

Edward W. Swanson, SBN 159859
August Gugelmann, SBN 240544
SWANSON & McNAMARA LLP
300 Montgomery Street, Suite 1100
San Francisco, California 94104
Telephone: (415) 477-3800
Facsimile: (415) 477-9010

Court Expert

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. CV 94-2307 CW

**COURT EXPERT'S QUARTERLY
REPORT ON INVESTIGATIONS AND
DISCIPLINE**

Pursuant to the Court's orders for remedial measures at the *Armstrong* Six prisons (RJD, LAC, COR, SATF, CIW, and KVSP), the Court Expert provides the following report on implementation of CDCR's new investigations and discipline system.

Evaluations of the investigations and discipline system

In recent submissions, the Court Expert has described a number of concerns with the overall functioning of the system for investigating and disciplining staff misconduct. Two recent developments have highlighted those concerns.

First, the Court's remedial order requires defendants to produce information on closed investigations on a quarterly basis. Following these productions, plaintiffs typically evaluate a selection of cases and report on deficiencies they identify. As with their prior reports, plaintiffs'

1 most recent evaluation identified numerous cases where they found that the Allegation Inquiry
 2 Unit (AIU) of the Office of Internal Affairs failed to conduct complete and unbiased
 3 investigations, wardens failed to sustain allegations despite the evidence gathered by
 4 investigators, and wardens imposed insufficient discipline despite sustaining allegations.

5 In response to prior reports, CDCR has contended that plaintiffs “cherry pick” cases to
 6 review and that, as a result, the selected cases are not representative of the investigations and
 7 discipline system as a whole. In response to this contention, plaintiffs in April conducted a
 8 different inquiry. Rather than reviewing only a subset of cases, plaintiffs examined all 133 cases
 9 from a single institution, LAC, for the fourth quarter of 2023. The analysis was not encouraging.
 10 Plaintiffs’ report on the 133 cases found that there was no evidence of misconduct in 56 cases
 11 (42% of the total) and that the department properly sustained complaints and imposed discipline
 12 in 2 cases (less than 2% of the total), meaning that plaintiffs had no concerns about 44% of cases.
 13 But they identified problems with the remaining 75 cases (56% of the total). These included
 14 incomplete investigations in 57 cases (43% of the total); a failure to sustain allegations despite
 15 sufficient evidence to do so in 9 cases (6% of the total); and a failure to impose appropriate
 16 discipline in 9 cases (6%). These findings suggest that plaintiffs’ conclusions in prior reports
 17 were not the product of biased selection but were instead indicative of widespread issues.

18 Second, in April the Office of the Inspector General issued its 2023 Annual Report,
 19 which presents a decidedly sobering assessment of the investigations and discipline process.¹
 20 The OIG reviewed nearly 7,000 screening decisions by the Centralized Screening Team (CST),
 21 113 inquiries by Locally Designated Investigators (LDIs), and 121 investigations by the AIU,
 22 and rated each of them as “superior,” “satisfactory,” or “poor.”² The most encouraging finding

23
 24 ¹ [https://www.oig.ca.gov/wp-content/uploads/2024/04/2023-Report-on-the-OIGs-Monitoring-of-](https://www.oig.ca.gov/wp-content/uploads/2024/04/2023-Report-on-the-OIGs-Monitoring-of-the-Staff-Misconduct-Complaint-Screening-Inquiry-Investigation-and-Employee-Disciplinary-Processes.pdf)
 25 [the-Staff-Misconduct-Complaint-Screening-Inquiry-Investigation-and-Employee-Disciplinary-](https://www.oig.ca.gov/wp-content/uploads/2024/04/2023-Report-on-the-OIGs-Monitoring-of-the-Staff-Misconduct-Complaint-Screening-Inquiry-Investigation-and-Employee-Disciplinary-Processes.pdf)
 26 [Processes.pdf](https://www.oig.ca.gov/wp-content/uploads/2024/04/2023-Report-on-the-OIGs-Monitoring-of-the-Staff-Misconduct-Complaint-Screening-Inquiry-Investigation-and-Employee-Disciplinary-Processes.pdf).

27 ² The Centralized Screening Team reviews complaints to determine whether they raise
 28 allegations of staff misconduct. CST then routes complaints to the AIU for inspection of more
 serious allegations of misconduct, to the LDIs for inquiry into less serious allegations of
 misconduct, or to the local Offices of Grievances for processing of “routine” complaints, i.e.
 those that do not allege misconduct.

1 was that the CST made “satisfactory” screening decisions on 90% of complaints reviewed and
 2 “poor” screening decisions on 10%. (It should be noted, however, that given the number of
 3 complaints processed through CST, even a 10% error rate translates to some 500 incorrectly
 4 screened cases per month from the *Armstrong* Six prisons alone.) Of much more concern is the
 5 OIG’s finding that LDIs performed poorly in 68% of inquiries and AIU investigators performed
 6 poorly in 64% of their cases. With respect to the AIU, the OIG report concluded that
 7 investigations received poor ratings “primarily because ... investigators conducted biased
 8 investigations, conducted incomplete investigations, used poor investigative techniques, and
 9 failed to ensure the confidentiality of investigations.” OIG Report, 57. On May 2, California’s
 10 Senate Budget and Fiscal Review Subcommittee No. 5 (Corrections, Public Safety, Judiciary,
 11 Labor and Transportation) held a hearing during which senators expressed frustration at the
 12 shortcomings in the investigations and discipline process identified by the OIG.³

13 Defendants have not yet responded to the OIG report or to plaintiffs’ review of cases
 14 from LAC, and the Court Expert has not conducted his own review of the LAC cases.
 15 Nonetheless, it is striking that the two investigations corroborate each other, with each
 16 identifying similar problems with a similar number of cases (64% of cases in the OIG review and
 17 56% of cases in plaintiffs’ review of LAC cases). The conclusions of each of these reports is
 18 troubling on its own; two such similar reports give much yet more cause for concern. In
 19 fundamental ways, these investigations have found that the system is failing to produce the
 20 comprehensive and unbiased investigations it was designed for.

21 Defendants recognize the need for change. As the Court Expert reported last quarter,
 22 CDCR has proposed a number of modifications, including redefining “staff misconduct” and
 23 modifying the ADI (which would decrease the number of cases that reach AIU), redirecting staff
 24 to provide more support to AIU investigations of serious allegations, updating the software used
 25 to track cases, and creating streamlined processes for allegations that do not require full-blown

26 _____
 27 ³ Video and transcript of the hearing are available at <https://digitaldemocracy.calmatters.org/hearings/257915?t=38&f=051b157badb96677882cef35dd1cab44>.
 28

1 investigations. In April, plaintiffs also made a series of proposals for broad reforms. Some are
2 directed at the investigations process, such as implementing a standard form of report, creating
3 benchmarks for completeness of investigations, and standardizing processes across all CDCR
4 institutions (including by implementing fixed and bodyworn cameras at all institutions). Others
5 relate to the imposition of discipline, such as moving disciplinary decision authority from
6 institutions to a centralized authority in CDCR headquarters. Defendants will be responding to
7 plaintiffs' proposals in the next quarter, and the Court Expert will work with the parties to
8 determine what modifications of those recommended by the parties and the OIG report should be
9 implemented.

10 It should be noted that defendants have already begun implementing reforms to address
11 some of the shortcomings in the system. One problem noted by the OIG is that investigators
12 seeking video footage had to request it from the relevant local institution's Investigative Services
13 Unit (ISU). This procedure was not only inefficient, but the OIG found that departmental policies
14 allowed ISUs to determine which portions of the requested footage to release and even identified
15 an instance of an ISU refusing to provide all the material investigators asked for. *See* OIG
16 Report, 37. To address these problems, defendants are implementing a centralized data storage
17 system called Neptune Intelligent Computer Engineering (NICE) Investigate. This system houses
18 video surveillance footage and allows the AIU's Forensic Analysis and Support Team direct
19 access, without any local ISU involvement. Phased implementation began in August 2023; all
20 but five institutions are scheduled to be enrolled in NICE by the end of 2024.⁴

21 On a similar note, the Court Expert's last report described plaintiffs' belief that CST was
22 evaluating the merits of complaints before making a routing decision. At a meeting in January
23 (also described in the last report), CDCR acknowledged that CST was, indeed, conducting some
24 form of merits review in an effort to reduce the number of cases being sent to AIU. The remedial
25 plan does not permit this; it contemplates that CST will route cases based solely on the face of
26

27 ⁴ Although implementation began in August 2023, plaintiffs and the Court Expert did not learn
28 about NICE until May 2024. The Court Expert applauds defendant's launch of this system but
encourages CDCR to communicate such changes in a more timely fashion.

1 the complaint, rather than based on the CST's view as to whether the complaint was supported
2 by the evidence. CDCR has since discontinued the merits review for all cases stemming from the
3 *Armstrong Six* institutions, and it is in the process of implementing a similarly "pure" screening
4 model at institutions not subject to the remedial plan. The Court Expert supports this decision,
5 both because it achieves conformity with the Court's order and because the Court Expert is
6 skeptical about the efficacy of a system with different processes for complaints from different
7 institutions.

8 **Case volume and investigation and discipline timelines**

9 As the Court Expert has previously reported, the investigations system continues to be
10 tasked with a far larger caseload than it was designed for. Defendants ascribe shortcomings in the
11 quality of investigations and discipline decisions largely to this fact. While it is not clear to the
12 Court Expert how far reducing investigator caseloads might go towards resolving some of the
13 problems with the quality of investigations and discipline decision-making identified by
14 plaintiffs and the OIG, the fact that the system continues to operate at such a high capacity
15 underscores the need for revisions to the processes. And the recent changes to CST have
16 significantly increased the caseload. As noted above, for some time CST was evaluating the
17 merits of cases as part of its screening process; the result was that more cases were designated
18 "routine" and sent to the local Offices of Grievances rather than to the AIU or to LDIs.
19 Implementation of a screening process based solely on the face of the complaint has generated a
20 significant increase in the number of cases routed to AIU. From December 2023 through March
21 2024, there was an average of around 2,000 open AIU cases at the end of each month; that
22 number increased to 2,500 in April and to 3,200 in May.⁵

23 CDCR has a deadline of either 120 or 180 days to complete investigations, depending on
24 whether the investigator is a custody supervisor (sergeant or lieutenant) or a special agent. The
25 Court Expert's last reported noted that for cases received by the department in the most recent
26 five months for which data was available, the on-time closure rate was 78%. That figure has
27

28 ⁵ These figures are for all institutions, not just the *Armstrong Six* prisons.

1 decreased slightly, with an average of 73% timely closures for cases opened from September
2 2023 through January 2024. As with prior reports, the Court Expert has not received information
3 from CDCR on the reasons for delay, so it is not possible to determine whether the “extenuating
4 circumstances” for late closures contemplated by the remedial plans existed here. However, it
5 seems unlikely that adequate grounds for extending the Court’s case closure deadlines exist in a
6 quarter of cases. Given that investigators are spending an average of 30 hours on each case
7 (compared to 24 hours as originally budgeted), it seems more likely that the sheer number of
8 cases is triggering the delays.

9 After the completion of investigations and inquiries, wardens must determine whether to
10 impose discipline and, if so, what discipline is appropriate. The Court Expert has previously
11 reported on the delay between case closure and disciplinary decision-making. Overall, the speed
12 with which wardens act on closed cases does not appear to have increased since the Court
13 Expert’s last report. Of cases closed since March 2023, roughly 43% are still pending with hiring
14 authorities. There are naturally higher percentages of pending cases in more recent months; for
15 example, as of the end of April 2024, hiring authorities have yet to act on 88% of cases closed in
16 January. Of more concern than the overall figure is the number of relatively old cases still
17 awaiting a warden’s decision. For example, as of April, wardens had yet to review 416 cases
18 (16% of all cases) that closed in March 2023. That a significant number of cases were still
19 pending 14 months after investigators completed their work is further indication that the
20 system—here the process for imposition of discipline—requires adjustment. This is especially
21 true given that the recent increase in cases coming out of AIU is likely to exacerbate the delays.

22 ///

Review of closed cases

As explained in previous reports, the parties and the Court Expert have been engaging in confidential discussions about the specifics of certain closed cases. Because the parties are currently considering both parties' proposals for broader reforms to the investigations and discipline process, they have agreed to suspend the confidential case studies for the current quarter. The Court Expert anticipates re-engaging in that process in future quarters.

Dated: June 28, 2024

Respectfully submitted,

/s/

Edward W. Swanson
SWANSON & McNAMARA LLP