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INVESTIGATION OF CRIMES IN THE BUREAU OF PRISONS

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A CRISIS IN THE PRISON SYSTEM

Prisons in the United States are housing a record number of inmates both at the local, state and federal levels....Sentencing guidelines and, "three strikes" laws have increased the length of sentences. The increase in sentence lengths and the inability of the government to provide adequate facilities for the inmates has created a crisis in the the prison systems. Nowhere is this crisis felt more acutely than in the Federal Bureau of Prisons (BOP).

I will focus on the investigation for defense of inmates charged with violent crimes while incarcerated in the BOP. Many of the techniques and problems that will be outlined are applicable to other prison systems, while some are unique to the BOP.

In March 2003, the BOP was housing 137,000 inmates in facilities across the country¹. These facilities are located throughout the United States. The facilities include Maximum, United States Penitentiaries, Federal Corrections Institutions, Federal Detention Centers, Federal Prison Camps and Federal Medical Centers. A list of these facilities as well as an inmate locator service is located at www.bop.gov.

Crimes of violence within the institutions can be generally classified in two categories; inmate on inmate and inmate on staff. The cache of weapons available to inmates varies from shanks to zip guns. Both produce very serious injuries and at times death to the victims.

THE GOVERNMENT INVESTIGATION

The investigation of violent crimes within a Federal Institution is conducted jointly by agents of the Federal Bureau of Investigation (FBI) and the staff of the Bureau of Prisons Special Investigative Service (SIS). While the investigations are conducted concurrently, their objectives often diverge. The FBI conducts a criminal investigation and if a suspect is identified the case is referred to the United States Attorney. The SIS investigation focuses primarily on infractions of rules and policy by both inmate and staff.

The defense investigator must be aware that information on a particular crime is contained in both the files of the FBI and the SIS and should be part of the discovery process in a criminal proceeding. Given that a violent crime within an institution indicates a failure on the part of the BOP, it is not uncommon for the BOP to be less than forthcoming with investigative information that maybe critical in the defense of an accused inmate.

Specifically, the investigator should be looking for the following information:

- *SIS interviews of staff and inmates*
- *Photographs and other evidence seized by the SIS independent of the FBI*
- *Cell rotation logs*
- *Disciplinary records*
- *Inmate medical records*
- *Gang affiliation files*
- *Razor logs (records of shaving equipment handed out)*
- *Cell inventory logs*
- *Correctional officer (CO) staffing schedule*
- *BOP Procedures for investigation of crimes*
- *After-action reports compiled by BOP*
- *Internal memorandum specific to the case*
- *Central Inmate Monitoring (CMI) files*
- *Inmate work assignments.*

The US Attorney's office may not be forthcoming with this information, telling defense counsel that it is in the control of the BOP. The BOP may even have one of its staff attorneys enter an appearance in the case, as a "special United States Attorney". The BOP attorney will often attempt to block the release of BOP information citing "security" concerns. It is incumbent on the investigator to identify the items needed and on the defense attorney to aggressively pursue the release of those documents.

ACCESS TO THE SCENE

Unlike most other crime scenes, the defense investigator is severely restricted in access to the scene. Access to the scene must be secured through the BOP and may require a court order. Photographs and measurements are taken under the supervision of BOP and they will generally screen all documents and photographs produced by the investigator prior to their release.

ACCESS TO INMATE WITNESSES

The defense investigator faces a particular challenge in interviewing inmate witnesses. The first challenge is locating and gaining access to the witness.

It is common for the BOP, after a serious crime, to transfer inmates to other institutions, often far from the institution where the incident took place. The Defense investigator must be prepared to travel extensively interviewing inmates in institutions throughout the country.

There is a routine for arranging legal visits with inmates. The routine may vary slightly from institution to institution, but it is generally the same through out the system.

- The investigator must identify the location of the inmate witness. (www.bop.gov).
- The investigator must contact the inmate's counselor.
- The investigator must submit a BOP form signed by the defense attorney.
- The visit must be approved by the warden or assistant warden.
- A date and time is set.

Often, when contact is first made with the counselor, the counselor will inquire as to the nature and the subject of the inquiry to be made of the inmate. The counselor will tell the investigator that he or she must "check" with the inmate to determine if the inmate wishes to meet with the investigator.

The proper response to this question is to:

- explain the the nature of the inquiry is confidential
- that the investigator understands that the inmate is not required to talk with the investigator.



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- that the investigator would like to meet personally with the inmate and explain the nature of the inquiry and then let the inmate decide if he or she wishes to talk.

This approach generally works, but there are still times when the counselor will go to the inmate, tell the inmate that an investigator wants to conduct an interview and then report back to the investigator that the inmate is refusing the interview and the visit is cancelled.

Letters to inmates, with any detail of the case, should not be sent as the letters are read by BOP personnel and often other prisoners. An inappropriate letter may jeopardize the safety of an inmate as well as compromise the investigation.

THE INTERVIEW

Once the investigator has been approved for the interview, preparation for the interview must begin. Beyond the normal interview the investigator is familiar with, there are special considerations for inmate interviews.

First, inmates are primarily concerned about their personal safety. They carefully assess the impact making a statement may have on their personal safety and their treatment by BOP. An inmate who is considered a "snitch" or "rat" not only risks physical harm, but may be placed in the Special Housing by prison staff.

Inmates are often concerned about losing privileges or even being transferred to another institution as the result of cooperating with the defense. By definition, a crime committed by an inmate in custody of the BOP implies a failure by BOP to accomplish its mission. BOP staff are alert to the fact that a defense investigation may uncover misconduct and negligence by BOP staff that is embarrassing to the agency.

On occasion, inmates may lie to get another inmate in trouble, to cause the investigator problems, to make themselves seem important or just for the fun of it. Inmates are very good at lying and often have access to the discovery on a certain case or may have obtained information via the prison grapevine. The investigator must make special efforts to corroborate all statements.

In the actual interview the investigator should be empathetic to the inmates plight, understanding of the system and treat the inmate with respect. Initial resistance to being interviewed can often be overcome by just talking about the inmate himself, his family, prison life etc. An open and friendly approach by the investigator goes a long way in fostering communications.

The investigator should never promise anything to the inmate. Ethical considerations aside, unlike government investigators the defense investigator in reality has little or nothing to offer the inmate. Broken promises inevitably result in non-cooperation.

Except in very unusual circumstances the tape recording of interviews inside of BOP institution is forbidden. Most inmates are understandably reluctant to make written statements out of fear for their safety. It is most productive for the investigator to produce a written or verbal report of the interview to the attorney. Obviously there is some risk that the inmate may change his story, but the alternative may be getting no information at all. Following up with periodic notes or letters to the inmate, simply inquiring about their well being and showing concern will often secure continued cooperation for an extended period.

The defense investigation of crimes committed in the Bureau of Prisons presents unique challenges to the investigator. Developing a routine or protocol for conducting these investigations results in a higher quality work product and increases the chances of a successful investigation.

¹ Lapin, Harly G. Bureau of Prisons, Weekly Population Report. March 2003