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STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

In re:)	1998 OAL Determination 18
Request for Regulatory)	
Determination filed by)	[Docket No. 91-016]
LAWRENCE BITTAKER)	
regarding DEPARTMENT OF)	August 20, 1998
CORRECTIONS Operations)	
Manual sections 13010.1 -)	Determination Pursuant to
13010.19--"Public)	Government Code Section
Information" ¹)	11340.5; Title 1, California
)	Code of Regulations,
)	Chapter 1, Article 3

Determination by: EDWARD G. HEIDIG, Director

HERBERT F. BOLZ, Supervising Attorney
TAMARA J. PIERSON, Administrative Law
Judge On Special Assignment
Regulatory Determinations Program

SYNOPSIS

The issue presented to the Office of Administrative Law ("OAL") is whether the Department of Corrections' Operation Manual "DOM" sections 13010.1-13010.19, dated January 25, 1990, regarding *inmate access to the media*, are "regulations" and are therefore without legal effect unless adopted in compliance with the Administrative Procedure Act ("APA").²

6

OAL has concluded that:

- (1) six of the twenty "challenged sections" are "regulations," but fall within the internal management exemption; thus, they need not be adopted in compliance with the APA.
- (2) fourteen of the "challenged sections" are "regulations" and do not fall within any exemption to the APA. Therefore, they were without legal effect. However, after this request for determination was filed, the Department formally adopted all but one of the "challenged sections" in compliance with APA requirements. The "challenged sections" which **were** adopted are published in the California Code of Regulations, Title 15, sections 3260-3261.7.
- (3) *one* of the "challenged sections," section 13010.5 defining media representatives, which is a "regulation," has not been adopted in compliance with the APA requirements; therefore, it *is still without legal effect*.

ISSUE

OAL has been requested to determine whether sections 13010.1-13010.19 of the Department of Corrections Operations Manual, dated January 25, 1990,³ limiting inmate access to the media, are "regulations" required to be adopted pursuant to the APA.⁴ Lawrence Bittaker filed this request as an inmate at San Quentin State Prison.

ANALYSIS

I. IS THE APA GENERALLY APPLICABLE TO THE DEPARTMENT OF CORRECTIONS' QUASI-LEGISLATIVE ENACTMENTS?

Penal Code section 5058, subdivision (a), declares in part that:

"The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons The rules and regulations *shall be promulgated and filed pursuant to [the APA]* [Emphasis added.]"

Clearly, the APA generally applies to the Department's quasi-legislative enactments.⁵

II. DO THE "CHALLENGED SECTIONS" CONSTITUTE "REGULATIONS" WITHIN THE MEANING OF GOVERNMENT CODE SECTION 11342?

The key provision of Government Code section 11342, subdivision (g), defines "regulation" as:

" . . . *every* rule, regulation, order, or standard of general application *or* the amendment, supplement, or revision of any such rule, regulation, order or standard adopted by *any* state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure [Emphasis added.]"

Government Code section 11340.5, authorizing OAL to determine whether agency rules are "regulations," and thus subject to APA adoption requirements, provides in part:

"(a) *No* state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (g) of Section 11342, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]"

In *Grier v. Kizer*,⁶ the California Court of Appeal upheld OAL's two-part test⁷ as to whether a challenged agency rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (g):

First, is the challenged rule either

- a rule or standard of general application, *or*

• a modification or supplement to such a rule?

Second, has the challenged rule been adopted by the agency to either

- implement, interpret, or make specific the law enforced or administered by the agency, *or*
- govern the agency's procedure?

If an uncodified rule fails to satisfy either of the above two parts of the test, we must conclude that it is *not* a "regulation" and *not* subject to the APA. In applying the two-part test, however, we are mindful of the admonition of the *Grier* court:

"... because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (*Armistead, supra*, 22 Cal.3d at p. 204, 149 Cal. Rptr. 1, 583 P.2d 744), we are of the view that *any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA.* [Emphasis added.]"⁸

Background of the challenged sections

For many years, the Department of Corrections maintained a "family of manuals," including the Classification Manual and the Administrative Manual. These manuals contained most of the statewide rules governing prison administration. In 1990, these individually titled manuals were replaced by a nine-volume compendium entitled the "Department of Corrections Operations Manual" (also known as the Department Operations Manual or most commonly by the acronym "DOM"). Volume one of DOM concerns "General Administration," Subchapter 13000 refers to "Public Relations," and section 13010 pertains to "Public Information." The sections challenged as "underground regulations" are found in the Public Information section.

A number of judicial decisions and OAL determinations have found that various manuals and manual provisions violated the statutory prohibition against agency use of "underground regulations," Government Code section 11340.5. In 1982, the California Court of Appeal struck down Forms 839 and 840, which had been issued as part of an administrative bulletin for inclusion in the Classification Manual.⁹ In 1987 and 1988 OAL determined that portions of the Classification

Manual and Administrative Manual violated Government Code section 11340.5.¹⁰ In 1991, the California Court of Appeal ordered the Department to cease enforcement of the regulatory portions of DOM.¹¹ In this latter case, the Department had conceded that “much” of DOM violated the APA; the court found that “a substantial part” was regulatory.

Following these judicial decisions and OAL determinations, the Department formally adopted pursuant to the APA and printed in the California Code of Regulations, many rules that had previously been found solely in manuals.

In Lawrence Bittaker’s request for determination,¹² he states:

“Petitioner alleges that Mr. Gomez, et al., have, or are, in the process of revising and reissuing the preexisting CDC ‘Administrative Manual’ under the new name of ‘California Department of Corrections Operation Manual.’ . . . Petitioner alleges that such Operations Manual contains numerous rules restricting or defining the rights of inmates in many areas of conduct, such as: 1. Subchapter 13000, sections 13010.1-13010.19, regarding inmate access to media interviews Petitioner alleges that the CDC is utilizing, enforcing, or attempting to enforce the rules, guidelines, and restrictions appearing in the above sections of the ‘Operations Manual’ to control the actions and activities of all state prison inmates in such named areas of activity.”

Even though Mr. Bittaker’s request for determination refers to DOM sections 13010.1-13010.19 (consisting of twenty-four sections), the request is limited to those sections which impact upon an *inmate’s access to the media*. Section 13010.13 refers to the release of spot news by the Department, section 13010.16 refers to interviews with Department employees, section 13010.16.1 refers to on-duty interviews with Department employees, and section 13010.19 refers to the California Code of Regulations references. Since these sections have no impact upon an inmate’s access to the media, these sections will not be included in OAL’s review. The remaining *twenty sections constitute the “challenged sections”* and will be the subject of OAL’s review.

A. ARE THE “CHALLENGED SECTIONS” STANDARDS OF GENERAL APPLICATION?

The "Purpose" provision of the "Public Information" sections of DOM clearly states to whom the "challenged sections" are to be applied.

DOM section 13010.2, titled "Purpose," states:

"This section defines staff responsibilities in relaying information to the public, who shall make contact with the media, how and when the media may enter institutional grounds, and for what purpose."

The "challenged sections" apply to the public, the media, or inmates statewide. Consequently, *OAL concludes the "challenged sections" are standards of general application*; thus satisfying the first element of the two-part test.

B. DO THE "CHALLENGED SECTIONS" INTERPRET, IMPLEMENT, OR MAKE SPECIFIC THE LAW ENFORCED OR ADMINISTERED BY THE AGENCY OR GOVERN THE AGENCY'S PROCEDURE?

Penal Code section 5058, subdivision (a), declares that:

"The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons"

Penal Code section 5054 declares that:

"The supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director [of the Department of Corrections]"

Until 1994,¹³ Penal Code section 2601, subdivision (d), stated that prisoners had the right:

"To . . . personal visits; provided that the department may provide such restrictions as are necessary for the reasonable security of the institution."

Setting limits on who may make contact with the media, how and when the media may enter facility grounds, and for what purpose, implements, interprets and

makes specific the Department's authority to supervise, manage and control the state's prisons. The limits also implement, interpret, and make specific the Department's authority to restrict visitation for security reasons.

Thus, *the "challenged sections"* not only are standards of general application, they also *implement, interpret, and make specific the laws enforced by the Department*. Both elements of the two-part test have been satisfied. *OAL concludes that the "challenged sections" are "regulations" within the meaning of Government Code section 11342.*

III. DO ANY OF THE "CHALLENGED SECTIONS" FOUND TO BE "REGULATIONS" FALL WITHIN ANY *SPECIAL* EXPRESS STATUTORY EXEMPTION FROM APA REQUIREMENTS?

After this request was filed, the Department's enabling act was amended to include several express exemptions from APA rulemaking requirements [Penal Code section 5058, subdivisions (c)¹⁴ and (d)].¹⁵ OAL is obliged to consider both the state of the law at the time the request was filed, and the state of the law as of the date this determination is issued.¹⁶

In its response, the Department does not contend that any of the special exemptions applies. OAL concurs. *None of the special exemptions applies to the "challenged sections" now, or at the time the request was filed.*

IV. DO ANY OF THE "CHALLENGED SECTIONS" FOUND TO BE "REGULATIONS" FALL WITHIN ANY *GENERAL* EXPRESS STATUTORY EXEMPTION FROM APA REQUIREMENTS?

Generally, all "regulations" issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute.¹⁷ Rules concerning certain specified activities of state agencies are not subject to the procedural requirements of the APA.¹⁸

INTERNAL MANAGEMENT

Government Code section 11342, subdivision (g), expressly exempts rules

concerning the "internal management" of *individual* state agencies from APA rulemaking requirements:

"Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, *except one that relates only to the internal management of the state agency.*" (Emphasis added.)

Grier v. Kizer provides a good summary of case law on internal management. After quoting Government Code section 11342, subdivision (b), the *Grier* court states:

"*Armistead v. State Personnel Board* [citation] determined that an agency rule relating to an employee's withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was 'designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implements [a board rule]. It concerns termination of employment, a matter of import to all state civil service employees. It is not a rule governing the board's internal affairs. [Citation.] 'Respondents have confused the internal rules which may govern the department's procedure . . . and *the rules necessary to properly consider the interests of all . . . under the statutes. . . .*' [Fn. omitted.] . . . [Citation; emphasis added by *Grier* court.]

"*Armistead* cited *Poschman v. Dumke* [citation], which similarly rejected a contention that a regulation related only to internal management. The *Poschman* court held: 'Tenure within any school system is a matter of serious consequence involving an important public interest. The consequences are not solely confined to school administration or affect only the academic community.' . . . [Citation.][¹⁹]

"Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections' adoption of a numerical classification system to determine an inmate's proper level of security and place of confinement 'extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself[,] and embodied 'a

rule of general application significantly affecting the male prison population' in its custody. . . .

"By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead's* holding that an agency's personnel policy was a regulation because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception. . . ."20

OAL concludes that only the following six sections of the twenty "challenged sections" fall within the internal management exemption: section 13010.4²¹ pertaining to the designation of Public Information Officers; 13010.6²² providing guidelines for media information practices; 13010.7²³ referring to general inquiries; 13010.12²⁴ concerning the authority of employees to contact the media; 13010.14²⁵ specifying who shall inform the Director of events likely to attract the media; and 13010.18²⁶ stating which employee shall be responsible for updating the "Public Information" sections of the DOM. These sections relate solely to the management of the internal affairs of the Department itself. Therefore, they are not subject to the requirements of the APA.

The remaining fourteen "challenged sections," 13010.1-13010.19,²⁷ do not fall within any general express statutory exemption from the requirements of the APA. OAL concludes these sections were without legal effect since these sections had not been adopted, in compliance with the APA, at the time of the request for determination.

IV. WERE THE REMAINING FOURTEEN "CHALLENGED SECTIONS" SUBSEQUENTLY ADOPTED IN COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE ACT?

The Department of Corrections adopted *all but one* of the remaining "challenged sections," in compliance with the requirements of the APA. Those rules are set forth in the California Code of Regulations, Title 15, sections 3260-3261.7. ²⁸ The following DOM section, defining members of the media, has *not* been adopted in compliance with the APA.

DOM section 13010.5, titled "Media Representatives," states:

“The media includes print, wire service, broadcast reporters and technical crews. Reporters on news assignments, as opposed to those on feature stories without deadlines, shall be given preference in the event of a breaking story. . . . The Communications Office can assist in identifying legitimate members of the media.”

“A current list of the names and telephone numbers of accredited media representatives who usually cover the institution or parole region office shall be readily available to those officials authorized to issue press releases and statements. Press representatives shall be advised to contact the PIO when they are seeking information.” [Emphasis added.]

DOM section 13010.5 defines and limits, who qualifies as a legitimate member of the media, and sets forth the basis for granting preferences. Since this section applies to all persons who claim to be media representatives, it is a standard of general application and fulfills part one of OAL’s two-part test.

This section implements, interprets, and makes specific the Department’s authority to supervise, manage and control the State’s prisons by setting limits upon the persons who qualify as media representatives, for access to institutions, inmates, and information. Accordingly, the second part of the test has also been met. Therefore, OAL concludes this section is a “regulation” within the meaning of Government Code section 11342, subdivision (g).

Since this section does not fall within any special express statutory exemption or any general express statutory exemption from the requirements of the APA, and it has not been adopted in compliance with the requirements of the APA, it has no legal effect.

CONCLUSION

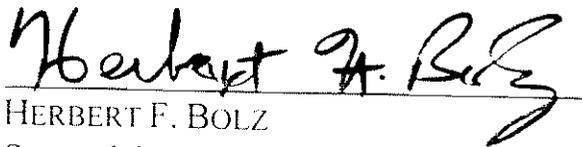
For the reasons set forth above, OAL finds that:

- (1) six of the twenty “challenged sections” are “regulatory,” but fall within the internal management exemption; thus, they need not be adopted in compliance with the APA.
- (2) fourteen of the “challenged sections” are “regulatory,” and do not fall

within any exemption to the APA. Therefore, they were without legal effect. However, after this request for determination was filed, the Department formally adopted all but one of the "challenged sections" in compliance with APA requirements. The "challenged sections" which were adopted are published in the California Code of Regulations, Title 15, sections 3260-3261.7.

- (3) *one* of the "challenged sections," section 13010.5 defining media representatives, is a "regulation" which has not been adopted in compliance with the APA requirements; therefore it *is still without legal effect*.

DATE: August 19, 1998



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ENDNOTES

1. This request for Determination was filed by Lawrence Bittaker, an inmate at San Quentin State Prison. The Department of Corrections was represented by Pamela L. Smith-Steward, Deputy Director of the Legal Affairs Division, 1515 "S" Street, North Building, P.O. Box 942883, Sacramento, CA 94283-0001, (916) 485-0495.
2. The January 25, 1990 version of the DOM sections 13010.1 - 13010.19 consisted of 24 sections but four of the sections did not impact upon inmate access to the media.
3. Sections 13010.1 - 13010.19 of the Department of Corrections Operations Manual has been revised since January 25, 1990. The Department of Corrections submitted a revised version dated March 14, 1995. However, OAL's review is limited to the request of Mr. Bittaker to review the manual sections dated January 25, 1990.
4. According to Government Code section 11370:

"Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act." [Emphasis added.]

We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Administrative Regulations and Rulemaking") of Division 3 of Title 2 of the Government Code, sections 11340 through 11359.

5. The APA would apply to the Department's rulemaking even if Penal Code section 5058 did not expressly so provide. The APA applies generally to state agencies, as defined in Government Code section 11000, in the executive branch of Government, as prescribed in Government Code section 11342, subdivision (a).
6. (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251. We note that a 1996 California Supreme Court case stated that it "disapproved" of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577. *Grier*, however, is still good law, except as specified by the *Tidewater* court. Courts may cite cases which have been disapproved on other grounds. For instance, in *Doe v. Wilson* (1997) 57 Cal.App.4th 296, 67 Cal.Rptr.2d 187, 197, the California Court of Appeal, First District, Division 5 cited *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596, on one point, even though *Poschman* had been expressly disapproved on another point nineteen years earlier by the California Supreme Court in *Armistead v. State Personnel Board* (1978) 22 Cal.3d 200, 204 n. 3, 149 Cal.Rptr. 1, 3 n. 3. Similarly, in *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 67 Cal.Rptr.2d 323, 332, the California Court of Appeal, First

District, Division 4, nine months after *Tidewater*, cited *Grier v. Kizer* as a distinguishable case on the issue of the futility exception to the exhaustion of administrative remedies requirement.

Tidewater itself, in discussing which agency rules are subject to the APA, referred to "the two-part test of the Office of Administrative Law," citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, a case which quotes the test from *Grier v. Kizer*.

7. The *Grier* Court stated:

"The OAL's analysis set forth a two-part test: 'First, is the informal rule either a rule or standard of general application or a modification or supplement to such a rule? [Para.] Second, does the informal rule either implement, interpret, or make specific the law enforced by the agency or govern the agency's procedure?' (1987 OAL Determination No. 10, *supra*, slip op'n., at p. 8.)

OAL's wording of the two-part test, drawn from Government Code section 11342, has been modified slightly over the years. The cited OAL opinion--1987 OAL Determination No. 10--was published after *Grier*, in California Regulatory Notice Register 98, No. 8-Z, February 23, 1996, p. 292.

8. (1990) 219 Cal.App.3d 422, 438, 268 Cal.Rptr. 244, 253.

9. *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr.130.

10. **1987 OAL Determination No. 3** (Department of Corrections, March 4, 1987, Docket No.86-009), CANR 87, No. 12-Z, March 20,1987, p. B-74 (dealt with the Classification Manual). **1988 OAL Determination No. 2** (Department of Corrections, February 23, 1988, Docket No. 87-008), CANR 88, No. 10-Z, March 4, 1988, p.720 (dealt with the Administrative Manual, finding portions of the manual were not "regulations" because they merely reiterated existing statutes, regulations, or case law, but portions of the manual were "regulations" so those sections had no legal effect.)

11. *Tooma v. Rowland* (Sep. 9. 1991) California Court of Appeal, Fifth Appellate District, FO15383 (granting writ of mandate ordering Director of Corrections "to cease enforcement of those portions of the Department Operations Manual that require compliance with the Administrative Procedure Act pending proof of satisfactory compliance with the provisions of the Act," typed opinion, pp. 3-4). This case was cited by the Department in its response at p. 1.

Although *Tooma* is an unpublished opinion of a court of appeal, OAL may refer to it for guidance because Rule 977 of the California Rules of Court does not apply to determinations by OAL. Rule 977 prohibits *a court or a party* from citing or relying upon an unpublished opinion of a court of appeal and applies to actions or proceedings

in a court of justice (Code of Civil Procedure, sections 21 and 22). Since OAL is not a court or a party, and OAL's determinations are not actions or proceedings in a court of justice, Rule 977 does not apply to determinations by OAL.

12. Request for Determination, pp. 1-2.
13. Penal Code section 2601, subdivision (d), was amended by Stats. of 1994, c. 555 (SB 1260), and again amended in 1996.
14. Penal Code section 5058, subdivision (c), codified case law regarding the local rule exception.
15. All state agency "regulations" are subject to the APA unless expressly exempted by statute. Government Code section 11346. Express statutory APA exemptions may be divided into two categories: special and general. Cf. *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120,126, 174 Cal.Rptr. 744, 747 (exemptions found either in prevailing wage statute or in the APA itself). *Special* express statutory exemptions, such as Penal Code section 5058, subdivision (d)(1), which exempts Corrections' pilot programs under specified conditions, typically: (1) apply only to a portion of one agency's "regulations" and (2) are found in that agency's enabling act. *General* express statutory exemptions, such as Government Code section 11342, subdivision (g), part of which exempts internal management regulations from the APA, typically apply across the board to all state agencies and are found in the APA.
16. **1998 OAL Determination No. 7** (Department of Social Services, Docket No. 91-011, June 18, 1998), typewritten version, p. 9, California Regulatory Notice Register 98, No. 30-Z, July 24, 1998, p. 1400.
17. Government Code section 11346.
18. The following provisions of law may permit rulemaking agencies to avoid the APA's requirements under some circumstances:
 - a. Rules relating *only* to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (g).)
 - b. Forms prescribed by a state agency or any instructions relating to the use of the form, *except* where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec.11342, subd. (g).)
 - c. Rules that "[establish] or [fix], *rates, prices, or tariffs.*" (Gov. Code, sec. 11343, subd. (a)(1).)
 - d. Rules directed to a *specifically named* person or group of persons *and* which do

not apply generally throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)

- e. Legal rulings of *counsel* issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (g).)
 - f. There is weak authority for the proposition that contractual provisions previously agreed to by the complaining party may be exempt from the APA. *City of San Joaquin v. State Board of Equalization* (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest). The most complete OAL analysis of the "contract defense" may be found in 1991 OAL Determination No. 6, pp. 175-177. Like *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, **1990 OAL Determination No. 6** (Department of Education, Child Development Division, March 20, 1990, Docket No. 89-012), California Regulatory Notice Register 90, No. 13-Z, March 30, 1990, p. 496, rejected the idea that *City of San Joaquin* (cited above) was still good law.
- 19. *Armistead* disapproved *Poschman* on other grounds. (*Armistead, supra*, 22 Cal.3d at 204, n. 2, 149 Cal.Rptr. 1, 583 P.2d 744.)
 - 20. (1990) 219 Cal.App 3d 422 436, 268 Cal Rptr. 244, 252-253.
 - 21. DOM section 13010.4, titled "Designation of Public Information Officers (PIO)," on January 25, 1990, stated:

"Each institution and parole region shall designate an appropriate staff member who shall coordinate the public information and community relations programs. The Assistant Director, Communications, may participate in all institution and parole region PIO interviews. Final selection is the responsibility of the warden or regional parole administrator. Prospective vacancies require written notification to the Assistant Director, Communications, via the Deputy Director, Institutions, or the Deputy Director, Parole and Community Services Division (P&CSD)."

"Each institution and parole region shall have a designated staff member on duty or available by telephone to the media at all times. Basic responsibilities include responding (after consulting with the administrative officer of the day or regular PIO) to the media inquiries with factual details about incidents or any other immediately newsworthy event."

"Institution PIOs shall be a correctional lieutenant, the equivalent, or above. Parole region PIOs shall be the regional or deputy regional parole administrator."

22. DOM section 13010.6, titled "Media Information Practices," on January 25, 1990, stated:

"The following provisions shall be considered as guides:

*News and all the factors associated with it are highly variable.

*No set of rules will cover all situations.

*There is no substitute for good judgment."

"Institution and PIO shall notify the Director of Corrections (Director) via the Assistant Director, Communications, immediately of any occurrence or situation of unusual media interest. Incidents likely to attract routine media interest do not require notification. Examples of these are:

*Routine. Nonfatal incidents unless a high profile inmate/parolee is involved, regularly scheduled events or classes, personal profile of staff member by local media and similar events.

*Unusual. Fatal incidents, incidents involving a high profile inmate/parolee, mass disturbances, labor actions, any significant inquiry by major media, a media investigation (prolonged inquiries) and others.

*Neither routine nor unusual is meant to be all-inclusive."

"Written news releases shall be reviewed over the telephone before distribution by the Assistant Director, Communications. A written news release is a formal, typed press release intended for mail or hand-carried delivery."

23. DOM section 13010.7, titled "General Inquiries," on January 25, 1990, stated:

"Requests for information shall be given prompt attention. Inquiries addressed to a specific institution requesting information about the history or operation of an institution shall be answered by the institution unless there is some question regarding the communication or a matter of policy involved."

"Unusual or repeated inquiries or letters shall be reported to the Assistant Director, Communications. Requests for information on a department wide basis, requests involving other agencies of the Department or state government shall be referred to the Assistant Director, Communications, for reply."

24. DOM section 13010.12, titled "Authority to Contact Media," on January 25, 1990 stated:

"The authority granted to institutions and parole region offices to release information does not apply to individual employees unless specifically authorized by the warden or regional parole administrator."

"Employees of the Department shall not generate or initiate media contact

regarding incidents or newsworthy events without specific instruction to do so. Employees who feel that a particular event is newsworthy shall first seek the guidance and permission of the PIO, who shall seek appropriate authorization and make prior notification to the Assistant Director, Communications, as necessary."

25. DOM section 13010.14, titled "Informing the Director," on January 25, 1990, stated:

"In the case of an event likely to attract significant attention, the Director shall be informed via the Assistant Director, Communications, of statements and releases given to news media, as well as instances in which reporters enter institutions to cover activities or interview inmates."

26. DOM section 13010.18, titled "Revisions," on January 25, 1990, stated:

"The Assistant Director, Communications, or designee, shall ensure that the content of this section is kept accurate and current."

27. DOM sections 13010.1 "Policy," 13010.2 "Purpose," 13010.3 "Requirements," 13010.5 "Media Representatives," 13010.8 "Media Access to Institutions," 13010.9 "Escapes and Media Notification," 13010.10 "News Inquiries," 13010.11 "Data on Inmates or Parolees," 13010.15 "Interviews With Inmates," 13010.15.1 "Inmate Consent to News Media Contact," 13010.15.2 "Interviews With Specific Inmate/Parolee," 13010.15.3 "Interviews With Inmates With Serious or Terminal Illness," 13010.17 "Photography," and 13010.17.1 "Prohibitions."

28. Sections 3260 - 3261.7, Title 15, California Code of Regulations were filed as an emergency on December 19, 1991. The Certificate of Compliance as to the December 19, 1991 order was transmitted to OAL April 17, 1992 and filed on June 1, 1992. Section 3261.5, which specifically governs routine media interviews with inmates was amended to prohibit specific face-to-face interviews with inmates, on October 28, 1996 as an emergency. The Certificate of Compliance as to the October 28, 1996 order was transmitted to OAL on March 3, 1997 and filed April 14, 1997. OAL notes this amendment supersedes DOM section 13010.15.2.