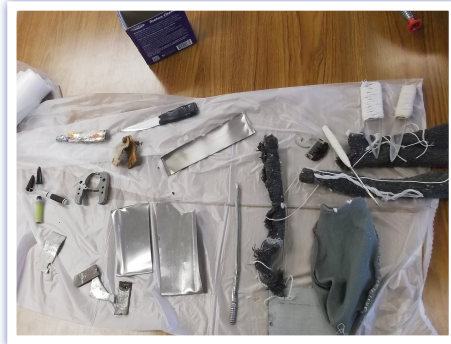




The Office of the Inspector General (OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Pursuant to California Penal Code section 6133, the OIG reports semiannually on its monitoring of these cases. However, in some cases, where there are compelling reasons, the OIG may issue a separate public report regarding a case; we call these *Sentinel Cases*. When this happens, the OIG has determined that the department's handling of a case was unusually poor, involving serious errors, even after it has had a chance to repair the damage. This Sentinel Case, No. 20-01, involves department attorneys who failed so fundamentally in their representation of the department that substantial justice was not done.

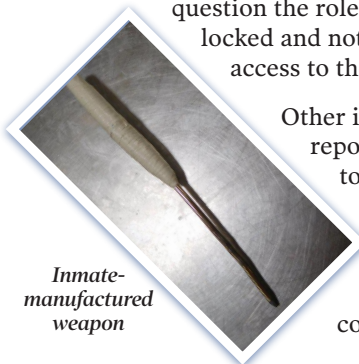


Cache of recovered weapons

From January through August 2017, ten officers at a prison in central California allegedly engaged in a conspiracy to open cell doors in a particular housing unit to allow a select group of inmates—called a *crew*—to enter cells and assault inmates convicted of sex offenses. The officers' misconduct was allegedly prevalent and widespread in the housing unit. This crew consisted of inmate porters, who are inmates selected by staff to assist with cleaning and other duties in a prison. A member of this inmate crew came forward to report the officers' misconduct because he was afraid that other inmates would attack him, and he knew there was a variety of weapons in the housing unit.

The department launched an investigation. The reporting inmate provided specific information, including identifying where the inmate crew had hidden weapons and other materials. After the reporting inmate provided the information, the prison's Investigative Services Unit found weapons and other materials in a locked plumbing chase, which is a cavity behind a wall used to conceal plumbing piping. This is significant because not only did the discovery of weapons corroborate the reporting inmate's information and credibility, it also called into question the role of the officers as the plumbing chase is locked and not accessible by inmates unless staff provide access to the inmates.

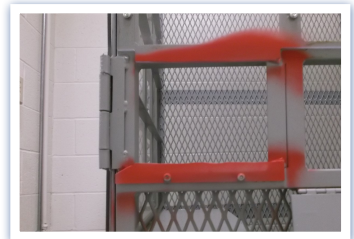
Other inmates independently corroborated the reporting inmate's information. According to four inmates whom departmental investigators interviewed, officers commonly allowed members of the inmate crew access to restricted areas in the housing unit so that these inmates could obtain materials to make inmate-



Inmate-manufactured weapon

manufactured weapons, to hide the weapons, and also to secrete drugs. The Investigative Services Unit found stabbing weapons the inmates crafted using metal they stripped from furniture and acrylic sheets of plexiglass typically used on holding cells. Furthermore, the Investigative Services Unit also found a can of red spray paint in the plumbing chase. Prison staff typically apply red spray paint to identify property with missing material, such as a piece of furniture or equipment. In order to conceal the material taken to make weapons, the inmates used the paint to mirror how prison staff applied red spray paint to identify property with missing material.

Multiple inmates also independently offered additional specific details and confirmed to investigators that inmates who were members of the crew assaulted inmates convicted of sex offenses; the inmate crew used stabbing weapons to assault the inmates convicted of sex offenses; the inmate crew made weapons using metal stripped from furniture and acrylic sheets; the inmate crew hid the weapons in a locked plumbing chase; and housing unit officers delayed responding to the Investigative Services Unit when its personnel requested access to the housing unit in order to conduct searches.



Cage marked with contraband spray paint

The investigators' discovery of five weapons and weapon stock in the exact location described by the inmates corroborated the statements of these inmates. The inmates also provided accurate descriptions concerning the manner in which the officers attempted to delay the entry of the Investigative Services Unit into the housing unit, allowing the inmates time and opportunity to hide their contraband weapons and drugs. Interestingly, departmental investigators also interviewed a number of officers, and not one stated that he or she was aware of any misconduct. The evidence for this case came solely from information provided by inmates and subsequent corroboration of that information.

As a result of the department's internal investigation as to the ten officers, on June 10, 2019, the warden decided to dismiss six officers and decided to not sustain misconduct allegations against four officers. The OIG agreed with the warden's decisions to

*Continued on reverse.*





dismiss the six officers based on the credible evidence and corroboration provided by the inmates. The OIG also agreed with the warden’s decisions to not sustain allegations as to four officers because the evidence did not support a finding of misconduct as to those officers.



Can of recovered red spray paint

As to the six officers the hiring authority decided to dismiss, the department had previously terminated

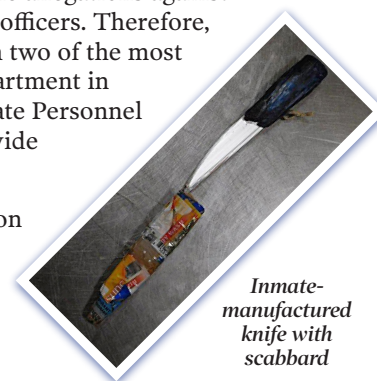
two of the four officers on unrelated cases; one of the officers resigned from the department pursuant to an unrelated case; and one of the officers resigned before being dismissed pursuant to the instant case. Thus, there remained two officers who were facing dismissals as decided upon by the warden.

The department attorney assigned to this case agreed with the warden’s decisions to not sustain the allegations against four officers and to sustain the allegations against the four officers who were previously terminated or resigned from the department, but objected to the warden’s decision to sustain the allegations against the two remaining officers and elevated the matter to the warden’s supervisor. The assigned department attorney, who is one of the most senior attorneys on the Office of Legal Affairs’ Employment Advocacy and Prosecution Team, which is responsible for litigating the department’s employee misconduct cases, reasoned that the department could not successfully litigate an employee discipline case before the State Personnel Board based only on inmate testimony.

In meetings regarding this case, the department attorney and his supervisor informed the OIG and departmental executives that the testimony of inmates would be insufficient and that noninmate testimony concerning the employee misconduct was necessary to prevail. However, in the OIG’s opinion, this position is not supported by current case law. The law states a witness’s testimony may be impeached if the witness has suffered a felony conviction involving moral turpitude; and yet, in determining the admissibility, the judge is to balance the probative value of the prior conviction against its prejudicial effect (*People v. Clark* (2011) 52 C.4th 856, *Robbins v. Wong* (1994) 27 Cal.App.4th 261, and California Evidence Code section 352). However, this does not mean that inmate testimony is categorically inadmissible or that it is not sufficient to sustain a finding of guilt or culpability. That is for the trier of fact, such as a judge, to decide.

To support their position, the department attorney and his supervisor cited prior decisions from the State Personnel Board that were not precedential which indicated that inmate testimony is to be viewed with suspicion and to not ordinarily be credited without corroboration. In one of the cases cited, the judge noted an inmate’s prior convictions, but also that the inmate had a history of filing unfounded grievances against staff, lied to investigators, and had previously suffered serious rules violations. In the other case offered by the department attorneys, the judge noted that uncorroborated inmate testimony must be viewed with suspicion, but also noted other reasons for not believing an inmate based on other statements he made and circumstantial evidence.

Moreover, although the support provided by the department attorney is not established case law, even utilizing such a standard, as noted above, that corroboration was present in this case. Furthermore, the department attorneys’ logic was internally inconsistent in that they agreed the evidence provided by the inmates and subsequently corroborated could be used to sustain the allegations against four officers, but not the two remaining officers. Therefore, the department attorneys’ advice—from two of the most senior attorneys who represent the department in employee discipline cases before the State Personnel Board—violated their obligation to provide accurate legal advice to their client.



Inmate-manufactured knife with scabbard

The OIG supported the warden’s decision to dismiss the officers and expressed its support for the warden’s decision to the department. However, based on the poor legal advice from its own attorneys, departmental executives overturned the warden’s decision and decided to not sustain the misconduct allegations against the two remaining officers. The OIG does not agree with the department’s ultimate decision that there would be no sustained misconduct allegations against the two officers.

THE OIG IS CONCERNED that the department attorneys’ actions suggest an apparent bias and hostility against inmate testimony and evidence provided by inmates, and set a dangerous precedent in which widespread officer misconduct, which in some cases cannot be proven by any means other than evidence or testimony provided by inmates, will go undiscovered and unpunished. The OIG believes that evidence concerning staff misconduct provided by an inmate and subsequent testimony proffered in a legal proceeding should not be disregarded, based simply on the fact that it came from an inmate. The credibility of information and testimony concerning staff misconduct provided by inmates must be independently assessed for credibility, like any other witness testimony, and should not be dismissed outright because the provider of the testimony is an inmate. Furthermore, simply because an individual is incarcerated does not mean he or she can never provide credible and reliable information. Unless department attorneys change their approach and bias regarding inmate testimony, we question whether they can effectively represent the department in such cases. **OIG**