



Program Statement

OPI: OGC
NUMBER: 1210.21
DATE: 3/9/2000
SUBJECT: Boards of Inquiry and
Inquiry Teams

1. **PURPOSE AND SCOPE.** To establish procedures for the creation and operations of Boards of Inquiry and Inquiry Teams to investigate the facts and circumstances of any incident or situation for such purposes as:

- ascertaining and reporting facts and circumstances,
- gathering and preserving evidence and records,
- determining the cause or causes, and
- recommending corrective steps as may be indicated in policy, regulation, and practice.

Only the Director may create a Board of Inquiry, and only a Regional Director or Warden (with Regional Director approval) may create an Inquiry Team. The focus of a Board of Inquiry is to determine the facts of an incident the Director deems significant or unusual enough to warrant a special and higher level of review.

When employee misconduct may have occurred, clearance must be received from the Chief, Office of Internal Affairs (OIA), prior to the appointment of any regional or local Inquiry Team. OIA must investigate any incident when employee misconduct may have occurred to ensure protection of employee rights and preservation of evidence. To accomplish this objective, an OIA staff member is to serve as a member of a Board of Inquiry when staff misconduct may be involved.

Any allegations of violations of law must be reported by the Bureau's Office of Internal Affairs, to the Department of Justice, Office of the Inspector General (OIG) prior to the creation of a Board of Inquiry or Inquiry Team.

2. **SUMMARY OF CHANGES.** To include the requirement that Board of Inquiry reports, or portions thereof, may have to be released pursuant to a Freedom of Information Act (FOIA) request or subpoena or produced in litigation.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. Serious incidents, allegations of significant and far-reaching breaches of policy, and allegations of misconduct will be formally investigated.

b. Recommendations for corrective measures to improve operations or avoid future incidents will be made.

c. The purpose, scope, and duration of each Board or Team will be defined by the appointing authority.

d. A written report containing all pertinent findings and recommendations will be made.

e. Appropriate records from each Board or Team will be preserved.

4. **STANDARDS REFERENCED**

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: None.

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: None.

c. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: None.

d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: None.

5. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

PS 1210.16 Boards of Inquiry and Inquiry Teams
(5/7/97)

b. Directives Referenced

PS 1210.17	Internal Affairs, Office of (8/4/97)
PS 1380.05	Special Investigative Supervisors Manual (8/1/95)
PS 1600.08	Occupational Safety and Environmental Health Manual (8/16/99)

6. RESPONSIBILITIES

a. **Boards of Inquiry.** The Director may appoint Boards of Inquiry to investigate appropriate significant incidents in the Bureau including, but not limited to:

- allegations of significant breaches of policy, or
- any other matter which reflects in a significant way upon the Bureau's ability to carry out its mission.

The General Counsel may request that the Director appoint a Board of Inquiry to investigate incidents or allegations that are likely to result in litigation against the United States, the Bureau, or one of its employees.

b. **Regional Inquiry Teams.** Regional Directors may appoint Inquiry Teams to investigate incidents or allegations of significant departure from policy or regulation within their jurisdictions, or in any other instance when it would be in the Bureau's best interest. An exception is a matter which is to be investigated by a Board or Team appointed at a higher level.

Regional Counsel may request that the Regional Director appoint an Inquiry Team to investigate incidents or allegations that are likely to result in litigation against a Bureau institution or employee under regional jurisdiction.

c. **Local Inquiry Teams.** Wardens, with the approval of the Regional Director, may appoint a local Inquiry Team to investigate incidents or allegations of significant departure from policy or regulation at only that institution. For more routine incidents requiring investigation, the Warden may not appoint an Inquiry Team, but should assign staff such as an Associate Warden, appropriate department head, or investigative officer to investigate routine matters.

7. APPOINTMENT OF BOARDS AND TEAMS. The Director, Regional Director, or Warden will notify in writing each person appointed to serve as a member of the Board or Team as to:

- the purpose and scope of the inquiry,
- the date the inquiry is to begin, and
- if appropriate, the date that a completed report is to be furnished to the appointing official.

The written notification will indicate which member is to chair the Board or Team.

The General Counsel or Regional Counsel will be consulted prior to the creation of a Board or Team to determine whether the appropriate legal office should initiate a request that a Board or Team be appointed. Boards and Teams appointed at the request of the General Counsel or Regional Counsel will include at least one legal staff member.

a. **Boards of Inquiry.** In addition to Bureau staff, a Board of Inquiry may also include non-Bureau personnel with expertise relevant to the scope and purpose of the inquiry. An OIA staff member is to serve as a member of a Board of Inquiry when staff misconduct may be involved. The OIA will pay all expenses incidental and necessary to the work of a Board of Inquiry.

b. **Regional Inquiry Teams.** To ensure objectivity, a regional Inquiry Team should not consist of staff from only one institution. The Team must be composed of personnel at the department head level or above from any institution, any regional office, or the Central Office. The regional office will bear all expenses incurred (such as for travel).

c. **Local Teams.** A local Inquiry Team may consist of staff of that institution at the Associate Warden and/or department head levels. The institution will bear any expenses incurred.

d. **OIA Assistance.** When requested by a Regional Director, Warden, or Inquiry Team Chair, the OIA will provide consultation and other assistance to Boards and Teams as is necessary.

8. INSTRUCTIONS FOR ALL BOARDS AND TEAMS

a. Members must become familiar with Bureau directives applicable to the matter being reviewed.

b. Members must review all written records, including investigative reports, medical records, or other records pertaining to the subject of the inquiry.

c. Members must visit the scene of an incident, reconstruct the chain of events, and record their observations by notes, photographs, audio or visual recordings, or other appropriate means.

d. If, at any point during the inquiry, it becomes apparent that serious criminal or administrative misconduct is involved, OIA will be consulted to determine whether a referral to the Office of the Inspector General or Civil Rights Division is appropriate. If an OIA representative is not present, members will contact the Chief, OIA, for advice before proceeding further.

e. Members must interview witnesses or other persons having knowledge of the incident, using the following procedures:

(1) Advise any person being interviewed of the purpose of the interview, including the nature of the inquiry, and fully identify all members present. An individual's right to representation, if any, must be determined prior to the interview. For bargaining unit members, union representational rights will apply (see Employee Rights Article of Master Agreement).

During the inquiry, witnesses or other persons having knowledge of the incident must be instructed to keep all information strictly confidential and instructed not to disclose any information concerning the nature of the inquiry or the information he or she has provided to anyone other than the Board or Team, or to an appropriate union representative.

(2) If the inquiry develops information which focuses on the person being questioned, or about to be questioned, as a suspect in possible criminal misconduct, questioning of that person may not proceed until the local U.S. Attorney:

- declines prosecution,
- grants use immunity, or
- recommends the interviewee be advised of his or her Miranda Rights.

One of these conditions must be satisfied before questioning a person suspected of possible criminal misconduct. These contacts with the local U.S. Attorney will be coordinated through OIA.

(3) Members are to require a witness to submit a written statement. The witness will be permitted a reasonable opportunity to prepare and review the statement before swearing or affirming the truth of the statement. The Chair and members will have authority to administer oaths or affirmations to witnesses in accordance with 5 U.S.C. 303.

- For a **written** statement.

"I hereby declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

- For an **oral** statement:

"I swear (or affirm) under penalty of perjury that the statement I am about to make is true and correct."

(4) All employees may be required by Boards of Inquiry, Regional Inquiry Teams, and local Inquiry Teams to answer questions regarding their employment, even though their answers may lead to disciplinary action up to and including removal; however, in criminal cases, employees retain their constitutional rights regarding avoidance of self-incrimination and may not be disciplined for properly exercising these rights.

(5) Any visual or oral recordings made of interviews and other proceedings will be preserved to allow a reasonable opportunity for the resolution of any administrative review or appeal related to the inquiry.

9. REPORTS

a. **General.** The Board or Team will prepare a detailed report of its findings, including, if appropriate, recommendations. The report must include all documents or records (or copies of them) pertinent to the findings and recommendations. Any member of a Board or Team may submit a separate or dissenting report.

b. **Submission.** The completed report, along with all working notes and other personal records created by members as a result of the inquiry, will be submitted to the official who appointed the Board or Team, unless the appointing official had done so at the request of the General Counsel or Regional Counsel. If the Board or Team was appointed at the request of the General Counsel or Regional Counsel, the completed report will be submitted directly to the requesting Counsel.

If a report is submitted to an appointing official (rather than to a requesting Counsel), three copies of the report will be submitted through OIA for filing in the Director's Office, in the Office of General Counsel, and in OIA.

c. **Release of Findings or Reports.** Findings or reports of all Boards of Inquiry or Inquiry Teams will be released only upon the Director's authorization in consultation with the General Counsel. A Board of Inquiry report may be required to be produced in connection with civil or criminal proceedings or a FOIA request. A Board of Inquiry report may also be released in connection with a Congressional inquiry.

If a subpoena or request for discovery is received in connection with any civil or criminal proceeding that demands, or reasonably could be construed as to demand, the production of a Board of Inquiry report, and/or any working notes or personal records created by members as a result of an inquiry, the subpoena should be forwarded to the Regional Counsel who, after consultation with the General Counsel and the Director, as necessary, will coordinate the production of the documents or assertion of any evidentiary privilege as appropriate with the local U.S. Attorney's Office.

Findings or reports from Boards of Inquiry or Inquiry Teams appointed at the request of the General Counsel or a Regional Counsel prepared in anticipation of litigation or trial are to be reviewed by the General Counsel before any release, since these documents may be privileged documents protected from disclosure by the attorney work-product privilege. The General Counsel will make the determination of whether to assert this privilege.

/s/

Kathleen Hawk Sawyer
Director