S. HRG. 108–257

ERRATA
LESSONS LEARNED—THE INSPECTOR GENERAL'S REPORT ON THE 9/11 DETAINEES

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JUNE 25, 2003

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ADDITIONAL QUESTIONS AND ANSWERS

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U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 19, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letter of July 11, 2003, in which you requested that the Bureau of Prisons (BOP) respond to several questions following Director Harley Lappin's testimony before the Judiciary Committee on June 25, 2003. We are pleased to provide the enclosed responses to the questions submitted by Members of the Committee. In addition, we have enclosed copies of a number of BOP program statements that were requested and that may be helpful in understanding Bureau of Prisons procedures.

Thank you for your continued support of the Bureau of Prisons. We look forward to working with you and the other Members of the Committee on the many issues that affect the Bureau.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

RESPONSES TO QUESTIONS FOR THE RECORD

HARLEY LAPPIN
DIRECTOR, BUREAU OF PRISONS

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

THE INSPECTOR GENERAL'S REPORT ON THE 9/11 DETAINEES

JUNE 25, 2003

Responses to Questions submitted by Senator Edward M. Kennedy

Question: What steps have you, as Director of the Bureau of Prisons, taken to investigate and respond to these allegations of abuse?

It is not enough to say that the Inspector General is handling this investigation, since the Bureau of Prisons is responsible for making sure that its own employees do not treat inmates in an inappropriate or inhumane manner.

Answer: We agree that the Bureau of Prisons (BOP) is responsible for ensuring its employees do not treat inmates in an inappropriate or inhumane manner. We abide by the guidelines issued pursuant to Attorney General Order 1931-94, and have issued BOP Program Statement 1210.24, Office of Internal Affairs, and BOP Program Statement 3420.09, Standards of Employee Conduct. These directives mandate that, when misconduct that could be a prosecutable offense allegedly occurs, such as a criminal civil rights violation, these allegations must be reported to the OIG before an investigation is initiated by the BOP. In the event the OIG defers the matter back to the BOP, then the BOP is permitted to proceed with an administrative investigation.

Of the 16 cases referred to the OIG for review, 8 cases were retained by the OIG or referred to the Civil Rights Division for investigation. The remaining 8 cases were referred back to the BOP for investigation. Of those eight deferred cases, five were closed administratively because the complaints contained insufficient information (for example, the staff member was not identified). In one case, the officer who was the subject of the investigation had transferred to the Transportation Security Administration (TSA). We informed TSA of the allegation. The remaining two cases were in the process of being investigated by the BOP until mid-March 2003, when we were notified that the OIG would be conducting an investigation into all allegations of physical abuse against the detainees. At that point, all BOP investigations were halted pending the OIG's investigation. In addition, the Bureau responded to the OIG's Supplemental Report on February 25, 2004. You can be assured that we will take appropriate disciplinary action against any and all staff members found to have engaged in misconduct.

Question: Do you dispute any of the facts set forth in the Inspector General's report on the abuse of inmates at the Brooklyn Detention Center? If not, why haven't you acted to prevent such acts of abuse from occurring in the future?

Answer: Immediately after the OIG's report was published, we requested a meeting with officials from the OIG in order to find out what specific information they had regarding misconduct by our staff. We were very concerned that we may have staff engaging in misconduct and that we were unaware of it. The OIG informed us that they were investigating what they considered to be credible allegations of past mistreatment of detainees by four officers at MDC Brooklyn. We pledged our full cooperation and offered the assistance of our Office of Internal Affairs staff. While we are extremely concerned about the allegations against our staff, we were gratified to learn from OIG representatives at the meeting that during the course of their investigation they had also received many reports from detainees stating that our staff had treated them with respect and dignity.

In addition, the Bureau responded to OIG's Supplemental Report on February 25, 2004. Appropriate disciplinary action will be taken to address those allegations which were substantiated.

It should also be noted that the BOP Director issued a memorandum to all wardens on October 30, 2003, reiterating the importance of staff professionalism and the need to treat all inmates fairly and with dignity, along with the expectation that employee code of conduct training be provided by the warden or associate warden.

Question: The sustained confinement of inmates in restrictive administration segregation endangers their physical and psychological health. Such segregated confinement should not be used longer than necessary. Do you agree that it was wrong for officials at the Detention Center in Brooklyn to abandon the Bureau's own security-risk assessment procedures in favor of the F.B.I.'s general (and factually unsupported) assessment that the detainees were "of high interest?"

Answer: MDC Brooklyn staff did not abandon security risk-assessment procedures by placing the detainees in administrative detention. Administrative detention is a non-punitive status that may be used when the continued presence of an inmate within the general population would pose a threat to the safety of the individual being detained, the safety of staff or other inmates, or the security or orderly operation of the institution. There is often very limited background information that is readily available to the BOP concerning pretrial detainees, and thus we rely on the information presented to us by other law enforcement agencies. Therefore, it is not uncommon to place detainees, who arrive at a facility with either little information or an indication of a need for separation, in administrative detention. Such detainees are housed in administrative detention pending receipt of additional information that would indicate no need for such status.

In the case of the detainees placed at MDC Brooklyn following the September 11, 2001, terrorist attacks, institution staff did not act incorrectly by relying on the information provided by the FBI

and/or INS in determining where to house them. The BOP as an agency, and MDC Brooklyn in particular, were given the critical task of safely and securely detaining a large number of individuals who were in this country illegally and who may have had some connection to the events of September 11th. The BOP depends on information provided by law enforcement agencies when taking pretrial detainees into custody.

The agencies have reached an agreement wherein the FBI will provide either a verbal or written statement to the BOP and DHS as to their interest in a detainee. If a written statement is received from the FBI, the BOP will place the information in the inmate's central file. If only a verbal statement is provided, this information will be documented by BOP staff in the inmate's central file. Along with this process, the BOP will apply its traditional inmate classification procedures to determine the level of secure confinement required by each detainee. Additionally, on a monthly basis the BOP will request and receive a status update from the FBI for each Category I Management Interest Inmate, to determine if continuation in highly restrictive conditions of confinement is still warranted. All information used to support the inmate's classification as a Category I Management Interest Inmate will be documented in the inmate's central file.

Question: Have any officials at the Detention Center been held accountable for this failure?

Answer: Staff at MDC Brooklyn did not act inappropriately by relying on the information provided by the FBI and/or INS in determining where to house the September 11th detainees. Consequently, there is no basis to hold any officials accountable for housing decisions that were made during this national security crisis.

Question: What steps have you taken to ensure that in the future, Bureau officials will not disregard their own classification procedures and subject detainees to the harsh conditions of "Administrative Maximum" segregation without appropriate justification?

Answer: The premise of the question that after September 11, 2001, BOP officials disregarded BOP classification procedures, is not correct. Nevertheless, in the future, the BOP will reach out proactively to the FBI and/or other law enforcement agencies to obtain updated information regarding the status of a particular inmate's or detainee's involvement in a criminal investigation so that we may be more certain of the most appropriate conditions of confinement for all of our inmates.

The BOP has developed a new policy regarding the housing of detainees during a crisis situation. The new BOP policy, entitled "Management of Select Inmates During National Security Emergency Situations," provides clear and specific procedures, regarding the initial classification process and a system of multi-level reviews to ensure they are placed in the most appropriate level of confinement at the earliest opportunity. The procedures, which the FBI has approved, call for the FBI to provide either a verbal or written statement to the BOP and DHS as to their interest in a detainee. If a written statement is received from the FBI, the BOP will place the information in the inmate's central file. If only a verbal statement is provided, this information will be

documented by BOP staff in the inmate's central file. Along with this process the BOP will apply its traditional inmate classification procedures to determine the level of secure confinement required by each detainee. Additionally, on a monthly basis the BOP will request and receive a status update from the FBI for each Category I Management Interest Inmate, to determine if continuation in highly restrictive conditions of confinement is still warranted. All information used to support the inmate's classification as a Category I Management Interest Inmate will be documented in the inmate's central file.

Response to Question Submitted by Chairman Orrin G. Hatch

Question: I understand that prior to September 11, 2001, in the New York area, the INS housed immigration detainees in the INS Detention Center on Varick Street - a facility that was closed as a result of the 9/11 attacks. And for that reason, after 9/11, the Brooklyn Metropolitan Detention Center (MDC) was charged with housing many of the 9/11 detainees. In your view, was the MDC facility prepared to handle such a high number of immigration detainees at that time? What new policies, if any, has the BOP implemented to resolve the concerns raised in the inspector general's report, particularly those relating to the MDC?

Answer: Subsequent to the closure of the Varick Street Detention Facility after the September 11 attacks, MDC Brooklyn was charged with housing many of the 9/11 detainees. Initially, the BOP did not plan to house a large number of immigration detainees at MDC Brooklyn; however, this became necessary due to the large number of detainees taken into custody as part of the government's investigation. The availability of beds at MDC Brooklyn and its proximity to the federal law enforcement agencies conducting the investigation made it the most appropriate facility to serve this function. The institution was prepared to house a large number of immigration detainees, but staff experienced some difficulties due to the additional security measures that were used to manage these detainees.

The BOP has developed a new policy outlining specific procedures for restrictive conditions of confinement for detainees that may come into BOP custody as a result of a national emergency similar to the one experienced on 9/11. The new BOP policy, entitled "Management of Select Inmates During National Security Emergency Situations," encompasses procedures for implementing many of the recommendations made by the OIG. The BOP will incorporate training on this policy into the BOP's FY 2005 annual training requirement. Annual training is mandatory for all BOP staff and is completed during the first 4 months of the calendar year. In addition, training will be provided during the National Captains' and Associate Wardens' Training in FY 2004, as well as during the next BOP Wardens' Training, scheduled for FY 2005.

Responses to Questions Submitted by an Unnamed Senator

Question 1A: Lawyers who went to visit their clients at the Metropolitan Detention Center were frequently informed, incorrectly, that the clients were not there, even more than 6 months after the

attacks. What steps have you taken or will you take to ensure that attorneys are not misled, intentionally or inadvertently, about their clients' presence in a BOP facility?

Answer: The BOP has developed an entirely new policy outlining clear and specific guidance for managing detainees who are suspected of involvement in terrorists activities. The new BOP policy, entitled "Management of Select Inmates During National Security Emergency Situations," outlines locator center screening operations, and specific procedures regarding legal access and consulate officials, to include verification of the attorney's credentials, visiting hours, and legal calls.

The BOP will incorporate training on this policy into the BOP's FY 2005 annual training requirement. Annual training is mandatory for all BOP staff and is completed during the first 4 months of the calendar year. In addition, training will be provided during the National Captains' and Associate Wardens' Training in FY 2004, as well as during the BOP Wardens' Training in FY 2005.

Question 1B: According to the OIG report, calls answered by answering machines, or even those ending in a busy signal, were counted against detainees' weekly limit of one legal phone call. In addition, the OIG investigation determined that detainees were asked "are you okay?" as a proxy for asking them whether they wanted their weekly legal call, and counselors treated affirmative answers to "are you okay" as a refusal of the legal call. Is such treatment consistent with BOP policy? If not, what have you done or will you do to prevent such conduct in the future?

Answer: BOP staff are required to make routine rounds through the Special Housing Unit. In doing so, staff routinely ask inmates "are you okay?" or other similar questions to inquire about their general well being and any issues or concerns that they need to address. Asking "are you okay" was not intended to be a proxy for asking a detainee whether they would like a legal phone call. BOP policy places the burden for legal telephone call requests on the inmate.

Pretrial detainees who request legal calls are permitted to make unmonitored calls to their attorney as often as resources of the institution allow. This access is available to all detainees and other pretrial inmates, including those assigned to special housing units. A completed call is one in which the inmate is able to communicate with his or her attorney or leave a meaningful message.

The BOP has developed a new policy outlining clear and specific guidance for managing detainees who are suspected of involvement in terrorists activities. The new BOP policy, entitled "Management of Select Inmates During National Security Emergency Situations," provides specific procedures regarding both social and legal telephone calls.

The BOP will incorporate training on this policy into the BOP's FY 2005 annual training requirement. Annual training is mandatory for all BOP staff and is completed during the first 4 months of the calendar year. In addition, training will be provided during the National Captains' and Associate Wardens' Training in FY 2004, as well as during the next BOP Wardens' Training, scheduled for FY 2005.

Question 1C: Finally, the OIG report suggests that Christopher A. Wray, now the nominee to head the Criminal Division, and another Criminal Division employee asked the BOP to "not be in a hurry" to allow detainees access to communications, including their lawyers. Are you aware of this conversation? Did this wish, as expressed by the Deputy Attorney General's office, cause or contribute to the BOP's decision to impose a "communications blackout" on the 9/11 detainees? How long did this "communications blackout" last?

Answer: I was not privy to any such conversation and have only read what is presented in the OIG report. I am not personally aware of any directive from the Deputy Attorney General's Office "to not be in a hurry ... to allow detainees access to communications, including their lawyers." I note that the OIG report itself states that, according to then-BOP director Hawk Sawyer, she was never told to violate BOP policies.

Immediately following the tragic events of September 11, 2001, (and prior to any conversations between the former Director and employees of the Deputy Attorney General's Office) the BOP placed every inmate that we believed may have ties to the attacks or other terrorist activity in administrative detention. For a short period, we did not permit these inmates to have any communication with the outside world or with any other inmates to prevent any potential continuing terrorist activity. MDC Brooklyn received its first detainee associated with the terrorism investigation on September 14, 2001. On September 20, 2001, (9 days after the terrorist attacks) direction was given to all wardens to permit pretrial inmates and INS detainees access to counsel via phone calls, visits, and correspondence. The first record of a legal telephone call by a detainee at MDC Brooklyn appears on October 15, 2001. It is unclear whether calls were made prior to this date. Technical problems experienced in the New York area after the attacks and inconsistencies in record keeping by MDC Brooklyn staff prevent us from explaining the appearance of delays in allowing detainees to place legal phone calls.

Question 2: The OIG report found that some detainees under BOP control suffered from "a pattern of physical and verbal abuse." This finding is deeply disturbing, as is the fact that the Civil Rights Division and the FBI appear to have been quite slow in investigating allegations of abuse. What steps have you taken to ensure that immigrant detainees in your custody who are of Arab or Muslim descent are not subject to abuse?

Answer: We agree the BOP must remain vigilant to ensure individuals in our custody are not subjected to harassment or abuse. The BOP's Standards of Employee Conduct program statement spells out very clearly the agency's expectations of staff in this regard, as well as potential consequences for violation of these standards. In addition, the BOP responded to the OIG's Supplemental Report on February 25, 2004. Appropriate disciplinary action will be taken to address those allegations which were substantiated.

In October 2001, the BOP's Chaplaincy Services Branch provided training to all wardens in the Northeast Region on appropriate religious accommodation of detainees who are of Arab and

Muslim descent. In addition, similar training was provided to all wardens during the 2002 and 2003 Wardens' Training. Institution Chaplaincy Services staff throughout the BOP provide training for employees who work with detainees of Arab and Muslim descent on appropriate religious accommodation and cultural understanding.

We have developed a new policy that outlines procedures for highly restrictive conditions of confinement for detainees, including a section that specifically addresses the professionalism of staff. The BOP will incorporate training in this regard into its FY 2005 annual training requirement. The training regarding employee code of conduct and treatment of inmates will be facilitated by the warden or associate warden at each institution. In addition, training will be provided during the National Captain's and Associate Warden's Training in FY 2004, as well as the BOP Wardens' Training in FY 2005.

Question 3: In your testimony before the Judiciary Committee on June 25, 2003, you stated that the BOP policy is to: (A) tape staff-inmate interactions during an emergency situation, and during a forced cell move or a calculated use of force on a particular cell to remove an inmate; and (B) retain only tapes of situations that have been brought up in allegations of mistreatment. Under this policy, how many staff-inmate interactions did the BOP record? How many of those recordings were destroyed? How many recordings were retained, and how long will the BOP preserve the recordings?

Answer: With regard to the recording of incidents, a video-recording always takes place when we have a calculated use of force situation (such as an inmate who refuses to move willingly from his/her cell). In addition, when an immediate threat to the safety of the inmate, staff, or others, or to property requires an immediate response, BOP staff members have an obligation to obtain a camera and begin recording the events as soon as it is feasible.

We had two calculated use of force incidents and seven immediate use of force incidents at MDC Brooklyn between September 21, 2001, and April 2, 2002. Our policy requires us to maintain tapes for 2½ years if there are no criminal investigations taking place in relation to the incident. With regard to the incidents at MDC Brooklyn, the tapes will be maintained until the law enforcement agencies with primary interest in the cases provide authorization to destroy them.

The new BOP policy, entitled "Management of Select Inmates During National Security Emergency Situations," addresses video surveillance. The decision to record any activity will be determined on a case-by-case basis and approved only by the Assistant Director, Correctional Programs Division. Videotapes made under these circumstances will be retained for a minimum of 6 months.

Responses to Questions Submitted by Senator Richard J. Durbin

Question 1: The IG's report concluded that BOP staff "failed to inform detainees in a timely manner about the process for filing complaints about their treatment." Do you agree with this conclusion? If not, why not? If so, what steps have you taken to remedy this problem? Do BOP

officers receive training on handling complaints? If so, please describe this training. If not, why not? If not, will you begin to offer such training? If not, please explain why not.

Answer: I do not agree with the conclusion. BOP policy provides that each inmate admitted to MDC Brooklyn is provided upon arrival an orientation handbook that details the procedures for requesting formal and informal relief. Detainees admitted to the facility as part of the September 11 situation were treated in exactly the same manner and were provided the same handbook. In addition, Arabic-speaking staff regularly visited with the inmates to allow them to express their concerns in their native language.

All BOP staff are trained on the process for inmates to file complaints. The training includes an overview of the policy related to the administrative remedy process, instructions on how to provide inmates with the information and paperwork they need to file a request for remedy, and the appropriate methods of accepting and processing such a request.

The importance of all detainees receiving full and timely notice of the BOP's policies, including procedures for filing complaints, has been reiterated to all wardens in a recent memorandum from the Director.

Question 2: Are BOP officers required to accept complaints and explicitly prohibited from refusing to accept complaints or discouraging anyone from making a complaint? If not, why not? If so, are BOP officers trained on this policy? If not, why not? If so, please describe the training.

Answer: BOP staff are required to accept complaints and are not to discourage any inmate or detainee from making a complaint. Beyond that, we encourage constructive interaction and frequent communication between staff and inmates. Our agency requires staff to be available to inmates and to be receptive to the inmates' concerns. Experience has proven that communicating with inmates is one of the best security tools we have. Good communication is an excellent way to gather information about potential problems and to address issues of concern before they escalate to become larger problems. We have an Administrative Remedy Program to allow inmates to seek formal review of any issue relating to any aspect of their confinement. A copy of our program statement describing the Administrative Remedy Program is attached.

Question 3: In a recent consent decree, the Justice Department requires a local law enforcement agency (the Detroit Police Department) to mandate that its officers (including detention officers) accept complaints and explicitly prohibits them from refusing to accept complaints or discouraging anyone from making a complaint. Will the BOP adopt such a policy?

Answer: The BOP already has such a policy in place. Our policy elaborates on Federal regulations that require a staff member to receive a Request for Administrative Remedy. The procedure is outlined on page 7 of the attached program statement on our Administrative Remedy Program.

Statement: The Inspector General's report found, "With regard to allegations of abuse, the evidence indicates a pattern of physical and verbal abuse by some correctional officers at the MDC against some September 11 detainees, particularly during the first months after the attacks."

Question 4a: Do you agree with this conclusion? If not, why not? If so, please describe what steps the BOP has taken to prevent physical and verbal abuse in the future.

Answer: Before addressing this particular excerpt of the Inspector General's report and the Supplemental Report, the statement should be put into context. The Inspector General acknowledges that the vast majority of the BOP staff performed their duties in accordance with policy. We have reviewed the OIG's Supplemental Report, which indicates a very small number of staff were involved in the instances of abuse and negates the original theory of a pattern of abuse. However, as has been previously stated, we take all allegations and instances of misconduct/abuse very seriously, and will continue to take steps to eliminate any future abuse. We have very strict standards of employee conduct, a copy of which every employee receives, that clearly state what is acceptable and unacceptable behavior and the consequences for failing to abide by these standards. Upon any allegation of inmate abuse by staff, a referral is made to the BOP's Office of Internal Affairs and ultimately to the OIG for investigation.

Question 4b: Please describe and attach a copy of BOP policy regarding the use of force by BOP employees. Please describe the use of force training that BOP employees receive.

Answer: The BOP's policy governing use of force indicates that staff may use force as a last resort when all other reasonable efforts have failed. Some of the circumstances that may warrant force include protecting and ensuring the safety of inmates, staff, and others; preventing serious property damage; and ensuring the security and good order of the institution.

BOP staff receive training in a variety of areas that relate to confrontation avoidance and the use of force to include: communication techniques, cultural diversity, dealing with the mentally ill, specific confrontation avoidance procedures, as well as the use of force and the application of restraints. A copy of our program statement on Use of Force and Application of Restraints on Inmates is attached.

Question 4c: Please describe and attach a copy of BOP policy regarding reporting uses of force. Please describe the training that BOP employees receive in this policy. Are BOP employees who fail to report a use of force disciplined? If not, why not?

Answer: Our program statement on Use of Force and Application of Restraints on Inmates includes procedures for reporting the use of force. The policy requires that a review team consisting of the warden, associate warden, captain, and health services administrator meet and review all relevant information following use of force incidents. The review team will assess the

actions of staff and determine if they acted reasonably. Following this process, a report of incident is completed and routed to the regional office and Central Office staff.

All new employees receive training about the use of force during initial orientation at their local institution and during our 3-week Introduction to Correctional Techniques Course at the Federal Law Enforcement Training Center. Staff are also provided refresher training each year regarding use of force and the application of restraints. In addition, although not required, many institutions have a cadre of staff who are designated specifically and receive additional training to respond to use of force incidents.

A staff member who fails to comply with any rule or regulation of our agency, including the requirement for reporting a use of force incident, is subject to disciplinary action. Our policy governing employee conduct requires that staff report any violation or apparent violation of standards of employee conduct to the Chief Executive Officer, including failure to report a use of force incident or any inappropriate use of force. A copy of our program statement on Standards of Employee Conduct is attached.

Question 4d: Does BOP policy explicitly prohibit verbal abuse? If not, why not? If so, please describe and attach a copy of this policy. Are BOP employees trained in this policy? If not, why not? If so, please describe the training that they receive. Are BOP employees who violate this policy disciplined? If not, why not?

Answer: BOP policy prohibits staff from using profane, obscene, or otherwise abusive language when communicating with inmates, staff, or others. Staff are required to acknowledge in writing that they have received a copy of the program statement governing employee conduct. Staff also receive training in communication techniques, cultural diversity, and confrontation avoidance. A copy of our policy on Standards of Employee Conduct is attached. The policy also includes a guide to the disciplinary sanctions a deciding official must use in cases where misconduct has been sustained against staff.

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: OGC
NUMBER: 1330.13
DATE: CN 4, 8/13/2002
SUBJECT: Administrative Remedy Program

RULES EFFECTIVE DATE: 8/6/2002

* 1. **[PURPOSE AND SCOPE §542.10**

a. Purpose. The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

b. Scope. This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.]

The president of a recognized inmate organization may submit a request on behalf of that organization regarding an issue that specifically affects that organization.

[c. Statutorily-mandated Procedures. There are statutorily-mandated procedures in place for Tort claims (28 CFR 543, subpart C), Inmate Accident Compensation claims (28 CFR 301), and Freedom of Information Act or Privacy Act requests (28 CFR 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.] *

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

a. A procedure will be available by which inmates will be able to have any issue related to their incarceration formally reviewed by high-level Bureau officials.

b. Each request, including appeals, will be responded to within the time frames allowed.

c. A record of Inmate Administrative Remedy Requests and Appeals will be maintained.

d. Bureau policies will be more correctly interpreted and applied by staff.

3. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

PS 1330.11	Administrative Remedy Procedure for Inmates (10/29/93)

b. **Directives Referenced**

PS 1320.05	Claims Under the Federal Tort Claims Act (6/28/00)
PS 4500.04	Trust Fund Manual (12/15/95)
PS 5212.07	Control Unit Programs (02/20/01)
PS 5214.04	HIV, Handling of Inmates Testing Positive (2/4/98)
PS 5264.06	Telephone Regulations for Inmates (12/22/95)
PS 5270.07	Inmate Discipline and Special Housing Units (12/29/87)
PS 5890.13	SENTRY-National On-Line Automated Information System (12/14/99)
28 CFR 301	Inmate Accident Compensation
28 CFR 16.10	Fees (for records requested pursuant to the Freedom of Information Act (FOIA))

c. Rules cited in this Program Statement are contained in 28 CFR 542.10 through 542.19.

4. **STANDARDS REFERENCED**

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4236 and 3-4271

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3C-22, and 3-ALDF-3E-11 *

5. **[RESPONSIBILITY §542.11**

a. The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

(1) Establish procedures for receiving, recording, reviewing, investigating and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;]

See Section 13 for further information on remedy processing, including use of SENTRY.

[(2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;]

The receipt is generated via SENTRY.

[(3) Conduct an investigation into each Request or Appeal;

(4) Respond to and sign all Requests or Appeals filed at their levels. At the regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this §542.11, but may not be further delegated without the written approval of the General Counsel.]

§ 542.11 refers to Section 5 of this Program Statement.

For purposes of this Program Statement, the term "institution" includes Community Corrections Centers (CCCs); the term "Warden" includes Camp Superintendents and Community Corrections Managers (CCMs) for Requests filed by CCC inmates; and the term "inmate" includes a former inmate who is entitled to use this program.

(5) The Warden shall appoint one staff member, ordinarily above the department head level, as the Administrative Remedy Coordinator (Coordinator) and one person to serve as Administrative Remedy Clerk (Clerk). The Regional Director and the National Inmate Appeals Administrator, Office of General Counsel, shall be advised of these appointees and any subsequent changes.

To coordinate the regional office program, each Regional Director shall also appoint an Administrative Remedy Coordinator of at least the Regional Administrator level, ordinarily the Regional Counsel, and an Administrative Remedy Clerk. The National Inmate Appeals Administrator, Office of General Counsel, shall be advised of these appointees and any subsequent changes.

(6) The Administrative Remedy Coordinator shall monitor the program's operation at the Coordinator's location and shall ensure that appropriate staff (e,g., Clerk, unit staff) have the knowledge needed to operate the procedure. The Coordinator is responsible for signing any rejection notices and ensuring the accuracy of SENTRY entries, e.g., abstracts, subject codes, status codes, and dates. The Coordinator also shall serve as the primary point of contact for the Warden or Regional Director in discussions of Administrative Remedies appealed to higher levels.

(7) The Administrative Remedy Clerk shall be responsible for all clerical processing of Administrative Remedies, for accurately maintaining the SENTRY index, and for generating SENTRY inmate notices.

(8) The Unit Manager is responsible for ensuring that inmate notices (receipts, extension notices, and receipt disregard notices from institutions, regions and the Central Office) are printed and delivered daily for inmates in their units and for deleting those notices from SENTRY promptly after delivery to the inmate. CCMs are responsible for this function for inmates under their supervision.

[b. Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.]

6. **RESERVED**

7. **[INFORMAL RESOLUTION §542.13**

a. Informal Resolution. Except as provided in §542.13(b), an inmate shall first present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy. Each warden shall establish procedures to allow for the informal resolution of inmate complaints.]

The Warden is responsible for ensuring that effective informal resolution procedures are in place and that good faith attempts at informal resolution are made in an orderly and timely manner by both inmates and staff. These procedures may not operate to limit inmate access to formal filing of a Request.

[b. Exceptions. Inmates in CCCs are not required to attempt informal resolution. An informal resolution attempt is not required prior to submission to the regional or Central Office as provided for in §542.14(d) of this part. An informal resolution attempt may be waived in individual cases at the Warden or institution Administrative Remedy Coordinator's discretion when the inmate demonstrates an acceptable reason for bypassing informal resolution.]

For example, the Warden may waive informal resolution for Unit Discipline Committee (UDC) appeals, or when informal resolution is deemed inappropriate due to the issue's sensitivity.

Although not mandatory, inmates may attempt informal resolution of DHO decisions. See the Program Statement on Inmate Discipline and Special Housing Units.

8. **[INITIAL FILING. §542.14**

a. Submission. The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the appropriate form (BP-9), is 20 calendar days following the date on which the basis for the Request occurred.]

In accord with the settlement in Washington v. Reno, and for such period of time as this settlement remains in effect, the deadline for completing informal resolution and submitting a formal written Administrative Remedy Request, on the appropriate form (BP-9), for a disputed telephone charge, credit, or telephone service problem for which the inmate requests reimbursement to his/her telephone account, is 120 days from the date of the disputed telephone charge, credit, or telephone service problem.

Administrative Remedy Requests concerning telephone issues that do not involve billing disputes or requests for refunds for telephone service problems (such as Administrative Remedy Requests concerning telephone privileges, telephone lists, or telephone access) are governed by the 20-day filing deadline.

[b. Extension. Where the inmate demonstrates a valid reason for delay, an extension in filing time may be allowed. In general, valid reason for delay means a situation which prevented the inmate from submitting the request within the established time frame. Valid reasons for delay include the following: an

extended period in-transit during which the inmate was separated from documents needed to prepare the Request or Appeal; an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal; an unusually long period taken for informal resolution attempts; indication by an inmate, verified by staff, that a response to the inmate's request for copies of dispositions requested under §542.19 of this part was delayed.]

Ordinarily, the inmate should submit written verification from staff for any claimed reason for delay.

If an inmate requests an Administrative Remedy form but has not attempted informal resolution, staff should counsel the inmate that informal resolution is ordinarily required. If the inmate nevertheless refuses to present a request informally, staff should provide the form for a formal Request. Upon receipt of the inmate's submission, the Coordinator shall accept the Request if, in the Coordinator's discretion, informal resolution was bypassed for valid reasons, or may reject it if there are no valid reasons for bypassing informal resolution.

[c. Form

(1) The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).]

The following forms are appropriate:

♦ Request for Administrative Remedy, Form BP-9, is appropriate for filing at the institution;
♦ Regional Administrative Remedy Appeal, Form BP-10, is appropriate for submitting an appeal to the regional office;
♦ Central Office Administrative Remedy Appeal, Form BP-11, is appropriate for submitting an appeal to the Central Office.

[(2) The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue. For DHO and UDC appeals, each separate incident report number must be appealed on a separate form.]

Placing a single issue or closely related issues on a single form facilitates indexing, and promotes efficient, timely and comprehensive attention to the issues raised.

[(3) The inmate shall complete the form with all requested identifying information and shall state the complaint in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8 1/2" by 11") continuation page. The inmate must provide an additional copy of any continuation page. The inmate must submit one copy of supporting exhibits. Exhibits will not be returned with the response. Because copies of exhibits must be filed for any appeal (see § 542.15 (b) (3)), the inmate is encouraged to retain a copy of all exhibits for his or her personal records.

(4) The inmate shall date and sign the Request and submit it to the institution staff member designated to receive such Requests (ordinarily a correctional counselor). CCC inmates may mail their Requests to the CCM.]

The correctional counselor shall submit the form promptly (ordinarily not later than the next business day) to the Clerk for processing.

[d. <u>Exceptions to Initial Filing at Institution</u>

(1) <u>Sensitive Issues</u>. If the inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the Request became known at the institution, the inmate may submit the Request directly to the appropriate Regional Director. The inmate shall clearly mark "Sensitive" upon the Request and explain, in writing, the reason for not submitting the Request at the institution. If the Regional Administrative Remedy Coordinator agrees that the

Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden. The Warden shall allow a reasonable extension of time for such a resubmission.

(2) DHO Appeals. DHO appeals shall be submitted initially to the Regional Director for the region where the inmate is currently located.]

See the Program Statement on Inmate Discipline and Special Housing Units.

[(3) Control Unit Appeals. Appeals related to Executive Panel Reviews of Control Unit placement shall be submitted directly to the General Counsel.]

See the Program Statement on Control Unit Programs.

[(4) Controlled Housing Status Appeals. Appeals related to the Regional Director's review of controlled housing status placement may be filed directly with the General Counsel.]

See the Program Statement on Procedures for Handling HIV Positive Inmates Who Pose Danger to Others.

9. **[APPEALS § 542.15**

a. Submission. An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP-10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the response. An inmate who is not satisfied with the Regional Director's response may submit an Appeal on the appropriate form (BP-11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response. When the inmate demonstrates a valid reason for delay, these time limits may be extended. Valid reasons for delay include those situations described in §542.14(b) of this part. Appeal to the General Counsel is the final administrative appeal.]

These deadlines specify the date of the Appeal's receipt in the regional office or the Central Office. The deadlines have been made deliberately long to allow sufficient mail time. Inmates should mail their Appeals promptly after receiving a response to ensure timely receipt. Ordinarily, the inmate must submit written verification from institution staff for any reason for delay that cannot be verified through SENTRY.

In many cases, courts require a proper Appeal to the General Counsel before an inmate may pursue the complaint in court.

[b. Form

(1) Appeals to the Regional Director shall be submitted on the form designed for regional Appeals (BP-10) and accompanied by one complete copy or duplicate original of the institution Request and response. Appeals to the General Counsel shall be submitted on the form designed for Central Office Appeals (BP-11) and accompanied by one complete copy or duplicate original of the institution and regional filings and their responses. Appeals shall state specifically the reason for appeal.

(2) An inmate may not raise in an Appeal issues not raised in the lower level filings. An inmate may not combine Appeals of separate lower level responses (different case numbers) into a single Appeal.

(3) An inmate shall complete the appropriate form with all requested identifying information and shall state the reasons for the Appeal in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8 1/2" x 11") continuation page. The inmate shall provide two additional copies of any continuation page and exhibits with the regional Appeal, and three additional copies with an Appeal to the Central Office (the inmate is also to provide copies of exhibits used at the prior level(s) of appeal). The inmate shall date and sign the Appeal and mail it to the appropriate Regional Director, if a Regional Appeal, or to the National Inmate Appeals Administrator, Office of General Counsel, if a Central Office Appeal (see 28 CFR part 503 for addresses of the Central Office and Regional Offices).]

c. Processing. The appropriate regional office to process the Appeal is the regional office for the institution where the inmate is confined at the time of mailing the Appeal, regardless of the institution that responded to the institution filing.

10. **[ASSISTANCE §542.16**

a. An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. However, no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

b. Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.]

* For example, Wardens must ensure that staff (ordinarily unit staff) provide assistance in the preparation or submission of an Administrative Remedy or an Appeal upon being contacted by such inmates that they are experiencing a problem. *

11. **[RESUBMISSION §542.17**

a. Rejections. The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written by an inmate in a manner that is obscene or abusive, or does not meet any other requirement of this part.

b. Notice. When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.]

(1) Sensitive Submissions. Submissions for inmate claims which are too sensitive to be made known at the institution are not to be returned to the inmate. Only a rejection notice will be provided to the inmate. However, other rejected submissions ordinarily will be returned to the inmate with the rejection notice.

(2) Defects. Defects such as failure to sign a submission, failure to submit the required copies of a Request, Appeal, or attachments, or failure to enclose the required single copy of lower level submissions are examples of correctable defects. Ordinarily, five calendar days from the date of the notice to the inmate is reasonable for resubmission at the institution level; at least 10 calendar days at the CCM or regional offices; and 15 calendar days at the Central Office.

(3) Criteria for Rejection. When deciding whether to reject a submission, Coordinators, especially at the institution level, should be flexible, keeping in mind that major purposes of this Program are to solve problems and be responsive to issues inmates raise. Thus, for example, consideration should be given to accepting a Request or Appeal that raises a sensitive or problematic issue, such as medical treatment, sentence computation, staff misconduct, even though that submission may be somewhat untimely.

[c. Appeal of Rejections. When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in §542.14 (d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the

inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.]

12. **[RESPONSE TIME §542.18. If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Director within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office level. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.]**

The date a Request or an Appeal is received in the Administrative Remedy index is entered into SENTRY as the "Date Rcv", and should be the date it is first received and date-stamped in the Administrative Remedy Clerk's office. Notice of extension ordinarily is made via SENTRY notice.

13. REMEDY PROCESSING

a. Receipt. Upon receiving a Request or Appeal, the Administrative Remedy Clerk shall stamp the form with the date received, log it into the SENTRY index as received on that date, and write the "Remedy ID" as assigned by SENTRY on the form. Once a submission is entered into the system, any subsequent submissions or appeals of that case shall be entered into SENTRY using the same Case Number. The "Case Number" is the purely numerical part of the "Remedy ID" which precedes the hyphen and "Submission ID."

* All submissions received by the Clerk, whether accepted or rejected, shall be entered into SENTRY in accordance with the SENTRY Administrative Remedy Technical Reference Manual. *

Sensitive issues, when the inmate claims that his or her safety or well-being would be placed in danger if it became known at the institution that the inmate was pursuing the issue, should be withheld from logging in until answered and/or should be logged into SENTRY with sufficient vagueness as to subject code and abstract to accommodate the inmate's concerns.

A Request should be submitted and logged in at the institution where the inmate is housed at the time the inmate gives the Request to the counselor or other appropriate staff member. If the event(s) occurred at a previous institution, staff at that previous institution shall provide, promptly upon request, any investigation or other assistance needed by the institution answering the Request. If an inmate is transferred after giving the Request to a staff member, but before that Request is logged in or answered, the institution where the Request was first given to a staff member remains responsible for logging and responding to that Request.

b. Investigation and Response Preparation. The Clerk or Coordinator shall assign each filed Request or Appeal for investigation and response preparation. Matters in which specific staff involvement is alleged may not be investigated by either staff alleged to be involved or by staff under their supervision.

Allegations of physical abuse by staff shall be referred to the Office of Internal Affairs (OIA) in accordance with procedures established for such referrals. Where appropriate, e.g., when OIA or another agency is assuming primary responsibility for investigating the allegations, the response to the Request or Appeal may be an interim response and need not be delayed pending the outcome of the other investigation.

Requests or Appeals shall be investigated thoroughly, and all relevant information developed in the investigation shall ordinarily be supported by written documents or notes of the investigator's findings. Notes should be sufficiently detailed to show the name, title, and location of the information provided, the date the information was provided, and a full description of the information provided. Such documents and notes shall be retained with the case file copy. When deemed necessary in the investigator's discretion, the investigator may request a written statement from another staff member regarding matters raised in the Request or Appeal. Requested staff shall provide such statements promptly. For a disciplinary Appeal, a complete copy of the appealed disciplinary actions record shall be maintained with the Appeal file copy.

c. Responses. Responses ordinarily shall be on the form designed for that purpose, and shall state the decision reached and the reasons for the decision. The first sentence or two of a response shall be a brief abstract of the inmate's Request or Appeal, from which the SENTRY abstract should be drawn. This abstract should be complete, but as brief as possible. The remainder of the response should answer completely the Request or Appeal, be accurate and factual, and contain no extraneous information. The response should be written to be released to any inmate and the general public under the Freedom of

Information Act (FOIA) and the Privacy Act. Inmate names shall not be used in responses, and staff and other names may not be used unless absolutely essential.

Program Statements, Operations Memoranda, regulations, and statutes shall be referred to in responses whenever applicable, including section numbers on which the response relies.

d. Response Time Limits. Responses shall be made as required in Section 11 of this Program Statement.

e. Index Completion. When a response is completed, the Clerk shall update SENTRY in accordance with the SENTRY Administrative Remedy Manual and the instructions in Attachment A. Particular attention should be paid to updating the status date, code, and reason, and to making any changes to the subject code and abstract indicated by the Coordinator or by the response drafter. The abstract shall be taken from the response's first paragraph. Abbreviations may be liberally used, as long as they are easily understood, to allow as complete a description of the issue in the 50 characters allotted. For consistency, the Administrative Remedy Coordinator shall approve the closing entry, including the subject codes, status code and reason, and abstract before the closing entry is made by the Clerk.

f. Response Distribution. For an institution response, one copy of the complete Request and response shall be maintained in the Warden's Administrative Remedy File together with all supporting material. Three copies shall be returned to the inmate. An inmate who subsequently appeals to the regional or Central Office shall submit one copy with each appeal.

One copy of a Regional Appeal and response shall be retained at the regional office. One copy shall be sent to the Warden at the original filing location. The remaining two copies shall be returned to the inmate; one to submit in case of subsequent appeal to the Central Office, and one to retain.

One copy of a Central Office Appeal and response will be returned to the inmate. One copy will be retained in the Central Office Administrative Remedy File, one copy will be forwarded to the regional office where the Regional Appeal was answered, and one to the Warden's Administrative Remedy File at the original filing location.

* g. File Maintenance. The Warden's Administrative Remedy File and Administrative Remedy Files at the Regional Offices and Central Office shall be maintained in a manner that assures case files are readily accessible to respond to inquiries from Federal Bureau of Prison staff, inmates and the public. Institutions shall file Regional and Central Office response copies with the inmate's institution submission copy. Regional offices shall file copies of Central Office responses with the inmate's Regional Appeal file. Each location shall maintain copies of supporting material and investigation notes with the case file. *

When a Regional or Central Office Appeal was not preceded by a lower level filing, the institution and regional copies shall be filed at the institution and region having responsibility for the inmate at the time of response.

To provide information and feedback, Wardens and Regional Directors are encouraged to route response file copies from subsequent appeal levels to the Coordinator and the appropriate department head or person who investigated and drafted the response at their respective levels.

14. **[ACCESS TO INDEXES AND RESPONSES §542.19. Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be requested from the location where they are maintained and must be identified by Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).]**

At present, fees are detailed in 28 CFR § 16.10, which specifies a charge of $.10 per page duplicated and no charge for the first 100 pages. Staff shall forward funds received for purchase of index and response copies to the FOIA/Privacy Act Section, Office of General Counsel, Central Office.

Any location may produce its index or that of another location by making the appropriate entries on a SENTRY retrieval transaction, and specifying the "SAN" (sanitized) output format.

15. RECORDS MAINTENANCE AND DISPOSAL

a. Disposal Authority. The authority for Administrative Remedy records disposal is the "job number" NC1-129-83-7 provided by the National Archives.

b. Administrative Remedy Indexes. SENTRY Administrative Remedy indexes shall be maintained in computer accessible form for 20 years, then destroyed. Pre-SENTRY indexes shall be maintained at the site of creation for 20 years, then destroyed.

c. Administrative Remedy Case Files. Administrative Remedy Case Files shall be destroyed three full years after the year in which the cases were completed (i.e., response completed). For cases submitted since implementation of the SENTRY module (July 1990), at the end of each calendar year (beginning at end of

1993), run SENTRY index retrieval transactions to identify the lowest case number for cases answered (status = cl* and status date in the appropriate range) during the calendar year ended three years previously. Cases below that number must be destroyed. Thus, cases answered in 1990 would be destroyed at the end of 1993; cases answered in 1991 would be destroyed at the end of 1994, etc.

To identify the lowest case number for cases answered during a given year, it may be necessary to check indexes with "Date Received" in the year in question as well as those with "Date Received" in the previous year.

Cases maintained under the pre-SENTRY numbering and filing system should be destroyed according to the following schedule:

YEAR OF CASE #	DESTROY AT END OF
94	1998
95	1999
96	2000
97	2001

* *

16. INSTITUTION SUPPLEMENT. Each Warden shall forward a copy of any Institution Supplement developed to implement this Program Statement to the Regional Administrative Remedy Coordinator and to the National Inmate Appeals Administrator in the Central Office.

\s\
Kathleen M. Hawk
Director

U.S. Department of Justice
Federal Bureau of Prisons

OPI: CPD
NUMBER: 5566.05
DATE: July 26, 1996
SUBJECT: Use of Force and Application of Restraints on Inmates

RULES EFFECTIVE DATE: July 30, 1996

1. **[PURPOSE AND SCOPE §552.20. The Bureau of Prisons authorizes staff to use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. When authorized, staff must use only that amount of force necessary to gain control of the inmate, to protect and ensure the safety of inmates, staff and others, to prevent serious property damage and to ensure institution security and good order. Staff are authorized to apply physical restraints necessary to gain control of an inmate who appears to be dangerous because the inmate:**

a. Assaults another individual;
b. Destroys government property;
c. Attempts suicide;
d. Inflicts injury upon self; or
e. Becomes violent or displays signs of imminent violence.

This rule on application of restraints does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates (e.g., the use of handcuffs in moving inmates to and from a cell in detention, escorting an inmate to a Special Housing Unit pending investigation, etc.).]

Another example of a situation in which precautionary restraints may be used without being subject to the provisions of this Program Statement is when they are applied by medical staff for medical purposes in accordance with procedures set forth in the Health Services Manual.

The use of restraints for psychiatric reasons, (e.g., to prevent suicide or the infliction of self-injury), however, is subject to the provisions of this Program Statement.

[Bracketed Bold - Rules]

Regular Type - Implementing Information

This rule's purpose is not to discourage employees from using force when it is necessary, but to provide guidance and instruction on appropriate procedures to follow when confronted with a situation requiring the use of force.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Force will ordinarily be used only when attempts to gain voluntary cooperation have not been successful.

b. When force is used, it will be only that which is necessary to subdue an inmate or preserve or restore institution security and good order.

c. Confrontation avoidance techniques will be used when feasible to avoid calculated use of force situations.

d. When an inmate must be subdued, the use-of-force team technique will be used when feasible.

e. Any inmate restrained to a bed will be checked every 15 minutes.

f. Chemical agents will be used as specified and only after a review of the inmate's medical file.

g. Restraints will be applied only for appropriate purposes and in appropriate ways.

h. Appropriate staff will be trained in confrontation avoidance, use of force team technique, use of chemical agents, and application of restraints.

i. Every use of force incident will be appropriately documented, reported, and reviewed.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5566.04	Use of Force and Application of Restraints on Inmates (06/13/94)

b. Directives Referenced

PS 1380.05	Special Investigative Supervisors Manual (08/01/95)
PS 5214.03	Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others (10/02/87)
PS 5500.07	Correctional Services Manual (01/31/95)
PS 5558.12	Firearms and Badges (06/07/96)

PS 5558.09	Use of Federal 203-A Gas Gun with Zuriel Adapter (Stun Gun) (06/01/92)
PS 6000.04	Health Services Manual (12/15/94)

c. Rules cited in this Program Statement are contained in 28 CFR 552.20-27.

4. STANDARDS REFERENCED

a. American Correctional Association Foundation/Core Standards for Adult Correctional Institutions: FC2-4044, FC2-4046, FC2-4047, FC2-4054, C2-4094.

b. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4183, 3-4183-1, 3-4191, 3-4194, 3-4195, 3-4198.

c. American Correctional Association Foundation/Core Standards for Adult Local Detention Facilities: FC2-5054, FC2-5055, C2-5124, C2-5127, C2-5128.

d. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF: 3A-17, 3A-17-1, 3A-25, 3A-28, 3A-29, 3A-30.

e. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-3A-01.

5. **[TYPES OF FORCE §552.21.]** Since inmates occasionally become violent or display signs of imminent violence, it is sometimes necessary for staff to use force and restraints to prevent them from hurting themselves, staff, or others, and/or from destroying property.

[a. Immediate Use of Force. Staff may immediately use force and/or apply restraints when the behavior described in §552.20 constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order.]

Section 552.20 refers to Section 1 of this Program Statement.

In an immediate use of force situation, staff may respond with or without the presence or direction of a supervisor.

[b. Calculated Use of Force and/or Application of Restraints. This occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range) and where there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force or application of restraints, staff must first determine if the situation can be resolved without resorting to force (see §552.23).]

Section 552.23 refers to Section 7 of this Program Statement.

(1) Circumstances. Based on experience, calculated rather than immediate use of force is feasible in the majority of incidents correctional practitioners encounter. Staff must use common sense and good correctional judgment in each situation to determine when there is time for the calculated use of force.

The safety of persons involved is the major concern. Obviously, immediate (and unplanned) use of force by staff is required if an inmate is trying to self-inflict life-threatening injuries, or is attacking a staff member or another inmate. If those circumstances are not present, staff should ordinarily employ the principles of calculated use of force.

Calculated use of force would be appropriate, for example, if the inmate is in a cell or in an area where the door or grill is (or can be) secured, even where an inmate is verbalizing threats or brandishing a weapon, provided staff believe there is no immediate danger of the inmate hurting self or others. The calculated use of force situation permits the use of other staff (e.g., psychologists, counselors) in attempting to resolve situations in a non-confrontational manner.

(2) Documentation. The confrontation avoidance process will be documented in writing for placement in the inmate's central file, and will be videotaped to include an introduction of all staff participating in the confrontation avoidance group and the actual confrontation avoidance process.

This tape and documentation will be made part of the investigation package for the After Action Review process (see Sections 15 and 16). Additionally, the Warden shall forward each videotape of each incident where force is used to the appropriate Regional Director, within four working days of the incident unless requested earlier by the Regional Director.

The entire interaction shall be documented in writing in the FOI Exempt section of the inmate's central file to reflect each staff member's actions and response while participating in the confrontation avoidance process.

[c. Use of Force Team Technique. If use of force is determined to be necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the Use of Force Team Technique shall be used to control the inmate and to apply soft restraints, to include ambulatory leg restraints. The Use of Force Team Technique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate.]

See the Correctional Services Manual, Chapter 2, Section 206 (Page 11) Use of Force Team Techniques.

[d. Exceptions. Any exception to procedures outlined in this rule is prohibited, except where the facts and circumstances known to the staff member would warrant a person using sound correctional judgment to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates, or others.]

Use of Force incidents shall be documented and reviewed, and if the provisions of this directive are violated, such review shall also determine if a person using sound correctional judgment would reasonably believe the situation required an exceptional response and if the actions taken were reasonable and appropriate. The Warden (or Acting Warden), Associate Warden (over Correctional Services), Captain, and Health Services Administrator or designee shall comprise the After-Action Review Team reviewing the incident on the next work day after the incident (see Section 16).

The Warden shall personally document to the Regional Director within two work days after the inmate has been released from restraints (if applicable), that the review has occurred and that the use of force was either appropriate or inappropriate. This rule applies to all instances involving the use of force, except for the use of firearms (see the Program Statements on Firearms and Badges and the Correctional Services Manual for more specific procedures on Use of Force Team Techniques).

6. **[PRINCIPLES GOVERNING THE USE OF FORCE AND APPLICATION OF RESTRAINTS §552.22**

a. Staff ordinarily shall first attempt to gain the inmate's voluntary cooperation before using force.]

See Section 7 of this Program Statement for confrontation avoidance procedures prior to any calculated use of force.

[b. Force may not be used to punish an inmate.

c. Staff shall use only that amount of force necessary to gain control of the inmate. Situations when an appropriate amount of force may be warranted include, but are not limited to:

(1) Defense or protection of self or others;

(2) Enforcement of institutional regulations; and

(3) The prevention of a crime or apprehension of one who has committed a crime.

d. When immediate use of restraints is indicated, staff may temporarily apply such restraints to an inmate to prevent that inmate from hurting self, staff, or others, and/or to prevent serious property damage. When the temporary application of restraints is determined necessary, and after staff have gained control of the inmate, the Warden or designee is to be notified immediately for a decision on whether the use of restraints should continue.]

Restraints should be used only when other effective means of control have failed or are impractical.

Designee refers to the Acting Warden or Administrative Duty Officer.

[e. Staff may apply restraints (for example, handcuffs) to the inmate who continues to resist after staff achieve physical control of that inmate, and may apply restraints to any inmate who is placed under control by the Use of Force Team Technique. If an inmate in a forcible restraint situation refuses to move to another area on his own, staff may physically move that inmate by lifting and carrying the inmate to the appropriate destination.]

Staff are cautioned not to use the restraints for lifting or carrying an inmate.

[f. Restraints should remain on the inmate until self-control is regained.

g. Except when the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of progressive restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee.

h. Restraint equipment or devices (e.g., handcuffs) may not be used in any of the following ways:

(1) As a method of punishing an inmate;

(2) About an inmate's neck or face, or in any manner which restricts blood circulation or obstructs the inmate's airways;]

Tape shall not be placed around an inmate's mouth, nose, or neck. Staff protective gear provides sufficient insulation from an inmate's spitting or biting; therefore, no effort should be made by use of towels, sheets, blankets, hosiery, or masks or any other device, to prevent an inmate from spitting or biting.

[(3) In a manner that causes unnecessary physical pain or extreme discomfort;]

* Staff in general, and the Lieutenant-in-charge in particular, shall ensure that unnecessary pressure is not placed on an inmate's body in applying restraints (for example, the inmate's chest, back or neck). *

While the proper application of restraints may result in some discomfort, examples of prohibited uses of restraints would include, but are not limited to: hogtying, unnecessarily tight restraints, or improperly applied restraints. All inmates placed in restraints should be closely monitored.

Hard restraints (i.e., steel handcuffs and leg irons) are to be used only after soft restraints prove ineffective, or a past history of ineffectiveness exists.

[(4) To secure an inmate to a fixed object, such as a cell door or cell grill, except as provided in §552.24.]

Section 552.24 refers to Section 10 of this Program Statement.

[i. Medication may not be used as a restraint solely for security purposes.

j. All incidents involving the use of force and the application of restraints (as specified in § 552.27) must be carefully documented.]

Section 552.27 refers to Section 15 of this Program Statement. This documentation includes, whenever practicable, filming the incident and having it reviewed by the After-Action Review Committee of the institution. Reports and videotapes of the incident must be reviewed, audited, and monitored by Regional and Central Office staff.

Use of force incidents must be reported and investigated both to protect staff from unfounded allegations and to eliminate the unwarranted use of force.

7. **[CONFRONTATION AVOIDANCE PROCEDURES §552.23. Prior to any calculated use of force, the ranking custodial official (ordinarily the Captain or shift Lieutenant), a designated mental health professional, and others shall confer and gather pertinent information about the inmate and the immediate situation. Based on their assessment of that information, they shall identify a staff member(s) to attempt to obtain the inmate's voluntary cooperation and, using the knowledge they have gained about the inmate and the incident, determine if use of force is necessary.]**

Ordinarily, in calculated use of force situations, there is time for the Captain or Shift Lieutenant, the designated mental health professional, Chaplain, or anyone else so designated, such as the

inmate's Unit Manager, Case Manager, or Counselor, to confer with each other and to assess the situation.

This discussion may be accomplished by telephone or in person, the purpose being to gather relevant information about the inmate's medical/mental history, any recent incident reports or situations which may be contributing to the inmate's present state of mind (e.g., a pending criminal prosecution or sentencing, the recent death of a loved one, or a divorce).

This assessment could include discussions with staff who are familiar with the inmate's background or present status. This information may provide insight into the cause of the inmate's immediate agitation, and assist in the identification of staff members who may have some rapport with the inmate, or who are more likely to be successful in attempting to reason with the inmate.

8. USE OF FORCE SAFEGUARDS. To prevent injury and exposure to communicable disease in calculated use of force situations, the following shall occur.

a. Staff participating in any calculated use of force, including those participating in the Use of Force Team technique, shall:

(1) Wear appropriate protective gear, and

(2) Receive training on communicable diseases during Annual Refresher Training.

b. Personnel with a skin disease or skin injury shall not be permitted to participate in a calculated use of force action.

c. Whenever possible, in an immediate use of force circumstance, staff should obtain and use appropriate protective equipment (helmets with face shields, jumpsuits, gloves, pads, etc.) prior to intervening:

(1) If an emergency situation results in a use of force, precautions such as clothing help to decrease the chances of transmission.

(2) Any time staff members are going into a cell or area where there is reason to believe that blood or body fluids would be present, protective devices shall be available and shall be used by those staff entering that area.

d. Following any use of force incident, any area where there is spillage of blood, or other body fluids, shall be sanitized immediately upon the authorization of the Special Investigative Supervisor (SIS) or Shift Supervisor, who must first make the determination as to whether there is a need to preserve evidence;

* (1) All blood and body secretions shall be immediately removed in an appropriate waste disposal container and the area washed with an antiseptic solution, pursuant to the Program Statement on Procedures for Handling of HIV Positive Inmates Who Pose a Danger to Others and the Health Services Manual. *

(2) Standard sanitation measures should be implemented following any use of force incident where there has been a spillage of blood or other body fluids by any inmate or staff member involved. Staff or inmates wearing protective gloves should immediately sanitize the cell walls or floors, etc., with an appropriate disinfectant. In addition, any clothing that has been contaminated with these fluids, including the equipment and clothing of the staff involved in the use of force, should be immediately disinfected or destroyed, as appropriate.

9. PROGRESSIVE AND AMBULATORY RESTRAINTS. For the purposes of this Program Statement, progressive restraints are defined as the process of using the least restrictive restraint method to control the inmate as deemed necessary for the situation. Based on the inmate's behavior, more restrictive and secure restraints may be used. Ambulatory restraints are defined as approved soft and hard restraint equipment which allow the inmate to eat, drink, and take care of basic human needs without staff intervention.

When it is necessary to restrain an inmate for longer than eight hours, the Regional Director or Regional Duty Officer is to be notified telephonically by the Warden or designee or institution Administrative Duty Officer.

Ambulatory restraints should initially be used to restrain an inmate if deemed appropriate for the situation. If the situation dictates the need for more restrictive or secure restraints, based on the inmate's behavior, staff should make the determination as to what form of restraint method should be used; i.e., hard restraints without waist chain or waist belt, hard restraints with waist chain or waist belt, four-point soft restraints with hard restraints used for securing the inmate to the bed, and finally, four-point hard restraints.

In situations involving highly assaultive and aggressive inmates, progressive restraints may be used as an intermediate measure in placing the inmate into, or removing an inmate from, four-point restraints.

10. [USE OF FOUR-POINT RESTRAINTS §552.24. When the Warden determines that four-point restraints are the only means available to obtain and maintain control over an inmate, the following procedures must be followed:

a. Soft restraints (e.g., vinyl) must be used to restrain an inmate, unless:

(1) Such restraints previously have proven ineffective with respect to that inmate, or

(2) Such restraints are proven ineffective during the initial application procedure.]

This may not be delegated below the Warden's level.

[b. Inmates will be dressed in clothing appropriate to the temperature.

c. Beds will be covered with a mattress, and a blanket/sheet will be provided to the inmate.]

Under no circumstance shall an inmate be allowed to remain naked or without bed covering placed over the inmate's body unless determined necessary by qualified health personnel.

[d. Staff shall check the inmate at least every 15 minutes, both to ensure that the restraints are not hampering circulation and for the general welfare of the inmate. When an inmate is restrained to a bed, staff shall periodically rotate the inmate's position to avoid soreness or stiffness.]

Qualified health personnel shall evaluate the inmate to be restrained to a bed to determine the position the inmate should be placed in. When qualified health personnel are not immediately available, the inmate shall be placed in a "face-up" position until evaluated by qualified health personnel. Inmates shall be checked every 15 minutes and this information shall be documented.

[e. A review of the inmate's placement in four-point restraints shall be made by a Lieutenant every two hours to determine if the use of restraints has had the required calming effect and so that the inmate may be released from these restraints (completely or to lesser restraints) as soon as possible. At every two-hour review, the inmate will be afforded the opportunity to use the toilet, unless the inmate is continuing to actively resist or becomes violent while being released from the restraints for this purpose.]

Ordinarily, the Shift Lieutenant makes the decision to release an inmate or apply lesser restraints. It shall never be delegated below the Lieutenant's level.

[f. When the inmate is placed in four-point restraints, qualified health personnel shall initially assess the inmate to ensure appropriate breathing and response (physical or verbal). Staff shall also ensure that the restraints have not restricted

or impaired the inmate's circulation. When inmates are so restrained, qualified health personnel ordinarily are to visit the inmate at least twice during each eight-hour shift. Use of four-point restraints beyond eight hours requires the supervision of qualified health personnel. Mental health and qualified health personnel may be asked for advice regarding the appropriate time for removal of the restraints.]

In institutions without 24-hour medical coverage, the Shift Lieutenant shall ordinarily conduct the checks, if medical

coverage is not available. This does not apply to the use of four-point restraints beyond eight hours, which requires medical supervision. If the Shift Lieutenant observes problems, health services staff shall be contacted for further instructions.

[g. When it is necessary to restrain an inmate for longer than eight hours, the Warden (or designee) or institution administrative duty officer shall notify the Regional Director or Regional Duty Officer by telephone.]

The notification is to be repeated for each consecutive eight hour period the restraints remain in place. Documentation as to the reasons for each placement in four-point restraints, regardless of the duration, shall be provided to the Regional Director or Regional Duty Officer on the following work day.

11. **[USE OF CHEMICAL AGENTS OR NON-LETHAL WEAPONS §552.25. The Warden may authorize the use of chemical agents or non-lethal weapons only when the situation is such that the inmate:**

a. Is armed and/or barricaded; or,

b. Cannot be approached without danger to self or others; and,

c. It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.]

Qualified health personnel shall be consulted prior to staff using chemical agents, pepper mace, or non-lethal weapons, unless the circumstances are such that immediate use is necessary. Whenever possible, the inmate's medical file should first be reviewed to determine whether the inmate has any diseases or condition which would be dangerously affected if the chemical agent, pepper mace, or non-lethal weapon was used. This includes, but is not limited to: asthma, emphysema, bronchitis, tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy, or congestive heart failure.

Reference the Correctional Services Manual, Chapter 2, Section 207 (Page 13).

13. **[MEDICAL ATTENTION IN USE OF FORCE AND APPLICATION OF RESTRAINTS INCIDENTS §552.26**

a. In immediate use of force situations, staff shall seek the assistance of mental health or qualified health personnel upon gaining physical control of the inmate. When possible, staff shall seek such assistance at the onset of the violent behavior. In calculated use of force situations, the use of force team leader shall seek the guidance of qualified health personnel

(based on a review of the inmate's medical record) to identify physical or mental problems. When mental health staff or qualified health personnel determine that an inmate requires continuing care, and particularly when the inmate to be restrained is pregnant, the deciding staff shall assume responsibility for the inmate's care, to include possible admission to the institution hospital, or, in the case of a pregnant inmate, restraining her in other than face down four-point restraints.

b. After any use of force or forcible application of restraints, the inmate shall be examined by qualified health personnel, and any injuries noted, immediately treated.]

If any staff involved in a use of force reports an injury, qualified health personnel should provide immediate examination and initial emergency treatment.

14. USE OF FORCE IN SPECIAL CIRCUMSTANCES. In certain extenuating circumstances, and after confrontation avoidance has failed or has proven to be impractical, staff may be forced to make a decision, such as whether to use force on a pregnant inmate or an aggressive inmate with open cuts, sores, or lesions. Special cases such as mentally ill, handicapped, or pregnant inmates, after consultation with the Clinical Director, must be carefully assessed to determine whether the situation is grave enough to require the use of physical force.

a. Pregnant Inmates. When pregnant inmates have to be restrained, necessary precautions to ensure the fetus is not harmed shall be taken. Qualified health personnel shall prescribe the necessary precautions, including decisions about the manner in which the inmate is to be restrained, whether she needs a qualified health personnel member present during the application of restraints, or whether the inmate should be restrained at the institutional hospital or a local medical facility.

b. Inmates with Wounds or Cuts. Aggressive inmates with open cuts or wounds who have attempted to harm themselves or others should be carefully approached, with staff wearing prescribed necessary protective gear. A full body shield should also be used in these instances to protect staff, if force is deemed necessary. Aggressive inmates, after being placed in restraints, should be placed in administrative detention and separated from all other inmates. Inmates of this status ordinarily shall remain in administrative detention until cleared to return to the general population by the Captain, Chief Psychologist, and the Clinical Director, and after the Warden's approval.

15. **[DOCUMENTATION OF USE OF FORCE AND APPLICATION OF RESTRAINTS INCIDENTS §552.27. Staff shall appropriately document all incidents involving the use of force, chemical agents, or non-lethal weapons. Staff shall also document, in writing, the**

use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.]

a. Report of Incident. A Use of Force Report (EMS-583, Attachment A) is to be prepared on the use of force, chemical agents, pepper mace, application of progressive restraints, or non-lethal weapons. This reporting requirement includes the application of progressive restraints to an inmate when the inmate is compliant with the placement into restraints. The report is to establish the identity of inmates, staff, and others involved, and is to describe the details of the incident. The report (to include mental health/medical reports) must be submitted to the Warden or designee by no later than the end of that tour of duty. A copy of the report is to be placed in the inmate's central file. Copies are also to be sent within two work days to:

(1) Assistant Director, Correctional Programs Division;
(2) Assistant Director, Health Services Division;
(3) Central Office Correctional Services Administrator;
(4) Regional Director; and,
(5) Regional Correctional Services Administrator.

A report is not necessary for the general use of restraints (for example, the routine movement or transfer of inmates).

b. Four-Point Restraints Report. Fifteen minute checks of inmates placed in four-point restraints shall be recorded in a bound ledger and recorded on the Special Housing Unit Report form (BP S292). Documentation of 15-minute checks shall continue until the four-point restraint placement is terminated.

During reviews of inmates' status while in four-point restraints (i.e., every two-hour review where the inmate is allowed to use the toilet facilities and his or her behavior is evaluated), each negative response by the inmate shall be documented in the bound ledger.

c. Videotape of Use of Force Incidents. Staff shall immediately obtain and record with a video camera any use of force incident, unless it is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate, staff, or others, or would result in a major disturbance or serious property damage. This video recording shall also ordinarily include any medical examination following the application of restraints, use of chemical agents, use of pepper mace, and/or use of non-lethal weapons.

Calculated use of force shall be videotaped following the sequential guidelines presented in the Correctional Services Manual. The original videotape must be maintained and secured as evidence in the SIS Office. A copy of every calculated use of force videotape, after review by the Warden (within four work

days of the incident), unless requested by the Regional Director sooner, shall be immediately provided to the Regional Director for review. The Regional Director shall forward videotapes of questionable or inappropriate cases immediately to the Assistant Director, Correctional Programs Division, Central Office, for review.

When an immediate threat to the safety of the inmate, staff or others, or to property, requires an immediate response, the staff members have an obligation to obtain a camera and begin recording the event as soon as it is feasible. Once control of the situation has been obtained, staff should record information about injuries, a description of the circumstances that gave rise to the need for immediate use of force, and the identification of the inmates, staff, and others involved.

d. Documentation Maintenance. The Captain shall maintain all documentation, including the videotape and the original EMS 583, for a minimum of two and one-half years. A separate file shall be established on each use of force incident.

16. AFTER-ACTION REVIEW OF USE OF FORCE AND APPLICATION OF RESTRAINTS INCIDENTS. Following any incident involving the use of force, whether calculated or immediate, and the application of restraints, if applicable, the Warden, Associate Warden (responsible for Correctional Services), Captain, and the Health Services Administrator shall meet and review the incident. This review is to assess the reasonableness of the actions taken (e.g., if the force used was appropriate and in proportion to the inmate's actions).

They should gather relevant information, determine if policy was followed, and then complete a standard After-Action Report (EMS 586, Attachment B), recording the nature of their review and findings. The EMS 586 should be submitted within two working days after the inmate is removed from restraints.

a. Videotape Review. The After-Action Review Team should also review the video tape for the following:

(1) Professionalism of the Lieutenant during the Forced Cell Team technique should be evident. The Lieutenant must be in the proper Correctional Services uniform. Lieutenants should not be dressed in riot gear or wearing chains or jewelry or other ornamentation that would detract from a professional appearance. The actions of staff during a use of force situation shall be narrated by the Lieutenant supervising the situation. In addition, the Lieutenant should face the video camera and speak normally;

(2) Use of Force Team members shall wear appropriate protective gear. This ordinarily includes:

- helmet with face shield,
- coveralls,
- flack vest,
- arm and knee pads, and
- lineman gloves.

Occasionally, a plastic shield may be used to prevent staff or inmate injury. No other piece of equipment or device is authorized. Equipment not authorized includes: towels, tape, surgical mask, hosiery, etc. Each Use of Force Team member should introduce himself/herself on the video and describe his or her responsibilities;

(3) Use of Force Team members, as they enter the cell or area, must use only the amount of force necessary to subdue the inmate. If the inmate is already restrained, voluntarily submits to the placement of restraints, discontinues his or her violent behavior, etc., it may be necessary for the Use of Force Team to minimize the amount of force used.

The Lieutenant in charge of the Use of Force Team shall ensure only the force necessary is used, based on the nature of the situation. The Lieutenant must clearly monitor the actions of the inmate and the team members. The Lieutenant should not be actively involved in subduing the inmate, unless it is determined necessary to prevent staff or inmate injury;

(4) The application of restraints by team members must be reviewed to ensure no more pressure than necessary is applied to the inmate's thorax (chest and back), throat, head and extremities;

(5) The amount of time it takes for team members to restrain the inmate should be reviewed. If an excessive amount of time elapses; i.e., more than five minutes, and the inmate is not struggling with staff, it may be that team members are not adequately trained;

(6) Team members should not remove protective gear while inside the cell or area. Protective gear must remain on team members during the entire process;

(7) The videotape must run continuously during the entire process. If there are breaks or apparent missing sequences in the video, reviewers must question why and document the propriety of the explanation;

(8) A member of the health services staff must promptly examine the inmate after the move and the findings must be noted by that person on the videotape;

(9) When a Stun Gun, chemical agents, or pepper mace is used, the method of use must be determined. Review Team members should ensure that use of these devices was in accordance with existing policy; i.e., the Program Statements on the Use of Federal 203-A Gas Gun with Zuriel Adapter (Stun Gun) and the Correctional Services Manual;

(10) Prior to the team entering the cell, the inmate was given the opportunity to voluntarily submit to the placement of restraints. If he or she submits, then team action is ordinarily unnecessary; and,

(11) Inappropriate conversations (derogatory, demeaning, taunting, etc.) occurring between team members and the inmate, or between team members and individuals outside of the cell or area.

b. Report Completion. When this review is completed, an After-Action Review Report (EMS-586, Attachment B) shall be completed, as soon as possible, not later than two working days after the inmate has been removed from restraints. Accordingly, the length of time an inmate is kept in restraints is appropriate. This will ensure that staff having relevant information will be available and that any necessary medical follow-up can be immediately provided to ascertain the nature of any injuries involved.

The Warden or designee shall then personally attest by his or her signature that the review has taken place and that the use of force was either appropriate or inappropriate.

c. Further Investigation. The reviewers should also decide if the matter requires further investigation, and whether the incident should be referred to the Office of Internal Affairs, the Office of the Inspector General, or the FBI. If deemed appropriate, the Warden's rationale for such an assessment shall be included. Copies of this report shall be forwarded to the Assistant Director, Correctional Programs and the Regional Director.

d. Report on Restraints Use. A report is not necessary for the general use of restraints. For example, a report is not required in the routine movement or transfer of inmates.

17. TRAINING IN THE CONFRONTATION AVOIDANCE/USE OF FORCE TECHNIQUE. In order to control any potential situation involving aggressive inmates, all staff must be made aware of their responsibilities through ongoing training. At a minimum, training must cover:

- communication techniques,
- cultural diversity,
- dealing with the mentally ill,
- confrontation avoidance procedures,
- the application of restraints (progressive and hard), and
- reporting procedures.

a. Training Topics. A sufficient number of institution staff should be trained annually in both confrontation avoidance procedures and forced cell move techniques. Each staff member participating in a calculated forced cell move must have documented proof of annual training in these areas. Training should also include specific information pertaining to special situations.

b. Restraints Training. Staff should be thoroughly trained in the use of soft and hard restraints. Soft restraints can be cumbersome to apply on an inmate, if proper training is not provided. Soft restraints such as vinyl or leather restraints should be used prior to applying hard restraints. For pregnant inmates, the approved vinyl or leather restraint belt should be used instead of a metal waist chain, whenever possible, to prevent injury to the inmate or fetus.

\s\
Kathleen M. Hawk
Director

P.S. 5566.05
July 26, 1996
Attachment A, Page 1

REPORT OF INCIDENT (EMS FORM 583 - MARCH 1996)

SECTION 1: GENERAL INFORMATION

INSTITUTION:	REGION:	REPORT DATE:	SUBMITTED BY:

DATE/TIME OF INCIDENT:

FBI NOTIFIED: ( ) YES ( ) NO
USMS NOTIFIED: ( ) YES ( ) NO

PROHIBITED ACT CODE(S):

INCIDENT REPORT NUMBER(S):

TYPE OF INCIDENT:

( ) ESCAPE OR ( ) ATTEMPTED ESCAPE (COMPLETE SECTIONS 1, 2, & 6)
( ) ASSAULT, INMATE ON INMATE (COMPLETE SECTIONS 1 & 6)
( ) ASSAULT, INMATE ON STAFF (COMPLETE SECTIONS 1 & 6)
( ) INMATE DEATH (COMPLETE SECTIONS 1, 3, & 6)
( ) FIGHT (COMPLETE SECTIONS 1 & 6)
( ) CELL FIRE (COMPLETE SECTIONS 1 & 6)
( ) SELF MUTILATION (COMPLETE SECTIONS 1 & 6)
( ) SUICIDE ATTEMPT (COMPLETE SECTIONS 1 & 6)
( ) INTRODUCTION OF CONTRABAND (COMPLETE SECTIONS 1 & 6)
( ) DISRUPTIVE BEHAVIOR (COMPLETE SECTIONS 1 & 6)
( ) WEAPONS DISCHARGE (COMPLETE SECTIONS 1, 4, & 6)
( ) USE OF FORCE (COMPLETE SECTIONS 1, 5 & 6)
( ) MISCELLANEOUS (SPECIFY) (COMPLETE SECTIONS 1 & 6)

_____

WAS WEAPON USED? ( ) YES ( ) NO	IF WEAPON WAS USED, WHAT TYPE?

INMATE(S) INVOLVED	REG. NO.	SEX M/F	RACE	CITZ	CIMS CATEGORY	MGMT INT GROUP
1.						
2.						
3.						
4.						
5.						

RACIAL/ETHNIC/SECURITY THREAT GROUP CONFLICT:

INMATE NAME	REG. NO.	GROUP	SUSPECT/CONFIRMED
1.			
2.			
3.			

STAFF INJURIES: ( )YES ( )NO

INMATE INJURIES: ( )YES ( )NO

IF MEDICAL TREATMENT REQUIRED BY EITHER STAFF OR INMATES, LIST NAMES, INJURIES, TREATMENT AND NAME OF MEDICAL STAFF PRESENT PRIOR TO OR DURING INCIDENT:

SECTION 2: ESCAPE OR ATTEMPTED ESCAPE

ESCAPE OR ATTEMPTED ESCAPE OCCURRED FROM:

__ INSIDE PERIMETER __ OUTSIDE PERIMETER __ ESCORTED TRIP
__ FURLOUGH (SOCIAL/LEGAL/MEDICAL)
__ FURLOUGH (INSTITUTION TO INSTITUTION
__ FURLOUGH (INSTITUTION TO COMMUNITY CONFINEMENT CENTER)
__ OTHER (SPECIFY):_____

SECTION 3: INMATE DEATH

INMATE DEATH (LOCATION):

CAUSE OF DEATH:

INVESTIGATIVE STEPS BEING TAKEN, IF NECESSARY:

CITIZENSHIP: __ USA __ OTHER. IF ALIEN, HAVE CONSULAR AND IMMIGRATION OFFICE BEEN NOTIFIED?: ( ) YES ( ) NO

SURVIVOR / DESIGNEE ( ) HAS ( ) HAS NOT BEEN NOTIFIED.

NAME AND ADDRESS OF SURVIVOR OR DESIGNEE:

MEDICAL COMMENTS:

SECTION 4: WEAPONS DISCHARGE

NAME OF EMPLOYEE:

POST ASSIGNMENT:

TYPE OF WEAPON: | DISCHARGE WAS:
NUMBER OF ROUNDS FIRED: | ( ) ACCIDENTAL
( ) LINE OF DUTY

REGIONAL OFFICE ( ) WAS ( ) WAS NOT NOTIFIED.

```
! CAPTAIN'S ANALYSIS AND DAMAGE REPORT:
!
!
!-------------------------------------------------------------------------
! DAMAGE ESTIMATE:  $
!-------------------------------------------------------------------------
! TRAINING NEEDS INDICATED:  ( ) YES  ( ) NO.  IF YES, EXPLAIN:
!
!
!_________________________________________________________________________
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SECTION 5: USE OF FORCE/RESTRAINTS/CHEMICAL AGENTS/NON-LETHAL WEAPONS

```
_________________________________________________________________________
! USE OF FORCE CLASSIFICATION:
!    ( ) EMERGENCY, UNPLANNED USE OF FORCE
!    ( ) CALCULATED, PLANNED USE OF FORCE
!_________________________________________________________________________
! RESTRAINT EQUIPMENT USED:          ! RESTRAINT METHOD USED:
!    ( ) NONE                       !    ( ) AMBULATORY
!    ( ) HARD                       !    ( ) 2-POINT
!    ( ) SOFT                       !    ( ) 4-POINT
!_____________________________________!_____________________________________
! DATE/TIME PLACED IN RESTRAINTS:    ! USE OF RESTRAINTS AUTHORIZED BY:
!
!                                    !
!_____________________________________!_____________________________________
! OTHER EQUIPMENT USED:                    !LIST OF OTHER STAFF SUBMITTING
!    ( ) CHEMICAL AGENTS (TYPE, QUANTITY)  !MEMOS EXCLUDING PRINCIPLE STAFF:
!    ( ) STUN GUN (RANGE, # OF ROUNDS)     !
!    ( ) BATON                             !
!    ( ) SHIELD                            !
!    ( ) MAG-LIGHT                         !
!    ( ) OTHER: (DESCRIBE)                 !
!_____________________________________!_____________________________________
! REASON FOR USE OF FORCE:
!    ( ) CONFRONTATION AVOIDANCE PROVED INEFFECTIVE
!    ( ) BECAME VIOLENT AND/OR ASSAULTIVE
!    ( ) DISPLAYED SIGNS OF IMMINENT VIOLENCE
!    ( ) DESTROYING PROPERTY
!    ( ) ATTEMPTED SUICIDE
!    ( ) INFLICTED WOUNDS ON SELF/OTHERS
!    ( ) ENFORCEMENT OF INSTITUTION REGULATIONS
!    ( ) PREVENTION OF A CRIME
!    ( ) APPREHENSION OF ONE WHO HAS COMMITTED A CRIME
!    ( ) OTHER:  (SPECIFY)
!_________________________________________________________________________
! LIST FULL NAME OF ALL PRINCIPLE STAFF INVOLVED IN INCIDENT:
!
! CONFRONTATION AVOIDANCE (LIST NAME AND TITLE):
! 1.                                  4.
! 2.                                  5.
! 3.                                  6.
```

```
! FORCE CELL TEAM MEMBERS, IF USED (LIST NAME AND TITLE):
! 1.                                    5.
! 2.                                    6.
! 3.                                    7.
! 4.
_____________________________________________________________________________
!WAS THE INCIDENT VIDEOTAPED SEQUENTIALLY AS OUTLINED IN THE CORRECTIONAL
!SERVICES MANUAL?  IF NO, EXPLAIN WHY NOT, AND INDICATE AT WHAT POINT
!TAPING DID BEGIN.
!
!    ( ) YES
!    ( ) NO
!    INDICATE TAPE ECN (EVIDENCE CONTROL NUMBER):
!_____________________________________________________________________________
```

SECTION 6: DESCRIPTION OF INCIDENT

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==================================
-----------------------------------------------------------------------------
! DESCRIPTION OF INCIDENT (IF USE OF FORCE, INCLUDE DETAILS, SUCH AS NAME
! OF THE SUPERVISOR APPLYING THE CHEMICAL AGENT AND/OR RESTRAINTS, REASONS
! FOR USE OF HARD RESTRAINTS INSTEAD OF SOFT RESTRAINTS, ETC.
!
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!
!
!_____________________________________________________________________________
ROUTING:  REGION CEO; REGION CORR SVC; BOP CEO;
          BOP CORR SVC; BOP MED SVC
   FILE:  CAPTAIN; INMATE CENTRAL FILE
```

AFTER-ACTION REVIEW REPORT
USE OF FORCE/RESTRAINTS/CHEMICAL AGENTS/NON-LETHAL WEAPONS
(EMS FORM 586)

INSTITUTION:	REGION:	REPORT DATE:	SUBMITTED BY:

DATE/TIME OF INCIDENT:	INCIDENT LOCATION (EXAMPLE: SHU):
PROHIBITED ACT CODE(S):	INCIDENT REPORT NUMBER(S):

USE OF FORCE CLASSIFICATION:
( ) EMERGENCY, UNPLANNED USE OF FORCE
( ) CALCULATED, PLANNED USE OF FORCE

USE OF RESTRAINTS CLASSIFICATION:
( ) NONE USED
( ) BRIEF, EMERGENCY USE WHILE UNDER SUPERVISION/ESCORT
( ) ONGOING USE

DATE/TIME PLACED IN RESTRAINTS:	DATE/TIME RELEASED FROM RESTRAINTS:

DATE/TIMES REGIONAL DIRECTOR NOTIFIED OF EACH ADDITIONAL 8 HOUR TIME PERIOD:

INMATES INVOLVED	REG. NO.	SEX M/F	RACE *	CITIZEN-SHIP *	**CIMS CATEGORY
1.)					
2.)					
3.)					

*CODES: RACE = W/WHITE, B/BLACK, A/ASIAN, I/AMERICAN INDIAN
CITZ = SENTRY CITIZENSHIP, SUCH AS: CU/CUBA, CO/COLOMBIA, MX/MEXICO, JM/JAMAICA, HA/HAITI, ETC.
**CIMS CATEGORIES: SCA, STATE, SEPARATION, DISR GROUP, OTHER (SPECIFY)

NAMES OF PARTICIPANTS IN AFTER-ACTION REVIEW: (MUST INCLUDE THE WARDEN OR ACTING WARDEN, ASSOCIATE WARDEN FOR CORRECTIONAL SERVICES, CAPTAIN. AND A MEMBER OF THE MEDICAL STAFF)

INDICATE THE ITEMS REVIEWED:
( ) CONFRONTATION AVOIDANCE MEASURES
( ) VIDEO TAPE OF THE INCIDENT
( ) STAFF MEMOS
( ) MEDICAL REPORTS OF EXAMINATION AND INJURIES
( ) SUPERVISOR'S REPORT
( ) TYPE OF RESTRAINTS USED
( ) METHOD OF RESTRAINT
( ) OTHER: (SPECIFY)

THE AFTER-ACTION REVIEW HAS DETERMINED:

( ) THE ACTIONS TAKEN WITH RESPECT TO THE USE OF FORCE AND/OR RESTRAINTS WERE REASONABLE AND APPROPRIATE AND HAVE BEEN REVIEWED WITH STAFF INVOLVED.
( ) THE MATTER NEEDS FURTHER INVESTIGATION AND HAS BEEN REFERRED TO THE OFFICE OF INTERNAL AFFAIRS.

_____ INDICATE

WHERE VIDEOTAPES AND ORIGINAL DOCUMENTS ARE STORED:
( ) SIS OFFICE
(INDICATE EVIDENCE CONTROL NUMBER FOR TAPES)
( ) OTHER LOCATION (DESCRIBE AND WHY)

_____

DESCRIBE ANY EXTRAORDINARY ACTIONS WHICH HAD TO BE TAKEN, AS A LAST RESORT, TO PREVENT SERIOUS PHYSICAL INJURY OR SERIOUS PROPERTY DAMAGE, AS DESCRIBED IN SECTION 4(D) OF PROGRAM STATEMENT 5566.4.

_____

RECOMMENDATIONS/RESULTS OF AFTER-ACTION REVIEW.

_____

ROUTING: REGION CEO; REGION CORR SVC; BOP CORR SVC; BOP MED SVC
FILE: CAPTAIN; INMATE CENTRAL FILE; SIS

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: OGC
NUMBER: 3420.09
DATE: 2/5/99
SUBJECT: Standards of Employee Conduct

1. PURPOSE AND SCOPE. To provide policies and procedures, herein referred to as the "Standards of Conduct," to complement those issued by the Office of Government Ethics on:

- employee conduct and responsibility,
- ethics in matters involving conflicts of interest,
- post-employment restrictions,
- procurement integrity issues,
- attorney ethics, and
- outside employment.

These standards apply to all employees of the Bureau of Prisons (Bureau), including employees of the Public Health Service and the National Institute of Corrections, and to any person detailed to any of those agencies under the Intergovernmental Personnel Act. Such employees are subject to certain standards and prohibitions -- some statutory, some regulatory, and some a matter of good ethical and moral practice that is essential to the efficiency of the organization. Contractors and volunteers working in Bureau facilities also are expected to conduct themselves by these standards. This policy will not override the Master Agreement.

While issuances from the Office of Government Ethics and the Department of Justice address the basic standards and prohibitions applicable to Bureau employees, this Program Statement more specifically addresses situations that are especially applicable to Bureau employment. It does not and cannot, however, attempt to detail every incident which could violate the Standards of Conduct.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Employees will conduct themselves in a manner that creates and maintains respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.

b. Employees will avoid situations which involve conflicts of interest with their employment.

c. Employees will comply with restrictions on employment outside the Bureau and after employment with the Bureau.

d. Employees will conform with procurement integrity regulations.

e. Employees will uphold the ethical rules governing their professions.

f. Employees will immediately report any violation, or apparent violation, of standards of conduct to their Chief Executive Officer (CEO) or another appropriate authority.

g. Employees who fail to conduct themselves in accordance with these standards will be subject to appropriate sanctions.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 3420.08	Standards of Employee Conduct and Responsibility (3/7/96)

b. Directives Referenced

PS 3735.04	Drug Free Workplace Program (6/30/97)
PS 5510.09	Searching, Detaining, or Arresting Persons Other Than Inmates (3/6/98)
PS 5840.03	Staff Correspondence About Inmates (3/4/93)

18 U.S.C. § 201	Bribery; Illegal Gratuities
18 U.S.C. § 203	Representational Issues
18 U.S.C. § 205	Representational Issues
18 U.S.C. § 207	Post-Employment Statute
18 U.S.C. § 208	Conflict of Interest Statute
18 U.S.C. § 2241-45	Sexual Abuse
41 U.S.C. § 423	Procurement Integrity Act

5 CFR § 2635	Standards of Ethical Conduct for Employees of the Executive Branch (8/7/92)
5 CFR § 2637	Post-Employment (12/30/93)
5 CFR § 2641	Post-Employment (1/28/92)
28 CFR § 50.15	Representation of Federal Employees Sued, Subpoenaed or Charged in Their Individual Capacities (4/9/90)
28 CFR § 500.1	Contraband
Executive Orders 12674 and 12731	Prescribing Standards of Ethical Conduct
DOJ Order 1735.1	Procedures for Complying with Uniform Standards and Other Ethics Requirements (9/17/92)
ABA Model Rule 1.11	Successive Government and Private Employment Rules for Lawyers (2/7/87)
ABA Model Rule 1.6	Confidentiality of Information (8/2/83)

4. STANDARDS REFERENCED

a. American Correctional Association, 3rd Edition, Standards for Adult Correctional Institutions: 3-4048, 3-4067.

b. American Correctional Association, 3rd Edition, Standards for Adult Local Detention Facilities: 3-ALDF-1C-23.

c. American Correctional Association, 2nd Edition, Standards for Administration of Correctional Agencies: 2-CO-1C-04, 2-CO-1C-20, 2-CO-1C-24.

d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-1A-23.

5. GENERAL REFERENCES. The Standards of Ethical Conduct for Employees of the Executive Branch, found at 5 CFR Part 2635, sets forth ethical standards, statutory provisions, and other matters governing the conduct of federal employees. Various resolutions, messages, memoranda, and Executive Orders are included, as are requirements for informing employees and the authority for regulating their conduct.

6. DEFINITIONS. For the purposes of this Program Statement, the following definitions apply:

a. Chief Executive Officer (CEO). The Warden at institutions, the Director at Staff Training Centers, the Community Corrections Manager at community corrections offices, the Regional Director at the regional offices, and the Assistant Director of each division at the Central Office.

b. Conflict of Interest. A conflict between public interests and the private interests of the individual involved.

c. Criminal Matters. Involvement with a federal, state or local law enforcement agency, or with inmates as defined by this section, or with state and local inmates.

d. During the Conduct of a Procurement. The time between the beginning and end of a procurement. The conduct of a procurement begins on the earliest date an authorized official directs that a specific action be taken to initiate a procurement. These actions include:

- Drafting a specification or a statement of work;
- Reviewing and approving a specification;
- Computing requirements or a purchase request;
- Preparing or issuing a solicitation;
- Evaluating bids or proposals;
- Selecting sources;
- Conducting negotiations; or
- Reviewing and approving the award of a contract or contract modification.

The conduct of a procurement ends with the award or modification of a contract or the cancellation of the procurement.

e. Employment. Any form of employment or business relationship, compensated or uncompensated, involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to current federal employment. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

f. Inmate. Any person found guilty of committing a felony or misdemeanor and who has been placed in Bureau custody or under supervision of a federal court. This includes individuals participating in home-monitoring programs, parole, probation, halfway house placement, pretrial and non-sentenced inmates,

detainees, and inmates with state sentences under federal supervision.

g. Former Inmate. Any inmate for whom less than one year has elapsed since their release from Bureau custody or supervision of a federal court.

h. Official Investigation. Includes, but is not limited to, investigations conducted by the Federal Bureau of Investigation, Office of the Inspector General, Office of Professional Responsibility, Office of Internal Affairs, Office of Personnel Management, Special Investigative Agent, Special Investigative Supervisor, Equal Employment Opportunity Investigator or any other employee the CEO authorizes or orders to conduct an investigation.

i. Negotiations. Discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person.

j. Participate. To take action as an employee through decision, approval, disapproval, recommendation, rendering of advice, or investigation.

k. Particular Matter. Matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or arrest.

l. Procurement Official. Any officer or employee of an agency who has participated personally and substantially in any of the activities involved "during the conduct of a procurement." This definition includes acting as a procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000.

This definition also includes serving as a program manager, deputy program manager, or administrative contracting officer, and extends to officials who personally make the decision to award a contract, task order, or delivery order, establish overhead or other rates, approve the issuance of contract

payments, or decide to pay or settle a claim, in excess of $10,000,000. (See definition "during the conduct of a procurement.")

7. PUBLICATION AND INTERPRETATION

a. The CEO of each facility has the primary responsibility for ensuring that the Standards of Employee Conduct are provided and made known to each employee, contractor and volunteer.

b. Only actions made in reliance on advice received from the Ethics Officer, or his or her designees, may be protected from disciplinary action. When an employee's conduct violates a criminal statute, however, reliance on the advice of an ethics official cannot ensure the employee will not be prosecuted, but may be used as a factor in making this determination.

c. Each new employee, contractor, and volunteer shall receive and sign for this Program Statement at the time of appointment. In addition, all employees, contractors, and volunteers shall receive and sign for any updated versions of this Program Statement when issued. The responsibility for ensuring that employees, contractors and volunteers receive and sign for this Program Statement shall be delegated in the following manner:

- Human Resource Managers shall be responsible for employees;
- Department heads who oversee a contractor shall be responsible for that contractor;
- Employee Development Managers shall be responsible for volunteers.

All receipts are to be filed on the left side of the Official Personnel Folder.

d. Employee Development Managers shall ensure that supervisors and employees receive annual training on their responsibilities under these regulations and policies.

8. GENERAL POLICY. Employees of the Bureau are governed by the regulations published in 5 CFR Part 2635. While this Program Statement expounds on those regulations to clarify their application in the Bureau, it does not and cannot specify every incident which would violate the Standards of Conduct. In general, the Bureau expects its employees to conduct themselves in such a manner that their activities both on and off duty will not discredit themselves or the agency.

Employees shall:

a. Conduct themselves in a manner that creates and maintains respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.

b. Not abuse their position by giving any false impression of having arrest authority through use of Bureau credentials or otherwise. Bureau employees may only arrest in their official capacity in very limited circumstances as permitted by 18 U.S.C. § 3050 or other authority officially granted to them, such as U.S. Marshal deputation.

c. Avoid any action which might result in, or create the appearance of, adversely affecting the confidence of the public in the integrity of the U.S. Government.

d. Avoid conflicts of interest in matters that affect their financial interests.

e. Comply with post-employment restrictions.

f. Conform with procurement integrity regulations.

g. Uphold the ethical rules governing their professions including complying with applicable licensing authority rules, except when they conflict with federal law.

h. Follow special rules to avoid conflicts of interest when seeking employment outside the Bureau.

i. Immediately report to their CEOs, or other appropriate authorities, such as the Office of Internal Affairs or the Inspector General's Office, any violation or apparent violation of these standards.

Failure by employees to follow these regulations or this policy could result in appropriate disciplinary action, up to and including removal (see Attachment A).

9. PERSONAL CONDUCT. It is essential to the orderly running of any Bureau facility that employees conduct themselves professionally. The following are some types of behavior that cannot be tolerated in the Bureau.

a. Alcohol/Narcotics. The use of illegal drugs or narcotics or the abuse of any drug or narcotic is strictly prohibited at any time. Use of alcoholic beverages or being under the influence of alcohol while on duty or immediately prior to

reporting for duty, is prohibited. Employees shall be subject to disciplinary action if found to possess a .02 blood alcohol content level or greater while on duty.

b. Sexual Relationships/Contact With Inmates. Employees may not allow themselves to show partiality toward, or become emotionally, physically, sexually, or financially involved with inmates, former inmates, or the families of inmates or former inmates. Chaplains, psychologists, and psychiatrists may continue a previously established therapeutic relationship with a former inmate in accordance with their respective codes of professional conduct and responsibility.

(1) An employee may not engage in, or allow another person to engage in, sexual behavior with an inmate. Regardless of whether force is used, or threatened, there is never any such thing as "consensual" sex between staff and inmates.

(2) Title 18, U.S. Code Chapter 109A provides penalties of up to life imprisonment for sexual abuse of inmates where force is used or threatened. "Sexual contact" is defined as the intentional touching of "the genitalia, anus, groin, breast, inner thigh, or buttocks." Penetration is not required to support a conviction for sexual contact. All allegations of sexual abuse shall be thoroughly investigated and, when appropriate, referred to authorities for prosecution.

(3) Employees are subject to administrative action, up to and including removal, for any inappropriate contact or relationship with inmates, regardless of whether such contact constitutes a prosecutable crime. Physical contact is not required to subject an employee to sanctions for sexual misconduct.

c. Additional Conduct Issues. An employee may not offer or give to an inmate or a former inmate or any member of his or her family, or to any person known to be associated with an inmate or former inmate, any article, favor, or service, which is not authorized in the performance of the employee's duties. Neither shall an employee accept any gift, personal service, or favor from an inmate or former inmate, or from anyone known to be associated with or related to an inmate or former inmate. This prohibition includes becoming involved with families or associates of inmates. If such contact occurs, it must be reported using the procedure in subsection c(5).

(1) An employee may not show favoritism or give preferential treatment to one inmate, or a group of inmates, over another.

(2) An employee may not use brutality, physical violence, or intimidation toward inmates, or use any force beyond that which is reasonably necessary to subdue an inmate.

(3) An employee may not use physical violence, threats or intimidation toward fellow employees, family members of employees, or any visitor to a Bureau work site.

(4) An employee may not use profane, obscene, or otherwise abusive language when communicating with inmates, fellow employees, or others. Employees shall conduct themselves in a manner which will not be demeaning to inmates, fellow employees, or others.

(5) An employee who becomes involved in circumstances as described above (or any situation that might give the appearance of improper involvement with inmates or former inmates or the families of inmates or former inmates, including employees whose relatives are inmates or former inmates) must report the contact, in writing, to the CEO as soon as practicable. This includes, but is not limited to, telephone calls or written communications with such persons outside the normal scope of employment. The employee will then be instructed as to the appropriate course of action.

(6) Employees shall avoid situations which give rise to a conflict of interest or the appearance of a conflict of interest (see Section 6, Definitions).

(7) Employees shall not participate in conduct which would lead a reasonable person to question the employee's impartiality (see Section 20, Conflicts of Interest).

10. RESPONSIVENESS

a. Inattention to duty in a correctional environment can result in escapes, assaults, and other incidents. Therefore, employees are required to remain fully alert and attentive during duty hours.

b. Because failure to respond to an emergency may jeopardize the security of the institution, as well as the lives of staff or inmates, it is mandatory that employees respond immediately and effectively to all emergency situations.

c. Employees are to obey the orders of their superiors at all times. In an emergency situation, carrying out the orders of those in command is imperative to ensure the security of the institution.

11. ILLEGAL ACTIVITIES. Illegal activities on the part of any employee, in addition to being unlawful, reflect on the integrity of the Bureau and betray the trust and confidence placed in it by the public. It is expected that employees shall obey, not only the letter of the law, but also the spirit of the law while engaged in personal or official activities. Should an employee be charged with, arrested for, or convicted of any felony or misdemeanor, that employee must immediately inform and provide a written report to the CEO. Traffic violations resulting in fines under $150 shall be exempt from the reporting requirement.

12. INTRODUCTION OF CONTRABAND. The introduction of contraband into or upon the grounds of any federal penal or correctional institution, or taking or attempting to take therefrom, anything whatsoever without the Warden's knowledge and consent, is prohibited. Pursuant to 28 CFR § 500.1(h), contraband is defined as any material that can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution. Contraband includes, but is not limited to, the following:

- letters,
- stamps,
- money,
- tools,
- weapons,
- paper,
- food,
- implements,
- writing material,
- messages,
- instruments,
- alcoholic beverages,
- drugs,
- photographic equipment,
- computer software,
- recording devices,
- cellular phones, etc.

13. OFFICIAL INVESTIGATION

a. Every employee is required to report to management immediately any violation or attempted violation of any law or regulation and any act or omission by any person which could result in a breach of institution security.

b. It is not Bureau policy to routinely search employees or their property; however, when the CEO has a reasonable suspicion to suspect that an employee is in possession of contraband items

which, if introduced, could endanger the safety of staff or inmates or the security of the institution, the CEO may authorize the search of an employee or his or her personal property. Searches may also be authorized when the CEO has a reasonable suspicion that an employee is transporting contraband. Other circumstances may warrant an order by the CEO to randomly search employees or any person or their property when entering or leaving the institution.

c. During the course of an official investigation, employees are to cooperate fully by providing all pertinent information which they may have. Full cooperation requires truthfully responding to all questions and providing a signed affidavit, if requested. Any employee who fails to cooperate fully or who hinders an investigation is subject to disciplinary action, up to and including removal.

14. JUST DEBTS. Failure on the part of any employee, without good reason and in a proper and timely manner, to honor debts acknowledged by him or her to be valid or reduced to judgment by a court, or to adhere to satisfactory arrangements for the settlement thereof, may be cause for disciplinary action. Depending on the circumstances, an employee who receives a legally valid garnishment order may be subject to disciplinary action.

15. CONFIDENTIALITY. Employees of the Bureau have access to official information ranging from personal data concerning staff and inmates to information involving security. Because of the varying degrees of sensitivity of such information, it may be disclosed or released only as required in the performance of an employee's duties or upon specific authorization from someone with the authority to release official information.
The only persons authorized to release official information are:

- in the Central Office, the Director, or designee;
- in a Regional Office, the Regional Director, or designee;
- in other locations, the CEO, or designee.

The above shall not be construed as a reason to deny authorized persons access to official records and files. The Bureau has an obligation to supply official information in response to requests from organizations or individuals upon determining that such individuals are properly identified and acting in an official capacity. To ensure the proper use of official information, the following rules of conduct are established:

a. Employees shall verify the identification and authority of individuals requesting access to information prior to giving or discussing records, personnel files, or other official information.

b. Employees may not deny authorized persons access to official information.

c. Employees may not use, or release for use, official information for private purposes unless that information is available to the general public.

d. Employees may not remove information from files or make copies of records or documents, except in accordance with established procedures or upon proper authorization.

e. Employees may not make statements or release official information which could breach the security of the institution or unduly endanger any person.

f. Former employees may be granted access only to information available to the general public and may have no greater standing than the general public, irrespective of their past employment and any associations developed in the course of such employment.

16. GOVERNMENT PROPERTY. Government property is to be used for authorized purposes only.

a. Authorized Purposes. Authorized purposes includes personal use of Government office equipment such as computers, printers, fax machines, telephones, copiers, and calculators. Use may not involve more than merely negligible cost to the Government.

b. Negligible Cost. Negligible cost to the Government includes the cost of electricity, ink, and ordinary wear and tear. Employees shall provide their own paper.

c. Personal Use. Personal use of Government property may take place before or after official working hours or during non-paid meal breaks, provided such use does not adversely affect the performance of official duties by the employee or the Bureau, with the following exception:

Telephones. Employees may place a personal call on a Government telephone during official working hours if the call:

- does not adversely affect the performance of official duties by the employee or the Bureau;
- is of reasonable duration and frequency;

- could not reasonably have been made at another time; and
- is within the employee's local commuting area.

d. Fitness Equipment. Employees may use Government-owned fitness equipment during breaks if such equipment is intended exclusively for employee use.

e. Existing Prohibitions. This rule does not override already existing prohibitions on use of Government property, including those rules established by a supervisor for business reasons.

17. CREDENTIALS. Bureau of Prisons credentials, identification cards, Government drivers licenses, or badges may not be used to coerce, intimidate, or deceive others or to obtain any privilege or article not otherwise authorized in the performance of official duties.

a. Employees may not obtain or use identification badges issued by other sources which give the appearance of being an official Bureau or law enforcement credential.

b. Employees may not use credentials or otherwise represent themselves as Department of Justice personnel to obtain a gun permit to be used in their unofficial capacity.

c. Employees may use credentials to prove Government employment for purposes of permissible discounts offered to a broad class of Government employees.

18. OUTSIDE EMPLOYMENT

a. There are limitations as to the type of outside employment an employee may obtain. Employees may not:

- engage in any outside employment or activity that involves criminal matters, although the Director reserves the authority to approve uncompensated correctional work on a case-by-case basis;

- engage in any outside employment which would require the use of a firearm, except for military reserve duty; or

- testify as an expert witness in any legal proceeding, with or without compensation, in which the Bureau does not have an interest.

b. Any employee who wishes to engage in employment outside the Bureau must obtain prior written approval for each activity using BP-S543.033 or BP-S166.033. Employment includes compensated speaking, writing, and teaching. Outside employment, including self-employment, must not result in, or create the appearance of, a conflict of interest with official duties or tend to impair the employee's mental or physical capacity to perform official duties and responsibilities. Written approval must be resubmitted when there is a change of duty station.

c. Any employee who wishes to serve as an officer or director of any organization, whether it is compensated or uncompensated, must also complete an outside employment request form. Employees who perform voluntary service involving church, employee's club, credit union, or union activities, which do not conflict with their official duties or with the mission of the Federal Bureau of Prisons, will be exempted from the requirement to request approval for these activities.

d. An employee may not have a direct or indirect financial interest that could be affected by the performance or nonperformance of his or her Government duties and responsibilities.

e. Certain professional employees are prohibited from engaging in the private practice of their professions. Exceptions may be granted, however, in accordance with subsection (1). Professional employees who wish to engage in outside employment **not** within their profession should follow instructions provided in subsection (2) and should complete BP-S166.033. For the purpose of this subsection, teaching, writing, and speaking are not considered practicing within one's profession.

(1) Employment in Certain Professions. Persons currently employed by the Bureau in the professions listed below who would like to work **within** that profession during off-duty hours must have the approval of his or her immediate supervisor, CEO, Regional Director, and the Director:

- Architect
- Attorney
- Chaplain
- Doctor
- Psychologist

The Bureau Ethics Officer shall review each request to ensure that there are no conflicts of interest.

Attorneys who seek to practice law outside of the Bureau must also refer to Section 19, Rules for Attorneys.

The form entitled "Request for Approval for Outside Employment Within One's Profession" (BP-S543.033) must be completed with all appropriate signatures affixed before the employee may engage in the outside practice of his or her profession. The form requires such basic information as the name of the employee, the employee's job title, grade, institution and a brief description of the outside employment contemplated. The brief description, at a minimum, should include:

- a summary of the duties to be performed,
- the work address of the employer,
- the hours of employment, and
- any information deemed relevant to support the request.

Failure to provide the required information could result in delays in processing or a denial of the request.

(2) Other Outside Employment. Any other employee who wishes to engage in outside employment must obtain prior approval from his or her supervisor and CEO by initiating a Request for Approval for Outside Employment. Forms may be found on BOPDOCS.

(3) Change of Outside Employment. Any approval granted for outside employment is specific to the particular position referenced in the application and approval. Any employee who wishes to change outside employment, (e.g., to work for a different company, accept a different position with the same company, etc.), must submit a new request form, and receive approval before doing so.

(4) One-Time Review of Outside Employment. All employees who have received approval for outside employment prior to the effective date of this Program Statement must submit a new request form by December 31, 1998. Request for Outside Employment forms may be found on BOPDOCS. This requirement applies even if the employee is still in the same outside position for which approval had previously been granted. The purpose of this one-time review is to ensure compliance with the Supplemental Standards Of Ethical Conduct For Employees Of The Department Of Justice (5 CFR Part 3801).

19. RULES FOR ATTORNEYS

a. Approval of Exceptions. Attorneys for the Bureau may not practice law on behalf of any other person or entity, for compensation, without the written approval of the Deputy Attorney General. Bureau attorneys, however, may perform uncompensated legal practice outside the Bureau if:

- the work does not violate 18 U.S.C. §§ 203 and 205,
- the General Counsel has approved the request, and
- the work does not involve criminal matters.

b. Confidentiality. Only under limited circumstances shall the attorney/client privilege of confidentiality apply to communications with a Bureau employee.

c. Successive Government and Private Employment

(1) A former Bureau attorney may not represent a private client in connection with a matter in which the attorney participated personally and substantially as a public officer. In such a case, the attorney's firm may continue representation in the matter only if the attorney is screened from any participation in the matter in which he or she participated in personally and is apportioned no part of the fee therefrom.

(2) A Bureau attorney who came from private practice may not participate in a matter before the Bureau in which the attorney participated personally and substantially while in private practice. Like any Bureau employee, an attorney may not negotiate for private employment with any party involved in a Bureau matter in which the attorney is participating in personally and substantially.

d. Other Duties. In addition to the ethical rules attorneys must follow, the duties of a Bureau attorney are further defined by federal regulations and Bureau policy.

20. CONFLICTS OF INTEREST. Bureau employees should avoid situations where their official actions affect or appear to affect their private interests, financial or non-financial.

a. Prohibitions. Employees are prohibited from taking official action on matters that affect the financial interests of:

- The employee, a spouse, minor child, or a general partner of an employee;

- An organization where the employee is an officer, director, trustee, partner or employee; or
- An organization the employee is negotiating with for future employment.

b. Waivers

(1) The Director may grant an individual waiver if the interest is found not to be so substantial as to affect the employee's service to the Bureau.

(2) Employee's holdings in mutual funds are exempt if the employee's share is no more than one percent of the total assets of the fund.

(3) An employee with a conflict of interest may ask to have himself or herself recused from the matter, sell the asset, or resign.

(4) An employee must seek written authorization prior to participating in a matter which could lead a reasonable person to question the employee's impartiality, even if there is not a statutory conflict of interest.

(5) Procurement officials must refer to Section 23, Procurement Integrity.

21. SEEKING OTHER EMPLOYMENT. Any Bureau employee who wishes to seek employment with persons who otherwise would be affected by the performance or nonperformance of the employee's official duties are required to disqualify themselves from participation in any particular matter that will have a direct and predictable effect on the financial interests of the person with whom he or she is negotiating.

When an employee is not actually negotiating for employment, but lacks impartiality in dealing with a prospective employer, the employee should disqualify himself or herself. A Bureau employee who is aware of, or should be aware of, the need to disqualify himself or herself from participation in a particular matter must contact his or her supervisor and request, in writing, to be removed from the matter.

22. POST-EMPLOYMENT. The Office of Government Ethics, in accordance with statutes, has issued post-employment restrictions for federal employees who leave federal service. There is a general restriction on the representation of parties in matters related to their federal employment. This regulation is not designed to bar an individual from accepting employment with any

private or public employer after his or her service at the Bureau, but certain acts that are detrimental to public confidence in Government are prohibited.

a. Lifetime Prohibition. All former Bureau employees are prohibited from representing another party before the Government on a particular matter involving specific parties in which they participated personally and substantially while working for the Government. This prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information. This restriction is found at 18 U.S.C. § 207(a)(1).

b. Two-Year Prohibition. After leaving the Bureau, a former employee is restricted from acting as a representative on a particular matter for which the employee had official responsibility, rather than personal participation. The restriction applies if the former employee knew, or reasonably should have known, that the matter was pending under his or her official responsibility during his or her last year of Government service. This restriction is found at 18 U.S.C. § 207(a)(2).

c. One-Year Prohibition. Former senior level employees are restricted from lobbying the Bureau, on behalf of another person on a matter in which that person seeks official action, for one year. This ban only applies to Executive Schedule or SES level 5 and 6 employees. The purpose of this restriction is to allow for a period of adjustment for incoming senior employees of an agency and to diminish any appearance that Government decisions might be affected by the improper influence of a former senior employee. This restriction is found at 18 U.S.C. § 207(c).

23. PROCUREMENT INTEGRITY. During the conduct of a procurement, a procurement official is prohibited from knowingly, directly or indirectly, soliciting or accepting any promise of future employment or business from any officer, employee, representative, agent, or consultant of a competing contractor. This prohibition includes engaging in any discussion of future employment or business opportunity. This restriction is found in the Procurement Integrity Act, 41 U.S.C. § 423. Any procurement official who participates personally and substantially in a procurement in excess of $100,000 (the simplified acquisition threshold) and who is contacted concerning employment by a person who is a bidder or offerer in such procurement must promptly report the contact in writing both to the employee's supervisor as well as to the Ethics Officer.

a. Recusal To Discuss Employment. In certain instances, a procurement official may obtain permission to withdraw from further participation in a procurement to discuss future employment with a competing contractor. An eligible procurement official may, in accordance with specific procedures in the regulations, request authorization to be recused from participation in the procurement. A procurement official is not eligible for recusal if, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, he or she has participated personally and substantially in the evaluation of bids or proposals, the selection of sources, or the conduct of negotiations.

An individual may not commence discussions with a competing contractor until he or she has received written approval of the recusal request from his or her supervisor. Rejection of a recusal request is not an adverse personnel action.

b. Post-Employment Restrictions For Procurement Officials. The Procurement Integrity Act places restrictions on employees involved in procurement who leave federal service. A former procurement official cannot, for one year after his or her last personal and substantial involvement in a procurement in excess of $10,000,000 accept compensation from such contractor as an employee, officer, director, or consultant. This does not prohibit former procurement officials from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services for which the employee contracted while a government employee.

/s/
Kathleen Hawk Sawyer
Director

Standard Schedule of Disciplinary Offenses and Penalties

1. This table is intended to be used as a guide in determining appropriate discipline to impose according to the type of offense committed. The offenses listed are not inclusive of all offenses.

2. Ordinarily, penalties imposed should be within the range of penalties provided for an offense. In aggravated cases, a penalty outside the range of penalties may be imposed. For example, supervisors, because of their responsibility to demonstrate exemplary behavior, may be subject to greater penalty than is provided in the range of penalties. When a more severe penalty than provided for in the range of penalties is proposed, the notice of proposed action must provide a justification.

3. The deciding official will consider relevant circumstances, including mitigating and aggravating factors, when determining the appropriate penalty. The range of penalties provided for most offenses is intentionally broad, ranging from official reprimand to removal. While the principles of progressive discipline will normally be applied, it is understood that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal. This is especially true in cases where there is no indication that the employee would be corrected by a lesser penalty, or if the offense is of such a nature that reoccurrence of the conduct could jeopardize security or bring disrepute on the Bureau of Prisons. For example, if an employee failed to respond to an emergency, even if that emergency turned out to be a false alarm, removal would be appropriate if the deciding official was not convinced that the employee would respond promptly to any future emergency.

4. Where appropriate, consideration may be given to a demotion or other action in lieu of removal.

5. Suspension penalties on this schedule refer to calendar days. Except for emergency suspensions and indefinite suspensions, all disciplinary suspensions are to begin on the first workday of the employee's next regularly scheduled work week.

6. The reckoning period is defined as that period of time following the date management becomes aware of the offense during which that offense can be used to determine the sanction for a subsequent offense.

7. Offenses falling within the reckoning period, even though unrelated, should be considered when determining the appropriate action.

8. Where the deciding official substitutes a letter of reprimand in lieu of a greater proposed sanction, the letter of reprimand itself is to be separate from the decision letter and is not to refer to the greater sanction proposed.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
1. Unexcused or unauthorized absence of 8 hours or less.	Unauthorized absence of 8 hours or less, tardiness, leaving the job without permission.	Official reprimand to 1-day suspension.	Official reprimand to 5-day suspension.	Official reprimand to removal.	6 months.
2. Unexcused or unauthorized absence of between 1 and 5 consecutive workdays.	Unauthorized absence of 8 to 40 hours.	1-day to 5-day suspension.	5-day suspension to 14-day suspension.	14-day suspension to removal.	1 year.
3. Excessive unauthorized absence.	Unauthorized absence of more than 5 consecutive workdays.	5-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
4. Careless workmanship or negligence resulting in spoilage or waste of materials or delay in work production.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
5. Failure or delay in carrying out orders, work assignments, or instructions of superiors.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
6. Loafing, wasting time, sleeping on the job, or inattention to duty.	Potential danger to safety of persons and/or actual damage to property is considered in determining severity of the penalty, as is potential or actual adverse impact on government operation.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
7. Insubordination.	Disobedience to constituted authorities, or refusal to carry out a proper order from any supervisor or other official having responsibility for the work of the employee.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
8. Disorderly conduct, fighting, threatening, or attempting to inflict bodily injury to another, engaging in dangerous horseplay.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
9. Disrespectful conduct, use of insulting, abusive or obscene language to or about others.	Includes verbal abuse of inmates, ex-inmates, their families or friends.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
10. Reporting for duty or being under the influence of intoxicants or other drugs; unauthorized possession of intoxicants or drugs on government or leased premises.		Official reprimand to removal.	14-day suspension to removal.	30-day suspension to removal.	2 years.
11. Failure to follow orders during an emergency situation.	Potential danger to safety and/or damage to property is a primary consideration in determining severity of the penalty.	5-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
12. Failure to respond immediately to an emergency situation.	Potential danger to safety of persons and/or damage to property is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
13. Failure to observe safety precautions.	To include: (1) precautions for personal safety; (2) posted rules; (3) signs; (4) written or oral safety instructions, or failure to use protective clothing and equipment.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
14. Endangering the safety of or causing injury to staff, inmates or others through carelessness or failure to follow instructions.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
15. Giving an inmate an order which could be hazardous to health and safety.	Potential danger to safety of persons and/or actual damage to property is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
16. Unauthorized possession or use of, loss of, or damage to government property or property of others.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
17. Willful use or authorization of use of a U.S. government owned or leased motor vehicle or aircraft for other than an official purpose.	31 U.S.C. Section 1349 provides for a minimum 30-day suspension.	30-day suspension to removal.	45-day suspension to removal.	Removal.	2 years.
18. Theft or attempted theft or misappropriation of government property or the property of others.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
19. Conversion of government funds or funds in government custody to personal use.	Includes, but is not limited to, travel advances, imprest funds, amounts received as collections and inmate funds.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
20. Malicious damage to government property or the property of others.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
21. Gambling or unlawful betting on government-owned or leased premises.		Official reprimand to 10-day suspension.	10-day suspension to removal.	14-day suspension to removal.	2 years.
22. Promotion of gambling on government-owned or leased premises.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
23. Physical abuse of an inmate.	In determining the severity of the penalty, the circumstances of the incident (were the employee's actions totally unwarranted) should be given more consideration than the presence or absence of physical injury.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
24. Loss of temper in the presence of inmates, former inmates, their families or friends.	Potential of creating a disturbance is a primary consideration in determining severity of penalty.	Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
25. Receiving or soliciting gifts, favors, or bribes in connection with official duties.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
26. Acceptance of any gift or favor from an inmate or former inmate.	Value of gift or favor and the reasons for accepting are primary considerations in determining severity of penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
27. Giving or offering an unauthorized article or favor to any inmate, their families or friends.	Value of article or favor and the reasons for giving are primary considerations in determining the severity of penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
28. Preferential treatment of inmates.	Potential or actual negative reaction of other inmates is a primary consideration in determining severity of penalty.	Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
29. Improper relationship with inmates, former inmates, their families or friends.	Degree of involvement is a primary consideration in determining severity of penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
30. Aiding or abetting inmate violation or attempted violation of any law, rule, regulation or commission of any prohibited act.	Degree of aid and seriousness of violation is a primary consideration in determining severity of penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
31. Failure to report to management any violation or attempted violation of unprofessional contacts with inmates, former inmates, their families or friends.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
32. Falsification, misstatement, exaggeration or concealment of material fact in connection with employment, promotion, travel voucher, any record, investigation or other proper proceeding.	Includes, but is not limited to, the destruction of records to conceal facts, and a concealed conflict of interest in the performance of official duties.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
33. Refusal or failure to cooperate in any official U.S. government inquiry or investigation, including a refusal to answer work-related questions or attempting to influence others involved in the inquiry.	Includes administrative or criminal investigation, grievance inquiry, EEO investigation, and any other administrative inquiry.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
34. Refusal to undergo a search of person or property.		Removal.	Removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
35. Criminal, dishonest, infamous, or notoriously disgraceful conduct.	Includes conduct on or off duty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
36. Conduct which could lead others to question an employee's impartiality.	Includes, but is not limited to, a financial, sexual, or emotional relationship with a subordinate in a supervisor's chain of command.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
37. Discrimination in official action against an employee or applicant because of race, religion, sex, national origin, age, handicapping condition, sexual orientation or any reprisal action taken against an employee for filing a discrimination complaint.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
38. Use of Department of Justice identification for other than authorized purposes.	Example: Use to coerce, intimidate, or deceive (Includes ID cards, badges, and other Bureau credentials.)	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
39. Intentional violations of rules governing searches and seizures.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
40. Reckless disregard of rules governing searches and seizures.		Official reprimand to removal.	14-day suspension to removal.	Removal.	1 year.
41. Negligent violations of rules governing searches and seizures.		Official reprimand to 1-day suspension.	Official reprimand to 5-day suspension.	Official reprimand to removal.	1 year.
42. Unauthorized dissemination of official information.		Official reprimand to 5-day suspension.	5-day suspension to 14-day suspension.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
43. Use of official information for private purposes.	Potential personal gain is a primary consideration in determining severity of the penalty.	Official reprimand.	14-day suspension to removal.	Removal.	2 years.
44. Unauthorized removal of records or documents.	Consequences of loss, or breach of security is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
45. Release of information which could breach the security of the institution.	Consequences or potential consequences is a primary consideration in determining severity of the penalty.	3-day suspension to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
46. Improper denial of official information to an authorized official.		Official reprimand to 5-day suspension.	5-day suspension to 14-day suspension.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
47. Breach of facility security.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
48. Failure to report any breach or possible breach of facility security.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
49. Trafficking contraband.	Nature of article and degree of involvement are primary considerations in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
50. Engaging in outside employment without approval.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
51. Failure to honor just debts without good cause.	A just financial obligation is one acknowledged by the employee, reduced to judgment by a court or arranged by settlement.	Official reprimand.	Official reprimand to 5-day suspension.	Official reprimand to removal.	2 years.
52. Failure to report arrest.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
53. Misconduct off the job.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
* 54. Failure to report a violation of the Standards of Conduct, or retaliation or discrimination against those who make such a report.	Offense includes failure to report violation of Program Statement, government ethics regulations, EEO laws and criminal laws. In particular, supervisors or managers must report sexual harassment observed by or reported to them. No retaliation can be taken against staff or inmates who report any such violations.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.*

BP-A165.033
MAR 1996

ACKNOWLEDGMENT OF RECEIPT OF "STANDARDS OF EMPLOYEE CONDUCT"

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

I, _____, acknowledge that I
(Employee's Name)

received a copy of the Program Statement (P.S.# _____) on the

Standards of Employee Conduct on _____ .
(Date)

Received: _____
(Signature)

Date: _____

Institution: _____

(This form replaces BP-165.033 dated Apr 1994.)

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 3, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On June 25, 2003, the Committee held a hearing concerning those detained in the United States in the immediate aftermath of 9/11/01, receiving testimony from Mr. Michael Rolince, Special Agent in Charge of Counterterrorism in the FBI's Washington Field Office. Following the hearing, the Committee requested written responses to numerous questions for the record. The Department's responses were forwarded to the Committee on March 4, 2004.

Two of the questions requested statistics concerning affidavits filed in bond proceedings related to the detainees held for immigration violations. The Department's responses indicated that those statistics could only be obtained by culling through more than 15 feet of documents, and that we would provide this information when that task was completed. We appreciate the importance of this Committee's oversight responsibilities, and we take very seriously our responsibility to respond to the Committee's inquiries as quickly as possible. We certainly apologize for the delay in providing the promised information.

In his first question, Senator Feingold requested "the exact number of affidavits [the FBI] filed in bond proceedings relating to September 11 detainees who were held on immigration violations." Our initial response clarified that the FBI did not file affidavits in immigration proceedings, but that we did provide such affidavits to the (then) INS for its use in bond proceedings. The FBI has determined that it provided approximately 160 affidavits to the INS in this context.

Another Senator posed several questions, the fifth of which asked: "[In] how many of those INS [cases] in which you submitted an affidavit did you have evidence of criminal activity concerning the specific individual whom the department was seeking to hold without bond?" The FBI has ascertained that these approximately 160 affidavits included 34 potential cases of criminal activity, including false statements, document fraud, social security card fraud, and marriage fraud.

Again, we regret the delay in responding to these questions, but we hope nonetheless that you will find this information helpful. Please do not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 4, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to questions posed to Mr. Michael E. Rolince, Special Agent in Charge of the Counterterrorism Divison of the Washington Field Office of the Federal Bureau of Investigation, following Mr. Rolince's appearance before the Committee on June 25, 2003. The hearing concerned the report of the Department of Justice's Office of Inspector General regarding the treatment of post-9/11 detainees.

We regret the delay in responding but hope that this information is helpful to you. We trust that you will not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Responses of Michael E. Rolince
Special Agent in Charge, Counterterrorism Division
Washington Field Office
Federal Bureau of Investigation
Based Upon June 25, 2003 Testimony
Before the Senate Committee on the Judiciary

Questions Posed by Senator Hatch

1. It seems to me that, as in any other emergency situation, in the wake of 9/11, the Bureau had to make what were essentially triage decisions. Among the many competing priorities, the Bureau had to decide what to put first. It is clear that what the Bureau did was put preventing another terrorist attack first. And I don't think anyone here would question that decision. But I do want to point out that these days we are asking an awful lot of your agency. Some have criticized the Bureau for not doing more in the war against drugs; while others have suggested that field offices - such as the Washington Field Office should be tasking more agents to investigate white collar crime. So I think it's important to bear in mind that the timely processing of clearance requests was simply one of many competing priorities in the Bureau.

Could you comment on what Bureau personnel were being tasked with when making clearance decisions and what other responsibilities were on their plate? In particular, I am curious as to whether some of these same agents who were conducting the 9/11 detainee clearances were also active in the overall 9/11 investigation?

Response:

The FBI/Immigration and Naturalization Service (INS) Working Group involved in the clearance process included FBI personnel from the Office of the General Counsel (OGC) and the Counterterrorism Division (CTD) at FBI Headquarters (FBIHQ). During this period, OGC employees were also working on other matters such as Foreign Intelligence Surveillance Act (FISA) and undercover reviews, while CTD employees were additionally working on investigative operations relative to the 9/11 hijackers. In addition to FBIHQ, FBI field offices also played a major role in the clearance process. The first step in the clearance process was a background check of the detainees conducted by the field offices and FBIHQ. Clearance of an individual required a formal request from the SAC in the field office advising FBIHQ that the detainee was no longer of investigative interest.

Most of the FBI personnel involved in the clearance process were also assigned numerous other responsibilities. Some agents and support personnel were working on FISA, undercover operations, and other investigative matters. All of the agents involved in the clearance process were also active in the overall 9/11 investigation. A good number of

these FBI agents and support personnel were also actively involved in the Daniel Pearl and anthrax investigations. The Daniel Pearl murder investigation was managed by the Newark Division, where a substantial number of the detainees were being held, so Newark office resources available to handle the detainees were limited. In addition, the FBI's New York Division, which was responsible for processing both the World Trade Center site and 1.8 million tons of remains and debris at the Fresh Kills landfill, was working out of a parking garage. Finally, notwithstanding the emphasis on the 9/11 investigation, the day-to-day business of the FBI went on, and the FBI continued its involvement in trials, grand juries, surveillances, arrests, and other investigative efforts.

2. As you note in your testimony, in the weeks following September 11 attacks, FBI labored under enormous constraints on its resources and was taxed to an extraordinary degree. At a time when the Bureau faced a shortage of trained terrorism agents, it reassigned more than 7,000 employees to track down those who either assisted the terrorists or were attempting to commit additional attacks. It was also investigating the anthrax attacks, the murder of Wall Street journal reporter Daniel Pearl, and providing security for the Winter Olympics—all while searching for evidence among the debris of the World Trade Center. As I understand it, since then the FBI has conducted a massive reorganization and has allocated additional resources to combat terrorism. Can you explain how these additional resources will allow the FBI to respond to future crises with greater efficiency?

Response:

The FBI has reorganized to effectively meet the challenges of the nation's war on terrorism, augmenting counterterrorism resources and making organizational enhancements to focus counterterrorism priorities.

Last year, the FBI began the process of focusing on the counterterrorism analysis program by creating an Analysis Branch within CTD. This new Analysis Branch was assigned the mission of producing strategic assessments of the terrorism threat to the United States. To date, the Analysis Branch has produced nearly 30 in-depth analytical assessments.

Through FY 2004, the FBI's proposed increase in analysts will result in quadruple the number of analysts employed compared with the number prior to September 11, 2001. The FY 2004 proposal represents a 156% increase in funding for analysts in comparison to the FY 2002 budget. Recognizing that the FBI could not hire enough analysts to do the work that needs to be done overnight, the Central Intelligence Agency (CIA) detailed 25 of their analysts to the FBI to provide an immediate infusion of expertise into the FBI program while the Bureau's hiring initiative is underway.

The FBI has also implemented a number of initiatives aimed at enhancing training for its analytical workforce, including creation of the College of Analytical Studies. In conjunction with the CIA, the FBI has begun the use of this College to train new

intelligence analysts. By the end of this year, the FBI expects more than 200 analysts to have completed the six-week training course.

These improvements to the FBI's analytic program had to be made quickly to address immediate needs. The FBI has also taken steps to ensure the ability to collect and analyze intelligence for the long term. As noted above, the centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence (EAD/I) who will have direct authority and responsibility for the FBI's national intelligence program, overseeing the intelligence programs for the FBI's Counterintelligence, Criminal Investigative, and Cyber Divisions.

The EAD/I will also ensure that the FBI is sharing information with Federal, State, local, and international partners. Furthermore, intelligence units staffed with reports officers will be established in every field office and will function under the authority of the EAD/I. The reports officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and with other national and international law enforcement and intelligence entities.

The FBI has also reorganized its system for threat warnings by establishing a number of specialized counterterrorism units. The CT Watch, a 24-hour Counterterrorism Watch Center, was created to serve as the FBI's focal point for all incoming terrorist threats. The Communications Analysis Section was established to analyze terrorist electronic and telephone communications and identify terrorist associations and networks. The Document Exploitation Unit was initiated to identify and disseminate intelligence gleaned from millions of pages of documents and computer data seized overseas by intelligence agencies. The Special Technologies and Applications Section was formed to provide technical support for field office investigations requiring specialized computer technology expertise and support. And finally, the Terrorist Financing Operations Section (TFOS) was established; TFOS is devoted entirely to the financial aspects of terrorism investigations and liaison with the financial services industry, both at home and abroad. All of these recently created, specialized counterterrorism units have streamlined the FBI's resources to more effectively target terrorism threats.

If we are to defeat terrorists and their supporters, a wide range of organizations must work together. The FBI is committed to the closest possible cooperation with the Intelligence Community, other Federal government agencies, international partners, and its essential partners at the State and local level. Toward that end, the FBI has developed numerous information sharing and operational coordination initiatives and expanded the number of Joint Terrorism Task Forces (JTTFs) from a pre-9/11 number of 35 to 84 today. The JTTFs partner FBI personnel with hundreds of investigators from various Federal, State, and local agencies in field offices across the country and are important force multipliers aiding our fight against terrorism. DHS's Bureau of Immigration and Customs Enforcement is a key player on the JTTFs. By the end of FY 2003, basic counterterrorism training will be provided to an estimated 14,000 Federal, State, and local law enforcement

officers. Beginning in FY 2004, the FBI proposes to provide this training to 27,000 Federal, State, and local law enforcement officers per year.

In July 2002, the FBI established the National JTTF (NJTTF) at FBIHQ, staffed by representatives from 30 Federal, State, and local agencies. The NJTTF acts as a "point of fusion" for terrorism information by coordinating the flow of information between Headquarters and the other JTTFs located across the country, and between the agencies represented on the NJTTF and other government agencies.

The FBI additionally created an Office of Law Enforcement Coordination (OLEC) to enhance the ability of the FBI to forge cooperation and substantive relationships with all of our State and local law enforcement counterparts. The OLEC, which is run by a former Chief of Police, also has liaison responsibilities with the White House Homeland Security Council.

The FBI also established the FBI Intelligence Bulletin, which is disseminated weekly to over 17,000 law enforcement agencies and to 60 Federal agencies. The bulletin provides information about terrorism issues and threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public - contacts that could result in the discovery of critical information about those issues and threats.

Furthermore, FBI analysts are making unprecedented efforts to reach out to the intelligence, law enforcement, government, and public sector communities. To prevent terrorists from acquiring weapons of mass destruction (WMD), the FBI is coordinating with suppliers and manufacturers of WMD materials in an effort to facilitate their voluntary reporting of any suspicious purchases or inquiries. In addition to enhancing our relationships with agencies related to WMD, the FBI has established working relationships with a host of agencies whose possible role in and contribution to law enforcement has not traditionally been recognized, including the Army Corps of Engineers and the Bureau of Land Reclamation. The FBI has also expanded its relationships with such groups as the Transportation Security Administration and the U.S. Coast Guard.

To augment local field office investigative capabilities, Flying Squads were established to provide for specialized personnel to respond to fast-breaking situations and provide a surge capacity in support of FBI Rapid Deployment Teams.

Finally, the FBI has made specific efforts with respect to the fusion of intelligence information for analysis. The FBI strongly supports the President's initiative to establish a Terrorist Threat Integration Center (TTIC) that is merging and analyzing terrorist-related information collected domestically and abroad. TTIC is providing all-source, integrated analysis to the FBI, CIA, Department of Homeland Security (DHS), and other Federal agencies (including the Department of State) which, in turn, can quickly share the analysis with State and local law enforcement. The two-way flow of information between Federal and local law enforcement is necessary to sharpen both the collection and analysis of

threat-related information. The FBI JTTFs will provide an effective channel to share the TTIC's analytical products with partners in State and local law enforcement. The FBI is committed to working with DHS to push information and analysis out of the TTIC to other Federal agencies and to State and local officials.

Questions Posed by Senator Kennedy

ARBITRARY ARRESTS

The Inspector General found that the FBI arrested and detained hundreds of foreign nationals in connection with the September 11 attacks on little or no evidence linking them to the attacks. Foreign nationals encountered incidentally in the course of the investigations were placed with the September 11 detainees, despite the fact that they were never linked to a specific terrorist lead.

The report describes a clear example of the arbitrary nature of some of the arrests. Three Middle Eastern men were stopped for a traffic violation. They were arrested because they had plans to a public school in their car. Their boss immediately confirmed that the men should have the plans because they were working on the school's construction. Nevertheless, the three men were held as September 11 detainees.

1. Why couldn't the FBI distinguish between the people arrested as subjects as an investigation lead and those encountered incidentally?

Response:

First, it should be noted that the FBI did not arrest these individuals, the INS (now the Bureau of Immigration and Customs Enforcement (BICE)) made the arrests -- all on administrative immigration charges. Aliens arrested by the INS and placed in removal proceedings are not entitled to release; release on bond during removal proceedings is discretionary.

Second, according to the Inspector General's report, the three men referenced in the question were initially stopped in Manhattan, on September 15, 2002, by New York City police. Although the "boss" advised that these three men were authorized to have the plans, the FBI simply cannot take all statements at face value and thus still needed to conduct our logical investigation of these men to determine if any terrorism nexus existed. We were concerned that releasing aliens, who were illegally in the United States without a thorough investigation could make us vulnerable to another attack. Also, we knew from other Inspector General reports that INS only removed 94 percent of non-detained aliens. With this high rate of absconding, we believed it necessary to err on the side of caution.

More generally, the foreign nationals arrested on immigration charges were in some manner linked to a PENTTBOM-related lead. In some circumstances, a lead was sent requesting an interview and, in the course of interviewing others who lived or worked with this individual, the FBI's JTTF determined that these other individuals had violated their immigration status. In such cases, these individuals were subsequently arrested and counterterrorism investigations were initiated to determine their link, if any, to the main subject of the lead.

2. When it quickly became evident that these sweeping arrests were picking persons with no ties to terrorism, why did the FBI not re-evaluate their classification process? I understand that you were able to clear watchlist errors quickly. Why was this not done with respect to the September 11 detainees?

Response:

It did not "quickly bec[o]me evident" that the individuals who were encountered in connection with the PENTTBOM investigation and detained on immigration-related charges had no link to terrorism. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. But many of the investigations of detainees took much longer, for reasons discussed in the Inspector General's report. During this post-September 11th time frame, the FBI and Department of Justice (DOJ) believed that, in the interests of this country's safety and the protection of our national security interests, we could not risk having potential terrorists, who were in our country illegally, out on the streets while we completed our investigation, and sought to avoid losing potential suspects or witnesses.

3. What steps, if any, did the FBI take to seek a revision of the no bond policy?

Response:

As indicated above, during this post-September 11th time frame the FBI and DOJ believed we could not risk having potential terrorists, who were in our country illegally, out on the streets while we completed our investigation, and sought to avoid losing potential suspects or witnesses. However, the FBI did not oppose the INS decision to not oppose bond after the second immigration hearing if, at that juncture, our investigation had not yielded affirmative evidence.

4. How many people arrested as a result of the September 11 investigation were never charged with terrorism related crimes or terrorism related immigration violations?

Response:

To the best of our knowledge, of the 762 detainees, only one, Zacharias Moussaoui, was

charged with terrorism-related crimes. Others were charged with various white-collar crimes such as credit card fraud, social security card fraud, document fraud, and making false statements. Several others were served with material witness warrants to determine their links, if any, to the PENTTBOM investigation.

5. With your experience as Chief of the FBI's International Terrorism Operations Section, do you believe that arresting hundreds of individuals with scant evidence of links to terrorism was an effective use of resources to combat terrorism?

Response:

The FBI had a duty to pursue thoroughly every lead generated pursuant to the PENTTBOM investigation. Investigating an individual for ties to terrorism is not as simple as conducting database checks. Even if the FBI possessed no specific information that a specific alien had ties to terrorism, it was critical to complete a thorough investigation before reaching the final determination that an alien arrested in connection with the events of September 11 in fact had no ties to terrorism. The detentions were lawful and necessary to protect both the American people and the integrity of the largest criminal investigation in history.

6. What policies would you advise senior FBI officials to adopt to ensure that nationwide, FBI resources are focused on arrests of those most likely to be terrorists?

Response:

The Director of the FBI has already taken numerous steps to use FBI's limited resources to target terrorism. The FBI believes that one of the keys to identifying terrorists and terrorist plots is improving our ability to conduct accurate, proactive analysis of the terrorist threat. A Memorandum of Agreement (MOA) executed by Secretary Ridge and Attorney General Ashcroft on May 13, 2003, provides for a joint, coordinated approach to terrorist financing investigations utilizing the resources and expertise of the FBI and the Department of Homeland Security (DHS), clarifying the roles and responsibilities of each organization and establishing mechanisms to de-conflict overlapping investigations to ensure priority targets are addressed more effectively in a combined effort. Pursuant to the terms of this MOA, the Department of Justice will serve as the "lead law enforcement agency for combating terrorism . . . and terrorist financing," the FBI will take the lead in terrorist financing investigations, and DHS will focus on protecting the integrity of U.S. financial infrastructures.

To address this role, and to give new focus to analysis of the terrorist threat, the FBI created an Analysis Branch in CTD and assigned it the mission of producing strategic assessments of the terrorism threat to the United States. To date, the Analysis Branch has produced nearly 50 in-depth analytical assessments, including the FBI's first

comprehensive assessment of the terrorist threat to the homeland. In addition, our analysts have produced more than 200 articles for the FBI Presidential Report, a product we created for the President and senior White House officials.

We have implemented a number of initiatives aimed at enhancing training for our analytic workforce, including creation of the College of Analytical Studies which, in conjunction with the CIA, has begun training our new intelligence analysts. We also created a corps of reports officers -- an entirely new and desperately needed function for the FBI. These officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and with other law enforcement and intelligence entities.

To improve our system for threat warnings, we have established a number of specialized counterterrorism units. These include a Threat Monitoring Unit which, among other things, works hand-in-hand with its CIA counterpart to produce a daily threat matrix; a 24-hour Counterterrorism Watch to serve as the FBI's focal point for all incoming terrorist threats; two separate units to analyze terrorist communications and special technologies and applications; a section devoted entirely to terrorist financing operations; a unit to manage document exploitation; and others.

To prevent terrorists from acquiring WMD, we have undertaken a number of initiatives. We are coordinating with suppliers and manufacturers of WMD materials in an effort to help them voluntarily report any suspicious purchases or inquiries.

To protect U.S. citizens abroad, we have expanded our Legal Attaché and liaison presence around the world to 46 offices. Our presence has enhanced the FBI's ability to bring investigative resources to bear quickly in the aftermath of terrorist acts, such as the shooting of Laurence Foley (a U.S. Agency for International Development officer in Amman) and the bombing of a disco in Bali. We also assist foreign liaison in following up terrorist leads around the world.

To strengthen our cooperation with State and local law enforcement, we are introducing counterterrorism training on a national level. We will provide specialized counterterrorism training for 224 agents and training technicians from every field division in the country so that they, in turn, can train an estimated 26,800 Federal, State, and local law enforcement officers this year in basic counterterrorism strategies and techniques.

The centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence (EAD/I) who will have direct authority and responsibility for the FBI's national intelligence program. As discussed further below in response to Senator Hatch's inquiry concerning the FBI's reorganization, the EAD/I will be responsible for ensuring that the FBI has the optimum strategies, structure, and policies in place for our counterterrorism mission. Also critical to this effort, and discussed in more detail below, are the FBI's participation in the TTIC (which is charged with merging and analyzing

terrorist-related information collected domestically and abroad), its cooperation with Federal, State, and local agencies through the FBI's establishment of the NJTTF, and its creation of an FBI OLEC to enhance the FBI's interaction with our State and local law enforcement counterparts.

CLEARANCE LETTERS

As the former Chief of the FBI's International Terrorism Operations Section, you were responsible for clearing detainees from the September 11 rolls, the Inspector General found that often these clearance letters were delayed because the FBI did not dedicate enough people to clearing the detainees. On average, detainees were held for 80 days before you were able to write a clearance letter for them. Some detainees had to wait up 8 months to be cleared. So, while the FBI was quick to arrest people, it was not timely in its release of non-suspects.

This delay in clearing detainees was apparent as early as September 2001. Yet, during the period of the Inspector General study, no changes were made in the clearance process.

7. Why did you and others in charge of detainee clearance not address the issue by devoting more resources to the clearance process or changing the process?

Response:

The FBI's flexibility to devote additional resources was limited because of other matters confronting the FBI. The resources devoted to the clearance process were not, however, insignificant. Personnel from FBI field offices and Headquarters played major roles in clearing the INS detainees as quickly as possible. These resources included OGC attorneys and operational agents at both FBIHQ and in the field. In addition, numerous support employees were detailed to the FBI/INS working group to help with the clearance process. These FBIHQ and field agents, OGC attorneys, and support personnel were also working on numerous legal and operational matters at this time.

8. What changes does the FBI need to make to ensure that the release of non-suspects happens quickly and efficiently?

Response:

Given the creation of DHS, which will typically make initial decisions whether to seek to detain illegal aliens during the course of investigation into possible terrorist ties, the FBI will need to ensure close coordination with DHS in future cases. The FBI is involved in an effort to draft a Memorandum of Understanding (MOU) between the Department of Justice and DHS to govern the detention of aliens who are of interest to the FBI.

FBI CLASSIFICATION OF DETAINEES

The Inspector General found that the FBI's decision to classify arrested people "of interest" in September 11 investigations was a primary determinant of their ability to obtain bond, their treatment in detention, and the length of their detention. Yet, the FBI made these classifications without any objective criteria about what sort of people were "of interest" and what sort of people were not "of interest." Additionally, the report shows that the term "of interest" was loosely applied to people who may never have been connected to any terrorism investigation. The Inspector General recommends developing clear, objective criteria to guide classification decisions. He also recommends that the FBI explicitly classify every detainee, so that those who are not linked to any terrorism investigation may be treated like any other immigration detainee.

9. Why were there no objective standards for classifying detainees as "high interest", "of interest", "interest undetermined", or "no interest"?

Response:

The broad nature of the PENTTBOM investigation left discretion to the field offices and FBIHQ in determining whether an individual detained by the INS was of investigative interest. Each field office remained flexible in its investigative steps as opposed to following overly rigid protocols in evaluating the interest. While each investigation developed its own investigative steps, some general procedures were followed in evaluating the interest. For example, after the arrest, one or more of the following investigative steps were conducted, depending on the circumstances of that case: extensive interviews, background checks, polygraphs, and other information-gathering steps. As a result of these techniques, assigned agents would determine whether further investigation was required in a given case.

10. Are you aware of any changes the FBI has made to respond to the concerns and suggestions of the Inspector General?

Response:

The creation of the new DHS has, by definition, changed the way such a classification situation will be handled in the future. In particular, initial decisions whether to seek to detain illegal aliens during the course of an investigation into possible terrorist ties will be made by DHS. DOJ and the FBI will continue to provide information to DHS to use in that process. It is likely that the role of the FBI in detention determinations will depend on the circumstances involved. If the FBI is best situated, based on ongoing investigations and intelligence information, to provide information to DHS regarding potential threats posed by the release of an individual alien, then it may be best for DHS to defer to information provided by the FBI. However, in other situations, DHS may determine that,

notwithstanding law enforcement and national security concerns of the FBI, normal agency procedures are sufficient. In any case, it is important that all interested agencies and components communicate effectively to determine the best course of action in each situation based on all available and relevant information.

With respect to coordination with DHS, DOJ and DHS have already signed a memorandum of understanding related to information sharing. The FBI and BICE (a component of DHS) work closely together through the FBI's Joint Terrorism Task Forces. DOJ and DHS communicate on many issues of mutual interest. Finally, as noted above, as recommended by the Inspector General, the FBI is working with the Department of Justice to draft an MOU that would govern the detention of aliens of interest to the FBI.

Questions Posed by Senator Feingold

1. (a) As we discussed during the hearing, please state the exact number of affidavits you filed in bond proceedings relating to September 11 detainees who were held on immigration violations. Also please provide copies of each affidavit.

Response:

The FBI did not file affidavits in immigration proceedings, but did provide such affidavits to the INS for use in bond proceedings. As the government has argued in litigation, these affidavits provide identifying information regarding the detainees, often in asylum proceedings, which are confidential. Moreover, they may reveal sources and methods of the government's investigation into the events of September 11th which is ongoing. Therefore, the affidavits cannot be provided at this time. In order to obtain the statistical information requested, the FBI must cull the affidavits from thousands of pages of documents, totaling more than 15 feet at FBIHQ and an unknown number of additional documents at the New York Office. The FBI has begun this task and will provide this information to the Committee when that task has been completed.

(b) For each case in which you submitted an affidavit, please state the evidence of criminal activity concerning the specific individual whom the Department was seeking to hold without bond.

Response:

As stated in the response to the previous question, disclosure of the requested information could compromise ongoing government investigations by revealing investigative sources and methods. In addition, affidavits that contain information obtained through grand jury proceedings may not be released because of the grand jury secrecy requirements of Federal Rule of Criminal Procedure 6(e).

(c) How many affidavits did other FBI officials file in bond proceedings for September 11 detainees held on immigration violations? Please provide the names of officials who filed such affidavits, the number of affidavits each official filed, and copies of each affidavit.

Response:

See response to Question 1(a), above.

(d) How many of the September 11 detainees held on immigration violations discussed in the Inspector General's report were eventually convicted of a terrorism offense? Please provide the date of conviction, name of the offender, and the offenses upon which the conviction is based.

Response:

None at this time, although the criminal prosecution of Moussaoui remains pending.

2. At the hearing, you testified that you "on occasion" refused to sign affidavits in bond proceedings because you "just did not feel that we had . . . uncovered enough information."

(a) On how many occasions did you refuse to sign an affidavit relating to a September 11 detainee's bond proceeding?

Response:

To the best of my recollection, I refused to sign affidavits on approximately three or four occasions because I was concerned that they contained insufficient information.

(b) For each case in which you refused to sign an affidavit, please state whether the Justice Department nevertheless proceeded to seek a denial of bond and the outcome of the bond proceeding.

Response:

On the three or four occasions when I refused to sign an affidavit, more detailed information was subsequently provided to me by the FBI field office involved relative to the activities of the individual detained by the INS. Upon receipt of adequate additional information with respect to a detainee, I signed the rewritten affidavit seeking to hold that detainee without bond. Because I signed many affidavits, I do not recall specifically the outcomes of the subsequent bond hearings concerning these three or four detainees.

(c) For each case in which you refused to sign an affidavit, please indicate whether

another FBI or Justice Department official signed an affidavit in support of the Department's denial of bond position. If so, please state the name and title of the official who signed the affidavit(s).

Response:

Please see the response to 2(b) directly above.

3. At the hearing, you described two Russian individuals who were arrested after "filming within either the Lincoln or the Holland Tunnel." Were these two individuals among the 762 individuals held on immigration violations described in the Inspector General's report? If so, how long were they detained without bond? What is the status or the final disposition of their case?

Response:

The two Russians described were among the 762 detainees. Through consultation with the FBI's New York Office and the FBIHQ/INS Working Group, the FBI determined quickly that these individuals were not of investigative interest in the PENTTBOM investigation. The FBI immediately prepared a letter to the INS indicating that the FBI had no investigative interest in these individuals. I have no information as to whether these two individuals were ultimately removed from the United States.

4. At the hearing, you testified that the FBI was never aware of the religious background of any of the September 11 detainees. You said, "No, I did not know that. I should not know that. There is no reason that we should ask that. It did not play any role whatsoever in the September 11 investigation, and I would submit that it should never play any role whatsoever in any FBI investigation, with relatively few exceptions. Maybe in the hate crime area you might want to know that." You also said, "I wouldn't know what religious background they were. We should not ask that question. I don't think we gathered that information."

As you are aware, however, al-Qaeda has used religious ideology to justify its activities and to recruit members. In fact, in its indictment of Zacarias Moussaoui, the Department states that al-Qaeda has an "extremist interpretation of Islam" (paragraph 2), and that it is "dedicated to opposing non-Islamic governments with force and violence" (paragraph 1). *(See* Moussaoui indictment on the FBI's website at http://www.fbi.gov/pressrel/speeches/mous.pdf.). *Newsweek* reported on January 3, 2003, that top aides to Director Mueller had ordered field offices to develop "demographic" profiles of the localities they covered, including the number of mosques. You were one of three officials at a press conference on June 27, 2003, announcing the indictment of 11 individuals charged with membership in Lashkar-E-Jihad, which was repeatedly identified during the press

conference as an Islamic extremist group.

(a) Notwithstanding your statement at the hearing, it seems fair to conclude that the FBI does in fact seek to determine the religious beliefs that may motivate violent criminal organizations like al-Qaeda. Assuming that the FBI seeks some awareness of the religious background of terrorist organizations and its participants, what role has religion played in terrorism investigations?

Response:

We do not single out or target individuals based on their religious beliefs. However, some investigations do involve individuals with ties to various religious establishments that have links to terrorism activities or terrorism fund-raising. My testimony was meant to point out that we do not, and should not, seek to determine a person's religious beliefs as a matter of course, since one's religious affiliation would have a bearing on an investigation only in rare cases. While we are aware that some adhere to a radical interpretation of Islam and the Koran that may involve links to terrorism, we do not use religion as a factor in deciding whether to open an investigation.

(b) What guidance, if any, did the FBI provide to its agents with respect to inquiries about suspects' religious, ethnic or national background during the PENTTBOM investigation? Please provide copies of any documents concerning such guidance. If no written policy existed at the time, please explain how you could state with certainty that questions about religious background were never asked.

Response:

As explained in the response above, the FBI did not target or profile individuals based on their religious beliefs; however, some investigations have revealed that agents of terrorist organizations use religious establishments to conduct their activities.

Via Electronic Communication (EC) dated 09/27/2001, the Director reminded all FBI agents that the FBI does not permit its agents to discriminate unfairly on the basis of race, ethnicity, or national origin, and condemns the use of racial profiling in law enforcement actions. FBI agents were further reminded that the FBI prohibits the use of race, ethnicity, and national origin as the sole basis for stops, searches, and other investigative procedures. However, race, ethnicity, or national origin may be used in combination with other identifying factors in determining whether there is reasonable suspicion that a given individual is associated with criminal activity.

The 9/27/2001 EC follows.

Precedence: PRIORITY **Date:** 09/27/2001

To: All Field Offices **Attn:** Personal Attention ADs
Personal Attention SACs
All Legats Personal Attention LEGAT

From: Office of the General Counsel
Investigative Law Unit
Contact: UC Elaine N. Lammert 202-324-5640

Approved By: Mueller Robert S
Pickard Thomas J
Garcia Ruben Jr.
Parkinson Larry R

Drafted By: Steele Charles M

Case ID #: 265D-NY-280350-LEGAL Serial 2

Title: PENTTBOMB;
MAJOR CASE 182;
OO:NY

Synopsis: This communication is written to remind all FBI agents that the FBI does not permit its agents to discriminate on the basis of race, ethnicity, or national origin and condemns the use of racial profiling in law enforcement actions.

Details: As you are all aware, the FBI, as the lead agency in this matter, has the primary authority for the law enforcement response to the terrorist attacks of 09/11/01. We also have the responsibility to ensure that civil rights are safeguarded in the process. Accordingly, this communication serves as a reminder that the FBI does not permit its agents to discriminate on the basis of race, ethnicity, or national origin, and condemns the use of racial profiling in law enforcement actions. The FBI prohibits the use of race, ethnicity, and national origin as the sole basis for stops, searches and other investigatory procedures. Race, ethnicity, or national origin may be used, however, in combination with other identifying factors in determining whether there is a reasonable suspicion that a given individual is associated with criminal activity.

ADs, SACs and LEGATs are to ensure that all their personnel are provided a copy of this communication.

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

All offices are to ensure that all their personnel are provided a copy of this communication.

(c) Please explain how the Department guidelines banning racial profiling by Federal law enforcement agencies issued in June 2003 will apply to the FBI's activities, including its terrorism prevention and investigative efforts.

Response:

The FBI has always condemned the use of racial profiling and will continue to do so. The FBI's investigative activities will be consistent with the guidance issued by the Department in June 2003. As this pertains to the FBI's primary mission to detect and prevent terrorism, any investigative activity in this regard will not consider race or ethnicity except to the extent permitted by the Constitution and the laws of the United States. The Department's guidance recognizes that there is no more compelling interest than the security of the United States and that Federal law enforcement officers must be able to use every lawful tool to protect our nation. The Department's guidance allows Federal law enforcement officers to consider race and ethnicity to the extent permitted by law.

(d) What steps will the FBI take to implement and train FBI agents on the Department's new guidelines?

Response:

The new guidance has been distributed throughout the FBI. As mandated by the Department, FBI field offices and Headquarters Divisions have been instructed to review all their operations, protocols, policies, guidance, and training to ensure consistency with this guidance. To date, the review indicates that FBI operations, protocols, policies, guidance, and training are consistent with this guidance. The FBI's OGC plans to provide a block of instruction on the guidance to all FBI Chief Division Counsel at their annual conference.

(e) The Department's guidelines do not include an enforcement mechanism. What steps will the FBI take to ensure that the guidelines are enforced and that victims of racial profiling will have an avenue for redress?

Response:

FBI agents have been advised of the Department's guidance. Alleged violations reported by victims or others will be addressed either by DOJ's Office of Inspector General, at its discretion, or by the FBI's Office of Professional Responsibility. Intentional or reckless

violations of the guidance will be treated as misconduct. If an action on the part of an FBI employee rises to the level of a criminal violation, the matter will be reviewed by DOJ to determine if prosecution is appropriate.

5. As you know, one criticism of the Department's conduct by the Inspector General Department is the "indiscriminate and haphazard manner" in which immigrants were labeled as possible terrorism suspects. The report found that:

"... the information provided to high-level Department officials suggested that this 'hold until cleared' policy was being applied to persons 'suspected of being involved in the September 11 attacks. In practice, the policy applied much more broadly to many detainees for whom there was no affirmative evidence of a connection to terrorism. This disconnect should have been discovered earlier and should have caused a review of the manner in which detainees were being categorized."

(a) Could you discuss what steps you or other FBI officials took to distinguish terror suspects from those for whom there was no affirmative evidence of a connection to terrorism?

Response:

In the course of the investigation, the FBI came across thousands of individuals who may or may not have been involved in the events of September 11, 2001. The FBI needed to conduct its investigation of these individuals. Investigations take time and entail careful analysis of the information collected. Once the FBI determined that no nexus to terrorism existed as to a given individual, that individual was cleared.

(b) In particular, on what basis were detainees prioritized for clearance?

Response:

Detainees were "cleared" as soon as the FBI was able to determine that they were not of continuing interest to the investigation.

(c) Did the FBI make any effort to focus its clearance investigations on those detainees who were affirmatively suspected of involvement with terrorism?

Response:

At the outset of the PENTTBOM investigation, detention was based on a lead indicating suspicion of terrorist links. As investigations of individual detainees progressed, some indicated no terrorist link. In other cases, the information initially developed indicated an increased likelihood of terrorist links, leading to additional investigative steps.

(d) Please provide copies of any documents that guided decisions on prioritization of detainees for clearance.

Response:

Several internal communications were drafted to the field offices highlighting the need to address the investigative status of the detainees in their jurisdictions. Due to pending litigation, the FBI cannot release those documents.

6. In a letter to FBI Director Mueller sent earlier this year, Special Agent Coleen Rowley wrote, "after 9-11, [FBI] Headquarters encouraged more and more detentions for what seem to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism."

(a) What instructions did you receive from either FBI Headquarters or main Justice about the reporting of the number of detentions in connection with the September 11 investigation?

Response:

I do not recall receiving any instructions personally. I reviewed the daily updates that were provided to and posted in the FBI's Strategic Information and Operations Center (SIOC). My recollection is that the Director asked those working in the SIOC to keep track of the number of detentions so the FBI would have a "centralized" view and a better understanding of how large an undertaking processing, investigating, and clearing the detainees would be.

I do not personally recall anyone from DOJ making requests for these numbers. However, DOJ personnel were present in the SIOC and attended meetings with the FBI where such information was discussed.

(b) What instructions did you provide to FBI agents or other law enforcement officials concerning the reporting of the number of detentions?

Response:

We instructed field offices to provide status updates on their respective detainee investigations, including a detailed summary of each detainee within their jurisdiction addressing possible terrorist links, relation to other field investigations, prospective time and resources needed to address investigation of the detainee, and whether the field had a strong interest in continued detention.

(c) **Special Agent Rowley also said: ". . . from what I have observed, particular vigilance may be required to head off undue pressure (including subtle encouragement) to detain or 'round up' suspects — particularly those of Arabic origin." Are you concerned that any FBI agents felt there was "undue pressure" to detain suspects? Would you recommend or have you taken specific steps to ensure that agents do not feel this kind of pressure in the future?**

Response:

I do not believe agents were under undue pressure to "round up" individuals. Investigators were concentrating on gathering information concerning the September 11th hijackers, their activities, and the possibility of additional attacks.

7. The FBI recently apologized to eight men of Egyptian origin from Evansville, Indiana. These men were arrested in connection with the September 11 investigation, but the FBI apparently discovered that their arrest was based on a false terrorism tip. Their lives were seriously disrupted. Some of them were included in a national crime registry, even though they were never charged with a crime, which prevented them from boarding planes, renting apartments, and landing jobs.

(a) **Have the names of any of the 762 individuals detained on immigration violations in connection with the September 11 investigation been entered into national crime databases? If yes, how many? If yes, does that include INS detainees who were later cleared of any connection to terrorism?**

Response:

A limited number of individuals were entered into national crime databases, including those INS detainees who were eventually removed from the United States prior to the FBI's completion of their investigations.

(b) **Once an individual was cleared of involvement with terrorism by the FBI, did the FBI remove their name from all national crime databases? If not, why not?**

Response:

The FBI did not place any INS detainee who was determined to not be of interest with respect to the PENTTBOM investigation in any national crime database.

(c) **Of the terrorism tips received by the FBI as part of the PENTTBOM investigation that turned out to be false, how many falsely reported tips were**

investigated for possible prosecution? Please describe the nature of these investigations and their status or final disposition.

Response:

The FBI received thousands of calls regarding the PENTTBOM investigation. The FBI did not, however, maintain statistics regarding false, unverifiable, or outdated tips.

(d) How many people have been charged with providing false information? Please describe these cases and their status.

Response:

As noted in our response to Senator Kennedy's question number 4, some of the 762 detainees were charged with various white-collar crimes, such as credit card fraud, social security card fraud, document fraud, and making false statements. We are currently unable, however, to provide the specific information requested by this question.

(e) How many people have been convicted for providing false information? Please describe these cases and their status.

Response:

Please see the previous response.

Questions Posed by Senator Durbin

Mr. Rolince, you argue persuasively that the FBI has limited resources with which to combat terrorism and that therefore the Bureau must make difficult decisions regarding resource allocation. You conclude therefore that the FBI rightly devoted its time and attention to neutralizing potential threats instead of clearing detainees of links to terrorism.

1. In light of this, in the absence of any affirmative evidence that an immigration detainee is linked to terrorism, isn't it a poor use of resources to attempt to prove a negative - that every detainee has no links to terrorism, instead of focusing on known threats? If not, why not?

Response:

Following the 9/11 attacks, locating and neutralizing potential threats was the FBI's top priority. This does not mean that the FBI failed to devote resources to completing checks of those who were first encountered in connection with investigation of the 9/11 attacks,

identified as in this country illegally, and detained on immigration charges. As noted above, the initial absence of affirmative evidence of terrorist links does not necessarily mean these links will not be revealed with further investigation. "Known threats" are often only "known" after significant investigation. The FBI's ability to assess the threat environment would have been severely compromised if we had "cleared" those encountered in connection with the 9/11 investigation and in this country illegally before we determined whether they had terrorist ties. Accepting the explanations of these individuals without verification would have been an abrogation of the FBI's responsibility.

The Inspector General's report said:

[W]e criticize the indiscriminate and haphazard manner in which the labels of "high interest," "of interest," or "undetermined interest" were applied to many aliens who had no connection to terrorism. Even in the hectic aftermath of the September 11th attacks, we believe the FBI should have taken more care to distinguish between aliens who it actually suspected of having a connection to terrorism as opposed to aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism but simply were encountered in connection with PENTTBOM lead.

2. Do you agree with this conclusion? If not, why not? Given the FBI's limited resources, wouldn't it have been more efficient to attempt to distinguish carefully between aliens with possible links to terrorism and other aliens so that investigative resources could be focused on the former? If not, why not?

Response:

While the FBI always attempts to conduct investigations as efficiently as possible, it is often difficult distinguish between an alien who is "merely" in the United States illegally and one who has terrorist ties. For example, while a given individual may currently have no clear link to terrorists or terrorist activity, investigation may reveal prior associations with known terrorists, financial or other assistance to terrorists, or education or activities that are inconsistent with the individual's background but consistent with terrorist intent. Once an individual is determined to have no connection to terrorism it may appear, in hindsight, that earlier release would not have posed a threat to the national security, but releasing an individual before we can reach that determination has clear national security risks.

As the Acting Deputy Attorney General explained in his November 20, 2003, Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency. In addition, the FBI has taken numerous steps since September 11, 2001, to establish entities such as the FTTTF and the

NJTTF. With these enhancements, we believe that we will have an improved flow of information in the event of another large-scale terrorist attack.

Questions Posed by Unnamed Senator

1. **A clearance letter from the FBI was necessary for a "September 11 detainee" to be reclassified as a "normal" detainee, and thus eligible for removal from the country. According to the OIG report, it took 80 days, on average, for the FBI to produce such clearance letters. The OIG report indicates that this period was unnecessarily lengthy because the FBI failed to allocate sufficient resources to the clearance project. Do you agree?**

Response:

I testified, and strongly believe, that 80 days is not an excessive amount of time to resolve those illegal aliens who were being lawfully detained. Given all that was going on in the immediate aftermath of the attacks and the work being done by 7,000+ agents (the processing of the crash sites, the search for the "second wave," the lack of power and adequate command post facilities in NYC where many of the detainees resided, the time taken to attend funerals, the processing of 1.8 million tons of remains and debris at Fresh Kills, etc.), the 80-day average is not surprising.

Additionally, as I testified, if leads were outstanding in other agencies, domestically or overseas, the coverage of those leads was out of our control. Adding 100 or more agents would not have had any effect on other agencies' response times.

Finally, when the FBI initiated response to the 9/11 attacks we did not cease the work in which we were engaged prior to the attacks. As mentioned above, the FBI continued its involvement in trials, grand juries, surveillances, arrests, and other investigative efforts.

2. **In your testimony before the Judiciary Committee on June 25, 2003, you stated that the FBI utilized the resources of the Joint Terrorism Task Force ("JTTF") by forwarding to the Task Force cases which required more investigation or scrutiny, and that this process took time. What steps did the FBI take to ensure that the JTTF investigation was completed in an expeditious manner? What steps did the FBI take to promptly process the cases of detainees that were not forwarded to the JTTF?**

Response:

FBIHQ spoke with the JTTF representatives on a daily basis to ensure that the investigations were being worked in a timely manner. Cases that were not forwarded to the JTTF were most likely cleared when all the necessary background checks were

completed.

3. **The OIG report recommends that the Justice Department, Department of Homeland Security ("DHS"), and the FBI develop clear criteria to determine when an alien is "of interest" for terrorism purposes and establish a time limit during which such a designation must be made. Do you agree with those recommendations? What steps, if any, have already been taken in response to those recommendations? What further steps are planned?**

Response:

In September 2002, DOJ imposed a requirement that the Office of the Deputy Attorney General approve the addition of any new cases to the September 11 special interest detainee list. The addition of new names to the list had to be based on the FBI's representation that the case was clearly linked to the September 11 investigation. As the report indicates, however, there are very few aliens who remain detained who were encountered during the course of the September 11 criminal investigation. As that is the case, we do not anticipate that new individuals will be added to the September 11 detainee list.

With regard to future investigations, we agree with the premise of the recommendation and are working with DHS to establish criteria and procedures for future investigations of alien detainees, including circumstances where a large number of aliens with potential ties to terrorism have been detained. Of course, the specific criteria will depend on the nature of the individual investigation particularly during a national emergency.

4. **Boilerplate affidavits were a key part of the "no bond" policy to oppose release on bond for all 9/11 detainees. Those affidavits indicated that the detainees could not be released because they could have information crucial to the 9/11 investigation. However, the OIG report indicates that, within days of the attacks, investigators had separated the detainees into two groups - (1) those who were of investigative interest and (2) those who were identified incidentally and not subject to the focus of investigators. Do you still stand by your affidavits that were used to oppose bond for that second group of detainees - those who were incidentally identified?**

Response:

At the beginning of this vast investigation, the FBI identified groups of individuals with potential or known associations with possible terrorism-related groups. Thus, we needed to conduct our investigations to determine who had a material association with terrorist groups. We could not take the chance of releasing a potential terrorist while we were conducting our investigations.

5. **In your testimony before the Judiciary Committee on June 25, 2003, Senator Feingold asked you to provide greater detail on a subset of the 762 Immigration and Naturalization Service ("INS") cases in which you submitted an affidavit. He asked, "[In] how many of those INS [cases] in which you submitted an affidavit did you have evidence of criminal activity concerning the specific individual whom the department was seeking to hold without bond?" At the time of the hearing, you did not have exact numbers in answer to this question, but indicated the figures were determinable. Please provide these figures to the Committee.**

Response:

In order to obtain the statistical information requested, the FBI must cull the affidavits from thousands of pages of documents, totaling more than 15 feet, at FBIHQ and an unknown number of additional documents at the New York Office. The FBI has begun this task and will provide this information to the committee when that task has been completed.

6. **In your Testimony before the Judiciary Committee on June 25, 2003, you indicated that "no bond" affidavits were submitted "simply because we were not convinced that we had all the answers to the questions or all the record checks were back." Do you agree that these "no bond" affidavits were based solely on the presence of the unknown, and not based on any evidence of individual criminal activity, and if so, how do you justify this rationale for denying bond?**

Response:

Most of the affidavits were drafted based on the possible flight risk and threat to national security posed by these detainees. In many cases, we specifically provided details to enable the immigration judge to render an informed decision on whether a detainee should be held without bond.

7. **Department officials acknowledged to the OIG that they realized that many in the group of "September 11 detainees" were not connected to the attacks or to terrorism in general. During the time that you were responsible for issuing clearance letters, did you also realize that many of the September 11 detainees had nothing to do with terrorism? If so, did that realization affect in any way the pace with which the FBI reviewed such cases?**

Response:

We realized, after our field offices conducted their investigations, that some of the detainees were not connected to terrorism activities. As soon as we realized that there was no connection, we issued clearance letters.

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