



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**November 23, 2009**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that New York State Office of General Services (OGS) employee Gary Pivoda sold and used cocaine and marijuana during working hours at the East Parking Garage at the Empire State Plaza in Albany. The Inspector General further found that Pivoda's supervisor, Louis Marciano, rather than disciplining Pivoda or reporting him to the appropriate authorities, observed and condoned Pivoda's cocaine and marijuana dealing and actually snorted cocaine and smoked marijuana with him. Moreover, instead of performing their state work, Marciano and Pivoda spent most of their shift sleeping, socializing, and watching television in an unauthorized break room of their creation, colloquially known as the "man cave."

The Inspector General further determined that OGS managers Thomas Casey, Dennis Williams and William Liston failed in their responsibilities to supervise Pivoda and Marciano. Evincing the dereliction in supervision, the Inspector General found that, with the knowledge and tacit consent of these managers, Marciano engaged in unauthorized outside employment which interfered with his ability to fulfill his OGS job responsibilities. Indeed, these managers and others knew of Marciano's outside work activity which overlapped with his state duties; yet failed to require Marciano to complete an outside employment request form as required by OGS policy. The most shocking example of the lax supervision that pervaded the Plaza was the payment of yearly incentive awards, totaling \$3000, to Pivoda for, in part, "the quality and consistency of work" and "promptness in returning from breaks and lunch."

Finally, the Inspector General concluded that, exemplifying this lax atmosphere and absence of supervision, OGS lacked effective internal controls over the use of OGS vehicles and the dissemination of keys at the Empire State Plaza.

The Inspector General referred this matter to the New York State Attorney General for criminal prosecution of Pivoda and Marciano. On November 12, 2009, Marciano and Pivoda pleaded guilty to defrauding the government, a felony. Pivoda also pleaded guilty to grand larceny, a felony. Sentencing is currently scheduled for January 4, 2010, at which time, Marciano is expected to be sentenced to five years probation and Pivoda is expected to be sentenced to one year of incarceration. During their respective plea allocutions, both men admitted to sleeping and consuming illegal substances instead of performing their official duties.

The Inspector General also advised OGS of these findings for disciplinary action against Pivoda and Marciano. OGS placed both men on unpaid suspension while seeking their termination. As part of their negotiated pleas, on November 12, 2009, both men resigned from state employment and agreed never to seek employment with the state of New York in the future.

By this report, the Inspector General also refers Casey, Williams and Liston for appropriate discipline for dereliction in the performance of supervisory responsibilities.

## ALLEGATIONS

On August 29, 2008, OGS advised the Inspector General that members of the OGS cleaning crew at the Empire State Plaza were allegedly using illegal drugs during working hours and that one of the employees was selling drugs on state property.

The Inspector General was further advised by a confidential informant that several supervisors participated in, and/or condoned, the alleged drug activity. Additionally, supervisors reportedly allowed employees to engage in late-night drug parties on state property. A supervisor was also alleged to have engaged in outside employment during his designated shift.

## SUMMARY OF INVESTIGATION

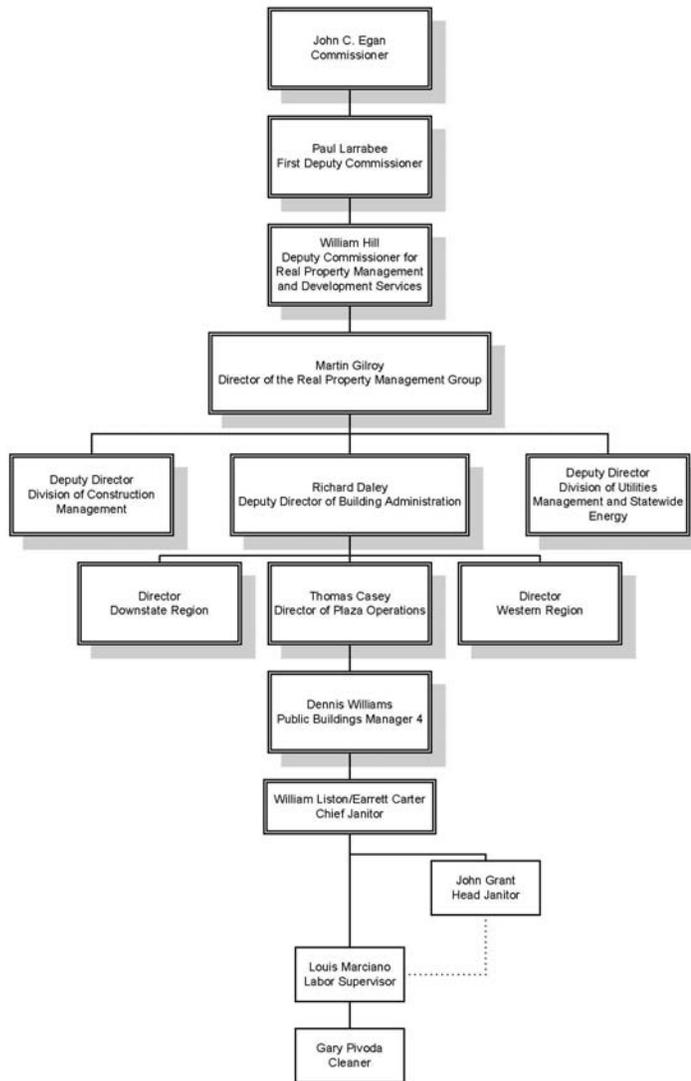
### **Background**

OGS provides, among other things, support services for state agencies. The Real Property Management Group within OGS is responsible for daily operation and maintenance of OGS owned or managed properties including the Empire State Plaza (“Plaza”) in Albany. Custodial and maintenance employees work various shifts throughout the day, but significant activity is relegated to late day into evening hours, when the complex has fewer occupants.

The Plaza consists of ten buildings and a large underground concourse serviced by parking levels housed underground in the facilities themselves, as well as four nearby parking ramps and two outdoor parking lots. The OGS cleaning crew works throughout the Plaza complex, including the parking areas. Authorized break rooms are located in various places at the Plaza.

Despite the availability of authorized break rooms, within the Plaza, absent managerial approval, cleaning crew employees installed a drop ceiling and used plastic tarps to enclose a 13-by-16 foot space in a corner of a locked oversized garage bay in the East Garage. Within the tarp-covered space was a heater, couch, chairs, coffee table, desk, lamps, two small refrigerators, a toaster oven, microwave, hot plate and a cabinet containing a television set and DVD player. Many OGS employees had access to the garage bay containing the man cave as equipment necessary for garage maintenance was

stored in the bay.<sup>1</sup> Louis Marciano was a Labor Supervisor for cleaning crew employees with an annual salary of \$38,593, who, during the time period of this investigation, was assigned a shift of 4:00 p.m. to midnight, Monday through Friday. Marciano supervised several cleaners who worked in the parking areas of the Plaza including Gary Pivoda, a building service assistant 1 with an annual salary of \$30,477 whose job duties included manual cleaning of various parking garages throughout the Plaza. Pivoda was assigned to the same shift as Marciano, 4:00 p.m. - 12:00 a.m., Monday through Friday. The relevant chain of command and organizational structure at OGS is depicted in the chart below.



<sup>1</sup> A key to the East Garage custodial garage bay hung in a key cabinet in the Plaza Operations office. While the cabinet had a lock, the key to the lock was maintained in the lock itself. The Plaza Operation’s office is open approximately 16 hours a day, and anyone with access to that office had access to the garage bay key.

## Illicit Activities in the East Garage

Instead of completing his duties cleaning the Plaza, Pivoda sold and used illegal drugs and socialized and slept in the man cave. Routinely, Pivoda clocked in at 4:00 p.m. and worked for approximately one hour emptying trash receptacles and other miscellaneous duties within the various parking areas of the Plaza. In order to commute between the various parking garages he was assigned to clean, Pivoda was provided with a state-owned OGS marked pickup truck. Confidential sources revealed to the Inspector General that after Pivoda completed his state duties, to the extent he minimally accomplished such, he delivered controlled substances to various OGS Plaza employees using his OGS-assigned truck. When not making deliveries, Pivoda spent the majority of his “work” hours in the unofficial make-shift break room in the East Garage. Often Pivoda entered the man cave after 5:00 p.m. and remained there for most of the remainder of his shift. While there, Pivoda read the newspaper, ate, watched T.V., and consorted with his friends and customers smoking marijuana and snorting cocaine. On many occasions, Pivoda slept in a chair for several hours. On some occasions, Pivoda went out for dinner, and on one occasion during his shift, Pivoda was observed by the Inspector General drinking several glasses of beer at a nearby Albany bar.



Above is a photograph of the unauthorized break room constructed in the East Garage.

Pivoda's almost constant companion throughout the evening shift was his immediate supervisor, Marciano. Marciano was aware of and complicit in all of Pivoda's loafing and more illicit activities. Marciano purchased marijuana from Pivoda, snorted cocaine and smoked marijuana with Pivoda, ate with Pivoda, and slept on one of the adjacent couches in the East Garage. Furthermore, neglecting and abusing his position as supervisor, Marciano actively concealed Pivoda's failure to perform no more than negligible duties as a building service assistant 1 by directing other OGS staff to complete Pivoda's assigned tasks.

The Inspector General and the New York State Police (NYSP) conducted surveillance of the activities in the so-called man cave from April 17, 2009 through July 14, 2009.<sup>2</sup> Of the 416 work hours covered during this time period, Pivoda spent over 190 hours, approximately 46% of his time, in this unauthorized break room.<sup>3</sup> While there, Pivoda slept for approximately 17 hours – the equivalent of over two full work days. Marciano spent in excess of 120 hours in the man cave during the 416 work hours studied. Taking into consideration that Marciano was on vacation or some sort of leave for 48.5 hours, reducing the available working hours to 367.5 over the 52 days of surveillance, he spent one-third of his work day in the man cave. As such, Marciano was asleep for approximately 54 hours, or nearly 15% of his work day. The value of the lost productive hours to the state while Pivoda and Marciano lingered in the unsanctioned break room during the 52 days of surveillance was approximately \$2,076 and \$1,524, respectively.<sup>4</sup> This calculation, of course, does not take into account the time period when the man cave was not under surveillance.

In addition to Marciano and Pivoda, various other OGS employees and non-state employees frequented this unauthorized break room. Employees from the building trades, including carpenters, electricians and plumbers, employees with the recycling program, and other custodial workers visited it in the evening. Sometimes even former employees also went there, and often, non-state employees visited Pivoda and/or Marciano to use or purchase drugs. On at least one occasion, Pivoda permitted his visitors to remain in the man cave, snorting cocaine, for several hours after he ended his shift at midnight and left for the evening.

As a result of this joint Inspector General/NYSP investigation, on July 14, 2009, the NYSP executed a search warrant of the man cave which uncovered marijuana, drug

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<sup>2</sup> Surveillance activities were not conducted every day during that time period.

<sup>3</sup> Of the 52 days under consideration, Pivoda was on vacation for one of them and left early for vacation time on another day. On June 19, after snorting cocaine for approximately an hour, Pivoda left work at 9:12 p.m. and claimed that he was sick.

<sup>4</sup> The value of Pivoda's lost productive time was calculated by multiplying Pivoda's hourly rate (\$14.60) by 142 hours and 12 minutes. Deducted from his total time in the man cave of 193 hours and 12 minutes was 51 hours, a half hour for lunch and two fifteen minute breaks per day worked. The value of Marciano's lost productive time was calculated by multiplying Marciano's hourly rate (\$18.48) by 82 hours and 29 minutes. Deducted from his total time in the man cave of 122 hours and 29 minutes were 41 hours, a half hour for lunch and two fifteen minute breaks per day worked. Neither calculation included shift differentials paid to Pivoda and Marciano or the value of fringe benefits provided to them.

paraphernalia (including a scale used to weigh controlled substances), pornographic materials, keys, gambling accessories, and innumerable personal belongings. Two days later, OGS suspended Marciano without pay. Pivoda was arrested and never returned to work and was formally suspended without pay effective July 30, 2009.<sup>5</sup> On October 19, 2009 Pivoda and Marciano were indicted by the New York State Attorney General's Office.

## **Supervisory Issues**

The Inspector General's investigation of the man cave logically progressed to an examination of the managerial environment which allowed illegal activity and rampant time and attendance abuse to flourish and remain unchecked. The Inspector General discovered a complete failure to manage by certain OGS officials. While the organization chart contained in the background section of this report is illustrative, there are several key OGS employees whose roles must first be identified.

William Hill has been the OGS Deputy Commissioner for Real Property Management and Development Services since April 2007. Maintenance and daily operation of state buildings falls under Hill's management, including cleaning services performed by in-house employees as well as outside contractors. Hill reports to OGS First Deputy Commissioner Paul Larrabee. Prior to 2007, Hill worked in private industry.

Richard M. Daley is the Deputy Director of Building Administration for the Real Property Management Group covering OGS buildings throughout the state of New York since March of 2005. Daley reports to Martin Gilroy, Director of OGS Real property Management Group. Prior to being assigned to Building Administration, Daley was the Director of the Utilities Management Division. Daley spent his career rising through the ranks in the Utilities Management Division. Daley does not know Pivoda, but claimed that he knew Marciano by reputation from growing up in Albany.

Thomas E. Casey is the Director of Plaza Operations. Casey reports to Daley. Casey has known Marciano since the 1990s when both worked at a state Department of Health facility in Rotterdam. Casey admitted hiring Marciano into a supervisory position at the Plaza in 2001.

Dennis Williams is an OGS Public Buildings Manager 4 and was functionally the assistant director of Plaza operations.<sup>6</sup> Williams supervised the Chief Janitors who were successively Liston, until February 2009, and Earrett Carter from late June 2009. From approximately February 2009 until late June 2009, Williams was effectively Marciano's

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<sup>5</sup> Pivoda was originally suspended without pay on July 17, 2009, based on an appearance ticket issued by the NYSP. As reported in the Times Union on July 28, 2009, the original charges were not pursued. In order to ensure compliance with the CSEA contract, OGS reinstated Pivoda and placed him on suspension again on July 30, 2009 on different administrative charges.

<sup>6</sup> Since approximately July of 2009, Williams has been removed from his direct supervisory position at the Plaza and been assigned to work at the Ten Eyck building.

direct supervisor, even though John Grant, a Head Janitor at the Plaza, was assigned to review Marciano's time record. Other than approving Marciano's time and attendance, and having the authority to be an alternate approver for Pivoda's time records, Grant exercised little to no supervision of Marciano or his crew. Prior to February 2009, Liston was Grant's supervisor. After February, Grant reported directly to Williams until June of 2009. Starting in late June, Grant reports to Carter.

William Liston was a Chief Janitor at the Plaza until mid-February 2009 when he took leave. Upon returning from leave in May, 2009, Liston was reassigned to the State Office Campus, located several miles from the Plaza. Liston exercised supervisory authority over Marciano and met with him on an almost daily basis to review his crew's daily work assignments. As his supervisor, Liston was responsible for counseling and disciplining Marciano but did not review or sign Marciano's time records.

John Grant, a Head Janitor at the Plaza, approved Marciano's time records and had the ability to approve Pivoda's time records as an alternate. Due to the protective actions of Liston and Williams, Grant exercised little to no supervision of Marciano or his crew.

The Inspector General's investigation concluded that Hill and Grant attempted to engage in corrective measures to control Marciano and his crew's behavior. On the other hand, Casey, Williams and Liston failed to exercise any reasonable supervisory control over the subordinates in their chain of command creating a culture at the Plaza which allowed illegal drug use, waste of tax payer resources, and abuse of minority staff members to flourish.

#### **A. Failure to Manage**

The Inspector General found an utter break down in supervisory roles and functions at the Plaza. Questioning by the Inspector General of the relevant supervisors resulted in mutual finger-pointing with each supervisor blaming the other. In the end, all of Marciano's and Pivoda's direct supervisors share blame.

Casey accepted responsibility for the problems in the East Garage and admitted that he had heard rumors of improprieties during the night shift, but attempted to excuse himself from the responsibility of personally monitoring the situation because of his extensive other duties. That assertion notwithstanding, Casey's responsibilities do not excuse his dereliction of duty. Casey should have monitored the activities of the night staff and held his supervisors more accountable. Notably, even in instances when Casey may have given direction to his subordinates, he never followed up to ensure compliance.

Williams acknowledged that problems pervaded the supervision of the evening shift at the Plaza: Williams confirmed that he had received complaints that areas in the East Garage were not being cleaned and that some of Marciano's staff was not working. He also confirmed knowledge of issues between Marciano and some African American subordinates. Williams also admitted knowledge of ongoing drug use at the Plaza and

was aware that on December 18, 2008, two OGS employees, Jon St. Pierre and John F. McHargue, subordinates of Liston, were arrested for smoking marijuana in the Plaza parking garage level P3; Allen Seymour, another subordinate of Liston's, passed out at work a month earlier due to a heroin overdose. In fact, Williams admitted hearing about drug use by OGS employees during his entire tenure at the Plaza.<sup>7</sup> Williams denied any accountability and claimed that the responsibility for all of these issues resided with Liston, yet failed to do anything to ensure that Liston performed his supervisory duties.

After acknowledging all of these improprieties of which he had been well aware for quite some time, Williams further admitted to the Inspector General that he had not been to the East Garage for at least the last two years. He also conceded that he never reviewed mileage logs to see if the state vehicles were being used properly; he had not stayed at work past 7:00 p.m. to check on staff in years; he did not directly supervise the staff below Liston; and, he did nothing to determine whether subordinate staff were performing their duties, much less using drugs during work hours. When the Inspector General asked if Williams could have simply walked into the East Garage to confirm whether the employees were in fact working, Williams, appearing insulted, asked in response, "What could I do?" Williams rhetorical answer evinces his appalling lack of accountability.

In fact, Williams and his immediate supervisor, Casey, could have done much more. Williams and Casey allowed Liston, over a long period of time, to become remiss in his work performance. As Casey informed the Inspector General, "Liston went bad on me." Nevertheless, instead of tightening control, Casey permitted Liston to change his work hours from 4:00 p.m. to midnight to 11:00 a.m. to 7:00 p.m., five hours before the workers he supervised concluded their respective shifts. Moreover, Casey and Williams allowed Liston to take excessive leave from work.<sup>8</sup> Even though Liston willfully failed to complete work assignments Williams had assigned to him, Williams never disciplined or counseled Liston and repeatedly acquiesced when Liston threatened to quit. When Casey finally did counsel Liston about his excessive leave use (when his accruals were approaching zero), Liston tried to make good on his threat to resign and left on Workers' Compensation Leave in February 2009.<sup>9</sup> After Liston left, Williams could no longer blame him for the employees' slackness.

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<sup>7</sup> One of the vendors in Parking Area P1 in the Plaza confided to the Inspector General that he often smelled marijuana when he walked by the Carpenter's Shop.

<sup>8</sup> On February 18, 2009, Casey finally issued a counseling to Liston for poor attendance. Liston responded by taking leave for the following day claiming stress. Casey admitted taking too long to reach the point of commencing progressive discipline. Casey complained, however, that once he did start, higher management moved Liston out from under his control and made it impossible for Casey to improve Liston's performance.

<sup>9</sup> Liston filed a claim for Workers Compensation benefits claiming that he was stressed because of the actions of Deputy Commissioner Hill. Apparently Liston found it stressful that Hill believed some of Liston's subordinates' claims regarding their treatment by Marciano. Liston's Workers' Compensation claim was controverted by the State Insurance Fund. The Workers' Compensation Board has placed the case into a "No further action" status until Liston submits medical documentation in support of his claim. Liston has not obtained benefits under the Workers' Compensation Law for this claim.

Although Liston claimed that deficiencies were due to the fact that the work crews were understaffed, Williams advised the Inspector General when Liston had raised this claim with him, he had attempted to obtain a list of staff assignments from Liston, to no avail. Of course, if Williams or Liston had actually minimally attempted to observe the activities of night shift employees, they would have undoubtedly confirmed that the nature of the problem was not understaffing but rather drug use and neglect. Tellingly, Liston told the Inspector General that he considered Marciano and Pivoda, the main transgressors, to be his “go-to” and “right hand” guys and claimed that they were responsive to his calls and never had to be told to do anything twice. Incredibly, Liston went so far as to say that the charges against Marciano and Pivoda were the result of a “witch hunt” by Hill.

Officially, Head Janitor Grant was Marciano’s supervisor. In reality, Grant did not exercise functional supervisory authority over Marciano. In fact, Marciano reported directly to Liston.<sup>10</sup> Grant reported that when he approached Liston and Williams and attempted to complain about Marciano on behalf of Marciano’s crew members, they were not responsive. Grant told the Inspector General that even when Liston had left and Grant asked Williams how to deal with Marciano, Williams told him to leave everything alone. When confronted with this seemingly apathetic answer, Williams claimed that he could not recall if he told Grant to leave everything alone, but claimed he “wasn’t aware of something [he] had to change.” Williams confirmed, however, that, Grant and a night shift employee (identified as Employee 3 below) came to him seeking assistance in regard to Marciano’s abusive behavior but he rebuffed them. Williams stated that he believed Pivoda and Marciano when they claimed they were performing their work duties and chose not to believe Grant and Employee 3.

### **B. Pivoda’s Receipt of an Annual Monetary Award from OGS for Superior Work Performance and Punctuality**

The most blatant evidence of a lack of supervisory control at the Plaza was the payment of yearly incentive awards, totaling \$3000, to Pivoda. Beginning in or around 1995, the Civil Service Employees Association (CSEA) and the Governor’s Office of Employee Relations entered into a Memorandum of Understanding (MOU). According to the guidelines and assessment form developed under the MOU, if an employee scored sufficiently high on nine separate factors, the employee would receive a \$500 yearly bonus from the state. The nine factors included “the quality and consistency of work” and “promptness in returning from breaks and lunch.”

According to the MOU, “a labor-management committee will be established for the purposes of reviewing the evaluation for each year and identifying, pursuant to such review, those employees who will receive such extra compensation as may be determined for that year.” That committee has never met and, as such, has never reviewed the

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<sup>10</sup> Richard Daley stated that he did not know that Grant was actually Marciano’s supervisor for time and attendance purposes. Daley stated that whenever he saw Marciano, he was meeting with Liston. Casey confirmed that Marciano met with Liston almost daily and that he believed that Liston was Marciano’s supervisor.

effectiveness of the program. OGS advised the Inspector General that the parties to the MOU believed that a committee meeting was only necessary if an appeal from the denial of an award was filed. Otherwise, OGS never attempted to enforce the committee requirement under the MOU. No evidence exists of any effort to determine whether the incentive awards actually resulted in increased “productiveness, efficiency and overall service delivery” as required by the MOU.

From 2003 to 2008, Pivoda received yearly \$500 Incentive Award payments from OGS, payments earned solely on the recommendation of supervisors.<sup>11</sup> Since August of 2006, Pivoda received perfect scores from Marciano and at no time did Marciano ever give Pivoda a score that negatively affected his ability to receive an incentive award. Only once in six years did Marciano score Pivoda below excellent in returning from breaks and lunch. The Inspector General found, however, that Pivoda went on break sometime between 5:00 and 6:00 daily and almost never returned to work until he punched out at midnight. No one in the supervisory chain ever reviewed the assessment scores that Marciano gave Pivoda and no labor-management committee ever met to review the nominees for the yearly bonus; Of course, given the negligent supervision described above, any review would have proved futile. Hence, by the mere completion of a form, Marciano awarded Pivoda, his companion with whom he bought and used illegal substances, a \$500 yearly raise.

### **C. Marciano’s Outside Employment**

Since at least 2001, OGS has maintained a policy regarding outside employment memorialized in its Employee Handbook which is provided to all OGS employees. Two editions encompass the time period of Marciano’s employment at the Plaza: one issued in June 1998 and a re-issue in November of 2007.<sup>12</sup> Both editions contain identical proscriptions regarding outside employment: it may not interfere with the regular performance of OGS duties; and, it may not occur during an employee’s scheduled working hours. Both editions required an employee to submit a written request to the employee’s supervisor to engage in outside employment, but the current edition requires the request to be renewed annually while the previous edition permitted a longer time period.

At no time, from his inception of working at the Plaza on August 2, 2001, did Marciano seek approval for outside employment, nor did anyone at a supervisory level request that Marciano submit a request for outside employment, despite common knowledge that Marciano had outside employment.

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<sup>11</sup> Marciano signed all but three of the forms reviewed by the Inspector General. Grant signed two of the forms and scored Pivoda as less than perfect; Liston scored one of the forms and marked Pivoda as perfect. Liston added a note on the form he completed extolling Pivoda’s work performance.

<sup>12</sup> Marciano received the June 1998 version of the Handbook when he commenced working at the Plaza and OGS provided the Inspector General with a copy of Marciano’s acknowledgement of receipt of that Handbook. Marciano, along with every then-current OGS employee, received a re-issued Handbook in November 2007.

Marciano is a member of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts (IATSE), Local 14. Marciano worked<sup>13</sup> as a stage hand/loader at various local theatres, including the Palace Theatre, Saratoga Performing Arts Center (SPAC), the Times Union Center, for concerts and various productions. Marciano worked at the local venues on evenings, mornings, and weekends. When working IATSE events, Marciano's shift regularly commenced at 10:00 p.m. Since Marciano's regularly scheduled OGS work hours were from 4:00 p.m. to midnight, his outside employment regularly overlapped two hours with his state employment.

On at least 33 occasions from January 2007 through January 2009, Marciano used either vacation leave, personal leave, or holiday leave to forsake his OGS employment during regularly scheduled hours to work at IATSE events. On two occasions, Marciano utilized sick leave to leave his OGS job after he worked for IATSE. On at least four occasions, Marciano's payroll records at OGS and IATSE events show him to be at both places at the same time.

Williams failed to intercede and had less than an objective approach towards Marciano's unauthorized outside employment. Williams admitted to the Inspector General that on more than one occasion, Marciano arranged for him to obtain preferred tickets to local events. Williams alleged that Liston told him that Marciano could provide preferential treatment at concerts for his children and parents. While Williams insisted that he paid for the tickets, he admitted that Marciano arranged for the tickets and left them at the box office.

Grant, Liston, Williams and Casey all admitted to the Inspector General knowing that Marciano engaged in outside employment. Casey alleged that it was the employee's obligation to request permission for outside work and denied that he had any duty to ensure that his subordinates comply with OGS policy. Neither Casey nor any other member of management at the Plaza directed Marciano to request permission for his outside activity. No one thought it improper for Marciano to take time off of work to engage in outside employment despite OGS's policy to the contrary.

#### **D. Marciano's Abusive Behavior Towards Staff**

Marciano supervised a crew of approximately six to eight individuals. At least three different African American employees complained about discriminatory treatment by Marciano. Nevertheless, rather than discipline Marciano, Plaza Operations management alternately attempted to placate the complainants or chose to believe Marciano's story rather than that of his subordinates.<sup>14</sup>

The first instance involved an individual who will be identified herein as Employee 1. Employee 1 claimed that he heard Marciano call a woman a "nigger bitch"

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<sup>13</sup> Marciano may still be employed by IATSE.

<sup>14</sup> For example, while Casey inquired into a single allegation that Marciano drove a state vehicle to an "Alive at 5" concert on the Hudson River waterfront, Casey believed Marciano when he denied the claim.

while travelling with Marciano in an OGS vehicle. Employee 1 reported the incident and requested that he not work with Marciano any longer. After the reporting, Employee 1 was moved to a different crew and Marciano was counseled<sup>15</sup> by Liston about the incident on January 4, 2007.

The second instance involved Employee 2 and occurred during the Spring/Summer of 2008. Employee 2 was a new OGS employee who had problems with Marciano from the beginning of his tenure. Employee 2 reported that he had difficulty contacting Marciano throughout the work shift. Marciano purportedly repeatedly spoke in a condescending manner to Employee 2, berating Employee 2 for failing to contact him (even though he tried and Marciano did not answer his phone) and threatening not to approve payment to Employee 2. On one occasion, Employee 2 advised that he witnessed Marciano using drugs on duty. On several other occasions, Employee 2 was convinced that Marciano was under the influence of marijuana or another controlled substance. In desperation, Employee 2 complained to members of management, including Hill. Employee 2 was also transferred from Marciano's crew.

Marciano called Employee 3 a "nigger" and assigned him excessive duties. Marciano was most likely assigning Employee 3 many of the duties that should have been completed by Pivoda. Employee 3 complained about his treatment on various occasions to Hill, Grant and Williams. After approximately a year of abuse without adequate resolution, Employee 3 and Grant went to Williams complaining about Employee 3's work assignments. Williams claimed that he consulted Marciano and that Marciano told him that the work assignments of his crew members were delegated equally. Williams never questioned the veracity of Marciano's claim because he chose to believe Marciano. Williams refused to take any further action to assist Grant with supervising Marciano and took no action on behalf of Employee 3.

In an attempt to address the complaints he was receiving about Marciano's conduct, in October 2008, Hill ordered that Marciano be moved to other duties where he would not be supervising employees. Hill tried to assign Marciano to duties that were consistent with his job description, including driving a truck. Casey protected Marciano's position and complained when Marciano was removed from his chain of command stating that he could not afford to lose another employee. Marciano filed a grievance and GOER recommended that Marciano be returned to his regular duties.<sup>16</sup> OGS complied with GOER's recommendation. Marciano was returned to full supervisory duties of his cleaning crew on or about December 30, 2008.

Hill also attempted to meet with Marciano's crew. In the fall of 2008, Hill went to meet with the cleaners in their break room in the P1 area of the Plaza. When Hill

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<sup>15</sup>A counseling is a written document placed in an employee's personal history folder advising the employee of improper behavior, poor work, or similar types of issues. Counseling is not considered discipline. The purpose of counseling is to advise the employee that the specified behavior is unacceptable and that repeated conduct may lead to discipline.

<sup>16</sup>GOER's input was based solely on the procedural aspects of Marciano's grievance. GOER was never advised of the underlying conduct that preceded Marciano's reassignment.

arrived, he noted the absence of several crew members. He was told by the crew members present that “the white guys” were in the East Garage. Hill went to the East Garage and stood outside the garage bay door to the man cave. He heard voices, but could not enter because he did not have the proper key with him. Hill waited in his car for over an hour and a half, until approximately 9:00 p.m., watching the door to the man cave. No one exited. Hill advised OGS Labor Relations of the issue. At the time Hill referred the matter to OGS Labor Relations, the Inspector General had already commenced this investigation. OGS deferred to the Inspector General and did not commence an internal investigation in anticipation of the Inspector General’s findings.

#### **E. Use of OGS vehicles**

OGS custodial employees are permitted the use of state vehicles to perform their job duties. Witnesses reported to the Inspector General that Pivoda and Marciano drove state vehicles for personal illicit purposes, such as to obtain illegal drugs. Therefore, the Inspector General attempted to review Pivoda’s and Marciano’s use of state vehicles. That effort, however, was thwarted by OGS’s lack of internal controls over its vehicles and its fuel sources at the State Office Campus. Nevertheless, the Inspector General found a breakdown in oversight in the implementation of OGS’s motor vehicle policy.

OGS’s policy regarding use of state vehicles reads as follows:

It is the driver’s responsibility to maintain all records pertaining to the operation and maintenance of the OGS vehicle. **Monthly Vehicle Cost Record Logs** should be completed each time the vehicle is used, tracking the beginning and ending mileage, destination, and any charges associated with its use. These records are in turn to be submitted to OGS Fleet Administration, no later than the 15<sup>th</sup> of the following month. Each driver’s supervisor is responsible for reviewing the mileage records and all associated charges for fuel and services performed on the vehicle and must attest to their appropriateness on the **Monthly Vehicle Cost Record** before submitting them to OGS Fleet Administration Group.

As a reminder, agency vehicles may not be used for personal mileage. (Emphasis in original).

The Monthly Vehicle Cost Records are maintained daily in each vehicle and the records are submitted monthly to Plaza Operations which copies the forms, maintains a copy, and forwards the original to OGS Fleet Administration.

The Inspector General requested logs from Thomas Casey and Plaza Operations staff for all vehicles driven by Pivoda and Marciano. All the logs reviewed by the Inspector General contained an area for a supervisor’s signature signifying approval of

the vehicle usage consistent with OGS policy. None of the forms provided to the Inspector General was signed by a supervisor. OGS Plaza Operations staff admitted that no one reviewed the logs for accuracy or propriety – they simply forwarded the forms to Fleet Administration and only did so haphazardly as the Inspector General found that several months of logs were missing for each vehicle reviewed. OGS Fleet Administration also admitted that no one reviewed the logs; staff just entered the amount of fuel used by the vehicles into a database to make sure that fuel billed at outside vendors was correct and the fuel measurements at the state-operated fueling station at the State Office Campus were accurate. However, the Inspector General was unable to verify that the gasoline allegedly used in the vehicles was, in fact, placed in the vehicles, because the State Office Campus does not have any live or camera surveillance of its pumps, which are open 24 hours a day.

In 2007, OGS conducted an internal audit of its motor vehicle fleet and issued eight recommendations for change. The first recommendation stated: “Require driver to complete vehicle usage reports that contain sufficient detail to document where the vehicle was driven. Require that supervisors review and approve the report indicating that the usage was reasonable for the assignments of the employee....” The remaining recommendations pertained to the collection of other data to prevent misuse and allow oversight.<sup>17</sup> In 2008, OGS issued a memorandum requiring supervisors to review mileage logs. Despite its own audit recommendation and the resultant memorandum directive, when interviewed by the Inspector General, not only was OGS’s Director of Risk, Insurance and Fleet Management unfamiliar with the policy she was charged with enforcing, but provided the Inspector General with an OGS mileage log lacking any space for supervisor signature, thus preventing supervisors from complying with the directive. Moreover, compliance with the revised procedure apparently varied among operational units. OGS’s failure to uniformly require supervisory review of mileage logs may have led to the failure of Plaza Operations supervisors in maintaining and reviewing mileage logs.

In response to the Inspector General inquiry, OGS advised that the full complement of audit recommendations have not been implemented because OGS is waiting to update a computer inventory/control system. That assertion notwithstanding, many of the changes recommended by the audit do not require computer programming; they merely mandate that supervisors perform necessary oversight of their subordinate’s use of expensive and easily abused assets – motor vehicles.

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<sup>17</sup> The other recommendations included, in relevant part: “2. Require drivers to enter their odometer reading at each fueling and to fill the tank each time they fuel the vehicle....; 3. Program the vehicle administration computer system to report MPG of each vehicle for supervisory review and approval. It would be more useful if the standard city and highway MPG for the vehicle was reported for comparison....; 4. The vehicle administration program should track the submission and approval of vehicle use reports and notify supervisors if usage reports are not submitted on a timely basis; 8. ...consider a policy on vehicle idling to reduce gasoline consumption, reduce costs and to help protect the environment.”

## **F. Time and Attendance**

All OGS employees use the Leave and Accrual Tracking System (LATS) to record time and attendance. LATS is a computer based system that allows employees to swipe an identification card by a time clock with an electronic eye or to manually enter time and attendance data into a computer. Employees in Pivoda's or Marciano's job classification are required to swipe their time and attendance daily. When the employee swipes the identification card in front of the time clock, the time clock uploads the swipe time into the LATS computer database. If the employee forgets to swipe in or out, only a supervisor or a single designated alternate in the chain of command<sup>18</sup> may enter the time by computer.

At the end of the pay period, the employee must access a computer and "submit" their time record. The employee must also click on an icon affirming that the time record is true and accurate as follows:

I certify that this record of attendance is correct and is an accurate report of my attendance and leave activity. I understand that I may be subject to progressive and corrective administrative action for failure to submit accurate and timely attendance and leave records.

Click OK to accept, otherwise click Cancel.

If the employee indicates OK, the time record is accepted into the LATS system. The employee can change the record after submission only until the supervisor approves the record.

At the end of the pay period, the supervisor, or the designated alternate, must go into the LATS system and approve the time records for his/her subordinate staff. The supervisor must click on an icon affirming that the time card is accurate as follows:

I certify that this record of attendance is correct and to the best of my knowledge the employee identified above is due payment for the services performed. I understand that I may be subject to progressive and corrective administrative action for failure to submit accurate and timely attendance and leave records in a prompt manner.

Click OK to accept, otherwise click Cancel.

If the supervisor indicates OK, the time record is forwarded to OGS Human Resources to be forwarded on to OSC for payment of wages. On a daily basis, OGS Human Resources processes the information and locks out any further changes of the time card.

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<sup>18</sup> Designated employees in Human Resources also have the ability to enter time, attendance and accrual usage information on OGS employees' LATS time records under limited circumstances.

Given the aforementioned drug dealing, drug usage, sleeping and general work avoidance of which Marciano was aware and participated, every time Marciano approved Pivoda's time record he lied. Marciano knew, by direct personal observation, that Pivoda was not due "payment for the services performed." A false document was knowingly submitted for each and every time record that Marciano approved Pivoda's time record. Therefore, each and every approval constituted a separate crime of Offering a False Instrument for Filing in the First Degree.

From January 1, 2009 through July 22, 2009, OGS employees, including Pivoda and Marciano, were required to submit 14 payroll records. Of those 14 payrolls, Pivoda only submitted five of his payrolls to his supervisor. Perhaps part of his difficulty in submitting his payrolls was his inability to swipe his timecard at midnight. For instance, on May 12, 2009, Pivoda fell asleep in the break room at 10:03 p.m. and did not wake until 2:10 a.m. on May 13<sup>th</sup>. If he had attempted to swipe his identification card at a time clock after midnight, he would have been due overtime and, because it was not pre-approved, any overtime would have raised an issue with higher management. Therefore, Marciano, who was well-aware of the reason for Pivoda's failure to clock-out given the fact that he woke up from his slumber that evening and carefully avoided waking Pivoda when exiting the man cave, went in to the LATS system and corrected Pivoda's time record, submitted it on Pivoda's behalf and then approved it. When Pivoda was able to stay awake in the evening, he would swipe his time card and then return to his nefarious activities. On July 2, 2009, while he was partying with two friends, Pivoda left the man cave at exactly midnight, ran to the Parking Attendants' office, clocked out, and returned to the man cave. Pivoda and his friends then continued to snort cocaine, smoke marijuana, and exchange money for drugs well past the end of Pivoda's shift.

Marciano also failed to submit his own time cards. Of the 14 pay periods covering his employment in 2009, Marciano only submitted his own time records on five occasions. Marciano was consistently late with submitting his time records and on the majority of occasions, Grant submitted and approved his time records. Grant stated that he approved the time records under pressure from his supervisors to complete paperwork. For unknown reasons, Marciano failed to submit his own time records even during time periods when he was approving Pivoda's time records.

Pivoda and Marciano were never disciplined for failing to submit their time records. It is not surprising that Marciano, Pivoda's supervisor, did not discipline Pivoda as he was his drug-using accomplice. Any complaints and attempts to discipline by Grant were generally rebuffed. Williams, however, was the alternate approver for Marciano's time records and, had he been more attentive, he may have noted Marciano's glaringly deficient submission of his time records.

Moreover, Human Resources, the division within OGS that is responsible for both maintaining LATS records and enforcing OGS policies, does not systematically review time records to determine if employees in general were submitting their own time records. Coincidentally, at the time the man cave was raided, the personnel office was

monitoring the time record approvals of Marciano's crew. Personnel had received a complaint that Marciano was interfering with some employees' submission of their time cards. Upon review, personnel determined that Marciano periodically submitted time cards for subordinates. The director of personnel drafted emails to Marciano on June 1, 2009, and again on July 1, 2009, advising him that submitting the time records of his subordinates was improper and asking why he did so. Marciano failed to respond.

The Inspector General recommends that OGS proactively monitor its employees' submission of their time records. As revealed by this investigation, if an employee fails to submit his or her own time record, and concomitantly refuses to certify those records, something may be amiss. OGS should also consider revoking supervisory ability to alter time cards. If a time card requires altering, a process may be instituted requiring oversight by Human Resources.

## **G. Key Control**

The OGS Facility Manager's Manual states that keys may not be issued absent a properly signed key request form. Master and sub-master keys may not be provided to movers, contractors or tenants. When a key is no longer required, the agency representative is required to return the key to the facility manager.

OGS employs two individuals responsible for key production at the Plaza: Frank Commisso the locksmith in charge and a subordinate who works with him. While Commisso has access to every office under his jurisdiction, he claims that no one, other than himself and his assistant, can gain access to his office.

According to Commisso, only his office issues keys at the Plaza and only in response to a valid, properly endorsed, key request. The Inspector General determined, however, that the key requester is not necessarily the final recipient of the key. For example, a manager who wishes to issue duplicates of the same key to several members of his staff could request three copies of the same key, receive the keys, and then dispense those keys to three subordinate staff members. As yet another example, a new state employee may be issued a set of keys that was requested by an administrator for that particular agency. Although OGS has a key policy, when a staff member leaves OGS employment, no provision exists requiring the return of keys to Key Control, nor is there any guidance to facility managers outlining specific procedures for the dispersal, retrieval or destruction of returned keys.

In the instant matter, keys were recovered from Pivoda<sup>19</sup> and Marciano upon their suspension from state service for their conduct described herein. Both Pivoda's and Marciano's sets of keys were examined by the Inspector General with Commisso to determine the nature of the keys in Pivoda and Marciano's possession prior to their suspension. While many of the keys were appropriately in the possession of cleaners, one key proved alarming. Pivoda had an unmarked key on his key ring which, when

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<sup>19</sup> Pivoda's keys were confiscated by the New York State Police upon his arrest on July 14, 2009. Subsequently, the NYSP turned Pivoda's keys over to OGS.

measured, was determined to be a sub-master key which provided access to practically every door in the Plaza Concourse area – not just the janitorial or maintenance closets. With this key, Pivoda had access to restaurants, stores, offices and even banks. Commisso did not believe this key was issued by his office. A particularly disturbing aspect of Pivoda's possession of this key is the fact that in addition to his ongoing illegal activities, Pivoda was convicted in 1991 of Burglary and served over four years in prison.<sup>20</sup>

A set of keys found in the man cave hidden in some clothes above the television set also posed a great security concern. Contained on a key ring were master keys to the Legislative Office Building, the Justice Building, the Corning Tower, the Swan Street Building and the Concourse and subfloors. While Commisso stated that all the keys on the key ring found hidden above the television in the unofficial break room were old keys, all were operational. The key to the Justice Building, however, only opened a few janitorial or closet doors, because, for the last five years access to the Justice Building and its interior offices has been limited to a new swipe card key system.. The Legislative Office Building has also been converted to swipe card access for perimeter entrances and the Senate offices have been switched to a new keyway not operable by the master key found in Pivoda's clothes. Most of the Assembly offices, however, were accessible using Pivoda's master key. And, while the Corning Tower has perimeter swipe card entry, its offices were accessible using Pivoda's master key. In fact, one of them was used as a test to open OGS Deputy Commissioner Hill's office door.

## FINDINGS AND RECOMMENDATIONS

The Inspector General determined that while employed by OGS, Louis Marciano and Gary Pivoda were engaged in illegal drug activities on state property. Surveillance and Investigation revealed that instead of performing their state work, Marciano and Pivoda spent most of their shift using drugs, sleeping, socializing, and watching television in an unauthorized break room of their creation colloquially known as the man cave. Moreover, they fraudulently claimed at least \$1,524 and \$2,076 in wages for time allegedly spent working. The Inspector General referred the cases on Marciano and Pivoda to the Attorney General's Office for prosecution. On October 19, 2009, Marciano and Pivoda were indicted of, among other things, Grand Larceny and Official Misconduct, Pivoda further was indicted for sale of cocaine and marijuana, and Marciano was also indicted for filing false instruments. On November 12, 2009, Marciano and Pivoda pleaded guilty to defrauding the government, a felony. Pivoda also pleaded guilty to grand larceny, a felony. Sentencing is currently scheduled for January 4, 2010, at

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<sup>20</sup> On his 2000 job application, Pivoda advised OGS that he had two convictions: Driving While Ability Impaired and Possession of Stolen Property. In fact, he had a lengthy criminal record including two felonies, possession of stolen property and attempted burglary, in addition to the burglary conviction mentioned above. Pivoda also failed to inform OGS that he had been convicted of various other misdemeanors and violations including assault, resisting arrest, unauthorized use of a vehicle, petit larceny, criminal possession of marijuana, and disorderly conduct. OGS started conducting criminal background checks for all employees in 2001.

which time, Marciano is expected to be sentenced to five years probation and Pivoda is expected to be sentenced to one year of incarceration.

The Inspector General also referred Marciano and Pivoda to OGS for appropriate disciplinary action. OGS advised the Inspector General that both Marciano and Pivoda were suspended without pay during the pendency of disciplinary charges. On November 12, 2009, as part of their negotiated plea, both men resigned their employment with OGS.

The Inspector General determined that Thomas Casey, Dennis Williams and William Liston failed to properly supervise their subordinate staff, including Marciano and Pivoda. Williams and Liston willfully failed to exercise any supervisory control over Marciano and Pivoda even though they knew, or should have known, of the ongoing conduct in the East Garage including drug activities, failure to work, and abuse of subordinate staff. The Inspector General recommends that OGS seek appropriate administrative action against Casey, Williams and Liston.

The Inspector General has found OGS supervision over its employees in the Plaza Operations unit at the Empire State Plaza to be negligently lax. The Inspector General recommends that OGS provide supplemental training for its supervisory staff at the Plaza which should include ways to effectively manage and supervise staff through personal observation, proper monitoring of the time and attendance system, and review of vehicle mileage logs. The Inspector General also recommends that, because the OGS Incentive Award program has proved prone to fraud, OGS should implement safeguards to ensure that recipients of the award are, in fact, worthy.

The Inspector General has determined that OGS current key control is inadequate. Investigation revealed that unauthorized individuals may be in possession of pass keys to various buildings within the Empire State Plaza. The Inspector General recommends that OGS conduct a security assessment of the Plaza and install new locks at perimeter entrances and other security points. The Inspector General further recommends that OGS revise internal controls for key issuance and key return.

### **Response of the Office of General Services**

The response of the Office of General Services to the Inspector General's report appears on the following pages.



**DAVID A. PATERSON**  
GOVERNOR

STATE OF NEW YORK  
**EXECUTIVE DEPARTMENT**  
**OFFICE OF GENERAL SERVICES**  
MAYOR ERASTUS CORNING 2<sup>ND</sup> TOWER  
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12242

**JOHN C. EGAN**  
COMMISSIONER

**HOWARD L. ZWICKEL**  
DEPUTY COMMISSIONER AND COUNSEL

November 20, 2009

Nelson Sheingold, Esq.  
General Counsel  
Office of the State Inspector General  
Agency Bldg. 2,  
16th Floor  
Albany, NY 12223

Dear Mr. Sheingold:

Re: NYS Inspector General Investigation of Night Shift Cleaning Crew

I am writing, on behalf of Commissioner Egan and the Office of General Services (“OGS”), in response to the Final Report of the Inspector General, concerning serious misconduct by two employees of the OGS night cleaning crew, and certain supervisors, at the Empire State Plaza. Every day of the year, over fifteen hundred OGS employees, including employees in OGS Real Property Management, perform their jobs on behalf of the people of the State of New York in a professional manner and with integrity and dedication to the highest principles. We are therefore appalled at the egregious and, in some cases, criminal conduct engaged in by Gary Pivoda and his immediate supervisor, Louis Marciano. Their misconduct should not, however, be viewed as representative of the hard-working and honest men and women of this agency who tirelessly perform their public service each and every day of the year.

The Office of General Services does not tolerate, under any circumstances, the use or sale of illegal drugs, theft of state service, or discriminatory behavior that the Inspector General discussed in the report. Commissioner Egan has made it clear to all employees that this agency has a zero tolerance policy for such misconduct. OGS promptly referred this matter to the Inspector General for investigation when executive staff were advised of potential criminal conduct among Plaza employees. While your investigation was pending, OGS refrained from pursuing any disciplinary action so as not to interfere with the investigation. OGS assisted the Inspector General and the New York State Police and immediately took steps to suspend Pivoda and Marciano when the surveillance efforts concluded. While OGS had been vigorously pursuing these employees’ termination, we note that they have resigned from state employment in connection with their plea agreement.

OGS is especially concerned with the claims of abusive and discriminatory behavior on the part of Marciano, who was Pivoda’s immediate supervisor. As noted in your report, in January 2007, OGS

counseled Marciano when management first became aware of his inappropriate remarks and actions, in accordance with the principles of progressive discipline under the collective bargaining agreements. Commissioner Egan has been a leader during his career in state service in promoting diversity in the state workforce and in instilling a culture that fosters respect and tolerance for every individual employee and every point of view. This commitment to a diverse and inclusive workforce is embodied in the appointment of executive staff accessible to employees who had concerns about abusive behavior. OGS is dismayed by a culture of intolerance displayed by certain employees and the fact that lower level supervisors of the cleaning crew impeded efforts of upper management to take corrective action to remedy the disparity in work assignments.

This agency is especially disturbed by the failure of certain supervisory officials to address the misconduct engaged in by Pivoda and Marciano, either through intentional omission or by actively supporting Marciano. While OGS is carefully reviewing the Inspector General's findings, counseling sessions were held with two of the higher level managers for their failure to identify the failings related to the middle level managers directly under their supervision. OGS looks forward to receiving additional details and evidence from your office so that OGS may vigorously and promptly take administrative action against any employees engaged in drug use, drug dealing or other misconduct. OGS will also take action against any supervisor in the chain of command who was derelict in his or her duties and/or contributed to the misconduct described in the report.

Your report makes recommendations with respect to the Incentive Award program based upon your findings concerning Mr. Pivoda. Prior to the report's issuance, in light of severe budgetary constraints, OGS exercised its authority to suspend the Incentive Award Program. In the event the program is reinstated in the future, OGS will ensure that the Labor-Management Committee referenced in the report is fully functional and engaged, and that the program's objectives of improving productivity, efficiency and overall service delivery are met.

The report further recommends that OGS conduct supplemental training for its supervisory staff at the Plaza. OGS agrees with this recommendation. The agency is currently revising its training programs, including a Leadership Development Program that will be mandatory for all supervisors. The courses comprising this program, such as Conflict Resolution and Practical Skills for Supervisors, will expand upon the Diversity and Ethics training courses that are already mandatory for all employees. OGS will ensure that the courses are available to employees working the night shift and will prioritize the successful completion of these courses by supervisors in this business unit.

Your report also recommends that OGS provide additional training to supervisors to ensure proper monitoring of the time and attendance or "LATS" system. OGS has already taken steps to address the concerns raised in your report. In this case, in May 2009, OGS Human Resources was advised by employees in Plaza Operations that supervisors were misusing the LATS system, and contacted those supervisors in an effort to correct the behavior. Shortly thereafter, OGS proactively engaged in preventive education when it posted a "tip of the day" on the LATS front page advising that every employee is responsible for submitting his or her own time record, and that supervisors should not submit a subordinate's timecard. This alert was visible to all employees and remained active for at least one month. The same information was also contained in an article entitled, "Timely Submission of Timesheets," in the June 2009 issue of "People Department News," a monthly OGS Human Resources publication e-mailed to all employees and provided in hard copy form to employees without access to e-

mail. As recommended in your report, OGS is working with the LATS system vendor to implement an automatic alert when an employee fails to submit a time record or submits a record on behalf of a subordinate. While OGS does not believe that manager misuse of LATS is widespread, the agency agrees that an automatic alert would assist in identifying and, if warranted, taking administrative action if the LATS system is misused.

Your report alerted OGS to the fact that although the agency Fleet Policy, and the related Vehicle Use Policy, both require supervisors to review their subordinates' vehicle mileage and attest to its appropriateness, some business units in OGS have been utilizing vehicle mileage documentation that lacks a field indicating that the required supervisory review was conducted. OGS is in the process of updating the form and its procedures to ensure that OGS Fleet Management will only accept documentation after review by supervisors, as the agency agrees with your findings that supervisors must perform this necessary oversight with regard to vehicle use.

Your report makes certain recommendations concerning key control. OGS has already begun a security assessment of locks throughout the Empire State Plaza, including commercial sites located on its concourse and perimeter building entrances. OGS is unaware of any additional distribution of unauthorized keys, other than those found in the makeshift break room. However, to ensure the ongoing security of its tenants, OGS is in the process of replacing, where appropriate, locks on doors which can be opened with keys issued prior to 2004. Additionally, the agency is in the process of amending its Employee Exit Checklist to require Business Unit directors to return keys issued to separating employees to the OGS Facility Manager or Key Master as deemed appropriate. The agency is also modifying its Facility Manager's Manual to require improved recordkeeping and tracking of key distribution and collection.

OGS wishes to thank the Inspector General and the New York State Police for the professional manner in which this investigation was pursued. OGS will continue to cooperate with your office and other law enforcement agencies as we pursue appropriate administrative action against supervisory employees who were derelict in their job performance, and as the agency takes steps to implement the other recommendations set forth in the report.

Sincerely,



Howard L. Zwickel