



# University of California



## WHISTLEBLOWER TRAINING



**Instruction**



**Research**



**Public Service**

University of California



***Reporting and Investigating  
Improper Governmental Activities***

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<http://ucwhistleblower.ucop.edu>

<http://www.universityofcalifornia.edu/compaudit/investigations/>

# Whistleblower Policies



**POLICY ON REPORTING & INVESTIGATING  
ALLEGATIONS OF SUSPECTED  
IMPROPER GOVERNMENTAL ACTIVITIES  
&  
POLICY ON PROTECTING WHISTLEBLOWERS  
FROM RETALIATION**





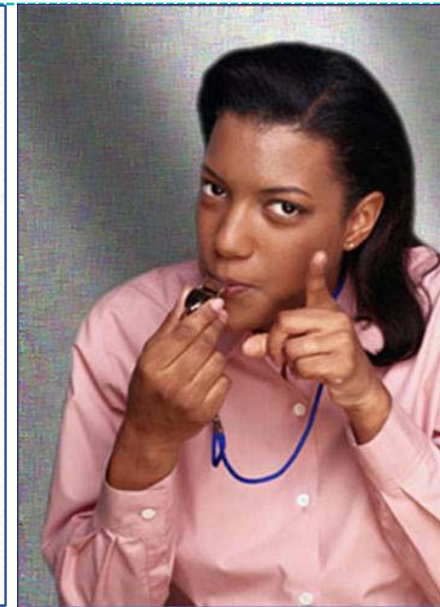
To adhere to the spirit of the state whistleblower statutes\* by creating

1) an environment in which *suspected improprieties* are brought forward without fear of retaliation

and

2) mechanisms that ensure an *appropriate institutional response* to all suspected improprieties (not just whistleblower reports)

\*California Government Code 8547 & 8548



## Whistleblower Protection Act

### Whistleblower Policy Objective



**Comprehensive**—All elements of the matter are addressed

**Multiple Perspectives**—All parties with a natural interest or responsibility for the matters are involved in crafting the institution's response plan

**Credible**—The requisite expertise & independence from internal or external resources are utilized

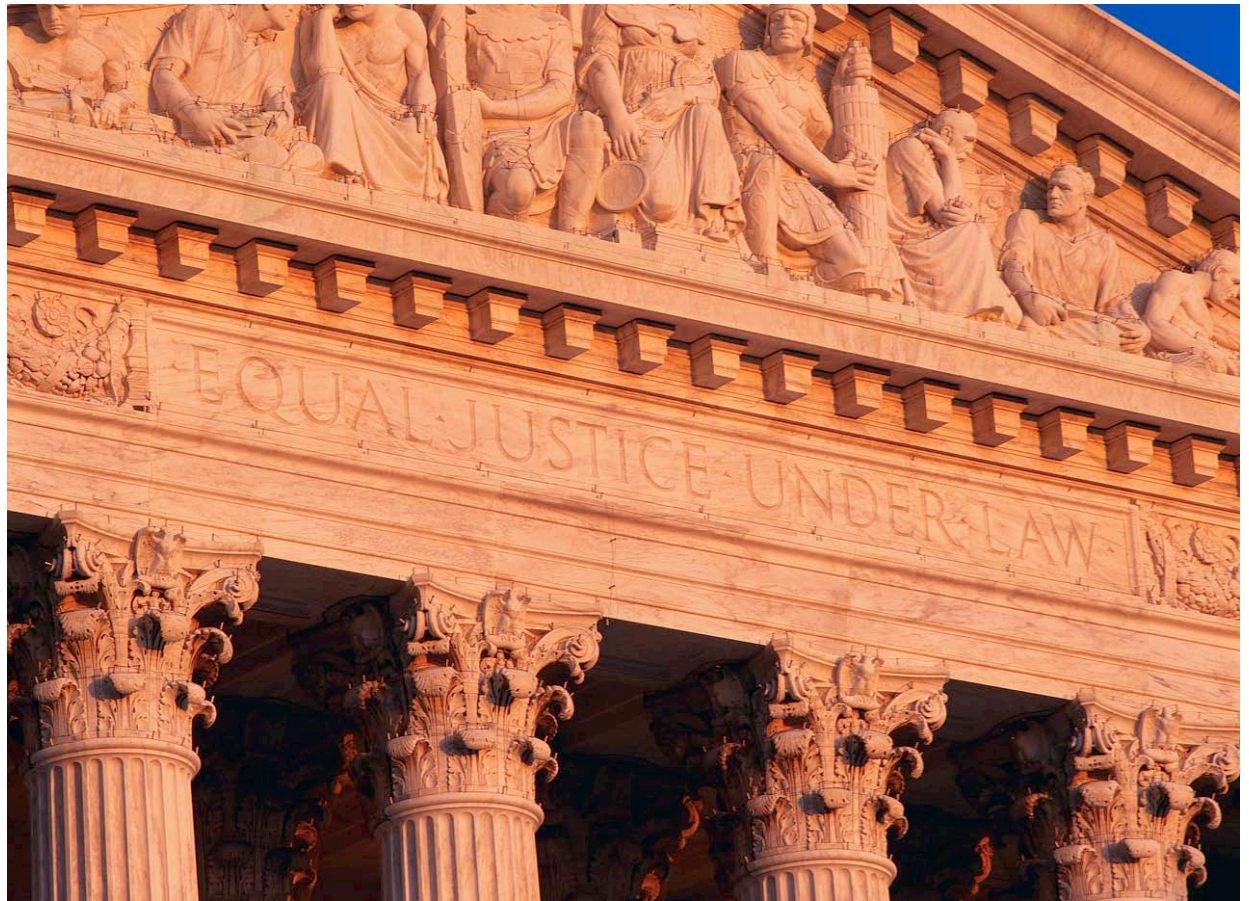


## Appropriate Institutional Response



**Demonstrable**—The University can defend its course of action & demonstrate, if challenged, that the matters were addressed as warranted

**Communicated**—To all appropriate internal and external parties with a need to know



**Appropriate Institutional Response**



Any activity by a state agency or by an employee that is undertaken in the performance of the employee's official duties, *whether or not that action is within the scope of his or her employment,*

and that

1) is in violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty,

or

2) is *economically wasteful, or involves gross misconduct, incompetence, or inefficiency.*



## Definition: Improper Governmental Act (IGA)



any *good faith* communication that *discloses* or demonstrates an intention to disclose *information that may evidence*

1) an *improper act*

or

2) any condition that may *significantly threaten the health or safety of employees or the public*

if the disclosure or intention to disclose was made *for the purpose of remedying that condition.*



**Definition: Protected Disclosure**





Can be oral

Can be made to line management OR to a University official with implied authority to act

“For the purpose of remedying that condition” should normally be assumed

If not recognized as such when made, danger of re-characterization when retaliation complaint is made

Malicious intent does not nullify potential validity of allegations

Frivolous complaints may themselves be IGAs



## Key Concepts

# Whistleblower Procedures



## UNIVERSITY PROCEDURES FOR INVESTIGATING & REPORTING ON WHISTLEBLOWER ALLEGATIONS





1) Funnel Complaints to LDO

2) Triage Process by LDO and I-Group

(Two pronged test—“If True” & Sufficient Basis)

3) Investigation within natural jurisdiction

OR

Referral to Management\*

4) Communications, Coordination & Monitoring by LDO

5) Report to management, IGA source and others as appropriate

\* If the two criteria are not met— “If True” test and “Probable Cause” Standard



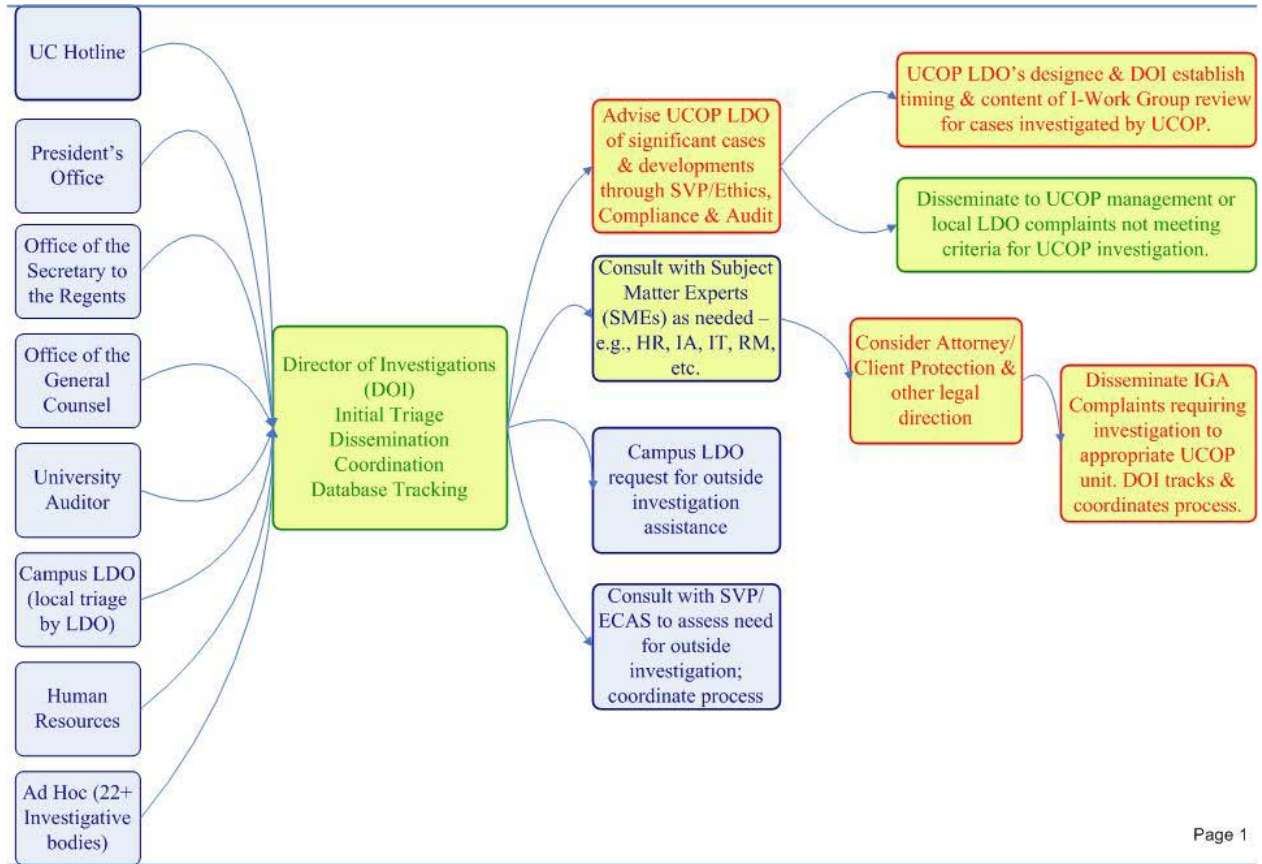
## Triage Process Overview



Complaints originate from a variety of sources & methods

The Office of the Director of Investigations is responsible for overseeing & tracking sensitive local investigations, as well as all UCOP investigations

The DOI also maintains an inventory of external resources for fact-finding & investigation, in the event that independence is required by the nature of the case



## Flow of Whistleblower Reports



Academic Personnel

Animal Research Office

Disability Coordinator

Environmental Health &  
Safety

Health Sciences  
Compliance Officer

Human Resources

- Labor Relations
- Employee Relations

EEO/AA

Risk Management

Student Judicial Affairs



**Who Performs Investigations**



Institutional Review Board

Internal Audit

Management overseeing  
Ad Hoc external processes

Medical Staff

NCAA Compliance Officer

Office of the General  
Counsel

Privilege & Tenure  
Committee

Research Administration

Retaliation Complaint  
Officer

Title IX Officer

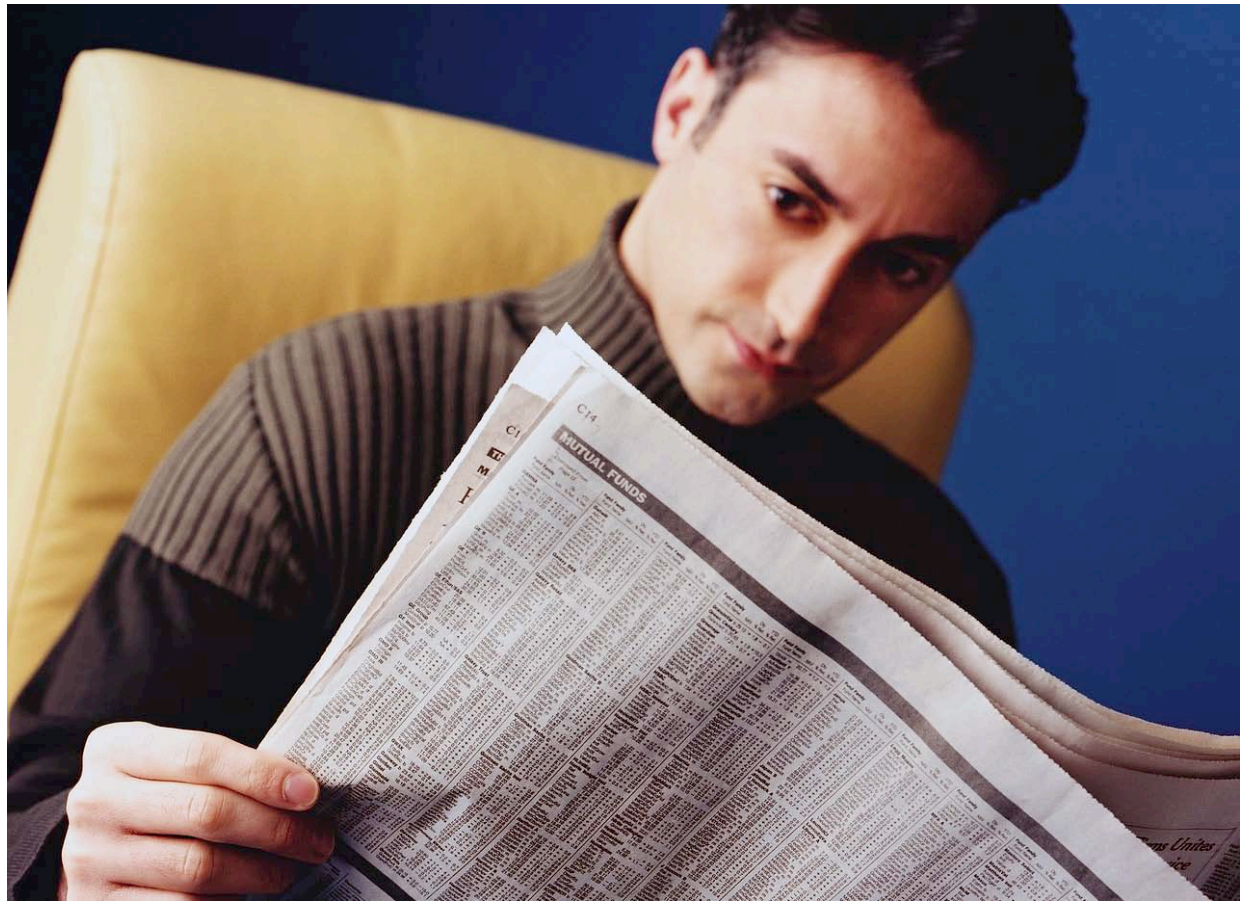
University Police



## Who Performs Investigations



- 1) Results from significant control or policy deficiency likely to exist elsewhere (on the campus or within the system)
- 2) Likely to receive media or other public attention
- 3) Involves misuse of University resources or creates exposure or liability in potentially significant amounts (no threshold for internal reporting; >\$25,000 for OP reporting)
- 4) Significant possibility of resulting from a criminal act
- 5) Involves significant threat to health or safety of employees and/or the public
- 6) Judged significant or sensitive for other reasons



## Reporting Criteria



Allegations – not just findings – are reportable.  
Thirty days for preliminary review no longer applicable.

Sensitivity & media attention override dollar impact (which is frequently immeasurable at the outset) especially when the matter really isn't about money.

Regents' Compliance & Audit Committee expectation: "No Surprises."

Materiality matters. Balance a bias towards disclosure against referrals for a missing "quart of ice cream."

Matters reported externally require internal reporting (e.g. reporting to funding or regulatory agency triggers EVP reporting).



## Key Concepts





## Learn UC Policy and reporting channels

- Locally Designated Official
- Internal Audit
- Human Resources

Recognize and be alert to informal communications of allegations (protected disclosures)

Contact Internal Audit and Human Resources before taking any personnel action

Act with speed

Hold the matter confidential



## When Confronted with Whistleblower Allegations



## DON'T

Dismiss the matter out of hand

Launch your own investigation

Confront the accused or otherwise tip them off

Disclose the matter to any unnecessary parties

Try to settle or resolve the matter yourself



**When Confronted with Whistleblower Allegations**



Managers have to be allowed to manage—to do their jobs.

Guidance can't be absolute—there is no way to remove judgment from the equation.

However, caution is urged. Err on the side of disclosure—the manager needs to be held accountable for failing to report matters that later surface as surprises.

A decision not to report is not a decision not to act, but rather a decision that the matter can be resolved under the person's own authority.

If “dealing with the matter” requires activities outside the scope of normal supervision, this is probably a matter for investigation.



## Use Appropriate Judgment

# Case Studies



## REPORTING & INVESTIGATING SUSPECTED IMPROPER GOVERNMENTAL ACTS





A large University department has a small unit that operates fairly autonomously & with very limited oversight.

This unit is involved in procuring services from outside vendors and re-charging various University organizations.



## Procurement Case



A temporary employee was assigned to assist with a backlog problem. This employee reported to her supervisor that a substantial amount of expenses had not been re-charged.

Senior department management became suspicious at this report and noticed that none of the bills for a particular vendor had been re-charged in over a year.



## Background



1) Has a protected disclosure been made?

2) Does this matter meet the criteria for reporting to the LDO or another appropriate office?



**Decision Point**



The senior department manager called the phone number listed on the invoices and got an answering machine. The call was not returned.



**Inquiry**





The manager drove by the address on the invoice and found that it was a UPS mail box store.



**Drive By**



The manager called the Better Business Bureau and conducted a Dun & Bradstreet search without finding any information on the business.



**Research**



The manager's research found that the University had paid this vendor in excess of \$250,000 over several years.



**Amount at Risk**



1) Did the manager go too far?

2) Is this matter now reportable to the LDO or another appropriate office?

3) What should the manager's next steps be?



## Considerations



With this information, the senior manager and another department supervisor confronted the employee on a Friday afternoon about the vendor and the failure to re-charge for their services.

The employee was perceived as being evasive but did not admit to any wrongdoing.

She was told to be available on Monday to go over in detail the operation of her unit.



## Action Plan



1) Should the manager and the supervisor have confronted the employee with questions about the vendor and the failure to re-charge for the billed expenses?

2) Is this matter now reportable to the LDO or another appropriate office?



**Reflection**



On Monday, the department found that all of the records in the unit had been removed over the weekend and information had been deleted from the employee's computer.

The employee had left a message saying that she could be contacted through her attorney.

*Then they called Internal Audit.*

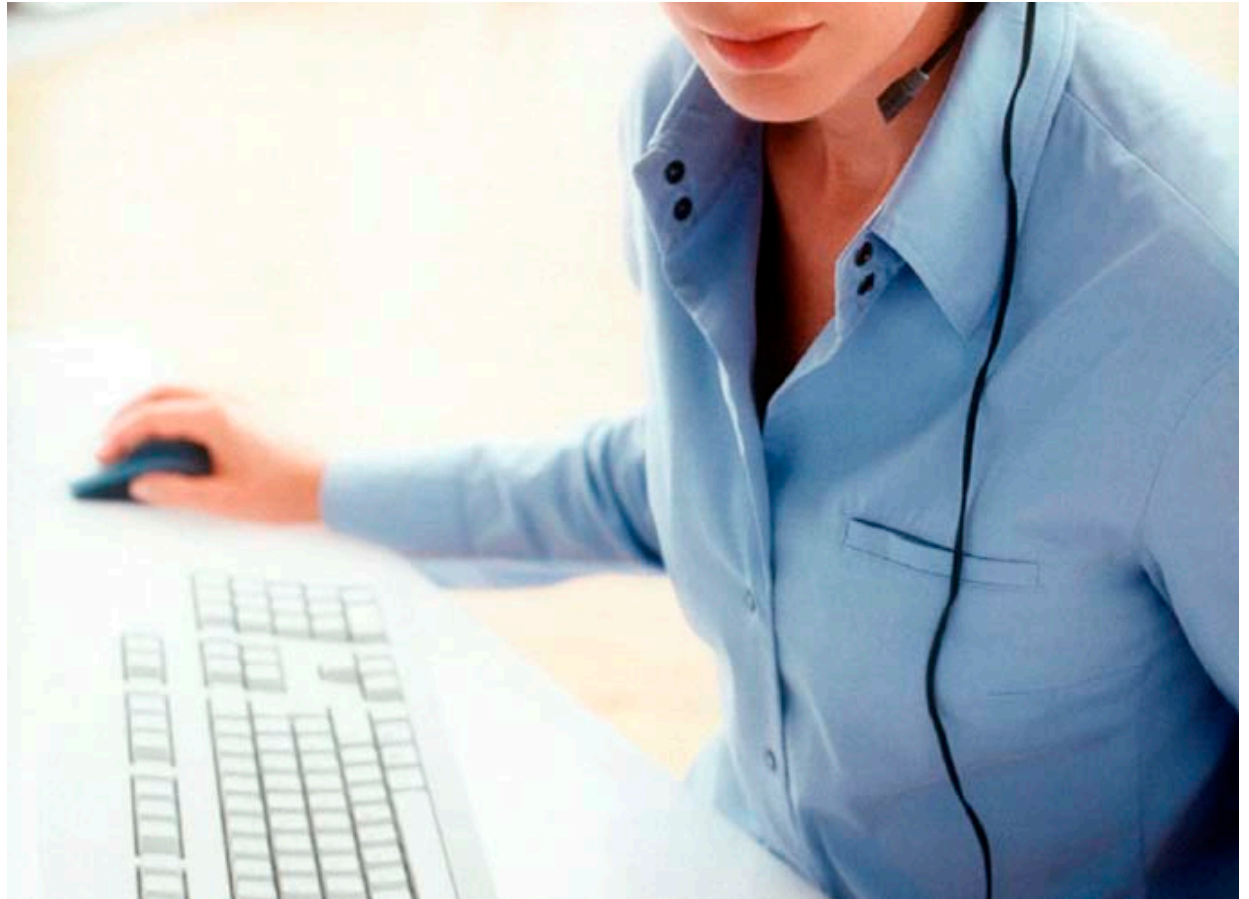


## Outcomes



The Graduate Studies department in the College of Engineering is planning a special research project on issues facing women in engineering schools.

A departmental employee was in the midst of preparing grant proposals to submit to several state & federal agencies, when he suddenly fell ill & took emergency sick leave.



## E-Mail Case





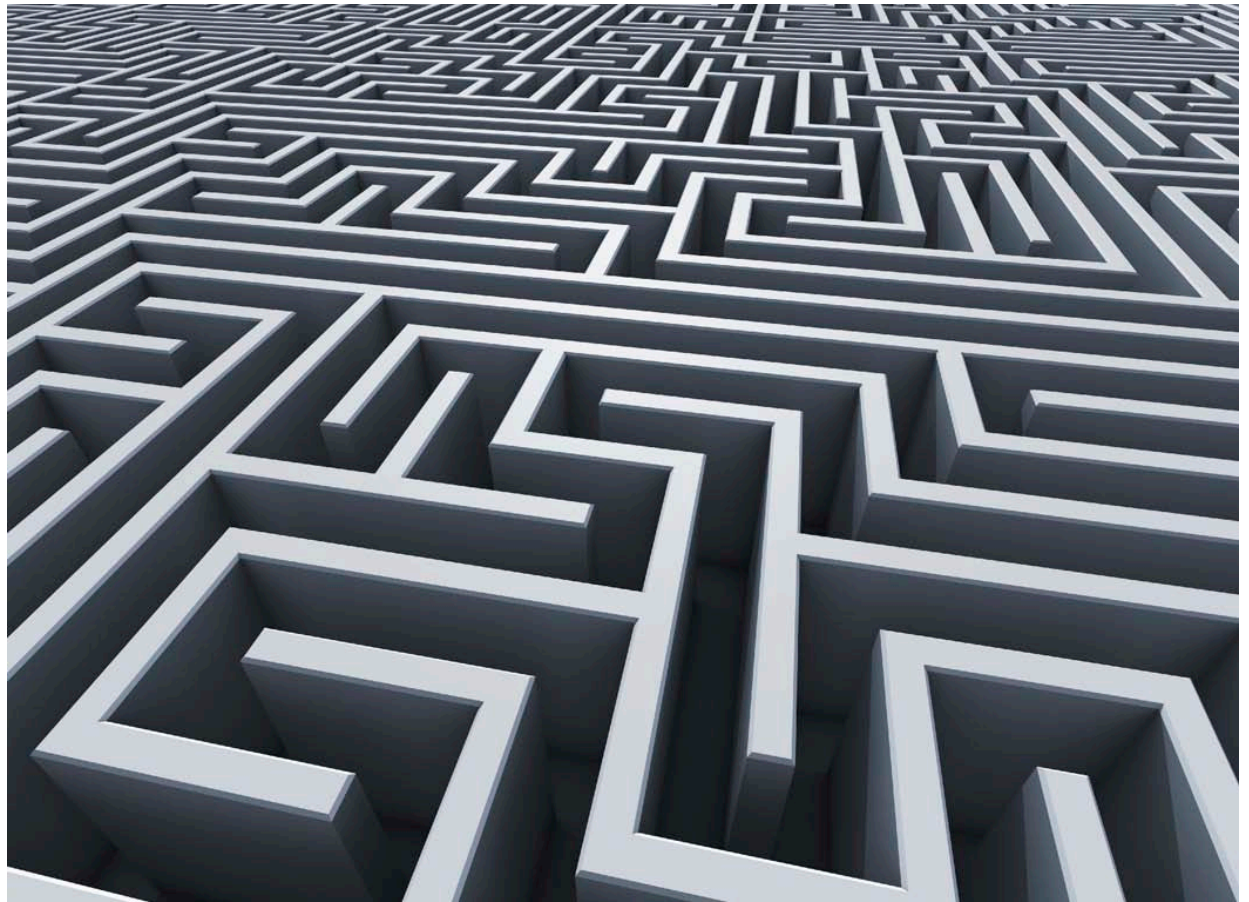
The department head asked another of the employees he supervises to access her co-worker's computer, in order to find any e-mail communications he may have had on the proposals.



## Improper Request



- 1) Which University policy does this request violate?
- 2) What legitimate procedure can the manager use to access his sub-ordinate's e-mail while he's out on leave?
- 3) Can the employee refuse to access her co-worker's computer?



## Decision Point



The employee went to her co-worker's computer & located his password, which he had written on a sticky note placed on the bottom of his keyboard.

She signed onto his account & found the e-mails her manager wanted.



**Discovery**



While she was printing the e-mails, a friend noticed her working at her absent co-worker's computer.

She explained about her manager's request.

Her friend told her that using her co-worker's account was a violation of the Electronic Communications Policy.



## Recognition



1) Who else has violated the Electronic Communications Policy?

2) What should the employee do at this point?



**Suspicion**



The employee returned to her manager & gave him the printed copies of the e-mails he wanted.

He was pleased & asked her to check her co-worker's e-mail for e-mails regarding another project he'd been working on.

The employee was afraid to comply. Instead, she asked another manager in the College of Engineering for help.



## Resolution



- 1) Who should the manager report this incident to?
- 2) How should the manager protect the confidentiality of the employee?
- 3) How should the department handle the problem of employees writing down their passwords in order to remember them?



**Endgame**



A department manager overheard a conversation between 2 employees, regarding a 3<sup>rd</sup> employee & his supervisor.

Their discussion led him to believe that these individuals were involved with a consulting company doing business with another University campus & a national lab.

The manager checked their personnel files, but found no requests to engage in outside business activities.



## Conflicts Case

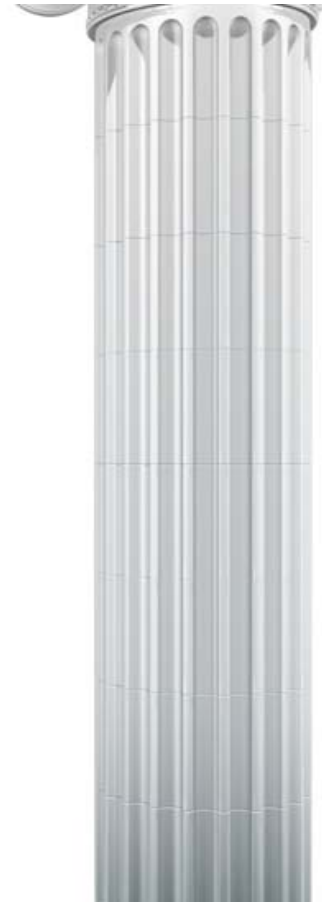




1) Which California law governs University policy regarding conflicts of commitment & conflicts of interest?

2) Which of the Business & Finance Bulletins outlines University COI policy?

3) What are the circumstances under which these employees could legitimately conduct business with the University?



**Decision Point**



The manager initiated a discussion with the employees whose conversation he overheard.

They provided him with the phonetic name of the consulting company they believed to be doing business with the University.

The manager Google'd various spellings & found a match with a company. Their website listed both employees as principals, as well as the University & national lab as clients.



**Hearsay**



- 1) Did the manager's actions in checking up on this hearsay violate anyone's privacy?
- 2) What discreet ways are available for determining whether or not these employees were involved in this venture?
- 3) What is the nature of the penalty for violations of the Conflict of Interest code?
- 4) What steps should the manager take to ensure all of his staff are aware of the COI code & are in compliance with it?



## Consequences

# Detecting Fraud



## CLASSIC CHARACTERISTICS OF EMBEZZLERS & FRAUD RED FLAGS





“There is a direct correlation between the employee’s age, education, position and the median loss due to fraud and abuse.” These factors often reflect the perpetrator’s position in the organization.

#### 2006 Fraud Study Results

61% of frauds are committed by men; the average amount stolen by men is 2.5 times as much as the average theft by women.

Executives account for only 19% of frauds, but steal on average 4.6 times more than managers & 13 times more than staff employees.



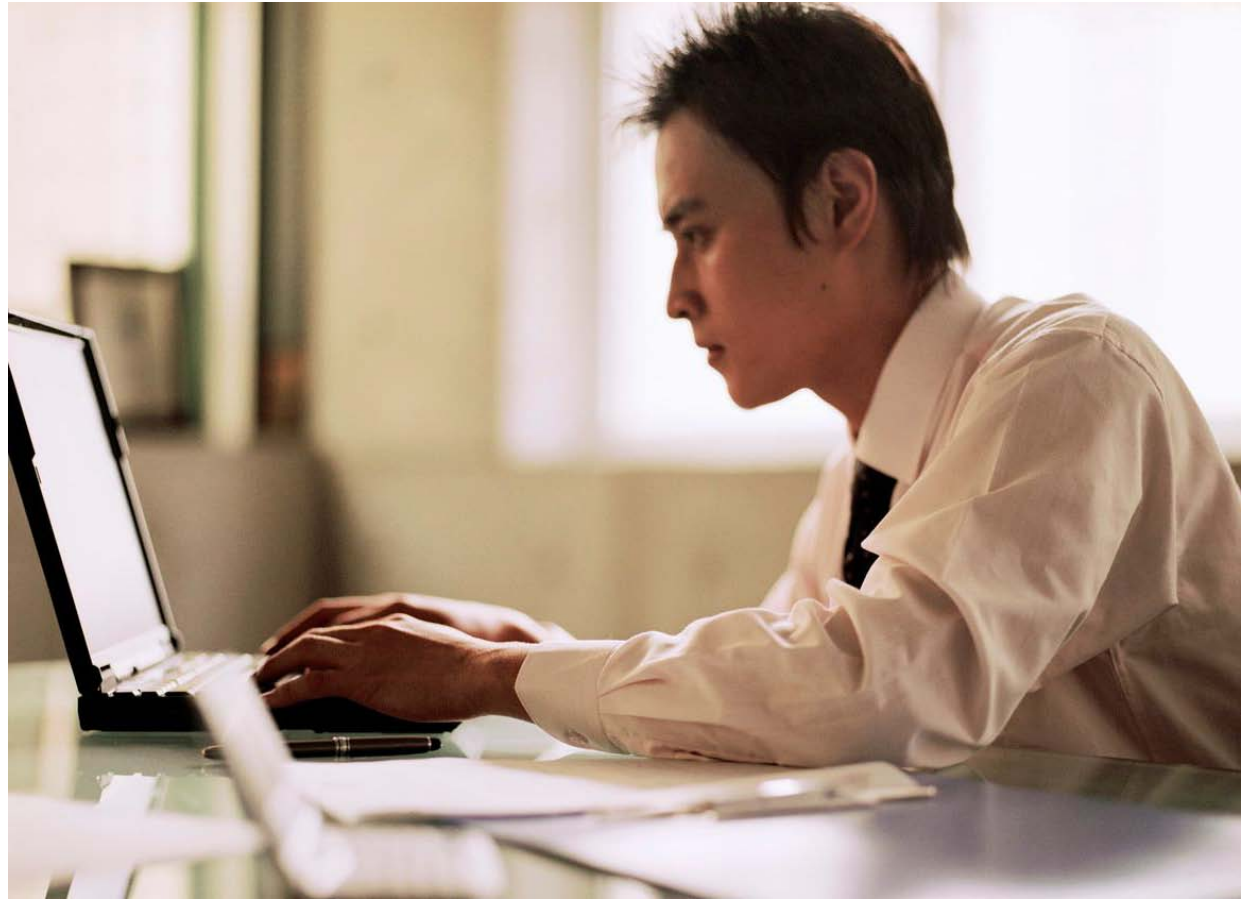
## Perpetrators of Fraud Association of Certified Fraud Examiners’ (ACFE) Conclusions



Embezzlers usually work their crimes alone.

They rationalize their thefts by thinking they are merely “borrowing.”

They exploit weaknesses in internal controls to cover up their crimes.



## Fraud Profile



Tend to be compulsive (gambling, abusing alcohol/drugs).

Work themselves into favor by utilizing their compulsiveness on-the-job.

Tend to repeat and escalate their crime.



## Classic Characteristics of Embezzlers



Spend money freely  
(their own and/or the  
University's).

Have ready access on-the-  
job to cash or its  
equivalent.



## Classic Characteristics of Embezzlers





Wheeler/Dealer  
Dominating Personality  
Living Beyond Means  
Poor Money Management  
Dissatisfied Worker  
Unable to Relax  
No Vacations or Sick Time  
Close Customer/ Vendor Relationships  
Unusual or Change in Personality (e.g., alcohol, drugs, sleep, irritable, defensive, argumentative)  
Too Good to Be True Performance  
Excessive Overtime



## Lifestyle & Personality Red Flags



No Communication of  
Expectations

Too Much Trust in Key  
Employees

Lack of Proper  
Authorization  
Procedures

Lack of Attention to  
Detail

Changes in  
Organizational Structure

Tendency Toward Crisis  
Management



## Organizational Red Flags



Missing Documents

Alteration of Documents

Excessive Number of  
Voided Documents

Documents Not  
Numerically Controlled

Questionable Handwriting  
or Authorization

Duplicate Payments

Inordinate Use of Form 5's

Unusual Billing Addresses  
or Arrangements

Address of Employee Same  
as Vendor

Duplicate or "Home Made"  
Photocopied Invoices



## Financial Document Red Flags



Lack of Separation of Duties

Lack of Physical Security and/or Key Control

Weak Links in Chain of Controls and Accountability

Missing Independent Checks on Performance

Lax Management Style

Poor System Design

Inadequate Training

## *Accountability & Control Red Flags*



# Summary



## INVESTIGATION GUIDELINES & PROTECTING THE WHISTLEBLOWER





The University of California's hotline is independently operated by EthicsPoint, to preserve confidentiality. Reporters may choose to remain anonymous.

Toll-Free Phone Numbers:

(800) 403-4744

Davis Health System:  
(877) 384-4272

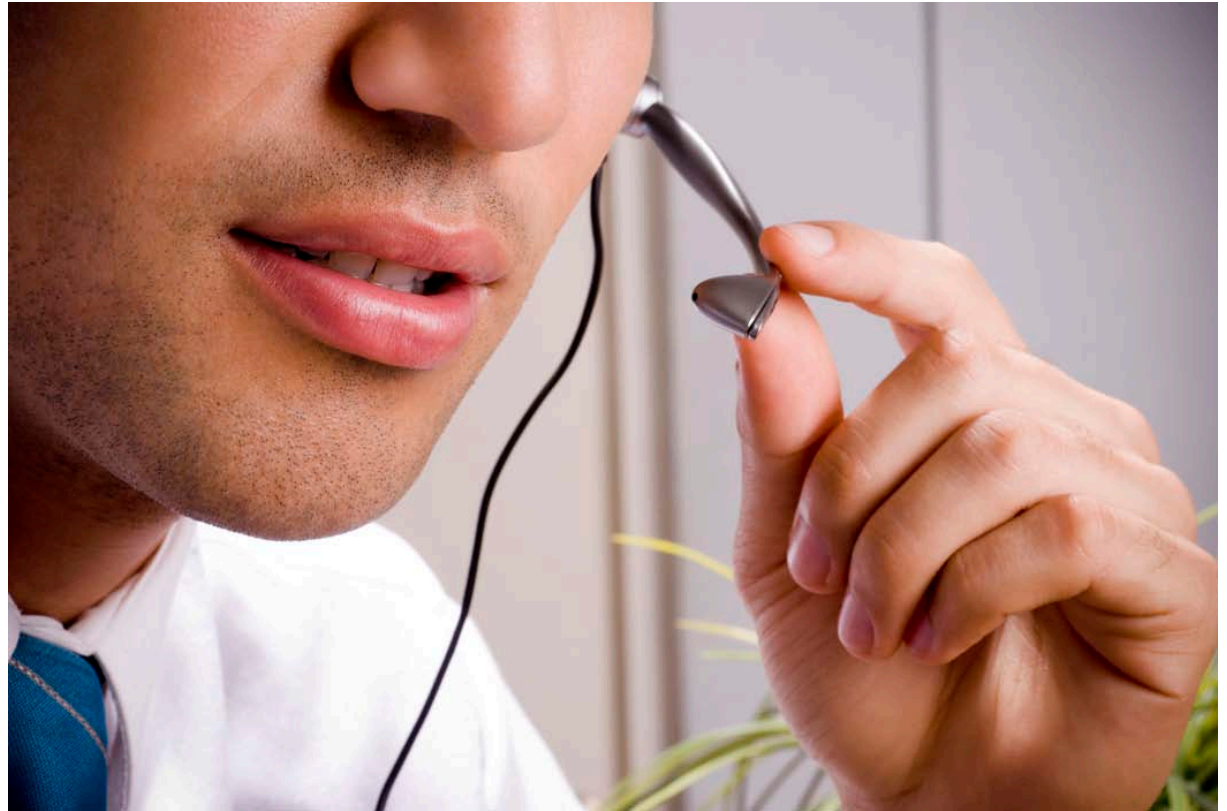
Los Angeles Health System:  
(800) 296-7188

San Diego Health System:  
(877) 319-0265

Lawrence Berkeley Lab:  
(800) 999-9057

Web Reporting Portal:

[universityofcalifornia.edu/  
hotline](https://universityofcalifornia.edu/hotline)



## Confidential Hotline Information



Investigation findings that lead UC officials to conclude that a crime has probably been committed shall be referred to UC Police for communication with the District Attorney or other appropriate law enforcement agency.

The Office of General Counsel must be consulted before negotiating or entering into any restitution agreement.

Consultation with HR and the lead investigative body should be undertaken before an investigatory or administrative leave decision is made and/or the subject is confronted.



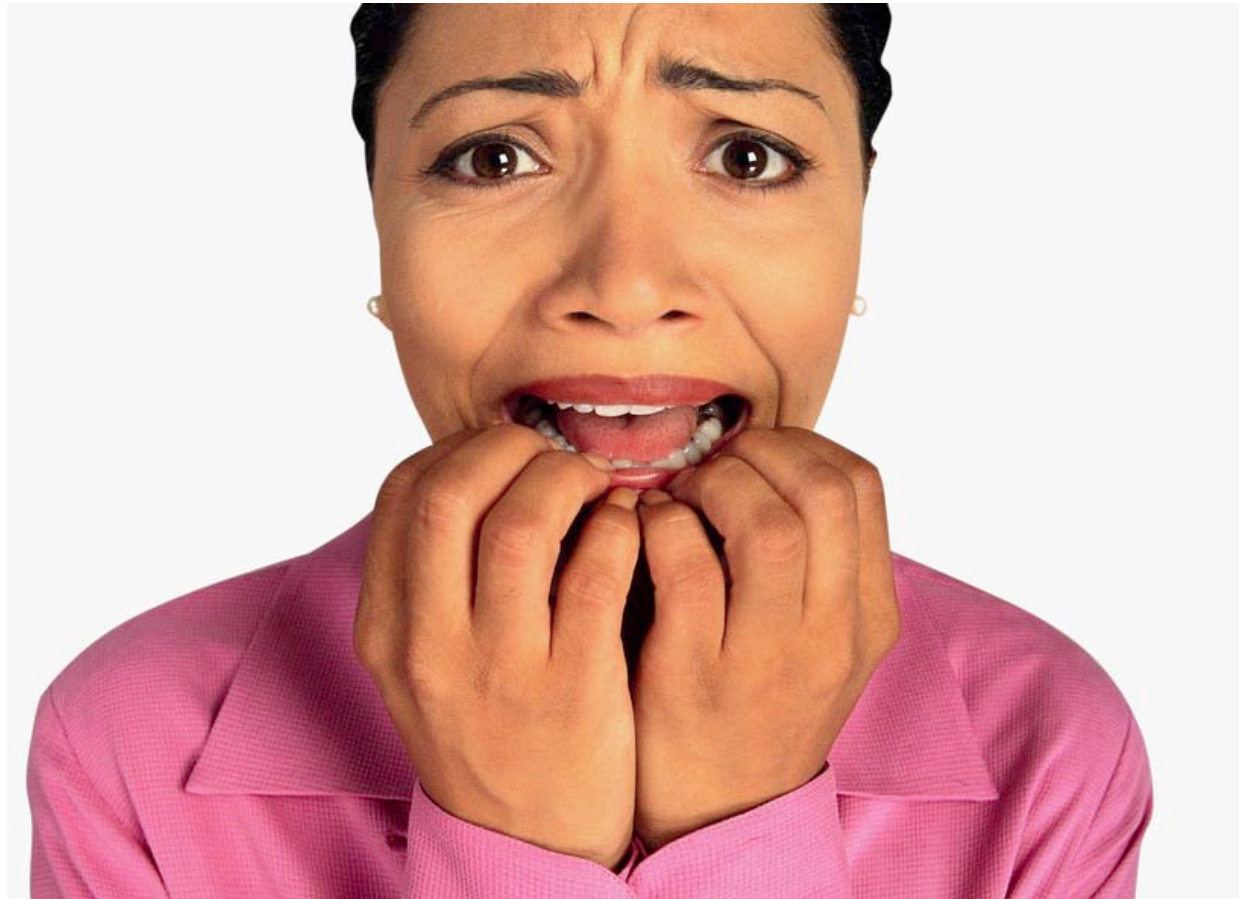
## Investigation Guidelines



In the corporate sector, only half of all whistleblowers are willing to disclose their identities.

In the government sector, about a third of whistleblower reports are anonymous.

At the University of California, only a quarter of our whistleblowers prefer to remain unidentified.



## Protecting the Whistleblower





Prohibits University officials from interfering with the right of an employee to blow the whistle

Prohibits University officials from retaliating against an employee for having made a protected disclosure or for having refused an illegal order as defined in the policy

Provides a procedure for filing and addressing complaints of retaliation for whistleblowing



## University of California's Whistleblower Protection Policy



Although some corporate & governmental whistleblowers achieve notoriety, most suffer alienation, threats, intimidation & financial stress.

Those who do not experience retaliation from their employers may be harassed by their peers.

2007 University of Chicago Study of 30 Significant Corporate Fraud Cases indicates the costs of blowing the whistle are significant.

<http://faculty.chicagosgb.edu/luigi.zingales/research/PSPapers/whistle.pdf>



## Whistleblower Celebrities