed the staff that in the interim while we're waiting for space, one of the problems...

CHAIRMAN TORRES: Waiting for space. We don't have space now.

MR. EATON: We do not have space for all that staff. We have space for a portion of that staff. We have requested additional space within the building that we're in. There've been some difficulties trying to negotiate a new lease with that building owner. I have a great reluctance to decentralize the staff, because I think that just adds to our problems of control within the department, and the only exception I've made is I've asked that we look for some interim staff so that people who are being hired and are in a training mode and really aren't in a production mode can have a place, or we can have them there so they can get that training while we are obtaining the necessary space.

CHAIRMAN TORRES: So who's going to be answerable to the Legislature? You? Yost? Embree? Who? Who are we going to go to and say have you done this yet, have you done this yet, have you reduced the backlog yet? Who is answerable to the Legislature other than the Governor and the administration, but who within that administration? You, Yost, or Embree?

MR. EATON: Well, I would say that the Board, the three-member Board, is the one that's answerable to you.

CHAIRMAN TORRES: But we already know that the Controller's representative has routinely been frozen out of decision-making in respect, and the Governor's appointment, and Mr. Anthony or Miss Yost basically run the operation, we've been told and what we know.

MR. EATON: Since I've -- with all due respect, since I've been here, I've been at all the Board hearings and I see no evidence that the Controller's representative is frozen out of those processes. In fact, he is very vocal, very articulate, and does, I think, an excellent job. But he fully contributes to the decisions made by that Board and is a full and active partner.

CHAIRMAN TORRES: So the people we have to rely on are the Governor's appointment, Mr. Anthony, and whoever the Controller's appointment or designee is.

MR. EATON: I think in -- yes.

CHAIRMAN TORRES: Those are the people that are to be held responsible.

MR. EATON: That is the Board of Control. You know, I am the executive officer and responsible for what the staff does, and they will, I'm sure, be holding me very much accountable for

the things that need to be done.

CHAIRMAN TORRES: Now, do you hire Miss Embree? Do you have...

MR. EATON: I didn't hire her. But she was there when I came.

CHAIRMAN TORRES: You can fire her.

MR. EATON: Yes.

CHAIRMAN TORRES: You can hire her and fire her.

MR. EATON: I would think I would want to discuss that with the Board before I...

CHAIRMAN TORRES: I'm not talking about whether you're going to do that or not. I'm just saying do you have the authority to do that.

MR. EATON: I believe that I do.

CHAIRMAN TORRES: All right. Are you looking into all of the testimony that will be presented today or it has been presented today to reflect upon that adequately?

MR. EATON: Well, I have not yet looked into it, obviously, but I'm reflecting on what I've heard and will have discussions with the staff and with Miss Embree.

CHAIRMAN TORRES: Well, you've had since August, it's now November, to reflect, and we think that it's appropriately -- if in fact you do have the power to do that, that you look at what changes need to be made. Maybe she needs to stay and maybe we need to improve the process and the guidelines. But I think -- you know, we get so frustrated here in the Legislature when we pass these bills, when Mr. Calderon has worked so hard in this area, as have others, and nothing seems to get done. I've never been in an experience in the 14 years that I've been in the Legislature where you've almost had an unwilling bride as this fund in terms of accepting help from the Legislature. It just doesn't seem natural.

MR. EATON: Well, I'll take that as an open invitation to come...

CHAIRMAN TORRES: It has been an open invitation and I'm just wondering where the opposition has been coming from in your administration. Senator Marks.

SENATOR MARKS: To continue your discussion about what Mr. Calderon asked you about the legislator testifying -- testifying to a legislative committee, you asked whether or not you would suggest authorized people from your staff to go before the Legislature. You asked that question. Remember that?

MR. EATON: Well, with respect, I'm not sure that was the question that Mr. Calderon was asking. I think that had to do more with telephone contacts or this sort of thing where people were inquiring of us.

SENATOR MARKS: So if the budget committee were to call a group of people from your office, you'd have no objection to them testifying.

MR. EATON: I would think that if you're going to review the budget of the Board of Control that you ought to have me before you and/or...

SENATOR MARKS: No, I'm asking you a question. Of the people who testified today, would you have objection to them come before the budget committee to testify?

MR. EATON: Testify as to what, sir?

SENATOR MARKS: Testify of the way in which the Board of Control is working. The Victims program. How it's working, whether it's working properly; whether we should give them more money or less money or change the positions.

MR. EATON: I don't think I'm prepared to answer that question at this time.

SENATOR MARKS: Would you care to tell me why?

MR. EATON: Well, I think I would have to reflect upon what's the reason for them being called to testify...

SENATOR MARKS: They're being called to testify as they did today before us. They have problems with the way in which the Board of Control works and the Victims program that they're...

CHAIRMAN TORRES: Senator Marks, if I may, these people did not come voluntarily because they were frightened of the repercussions and the potential retaliation. That's why we took the extraordinary step of issuing subpoenas, which is unheard of.

SENATOR MARKS: I cannot conceive of how a state employee, working for the State of California, as we do, is not authorized to testify before a committee on matters relating to the subject matter which they're involved. Now, maybe there is a problem in your department, but I'd like to know why that is. If you don't want to answer, you don't have to answer.

MR. EATON: I think it's a matter of how many people can we afford to have coming over and repeatedly testifying.

SENATOR MARKS: Oh, come on. You mean to say they're going to hamper the work of your Board by coming over here and testifying? You know that's not so. Thank you.

CHAIRMAN TORRES: We'll look forward to seeing you in the budget hearings, Mr. Eaton.
Miss Elizabeth Yost. Welcome to the committee.

MS. ELIZABETH YOST: Thank you. May I correct one impression. The letter which I received from you to testify is addressed to me but it starts off saying Mr. Anthony and I'm not Mr. Anthony. He is in the hospital today and he asked me to be here on his behalf. I'm chief deputy director of the Department of General Services.

CHAIRMAN TORRES: We sent you a direct letter, Miss Yost, because we wanted you to be here, not Mr. Anthony.

MS. YOST: But it says "Dear Mr. Anthony".

CHAIRMAN TORRES: I'm sorry. We'll talk to our secretarial staff.

MS. YOST: I just thought it was funny, that's all.

CHAIRMAN TORRES: They're overworked.

MS. YOST: You get busy, too, huh?

CHAIRMAN TORRES: That's right. That's right. We make mistakes, too. We're human, too. Now, let's hear about your mistakes.

MS. YOST: I'm sure I have lots of them.

CHAIRMAN TORRES: Let's start sharing them. How long have you been with the Department of General Services?

MS. YOST: Four and a half years.

CHAIRMAN TORRES: Four and a half years. What were you doing before that, Miss Yost?

MS. YOST: I was with the Department of the Youth Authority for 10 years.

CHAIRMAN TORRES: With the Youth Authority. Is that when you first met Miss Embree, in the Youth Authority?

MS. YOST: Yes. We were hired for the same...(interference) I worked with her for a period of three years. After that we did not work together for the next seven years, or whatever.

CHAIRMAN TORRES: So you've known each other for how long then?

MS. YOST: Well, as I know a lot of people, for probably 15 years.

CHAIRMAN TORRES: Fifteen years.

MS. YOST: Um hmm.

CHAIRMAN TORRES: So you've had a social relationship or just a professional one?

MS. YOST: Just a professional one. I have not seen her for the past seven years. In fact, I don't think we've even had lunch.

CHAIRMAN TORRES: You have not talked to her or seen her in the last seven years.

MS. YOST: No, that's correct, until she came to work for the Board.

CHAIRMAN TORRES: Until she came to work for the Board.

MS. YOST: That's correct.

CHAIRMAN TORRES: How often do you see her now?

MS. YOST: I'm not sure. In a -- you mean a professional or personal capacity?

CHAIRMAN TORRES: I'm talking about a professional capacity.

MS. YOST: Professional capacity? I see her when she comes with the executive officer of the Board. I do not have line authority over the Board of Control.

CHAIRMAN TORRES: You do not have line authority over the Board of Control.

MS. YOST: No, sir. And if you will check all the other 10 charts that we gave you, you will see that there is a dotted line. My job in the Department of General Services, as the director's chief deputy, is to coordinate all the information that comes in on his behalf.

CHAIRMAN TORRES: So in other words, Miss Yost, there aren't internal routing slips in the office instituted by you that all major decisions require your signature regarding this fund?

MS. YOST: No. The Department of General Services is a large department and Mr. Anthony has asked me to coordinate the information for all the boards and commissions and committees on which he sits, which I think is not unusual. Among those in which I'm involved and sit are the Public Works Board, the State Allocation Board, the Arbitration Committee, the -- I've forgotten which others. Anyway, there are a number of boards. In addition to that...

CHAIRMAN TORRES: Have you ever been regularly briefed by the Victims of Crime program?

MS. YOST: When the information comes in for the Board hearings, the staff in the department, the special assistant to the director and my special assistant, usually go over the work to see that the information is needed in order for the chairman of the Board to make decisions. But you will see that originally there were dotted lines between all of those boards and me.

CHAIRMAN TORRES: So you did not order a word processor technician or her supervisor to

alter a General Services' organization chart reflecting the lines of responsibility?

MS. YOST: No, I did not. In fact, I found out that when I saw the one that came over to you, I was concerned because -- and I asked the administrative officer, our deputy for administration, to look into how this came about. It appeared that they had also left off, if you compare it with previous ones, three offices along the bottom. So apparently, somebody somewhere along the line decided it was easier to have a straight line than to have a dotted line.

CHAIRMAN TORRES: Well, we have a memorandum here to a Mary Graff from a Mr. Alan Kline and that is assignment to review old guidelines and policies dated June 10th of '87 saying, "The eventual incorporation of any background material into a directive depends upon the approval from Liz Yost." If you still insist that it is not among a staff analyst's responsibilities, I will ask Judith for further direction, but it seems clear, at least in this instance...

MS. YOST: I never spoke to Mr. Alan about that. The general impression is that when the information from the Board, as it does for the Public Works Board and the State Allocation Board, comes to our staff...

CHAIRMAN TORRES: So you're saying to me that you shouldn't even be here today because you have no direct line or indirect or informal communication with...

MS. YOST: I have not said that. What I have said is that there's a dotted line. I am asked by the director of the Youth Authority to coordinate the information that comes in on the different boards that he sits on. That is my responsibility in my job.

CHAIRMAN TORRES: Youth Authority? You mean General Services, don't you?

MS. YOST: General Services, yes, excuse me.

CHAIRMAN TORRES: We all make mistakes.

MS. YOST: There've been so many Youth Authority people here today.

CHAIRMAN TORRES: We all make mistakes. Have you ever...

MS. YOST: May I further clarify in addition to that?

CHAIRMAN TORRES: Sure.

MS. YOST: The Department of General Services does nothing for the Board of Control, and I'd like to ask our fiscal officer to explain to you the other relationship. We have two relationships with the Board of Control. One is that the director of the General Services is also the chairman of the Board. In addition to that, there are about 35 boards, commissions, and committees who are not large enough to have staff of their own, and in terms of doing their personnel work, their budget work, and other items of that nature; so they contract with us and, in fact, probably last year they spent a large amount of money, and I'd like to ask our fiscal officer...

SENATOR MARKS: Can I ask one question, please?

CHAIRMAN TORRES: Just a moment, Senator. Miss Yost, let's not move so quickly. So it isn't true that you hired Miss Judith Embree.

MS. YOST: That's correct. I did not hire Mrs. Embree.

CHAIRMAN TORRES: You had no role in her hiring? You never said hey, Tony, I think she's a great person, you ought to hire her for this job?

MS. YOST: No, sir.

CHAIRMAN TORRES: You had no interaction in terms of Miss Embree or even talked to her about the possibility that she might be recruited for this position?

MS. YOST: May I tell you what it is before you interrupt me again?

CHAIRMAN TORRES: Of course, Miss Yost.

MS. YOST: Thank you very much. Whenever there is a position open in the Department of General Services or in the Board of Control, everybody, we go through exactly the same recruitment process. In fact, I was going to ask our personnel officer to come and testify to this also. That recruitment was conducted in exactly the same fashion as any other recruitments. Mrs. Embree, whom I believe I saw one day, I said, "There is a position open, you should apply for it." I also asked one of your legislative analysts. I said, "There is a position open, you should apply for it." I told any number of people there are positions open and you should apply for it.

CHAIRMAN TORRES: Oh, you saw Miss Embree and you told her that she should apply for it.

MS. YOST: Yes.

CHAIRMAN TORRES: But for seven years...

MS. YOST: As I did several others.

CHAIRMAN TORRES: But for seven years you had not seen her.

MS. YOST: Not on an ongoing basis, no.

CHAIRMAN TORRES: It was just a casual encounter or did you call her? How was the recruitment accomplished?

MS. YOST: It was not a recruitment. What we ask our personnel office to do is to widely spread the word in terms of who is out there, who's available, and ask people to apply. Twenty-five people applied for the position, and initially, Lane Richmond set up an interview panel to do the interviewing. He asked the director of the department and the chairman to sit on that interview committee and he could not. He asked me to take his place, so that Lane Richmond, Michael Kelly, and I interviewed probably 15 or 16 people. And I've not reviewed my papers on this; I didn't know this would be a big issue today. Sorry.

CHAIRMAN TORRES: No, the issue is just what role do you play over there because I'm very confused, because I hear one story from many other sources and now I'm hearing your story, which is why I wanted you here so that we had an objective evaluation of who's really in charge. Because part of our problem is where do we find the person who's responsible.

MS. YOST: I think perhaps I could clarify...

CHAIRMAN TORRES: Excuse me. I sought not to interrupt you as you requested and...

MS. YOST: My apologies, sir.

CHAIRMAN TORRES: ...please do so in my case. So at no time then have you had any impact in terms of budget change proposals regarding this department or fund?

MS. YOST: If the director is not there, then I sign the budget change proposals on his behalf.

CHAIRMAN TORRES: Sign? But no input.

MS. YOST: Not that I'm aware of, no.

CHAIRMAN TORRES: So in other words, you just sign statements without knowing what's in them?

MS. YOST: The budget change proposals are brought about by the executive officer. He brings them over and reviews them with -- he reviews them conceptually on several different levels with the chairman of the Board. The chairman of the Board reviews them. Then when they're in final position and they're ready to be signed, they're brought in. If Mr. Anthony is there, he signs them; if I'm there, I sign them.

CHAIRMAN TORRES: So in other words, upon your appointment in 1983 you specifically rejected -- you didn't specifically reject staff recommendations for increased hiring in the Victims of Crime program due to the Governor's determination to limit state government? You never had any role in that?

MS. YOST: I don't recall, Senator.

CHAIRMAN TORRES: All right. I'm going to remind you once more, Miss Yost, that you are under oath.

MS. YOST: Yes, sir, I understand that. If I could recall that, I would certainly come forth with it. As far as I'm concerned, there has...

CHAIRMAN TORRES: Are there any documents that you might need to refresh your memory that we might make available for you?

MS. YOST: I don't understand the question.

CHAIRMAN TORRES: The question is, when you were appointed in 1983, did you specifically reject staff recommendations for increased hiring in the Victims of Crime program? Do you recall that?

MS. YOST: I am not aware of that. It seems to me that Lane Richmond and Mr. Anthony had some meetings. In addition to that, Mr. Richmond met with the Board. You have to also understand, when the Board meets, that I am not privy to their executive sessions and I do not know what transpires in those executive sessions.

CHAIRMAN TORRES: Excuse me, Miss Yost, but we've heard testimony today that you have sat on those boards before in Mr. Anthony's...

MS. YOST: I have sat on the Board but not in executive sessions. I do occasionally substitute.

CHAIRMAN TORRES: Okay. In other words...

MS. YOST: But I am not a member of the Board and when there is an executive session, I am not present.

CHAIRMAN TORRES: Miss Yost, I understand you're not a member of the Board. I'm just merely attempting to ask a question, if I may. The question is, when you do sit on the Board as a substitution for Mr. Anthony, you have participated in these sessions, have you not?

MS. YOST: Yes, but not in executive sessions, which is where such items might come up.

CHAIRMAN TORRES: So at no time have you had any impact regarding personnel hiring or any other factors regarding personnel.

MS. YOST: My recollection, Senator, is that -- and that's a long time ago. In '83, when Mr.

Richmond was talking about the growth, the possible growth of the program, I indicated that he should probably put some plans together to bring in to the chairman of the Board. It seems to me that he did that. He brought in some plans and one was to add larger staff, another was to take to the local level, to the local victims centers, the ability to be able to have them process claims where they're located where they live and then send those to the Board.

CHAIRMAN TORRES: I know it's hard sometimes when you're trying to recollect a lot of things. I know I can't remember from one day to another without looking at a calendar or a schedule. But I think I can remember when Mr. Godegast was here just a few moments ago and you signed his demotion. You also testified against him. So you have had some impact in personnel matters.

MS. YOST: Senator, Mr. Godegast is in error. Tony Anthony signed Mr. Godegast's demotion or whatever it was, because...

CHAIRMAN TORRES: Apparently you signed the final revised sheet, and you didn't testify against Mr. Godegast?

MS. YOST: Let me go back to the beginning about Mr. Godegast. Mr. Richmond had some apparently long-standing problems, I guess, and after each Board meeting on the government claims side, not the victims side, after each meeting, if I sat on the Board that day, I would give Mr. Richmond and his staff some feedback on the types of information that was needed to make good decisions.

CHAIRMAN TORRES: Feedback? In other words, opinions, input? What do you mean by feedback?

MS. YOST: Opinions.

CHAIRMAN TORRES: So you knew what was going on with the fund then.

MS. YOST: Not the fund. Don't you hear me, sir? I'm saying the government claims side, not the victims side.

CHAIRMAN TORRES: So you had no...

MS. YOST: Mr. Godegast, my dealings with Mr...

CHAIRMAN TORRES: I may be deaf then. So let me ask the question again and would you be so kind as to answer it. So in terms of the Victims of Crime fund, you had no impact regarding personnel decisions or any other factors.

MS. YOST: I will repeat for you that I do not make those decisions. The chairman of the Board makes those decisions in consultation with the Board. The information may come to me, but...

CHAIRMAN TORRES: I understand what the formal gobbledygook is, Miss Yost. I want to know what you really do over there in respect to these decisions. Because it has not been uncommon for your name to crop up: You're in meetings with auditors, as auditors have testified to us before; you're testifying against an employee in a hearing; you're involved, irrespective from where that employee came from, you're involved in a direct letter, dated August 27, 1987, that you signed for Mr. Anthony. I suppose he's never in the office because you seem to do a lot of signing of letters in respect to an employee, Miss Suzanne Alexander, to her attorney on August 26. So I just want to know if I shouldn't be talking to you about what's happening over there. If you have no input, other

than (quote) "feedback", then we need to know that; otherwise, we'll just exclude you as a principal party to this whole mess that we've been hearing about this morning.

MS. YOST: Feedback. The feedback that I was discussing had to do with Mr. Godegast. I have not had any contact with Mr. Godegast since he's been a member of the Victims program. In fact, I think the work that I've seen on the couple of times I've sat on the Victims program as substituting for Mr. Anthony has been quite good. I think his observations about reorganization are also excellent.

When Mr. Godegast was on the government claims side of things, and I usually sit on the government claims side, not the victims side, Mr. Anthony does that, when I sat on the government claims side, if his work was not up to snuff and it was inadequate information for the Board to make decisions, I would give that back to Mr. Richmond and Mr. Godegast and say, "This is the reason why it's difficult to make a decision because this isn't clear to me when I read it." That's the only contact I have with Mr. Godegast. Personnel decisions are made by the executive officer and he does that in consultation with the Board of Control and they do that in executive sessions and I have never been present in an executive session of the Board to discuss personnel issues.

CHAIRMAN TORRES: I understand that. That was not my question. My question was not have you been present at Board of Control executive decisions regarding personnel matters. Please hear me correctly. The question is, are you or have you been involved in any personnel matters, not necessarily in the Board of Control, but within the operation of the Victims fund? Yes or no.

MS. YOST: No! Unless Mr. Anthony is not in the office. If there's a paper that needs to be signed for the chairman of the Board and he is not there, I sign that paper.

CHAIRMAN TORRES: So Mr. Anthony should be held responsible, not you, is what you're saying.

MS. YOST: That's correct.

CHAIRMAN TORRES: So you told him to get well and get over here fast.

MS. YOST: That's right!

CHAIRMAN TORRES: Have you at any time frozen out or at any time dealt with the Board of Control representative from the Controller's office regarding budgeting decisions?

MS. YOST: I'm not sure whether or not the budget decisions have gone to the full Board or not. Usually there's a great deal of pressure. So I don't know what Mr. Anthony's arrangement is with Mr. Pelkofer on this issue.

CHAIRMAN TORRES: So you have no knowledge of what role he played.

MS. YOST: No. But in terms...

CHAIRMAN TORRES: What role did you play?

MS. YOST: What role did I play in what? Budgeting decisions?

CHAIRMAN TORRES: Yes, Miss Yost.

MS. YOST: I don't make the budgeting decisions.

CHAIRMAN TORRES: I know you don't make the budgeting decisions, Miss Yost, but do you contribute to those budgeting decisions? I know you don't do a lot of things. It's clear to me that you don't do a lot of things. At least you don't decide a lot of things.

MS. YOST: I don't make the decisions, that's true.

CHAIRMAN TORRES: All right. I understand that, so let's get beyond that and let's deal with what you do do. Do you provide feedback or input, as you've described it, on budget change proposals?

MS. YOST: I'm not sure how to answer that. Let's ask Austin. Did I recently?

CHAIRMAN TORRES: Excuse me. I'm not asking Mr. Eaton. I'm asking you, Miss Yost. Do you or don't you?

MS. YOST: Make decisions on budget proposals.

CHAIRMAN TORRES: No, Miss Yost. It's not what I'm talking about. I'm talking about do you participate or do you contribute or do you try to influence budget change proposals?

MS. YOST: No. I am not involved in those decisions.

CHAIRMAN TORRES: Never have been.

MS. YOST: Well, I don't know what you mean by never have been. Let me make it clear. Let us say...

CHAIRMAN TORRES: It's being very clear to me that you're being extremely evasive. Senator Marks.

SENATOR MARKS: I'm sorry because I can't stay very long. Let me just ask you a question, because I mentioned once before and I'm not sure I'm proud of it, I'm the author of the bill that established the General Services Department a number of years ago.

MS. YOST: Yes, sir. I understand.

SENATOR MARKS: Did we do all the things -- did we give you all the power in that bill originally that you now have, or has the bill been amended since I authored it?

MS. YOST: No, sir. There was an amendment to Government Code 7.5. The amendment was, I think, to -- as a courtesy to the Controller's office, the Treasurer's office, and the Department of Finance. Those entities sit on so many boards, commissions, and committees that the...

SENATOR MARKS: When did that take place? Do you recall?

MS. YOST: I'm not sure when it was. The statutes of 1984. It was changed in '84.

SENATOR MARKS: I wasn't the author of that, I don't believe.

MS. YOST: And what it did was to allow a -- if a principal can't be present to designate someone else to be available, and there are other members, other deputy directors in our department who have sat on the Board of Control and make...

SENATOR MARKS: Well, what I'm really trying to find out is, did the original bill give the Department of General Services the power over the Board of Control it now has?

MS. YOST: I don't think the Department of General Services has any power over the Board of Control, sir. It may the director of...

SENATOR MARKS: Isn't Mr. Anthony the head of the Board of Control?

MS. YOST: He's the chairman, yes, sir, and it did.

SENATOR MARKS: Isn't he the director of General Services?

MS. YOST: Yes, sir, he is.

SENATOR MARKS: And he has power over the Board of Control not because he's director of General Services but because he has two jobs?

MS. YOST: I'm not sure. I can't answer that, sir. I've not looked back into the legislation and its history. I'll be happy to ask someone to do that and get back to you if you'd like.

SENATOR MARKS: No. I'm more interested, I think, in the question that Senator Torres has been trying to ask you. I'm just curious to know. Unfortunately, I can't stay very much longer so I'll have to read about it.

CHAIRMAN TORRES: Is there any other feedback you'd like to give us, Miss Yost? No decisions, just feedback.

MS. YOST: I do make decisions in the Department of General Services, but I don't for the Board of Control. I think that's all.

CHAIRMAN TORRES: All right. Miss Embree, welcome to the committee.

MS. JUDITH EMBREE: Thank you. I have a very bad sore throat so it's going to be a little difficult.

CHAIRMAN TORRES: I'm sorry to hear that.

MS. EMBREE: So am I.

CHAIRMAN TORRES: What was your managerial experience before you came over to the deputy executive director of the Board of Control?

MS. EMBREE: I was two years at the O. H. Close School for the California Youth Authority, and I was the supervisor of Treatment Services. I supervised a clerical pool, as well as had functional supervision of the parole agents in the institution, the staff psychologists and the consulting psychiatrists.

CHAIRMAN TORRES: So how many does that make that you had supervision over?

MS. EMBREE: Mmm, let's see. Ten -- oh, roughly 17 people specifically there.

CHAIRMAN TORRES: How did you find out about the job at the Board of Control? Was it Miss Yost who casually ran into you by accident and said...

MS. EMBREE: She mentioned it to me and it sounded like something that was very appropriate for me.

CHAIRMAN TORRES: Mm hmm. What was your -- you're now being paid \$4,400 a month as the director?

MS. EMBREE: Deputy executive officer, yes.

CHAIRMAN TORRES: Did you receive a substantial increase from moving over from the Youth Authority?

MS. EMBREE: No. As a matter of fact, I lost money.

CHAIRMAN TORRES: Really?

MS. EMBREE: Yes.

CHAIRMAN TORRES: Good for you. We appreciate that. That's a tremendous sacrifice on your part, I know.

MS. EMBREE: It has been.

CHAIRMAN TORRES: What is your working relationship with Miss Yost? Do you see her now, or work with her on issues regarding the fund?

MS. EMBREE: I think as was mentioned, when Mr. Eaton and I go to speak with the chairperson, we either speak with him or with Miss Yost in his absence.

CHAIRMAN TORRES: So, what do you speak to Miss Yost about? Not personally but about -- professionally, what do you speak to her about?

MS. EMBREE: We discuss problems within the Board, such as the backlog. I, too, acknowledge the fact that there's a backlog and I have all along.

CHAIRMAN TORRES: And what has she said to you to do about the backlog?

MS. EMBREE: Try and reduce it.

CHAIRMAN TORRES: And how has she suggested you do that?

MS. EMBREE: Well, there are a variety of means available to management. I'm not sure that Miss Yost has at any time specifically suggested things that we do, but there are always things available to management.

CHAIRMAN TORRES: But you feel you can go to her and ask for her advice on this, don't you?

MS. EMBREE: Well, I would never go myself. I would -- I work for Mr. Eaton and he has me with him as an advisor whenever we meet with the chairperson of the Board.

CHAIRMAN TORRES: So that's the only time you ever talk to Miss Yost is when you're in the presence of Mr. Eaton?

MS. EMBREE: My immediate reaction was we've been in the ladies room together at the same time but Mr. Eaton has not been there.

CHAIRMAN TORRES: No, I understand that, Miss Embree.

MS. EMBREE: No. On occasion, we have had lunch together because we have known each other for 15, 16 years.

CHAIRMAN TORRES: Do you exercise -- does she exercise any administrative authority over the Victims program?

MS. EMBREE: I would not say directly, no.

CHAIRMAN TORRES: She's had no impact or no direction in terms of hiring or firing or staff discipline?

MS. EMBREE: Direct impact? No.

CHAIRMAN TORRES: How about indirect impact?

MS. EMBREE: Only as she must stand in the stead of Mr. Anthony. We are not given directions by the Board on internal personnel policies. Management has always taken those responsibilities themselves.

CHAIRMAN TORRES: But you feel comfortable going to Miss Yost and Mr. Eaton to talk about these problems?

MS. EMBREE: I think so, yes.

CHAIRMAN TORRES: Have you?

MS. EMBREE: I've certainly spoken to Mr. Eaton about a lot of them.

CHAIRMAN TORRES: He's only been here since August.

MS. EMBREE: I have spoken with the prior executive officers rather openly.

CHAIRMAN TORRES: Have you ever ordered staff to change official state documents?

MS. EMBREE: No!

CHAIRMAN TORRES: So you're not familiar with the 6-34 form dealing with Netty Farnsworth on the issue of docking?

MS. EMBREE: No. I know what you're referring to.

CHAIRMAN TORRES: Pardon me?

MS. EMBREE: I know to which you're referring.

CHAIRMAN TORRES: So, in other words, it is not true that you or your subordinate, your secretary, ordered a supervisor to alter this form in order for Miss Farnsworth not to be docked as is required?

MS. EMBREE: The employee always changes the 6-34 him or herself.

CHAIRMAN TORRES: That was not the question, Miss Embree.

MS. EMBREE: Oh. I'm sorry.

CHAIRMAN TORRES: You and Miss Yost have known each other for some time because you have a very good way of answering questions. My question was, is it true that you or your subordinate, your secretary, ordered a supervisor to alter this form in order for Miss Farnsworth not to be docked as is required? Yes or no.

MS. EMBREE: I don't recall. I'm sorry. I just...

CHAIRMAN TORRES: There's no need to apologize, we just want to have your answer.

MS. EMBREE: I don't recall.

CHAIRMAN TORRES: If you don't recall, that's one way to deal with an issue. So it's not also true that in fact the very next month instead of being docked for that day she was simply given credit for a newly earned sick day. You're not familiar with that either.

MS. EMBREE: I'm trying to remember and put this all together. One hundred and six employees, it's hard to remember every detail. She was docked one month -- not docked one month -- and then given credit for sick leave the following month.

CHAIRMAN TORRES: Mm hmm. You don't recall that incident? Well, let's go on to another one. Is it not true that you also ordered a supervisor to change an employee dock to that of AWOL against that supervisor's will?

MS. EMBREE: Under what circumstance? As I said, I have 106 employees. If you could be specific, I might remember.

CHAIRMAN TORRES: Supervisor Mike McCormick apparently has had that experience with you.

MS. EMBREE: Has had which experience? Asking -- I have asked him to change an...

CHAIRMAN TORRES: Change an employee dock to that of AWOL against that supervisor's will.

MS. EMBREE: Can you name the -- you can't name the employee. I don't want you to. It would

be very difficult to be specific without seeing the document. If I could see the document, I could respond and without mentioning the employee's name.

CHAIRMAN TORRES: All right. What is the status of your current data processing system, the one that we approved so long ago?

MS. EMBREE: Well, it's finally in the process of being corrected.

CHAIRMAN TORRES: What does that mean, corrected?

MS. EMBREE: There were a number of -- well, let me back up. Evidently this happened before. I was at the Board so I really don't know exactly what the history was. From what I gather, when the Board of Control was first given data processing capability, a data processing technician or manager was not hired. And it's my understanding that a person who had been a clerical person and had worked up to an office tech position was assigned to do all of the input of the data for the computer system. She alone has been responsible, unfortunately, for that enormous task over a period of years. I'm not sure how long but certainly -- I came in '85 and we hired a new data -- a person who will be a data processing manager the first of September.

CHAIRMAN TORRES: Why did it take so long to hire that person?

MS. EMBREE: Because we did not have approval on two prior requests in our budget change proposals to hire a data processing manager. We were told to manage without.

CHAIRMAN TORRES: So is it true that you really put someone in there who only had two weeks' experience, two weeks' training, in computers to run that entire system?

MS. EMBREE: Who are you talking about?

CHAIRMAN TORRES: Miss Lunetta?

MS. EMBREE: Oh, no. Laura is the person that I'm saying from the day of the -- evidently from the day that the computer was brought into the Board, and I don't know when that date was, she was the one that had responsibility for doing the input of information. She has had no formal education in data processing. That's correct.

CHAIRMAN TORRES: And she was put in charge of the entire project.

MS. EMBREE: I guess so.

CHAIRMAN TORRES: Well, guessing and knowing are two different...

MS. EMBREE: I don't know because I was not there. It was much...

CHAIRMAN TORRES: So you don't have direct responsibility over the computer unit within your department.

MS. EMBREE: The position has always been under the administrative office, or the executive officer, although I did supervise her for timekeeping purposes. And Miss Lunetta has had responsibility for that entire data processing system up until the time we were able finally, through a budget change proposal, to hire a manager, a data processing manager I.

CHAIRMAN TORRES: Now, you were in the department in April of 1986?

MS. EMBREE: Yes.

CHAIRMAN TORRES: That's when the system was installed. Right?

MS. EMBREE: No. That's when the new VS 300 was installed. The system existed. We just got

a bigger box, a bigger memory capacity. The system was there prior to that.

CHAIRMAN TORRES: But the Legislature gave you the money to fund a computer system that you desperately needed in testimony before Assembly and Senate committees -- not your testimony, but someone did -- to reduce the backlog.

MS. EMBREE: And evidently they did not provide a person to give us the computer capacity with which to do that.

CHAIRMAN TORRES: We did not provide you? The Legislature did not provide?

MS. EMBREE: No, I didn't say the Legislature. Our budget change proposal was not approved...

CHAIRMAN TORRES: Ahhhh. Who has the power to approve those budget changes?

MS. EMBREE: Usually the Department of Finance is the one that passes on that.

CHAIRMAN TORRES: It was the Department of Finance now who did not approve your budget change proposal to allow you to have a more efficient computer system...

MS. EMBREE: Person.

CHAIRMAN TORRES: Well, a person has to run the computers. The computers don't run themselves.

MS. EMBREE: That's my understanding.

CHAIRMAN TORRES: And the Department of Finance said no, you don't need that person?

MS. EMBREE: That is my understanding. I understand -- when I arrived there, I said...

CHAIRMAN TORRES: And that person was absolutely needed to run the system in order...

MS. EMBREE: I certainly feel it is.

CHAIRMAN TORRES: Who made that decision?

MS. EMBREE: I don't know. I was not there. I'm saying that we had it in the budget change proposal last year and the year before and both of those were denied.

CHAIRMAN TORRES: Didn't you go to Mr. Richmond at that time or Miss Yost...

MS. EMBREE: No. Mr. Richmond was the one that negotiated with Finance.

CHAIRMAN TORRES: And that's all he was able to get.

MS. EMBREE: Yes.

CHAIRMAN TORRES: So the administration felt you didn't need the computer specialist to run the computer system that we gave you.

MS. EMBREE: Which administration?

CHAIRMAN TORRES: The Governor, the Department of Finance. They all work for the same administration.

MS. EMBREE: All I know is that the budget change proposal was not approved to include a data processing manager which had been requested twice.

CHAIRMAN TORRES: Why do you think that was? Did you have any feedback from the Department of Finance?

MS. EMBREE: I wasn't there. I was not included in the negotiations the second time, and the first time I was not working for the Board.

CHAIRMAN TORRES: How did it happen this year?

MS. EMBREE: We put the position in and made, I guess, a better argument, a stronger -- I don't know. We knew that we had major problems with the data processing; major problems that we could not resolve ourselves, and in fact, we hired consultants who destroyed information.

CHAIRMAN TORRES: So the budget change proposal that you're referring to did not go through Miss Yost but went through Mr. Richmond.

MS. EMBREE: Well, Mr. Richmond, as executive officer, would be the one that would present it. His name would be on the budget change proposal asking for the staff or equipment or whatever it is. When you put together a budget change proposal, you have one for personnel years and another one for equipment, and it appears that much of the equipment was allowed and approved, much of the personnel was allowed and approved to take care of the backlog.

CHAIRMAN TORRES: So Miss Yost had no impact on that budget change.

MS. EMBREE: I have no idea.

CHAIRMAN TORRES: You have no idea.

MS. EMBREE: No, I wasn't there.

CHAIRMAN TORRES: If I'm not at a hearing, I find out about it if it affects my area...

MS. EMBREE: No, no, no. I say I hadn't been hired.

CHAIRMAN TORRES: You hadn't been hired?

MS. EMBREE: In 1985.

CHAIRMAN TORRES: And in April of '86 when you got the system? Big box, rather.

MS. EMBREE: Let's see, the '86 budget proposal is done in '85.

CHAIRMAN TORRES: And when you got the computer system, there was no request for additional funds to hire that person? You see...

MS. EMBREE: No, the budget year, we were already into the new budget year.

CHAIRMAN TORRES: And why didn't your department come to the Legislature to ask for a Section 28 letter to get some money out to you?

MS. EMBREE: I have no idea. I did not question Mr. Richmond and ask him why he didn't do certain things. I said we need the person, how can we manage without it? His response, you know, as close as I can remember -- we're talking a couple of years ago -- it was unauthorized; we're going to try and develop a position in-house.

CHAIRMAN TORRES: How are you keeping your filing system now? Is it true that you still have files that are still located in boxes throughout your floors?

MS. EMBREE: The boxes are on the staff workers' tables and they're kept by terminal digit and by month, or else they're kept in shelves in their offices.

CHAIRMAN TORRES: Memorandum that I have, dated as late as November 10, 1987, from Eleanor Acox(?) -- do you know who that is?

MS. EMBREE: Yes, I do.

CHAIRMAN TORRES: She's a word processing technician. It says, "To Whom it May Concern: One of the many duties I have with the Board of Control is searching for lost files that analysts, claims specialists, and word processing technicians are unable to locate. Approximately three days a

week I'm asked to locate at least four or five misplaced files. It takes me approximately 2½ to 3 hours a day to locate the lost file in question." So all these boxes that are sitting on all these employees desks aren't in any order?

MS. EMBREE: Yes. I have not seen that memo from Eleanor, but let me explain. When a file is taken out of the file room, the person in the file room is responsible for recoding that file. The file room file number is taken off, and the person to whom the file is being assigned, that number goes in. All of our analysts and all of our claims specialists have a number. So if a file moves out of the file room and goes to a claims specialist's desk, that person's number is then input into the computer so that the file can be found. If that person, for any reason, is away from her desk or his desk — let's say he's off work for a day -- and a telephone call comes in, the file would be searched through the computer and it would say it's on desk #35. So somebody would go to desk #35, pull the file, talk on the telephone, and maybe or maybe not replace it that day.

CHAIRMAN TORRES: That sounds like a matter of minutes. It doesn't sound like 2½ to 3 hours a day to locate a lost file in question.

MS. EMBREE: Well, if they don't know that it's on another analyst's desk or another claims specialist's desk, they would go to the claim specialist...

CHAIRMAN TORRES: Treasure chest. It's a treasure hunt.

MS. EMBREE: Not really. It's really very effective. I recognize that Eleanor spends some time looking for missing files but we have 60,000 files.

CHAIRMAN TORRES: How can, in God's name, can you say to us that that kind of system is effective?

MS. EMBREE: We have 60,000 files; we have 106 people.

CHAIRMAN TORRES: And they're in boxes in people's desks around your offices?

MS. EMBREE: Yes, some are in boxes on desks. We have an enormous file room. You're certainly welcome to come and look at it. I think your staff person has, as a matter of fact. And we have approximately 60,000 files active in the program between the file room and people's desks at any given time. 60,000 files is a lot of files to keep track of, and missing 2 or 3 is certainly not amazing.

CHAIRMAN TORRES: It's more than 2 or 3. It's 3 or 4 or 5 a day.

MS. EMBREE: I still can't be overwhelmed by that kind of a number when you're talking about...

CHAIRMAN TORRES: It's obvious you're not overwhelmed by anything regarding this fund, because it's clear that if you were overwhelmed by it, you would have done something about it. That's what's so frustrating, and I don't mean that in a negative sense; I mean that in a cooperative sense from this Legislature to the administration. We are paid by the same taxpayer who wants productivity, who wants results. And now we're dealing with victims, and here you are essentially running the operation — I think you are. Is that correct?

MS. EMBREE: Yes.

CHAIRMAN TORRES: We need to know how to improve it. And it doesn't do us any good if we

seek to continue to ignore what problems are there; if we can try to work together on those problems.

MS. EMBREE: We are not ignoring problems. One of the biggest problems is human nature. The way that a file moves from one location to the other requires that the person handling it inputs that information into the computer. We do not have a magic string that's attached to each file. It requires every person that touches the file to change the location of the file in the computer. If they don't do it, it doesn't get done. I cannot stand and watch 106 people inputting each file into the computer. That's not possible.

CHAIRMAN TORRES: I'm not saying nor suggesting that you do so or have done or should have done. I'm merely suggesting that perhaps there needs to be some guidelines as to how a filing system is set up, and if you can't do it on your own, then get some help. And if you're prevented from coming to the Legislature to ask for that help, call us anonymously and just leave a note, don't even sign it, and tell us what you need and we'll get it in the budget. That's what's so frustrating about all of this discussion with these budget change proposals, with these other little politics that are going on, with this effort to reduce state government, with following procedures here, not following them. The kind of testimony that we've heard from the witnesses has been extremely frustrating to us who have been so supportive of this program, and quite frankly, supportive of you and the people that work in that department because we feel you are on a mission to help people. And it's so frustrating when you can't see that mission fulfilled given all the factors that are there, and especially when we're not being cooperative with each other.

For example, on March 26, 1986, you sent a memorandum to all Victims of Crime staff by Judith Embree. You did not sign it so I don't know whether you sent it or not because I don't want to get into the same problems with Miss Yost who signs things but doesn't read them but just does it for Mr. Anthony.

ASSEMBLYMAN CALDERON: Fifty-six cases.

CHAIRMAN TORRES: "We have recently discovered that a full box of claims has been misplaced." Are you familiar with that?

MS. EMBREE: Yes, I am.

CHAIRMAN TORRES: "They were assigned to analysts," such and such, "on 11/27/85 and the recommendations were made before the end of November. No action has been recorded in the computer since that time. Please check your work if any of these files are located." "Subject: Emergency File Search." That doesn't sound like the calm system that you described earlier where it...

MS. EMBREE: That was prior -- two things. That was prior to our move where we established the current filing system that we have. We now have what we call Terminal Digit Filing. So this memo was sent out...

CHAIRMAN TORRES: Terminal Digit Filing means boxes on desks?

MS. EMBREE: No, no. Terminal Digit means that you organize your workload by the final two digits. People are assigned to workload by the final two digits on the file.

CHAIRMAN TORRES: Assemblyman Calderon.

ASSEMBLYMAN CALDERON: I was going to resist the opportunity to be able to raise with you some touchy issues, I think, in terms of my involvement in the victim rights issue, but I'm going to do it because it's clear to me that you don't understand that there's a problem. You keep getting asked specific questions and you keep giving bureaucratic answers.

You have, I assume, been listening to the testimony of your employees — honest, dedicated public servants, who, in some instances, have come to you directly and have said there is a problem and this is where I think the problem is. And yet, the inefficiency of the program persists. You told me that there was no more problem, that there was no more backlog, that the problem had been taken care of. You testified before a public hearing that there was no backlog, and now you're going to come before this hearing and suggest that there wasn't the right computer guy or there was some other technical reason why we thought we had the problem solved and we didn't.

I have listened to testimony of your employees that have indicated there's a very significant morale problem. We have heard testimony from auditors from General Services which indicate there are serious problems in the operation, your operation, that you're responsible for. We have seen that there could be as much as \$750,000 in Victims Fund money that has been wasted. I don't see how any of those problems will be solved other than by your resignation.

MS. EMBREE: Are you asking for my resignation?

ASSEMBLYMAN CALDERON: I have already asked for your resignation, but it's not up to me to make that request. But I believe that you should resign because I don't believe that the problem is solvable as long as you are in the position that you are in overseeing the program. You don't have the confidence of the people who are working underneath you. You haven't had the performance in two years to indicate that you understand what the nature of your -- that you understand the program and can administer it. You don't appear to acknowledge that there's a very serious problem. I mean, you want to give answers to specific questions that Senator Torres is giving you, and I understand the position that you're in, but I don't see -- you've lost the troops. You've lost the people whose job it is to administer this program. It's a people business. You know, they have been kind, but I don't see that they're going to listen to you because they don't believe that you listen to them, and what's more, the proof is in the pudding. We don't have a victims compensation program that works in this state, and it's a discussion I had with you two years ago and have had an ongoing conversation with you for the last two years and nothing gets done.

So I don't see how the problem can be solved until we get -- we've already got a new executive director, but you're probably tougher than he is. So I don't know how the problem gets solved unless we get somebody in your spot who can relate to the people and who can start getting this program underway.

CHAIRMAN TORRES: Miss Embree, on a memo dated February 20...

MS. EMBREE: Am I not allowed to respond in any way to that?

CHAIRMAN TORRES: I'm sorry. I didn't realize you wanted to. You're perfectly free to respond. We don't limit anyone from speaking to us.

MS. EMBREE: Mr. Calderon spoke of ongoing conversations. I believe I have spoken to him

twice within the first few months that I was hired on the Board. I have not spoken to him since then under any circumstance.

Number two, we have heard some staff here today in testimony. There are 100 people sitting back at the Board who have not been asked nor invited nor in any way have had an opportunity to make input into this hearing.

CHAIRMAN TORRES: They're frightened and they are scared, Miss Embree.

MS. EMBREE: I do not believe that's true. I have never had a chance in any way to respond to any of the allegations. One in particular that is absolutely amazing to me, I believe -- was it there are 86 grievances filed? In fact, there were seven. There were seven issues that were discussed. If you talk about a group grievance where 21 people signed one issue and they were asking for an increase in pay, I have absolutely no control over people's increase in pay. None at all. That went to DPA. Department of Personnel Administration denied their grievance. I have had no opportunity whatsoever to speak. Talk about a victim, I'm sitting here right now as one. I am a career employee of the State of California. I have put in 15 years of very hard work. I have the respect of many, many people, none of whom have been asked to be here -- former supervisors, former employees -- people who have seen my work and can validate what I've done.

CHAIRMAN TORRES: Because this is not a trial on Judith Embree. This is a hearing on whether claims are being processed or not. All of the allegations that I've read in newspapers and others do not have any place in this hearing room and that's why they have not been raised on your personal actions with employees, on your interaction with employees. I have not raised those in respect to my questions to you. My questions have been specifically designed, and I demand that my staff design the questions to relate only to the process of how decisions get made...

MS. EMBREE: Fine. May I respond to those then.

CHAIRMAN TORRES: ...because I did not want this to be a witch hunt, nor do I intend it to be, nor will I allow it to be.

MS. EMBREE: I appreciate that very much. I would like an opportunity to respond.

CHAIRMAN TORRES: You have that opportunity now but I have a number of other questions as well and I just wanted to let you know that.

MS. EMBREE: Please.

CHAIRMAN TORRES: So go ahead and respond.

MS. EMBREE: No, I'm willing to respond to your questions.

CHAIRMAN TORRES: All right. How would you describe the production steps that we need to take and to whom have you spoken about the recommendations that you think ought to take place in respect to payment of claims on time?

MS. EMBREE: We have in place a variety of task force and organizations within the Board to look at ways that we can improve processing claims. One of the things that we're always constrained by are the statute itself. It requires us to make sure that we verify every claim fully. In doing that, that takes time, and one of the items that is beyond our control is receiving back from those people who do respond to our requests about verification, they send material to us and we wait and have to

wait until we receive that. So we have a twofold problem: We've got our problem about processing claims within the Board and our problem of receiving information back from verification sources. So that's a problem.

We have a special assistant who has been working with us on redeveloping a new processing system. They have worked in the government claims section so that there is a more efficient flow of information and claims, and now we are working on that same process within the Victims of Crime program.

CHAIRMAN TORRES: What other recommendations did you have?

MS. EMBREE: Once the data processing information is in place and can be purified, as it's called -- we have had problems with our information and it is now in the process of being (quote) "purified". That's data processing talk. And once that is done, we are able to more closely monitor the receipt and the movement of a claim through the process. Certainly hiring more staff will help. We have had an enormous increase in claims over the years and there have never been enough staff, except for one month in September of 1986 we were up to date and things were getting processed, and that's about when the avalanche of more claims...

CHAIRMAN TORRES: Sergeant, would you get Miss Embree some water, please?

MS. EMBREE: Yes, please. My throat is just not going to make it, I don't think. By having more staff, we will be able to process those claims and take care of the backlog. As somebody mentioned, we're having mandatory overtime. We are hiring and training new staff. We asked for that new staff in a finance letter which was begun in February of this year, and the request for new staff was tied to the passage of legislation that had to do with the restitution fund. We were told you will get no more resources if the restitution fund itself is not healthy. So it was if there isn't money, we won't get more staff. So we made those requests through a finance letter and a deficiency letter, and then in our BCP, we were given more staff.

CHAIRMAN TORRES: Budget change proposals.

MS. EMBREE: Budget change proposals, we were given more staff. However, since the new staff were tied to the chaptering of those financial bills having to do with the restitution fund, we could not hire any new staff. So we have until October 1st -- our hands were totally tied. We identified the problem in January and February and it's until October before we can start dealing with it because we do not have the budgetary authorization to hire. That's fact. You can read the budget language.

CHAIRMAN TORRES: No, I'm shaking my head because it's just disturbing to hear that we don't have the authorization to do it.

MS. EMBREE: Yep. It's tied to budget language and you can read it in the budget act.

CHAIRMAN TORRES: So the mandatory overtime that you indicated starts when?

MS. EMBREE: I think the 19th. We notified staff and gave them two weeks' notice prior. We have had -- when the finance -- when the restitution bill augmentation was signed, then that authorized us to use the money in this current fiscal year, which we had requested to deal with the backlog with overtime. We couldn't spend any of that overtime money until the restitution fund bill

was passed and signed.

CHAIRMAN TORRES: So that's why you're limiting overtime to one and three-quarter hours in order not to pay meals so that will not increase your costs then?

MS. EMBREE: Right. On a daily basis, we don't want people working more than 10 hours a day. We think that's just inappropriate. And then they work eight hours if they want to on a Saturday.

Now, we could not authorize any overtime until we had the money in the restitution fund as authorized by the signing of that bill. Once there was money available to us, we said anyone who wants to work voluntary overtime is free to do so.

CHAIRMAN TORRES: How familiar do you think you are with the regulations affecting your program?

MS. EMBREE: I cannot quote them.

CHAIRMAN TORRES: Could you perform the job of an analyst?

MS. EMBREE: If I had some training, certainly.

CHAIRMAN TORRES: Because it appears from a memorandum from -- in these areas that we need to do more training. How do we get better training for the employees, because that seems to be the consistent thread that I've heard today...

MS. EMBREE: Yes, it has been a problem.

CHAIRMAN TORRES: ...is the lack of training.

MS. EMBREE: Right.

CHAIRMAN TORRES: Why isn't that happening?

MS. EMBREE: We do not have a position designated as a trainer for our in-house staff. I have used the in-house trainer to start working on developing training. We do have a three-week training program for new claims specialists. We have a three-week training program for new claims specialists that all of them go through that is provided by our trainer. That same person -- persons, two of them, go to the counties and train the JPA programs also.

And what we're now trying to do is develop a specific training program for analysts. When there was a big hire done in, oh, I think it was May of '85 -- it was before I was at the Board -- they did put together some kind of a training program. Through attrition we've only gotten one or two staff people at a time, so we haven't had any major training programs. But it's clear that that's one of the things we need. Once we have more clear guidelines from the Board so that we can specifically train staff, we will do that. We're in the process of redesigning the claims statement on the claim that goes before the Board for discussion and we'll be training in those.

As we changed just recently, we had training on the losses and reimbursements page, and we had everybody go through that training. So we are attempting to do that, and it's very difficult with limited staff resources.

CHAIRMAN TORRES: What's the main problem?

MS. EMBREE: What's the main problem?

CHAIRMAN TORRES: In terms of limiting staff resources. In terms of all the problems, is it money, is it support, is it the Department of Finance who's giving you problems, is it somewhere else

that's causing the problems? What's causing the problems? You've been in there, what, two years?

MS. EMBREE: Three years, um hmm.

CHAIRMAN TORRES: Two?

MS. EMBREE: Yeah. It's a combination of things. If we can go ahead and hire these people that are authorized in this current budget -- we are in the process of interviewing about 125 people in the last couple of weeks, and we will be hiring a group of people that are scheduled to come December 1st and their training begins then. Up to this point, I have had one clerical supervisor in an OSS II position. I have had two staff managers and that's it. So that we have had responsibility for supervising 106 people with massive problems in the processing of claims and a backlog. One of those managers, as you well know, is no longer with the Board. So I have had one manager and the OSS II has been out on leave. So we have been without management, we have been without supervision, we have been without adequate people to provide the services and supervision that people need. I'm very aware of that. I have been frustrated.

I think it's time for you to ask some more questions. I don't want...

CHAIRMAN TORRES: I have no other questions that I have. Is there any other statements that you'd like to make before this committee?

MS. EMBREE: I'd like to make some statements in response to some of the allegations and some of the false statements that have been made today, often based on lack of information about personnel practices. We don't discuss personnel practices with line staff; we never have. Management never does. It's inappropriate. Things like the grievance process where supposedly 85 grievances were filed against me, I would welcome somebody to come and look at all of those grievances; welcome it because it was not true. There were not 85 grievances filed against me. That's just not true.

Those kinds of allegations are sitting out; they're in the press; they're on the news media. I have had absolutely no opportunity to respond to them or in any way show what I feel is actually what happened. I think that's unfortunate and unfair.

CHAIRMAN TORRES: All right. (Inaudible -- away from mike.) Any other questions?

MR. EATON: Senator Torres? May I add something?

CHAIRMAN TORRES: Yes. While you're speaking, I'd like to have Mr. Richard Godegast to please come forward again.

MR. EATON: I just want to do -- I think we were interrupted at some point when you were delving into the hiring of Miss Embree, and I did, in the last few days, check with the previous executive officer, Lane Richmond, about that hiring process and was informed by him that Miss Embree's references and background was checked thoroughly with Mr. Rolland, who's the director of her former department, and she got very high marks there and that was a normal recruitment process, to quote him.

CHAIRMAN TORRES: As it should have been.

MR. EATON: Right. So I just wanted to put that to rest.

CHAIRMAN TORRES: All right.

MR. EATON: And I would say that in addition to that, some of the problems that we've gotten into today are the result of changes in the program which have changed eligibility, and we're going from a program that was dealing with assault with deadly weapons and murder a few years ago to where the largest proportion of claims we have today have to do with child abuse, child molest, and they tend to then result in therapeutic or therapist treatment rather than their traditional medical treatment, and that has tended to blur some of the guidelines about what's appropriate treatment, what is a victim, when does...

CHAIRMAN TORRES: Well, when will those guidelines become clear?

MR. EATON: I can't give you a date, but hopefully in the near future we will be able to get to those guidelines. But I would submit to you that they may never be as clear as anyone would like them to be, because as you heard some of the testimony this morning, when you have victims of child molest, you do get into difficulty determining was there a crime; and the program is there to aid victims of crime, and it becomes a very difficult decision to make as to whether there was in fact a crime. Even though the staff and the Board and everyone else would feel sympathy for that victim, it's a question that comes down to were they a victim of a crime or were they a victim of something else, and making that decision is very difficult. So, I just wanted to add those statements.

CHAIRMAN TORRES: All right. Mr. Godegast, Miss Yost testified before this committee under oath that she had no direct control, or hands-on control, or decision-making process regarding the Victims of Crime fund. Was that your experience as well?

MR. GODEGAST: No, that is not my experience.

CHAIRMAN TORRES: What was your experience?

MR. GODEGAST: My experience, and also shared with me in management meetings, that Mrs. Yost did have direct input; was very concerned about the method of -- the methodology used for writing up the claims; in fact, was intimately involved in the direction on how the form should be prepared and the method on...

CHAIRMAN TORRES: On how the forms should be prepared?

MR. GODEGAST: Yes, sir.

CHAIRMAN TORRES: On the methodology?

MR. GODEGAST: On the methodology on how it should be presented to the Board.

CHAIRMAN TORRES: So, from your...

MR. GODEGAST: And that was shared with me with the other manager I's that were within that program.

CHAIRMAN TORRES: So from your experience she had some pretty direct control on decision-making or she was just providing "feedback", as she has stated?

MR. GODEGAST: It was presented to me and then part of that on my own observations from the government claims and the local mandated program side. That's why I believe that, that she had very direct input.

CHAIRMAN TORRES: Miss Yost, did you have a response?

MS. YOST: Yes, sir, Mr. Chairman. I believe that Mr. Godegast has not been with the Victims

program since I've become involved. My main activity has been with the government claims side, which is the board I usually sit on most of the time.

CHAIRMAN TORRES: Since you've become involved.

MS. YOST: Well, since 1983. Were you with the Victims program in '83, Richard?

MR. GODEGAST: No, I was not directly involved with the Victim program. I was the manager in the Board of Control, and as I stated, Mr. Torres, Senator Torres, the other managers of that program shared that information with me, and I believed it to be true because of my direct involvement with Mrs. Yost in regards to the government claims program and the local mandated program.

CHAIRMAN TORRES: All right. I just wanted to get a clarity on your perception regarding that. I'm just...

MS. YOST: I grant that may be his perception.

CHAIRMAN TORRES: Pardon me?

MS. YOST: I said I grant that may be his perception.

CHAIRMAN TORRES: Thank you, Miss Yost. The other factors that we have to take into account are clearly how we're going to make this program effective. And whether you want to or not, you're there, Miss Yost. You're a player in this scenario. You are there to advise Mr. Anthony, because I know Mr. Anthony can't do it all the time, every day, as today's vivid example for unforeseen circumstances, or in signing letters for him and other areas. You're really the top person here today representing the administration, because you are No. 2 in General Services in dealing. And we may wish to shuffle off to other agencies, but I think we all need to work together as agencies, as I know you support given your long tenure in state government.

So I guess what my message to you is let Mr. Anthony know that we hope he recovers quickly and well, and that we can continue to work together to resolve this problem. And if it's going to take your feedback and your input, then so be it. Let's get it done and let's get it done now.

But let's not get into a situation that we're afraid to deal with the Legislature for whatever reasons. I think too much of that has gone on in the past, whether it was Jerry Brown's administration or whether it's George Deukmejian's administration. It goes along party lines; it doesn't matter the party. That's been my experience and I think we need to get beyond that.

And I think that the testimony that we've heard today have been from employees who have indicated their concerns, and I think they've been sincere. They have testified under oath, as you have, and their veracity can only be...

MS. EMBREE: I'm not under oath in the same -- they were subpoenaed and so they have immunity.

CHAIRMAN TORRES: Not from perjury before this committee. Do you understand the difference?

MS. EMBREE: Mm hmmm. I do.

CHAIRMAN TORRES: That's correct. That's correct. As we will be reviewing the transcript of all of our witnesses today.

MS. EMBREE: Good. Thank you.

CHAIRMAN TORRES: But the fact of the matter is, that simply because they testified, you ought not to have a bad feeling about them. You ought to look for the good that's in them and try to make that good important for the State of California.

MS. EMBREE: I would like to respond to that. I feel that our purpose here today is to provide a better source of reimbursement for victims for the State of California.

CHAIRMAN TORRES: And that involves...

MS. EMBREE: My job has always been to put whatever my personal needs or wants are second. I have always put the program first. Every job that I have ever done, that has always been the case. I can easily and comfortably say that I feel that I've done a good job. I honestly do. I feel I've been an able administrator and under no circumstances will I resign unless asked by Mr. Anthony. I plan on staying.

CHAIRMAN TORRES: Well, Miss Embree, I'm glad that you feel that way. The evidence seems to be quite in the other direction.

MS. EMBREE: I understand that.

CHAIRMAN TORRES: But that's a decision for Mr. Anthony to make not the Legislature.

MS. EMBREE: And I encourage you, I really encourage you to look at more.

CHAIRMAN TORRES: I have been for two years and I'm disappointed and I'm frustrated and I'm tired...

MS. EMBREE: I understand.

CHAIRMAN TORRES: ...and the fact that after two years we still have a 56% backlog, and that's unacceptable, especially from a Governor who has consistently been a law and order candidate when he was Attorney General, now when he's Governor, and the very victims of those crimes are still not being reimbursed. Something's wrong when a Governor doesn't take the personal interest to make sure that this program is funded, especially when the Democrats and the Republicans and the Legislature are supporting him to do so. Miss Yost, I don't think she needs coaching.

MS. YOST: No, what I was going to say is that 24,000 were paid last year. It's very difficult. While we've heard a lot of problems today and while I am not a hands-on operator with the Victims program day to day, regardless of what Mr. Godegast may feel, it's...

CHAIRMAN TORRES: Then you're in no capacity to tell us what's wrong then, are you?

MS. YOST: No. What I'm going to say to you is, sir, that I will be sure that all the members of the Board, Mr. Pelkofer included -- incidentally, who has sat on the Board for nine years and has very good friends working on the Board of Control and was good friends with the previous administrators of the Board. We have an excellent working relationship with him and he is a part of every management decision that's been made in executive session. All three of the Board members will be discussing these issues. Mr. Anthony has asked Mr. Austin Eaton to look at all the allegations that have been made in the newspapers, and he will be reporting to the full Board, not just to Mr. Anthony but to the full Board, which is where all major personnel decisions are made. And I pledge to you to give him as complete accounting as I can today of what has happened, as well as these people.

CHAIRMAN TORRES: And I hope you indicate to him, and if you speak to the Governor or any of his representatives, that we're concerned about getting the processing system on board and the claims paid. What happens between employees and their managers is best left to the grievance procedures and to those issues, the Legislature really has no role in that regard. Our role is to make sure that morale is high, that productivity is high, and that claims are being reimbursed, because we are all working for the victim.

MS. EMBREE: Thank you. I appreciate that very much.

CHAIRMAN TORRES: This hearing is adjourned until a further hearing.

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APPENDIX # 1

REPLY TO

SACRAMENTO ADDRESS ☐
ROOM 2080, STATE CAPITOL
SACRAMENTO CA 95814
TELEPHONE (916) 445-3456

DISTRICT ADDRESS ☐
107 SOUTH BROADWAY
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CALIFORNIA LEGISLATURE

Senate

ART TORRES

SENATOR, TWENTY-FOURTH DISTRICT

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CHAIRMAN

TOXICS AND PUBLIC SAFETY MANAGEMENT

BUDGET & FISCAL REVIEW
EDUCATION
GOVERNMENTAL ORGANIZATION
HEALTH & HUMAN SERVICES
HOUSING & URBAN AFFAIRS
JUDICIARY
JOINT COMMITTEE FOR THE
REVIEW OF THE MASTER PLAN
FOR HIGHER EDUCATION
JOINT COMMITTEE ON REFUGEE
RESETTLEMENT, INTERNATIONAL
MIGRATION AND COOPERATIVE
DEVELOPMENT
JOINT COMMITTEE ON SCIENCE
AND TECHNOLOGY
SELECT COMMITTEE ON
BUSINESS DEVELOPMENT
SELECT COMMITTEE ON
TOURISM AND AVIATION
(CHAIRMAN)
SUBCOMMITTEE #3, HEALTH,
HUMAN SERVICES & ALRB
SUBCOMMITTEE ON
VICTIMS' RIGHTS

November 10, 1987

To: Members of the Senate Judiciary's Subcommittee on
Victims' Rights

From: Senator Art Torres

Re: State Board of Control

In August of 1985, this Subcommittee of the Senate Judiciary Committee was created to hold informational and investigative hearings on the subject of victims rights.

In October of that same year, this Committee held a hearing on the same subject in Los Angeles. After an indepth review, several recommendations were made by the Committee in order to ensure the efficiency of the Victim Compensation program. Under the guidance of Lane Richmond, the Executive Officer, the program was able to meet its state mandated requirement that all verified claims must be processed within 90 days.

The California Victims' of Crime Program was established in 1965 to compensate innocent victims of crime for documented financial losses incurred as a direct result of the crime. It is the first and also the largest program in the nation. Since 1978, the Board of Control has administered all aspects of the program, including verification of claims. The program is funded by the Restitution Fund which received its income primarily from fines and penalties imposed by judges upon persons convicted of crime in California.

The California Board of Control under the Department of General Services, provides financial compensation when no other source is available. The program has experienced phenomenal growth in the last three years - in fiscal year 1983-84, almost 8,000 victims received assistance from the program. In 1985-86, over 20,000 were aided.



Recent studies indicated that the Restitution Fund, the source of assistance, for a variety of reasons faced a critical deficit situation. Without legislative action by the end of fiscal year 1988, the Fund would be short by \$5 million. Therefore, last session, the legislature passed Senate Bill 738, Chapter 1214, statutes of 1987 by Senator Ed Davis (R-Chatsworth). This legislation will boost the revenue in the restitution fund by \$24 million by increasing penalties assessed by the courts by \$2.00 for every \$10.00 fine and adding it to the restitution fund.

The Victims' of Crime Program has again been steadily experiencing an increasing backlog. As of October 20th of this year, it has been unofficially calculated that there is a 10 month delay in processing of claims. In addition, it has been determined that there are 10,000 claims that have not yet been assigned to a claims specialist to process.

The recent disclosure of a confidential review of the program, conducted during the first 4 months of 1987 by the State Department of General Services, found that nearly \$750,000 from the restitution fund was misspent as a result of lax procedures, a failure to follow laws and administrative rules and the overriding of internal controls by manager.

Due to the seriousness of these claims, the Subcommittee will take an in-depth investigative look at the program itself, the claims process, the administrative guidelines and policies and the amount of arbitrariness that the Board of Control has demonstrated in their past hearings.

THE VICTIMS OF VIOLENT CRIME RESTITUTION FUND

BACKGROUND

The Victim Restitution Fund was established in 1965, and was the first such fund in America. Money to reimburse victims originally came from the General Fund, but it is currently 100% funded by fines assessed against persons convicted of crimes. The Fund is estimated to total over \$40 million.

Prior to 1974, if a claim was not filed within 12 months of the date of the crime, it was denied. Pursuant to legislation, for crimes occurring after July 1, 1974, the Board of Control may allow a "late claim" if the claimant presents an excuse as to why it was filed more than a year later. Generally, the Board has accepted as acceptable that the claimant had just learned of the existence of the program.

In 1978, The Board of Control assumed all of the verification responsibilities, which had formally been performed by the Department of Justice.

The office of Criminal Justice contracts out with local District Attorneys to provide victim/witness assistance in applying for restitution from the Fund.

What is the difference between the restitution provided by the Victims' Bill of Rights (1982) and the Victims of Crime Fund?

Both provide restitution to victims of violent crime for out-of-pocket costs incurred for:

- medical expenses
- funeral expenses
- psychotherapy
- loss of income

VICTIMS' BILL OF RIGHTS

- The Victims' Bill of Rights also provides for property loss and/or damage.
- The Victims' Bill of Rights is a court ordered program where the criminally convicted individual must, regardless of the sentence or disposition imposed, repay the victim for any loss suffered due to the crime.
- The fund can pay up to \$23 thousand per applicant and is authorized to pay up to \$46 thousand if matching Federal funds become available.
- In some cases where loss of earnings or emergency medical care is needed, an emergency award of up to \$1,000 may be made within 30 days of application.

To receive restitution from the Fund the victim must:

- ° be a California resident at the time of the crime.
- ° make a crime report with the police.
- ° cooperate with the police in an investigation.

Other Facts

- ° The assailant need not be convicted prior to receiving reimbursement from the Fund.
- ° Awards ARE NOT made on the basis of financial need. Everyone is entitled equality.

Procedure

Obtaining restitution through the Victims of Violent Crime Fund is as follows:

1. Application: Each application is immediately reviewed for completeness by Board Staff. "Late Claim" status requires Board approval; otherwise, a completed application is immediately assigned a claim number.

- ° It has taken up to 2-3 months from time of application to assignment to a Claims Specialist. An additional 2 months is usually needed to verify these claims.

2. Claims Specialist: One of the Claims Specialists reviews the file, determines what information or documentation is needed, and either seeks to obtain that information (e.g., copy of crime report) or asks the claimant and/or his representative to obtain it.

- ° The time delay between a claimant's leaving the Claims Specialist and receiving the Analyst's attention has taken up to 2-3 months.

3. Analyst: When claim is fully verified -- or the Claims Specialist reaches a dead-end or deadline -- it is assigned to an Analyst who reviews the file and makes a recommendation to the Board ("Allow", "Deny", or "Discuss").

- ° Once the Analyst has reached a recommendation, it takes 1-3 months for the Board to set a hearing -- even when the recommendation is to "Allow" the claim, which usually places the case on the consent calendar.

4. Board Action: The claim is then set for a Board hearing. The Board meets monthly in Sacramento and approximately quarterly in Los Angeles, San Diego and San Francisco. Prior to the hearing a 10-day notice is given to all disputable cases..

5. Post-Approval: If the claim is approved, a letter is sent to the Controller to request a check.

- ° Inexplicably, once the Board approves a claim, there is a long delay in preparing a letter requesting the Controller to cut a check. Currently, the wait is 10 days due to the use of magnetic tape. Last year it was over 2 weeks and in 1988 it was 4-7 weeks.

6. Controller: Once receiving an approved check request, the Controller cuts a check. This typically takes two days.

PROBLEMS & DELAYS

Ultimately, claims are taking up to two years to be fully processed. Arguably the initial backlog may have developed due to an unexpected increase in claims over the past several years. However, the Legislature and the Governor have assisted the Board by approving a corresponding appropriate number of additional staff positions.

The delay in payment -- which should be 90 days from the date of application to payment -- is most likely due to inefficient administration and poor allocation of resources on the part of the Board.

Subsequent Payments:

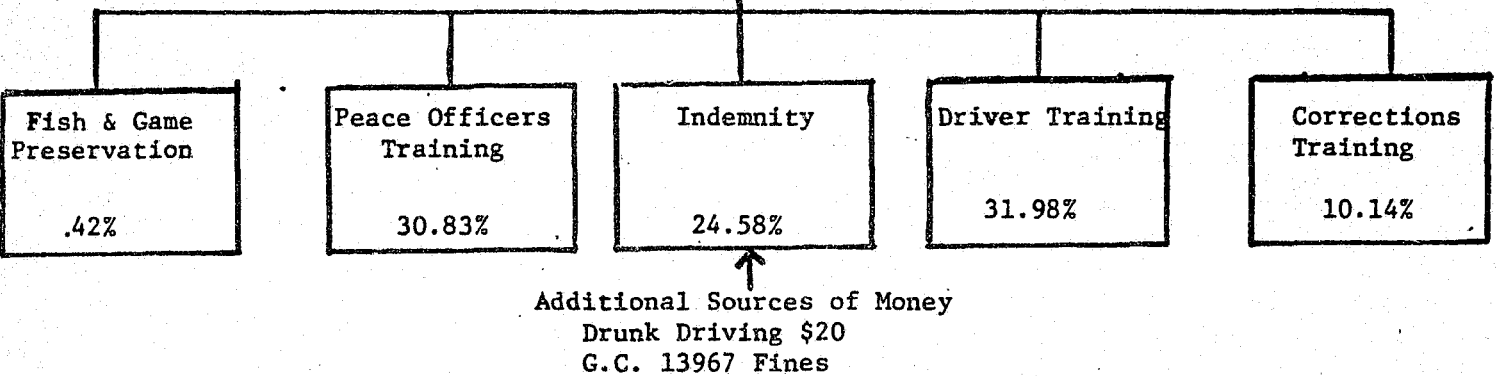
Perhaps the most frustrating delay is in subsequent payments. Once a claim is approved by the Board, all subsequent related claims should realistically be processed quickly since all the major background work has been completed. However, due to the excessive backlog, the delay of subsequent payment is often a year or more.

Supposedly, all subsequent payments are assigned directly to the Analyst who handled the case originally. However, while the original claim remains hung-up in the red tape, the victim incurs additional expenses which have to be submitted separately. Again, delay compounds delay..

PRE 1984

Penalty Assessments from Courts

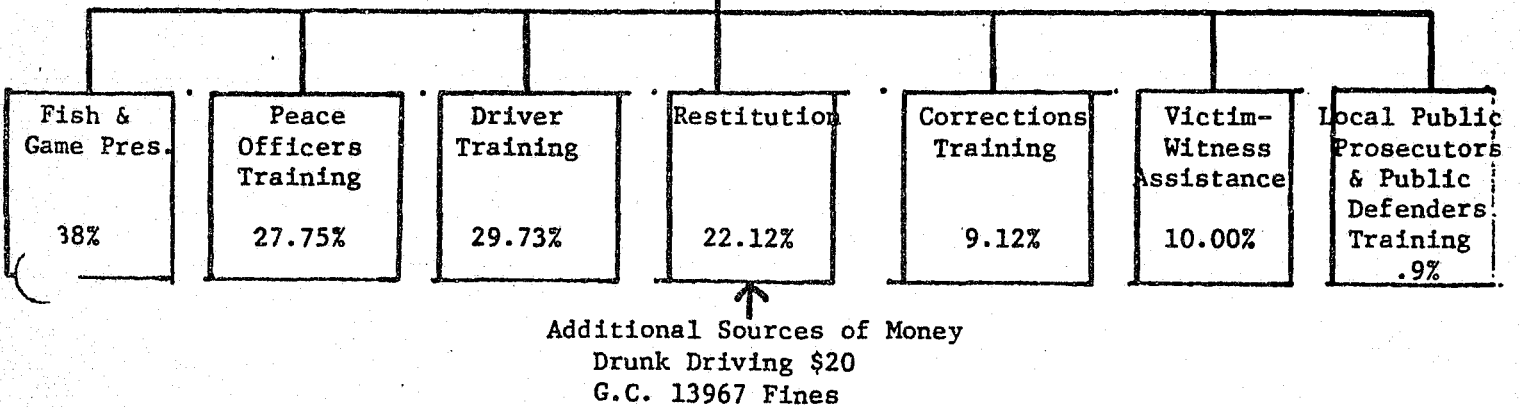
ASSESSMENT FUND



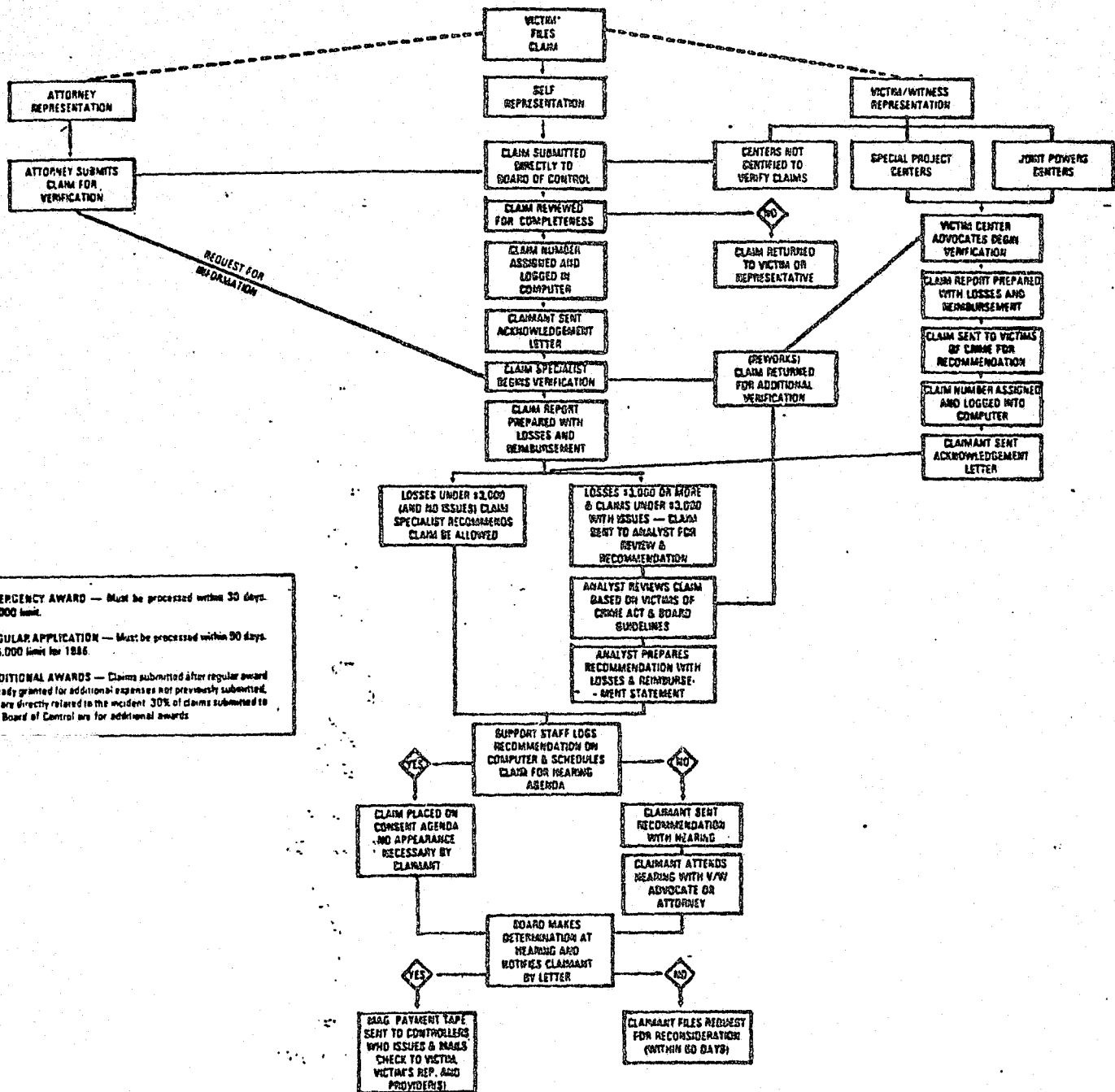
1984

Penalty Assessments from Courts

ASSESSMENT FUND



**BOARD OF CONTROL
VICTIMS OF CRIME PROGRAM
CLAIMS PROCESSING**





Telephone:
(916) 445-0255

STATE OF CALIFORNIA
Office of the Auditor General

660 J STREET, SUITE 300
SACRAMENTO, CA 95814

Thomas W. Hayes
Auditor General

Compliments of
SENATOR ART TORRES
24th Senatorial District

ANALYSIS OF AUDIT REQUEST

P-771

November 9, 1987

I. AUDIT REQUEST

Assemblyman Charles Calderon and Senator Art Torres requested that the Auditor General conduct an audit of the State Board of Control's Victims of Crime Program. The legislators are concerned about issues identified during an internal audit conducted by the Department of General Services which indicates weaknesses and circumvention of internal controls, inappropriate and inaccurate payment of claims, overpayments of emergency awards, and poor implementation and operation of the automated claims system.

In addition, members of Assemblyman Calderon's and Senator Torres' staff identified other issues to be included in the audit. The legislators have received reports of poor recordkeeping and document handling by the State Board of Control. Further, reports indicate a significant backlog in claims to be processed. Finally, the Department of General Services' audit did not address the Joint Powers Agreements that the State Board of Control has with certain local entities. The legislators are interested in comparing the efficiency of claims processing by these entities to that of the Board of Control.

II. BACKGROUND

Chapter 1144, Statutes of 1973, authorized a program to indemnify injured citizens who suffer financial hardship as a result of a crime or violence, or who sustain damage or injury while performing acts which benefit the public. The State Board of Control (SBOC) administers this Citizens Indemnification Program, which is also known as the Victims of Crime Program (victims program). A victim of crime, a citizen performing an act beneficial to the public, or a person dependent upon a victim for support may file a claim with the SBOC for compensation from the State.

The victims program is intended to pay for expenses or losses that a victim incurs as a direct result of criminal acts that are not paid or reimbursed from any other source. A victim may receive up to \$23,000 for losses incurred as a result of a criminal act, and this amount may increase to \$46,000 if federal funds are available.

The three-member board which oversees the SBOC consists of the Director of General Services, who serves as chairman, the State Controller, and a public member who is appointed by the Governor. The members of the board determine eligibility of a claim payment after an investigation of the claim by SBOC staff. Through fiscal year 1986-87, the board had contracts (Joint Powers Agreements) with 15 local Victim Witness Centers to locally process and investigate claims. The SBOC plans to expand the number of Joint Powers Agreements to 23 during fiscal year 1987-88.

The victims program is financed by appropriations from the Restitution Fund, which receives a portion of the revenues collected from penalties assessed on criminal and traffic fines. Chapter 1092, Statutes of 1983, continuously appropriates funds from the Restitution Fund to the SBOC for payment of claims but requires that the administrative costs of the program be annually reviewed through the budget process.

III. PENDING LITIGATION

None identified.

IV. AUDIT SCOPE

This report by the Office of the Auditor General will emphasize independently developing and verifying data related to the State Board of Control's Victims of Crime Program and will

- Review the laws, rules, and regulations relevant to the program;
- Review and validate the May 1987 report by the Department of General Services, including
 - evaluating the methodology and procedures used for claims sampling and testing;

- determining the statistical validity of the claims sample;
- expanding the claims sample, if appropriate, to determine the accuracy of claims processed, paid, and unpaid as well as the magnitude of the error rate; and
- reviewing the evaluation of the implementation of the automated claims system and determining any improvements implemented since the Department of General Services' report;
- Determine the capabilities of the automated claims processing system and the extent to which these capabilities are in use by the victims program;
- Review the Department of Finance's review and evaluation of the SBOC's internal controls over the victims program;
- Review and evaluate the SBOC's procedures for processing claims;
- Review and evaluate the SBOC's recordkeeping and document handling;
- Review and evaluate the time it takes for the victims' claims to be processed and determine the SBOC's backlog of claims;
- Determine the amount of time taken by local Victim Witness Centers under Joint Powers Agreements with the SBOC to process claims for payment and compare to the amount of time taken by the SBOC to perform the same function;
- Review and evaluate the processes employed for claims approval during the formal hearing process; and,
- Determine the change in number of claims filed over the past five years and estimated for the next fiscal year and determine what planning the SBOC has for meeting the change in claims volume.

V. OTHER WORK IN THE GENERAL AREA

In April 1984, the Office of the Auditor General issued a report entitled "Courts and Counties Are Not Collecting and Remitting to the State All Revenue for the Victims of Crime Program" (P-337).

The Department of General Services conducted an internal audit of the Victims of Crime Program and issued a report in May 1987. In addition, the Department of Finance conducted a review of the system of internal accounting controls and fiscal procedures of the SBOC and issued a report in January 1987.

VI. AUDITOR GENERAL CONTRIBUTION

The report by the Office of the Auditor General will provide the Legislature with independently verified information related to the State Board of Control's Victims of Crime Program.

VII. RESOURCE REQUIREMENTS

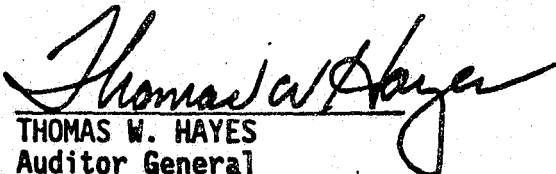
The following audit staff will be required to perform this audit:

- One senior or staff auditor--full time
- Two associate or assistant auditors--full time.

We will conduct this audit using our existing budget authority. We estimate that approximately \$37,950 (165 days at \$230 per day), plus travel, will be allocated to this assignment.

VIII. REQUIRED DATE OF COMPLETION

Assemblyman Calderon and Senator Torres requested that the audit report be completed by mid-March 1988.


THOMAS W. HAYES
Auditor General

REPLY TO:

SACRAMENTO ADDRESS ☐
ROOM 2080, STATE CAPITOL
SACRAMENTO, CA 95814
TELEPHONE: (916) 445-3456

RICT ADDRESS ☐
N. SOUTH BROADWAY
SUITE 2105
LOS ANGELES, CA 90012
TELEPHONE: (213) 627-5333

BOB MORALES
CHIEF OF STAFF



CALIFORNIA LEGISLATURE

Senate

ART TORRES

SENATOR, TWENTY-FOURTH DISTRICT

LOS ANGELES COUNTY

CHAIRMAN

TOXICS AND PUBLIC SAFETY MANAGEMENT

November 3, 1987

BUDGET & FISCAL REVIEW
EDUCATION
GOVERNMENTAL ORGANIZATION
HEALTH & HUMAN SERVICES
HOUSING & URBAN AFFAIRS
JUDICIARY
JOINT COMMITTEE FOR THE
REVIEW OF THE MASTER PLAN
FOR HIGHER EDUCATION
JOINT COMMITTEE ON SERVICES
RESETHLEMENT, INTERNATIONAL
MIGRATION AND ECONOMIC
DEVELOPMENT
JOINT COMMITTEE ON SCIENCE
AND TECHNOLOGY
SELECT COMMITTEE ON
BUSINESS DEVELOPMENT
SELECT COMMITTEE ON
TOURISM AND AVIATION
(CHAIRMAN)
SUBCOMMITTEE ON HEALTH
HUMAN SERVICES & ALDS
SUBCOMMITTEE ON
VICTIMS RIGHTS

Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Due to an enormous backlog of claims that are not currently being processed and the tremendous effect this is having on our state's victims who have suffered from violent crimes, I am formally requesting that an official audit be conducted of the State Board of Control's Victims of Crime Program.

Specifically, I would like a review of the system of internal accounting controls, the fiscal procedures of the State Board of Control, and the degree of arbitrariness by the Board in allowing or denying claims during its formal hearings. In addition, I would like a complete review of the S.B.O.C.'s data processing system: its capabilities and its current misuse or underuse.

I thank you for your prompt attention to this request. If you or any of your investigators have further questions, please contact my consultant Keith Higginbotham at 445-3456.

Sincerely,

ART TORRES

Chairman

Subcommittee on Victims' Rights

AT/akh

LEGISLATIVE ADDRESS
STATE CAPITOL
P.O. BOX 942848
SACRAMENTO, CA 94248-0001
PHONE: (916) 445-0854

DISTRICT
W. BEVERLY BLVD.
MONTESIELLO 90840
PHONE: (213) 721-2804

Assembly California Legislature

CHARLES M. CALDERON

ASSEMBLYMAN, FIFTY NINTH DISTRICT

ASSEMBLY MAJORITY WHIP

October 8, 1987

COMMITTEES:
CHAIRMAN
SUBCOMMITTEE ON
INTERSTATE BANKING
FINANCE & INSURANCE
PUBLIC EMPLOYEES, RETIREMENT,
& SOCIAL SECURITY
REVENUE & TAXATION
WAYS AND MEANS
SUBCOMMITTEES:
STATE ADMINISTRATION
TRANSPORTATION

Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

P-771


Dear Mr. Hayes:

This letter follows my request of last year to have the Auditor General investigate the State Board of Control (SBOC). I am renewing my request that the Auditor General investigate the SBOC based on the internal audit of the Board completed by the Department of General Services. The findings of the audit are very disturbing and raise the significant issues of misfeasance and malfeasance on the part of the Executive Secretary and the Deputy Executive Secretary of the Board. Additionally, my staff has received many calls from state employees who work in the Victim of Crime Program. They assert abuses of power by management.

Some of the most significant problems detailed by the audit include the following: Ineligible, unsubstantiated and incorrectly calculated claims have been paid by the board. Fraud has been committed within the agency that the Board did not detect. The Board has ignored basic accounting principles and internal controls. The Board failed to report to the Legislature \$617,000 in uncollected overpayments of emergency awards since 1981. The Board entered into agreements without proper authorization. The computer system does not have the capability to assure the accuracy or security of data. Management failed to compile adequate information to teach staff how to run the computer. The computer is not installed, maintained or secured correctly.

Thank you for your help with this matter. If you have any questions, please call Mike Burns of my staff at 5-0854.

Sincerely,



CHARLES M. CALDERON

CMC:tnp



Assembly California Legislature

DAN HAUSER

ASSEMBLYMAN, SECOND DISTRICT

CHAIRMAN

COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

COMMITTEES

ECONOMIC DEVELOPMENT
AND NEW TECHNOLOGIES
LOCAL GOVERNMENT
WATER, PARKS AND WILDLIFE

VICE CHAIRMAN

JOINT COMMITTEE ON
FISHERIES & AQUACULTURE
PACIFIC FISHERIES
LEGISLATIVE TASK FORCE

MEMBER

COMMISSION FOR ECONOMIC
DEVELOPMENT
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8380

DISTRICT OFFICES
NORTHERN OFFICE
1334 - 5TH STREET
SUITE G

EUREKA, CA 95501
(707) 445-7014

CENTRAL OFFICE
216 W. PERKINS STREET
SUITE 104

UKIAH, CA 95482
(707) 463-1508

SOUTHERN OFFICE
50 D STREET, SUITE 450
SANTA ROSA, CA 95404
(707) 576-2526

November 12, 1987

Senator Art Torres, Chairman
Senate Judiciary Subcommittee on Victims Rights
State Capitol
Sacramento, CA 95814

Dear Senator Torres:

I am submitting this testimony on behalf of the many exemplary counseling service providers residing and doing business within the Second Assembly District. As you know, the apparent mismanagement of the Board of Control's administration of the Victims of Violent Crimes program (VVC) has created an uproar among psychotherapeutic providers throughout the state.

I have received numerous complaints from VVC service providers in my district. Foremost among these complaints are major concerns and dissatisfaction with the method and criteria used to determine reimbursement of claims made to the Board of Control.

The delay of reimbursement is threatening the entire framework of the psychotherapeutic delivery system throughout the North Coast. Reimbursement is slow, to the point of being dilatory. The laxity and delay in reimbursement is only compounded by the VVC staff's indifferent attitude in rectifying these situations. As you know, VVC regulations require that the Board of Control process claims and make payments within 90 days. And yet, in my district, I have counselors who have unpaid bills for services provided in 1985 and 1986. When the counselors inquire as to the status of unpaid claims, VVC staff replies range from "Your client is responsible, not us" to "I can't find it on the computer." One analyst had the audacity to demand proof that a claim had not been paid.

Other complaints include the refusal of the agency to supply providers (even at the providers' expense) with a regulatory or policy manual. Itemized bills are routinely "lost" and asked to be resubmitted, promises of expedition are regularly made and broken and inaccurate information from the Executive Director is disseminated to local VVC directors. (One provider has written documentation of this.)


The need for providers of VVC services to be reimbursed in a timely fashion is obvious. Without the revenue from the VVC clients, counselors will be forced to abandon the services they provide -- causing a serious deficiency in counseling services for all the residents of the North Coast.

Rural areas are especially at risk since providers that participate in the VVC program are limited. Once the credibility of the program is damaged, counselors refuse to participate in it, victims are denied important services and the very problem the State set out to correct becomes more aggravated. Do victims of violent crimes need to be victimized twice? Do therapists need to become victims in this process as well?

Expecting small counseling agencies to carry up to \$50,000 of unpaid claims on their books is ridiculous. However, that is the situation for Delson-Kokish Associates in Eureka. Similar cases can be quoted from other parts of my district. It is absolutely imperative that the Board of Control correct the serious flaws that currently delay reimbursement for VVC counselors so that providers may continue to offer therapy for new VVC service recipients, and other clients.

Please use this letter and the documents I have attached as testimony for your investigative hearing today. I would like to thank you for a timely inquiry into an agency which has demonstrated several times over the inability to meet even the most basic criteria for a smooth and efficient operation of the important programs it administers.

Sincerely,



DAN HAUSER

DH/r
enclosures



Assembly California Legislature

DAN HAUSER

ASSEMBLYMAN SECOND DISTRICT

CHAIRMAN
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

October, 22, 1987

W.J. Anthony, Chairman
California State Board of Control
P.O. Box 3036
Sacramento, CA 95814

Dear Mr. Anthony:

It has been brought to my attention that the Board of Control has been extremely slow in reimbursing counselors involved in the Victims of Violent Crimes Program. There are several Licensed Clinical Social Workers and Marriage, Family and Child Counselors in my district that provide vital and valuable services to children through this program. However, reimbursement for their services has been so slow that now they are faced with not only terminating these services, but going out of business all together.

Members of my staff have been in contact with other legislators, namely Assemblyman Calderon and Assemblyman Vasconcellos, who have received a number of similar complaints. Furthermore, several articles regarding corruption within the Board of Control prompt me to think that statutory change may be necessary to correct the problems that seem to have grown beyond the Board's control.

Enclosed is a copy of the letter from Delson-Kokish Associates, a pair of committed social workers who are distressed and in danger of bankruptcy because of the lax commitment the Board has made to reimburse them. Nearly \$50,000 in claims are still unpaid (see printout of accounts).

Delson-Kokish Associates provide essential services to the people of my district. It would be a great loss if they, and

others in similar situations, were to go out of business, causing a decline of quality social services for the residents of the North Coast.

I would very much appreciate a quick response to this letter. Enclosed you will find a list of all the accounts for which Delson-Kokish have yet to reimbursed. In addition to a response to this letter I would like the status of each and every outstanding account listed, (approximately 80), and the date when reimbursement can be expected. Please reply to these requests as soon as possible, as this information is extremely important to the survival of Delson-Kokish Associates.

Thank you in advance for your assistance.

Sincerely,



DAN HAUSER

DH/r
Enclosures

CC:

Honorable Barry Keene, Senate Majority Leader
Honorable Art Torres
Honorable Charles Calderon
Honorable John Vasconcellos
Honorable John Van de Kamp, Attorney General
Honorable Thomas W. Hayes, Auditor General
Judy Balmain, Legislative Liaison to Board of Control
Delson-Kokish Associates

DELSON - KOKISH ASSOCIATES

2583A HARRIS STREET
EUREKA CALIFORNIA 95570
(707)442-8912

450 MOSIER COURT
TRINIDAD CALIFORNIA 95570
(707)677-3181

October 11, 1987

Dan Hauser
Assemblyman 2nd District
1334 5th Street
Eureka California 95501

Dear Assemblyman Hauser,

We are in desperate need of immediate assistance from someone who can deal effectively with the gross mismanagement of the State Board of Control Victims of Violent Crime Program. (VVC)

We are major providers of psychotherapeutic services to victims of violent crimes in Humboldt County. Our patients are child victims of physical and sexual abuse and their families. Many of the families receive public assistance. Often a previously self supporting family is forced onto the Welfare rolls by the very crimes whose effects we attempt to mitigate with our services. Other families are simply low income. Since Medi-Cal does not cover payments to providers with LCSW or MFCC licenses, we are unable to accept this form of payment. Our clients are therefore very grateful that California has a VVC program to reimburse providers for psychotherapy and supportive counselling services. They are especially gratified to know that payment comes from the fines paid by convicted felons, and not from taxpayers. Although the VVC Program is written so that the applicant is technically responsible for payment, the Board of Control issues checks directly to service provider in the applicant's behalf. VVC regulations require that the Board of Control process claims and make payment within 90 days. Yet, we have unpaid bills for services provided in 1985 and 1986.

We have regularly called the Board of Control, running up substantial telephone bills. We have clarified every possible regulation with their analysts, our local representatives and attorneys. (This is not easy to do, because the agency refuses to provide us with a regulatory and policy manual, even at our expense.) Their responses to us vary from "your clients are responsible for the bill and not us," to "well I just can't find it on the computer. One analyst had the audacity to tell us to prove that a particular bill hadn't been paid.

The issue goes beyond not being paid. The itemized bills we submit are regularly lost and we are asked to submit the same bills again and again, sometimes for years. Other documentation such as registration for clinical interns is lost and we are repeatedly asked to resubmit. Analysts call to verify information that was sent to them in writing months before.

In absolute frustration, on July 10, 1987 Niki contacted Judith Embree, Executive officer of the Board. Ms. Embree said she couldn't believe that such old claims were still unpaid. In fact, she said that many of those files had already been archived. She did ask for a list of all our clients (60 at the time, owing us more than \$45,000 - it has grown since). She said she would put one analyst on all these claims and that person would straighten out the backlog. Niki has had several contacts with Myra Moon, who was the second analyst to respond to this inquiry. Ms. Moon told her that all our claims would be taken up at a hearing on September 21st and she would call that week to let Niki know what had transpired. She never called. Payment was received for only 2 claims...the only ones that were heard on that date. Although one claim was for over \$1200, the payment was for approximately half. They only paid bills to March 1987. Niki called Myra Moon, and learned that only 4 more of our sixty some odd claims were heard at the October 6th Board meeting.

We have other complaints. Niki had a case rejected by an analyst who was later arrested for extorting kickbacks from service providers. The local VVC office asked the Board to reopen the case. This bill is for services provided 1984-1986. We still have not received word from the Board regarding this claim. Another problem is that they pass on information to providers that is erroneous, or confusing. For example, our local VVC director was informed that an offender could participate in therapy sessions "if his presence was necessary for the successful treatment of the victim". In cases of intra-familial violence, this is extremely important, as the offender can take a great burden from the child by acknowledging responsibility for his actions. Based on this assurance we included some offenders in family therapy. Now we are being told that they are going to deduct a percentage of these bills because they won't pay for offender treatment. In fact we are not asking them to pay for offender treatment, but for victim treatment which requires the offender's presence. They seem unable to understand this simple distinction at this time, even though they seemed to understand it quite well several years ago, when Ms. Embree informed us (via our local VVC director) that VVC would pay for this type of victim treatment. (We have this in writing from the local program director and from an attorney who was present when Ms. Embree gave these assurances.)

The delay in payment is not only to providers, but also to the victims who are supposed to be reimbursed for travel expenses to and from therapy appointments, necessary child care, and other related expenses. Our clients, victims of violent crimes who are struggling to put their lives back together are thus also victimized by the system, which promises much but delivers little.

Obviously a business cannot continue to survive with substantial accounts two to three years old. (We have even been told it would be illegal to charge interest because the client, not the Board is financially responsible.) We do not want to eliminate back services to families with no insurance or ability to pay for service. These are often the people who need the most help, and the very ones for whom the program is intended. Please help us.

We hope that you can intervene on behalf of the many Humboldt County residents who are being grossly mistreated by this system, and certainly on our behalf.

Specific written substantiation of these problems will be provided at your request.

We look forward to your early reply. In response, please contact Niki Delson.

Thank You,

Niki Delson LCSW

Ron Kokish MFCC

cc:Judith Embree
Assemblyman Vasconcelles ✓
Governor George Deukmejian
State Senator Barry Keene

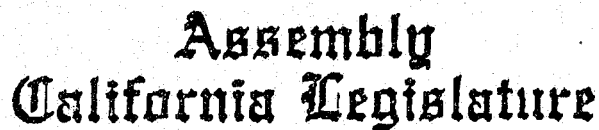
VVC BILLING SUMMARY
Oct. 1, 1987

APPLICANT	VICTIM	VVC#	BAL DUE	SERVICES FROM
Crystal Behrens	Crystal Behrens	83657	75.00	03/85
Charlotte Amos	Susie Lyons	62267	55.00	10/86
Gail Bodkin	Gail Bodkin	?????	357.50	08/87
Gail Bodkin	Rosemarie Bodkin	?????	497.50	08/87
Betty Boone	John Boone	?????	143.00	08/87
Betty Boone	Betty Boone	?????	155.00	08/87
Betty Boone	Shannon Boone	?????	110.00	08/87
Jaylene Bowles	Vannesa Bowles	?????	236.50	09/87
Karen Brickey	Karen Brickey	?????	55.00	09/87
Robin Brink	Robin Brink	945437	410.28	11/86
Robin Brink	Felicia Burch	945437	265.35	11/86
Estelle Bunting	Dawn Bunting	119987	1623.00	03/87
Estelle Bunting	Rebecca Bunting	119987	967.50	03/87
Barbara Burt	Joslyn Nelson	108659	453.50	02/87
Barbara Burt	Barbara Burt	108659	1896.00	06/87
Dale Crabb	Chris Kitchen	???????	552.50	08/87
Margie Fewel	Christie Fewel	110044	296.00	01/87
Margie Fewel	Margie Fewel	110044	3677.50	12/86
Debbie Fisher	Allen Yochum	117801	89.50	06/87
Debbie Fisher	Darlene Mueller	???????	310.00	04/87
Betty Hensley	Lynette Brown	???????	413.50	04/87
Nancy Hernandez	Jacob Hernandez	90436	162.50	04/86
Nancy Hernandez	Nicky Hernandez	90437	280.00	01/87
Katherine Hough	Amanda Hough	110338	500.00	11/86
Katherine Hough	Katherine Hough	110338	2173.50	11/86
Jean Huffman	Monica Huffman	105046	636.00	03/87
Robin Hunter	Robin Hunter	99212	1135.50	03/87
Robin Hunter	Lorie Hunter	99212	494.00	04/87
Valarie Hutchins	Michelle Ward	90762	37.50	10/86
Valarie Hutchins	Geneva Roybal	119440	2155.50	04/87
Valarie Hutchins	Charlie Roybal	119441	828.00	04/87
Valarie Hutchins	Jason Roybal	119439	1018.75	04/87
Valarie Hutchins	Cherise Roybal	119438	1686.75	04/87
Carolyn Johnson	Shannon Johnson	110572	390.50	03/87
Chris Johnson	Christina Nemnich	87307	2.50	09/86
Rebecca Keuhnel	Mark Schneider	???????	878.50	06/87
Katherine Knight	Shana Rizzi	???????	31.00	09/87
Jackie Kviz	Shalimar Byrnes	100530	297.00	08/87
Anabelle McCarty	Kenneth McCarty	???????	511.50	06/87
Anabelle McCarty	Lena McCarty	???????	511.00	06/87
Megan McMahan	Heather Mahood	102795	1213.25	04/86
Megan McMahan	Heidi Mahood	106394	222.50	05/86
Rita Mensinger	Maggie West	???????	209.00	06/87
Sally Meyers	Tiana Corning	100959	923.50	03/86
Dawna Mills	Tressa Mills	100596	208.75	04/86
Dawna Mills	Tonya Mills	100595	495.00	04/86
A. Monro-Proulx	Kinara Erickson	83922	50.00	04/85

APPLICANT	VICTIM	VVC#	BAL DUE	SVCS FROM
usan Murphy	Owen Kissler	?????	733.20	06/87
usan Murphy	Bradley Kissler	?????	561.00	06/87
ane Parker	Patricia Thompson	?????	231.00	05/87
ane Parker	Chris Thompson	?????	386.50	06/87
ammy Parkson	Christina Owen	104280	55.00	04/87
enney Pennell	Penney Pennell	??????	66.00	09/87
enney Pennell	Randy Pennell	??????	150.00	09/87
Barbara Phillips	Dawn Partington	??????	159.50	06/87
Kathleen Pomeroy	Jennifer Haneke	105224	65.00	05/87
Maggie Pries	Crystal Pries	?????	218.00	07/87
Verna Quinn	Marly Quinn	72482	42.00	03/87
Mary Ramsey	Calvon Ramsey	117150	1865.48	02/87
Peggy Rhoden	Jeramiah Rhoden	?????	82.50	07/87
Peggy Rhoden	Peggy Rhoden	?????	110.00	07/87
Seneva Ryan	Amanda Ryan	?????	241.50	08/87
Diane Sanger	Michael Stanford	83204	150.00	02/85
Marsha Sauls	Marsha Sauls	120684	731.00	07/87
Marsha Sauls	Misty Scates	120684	1467.00	07/87
H. S. Seo	Christina Bressler	??????	991.00	07/87
Doreen Smith	Rebecca Crompt	11283	372.00	03/87
Roslyn Sanchez	Roslyn Sanchez	?????	676.50	02/87
Charles Stockton	James Cunningham	112493	1305.00	06/87
Barbara Thomas	Melinda Johnson	103881	322.50	10/86
Jean Thompson	Anthony Warner	??????	247.50	06/87
Jean Thompson	Davine Goyer	90766	668.62	06/84
Roxanne Wade	Roxanne Wade	?????	209.00	09/87
Whiteside	Tylean Mayfield	??????	1980.75	03/87
M. Whiteside	Jerry Sooter	122637	945.50	03/87
M. Whiteside	Sharon Valentine	122638	221.00	05/87
M. Whiteside	Pamella Millsap	???????	88.00	06/87
Donna Whitner	Robert Jones	122212	2950.00	04/87
Pat Wright	Carolyn Wright	?????	231.00	09.87

\$48,214.18

UNKNOWN NUMBERS



APRIL 1941

CHAIRMAN
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

October 20, 1987

Austin Eaton
Executive Officer
State Board of Control
P. O. Box 3036
Sacramento, CA., 95812-3036

RE: Victims of Violent Crime
Vera Nunes, claim # 104166V

Dear Mr. Eaton,

I am writing on behalf of a constituent, an applicant to the State Board of Control for a Victims of Crime claim. Vera Nunes, #104166V, was denied her claim for restitution of counseling fees on February 17, 1987. She made a subsequent appeal and was notified on May 26, 1987 that the Board had granted an extension; this extension was later withdrawn.

My understanding is that an award may be granted regardless of whether or not a crime is prosecuted by law enforcement. Such crimes of molest are difficult cases to bring to Court and historically the Board has been flexible to make such considerations in favor of the victim.

Many previous cases of child abuse and molest have had their claims for restitution granted even though a defendant has "walked" or the investigating agency deemed evidence to be insubstantial. Thus the Board has established a good record in taking into consideration evidence other than what is required by the Courts of Law.

In the case of Vera Nunes, the local Victim Witness submitted information from two therapists, one a psychiatrist with previous professional relationship with the victim. Dr. Fredricks indicates in her letter that she has strong reason to believe Nunes and also states the rational reason for Nunes' heavily sedated condition while in the hospital. Of course, this state would make her more vulnerable and puts a greater responsibility on the hospital, law enforcement and the State Board of Control to ensure her safety and her rights to compensation.

143

October 20, 1987
Austin Eaton
page two

Nunes has questions as to why she would be given a bath at 4:00 a.m. by a male nurse and under what authority was this bath ordered? Why was a catharization ordered after she had used a bedpan? Her contention is that she was not given a catharization but that the defendant had penetrated her with his finger. The initial lab report taken the next day in another hospital found lumps of soap in her vagina and possible ejaculation. The rape kit seems to have disappeared, eliminating the possibility of further tests. The defendant after first agreeing to a polygraph test, later refused to take the test. If we reverse our logic here, though there is not enough evidence to find the nurse guilty, is there enough evidence to prove him innocent?

My purpose is not to chastize the police since several factors made the investigation difficult, such as Ms. Nunes' recovery from a highly sedated State. Her questions, though, are sufficient to warrant careful reconsideration by the Board, especially since such an incident would require the attention a therapist for the victim's recovery.

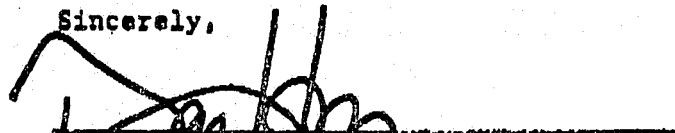
I am also concerned that we are beginning to abuse those therapists willing to go through a lengthy, ambiguous process for reimbursement of counseling services under the Victims of Violent Crime Program. We must not lose the Program's credibility by permitting a provider to incur a large unpaid debt through their attempt to be of service to a victim.

Thus, I am requesting the Board to reopen the case of Vera Nunes per her appeal, this time requesting the presence of both the claimant and her therapist. Ms. Nunes is articulate and very convincing as she communicates her story, without anger or vindictiveness.

I would very much appreciate your personal attention to this matter. Please keep my Central Office advised of your actions.

Thank you in advance for your consideration.

Sincerely,



DAN HAUSER

Dr., sh
cc: Vera Nunes, 101 Canyon Drive, Ukiah, CA., 95482

UCS

UKIAH COUNSELING SERVICES

Scott Sherman, M.A., MFCC

Nancy A. Adams, M.A.

Deborah Jaynes, M.A.

November 5, 1987

Victims of Crime
State Board of Control
P.O. Box 3036
Sacramento, CA 95812-3036

RECEIVED

NOV 7 1987

Dear Board of Control:

UKIAH OFFICE

Enclosed please find a copy of our letter dated July 29, 1987 to our local Victim Witness Assistance program. Attached to this letter is a list of our accounts receivable with Victim Witness. As you can appreciate, for a small business, this amount is quite large at \$20,146.97. As you can see from the attached update dated 10/20/87, the amount remains at nearly \$20,000. In fact, the Melissa Garner case has been recently approved for funding, so our accounts receivable at this time totals \$21,687.22. This is an unacceptable amount due by your organization.

As we understand the bureaucratic nature of how Victims of Crime works, it is clear that your agency is too cumbersome with unnecessary steps. Once a claim is approved, it seems like it should be possible to grant payment without the constant checks, rechecks and double checks. Private insurance companies have developed effective models for how such claims, verification and payment can be processed within one to three months (maximum). The six months and longer that we and others (including victims who ultimately are made to suffer again) are subject to is unreasonable and unacceptable.

In addition, we feel the practice of verifying claims long after clients have started in therapy is deplorable. Clients and therapists both need to know whether or not a claim will be honored either prior to therapy or shortly (within one month) thereafter. To be encouraged or led to believe that a claim will be honored and then to experience rejection three to six months or more after therapy has begun is unfair to all concerned.

We sincerely hope there are new practices being researched and instituted. We are willing to work with you to facilitate such gains. Thank you for your consideration of these concerns.

Sincerely,



Scott Sherman

cc: Victim Witness Program, Ukiah

813 South Dora

Ukiah, California 95482

(707) 463-1305



UKIAH COUNSELING SERVICES

Scott Sherman, M.A., MFCC
Nancy A. Adams, M.A.
Deborah Jaynes, M.A.

July 29, 1987

VICTIM WITNESS ASSISTANCE
P.O. Box 144
Ukiah, CA 95482

Enclosed please find our listing of Victim Witness clients and the current status with respect to last payment and amount owed. Please note that the total amount owed us for these claims is \$25,590.72. Not counting the two unverified claims, the total is still a healthy \$20,146.97. As a small business, we reiterate, it is often hard for us to manage with such a huge accounts receivable.

We would also like to point out that in some cases (notably the two Mehtlan accounts), these past due accounts are of a long duration. Surely there must be a way to simplify the payment process!

Even considering our occasional errors, insurance companies (private payers) are generally able to reimburse us for our work within a 1-2 month period of time.

Thank you for your attention to this cash flow problem. If there are any additional ways (other than those we have incorporated) in which we can assist in hastening the payment process, please let us know.

Sincerely,

Scott Sherman, M.A., MFCC

Enclosure

cc: Victims of Crime
Sacramento

VICTIM WITNESS RECEIVABLES

As of 10/20/87

<u>Client</u>	<u>Bal. Due</u>	<u>Last Date VW Paid</u>	<u>Last Amt. VW Paid</u>	<u>Date Last Seen</u>
Jodie Biggs	630.00	8/17/86	1180.00	7/22/87
Jenny Biggs	440.00	8/17/87	470.00	7/22/87
*Diana Davidson	845.00	-	0	9/29/87
Michelle Gavette	18.50	6/18/87	886.75	7/23 (Conj)
Ann-Marie Gavette	28.75	6/18/87	531.75	7/23 (Conj)
Margaret Gavette	645.25	6/18/87	1350.00	10/8 (Conj)
Charline Harrison	607.00	3/19/87	223.00	10/13/87
Locatelli/Mabery	210.00	8/26/87	250.00	10/9/87
Trudy Mabery	1280.00	4/16/87	300.00	10/13/87
Yolanda Mabery	1670.00	4/16/87	300.00	10/13/87
Carla Mabery	960.00	-	0	10/13/87
Aaron Masterson	1845.00	9/10/87	270.00	9/2/87
Lori Masterson	433.00	6/18/87	750.00	7/9 (Group)
Shawn Masterson	1143.00	7/16/87	612.50	10/8/87
Sharon Masterson	460.00	10/19/87	440.00	10/1 (Conj)
*Lila Malone	430.00	10/1/87	995.00	10/12 (Con)
*Shannon (Davis) Malone	770.00	10/1/87	805.00	10/12/87
*Sheryl (Davis) Malone	600.00	10/1/87	570.00	10/12/87
Shawn Malone	61.50	-	0	3/9 (Group)
Diana Mehtlan (Eric Crouch)	234.72	-	0	5/28/87
Richard Mehtlan	455.00	-	0	5/4/87

* Private insurance has recently made payment - see attached

VICTIM WITNESS RECEIVABLES
As of 7/28/87

-2-

<u>Client</u>	<u>Bal. Due</u>	<u>Last Date VW Paid</u>	<u>Last Amt. VW Paid</u>	<u>Date Last Seen</u>
Anna Pierson	280.00	-	0	9/16 (Group)
Sarah Pierson	711.50	7/8/87	20.00	9/16 (Group)
Kim Pierson	1080.00	7/3/87	140.00	9/16/87
Williams/Pinole	1540.00	4/2/87	700.00	7/23/87
Bessie Ratliff	1112.25	-	0	10/8/87
*Victoria Nunes (verbal verification by V.W.)	775.00	-	0	10/8/87
Ellen Wells	<u>48.00</u>	7/2/87	650.00	6/10/87
TOTAL	\$19,313.47			

<u>Unverified</u>	<u>Balance</u>	<u>Last Seen</u>
Melissa Garner	2373.75	6/3/87
Mimi Doka	150.00	3/4/87
Vera Nunes	3610.00	9/29/87
TOTAL	<u>\$25,447.22</u>	

* Private insurance has recently made payment - see attached

Susan Marie Knopf, L.C.S.W.

514 South School Street, Suite 202

Ukiah, CA 95482

707-463-2131

November 2, 1987

The Honorable Dan Hauser
Member of the Assembly
216 West Perkins
Ukiah, CA 95482

RECEIVED

NOV 5 1987

Attention: Theresa Staber

UKIAH OFFICE

Sir:

I am writing to you to express my serious concerns about the Victim/ Witness Assistance Program, and to request your help in intervening with them 1) to help me get the money they owe me, and 2) to improve and reorganize this profoundly inefficient bureaucracy.

I am a psychotherapist with experience and expertise in working with abused children and their parents. I hope to be able to continue my work with this particularly vulnerable and needy population, but will be unable to do so if I am not reimbursed promptly for my efforts. I am unable to pay my own bills when I am not paid for my work. I see that the issues are as follows:

I. Extreme Bureaucratic Inefficiency and Delays.

As I understand it, the local Victim/Witness Assistance office sends bills to Sacramento, where each bill must pass through 6 or 7 stations before it is paid: 1) mail room, 2) case assigned, 3) claims specialist, 4) analyst, 5) hearing of Board of Control, 6) print check, 7) file may be sent to "recheck" at any time. Even for a bureaucracy, I find this process to be clumsy and absurd. And even if one accepts such a process as necessary for the first claim or bill submitted by a victim, surely all subsequent bills need not go through repeated eligibility verifications and Board hearings.

Because the process in Sacramento is so disorganized, the local office requests that we submit bills quarterly - apparently the Sacramento office gets hopelessly confused with monthly bills.

Let me give you some examples from my own practice.

1. N.M. - billed in January 1987 for \$780. Billed again in May for an additional \$990. (Total owed \$1770). As of mid-September, this case was "waiting for an analyst."

2. D.W. - billed in April for \$360. Billed again in August for \$840. (Total \$1200). As of mid-September, this case was still waiting to be assigned to a claims specialist.

3. I.O. - billed in May for \$540. As of mid-September, this case was still waiting to be assigned to a claims specialist.

4. S.B. - billed in May for \$540. As of mid-September, this case was still waiting to be assigned to a claims specialist.

5. R.J. - billed in May for \$780. As of mid-September, it was "working in the system." (I guess that means they couldn't find the file)

6. C.B. - billed in June for \$600. As of mid-September, it was "waiting for an analyst." By the end of October, after running up bills totalling \$1290 for the child and her mother, it was determined that they were not eligible for VW Assistance after all.

7. J.G. - billed in June for \$405. As of mid-September, it was "waiting for an analyst."

Meanwhile, I have not yet been paid for work I performed over a year ago!

II. Unclear, Varying and Untimely Eligibility Determinations

Eligibility determinations are made by the Board as they are considering payment of bills. Thus, neither victims nor their providers know if they are actually eligible for VW Assistance until after bills are presented and have spent months churning around the Sacramento office.

Example #6 C.B. (above) is a case in point. After six months of treatment (in fact, after treatment had been terminated), we found out that she is not eligible. Legally her parents are responsible for the bill, but they cannot afford it and would never have assumed such a financial liability if they thought that they were not covered by VW Assistance.

Furthermore, it is my understanding that the Board sometimes arbitrarily changes eligibility requirements and determinations without notifying victims or providers in advance. Thus people previously found eligible might incur more bills only to find that they are no longer eligible.

III. Victims of Child Abuse

It is my understanding that this particularly vulnerable and helpless population of victims is currently being singled out by the Board by their finding fewer and fewer of these children eligible for VW Assistance. Such arbitrary policy changes are unconscionable in an agency supposedly designed to help victims of crime.

IV. Sacramento Office

I wish to emphasize that these problems are all in the Sacramento offices. the local representatives have always been helpful, cooperative and prompt. Our local representatives, too, are frustrated by the continuing problems in Sacramento.

Recommendations

1. Eligibility requirements must be clarified and eligibility must be determined quickly and at the local level.
2. The process of handling claims in Sacramento must be simplified, streamlined, and speeded up.
3. Providers must be paid promptly (within 60 days of billing).
4. Victims and providers must be notified in advance of changes in eligibility *or billing procedures*.
5. Victims of child abuse must not be singled out as the population on which to balance the budget.

I appreciate your consideration of these matters. It is shocking to me that the State of California, with its highly publicized "budget surplus" is, in fact, months behind in payment of thousands of dollars of debts.

I look forward to hearing from you soon.

Very truly yours,

Susan Knopf, LCSW

Susan Knopf, LCSW

cc: Sheelagh Jaquay, Coordinator
Victim/Witness Assistance, Ukiah



COMMUNITY TREATMENT CENTER
helping abused children and their families

P.O. BOX 2223
FAIRFIELD, CALIFORNIA 94533
707-425-9414

November 12, 1987

Senate Judiciary Subcommittee
on Victims' Rights
State Capitol
Rm. 2080
Sacramento, CA 95814

RE: Public Hearing on Victim Restitution Program

Dear Committee Members:

Community Treatment Center, a non-profit agency in Solano County which serves sexually abused children and their families, wishes to state the following for the record:

1. To date, our agency has \$39,605.00 in outstanding claims in process at the State Board of Control.
2. Some of these claims date as far back as December, 1986.
3. Severe cash flow problems caused by untimely processing of claims may result in closure of our services to over 500 persons annually.

Enclosed is a letter to Assemblyman Tom Hannigan which we also include for the record. This correspondence contains a detailed description of our dilemma in relation to the State Board of Control. Since June, 1987, we have been seeking legislative assistance to ascertain the status of our claims and to procure more timely reimbursement of approved claims. The current situation of untimely processing and sporadic reimbursement leaves our agency extremely vulnerable.

We appreciate your efforts to remedy this situation which afflicts not only our agency, but many other service providers throughout the State.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Catherine Elia', is written over the typed name.

Catherine Elia
Executive Director

CC Community Treatment Center Board of Directors
Encls.



COMMUNITY TREATMENT CENTER
helping abused children and their families

P.O. BOX 2223
FAIRFIELD, CALIFORNIA 94533
707-425-9414

October 20, 1987

Assemblyman Thomas M. Hannigan
844 Union Ave., Suite A
Fairfield, CA 94533

Re: CTC's Severe Cash Flow Problem Due To State Board of Control
Reimbursement Process

Dear Assemblyman Hannigan:

Community Treatment Center, a sexual abuse treatment program for children and their families in Solano County, faces the imminent prospect of closure. Our dilemma once again is a severe cash flow problem. To date, our agency has approximately \$39,000 in outstanding claims in process at the State Board of Control. Some of these claims date as far back as December, 1986. The untimely processing and disbursement of Victim of Crime funds is in violation of the legislative mandate to reimburse within a 90 day period. In short, our program which currently serves 90 children and 140 adults is being strangled by the system.

Last June, I wrote to you regarding a similar cash flow problem in our agency due in large part to the lengthy processing of Victim of Crime Claims at the State Board of Control. At that time, your office took prompt action in contacting the State Board of Control and provided suggestions to benefit our clients. (Please see attached copy of your letter.) Your suggestions were followed immediately. Our local Victim Assistance Program representative has been contacted on several occasions regarding our claims. Several lists of claimants' names and claim numbers have been submitted to Sacramento, both to Ms. Embrie and to her representatives. For subsequent procedures to insure speedier processing, we were promised a meeting with State Board of Control Personnel in July. After many phone calls to the Victim of Crime office, this meeting was finally held on September 24, 1987. Ms. Mc Levis from the Solano County D.A.'s office was present along with Judith Embrie, Martina Braumley, Myra Moon and other staff. At the meeting, we learned that many of our claims were pending. (Only two claims were not qualified.) Some of the claims submitted prior to March, 1987, through the D.A.'s office had only been assigned claim numbers as of August 18th. The reason for this could be either (1) the claims had not arrived from the D.A.'s office until that time, or (2) they had not been accounted for at the State Board of Control office prior to that time. When we questioned the length of time involved regarding these claims, we were not given any clear answers as to

Assemblyman Hannigan, October 20, 1987, Page2

where the delay actually occurred. We also learned at the meeting on Sept. 24 that the procedure recommended by the D.A.'s office in Spring 1987, i.e., for the agency to assist clients in processing claims, is not within the intent of the Victim of Crime Statutory law. We were also informed of the thousands of claims (statewide) pending, and that we could not expect claims for our clients to be processed first. Since that meeting, we have taken another direction in assisting our clients to get reimbursement for treatment. Currently, we are referring them to an independent attorney, and/or back to the D.A.'s office of Victim Assistance.

Currently, our program is the only one of its kind in Solano County. Last year, we provided services to more than 500 children and family members. Our funding sources other than Victim of Crime reimbursements, include grants, foundation monies, client fees, fundraisers, and donations. Of our \$200,000 budget, these sources (not including Victim of Crime monies) amount to about 64% of the total income. The major portion of these funds are available on an intermittent basis dependent upon the funding period and grant contracts. Hence, we are desperately in need of more timely reimbursement through the Victim of Crime office. Presently, our funds will last until the end of November before we will be forced to recess the program. A small percentage of other funding from AB1733 and AB90 grants (the major portion of our income other than Victim of Crime monies) is not available until mid-January. At that time, without Victim of Crime monies, we will be forced to cut services drastically to children and families needing treatment for sexual abuse problems. A program that operates from month to month wondering whether or not there will be enough cash on hand to meet the payroll and minimal operational costs, cannot survive.

We would appreciate any further assistance that you can provide at this time. It is essential to get the current claims pending for reimbursement to Community Treatment Center processed, and the funds distributed as soon as possible.

On behalf of all of our clients, thank you for your continued care and support.

Sincerely,

Catherine A. Elia
Executive Director

cc: Solano County Board of Supervisors
John Powers, President of CTC Board of Directors

APPENDIX # 3

Memorandum

Date : November 25, 1987

File No.: 751

To : W. J. Anthony, Chairman
State Board of Control
915 Capitol Mall, Suite 590
Sacramento, CA 95814

From : Department of General Services

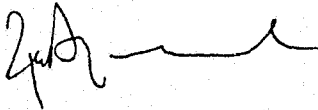
Subject : STATE BOARD OF CONTROL
AUDIT OF
VICTIMS OF CRIME PROGRAM

The enclosed report of the Victims of Crime program by the Office of Management Technology and Planning was completed as the result of your request as Chairman of the State Board of Control to review internal controls.

The report has been discussed with operating management and with the State Board of Control who have provided the comments and corrective actions attached. Proposed actions are responsive to the findings and many are already in process.

We wish to thank the management and staff of the State Board of Control for their cooperation during the review.

If you have any questions or need further information on this issue please call me at 323-3066.



P. K. AGARWAL, Chief
Office of Management
Technology and Planning

PKA:CR:asd
Attachments

State of California

State and Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES

Office of Management Technology and Planning

Audit Section

STATE BOARD OF CONTROL

Audit of Victims of Crime Program

November, 1987

Memorandum

Date : November 25, 1987

File No.: 751

To : W.J. Anthony, Chairman
State Board of Control
915 Capitol Mall, Suite 590
Sacramento, CA 95814

From : Department of General Services
Office of Management Technology and Planning

Subject: Board of Control

As Chairman of the State Board of Control (SBOC), you requested that the Audit Unit of the Department of General Services perform an audit of the Victims of Crime Program.

During the course of the audit, between January 13 and April 30, we made a study and evaluation of the system of internal accounting and administrative controls of the Victims of Crime Program administered by SBOC. Our study and evaluation was conducted in accordance with standards for the Professional Practice of Internal Auditing as required by Section 1236 of the California Government Code, except that the Audit Unit does not meet the standard which requires organizational independence due to our reporting relationship to the chairman of SBOC.

We did not perform an audit of the financial statements of SBOC, and we therefore do not give an opinion on the financial statements. Moreover, our audit was not performed to determine whether all of the revenues due to the Restitution Fund had been received.

Our audit was limited to the internal accounting and administrative controls of the Victims of Crime Program administered by SBOC. The management of SBOC is responsible for establishing and maintaining a system of internal accounting and administrative control procedures. The broad objectives of control systems for state agencies are to ensure:

- The reliability and integrity of information;
- Compliance with policies, plans, procedures, laws and regulations; and
- The safeguarding of assets;

W. J. Anthony
Page2

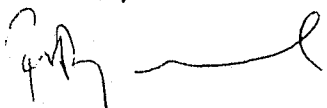
Because of inherent limitations in control systems, errors or irregularities may occur and not be detected. In addition, projection of any evaluation of systems to future periods is subject to risk since procedures may become inadequate because of changes in conditions or the degree of compliance with the procedures may deteriorate.

During our audit, we found material weaknesses in controls over the following:

- the verification and approval of claims;
- the payment of claims;
- the collection of overpayments made to claimants; and
- the automated claim payment system;

In our opinion, the systems and procedures in use for the Victims of Crime Program at April 30, 1987, taken as a whole, are not sufficient to provide SBOC with reasonable assurance that internal accounting and administrative controls protect assets or that fiscal compliance procedures are in place and operating as intended.

If you have any questions, please call me at 323-3066 or Carolyn Robinson, Audit Manager, at 322-4188.



P. K. AGARWAL, Chief
Office of Management
Technology and Planning

PKA:IH:IH

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SUMMARY

The Chairman of the State Board of Control (SBOC) requested that the audit unit of the Department of General Services perform an internal control review of the programs and systems which SBOC administers. During the audit, serious internal control weaknesses were found in the Victims of Crime (Victims Program) program. Because of the serious nature of the deficiencies, audit resources were concentrated on a review of program, administrative and automation controls of the Victims Program. In addition, we relied upon the work of a concurrent report of the Department of Finance to appraise accounting internal controls. We also utilized the assistance of auditors with the State Controller's Office.

This report presents the results of our audit tests and the recommendations for implementing corrective action. The report indicates that several findings from the 1984 audit report had not been corrected. Further, some of these previously identified weaknesses had continued to deteriorate as the result of the increase in claim applications and the expansion of the automated system. The report concludes that the internal control system is not adequate to provide reasonable assurance that state resources are protected. The report also concludes that losses have occurred due to errors and improper activities.

The report is presented in two parts: Part I includes the review of the claim payment process, and Part II includes the review of the acquisition, development, and maintenance of the automated system for claim payments.

Part I of the report identifies \$129,317 in unsubstantiated claims. In addition, \$617,000 in uncollected emergency award overpayments were also identified.

Part II of the report identifies major weaknesses in the automated data processing system. The weaknesses identified include deficiencies for system development, system installation, data security, data integrity, and documentation. SBOC plans to expand this system to include participating county victim centers. We have recommended that the system be reviewed for conformance with minimum standards before data processing equipment is provided to other agencies. In general, the system should provide accurate accounting information and should provide for the detection of duplicate payments before other agencies are permitted to utilize the system.

PART I
CLAIM PAYMENTS

INTRODUCTION

SBOC considers and settles claims against the state, and as part of the Citizens Indemnification Program, it indemnifies citizens who are injured or suffer financial hardship as a result of a crime of violence. The three member board (Board) which oversees the SBOC consists of the Director of General Services, who serves as the Chairman, the State Controller, and a public member appointed by the Governor.

The Victims Program is administered by the Board, an Executive Secretary (ES), a Deputy Executive Officer (DEO), and a staff of approximately 110 employees. Although programmatically the staff, the DEO, and the ES report to the Board, administratively they report to the Director of General Services.

Title 2, Division 3, Part 4, Chapter 5 of the California Government Code delineates the authority and responsibilities of the Board in administering the Victims Program.

The Victims Program receives its funding primarily from the Assessment Fund. Assessments imposed by courts for criminal offenses are remitted by the counties to the State Controller. The State Controller then transfers monthly 22.12% of the Assessment Fund to the Restitution Fund to pay victim's claims.

The Restitution Fund receives additional revenue from the counties. Fines collected by the courts from persons convicted of driving under the influence of alcohol or drugs and additional fines imposed by courts for felony offenses are also remitted by the counties to the State Controller. The State Controller deposits these revenues in the Restitution Fund. Federal funds are also received and deposited in the Restitution Fund.

The Victims Program administered by SBOC assists residents of the State of California in obtaining restitution for the pecuniary losses they suffer as a direct result of criminal acts. Pecuniary losses, according to Code Section 13960 of the California Government Code, are "any expenses for which the victim has not and will not be reimbursed from any other source." The maximum amount that a claimant may receive for losses incurred as the result of a criminal act is \$23,000; however, when federal funds are available, the maximum amount that a claimant can receive is raised from \$23,000 to \$46,000.

Victims of crimes (claimants) may apply for an emergency award of up to \$1,000. SBOC may grant emergency awards based solely on the application of the claimant; however, claimants who are granted an emergency award are required to file a regular application within one year from the date of the crime.

When a regular application (a claim) is filed by a claimant, the SBOC is required by Government Code Section 13962 to verify the pecuniary losses listed in the claim. In addition, Government Code Section 13962 permits SBOC to contract with agencies having victim centers to verify claims. SBOC and approximately 15 participating agencies have entered into Joint Powers Agreements to verify claims. The agreements require the victim centers to verify a specific number of claims per year. The verified claims are submitted to SBOC.

The SBOC can make one of three recommendations:

- allow the claim;
- deny the claim; or
- discuss the claim;

The verified claim is then placed on one of two Board agendas which are addressed at regular public hearings. The two agendas are as follows:

- the "consent" agenda, and
- the "discuss" agenda;

Because of the volume of claims received by the SBOC, not all claims are heard by the Board; however, claims on the "discuss" agenda are individually heard and discussed by the Board. Based on the evidence presented by the claimant, the Board makes a decision to allow, deny or "continue" the claims on the "discuss" agenda. In addition, at each regular meeting of the Board, the "allow" and the "deny" recommendations on the consent agenda are approved by the Board.

Payment journals are created by SBOC from the "allow claims" on the approved consent and discuss agendas. From the payment journals, automated claim schedules (on magnetic tape) are created and submitted to the State Controller. Upon receipt of the claim schedules, the State Controller issues warrants to the claimants. All warrants issued to claimants are recorded as expenditures in the Restitution Fund.

SCOPE AND METHODOLOGY

On November 17, 1986, the Director of General Services as Chairman of SBOC requested the Audit Unit to perform an audit of SBOC. The audit was to include the Victims Program, the Hazardous Waste Program, and the Government Claims Program.

On March 11, 1987, the audit of SBOC was suspended because serious weaknesses were identified in the system of internal controls for the Victims Program. The planned testing of the Hazardous Waste Program and the Government Claims Program was redirected to allow the auditors and SBOC management to devote resources toward correcting the internal control weaknesses in the Victims Program.

The audit of the Victims Program was conducted to determine whether the system of internal controls was adequate to safeguard assets, ensure the reliability of information, ensure the efficient use of resources, and ensure compliance with applicable laws, policies, and procedures.

The requirements for an effective system of internal controls are defined in the Financial Integrity And State Manager's Accountability Act (FISMA) of 1983 (Appendix A).

Because an employee of SBOC was arrested on November 17, 1986, for receiving \$2,000 from a claimant who sought and received approval for an inflated claim, we conducted a review of the claims approved by this employee to determine whether the system for approving claims had failed to function or whether the system had been overridden by the employee.

We judgmentally selected and reviewed 7 of the 20 claims which SBOC identified as having been improperly approved by the employee. All 20 of the claims reviewed were submitted by SBOC to the Department of Justice for its criminal investigation.

We were also made aware by SBOC's staff of three (3) claims which were alleged to have been improperly approved by management. Because these approved claims represented a potential override of existing internal controls, we reviewed all three (3) of the claims.

To evaluate the system of internal controls used to accept claims, verify eligibility of claimants, determine award amounts, and approve payments to claimants, we reviewed a random sample of 30 regular claims received in calendar year 1986.

Because a claimant who receives an emergency award must submit a completed application for a regular award within one year of the crime and because the payment of the claim may take 90 days, we

reviewed 30 emergency claims received before October 26, 1985 (approximately 15 months from the date the claims were selected for testing).

Since the initial samples of regular claims and emergency awards revealed a large error rate, we determined that the existing system of internal controls did not prevent or detect errors or irregularities in amounts that would be material in relation to the financial statements.

AUDIT SUMMARY OF CLAIMS

On March 17, 1987, we notified the Board of the critical weaknesses in the system of internal controls for the Victims Program; namely, the verification and approval of claims, the payment of claims, the collection of overpayments. The weaknesses resulted from both a lack of required internal controls and from internal controls that were overridden. Because of these weaknesses, losses due to errors and improper activities have occurred. These weaknesses affected the Restitution Fund, the State Controller, and reporting to the State Legislature.

Approximately \$110,000 in unsubstantiated claims were paid out of the Restitution Fund. In addition, because some internal controls were overridden by management, both ineligible and unsubstantiated claims totalling \$10,990.68 were improperly approved and paid from the Restitution fund. Finally, despite containing errors, claims totaling \$8,326 were approved by SBOC. All of the claims were subsequently paid from the Restitution Fund.

The State Controller unknowingly paid, in error, approximately \$129,317 in claims because internal controls for the Victims Program were either nonexistent or were overridden by management of SBOC.

Approximately \$617,000 in emergency award overpayments were not recorded on the financial statements of the Restitution Fund and were not reported to the legislature. In addition, these overpayments were not collected.

PREVIOUS AUDITS OF THE BOARD OF CONTROL

In May 1984 the General Services Audit Unit issued an audit report (R-83-1200) on the Victims program, the Governmental Claims Program, and the Hazardous Waste Program. Included in the audit were recommendations to the management of SBOC to strengthen internal controls. Four (4) of the weaknesses in internal controls which were reported in the May 1984 report were not corrected. The four (4) weaknesses are as follows:

- 1) The ES does not document the basis for overruling staff recommendations (PART I., SECTION 2., FINDING #2).
- 2) SBOC has not implemented procedures to identify, record and collect emergency award overpayments (PART I., SECTION 4., FINDING #1).
- 3) SBOC has not reported annually to the legislature, as required by Government Code Section 13961.1, those emergency advances which have become uncollectible (PART I., SECTION 4., FINDING #2).
- 4) SBOC has not ensured that written instructions for data input, for data retrieval, and for report production have been developed for the EDP system (PART II., SECTION 4., FINDING 1).

In January 1987 the Department of Finance conducted a review of the system of internal accounting controls and fiscal procedures of SBOC, and of federal financial reports. Its review disclosed a "serious breakdown in the Board of Control's system of internal accounting control and fiscal procedures. The controls were either not operative or contained inherent weaknesses."

In the opinion of the Department of Finance, the system of internal accounting and fiscal procedures at the Board are "not sufficient" to ensure that assets are safeguarded from unauthorized use, that transactions are executed in accordance with management's authorization, and that transactions are recorded properly to permit the preparation of financial reports.

SECTION 1.
IMPROPER ACTIVITIES

FINDINGS

1) The Executive Secretary (ES) and the Deputy Executive Officer (DEO) violated the State Administrative Manual (SAM) by not reporting suspected fraud to both the Department of Finance and to the Auditor General.

The ES and the DEO did not notify the Auditor General and the Department of Finance of suspected fraud as required by SAM. Specifically, Section 601 of SAM states:

Agencies will notify the Department of Finance, Financial and Performance Accountability, and the Office of the Auditor General, of actual or suspected theft, defalcation, or fraud.... Such notification will be made in writing not later than the first business day following the actual or suspected defalcation or fraud.

We found that five (5) months prior to an employee's arrest on November 17, 1986, for suspected fraud the DEO was aware of the employee's involvement with a claim that was suspected to be fraudulent. An analyst with SBOC informed us that in mid-June 1986 the DEO told her that "(the employee) paid out \$23,000 for a thumb injury. I need you to verify the claim." The analyst was also told that "the claimant may have submitted a fraudulent claim."

The analyst informed us that when the investigation of this claim was completed by her on September 15, 1986, she submitted a memo to the DEO. Her memo informed the DEO that \$16,631.84 of the \$23,000 awarded to the claimant for a wage loss could not be substantiated because the "(claimant) was unemployed at the time of the incident" and because the claimant had received State Disability Insurance benefits for several weeks during his disability period.

In addition to this memo, a second memo was written on this matter. On September 21, 1986, (6 days after the receipt of the first memo), the DEO wrote a memo to the ES which addressed the fraudulent claim. In the memo the DEO wrote, "we may be uncovering an attempt to gain money through the program illegally."

During the two (2) months prior to the arrest of the employee on November 17, 1986, we found that the ES and the DEO took no action to resolve the suspected illegal activity. In addition, they took no action to notify the Department of Finance and the Auditor General of the suspected fraud.

We recommend that SBOC implement procedures to report

suspected fraud to both the Department of Finance and to the Auditor General.

- 2) The DEO discontinued an investigation of approximately 269 wage loss claims approved by the employee who was arrested for fraud.

The ES informed us and the Board on March 31, 1987, that he did not continue the investigation of the claims approved by this employee because it would have jeopardized an ongoing criminal investigation; however, an internal investigation to determine whether additional claims had been improperly approved and whether overpayments had resulted could have been conducted without jeopardizing the criminal investigation.

We reviewed 7 of the 20 claims which the employee was suspected of having improperly approved. The total overpayment for these 7 claims was \$110,304 (an average overpayment of \$15,757 per claim). The 20 claims were found to be for wage losses. All 20 claims were submitted by SBOC to the Department of Justice.

Despite the severity of the fraud, 269 of the 384 (70%) wage loss claims in excess of \$999 approved by this employee were not reviewed because the internal investigation was discontinued.

We recommend that SBOC resume its internal investigation of these claims. We also recommend that any fraudulently approved claims which resulted in an overpayment should be scheduled for collection.

SECTION 2.
REGULAR CLAIMS

FINDINGS

1) Unsubstantiated claims, ineligible claims, and incorrectly calculated claim amounts have been paid by the State Controller because SBOC does not properly review claims approved by its staff.

The duty statements of both the Staff Services Manager I and the Claim Specialist Supervisor state that 70% of the supervisor's time is expected to be spent supervising analysts and claim specialists, respectively. In addition, FISMA (Appendix A.) Requires state agencies to maintain an effective system of internal review.

SBOC has not implemented an effective system of internal review because supervisors do not review the work of analysts and claim specialists. According to the ES, the staff of SBOC have "proven track records." As a result, "consent allow" claims approved by them are not reviewed by a supervisor. By not implementing a system to ensure that supervisors review "consent allow" claims approved by the SBOC, there is an increased risk of paying both ineligible and fraudulent claims.

In addition to the failure to detect ineligible claims, numerous errors made by the staff of SBOC also go undetected. In our audit 11 errors were found in the 30 claims (37% error rate) we tested. Four (4) of the errors resulted in the payment of ineligible claims. Five (5) of the errors resulted in overpayments. One (1) error resulted in the payment of an unsubstantiated claim. The remaining error (1) resulted in the payment of a claim which did not have a lien agreement present in the file.

In our sample of 30 claims, we found that the following ineligible claims had been approved for payment by SBOC:

Claim #1

Despite the presence of a police report which stated that the officer could not determine who had initiated the fight, this claim for \$399.59 was approved for payment.

The ES told us and the Board on March 31 that "this is an eligible claim... in the analyst's judgment the victim (claimant) was not involved in any events leading to the crime"; however, we found that the police could not determine whether or not the claimant was involved in the events leading to the crime.

In the police report, the officer wrote:

due to the conflicting statements from both parties (only) a disturbance report was written.... all subj (sic) were advised to go to the D.A.'s office to file charges.

We found no evidence in the file indicating that any party had filed charges against the other party.

In the absence of criminal charges, the police officer's factual conclusion was the most reliable statement which was available to the Staff. Page J-4 of the Claim Specialist Manual states that:

If the crime report indicates the possibility of a contribution issue, examine statements in the following order to determine the most reliable source to use in referring to the possibility of a Contribution issue.

- A) Law enforcement officers factual conclusion.
- B) Witness statements who (sic) are totally uninvolved...
- C) Witness statements who (sic) are acquaintances of the victim or suspect.

Claim #2

This claim for \$255.40 was approved for payment and placed on the "consent agenda" by the staff despite the fact that the victim failed to cooperate with law enforcement officials by refusing to prosecute the assailant.

In reviewing the claim, we found that the claim specialist who approved this claim had failed to follow Government Code Section 13964 which states that:

No victim shall be eligible for assistance under the provisions of this article under any of the following circumstances:

- (1) The board finds that the victim ... knowingly and willingly participated in the commission of the crime.
- (2) The victim or the person whose injury or death gave rise to the application failed to cooperate with A law enforcement agency in the apprehension and conviction of A criminal committing the crime."

Claim #3

This claim for \$1,219.60 was approved for payment by the staff despite the fact that the victim had voluntarily engaged in a fight.

On March 31 the ES informed us and the Board that:

This is an eligible claim. In the claim specialist's judgment, the contribution issue was not adequately significant on the part of the victim (claimant) to deny or discuss as he was in a defenseless position, on his knees, when stabbed.

However, we found that the claimant had contributed to the events leading to the crime because he had been fighting prior to the stabbing. Hence, the issue of contribution was significant. Specifically, the police noted in their report that:

Romero had been argueing (sic) with V-Ramos (claimant) which resulted in a fight ...during the fight he (claimant) had fallen to his knees at which point the S-Romero had stabbed him with a knife.

According to the Claim Specialist Manual (page J-6), claim specialists are required to deny claims filed by claimants who are injured during their voluntary participation in a fight. The Claim Specialist Manual states:

...(if) the victim and suspect voluntarily agreed to fight as a means of settling a dispute, regardless of whether either were armed; This incident should be classified as contribution to the crime itself. The Contribution Section should therefore be answered "Yes" and the claim will be Quick Closed (denied).

Claim #4

Although the police stated in their report that the claimant "fail(ed) to tell the truth" about the incident which led to his injuries, the staff approved this claim in the amount of \$4,373.95.

The police concluded in their report that none of the "subjects" involved in the incident had told the truth. Consequently, the police wrote that:

ALL SUBJS (sic) CONTACTED IN THIS INCIDENT TO (sic) FAIL TO TELL THE TRUTH FOR ALL RESPECTS OTHER THAN 'SALVADOR' WAS A MMA (mexican male adult), WHERE MANVILLA HAD BEEN STABBED AND WHAT TYPE OF A KNIFE WAS USED.

In the report, the police wrote that the claimant had stated that an individual named "Salvador" had approached him on foot and had stabbed him for no apparent reason. The claimant told the officer, "he (claimant) had no idea who 'Salvador' was (and) had never seen him before." He also told the officer that his brother came to his aid and struck "Salvador" in the head with an orange colored stick.

In reviewing the three (3) police reports which were submitted to the Board's staff, we found that the following information which contradicted the claimant's statements to the police was available in the police reports:

- 1) "Salvador" had arrived at the claimant's residence with two (2) friends of the claimant;
- 2) One of the claimant's friends had lived with "Salvador" during the eight (8) days prior to the stabbing;
- 3) "Salvador" and the claimant's two (2) friends arrived in the same car;
- 4) These three (3) individuals arrived at the claimant's residence with stolen property in the trunk of the car;
- 5) A "chrome colored tire tool" with blood stains was found in the trunk of the car;
- 6) There had been an argument between the claimant and "Salvador." During the argument, the claimant was stabbed; and
- 7) Although the claimant's brother admitted that he had taken his brother to the hospital, he denied that he was the one who came to his brother's aid and struck 'Salvador' in the head;

As noted in claim #2, Government Code Section 13964 denies assistance to victims who fail to cooperate with law enforcement officials in the apprehension and conviction of the criminal committing the crime.

Summarizing the errors which we found in the remaining eight (8) claims:

Claim #5

Despite an unexplained \$1,400 discrepancy between the

amount billed by the medical provider to the Board and the amount billed by the medical provider to the victim's insurance, this claim was approved for payment by an analyst.

In reviewing this claim, we informed the Staff that the medical provider had overstated the medical costs which were submitted to the Board. As a result, the Staff requested the medical provider to return the \$1,400 overpayment.

Claim #6

The claim specialist calculated a wage loss based on a 6 day disability period when the victim's physician had determined the disability period to be 2 days. As a result, the claimant was overpaid \$141.50.

Claim #7

The claim specialist, without verifying \$255.00 in medical expenses, approved this claim for payment.

Claim #8

The claim specialist approved this claim for payment without verifying the claimant's disability period. As a result, an unsubstantiated claim was approved by the staff for payment.

Claim #9

The claim specialist unknowingly approved a duplicate payment in the amount of \$197.56 to a medical provider.

A medical bill which had previously been reimbursed by SBOC was resubmitted by the medical provider to SBOC. Because the claim specialist failed to determine whether a payment had been submitted to the medical provider, the claim specialist unknowingly approved a duplicate payment.

Claim #10

We found five (5) claims that had been submitted by claimants who either planned to file a lawsuit or who stated that they might file a lawsuit in the future; however, two (2) of the claims which totalled \$1,126 did not have signed lien agreements.

We recommend that SBOC comply with Government Code Sections 13400 to 13407 by implementing an effective system of internal review to ensure that claims approved by SBOC are reviewed and approved by a supervisor.

- 2) SBOC does not ensure that the procedures in the Claim Specialist Manual do not conflict with the Government Code.

Page I-3 of the Claim Specialist Manual states that "(i)f claimed losses are no more than \$1,000 gross, there is no need to verify the disability period." This procedure is in conflict with Government Code Section 13962 which states that "(i)f the application is accepted, it shall be verified promptly by the staff of the board."

According to the ES, the Board approved an oral request from him to "streamline operations"; however, there was no documentation to indicate that the Board had been informed that the new procedure violated the Government Code.

In our May 1984 audit report on the Victims Program, we reported that SBOC did not document Board policy. We recommended in the report that SBOC should document all policies and procedures approved by the Board.

We again recommend that SBOC ensure that all policies and procedures approved by the Board are documented. In addition, we recommend that SBOC ensure that claim verification procedures are in compliance with the Government Code.

- 3) SBOC does not properly document and supervise the reconciliation of the "consent allow" agenda with the payment journal.

In reviewing the reconciliation of the Board-approved "consent allow" agenda with the payment journal, we found that the reconciliation was not documented and that there was no supervisory review of either the reconciliation or the adjustments to the payment journal.

Without a properly documented reconciliation, there is no assurance that only approved claims are appearing on the claim schedules (on magnetic tape) submitted to the State Controller.

We recommend that SBOC ensure that the reconciliation of the Board-approved "consent allow" agenda to the payment journal is properly documented. In addition, we recommend that SBOC ensure that a supervisor reviews and approves both the reconciliation and the adjustments to the payment journal.

4) SBOC has not ensured that the preparation of the reconciliation (noted above) and the preparation of the claim schedules are performed by separate employees.

We found that the same employee who prepares the claim schedules also reconciles the payment journal to the Board-approved "consent allow" agenda. In addition, this employee also prepares adjustments (adding or deleting claims) to the payment journal. The adjustments are then entered on the claim schedules before the claim schedules are submitted to the State Controller.

Without an adequate separation of duties in the reconciliation of the payment journal, fraud could occur and not be detected by management.

We recommend that SBOC ensure that these duties in the reconciliation process are adequately separated.

5) SBOC has not implemented procedures to ensure that all claims approved for payment by SBOC staff are placed on the consent agenda.

We found that 2 of the 30 randomly selected regular award claims had been approved for payment, but had never been paid. In reviewing the process through which approved claims flow, we determined that there is no listing prepared of claims approved for payment, and as a result, there is no listing to submit to the payment unit. Consequently, the payment unit cannot properly account for claims approved for payment.

We recommend that SBOC ensure that a daily "batch control" listing of claims approved for payment be generated and distributed to the payment unit to account for claims approved for payment.

6) SBOC has not established procedures to locate claimants whose warrants have been returned to the State Controller.

Whenever a warrant is returned undeliverable to the State Controller, the State Controller will request the agency involved to provide the current mailing address of the payee. After 30 days, unclaimed warrants are automatically deposited in the Unclaimed Trust Deposit account maintained by the State Controller. Contracted Fiscal Services within the Department of General Services provides SBOC with a monthly schedule of unclaimed awards which have been placed in Unclaimed Trust Deposits.

As of January 31, 1987, \$140,314 in unclaimed awards had

been placed in the Unclaimed Trust Deposit account.

Since uncashed warrants may be an indicator that fraudulent activities are occurring, we recommend that SBOC follow-up and investigate the unclaimed warrants.

SECTION 3.
EMERGENCY CLAIMS

FINDINGS

- 1) SBOC has not developed procedures to identify, record and collect emergency award overpayments.

In our May 1984 audit report on the Victims Program, we recommended that SBOC implement a system to identify, record and collect overpayments on emergency awards. The ES informed the Chairman of the Board on May 30, 1984, that "an accounts receivable program was developed, collection procedures were implemented...(and) collection efforts are under way after initial discussion by the Executive Secretary with the Board"; however, we found that a program to record and collect these overpayments was never implemented.

In a random sample of 30 emergency award claims, four (4) claims had been overpaid by a total of \$1,512. In addition, none of the overpayments had been recorded or collected by the Staff.

On January 27 we obtained from SBOC a computer printout of all overpayments on emergency awards since December 1981. According to the information in this report, the total amount of uncollected overpayments as of January 27 was \$617,786. All four (4) of the overpaid claims were traced to this report.

One of the internal control weaknesses cited by the Department of Finance in its 1987 report on accounting controls of SBOC was the lack of a system to record and collect emergency award overpayments (accounts receivables). The Department of Finance found that the \$156.72 in accounts receivable reported on the financial statements of the Restitution Fund at June 30 had been understated and were therefore not properly stated.

We again recommend that SBOC develop procedures to identify and to record overpayments on emergency awards. We also recommend that SBOC ensure that procedures are implemented to collect emergency award overpayments.

- 2) SBOC has not reported annually to the legislature those emergency advances which have become uncollectible as required by Government Code Section 13961.1.

Government Code Section 13961.1 requires the Board to report annually, beginning in 1985, on the advances which become uncollectible in prior years.

In his written response, dated May 30, 1984, to the May

1984 audit report of the Victims Program, the ES wrote that "a report to the legislature on the emergency award advances which become uncollectible will be published in the near future"; however, between January 1, 1985, and March 31, 1987, the ES had neither prepared nor submitted to the legislature a report on the uncollectible advances.

We recommend that SBOC annually report uncollectible emergency advances to the legislature.

- 3) Claims filed by claimants who have elected not to use their health insurance to defray medical costs are being approved by SBOC.

We found 2 instances where a victim had Kaiser Health Insurance, but elected to seek treatment with another medical provider. Both claims were placed on the "consent allow" agenda and were paid.

The payment of these claims appears to violate the intent of Government Code Section 13960 which limits a claimant's recovery to losses that will not be reimbursed from any other source.

We recommend that SBOC report to the Board the cost of allowing victims with medical insurance to seek reimbursement for medical costs.

- 4) Emergency award applications accepted by the SBOC do not always contain the name, address, and telephone number of the claimant's employer as required by the Government Code.

Government Code Section 1396.1 requires all emergency award applications to contain the name, address, and telephone number of the claimant's employer.

We found 7 applications in our random sample of 30 emergency award applications which did not contain any employer information and for which the victim claimed and received reimbursement for medical expenses. Without the employer information, SBOC cannot properly verify whether the claimant has employer-paid health insurance to reimburse medical expenses.

The DEO informed us that if claimants choose not to submit medical expenses to the health insurance coverage provided by their employers then the information pertaining to the employer is not requested.

We recommend that the SBOC ensure that the employer information required by Government Code Section 13961.1 is present on all emergency award applications.

5) SBOC has not established procedures to determine Medi-Cal eligibility for claimants before their claim is approved for payment.

Government Code Section 13960 (d) requires that victims shall only be compensated for those expenses for which they have not or will not be reimbursed from any other source.

In 16 of the 30 emergency claims in our sample, the victim had claimed a reimbursement for medical costs. Two (2) of the victims had voluntarily applied for Medi-Cal benefits with one (1) of the victims receiving benefits.

By referring eligible victims to the Medi-Cal Program, SBOC could ensure that only those victims who have no other source of reimbursement are granted awards by the Board.

We recommend that SBOC report to the Board the cost of allowing victims who are eligible for Medi-Cal to seek reimbursement from SBOC for medical costs.

SECTION 4.
OTHER CLAIMS REVIEWED

FINDINGS

- 1) The ES violated Government Code Section 13962 by approving for payment a claim which had not been verified.

We found that the ES had approved a claim for payment which had not been verified. The victim, a sole proprietor who paid extra wages to his employees during his disability, received a reimbursement for an unsubstantiated wage loss. The reimbursement for \$8840.52 included \$921.18 in unsubstantiated auto expenses which were incurred by the claimant and by his employees.

Government Code Section 13962 states that "if the application is accepted, it shall be verified promptly by the staff of the board." For the Staff to verify a self-employment wage loss, we found that page U-9 of the Claim Specialist Manual requires the staff to:

...(R)equest copies of cancelled checks verifying the total amount of wages paid. Also request the prior year "Profit or Loss" and the "Profit or Loss" for the year during which the disability occurred. Compare the amount of wages paid to employees during both years....

We found that there was no comparative analysis of wages paid and no copies of cancelled payroll checks in the claim file. For at least 9 months (October 10, 1985 to July 18, 1986), SBOC had repeatedly requested the claimant to submit cancelled payroll checks to verify his claim, but the claimant never submitted the cancelled checks.

On July 18 a manager with SBOC instructed his staff to waive the requirement for cancelled checks and, instead, to use the claimant's summary of wages paid and auto expenses incurred to calculate the award amount.

When we spoke to the manager on March 4, he informed us that the ES had authorized him to accept the documents supplied by the claimant. On March 8 the manager informed us that he had spoken to the ES after the March 4 discussion with us, and because this claim involved issues in a "gray area," the ES had informed him that it was the ES's judgment that the claim should be approved for payment.

We found that the payroll summary sheet submitted by the claimant was not reliable since it was based on financial data that was unaudited. In addition, the W-2 form was also unreliable since it was derived from payroll summary sheets. Neither the summary sheet nor the W-2 form is identified in the Claim Specialist Manual as an acceptable

alternative to the check requirement.

We recommend that SBOC comply with Government Code Section 13962 and with established procedures when it verifies claims.

2) The ES violated Government Code Section 13964 by approving and subsequently paying a claim for a victim who had initiated and voluntarily participated in a fight.

On March 5 the ES overruled the recommendation of his staff and approved a claim submitted by a victim who had voluntarily participated in a fight. We found no explanation in the claim file setting forth the ES's reasons for approving this claim.

In reviewing this claim, we found that the claim had been approved despite the presence of a police report which stated that the claimant voluntarily fought several individuals.

The ES stated on March 31 that "management did not feel this issue (voluntarily fighting) was more significant than the issue of the cause of the victim's death." The fight, he stated, "might have induced the heart or artery trauma"; however, because the claimant voluntarily fought, he was not legally eligible to receive assistance from the Victims Program.

In reviewing the police report, we found that the reporting officer interviewed a witness to the fight who informed him of the following:

The driver (claimant) slowed and made a turn northbound onto (a street), and came to an abrupt stop in front of the ...kids. The victim put the kick stand down on his motorcycle, and walked over a couple of steps and confronted the group of juveniles.... the victim started pointing his finger at the ... kid with the dark shirt on... He (witness) stated that he wasn't certain as to who actually threw the first punch, but the group began fighting... He (witness) stated that the (victim) had kicked several of the ... kids and everybody kind of backed off.

The (victim) told the group of ... kids that he would fight all of them, he would take them all on, one on one. One of the ... kids approached the victim and they began to fight one on one... one of the other kids tackled the (victim) around the legs. Everybody jumped in.

When the ES approved this claim for the "consent allow"

agenda, he did not comply with Government Code Section 13964. Government Code Section 13964 states:

No victim shall be eligible for assistance under the provisions of this article under any of the following circumstances:

(1) the board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime * * *

In the 1984 audit report of the Victims Program, we noted that the ES did not document the reasons for overruling staff recommendations. As a result, we recommended that the ES document the properly document the basis for overruling recommendations on claims.

We recommend that SBOC comply with Government Code Section 13964 which denies assistance to victims who knowingly and willingly participated in the commission of the crime. To ensure a complete audit trail, we also recommend that SBOC properly document recommendations which have been reversed.

3) A Staff Services Manager approved a claim for the consent agenda which had previously been denied and for which no new evidence was provided to reverse the Board's denial

On December 12, 1986, a manager overruled the Board's previous decision to deny a claim and approved the claim for payment.

The Analyst Manual requires SBOC staff to grant a victim's request for reconsideration if relevant new information was received; however, the staff is to deny a request for reconsideration if:

1. Material submitted is not relevant new information.
2. Information was in the file and available to the Board at the original hearing.

The manager had based his decision to overrule the Board on evidence that was not "relevant new information." Specifically, we found that the claimant had written two (2) letters asking SBOC to approve his claim, but the letters did not provide new information; nevertheless, the manager relied on the information contained in the letters to overrule the Board's previous decision. There was also no explanation in the file documenting the reason for management's overruling the prior Board decision and the staff recommendation.

In addition to the lack of relevant new information, the claim should not have been approved because the claimant had provoked a fight.

The police noted in their report that the claimant had been involved in a verbal dispute with another individual. During the dispute, the claimant sprayed this individual with water. This individual then ran into his apartment and obtained a knife. When this individual returned with a knife, a struggle ensued. During the struggle, the claimant suffered cuts on his hands.

When the claimant has been identified as the individual who provoked the fight, page J-7 of the Claim Specialist Manual requires the staff to classify the claimant's activities as "Contribution to the Events Leading to The Crime." Specifically, it states that:

If the crime report clearly shows that the victim provoked a physical fight, however, was not the one to throw the first punch, this incident should be classified as Contribution to the Events Leading to the crime (sic).
The Contribution Section should therefore be answered "Unable to Determine."

As a result, the claim should have been presented to the Board for discussion.

We recommend that SBOC follow established procedures when granting a claimant's request for reconsideration.

SECTION 5.
AGREEMENTS AND PURCHASES

FINDINGS

- 1) The ES signed agreements without the authority of the Board.

Government Code Section 13910 empowers the ES to perform statutory and other duties as required by the Board. In addition, SAM Section 1212.4 limits the authority to sign contracts and interagency agreements to those officers who either have statutory authority or have been duly authorized in writing by the agency head.

In reviewing Joint Powers Agreements, entered into between SBOC and participating agencies, we found that the ES had signed these agreements on behalf of the Board. The ES told us that he thought that he had the authority to sign contracts on behalf of the Board; however, we found that he had not received authorization from the Board to sign contracts on behalf of SBOC. Instead, we found that the ES had authorized himself to sign contracts on behalf of SBOC.

We recommend that the ES comply with SAM Section 1212.4 by obtaining the written authorization of the Board to enter into contracts.

- 2) The Joint Powers Agreements between SBOC and local victim centers have no enforceable audit provision.

Although the Joint Powers Agreements state that "the AG (Auditor General) may audit up to three years after completion of this agreement," there is no agreement between SBOC and the Auditor General to audit the Joint Powers agreements. In addition, there is no statute which requires the Auditor General to audit Joint Powers Agreements between SBOC and victim centers.

We recommend that SBOC incorporate an audit provision in its Joint Powers Agreements.

- 3) The ES authorized a \$26,500 purchase without obtaining a Purchase Order.

As noted in SAM Section 3506, the Office of Procurement has the sole authority to make purchases in excess of \$100. Departments may request the authority to make individual purchases of up to \$900. To initiate a purchase, SAM Section 3550 requires departments to submit a purchase estimate to the Office of Procurement. The purchase is authorized when a completed Purchase Order is sent to the vendor by the Office of Procurement.

On August 1, 1985, the ES authorized the purchase of a

computer program (see PART II. For findings related to the performance of this computer program) valued at \$26,500 without submitting a purchase estimate to the Office of Procurement. As a result, a Purchase Order was not obtained before the purchase was made.

We recommend that the ES comply with SAM Section 3550 when making purchases.

PART II
DATA PROCESSING

INTRODUCTION

The automated claims processing system for the State Board of Control (SBOC) Victims of Crime program is a large-capacity, self-contained computer system which is independently owned and operated by the SBOC. The computer facility is staffed by a Staff Services Analyst, with assistance from a Word Processing Technician and an Office Technician. No other data center facilities are used to maintain claimant history or create claims payment information. Information created by this system is used by Contracted Fiscal Services, Department of General Services, to prepare accounting and financial reports. The system is currently centralized in Sacramento; however, the SBOC has planned to expand automation capability by providing equipment and support to each of its participating Victim Witness Centers. Initially, the Centers will only have information retrieval access; however, it is possible that in the future the Centers will both determine eligibility and calculate award amounts, and update the files remotely.

The VOC automated system operates on a Wang VS300 minicomputer, with 64 workstation terminals. The system is used by the analysis and payment units to: enter, view, or update claim records; to prepare agendas for consideration at State Board of Control hearings; to generate letters to claimants; to create claims payment tapes for the State Controller; and to create required reports for the Executive Office of DGS and the Legislature. The software used for the VOC system is SPEED II, from TOM Software.

SCOPE AND METHODOLOGY

The State Legislature has enacted Chapter 7 of the Government Code, which creates the Office of Information Technology (OIT) to guide the development of automated data processing systems in the State. OIT has created Sections 4800 through 5957 of the State Administrative Manual (SAM) to publish guidelines for such development by State agencies.

During the period from February 4, 1987, through April 30, 1987, Data Processing Quality Assurance (DPQA) of the Office of Management Technology and Planning (OMTP) conducted an audit of the Victims of Crime (VOC) automated system. The system was studied from five aspects: (1) system development, (2) physical security, (3) data security, (4) documentation, and (5) data integrity. Because the reliable operation of the automated system is essential to the VOC program, we reviewed the contracts for the procurement of the computer equipment and software.

DPQA employed a standard questionnaire to interview the Deputy Executive Officer of the Board, the manager in charge of the system, the System Administrator, and other technical staff in the VOC program, in order to determine whether controls had been employed which adhere to SAM guidelines. For the determination of data integrity, selected records from the VOC master files were examined for the existence of erroneous or missing data. This report presents the findings of this examination.

SUMMARY OF EDP AUDIT

The system as it is presently operating does not have sufficient physical and general controls to provide assurance that data is accurate and protected. Control weaknesses result from both improper initial installation of equipment and inadequate attention to development and maintenance of the automated processes. For instance, the computer installation did not meet specifications for separate air conditioning or cable hookup. Also, the development and documentation of software was under nearly the sole control of a single individual private contractor who did not receive adequate user requirements definitions or system performance criteria. As a result, the system contains neither basic data integrity controls nor sufficient detail to allow production of management information reports needed to make program decisions. For instance, there are no internal edits to identify out-of-balance claims conditions, or duplicate claims payments. There are no management reports to identify effects of various program decisions on fund balance.

State requirements for quarterly reporting and periodic independent review were either not performed or inadequate. These reporting requirements are intended to provide an "early warning" to management of conditions requiring adjustment. If these reports had been properly prepared and submitted, management may have been alerted to the seriousness of the installation, development, and system maintenance problems.

The deteriorated condition of the VOC system is the result of failure to properly manage the computer system project delegation from the Office of Information Technology. State entities who accept delegated authority for project development assume all of the management and reporting responsibilities without incurring the independent review which would be provided by the control agency. In this case, we found the SBOC did not manage the project according to State requirements. For instance, we find that SBOC management did not staff the project with the professional data processing classifications which the State has established for this purpose. We also find that management did not follow SAM guidelines for system planning, did not provide adequate technical training for those staff assigned responsibilities in the project, and did not require professional performance from its consultants.

As a result, we find that the VOC automated system is deficient in the areas of

- System Development
- Policies and Standards
- Security
- Documentation

and that the system has serious deficiencies in data integrity and reliability. The system should not be expanded until production processes are installed to meet minimum standards.

SECTION 1
SYSTEM DEVELOPMENT

FINDINGS

1. The Feasibility Study Report of May 15, 1985, which was delegated to the Board for approval, does not meet State Administrative Manual (SAM) requirements.

The Background statement is not a "brief history" of the VOC program. The Solution Objectives do not "define the results which must be obtained to solve the problem". The System Performance Criteria are technical specifications, not "a definitive measure of the system performance required". Alternative Analysis is not complete, and does not: consider a Teale-based system or competitive minicomputer vendor; describe the "general outline of the system and the major elements"; classify benefits of the project; present advantages and disadvantages of both alternatives; nor describe benefit/cost comparison. Solution Analysis presents, of twelve required topics, only the Recommended Solution and Rationale for Selection.

In effect, this FSR does not provide a "basis for good management decisions", in that it does not present a sufficiently complete analysis to avoid uninformed and incorrect decisions. This incurs the risk of system failure resulting from inadequate processing capacity or poor design.

Recommendation: SBOC management must carefully examine all pending and future FSRs for adherence to SAM requirements, so that those FSRs can provide SBOC management with a basis for evaluating system development results and performance.

Ref.: SAM 4921 - 4926.1

2. The SBOC did not perform a risk analysis prior to implementation of the VOC automated system, as called for in SAM 4846.4 when systems which process sensitive data require an FSR.

If risks are not identified, there can be no assurance that the installed system has proper internal controls.

Recommendation: SBOC management should perform a risk analysis, and determine whether organizational or program changes are necessary to effect risk management. Risk analyses should be performed in conjunction with any FSR. Currently planned system expansion should not go forward until this requirement of SAM is satisfied.

Ref.: SAM 4846.4

3. SBOC management has not identified and classified its sensitive data as required under SAM 4846.1,2.

The SBOC cannot perform required risk analysis until this is accomplished.

Recommendation: SBOC management should become familiar with these SAM requirements, and identify and classify its sensitive data by the categories specified: (1) confidential, (2) financial, (3) essential operating data, or (4) marketable data.

Ref.: SAM 4846.1,2

4. The software vendor/consultant did not perform at a level of proficiency that could be reasonably expected of a professional consultant.

The SPEED II software vendor/consultant contracted with the SBOC on three occasions to provide consulting and software maintenance services. His programming logic errors resulted in misposting of State Controller's data exchange tape transactions for a period of 4 to 5 months. Subsequently, in attempting to correct these problems, he caused further misposting. In one instance, payee information from one claim (95651), is posted to four other unrelated claims (95646, 95647, 95649, 95650). In addition, the consultant tested his programs against production files, which jeopardizes the integrity of data.

Despite the expenditure of over \$12,000 for these services, the data files remain in a degraded condition.

SAM 5222 defines workplan, design and development standards for IFB-procured services. The contracts in question were sole-source acquisitions. However, it is reasonable to expect a sole-source contractor to provide the same level of service as one procured through the IFB process. In addition, the contractor's work was not evaluated by the SBOC as required in SAM 1218.

Recommendation: SBOC management should develop policies which define minimum standards for project deliverables such as work plans, testing plans, and review/acceptance checkpoints. SBOC management should establish policy requiring all contracts to be evaluated at completion.

Ref.: SAM 5222, 1218

5. SBOC management did not adequately monitor, control, and report progress during the development of the system as required of agencies that receive project delegation authority.

Quarterly reports during fiscal years 1985/86 and 1986/87, and a project status report dated July 9, 1986 were prepared by the acting Project Manager and submitted to SBOC's executive staff. These reports, however, did not disclose that there was inadequate project planning such as: a security plan, a risk analysis, user requirements, work plan and testing plan.

In effect, the essential development criteria expected of an effective automated system, such as security safeguards, error detection, audit trails, management reporting, and system performance requirements have not been fully realized from this project.

SBOC executive staff's lack of EDP project management experience and training contributed to this deficiency.

Recommendation: SBOC executive staff and data processing support staff should be trained in SAM requirements for automation project development and reporting. The Board should develop policies and procedures which provide for proper project development and monitoring pursuant to SAM.

Ref.: SAM 4819.3

6. The cabling for the computer network was incorrectly installed by the electrical contractor.

Cable connectors were attached in a manner which caused them to "short-out". Cable concentrator ports also were "shorted-out" from this cause. In addition, cables were incorrectly numbered for identification and routing. Cables were found to have one end dropped to a workstation, with no matching end in the computer room.

The result was that workstations and printers could not be brought "on-line". The system administrator had to spend many hours correcting the problems herself. The Wang vendor absorbed the cost of replacing the damaged ports.

SAM 1218 requires "follow-up" after completion of contracts, to evaluate the contractor's work. SBOC management did not require adequate testing of the cabling to evaluate the contractor's work.

Recommendation: SBOC management should investigate the feasibility of recovering extra costs incurred as a result of the faulty installation.

Ref.: SAM 1218

7 . The SBOC has no contract for service of its Wang computer equipment.

Despite repeated letters and telephone calls from the Board, the Wang vendor has not acted to contract with the Board for maintenance service. Without a service contract, SBOC management cannot expect to maintain its hardware in serviceable condition, and serious failures could occur.

Recommendation: SBOC management should take immediate action to raise this issue with Wang, and secure a contract for computer equipment maintenance service.

Ref.: SAM 5220.1 (Maintenance Policies)

8. There is no formal disaster recovery plan for the automated VOC system.

Without a formal plan, recovery from a disaster affecting the computer system could be delayed, incomplete, and prone to error.

Recommendation: SBOC management should develop, and test, a detailed disaster recovery plan, reflecting SAM requirements, which addresses response to natural, accidental, and intentional events which can cause loss of facilities and data.

Ref.: SAM 4845.81 (Management Controls and Procedures)
SAM 4846.5 (Required Security Measures)

9. VOC computer programs do not contain adequate edits for data integrity.

Programs do not cross-check between fields for illogical conditions. Example: a cross-check between total award and the sum of warrant amounts should produce an exception report when out of balance.

The effect is that erroneous data conditions can exist in the automated files. These edits are considered basic and should have been installed by the software consultant.

Recommendation: Current computer programs should be examined to determine all opportunities for data validation, and the programs modified to include such edits.

Ref.: SAM 4846.6 (Accuracy of Data)

10. The VOC automated system does not contain adequate controls to ensure that duplicate claims cannot be entered.

Claims are filed with claimant and victim names as the primary identifiers, and a sequential number is assigned to the claim. No unique identifier such as Social Security number is used. Therefore, a slight alteration such as adding "Jr." to the name is sufficient to make a duplicate claim appear to be different. The result is that a claimant can submit, and receive payment for, two or more claims.

Recommendation: VOC computer programs and automated files should be restructured to integrate the use of a unique claim identifier such as Social Security number.

Ref.: SAM 4846.6 (Accuracy of Data)

11. There are no reliable preventive and detective controls against duplicate VOC payments, either at the State Board of Control or at the State Controller's Office.

The VOC automated system does not compare records of scheduled or issued payments to check for possible duplicates. SCO's automated system does not distinguish between cashed warrants and redeposited warrants, only between those that are outstanding and those that are not. Thus, duplicate payments can be ordered by SBOC, with no automated audit trail at SCO to determine whether the duplicates were cashed.

Recommendation: VOC computer programs should check for, and provide exception reporting on, all scheduled and issued payments to the same payee which appear to be duplicated.

Ref.: SAM 4846.6 (Accuracy of Data)

12. The VOC automated system does not contain procedures for recording warrant redeposits.

Warrants are sometimes returned to the Board by payees requesting changes in payee name as printed on the warrant. These warrants are redeposited into the Restitution Fund, but are not always entered into the automated system as credits. When new warrants (re-issues) are issued, they are posted as payments. This causes the appearance of duplicate payment. As a result, the automated files do not reflect accurate records of claims paid and fund balance.

The redeposit procedure could have been installed by the software consultant, but was not requested by SBOC management.

Recommendation: A warrant redeposit subsystem should be developed for the automated system, along with documented operator procedures.

Ref.: SAM 4846.6 (Guidelines for System Design)

13. The VOC automated system does not maintain discrete records of each master file change.

Only the originator of the claim record and last person to alter the record are identified on the record. This causes a lack of audit trail by overlaying historical data with new data, and aids in obscuring fraudulent changes. The programs should create a new record for each master file change in order to provide a complete history. This feature should have been installed by the software consultant.

Recommendation: VOC update programs and files should be restructured to record each instance where the master file records are changed.

Ref.: SAM 4846.6 (Audit Trails)

14. Sensitive automated files are not encrypted.

Encryption makes the data unreadable except by authorized users using decryption. Without it, files can be manipulated by Wang utility programs.

Recommendation: SBOC management should investigate the feasibility of acquiring encryption software to protect automated files.

Ref.: SAM 4846.5 (Application Software and Data)

SECTION 2
POLICIES AND STANDARDS

1. The VOC program does not have a mission statement for its computer support unit. The computer support personnel do not have individualized duty statements.

If missions and duties not are specifically defined, there can be confusion about what is to be accomplished by units and individuals, resulting in under-performance, omission of critical functions, or excessive responsibility. Duty statements provide a means for assessing performance.

Recommendation: SBOC management should publish a mission statement for the computer support unit, and provide individuals with specific duty statements, defining goals and objectives on an annual basis.

Ref.: SAM 4847 (Assignment of Responsibilities)

2. There is insufficient separation of duties in the VOC computer support unit.

The following functions should be organizationally separate:

- System Programming
creates procedure language to run jobs
- Application Programming/Design
creates screens, BASIC programs
- Data Definition
develops definitions of data entities
- Database Administration
creates file and access definitions
- Application System Testing
creates test plans, conducts system tests, evaluates results
- System Administration
maintains security system, generates reports, runs jobs to create SCO tapes, runs jobs to post warrants
- Change Control
controls production release of programs, file definitions, installs new software

Presently three staff can accomplish any of these functions. This situation places too much control in the hands of individuals, and gives them the ability to create unauthorized software and access files without detection.

Recommendation: Separation of duties is intended to isolate one function from a related one, so that unauthorized changes cannot go undetected. This concept is especially important in an automated system which creates payment documents. This can be accomplished with a more extensive use of available Wang security features, such as file-level security. For example, security on the file which contains production program libraries can be set so that only one userID can access the file for update, that user being the one designated as Change Control.

Following is one suggested set of function groupings which can accomplish separation. Each function represents one or more individuals.

Function A

- System Administration
- Change Control

Function B (non-data processing person)

- Data Definition
- Application System Testing

Function C

- Application Design/Programming

Function D

- System Programming
- Database Administration

SBOC management should undertake an organizational study to determine how best to accomplish separation in the computer support unit.

Ref.: SAM 4846.5 (Organization and Administration)

3. There is no formal change control process for the VOC automated system.

Without a formal, documented change control process, it can be more difficult to trace system errors caused by changes. Also, there is no audit trail to determine whether changes were authorized.

Recommendation: SBOC management should institute a change control process which includes:

- standard forms for requesting system changes and documenting the need for the changes; and
- a process of peer review, management review, and proof of adequate testing before the change is released for production processing.

The change control process should address changes to application processes, system software, passwords, and other system security. Change logs should be kept with the pertinent documentation manuals, noting briefly the type of change and the date.

Ref.: SAM 4820 (Documentation)

4. SBOC management does not require background checks on its employees.

The VOC program is open to fraud by unscrupulous employees.

Recommendation: SBOC management should require background checks on all present employees, and institute policy that all new employees will be subject to such checks. SAM 4847 allows for background checks "at the discretion of the department director".

Ref.: SAM 4847 (Background Checks)

5. SBOC management does not have published policies for handling employee security breaches.

If staff do not have published policies, it is difficult to hold them accountable for their actions. In addition, staff may not know what constitutes a breach of security.

Recommendation: SBOC management should publish policy which addresses the definition of breach of security, and the actions to be taken in the event of such a breach by an employee. Employees should be required to sign a statement which acknowledges the policy. Employees should be given training in security on an annual basis.

Ref.: SAM 4847 (Signed Statements; Security Training)

6. SBOC management do not prepare an annual training plan for computer support personnel.

Without planned regular training, the Board cannot be assured that technical personnel are knowledgeable enough in current technology to avoid errors in system operation.

Recommendation: SBOC management should institute a policy of preparing annual training plans which address current and future professional requirements in automated systems operation.

Ref.: 4854 - 4854.4 (Training)

7. The system administrator has not had adequate training commensurate with the responsibilities of the assignment.

She has had two classes in telecommunications and one in programming for the Wang VS system, but none in operations, system administration, or SPEED II software. In these areas, she is basically self-taught. As a result, she might not be able to respond quickly and correctly to system maintenance needs.

Recommendation: SBOC management should develop and budget a rigorous training program to assure state-of-the-art capability in its computer support staff.

Ref.: SAM 4854 (Training Plans and Priorities)

8. The SBOC does not have published standards for the development and maintenance of operating documentation.

Without such standards, the Board cannot assure that documentation for system operation is developed that is uniform in format and content. Without a careful review and approval process, there is the risk of serious omissions in operating procedures, and the accompanying risk of data errors or loss.

Recommendation: SBOC management should commit resources to the development of standards for documentation of automated systems. This should include procedures for review and approval, and for logging changes in the pertinent manuals.

Ref.: SAM 4820 (Documentation)

9. The SBOC system administrator does not maintain an inventory of blank or scratch magnetic media.

Without a formal inventory, there is the risk that production data files could be mixed in with the blank media, with the possibility of data loss. Important data files, including Wang software libraries, which should be segregated from blank media, are stored in the computer room and in the system administrator's office.

Recommendation: The system administrator should organize the magnetic media library, and maintain an inventory of blank/scratch media, and such production files as are needed on-site. The library should be secured in a lockable room.

Ref.: SAM 4842 (Data Inventories)

10. The SBOC does not have formal procedures for maintaining an inventory of its computer equipment.

Without formal procedures, the SBOC has no way to determine whether all the purchased equipment is in its possession; or to report the inventory to the Office of Information Technology, Department of Finance, as required by SAM 5001.

Recommendation: SBOC management should develop a formal procedure for maintenance of an inventory of its computer equipment in accordance with guidelines in SAM 5001 - 5009, coordinating this effort with the DGS SRF Accounting Services Section.

Ref.: SAM 5001 - 5009 (EDP Equipment Inventory)

SECTION 3
SECURITY

1. VOC system password management is poor, and not based on policy.

Passwords are:

- not regularly changed
- composed of common language forms
- not understood by staff as security devices
- exchanged between staff.

As a result, password security is not effective, and operational data can be jeopardized.

Recommendation: SBOC management should develop a password policy which addresses:

- changing passwords on a regular basis
- composition of passwords as sets of random characters
- responsibility of staff in maintaining secrecy of passwords.

Ref.: SAM 4846.2,6

2. There is no procedure for notifying the system administrator of employees who leave SBOC for other employment, or who are reassigned so that they no longer need VOC system access.

With such notification, the system administrator can promptly delete the employee from the system user list. Otherwise, their userIDs can be used by others to cover illegal file changes.

Recommendation: SBOC management should institute a procedure whereby the personnel unit immediately reports such personnel changes to the system administrator.

Ref.: SAM 4846.5 (Required Security Measures)

3. SBOC does not have written policy directing that employees will challenge improperly identified visitors.

On one occasion, the system administrator did not challenge a visiting Halon technician for identification until this was suggested by the auditor. Additionally, it is simple for visitors to enter the VOC work areas, since there is a doorway opposite the reception desk.

Without a coordinated, publicized security effort, areas containing sensitive records are subject to intrusion by unauthorized persons.

Recommendation: SBOC management should establish written security policy which includes challenging unescorted visitors, and make the policy known to all employees. Visitors should be required to identify themselves and sign in and out at the reception counter. They should be escorted to and from their destinations within the VOC area. The lobby door opposite the reception counter should be attended constantly.

Ref.: SAM 4845.71 (Access Control)

4. Workstation restriction for operators is available with the Wang VS security system, but is not used.

Workstation restriction is a feature which identifies the permitted userID for a particular workstation. No other userID may log on to this station. Not taking advantage of this feature lessens the effectiveness of security. In combination with the userID/password scheme, workstation restriction increases security. Using another person's workstation would reveal that User A knows the userID and password of User B.

Recommendation: SBOC management should direct the system administrator to effect workstation restriction as a key part of the overall security plan.

Ref.: SAM 4846.5 (Transaction-oriented Systems)

5. The VOC computer system does not produce a system operations log, except to record input/output errors.

A system log should record such events as:

- operator logons and logoffs
- invalid logon attempts
- jobs run
- system operator on shift
- system aborts
- operator actions
- operator errors
- files accessed by operator

Without comprehensive system event logging, there is no audit trail of system history, which can be used by SBOC management to investigate system intrusions, and by hardware and software consultants in resolving problems.

Recommendation: Wang does not currently have these features, although they may be released in the future. SBOC management should assign the system administrator to develop such a log, possibly with the aid of Wang consulting services. SBOC should then establish a policy of reviewing the log for system problems.

Ref.: SAM 4846.3 (cont.1) (Data Processing Facility)
SAM 4846.5 (cont.4) (Transaction-oriented Systems)

6. Too many people have the combination to the computer room door.

Six people, including consultants, have the combination. Consultants should not have the combination, particularly if they are no longer in the employ of SBOC, and staff with this access should be kept to a minimum. Proliferation of access codes of any kind increases vulnerability.

Recommendation: SBOC management should establish a policy which identifies the authorized holders of door combinations, and addresses the changing of the combinations when these employees take other employment or otherwise no longer have need for this access. Management should immediately review the need-to-know of current holders, and change the combination if this need is reduced. Consultants should not be given the combination, but should be escorted.

Ref.: SAM 4846.3,5

7. The door to the computer room is not equipped with an alarm connected to a central monitoring station, as recommended by SAM 4845.71.

If an intrusion into the computer room occurred during non-business hours, it might not be immediately detected.

Recommendation: SBOC management should consider installing a door alarm to be activated during non-business hours, connected to the building security system, or to State Police headquarters.

Ref.: SAM 4845.71 (Access Control)

8. Wang environmental standards for the VS300 computer system are not being maintained.

The specified operating temperature range of 60-90F has been exceeded numerous times, according to the system administrator. A recently installed temperature monitor activates the electrical shunt trip at 95F. Humidity is not monitored. The operating temperature and humidity ranges are defined in the Wang literature.

Computer equipment could be seriously damaged by environmental extremes. Wang equipment warranties could be voided as a result of not properly protecting the equipment.

Recommendation: SBOC management should acquire recording devices for the computer room environment, and provide staff with procedures for their use. The devices should act as triggers for the emergency power-off switch.

Ref.: SAM 4845.81 (cont.1) (Security Procedures)

9. The air conditioning system for the SBOC computer room is not a dedicated system.

The system serves areas of the sixth floor also, and shares a cooling tower with other areas of the building. Thus, there is no assurance that temperature can be adequately controlled for the computer room, or that incidents outside the control of the SBOC would not disrupt cooling to the computer room. SAM 4845.51 states: "Computer room air-conditioning systems should be self-contained and isolated from other building systems".

Recommendation: SBOC management, in conjunction with the Office of Space Management, should confer with the building lessor, Heitman Properties, Inc., and the air conditioning contractor to contract for installation of a dedicated system.

Ref.: SAM 4845.51

10. There are no emergency fire procedures for the SBOC computer facility.

Without published procedures, and training in the procedures, employees cannot be held responsible for responses to emergency situations. The result could be inadequate response to an emergency, or endangerment of employees.

Recommendation: SBOC management should develop emergency fire procedures, assign individual responsibilities, train staff in the procedures, and test them with drills.

Ref.: SAM 4845.81 (Security Procedures)

11. The SBOC computer room is not supplied with equipment covers or plastic sheeting to protect equipment from accidental fire sprinkler activation or overhead water pipe leakage.

Recommendation: SBOC management should acquire such protection, and include instructions for their use in the computer room emergency procedures.

Ref.: SAM 4845.81 (cont.2) (Management Audit)

12. Combustibles such as printer paper are stored in the SBOC computer room.

This increases the risk of fire in the facility. SAM 4845.81 states that "Supplies of paper or other combustible material in the computer room shall be strictly limited to the minimum needed".

Recommendation: Since there is no printer in the computer room, a separate facility should be found to store this paper and eliminate this risk.

Ref.: SAM 4845.81 (cont.1)

13. Offsite storage of backup tapes at the Contracted Fiscal Services facility is not secure.

Tapes are placed on the floor next to the safe, and not in the safe. CFS personnel stated there was no room in the safe. These tapes are exposed to accidental or intentional damage or theft, compromising their confidentiality, and negating their value for disaster recovery.

Recommendation: SBOC management should confer with CFS to determine a secure method for storing backup files, and implement that method.

Ref.: SAM 4846.3 (Program Manager responsibilities)

14. SBOC management has not contracted for compatible backup computer facilities.

In the event of extended computer malfunction, the SBOC could be left with no alternative to manual operations, causing large backlogs and delays in caseload processing.

Recommendation: SBOC management should research the availability of an alternative processing site, and contract for that contingency with the owner of that facility.

Ref.: SAM 4846.3 (Data Processing Facility)

15. Software documentation for the VOC automated system is not securely controlled.

The documentation is stored on the system administrator's bookshelf, and includes information on system security procedures for Wang and SPEED II. Unauthorized users could gain knowledge of the system from these readily available manuals which could aid them in misuse of facilities and sensitive data.

Recommendation: Documentation relating to the Wang hardware and software, and SPEED II software, which are pertinent to only the system administrator's duties, should be kept in a reference library in the computer room.

Ref.: SAM 4846.1 (cont.1) (Other Sensitive Resources)

16. The VOC automated system does not report master file changes.

Reporting master file changes is a valuable ongoing check of the correctness of master files. By not reporting, the audit trail is broken. This facility should have been provided by the software consultant.

Recommendation: VOC update programs should be modified to generate a report file of master file transactions. This should include all on-line changes by VOC staff, and posting transactions from the SCO data exchange tape. A report program should be written to generate a report of these transactions on a regular basis. A Quality Assurance unit should be formed to review the transaction reports and create error correction transactions to be cycled back through the system.

Ref.: SAM 4846.6 (Audit Trails)

SECTION 4
DOCUMENTATION

1. The VOC system is largely undocumented. This was presented as a finding in an audit by the DGS Audit Section in 1984, but has not yet been corrected. The SBOC, in its response to the audit, targeted September 1984 for completion of the documentation.

Documentation is lacking in the areas of:

- System Definition
- Computer Programs
- Computer Operations
- User Procedures
- Data Administration
- Change Control
- Equipment Inventory

Without comprehensive documentation, it is more difficult to trace the source of system errors, to train new employees, and to enforce standards of system operations.

Recommendation: SBOC management should commit resources to completely document the VOC automated system as follows:

a. System Definition. This should include:

- a statement of the purpose and objectives of the automated system, and its role in implementing the Victims Program
- a diagram of the flow of data through the system
- a description of subsystems which have discrete functions within the total system
- a list of programs used by the system
- a list of automated files maintained
- a list of reports and screen displays

- b. Program Documentation. This should include for each program:
- a general narrative of the program and its functions
 - input record formats and descriptions
 - a description of program logic, including diagrams and decision tables
 - output record formats and descriptions
 - identification of database files used by the program
 - constant values, codes, and tables used by the program
 - current-release program listings
- c. Operations Documentation. This should include:
- operating procedures for the Wang VS300 system, including initial program load (IPL), shutdown, network and printer setups, and any other necessary utility operations
 - file backup and recovery procedures, and procedures for offsite backup file storage and retrieval
 - system errors and operator response
- d. User Documentation. This should include:
- a general description of the use of the system, and the sensitiveness of the data maintained
 - procedures for viewing records, with correlation to the analyst's/specialist's job
 - procedures for handling victims' applications containing invalid data
 - stamping or initialing documents after they have been entered into the system
 - procedures for checking the validity of reports produced by the system

e. Data Administration. This should include:

- a description of the interrelationships of database files
- a description of database access methods (e.g., key fields used for retrieval)
- guidelines and controls for defining data elements and adding them to the automated data dictionary

f. Change Control. This is addressed earlier in this report in finding 2.3.

G. Equipment Inventory. This is addressed earlier in this report in finding 2.10.

SBOC management should consider contracting with OMTP for development of the more technical aspects of the documentation relating to automation. Documentation should be developed from the perspective of someone who is inexperienced with the system.

Ref.: SAM 4820 (Documentation).

SECTION 5
DATA INTEGRITY

1. The VOC automated system contains incomplete and degraded data.

In addition to erroneous data cited earlier in this report, other examples are:

- claims with missing record segments for Board actions
- records where "total award" does not reconcile with "warrant amount"
- records with missing warrant data
- records with award status "0", a code with no meaning in the system

The result of these conditions is an incomplete audit trail, and an inability to rely on the system's data.

Recommendation: SBOC should initiate an effort to correct existing errors. This may require creation of a program which scans all records for illogical conditions, and produces an exception report of invalid records.

APPENDIX A
FINANCIAL INTEGRITY ACT
REQUIREMENTS

FINANCIAL INTEGRITY AND
STATE MANAGER'S ACCOUNTABILITY ACT
OF 1983

The California Legislature in 1982 passed into law the Financial Integrity and State Manager's Accountability Act of 1983. The act was incorporated in the State Government Code as sections 13400 to 13407.

Section 13401 states:

- (a) The Legislature hereby finds that:
 - (1) Fraud and errors in state programs are more likely to occur from a lack of effective systems of internal accounting and administrative control in the state agencies.
 - (2) Effective systems of internal accounting and administrative control provide the basic foundation upon which a structure of public accountability must be built.
 - (3) Effective systems of internal accounting and administrative control are necessary to assure the state assets and funds are adequately safeguarded, as well as to produce reliable financial information for the agency.
 - (4) Systems of internal accounting and administrative control are necessarily dynamic and must be continuously evaluated and, where necessary, improved.

- (b) The Legislature declares it to be the policy of the State of California that:
 - (1) Each state agency must maintain effective systems of internal accounting and administrative control as an integral part of its management practices.
 - (2) The systems of internal accounting and administrative control of each state agency shall be evaluated on an ongoing basis and, when detected, weaknesses must be promptly corrected.
 - (3) All levels of management of the state agencies must be involved in assessing and strengthening the systems of internal accounting and administrative control to minimize fraud, errors, abuse, and waste of government funds.

FINANCIAL INTEGRITY AND
STATE MANAGER'S ACCOUNTABILITY ACT
OF 1983

Section 13402 states:

State agency heads are responsible for the establishment and maintenance of a system of systems of internal accounting and administrative control within their agencies. This responsibility includes documenting the system, communicating system requirements to employees, and assuring that the system is functioning as prescribed and is modified, as appropriate, for changes in conditions.

Section 13403 states:

- (a) Internal accounting and administrative controls are the methods through which reasonable assurance can be given that measures adopted by state agency heads to safeguard assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies are being followed. The elements of a satisfactory system of internal accounting and administrative control, shall include, but are not limited to, the following:
 - (1) A plan of organization that provides segregation of duties appropriate for proper safeguarding of state agency assets.
 - (2) a plan that limits access to state agency assets to authorized personnel who require these assets in the performance of their assigned duties.
 - (3) A system of authorization and recordkeeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures.
 - (4) An established system of practices to be followed in performance of duties and functions in each of the state agencies.
 - (5) Personnel of a quality commensurate with their responsibilities.
 - (6) An effective system of internal review.
- (b) State agency heads shall follow these standards of internal accounting and administrative control in carrying out the requirements of Section 13402.

APPENDIX B
RESPONSE TO THE REPORT

STATE BOARD OF CONTROL

P.O. BOX 3035
SACRAMENTO, CA 95812-3035

73



November 18, 1987

P. K. Agarwal, Chief
Office of Management
Technology and Planning
400 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Mr. Agarwal:

Thank you for affording us the opportunity to review your draft report of the audit performed on the Victims of Crime Program and the Data Processing Unit, State Board of Control.

I have attached a complete response to all the audit findings, for the most part we agreed with you on the findings and recommendations to improve our programs and our systems areas. In some cases we have provided information that may not have been available at the time of the audit.

If you have the need of answers or clarification on anything within our response, please let me know. I can be reached at 445-1540.

Sincerely,

A handwritten signature in cursive script, reading "Austin Eaton", is written over the typed name.

AUSTIN EATON
Executive Officer

AE:fak:l354A

cc: Carolyn Robinson, OMTAP
W. J. Anthony, Chairman
Peter Pelkofer, Member
Dr. Elmer T. Jaffe

SBOC RESPONSE
TO OMTAP AUDIT REPORT
VICTIMS OF CRIMES PROGRAM
NOVEMBER 18, 1987

FINDINGS & RECOMMENDATIONS
1984 UNRESOLVED AUDIT FINDINGS

1. The Executive Secretary (ES) does not document the basis for overruling staff recommendations.

SBOC Action/Response: A policy of documenting the basis for overruling staff recommendations, in written form with written procedures, will be developed by February, 1988.

2. There are no procedures to identify, record, and collect emergency award overpayments.

SBOC Action/Response: Written procedures to identify, record, and collect emergency award overpayments and the development of comprehensive reports of uncollectible emergency advances to the legislature as required by Government Code 13961.1, are currently being reviewed and developed. The design in detail plan will be completed in April, and the procedures will be initiated in August 1986.

3. The emergency advances that have become uncollectible are not reported to the legislature as required by Government Code Section 13961.1.

SBOC Action/Response: Included in finding 2. See #2-1984 above.

4. SBOC has not ensured that written instructions for data I/O, retrieval, and reports of production have been developed for the EDP automated systems.

SBOC Action/Response: SBOC is currently developing a plan for the design of written instructions to guide employees working on data I/O, retrieval, and the development of production reports. This plan will be completed by April 1988, with the actual instructions completed and implemented by September 1988.

FINDINGS & RECOMMENDATIONS

PART 1. CLAIM PAYMENTS

SECTION 1. Improper Activities

1.1 Finding

Executive Secretary (ES) and the Deputy Executive Officer (DEO) do not maintain a proper fraud reporting system.

1.1 Recommendation

Develop procedures that define the proper steps to report suspected fraud to both the Department of Finance and the Auditor General, and see that proper implementation occurs.

1.1 SBOC Action/Response: SBOC agrees that written procedures are needed to carry out the methodology and to assign responsibility for the fraud reporting system. This effort will require the development of both the procedures and instruments (forms, reading material, data input documents, etc.) before completion of the project. A project status report is planned for February 1988, with a project completion date of May 1988.

1.2 Finding

SBOC has discontinued the investigation of the 269 wage loss claims approved by a former SBOC Program Analyst who is currently undergoing prosecution for accepting a bribe in connection with the approval of a wage loss claim.

1.2 Recommendation

Resume internal investigation of the wage loss claims including the 269 claims detailed in the audit report. Schedule collection of the 20 claims suspected of being improperly approved.

1.2 SBOC Action/Response: SBOC agrees that the all of the wage loss claims identified as being assigned to this individual should be reactivated. Apparently the auditor overlooked the fact that the Department of Justice had suspended SBOC from further investigation of all issues related to this area. The total of these claims includes 20 claims alleged to be among the improperly approved claims. Correspondence between the ES and the Department of Justice is on file to verify that the investigation of these claims has been reactivated. A report on these issues and the final disposition of each claim in question will be made available for review by June 1988.

Section 2. Regular Claims

2.1 Finding

Improper review of claims by SBOC staff result in unsubstantiated claims, ineligible claims, and incorrect calculation of claims that are placed on the State Controller Office (SCO) payment tape.

2.1 Recommendation

Implement an effective system of internal review and control for claims processing.

2.1 SBOC Action/Response: SBOC agrees with the recommendation that an effective system of internal review (control) for claims processing should be developed. Failure to do so is detrimental to the Board's ability to produce an accurate claims payment which SBOC must certify before the Controller warrant disbursements process. An internal control system outline will be designed by March 1988. Monthly progress reviews will be conducted throughout the design and development phases.

2.2 Finding

The Claim Specialist Manual of procedures conflicts with Government Code section 13962.

2.2 Recommendation

The Claims Specialist procedures manual should adhere to the Government Code [13962]. SBOC should document all policies and procedures approved by the Board. Additionally, verification procedures that demonstrate sound fiscal compliance should be developed and initiated.

2.2 SBOC Action/Response: The Claims Specialist Manual is the subject of an ongoing review. A system will be developed for 1.) presenting proposed policy changes to the Board for approval, and 2. as approval is obtained the policies will be included in the Claims Specialist Manual, and 3. all Board policies will be reviewed for consistency and compliance with the Government Code.

2.3 Finding

SBOC staff does not properly document or supervise the reconciliation of the "consent allow" agenda with the payment journal.

2.3 Recommendation

SBOC should properly document the reconciliation of the Board approved "consent allow" agenda to the payment journal for proper audit trail and internal controls. Moreover, SBOC should insure (ensure) that a supervisor be given responsibility to review and approve both reconciliation and adjustments to the pay journal so that only approved claims appear on the claim schedules that are submitted to the SCO.

2.3 SBOC Action/Response: SBOC agrees that a process which demonstrates appropriate documentation and internal control checks, including the supervisory functions in the reconciliation of the "consent allow" agenda to the payment journal, should be developed and implemented.

A process to accomplish this recommendation will be initiated and documentation of the procedures is scheduled for April 1988.

2.4 Finding

There is no policy or procedures that define the separation of duties of the employees whose functions include reconciliation and the preparation of claims.

2.4 Recommendation

SBOC should ensure that the duties involving reconciliation and preparation of claims processing are adequately documented and adhered to for effective internal controls.

2.4 SBOC Action/Response: SBOC will develop the parameters for the separation of duties as required for the claims payment process. A study of the duties involved in claims schedules, payment journals, adjustments, and the movement of any payments on the SBOC certified claims payment tapes will be performed. A matrix that defines the claims payment functions and the employees assigned the responsibility to perform those functions will be developed. The results of the project development will be included in the policies and procedures manual.

Finding 2.5

Current procedures do not ensure that all claims approved for payment are placed on the consent agenda.

2.5 Recommendation

SBOC should develop a daily "BATCH CONTROL" process, listing those claims approved for payment. This list should be provided to the payment unit with batch control total[s] accompanying the claims approved for payment to create a proper and reliable audit trail.

2.5 SBOC Action/Response: SBOC will develop a written procedure to ensure that all claims approved for payment are placed on the "consent agenda" and that a daily "batch control" is an integral part of the preparation of the payment system. A statement of intent on the development of the procedures for this project will be made available in June 1988.

2.6 Finding

An appropriate system for dealing with warrants [checks] returned to the SCC, who then returns them to the SBOC, has not been developed.

2.6 Recommendation

SBOC should develop a system that provides for the timely follow-up of all unhatched, undeliverable warrants, (including those warrants returned directly to SBOC), to ensure that fraudulent activities are not occurring and that documentation on the final disposition of each undeliverable warrant is a visible audit trail and internal control.

2.6 SBOC Action/Response: SBOC is in the process of developing the "returned warrant" process and written procedures. This will include instructions on functions related to the receipts, claims payment systems update, returned warrant register file, and any follow up and investigative processes necessary for assurance of internal control and a visible audit trail. A review is scheduled for July 1988.

Section 3. Emergency Claims

3.1 Finding

Procedures have not been developed to identify, record and collect emergency award overpayments [accounts receivables]. The audit disclosed that the data base of overpayments on emergency awards is available, but not utilized.

3.1 Recommendation

SBOC should develop procedures to identify and record overpayments on emergency awards. These procedures should include a segment for the collection of emergency award overpayments.

3.1 SBOC Action/Response: Written procedures to identify, record and collect emergency award overpayments and the development of comprehensive reports of uncollectible emergency advances to the legislature as required by Government Code Section 13961.1 are currently being reviewed and developed. (see 2.1984 Finding)

3.2 Finding

SBOC does not annually report uncollectible emergency advances to the Legislature in compliance with Government Code Section 13961.1

3.2 Recommendation:

An annual report on all uncollectible emergency advances should be made to the Legislature as a regular part of the SBOC reporting cycle.

3.2 SBOC Action/Response: SBOC agrees that in compliance with Government Code Section 13961.1 on Emergency Advance Awards, an annual report of uncollectible emergency advances will be developed. (see 3.1984 finding).

3.3 Finding:

SBOC approved, placed on the "consent agenda", and paid claimants who at the time had health insurance. Such payments are in violation of Government Code Section 13960.

3.3 Recommendation:

SBOC should report to the Board as to the cost of allowing victims with health insurance to seek reimbursements for medical costs and of the need to adhere to the Government Code Section 13960.

3.3 SBOC Action/Response: SBOC believes this is a matter of interpretation of the statutes. This issue will be discussed at a Board hearing for the purpose of providing guidance to Board of Control staff. Clarifying legislation may be necessary at some future date.

3.4 Finding

SBOC does not comply with Government Code 13961.1 which requires that all emergency award applications contain the name, address, and telephone number of the claimants employer[s].

3.4 Recommendation:

SBOC should ensure that employer information is present on all emergency award applications.

3.4 SBOC Action/Response: SBOC agrees that all claims filed with SBOC should contain a name, address, and telephone number of the victim's and/or claimant's employers. The new application form currently being developed contains mandatory computer data element fields that must be present before the claim (data) is accepted by the computer for processing.

3.5 Finding

SBOC does not comply with Government Code 13960 [d] which requires that only victims without other sources of compensation [including Medi-Cal] be granted awards by the Board.

3.5 Recommendation

SBOC should report to the Board the cost of allowing victims who are eligible for Medi-Cal [and any other reimbursements].

3.5 SBOC Action/Response: SBOC will determine whether or not a law or statute requires that victims must exhaust their Medi-Cal coverage before a claim can be considered by SBOC. Additionally, SBOC will continue to meet with Department of Health Service administrators and staff to explore already developed areas with potential and available enhancements that may maximize the utilization of Medi-Cal funds, including the matching Federal funds for Victims of Crimes program and adaptations.

Section 4. Other Claims Reviewed

4.1; 4.2; 4.3; Findings

SBOC employees do not comply with Government Code 13962 & 13964 in terms of the processes involving claim verification, approval and/or reappraisal.

4.1; 4.2; 4.3 Recommendation

SBOC should comply with the Government Code in claim verification, in establishing the victims role in the commission of a crime, in accepting new evidence or information to reopen a denied claim, and in determining whether or not a new discussion with the Board is appropriate.

4.1; 4.2; 4.3; SBOC Action/Response: SBOC's entire claims approval, verification, and reconsideration process is subject to and is under going continuing review. The review also addresses the feasibility of establishing "standards" that provide SBOC employees with more measurable objectives in terms of appropriate recommendations that need to be determined relative to the preparation of claims applications. These areas must adhere to the Government Code and be responsive to internal controls and fiscal compliance that can provide management with adequate evaluations and proper reports at all times.

5. Agreements & Purchases

5.1 Finding

SBOC has signed agreements/contracts without the authorization of the Board.

5.1 Recommendation

SBOC's ES should obtain written authorization of the Board to enter into agreements/contracts. A procedure placing responsibilities and signature authorizations should be developed to facilitate the process and to provide a clear audit trail.

5.1 SBOC Action/Response: SBOC's Executive Officer will draft a proposed delegation of authority for the Board concerning the extent of his administrative and executive authority.

5.2 Finding

SBOC and local victims centers have no enforceable audit provision in the Joint Powers Agreements.

5.2 Recommendation

SBOC should incorporate an audit provision in its Joint Powers Agreements.

5.2 SBOC Action/Response: SBOC has included enforceable audit provisions in the 1987-88 Joint Powers Agreements. A procedure documenting the effective utilization of the provisions needs to be developed and initiated accordingly. The target date of June 1988 has been set to initiate this project.

5.3 Finding

BOC's ES has authorized purchases without a Purchase Order.

5.3 Recommendation

SBOC should adhere to SAM 3506 & 3550 guidelines concerning the authority, dollar value limitations, & purchasing processes .

5.3 SBOC Action/Response: SBOC written policy and procedures establishing the appropriate approval process and development of purchase order documentation, in compliance with S.A.M. guidelines, will be developed by March 1988.

Part II Data Processing

Section 1. Systems Development

1.1 Finding: The May 15, 1985, Feasibility Study Report [FSR] "does not meet SAM 4921 & 4926 requirements" [guidelines].

1.1 Recommendation: SBOC management should examine all pending and future FSR's carefully for adherence to SAM requirements [guidelines] so that the FSR's can provide SBOC management with a basis for evaluating systems development results and performance.

1.1 SBOC Action/Response: SBOC will develop policies and procedures that adhere to the guidelines in SAM 4921 & 4926.1 on all future FSR preparation, including a basis for evaluating results and performance against anticipated and measurable objectives. Target date for completion of the policies and procedures is September 1988.

1.2 Finding: SBOC did not perform RISK ANALYSIS prior to the implementation of the Victims of Crimes [VOC] automated system as required by SAM 4846.4.

1.2 Recommendation: SBOC management should ensure that RISK ANALYSIS is performed so that any necessary additions and/or changes are initiated before any planned VOC systems expansions are considered.

1.2 SBOC Actions/Response: SBOC will perform risk analysis in compliance with SAM 4846.1. The SBOC Security Manual will contain the procedures used to perform and evaluate risk within the SBOC environment. Completion is scheduled for October 1988.

1.3 Finding: SBOC has not identified and classified its sensitive data per SAM 4846.1 & 2.

1.3 Recommendation: SBOC should identify and classify sensitive data in the following categories:

1. Confidential
2. Financial
3. Essential operating data
4. Marketable data

1.3 SBOC Action/Response: SBOC agrees, and will identify and classify its sensitive data in compliance with SAM 4846.1.2. Moreover, SBOC acknowledges the categories identified in the audit report and will classify its data into the following categories.

- a. Confidential

- b. Financial
- c. Essential operating data (data elements that must be present to be accepted by the system)
- d. Marketable data

The data classification process will be an ongoing function as defined within the SBOC Security Manual and the initial classification has an estimated completion date of March 1988.

1.4 Finding: SBOC did not follow SAM 5222 & 1218 which provides guidelines for the preparation of Information For Bid [IFB] procured services. Moreover, on 3 occasions SBOC contracted software vendors/consultants and maintenance without benefit of an evaluation or post audit.

1.4 Recommendation: SBOC should develop policies which define minimum standards for project deliverables. Additionally, policies should also be established requiring all contracts to be evaluated at completion.

1.4 SBOC Action/Response: SBOC will review the guidelines of SAM 5222 and 1218 in terms of IFB for all future contracts. The policy and procedures will be developed for inclusion in the SBOC Administrative Manual. Completion date has been set as July 1988.

1.5 Finding: SBOC management did not adequately monitor, control, report progress or set backs, as outlined in SAM 4819.3 in terms of project planning, development, and evaluation.

1.5 Recommendation: SBOC ES and data processing support staff should be trained in SAM requirements [guidelines] for automation project development and reporting. The Board should develop policies and procedures to follow accordingly.

1.5 SBOC Action/Response: SBOC will develop and initiate effective EDP project management and reporting processes that reflect responsiveness to SAM 4819.3. The SBOC Training Plan will consider and include the EDP Units' training needs. The first coordinated SBOC Training Plan has a target date of July, 1988.

1.6 Finding: SBOC's cabling for the computer network was installed incorrectly by the electrical contractor. [see SAM 1218].

1.6 Recommendation: SBOC should investigate and attempt to recover "extra" costs due to the faulty installation.

1.6 SBOC Action/Response: The DF manager is currently reviewing the work performed by the contractor in question and will also

attempt to evaluate the associated costs toward development of a possible refund. A report on the outcome of this effort will be available by February 1988.

1.7 Finding:

SBOC has no service contract for WANG computer equipment [SAM 5220.1].

1.7 Recommendation: SBOC should take immediate action and secure a maintenance contract with WANG.

1.7 SBOC Action/Response: SBOC is in the process of securing an agreement with the WANG Vendor. The estimated completion date, when the contract will be forwarded to General Services for approval, is January 1988.

1.8 Finding: SBOC has no disaster recovery plan for the automated VOC system [SAM 4845.81--4846.5]

1.8 Recommendation: SBOC should develop and implement a disaster recovery plan.

1.8 SBOC Action/Response: SBOC will develop a Disaster Recovery Plan to include provisions for hardware replacement, alternate site [backup] to conduct production DP workload, and provide for the development and data reproduction considerations. Target date for completion is June 1988.

1.9 through 1.13 Findings: These findings all pertain to the VOC automated system and software, or the periphery around the operation and management of the VOC automated system. More specifically, 9 addresses lack of data integrity from software that needs appropriate checks &/or edits. 10 addresses inadequate controls that result in the possibility of duplicate claims; 11 addresses "reliable prevention and detective controls against duplicate VOC payment."; 12 addresses the need for procedures for recording warrant redeposits; 13 addresses the need for VOC system to maintain discrete records of each master file change.

1.9 thru 1.13 Recommendation: The recommendations for these findings is that SBOC correct, develop, examine, reconstruct, check, and investigate the areas addressed in the findings above.

1.9 thru 1.13 SBOC Action/Response: SBOC has initiated an analysis and design project of the VOC automated system. SBOC has contracted with a vendor to document and refine the current VOC automated system and to assist in the development of internal controls and any "edits and audits" that are appropriate. This effort will also provide for the closure of the audit findings

mentioned above at implementation time. The result of this project will include provisions for data integrity in the current and future VOC claims system. The plan of action details will be available for review in April 1988, with ongoing development and implementation occurring between June 1988 and June 1989.

1.14 Finding: SBOC does not encrypt sensitive automated files [S AM 4846.5]

1.14 Recommendation: SBOC should investigate the feasibility of acquiring encryption software to protect automated files.

1.14 SBOC Action/Response: SBOC will analyze and evaluate the feasibility of using encryption software for sensitive VOC data after classification of sensitive data and risk analysis has been completed (Finding 1.2;1.3). The study is to be completed in October 1988.

Section 2. Policies & Standards

2.1 Finding: SBOC's VOC program and computer support unit does not have a mission statement.

SBOC's computer support personnel do not have individual duty statements [SAM 4847] or Individual Development Plans.

2.1 Recommendation: SBOC should develop a Mission Statement, Duty Statements and Individual Development Plans annually.

2.1 SBOC Action/Response: SBOC's short range/long range plan will provide the basis for a mission statement, including EDF.

SBOC's management staff will develop duty statements and individual development plans (IDP).

SBOC disagrees with the auditor's finding that no mission statement exists. SBOC considers the Annual Report to be a mission statement. Currently, the Data Processing staff has in place a mission statement, duty statements, and individual development plans.

2.2 Finding: SBOC's computer support unit has insufficient separation of duties [SAM 4846.5]

2.2 Recommendation: SBOC management should initiate a organizational study to determine how best to accomplish the task of developing adequate internal controls by the separation of related functions or duties.

2.2 SBOC Action/Response:

SBOC separation of duties as exists throughout the agency is currently being reviewed and documented in terms of existing and potential controls. An organizational review to accomplish the proper internal controls through the separation of duties in the VOC program and the EDP Unit will be conducted by June of 1988.

2.3 Finding: SBOC has no formal change control process for the VOC automated systems [SAM 4820]

2.3 Recommendation: SBOC should initiate a change control process to include the following:

- Standard forms to request systems changes with appropriate documentation of need and authorization to do so.

- Process of peer review, management review, and proof that adequate testing occurred before implementation on line.

- Address changes to application processes, system software, passwords and security.

Change control log should be maintained with listing of type of change and the date of the change and who authorized the change.

2.3 SBOC Action/Response: The form and procedures will be developed to ensure that all VOC systems changes are requested in written form, that they provide a clear definition of the purpose and need for the change. Additionally, SBOC will develop EDP procedures that address both EDP and management responsibilities in terms of the review, documentation, and criteria for the EDP systems changes. Target date for completion of this action is May 1988.

2.4 Finding: SBOC does not require background checks on its employees, therefore, "SBOC is open to fraud by unscrupulous employees."

2.4 Recommendation: SBOC should require all present employees, and initiate a policy that all new employees, be subject to such checks.

2.4 SBOC Action Response: It has not been made clear how the lack of a background check necessarily leads SBOC to hiring "unscrupulous employees." However, SBOC will study the issue and include the results in the form of a policy directive by the Executive Officer by June 1988.

2.5 Finding: SBOC does not have policies and procedures for handling employee security breaches. SAM 4847.

2.5 Recommendation: SBOC should develop policies and procedures for the handling of employees in matters of security and/or potential fraud.

SBOC should provide all employees with annual training in security.

2.5 SBOC Action/Response: SBOC's Data Processing Unit will develop guidelines for security procedures and will provide any necessary standards to support the security policy. This will be accomplished by Sept 1988. Additionally, the DF Training Plan will include security training on an annual basis.

2.6 Finding: SBOC does not prepare annual training plans for computer support employees. [SAM 4854--4854.4]

2.6 Recommendation: SBOC should develop policies and procedures for handling annual employee training plans.

2.6 SBOC Action/Response: SBOC has initiated a policy for training that will assure quality service to the State by development of all of SBOC's employees through planned training activities as appropriate. Moreover, SBOC DP management will prepare annual training plans for the DP Unit employees in compliance with SBOC Training Policy to meet current and professional requirements in the area of automated systems (see DP 1.5).

2.7 Finding: SBOC's systems administrator has not had adequate training in telecommunications, programming, operations, systems administration, Speed II [software] SAM 4854].

2.7 Recommendation: SBOC should develop a training program to assure state of the art capabilities in the computer support unit.

2.7 SBOC Action/Response: SBOC management will establish an annual training plan for the EDP Unit (see DP 1.5).

2.8 Finding: SBOC does not have published standards for development and maintenance of systems operating documentation per SAM4820.

2.8 Recommendation: SBOC should develop standards for documentation of automated systems, including review, approval, and logging of changes in manuals.

2.8 SBOC Action/Response: SBOC will develop the standards for documentation of automated systems, including review, approval.

and logging of systems changes. The target date for completion is May 1988.

2.9 Finding: SBOC does not maintain an inventory of blank or scratch magnetic tapes [SAM 4842].

2.9 Recommendation: SBOC should organize the magnetic tape library and maintain an inventory of the blank/scratch tapes and production file tapes, as needed with authorized access in a secure and lockable room.

2.9 SBOC Action/Response: SBOC is developing a procedure and inventory of blank/scratch tapes and all magnetic media.

2.10 Finding: SBOC does not have procedures for maintaining an inventory of the computer equipment. [SAM 5001--5009]

2.10 Recommendation: SBOC should develop a procedure for maintenance of an inventory of the computer equipment. This effort will be coordinated with DGS-SRF Accounting Services Section.

2.10 SBOC Action/Response: SBOC is developing a procedure and a data base for the inventory of computer equipment.

Section 3. Security

3.1 Finding: SBOC 's VOC system password management is inadequate and not based upon policies 4846.2+6.

3.1 Recommendation: SBOC should develop a password policy that addresses changing passwords on a scheduled basis, development of a set of random characters specifically designed for passwords, establishing responsibility for maintaining secrecy of the passwords by the employees.

3.1 SBOC Action/Response: SBOC Executive Officer is initiating a password protect policy that requires all SBOC employees to change passwords monthly using random characters and maintaining the secrecy of the process.

3.2 Finding: SBOC has not established a procedure for handling the changes that may be required when employees leave SBOC or are reassigned to other functions, units in the department where VOC systems access is not authorized.

3.2 Recommendation: SBOC should initiate a procedure that assures appropriate access to VOC system and any other SBOC secured environment.

3.2 SBOC Action/Response: SBOC has initiated the project of SBOC DP Security Development. The result of this effort will be the SBOC Security Manual that will address access of systems security, confidentiality and data security, physical security, and all other vulnerable areas. The project outline will be developed by August 1988 and will contain milestones for review and updates on progress and management approval. Some policies and procedures will be initiated and implemented during the development phase of the project. The completion target date is April 1989.

3.3 Finding: SBOC does not have written policy that directs employees to challenge improper identified visitors on the premises of the department SAM 4845.71.

3.3 Recommendation: SBOC should develop written policy and procedures for security which includes visitor identification, sign in sign out procedures that are specifically delineated in employee duty statements as to those employees with specific responsibilities in the process.

3.3 SBOC Action/Response: SBOC has developed and implemented a policy and procedure for a sign-in/sign-out process for visitors to SBOC's 8th floor offices. This is in compliance with SAM 4845.71 guidelines concerning facilities security in terms of visitor identification.

3.4 Finding: SBOC has the option, but does not utilize work station restriction for operators on WANG VS security system. SAM 4846.5.

3.4 Recommendation: SBOC should effect workstation restrictions as a key part of the overall security plan.

3.4 SBOC Action/Response: SBOC agrees that a policy of workstation restrictions, should be enforced. Therefore, SBOC is developing the procedures for work station restrictions which will also be included in SBOC's Security Manual. Completion date is January 1988.

3.5 Finding: SBOC's VDC computer system does not produce a system operations log, except to record I/O errors. SAM 4846.3-5.

3.5 Recommendation: SBOC should develop a policy and procedure for maintenance of a systems operations log, including routine review of the log for identification of systems problems.

3.5 SBOC Action/Response: SBOC's VDC automated system has the facility to produce a systems operations log. The development of the systems operations log will provide for the system history audit trails. The policy and procedure will be developed by June 1988.

3.6 Finding: SBOC does not properly restrict the combination to the computer room door. SAM 4846.3-5

3.6 Recommendation: SBOC should establish a policy which identifies the authorization criteria and excess (access) to the computer room.

3.6 SBOC Action/Response: SBOC agrees that the access to the computer room facilities should be restricted to authorized personnel only. SBOC will develop and document the policy and procedures to manage computer room access.

3.7 Finding : SBOC does not equip computer room door with alarm connected to the monitoring system, as recommended by SAM 4845.71

3.7 Recommendation: SBOC should consider installing an alarm system for the computer room which also is activated during non-business hours.

3.7 SBOC Action/Response: SBOC management has approved and initiated the work request to have the computer room access connected to a central monitoring facility. The standard bid process is being initiated. The completion of this project is anticipated to be June 1988.

3.8 Finding: SBOC's WANG environmental standards for the VS300 computer system are not being maintained. 3.8

Recommendation: SBOC should acquire (temperature) recording devices for the computer room environment, and provide staff with procedures for their use. The devices should act as triggers for the emergency power-off switch. SAM 4845.81

3.8 SBOC Action/Response: SBOC management has approved and initiated the work order to obtain the device(s) that will effectively monitor and control the computer system facility temperature and humidity. It will also trigger the emergency power-off switch. The anticipated completion date is April 1988.

3.9 Finding: The air conditioning system for the SBOC computer room is not a dedicated system.

3.9 Recommendation: SBOC management, in conjunction with the Office of Space Management, should confer with the building lessor, Heitman Properties, Inc., and the air conditioning contractor to contract for installation of a dedicated system. SAM 4845.51

3.9 SBOC Action/Response: The building manager has insisted that the computer room is on a separate air conditioning system and the current air conditioning of the computer room is adequately controlled. SBOC management has requested that the building manager provide documentation to SBOC confirming the verbal information that the computer room is on a separate air conditioning system.

3.10 Finding: SBOC's computer facility has no emergency fire procedures. SAM 4845.81

3.10 Recommendation: SBOC should develop emergency fire procedures which includes assigned responsibilities, training and testing with periodic drills.

3.10 SBOC Action/Response: SBOC management agrees that emergency fire procedures should be developed and initiated for the entire agency, which includes the DF facilities. Therefore, the SBOC Emergency Plan assignment will be initiate with a SBOC policy that will ensure that all measures of precaution and safety are taken for all SBOC employees in the event of a fire emergency. This project completion date is February 1988 for the policy and outline, and March 1988 for a complete plan.

3.11 Finding: SBOC's computer room is not supplied with equipment covers, plastic sheeting to protect the EDF equipment from water damage from overhead sprinklers. SAM 4845.81

3.11 Recommendation: SBOC management should acquire adequate protection from water for its computer equipment. Additionally,

procedures and responsibilities should be developed and implemented.

3.11 SBOC Action/Response: SBOC has purchased covers to protect the computer equipment for water damage. Emergency procedures are being developed for SBOC, including DP. Target date for completion is March 1988.

3.12 Finding : SBOC does not adhere to the request of SAM 4845.81 to restrict supplies of paper and other combustible materials in the computer room to the minimum needed.

3.12 Recommendation: SBOC should restrict supplies of paper and other combustible materials to an as needed basis in the computer room.

3.12 SBOC Action/Response: The SBOC computer room will be cleared of all unnecessary supplies and paper and other combustible materials as outlined in SAM 4845.81. The policy and procedures are available for review.

3.13 Finding: SBOC does not secure the offsite storage of back up tapes at the "Contracted Facility Services" (CFS) SAM 4846.3

3.13 Recommendation: SBOC should confer with CFS to determine a secure method for storage back up files and implementation.

3.13 SBOC Action/Response: SBOC has contacted Department of General Services, OMTAP, to discuss potential storage for back up media and the potential of utilizing the storage permanently. The target date for completion is January 1988.

3.14 Finding: SBOC has not contracted for compatible back up computer facilities SAM 4846.3

3.14 Recommendation: SBOC should contract for the best back up alternative processing site.

3.14 SBOC Action/Response: SBOC will initiate a study to research the availability of alternative processing sites and will investigate the feasibility of acquiring equipment that is compatible with other local/state agencies in terms of obtaining an appropriate back up facilities. Target date is March 1988.

3.15 Finding: SBOC's VDC automated system software documentation is not securely controlled. SAM 4846.1

3.15 Recommendation: SBOC's software documentation that are pertinent to only the system administrators duties should be maintained in the computer room.

3.15 SBOC Action/Response: SBOC will determine the feasibility of moving documentation, relating to the systems administrators duties only, to the computer facility. May 1988 is the planned date for completion of the study.

3.16 Finding: SBOC's VDC automated system does not report master file changes SAM 4846.6

3.16 Recommendation: SBOC's "update programs" should be modified to generate a report file on master file transactions, on line changes by VDC DP staff, and posting transactions, from the SCO data exchange tapes, on a regular scheduled basis. SBOC should form a Quality Assurance Unit to perform the function of reviewing the transactions reports, to document and create error correction transactions that need to be cycled back through the system for processing and for the completion of an adequate audit trail.

3.16 SBOC Action/Response: SBOC has implemented the master file change logging process. SBOC will develop policies and procedures to effectively process and review the master file changes. The policy and procedures development is in process. The date for completion of the logging process is set for April 1988.

Section 4. Documentation

4.1 Finding: SBOC's VDC automated system has inadequate documentation. Page 64 thru 66 of the audit report of findings and recommendations identifies and details the areas that past audit reports have defined as needing documentation. Moreover, the abilities to trace the source of system errors, training of new employees and the enforcement of standards of system operations cannot be addressed properly without comprehensive documentation. SAM 4829

Specific areas provided in the audit report are as follows:

- Systems Definition
- Computer Programs
- Computer Operations

- User Procedures
- Data Administration
- Change Control
- Equipment Inventory

Note: Detail definitions for each of the recommended areas as listed above are provided in the audit report.

4.1 Recommendation: SBOC should provide comprehensive documentation of the VOC system as requested in prior and 1987 audit report.

4.1 SBOC Action/Response: SBOC has contracted with a vendor to document the VOC automated system. A target date of May 1988 has been established. Computer documentation has an estimated completion date of July 1988. User and data administration documentation has an estimated completion date of December 1988. Change control is addressed in response DF 2.3, and equipment inventory in response DF 2.10.

Section 5. Data Integrity

5.1 Finding: SBOC's VOC automated system contains incomplete and degraded data caused by the testing of new software on "live" data.

5.1 Recommendation: SBOC should correct existing data errors. Although it may be necessary to design and develop an "exception reporting" computer program to scan all VOC records [data] for illogical conditions and/or invalid records, the correction should be performed.

5.1 SBOC Action/Response: SBOC has initiated the project to correct errors in the data base of the VOC system. Target date: March 1988.

This finalizes the D R A F T SBOC response.
November 18, 1988.

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