Inquiry Outline

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The following outline summarizes topics that will be addressed in the Practicum. It is provided to assist in following the discussion and as an aid for notetaking.

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Part I: INQUIRY

A. How to Respond to Allegations

Concerns regarding the conduct of research are expressed in a variety of ways. The source may be students or faculty with first-hand knowledge of practices that may be improper, or it may be that a complaint is conveyed second-hand. Allegations span a spectrum from those that are very unclear and apparently insubstantial to those that are obviously quite serious. The first response to such expressions can be crucial to the outcome for all affected individuals and for the institution.

Because individuals expressing this type of concern are often upset, angry, and frightened, it can be difficult during an initial interview to determine whether the person is simply concerned or is alleging misconduct. Patient listening and probing often reveal that the individual’s concern, while real, does not relate to alleged research misconduct (fabrication, falsification, plagiarism and “other practices that seriously deviate . . .”) but does require institutional response through other appropriate channels.

Public Health Service regulations that apply to all institutions receiving PHS funding require those institutions to file assurances that the institution will “inquire immediately” into an allegation or evidence of serious misconduct. (42 CFR 50.103(d)(1); see Federal Regulations and Documents Section.) The regulations, however, do little to clarify or define the difference between “statements of concerns” and “allegations” that require immediate action. As a result, a determination as to whether information received is an “allegation” (or otherwise may evidence research misconduct) has consequences for institutional compliance.

What is an allegation? When does an expression of concern become an allegation? What to do with allegations as a faculty member, as a colleague, as an administrator.

- When is something an allegation and when is it an expression of concern that may properly be resolved informally or through other channels?

- If someone comes to you for advice and requests confidentiality, but describes a very serious situation, must you take action? (the Waters case study)

- What, if anything, do you do to assess the credibility of the person who comes to you?

- What if you believe that the situation centers around a misunderstanding or miscommunication not involving research misconduct?

Comment: This is one of the most challenging aspects of the entire process. Many expressions of concern, once examined, turn out to be the results of misunderstandings, miscommunications, or unresolved personality clashes. Most can probably be resolved through direct conversation or mediation by a third party. Some concerns are serious but do not relate to research integrity. Ordinarily, they should be referred to the appropriate administrator or departmental office.

It is often good practice to encourage the parties to speak directly to each other. If the situation involves individuals of unequal status (such as student/professor), it can sometimes be helpful to have a third party involved in the conversation. Efforts to make the meeting as non-threatening as possible
for all participants are worthwhile. These can include: having the meeting in an informal and neutral setting; presenting and discussing contentious issues in a manner that conveys concern but that is neither accusatory nor implies that conclusions have been reached; and focusing on the common ground of the participants in the discussion.

However, if the allegations are about the integrity of data and the matter is handled entirely informally, this can leave the accused in a very awkward situation later. The only way that the accused in such a situation can be cleared unequivocally is if he or she had no opportunity to alter the data after the concerns were first expressed. Depending upon the nature of the allegation, it may thus be wise to consider mechanisms for securing copies of the data before the process proceeds very far. This can be very upsetting to the person accused, so taking the time to explain carefully why copies of the data are being secured (i.e., because it will leave that person better protected at the end of the process) is time well spent.

- What if an expression of concern is brought to your attention, but later withdrawn by the individual who raised it? Do you have an obligation to pursue the matter anyway, or may you drop it?
- When should an allegation be elevated to the next highest administrative level (i.e., department head, dean or research standards officer)?
- If a faculty member receives an expression of concern from a graduate student, when should the faculty member alert the department head?
- When should the department head alert the institution’s legal counsel or the dean/vice president/provost that he or she has received and is handling an expression of concern?

Comment: In general, if an expression of concern is received by a faculty member, the faculty member probably should at least inform the department head unless the concern is patently frivolous, mistaken, or the product of an obvious miscommunication. This advice applies to circumstances where the expression of concern clearly touches upon topics addressed by the institution’s and/or government’s definitions of scientific misconduct (fabrication or falsification of data, plagiarism, or other extremely serious matters). Expressions of concern that fall into those categories should be, from the beginning, handled with extreme care and institutional officials responsible for compliance or the implementation of the institution’s misconduct policy should be consulted. This does not invariably mean that they must handle it, but it does suggest that they should be informed and should be consulted as to the appropriate way to respond, because if the matter proceeds into a full-blown misconduct case, it will be important to have responded appropriately from the beginning. This is the stage where a great deal can go wrong for all parties if things are not managed carefully.

When does the institutional policy begin to apply and control the process?
- What does it mean to review these matters informally as opposed to within the context of an inquiry under institutional procedures?
- When does the institution’s policy “click in”?
- How long should it be possible to deal with an allegation informally before a formal inquiry is convened?
• Under what, if any circumstances, is a “quiet” investigation appropriate, possible, sensible or desirable?

**Comment:** These determinations are obviously judgment calls. The factors to be considered include the seriousness—or potential seriousness—of the allegations, the history of questions about the conduct of the individual concerned, and an assessment of the personalities of the involved parties. Caution is essential. Even professionals with outstanding reputations have been guilty of misconduct, and accusers with unstable personalities have been correct.

The more serious the allegations, or the potential allegations, the more formally things should be handled. It is important to keep in mind that a proceeding that is formal and documented can offer better protection to a faculty member who may be the victim of a vendetta or other malicious charges. Finally, if *any* of the parties are particularly volatile or appear unstable, the situation warrants especially careful handling.

The remaining situations, i.e., those involving low-key or minor allegations, those involving individuals who are otherwise on cordial terms, and those where allegations have not arisen previously, may be reasonable candidates for informal pursuit for a short period of time. If the consideration period drags out, however, beyond a week or two it is probably appropriate to begin thinking about invoking the institutional policy and following its strictures.

What sort of “quiet” investigation is possible? It is always possible to ask the person raising the issue what sort of evidence is available, and to examine whatever material that person has available. (Care should be taken to avoid conveying the idea that the person should act as an independent investigator ferreting out information for you, however.) Depending upon the circumstances, a conversation with the administrator most knowledgeable about the situation might be appropriate, always bearing in mind that personal relationships and affiliations might affect the information you are receiving.

• Are there “statutes of limitations” for allegations?

• What if the charge has been reviewed in some form before? Under what circumstances can it be brought up again? Are there any special precautions that must be taken if the institution declines to review a charge again?

**Moderating the emotional pitch**

Even for informal mediation or intervention efforts, close attention to the emotional pitch of the concerned parties is essential. The most stressful aspect of many of these situations is uncertainty. Graduate students and other junior personnel will be worried that voicing concerns may have a negative effect on their careers. Senior personnel about whom concerns are expressed are likely to be quite angry that the questions were raised. All will be worried about what the process will entail, how long it will take, and what will happen to them afterwards.

It is important that the limits of informal efforts are understood at the outset. In addition, provide a clear and careful explanation of the policies and procedures that will apply if the informal efforts are not successful and when they will begin to apply; who will make the determination regarding the initiation of a formal procedure; what the role of each of the parties will be; and who will know what each has said.
• What if the person who expresses the concern is so fearful of retaliation that he or she demands anonymity, or withdraws the concern?

• What if the person who expresses the concern appears vindictive, overwrought, or unstable?

• What if the respondent is known to have a volatile or vindictive personality?

Comment: It is often useful to keep careful records about meetings that occur, their participants, and the topics discussed. When meeting with individuals under stress, the presence of a third party can help to keep the tone balanced and provides additional recollection of the conversation; even innocuous statements made in such circumstances are amenable to mis- or over-interpretation. The role of a third party can be key, but choose the party carefully.

Expressions of personal support or concern for individuals in obvious pain must be carefully stated, or they may be taken as evidence that you are accepting their version of the facts. Repeated statements of your neutrality and your commitment to a fair and just outcome can help ameliorate this effect.

An individual who is caught up in the process—whether by reporting a concern or as the accused—frequently is not organized or collected when initially interviewed. Second thoughts are common. While it is important that the individuals know that it is possible to provide additional information or ask questions later, it is also important not to get caught in a situation where all your time is spent meeting with the individual or talking with him or her on the telephone. Sometimes encouraging the individual to seek counsel and advice from a trusted supporter or friend can be helpful—if he or she has someone to discuss matters with (other than you) who is not so emotionally involved, he or she may gain another perspective on the situation. The key is to explain the process and your role in it clearly; repeat it often and stay within the limits of your prescribed role. Be friendly and cordial to all parties, but do not become a friend or confidant.

Who tells what to whom?

• May an allegation be made anonymously?

• Must an allegation be put in writing or can it be made orally?

• Who decides these issues, and are they ironclad rules?

Comment: If your institution does have firm-and-fast rules on these issues, make sure they are clearly stated and broadly disseminated. This is one area in which it is worth moving cautiously, as circumstances will differ so much from case to case.

• How much weight should be accorded to information provided in this manner?

• Are there distinctions between information received anonymously (e.g., slipped under the door or sent in the mail) versus an individual coming to see you, but requesting anonymity before providing information?

• Does it make a difference if the individual can provide documentary information or evidence, but does not wish to be involved or to have it known he or she has done so?
Comment: From the perspective of institutional integrity, an anonymous allegation of wrong-doing cannot be ignored, but it is also important not to embark upon what could be perceived as a “witch hunt” on the basis of purely anonymous and unverified statements.

Clearly there is a difference between “poison pen” letters slipped under the door and statements made by an identifiable person who is afraid of possible retaliation. If the allegations involve facts that can be independently verified, that situation is different from one that depends upon the credibility or interpretation of the informant. In the former circumstance, it may be possible to be fair to the accused (by providing full notice and opportunity to respond) while still protecting the individual who raised the concern. In the latter, it is probably not. Further, promising anonymity for the duration of the process is problematic. Anonymity is difficult to protect on a practical level, and becomes increasingly troubling from the perspective of fairness as the process proceeds.

There are no cut-and-dried answers in this area—just hard questions and balances to strike.

• When should the subject of concerns (the accused) be notified?

• When should he or she be given an opportunity to respond and in what form?

• If the concern is resolved informally, does the accused have a right to know about it, or is it sufficient to resolve the matter without ever “bothering” the faculty member?

Comment: It is very tempting to close the matter out without notifying the accused (especially if the complaint was frivolous and the accused has a short fuse), but this is a temptation worth resisting.

• What risks apply to discussions of the matter with the respondent before an inquiry?

Comment: Especially in the case of allegations that involve data fabrication, if the respondent is notified of these allegations in an informal resolution process but an inquiry later results, how can that individual be protected against later accusations that he or she had an opportunity to alter the data before it was reviewed by others? One method is to secure copies of all potentially relevant data at the earliest possible moment.

• Under what circumstances should the respondent be advised to secure legal counsel?

• What steps should be taken when the allegations relate to work by your institution’s faculty or other employees off campus and to work at your institution of persons affiliated elsewhere?

Keeping records of allegations received; what’s prudent and what’s required

Comment: If the problem is not resolved during the initial stage and the matter recurs, records are needed to establish the institution’s integrity. Subject to PHS and other legal requirements, it is not necessary to have formal written documents or extensive “case files” but it is important to have at least handwritten notes in
some accessible place so that if questions do arise later, it is possible to
reconstruct what happened and to support the initial decision(s).

- What records should be kept on informal resolution efforts?
- Who should be notified of such efforts?
- How do you achieve institutional consistency, if allegations are handled
  informally?

Institutional policies: aspects and ramifications for the process
The effect of federal regulations (currently a moving target); definitions of research
misconduct vs. other violations of the faculty code of conduct

Comment: Often, by the time a person comes forward to express concerns about the conduct
of another individual, the situation is already quite complex from an
interpersonal perspective. The concerns may involve a raft of allegations of
improper conduct ranging from issues of scientific integrity to sloppiness to
sexual misconduct to exploitation of students. Deciding how to proceed can be
quite complex. Most institutions have separate policies for research
misconduct, financial finagling, sexual misconduct, and other areas of concern.
At this initial stage, the safest advice is: the more complex the matter, the
more likely it needs to be handled within formal procedures.

How to decide when to go on to a formal inquiry
When the situation is complex, with more serious charges, and volatile personalities, it is
prudent to invoke a formal procedure. Similarly, if initial inquiries indicate that there might be
some substance to the concerns, it is far better to review that substance within the framework of
an institutional procedure than to pursue it informally. If informal efforts have demonstrated
that in fact there are no quick and easy answers or that there is serious disagreement among the
parties, that is the time to invoke the institutional procedures.

- At what point does the institution have an obligation to review the
  questions with or without the consent or participation of the original party?
- What obligation does the institution have to protect that individual?
- Is it possible to protect that individual?
- What steps can be taken?
- Alternatively, what can be done (if anything) to prevent the initiator from
go public with his or her accusations?
- How can reprisals by the accused be prevented?

B. What is an Inquiry?
Thinking about an inquiry vs. an investigation; when to switch from one to the
other; ramifications of the switch.
An inquiry is an expeditious and confidential review of allegations or concerns that have
been raised regarding the integrity of the research, publications, or grant-seeking
activities of a faculty member or other employee of the institution. It is typically
designed to enable a distinction to be made between allegations of scientific misconduct
that have no merit and those that deserve further review. (There is, of course, still
another possibility: the allegations have merit, but do not involve scientific misconduct.
See discussion in “How to Respond to Allegations.”) By rough analogy, the inquiry
process is somewhat like a grand jury process where the sole question is whether there is sufficient cause to proceed to the next phase of the process.

NOTE: Federal funding may impose restrictions upon the inquiry process. For example, NSF regulations require that an institution complete its inquiry within 90 days. See 45 CFR 689.

What are the role and purpose of an inquiry?
Under a grand jury model of an inquiry, the sole purpose of the process is to determine whether there is sufficient cause to proceed. Other models call for the substantiation of the charges before moving on to an investigation. In order to choose between these models, it is necessary to have some sort of idea about the role of the inquiry versus the role of the investigation.

- How much overlap is desirable?
- How many people will be involved at each stage?
- What implications do the above factors have for speed, confidentiality, fairness and thoroughness of the contemplated reviews?

Comment: The grand jury model has a number of implications for how the inquiry is organized. Under this model, if eight allegations had originally been raised, the inquiry would not necessarily be required to examine all eight if the first allegation reviewed reveals sufficient substance to warrant a formal investigation under the institution’s policy.

Under this model, the inquiry would be completed if any of the allegations indicated the need for an investigation, leaving the review of that allegation—and all others—to the investigation process. This guarantees that there are separate and distinct roles for the inquiry and the investigation, that the same ground is not covered multiple times (in possibly conflicting ways), that the process is relatively expedient, and that the respondent is covered by as many procedural safeguards as possible if there is any likelihood of a misconduct allegation being sustained.

However, this method has the drawback of making the formulation of an explicit and limited charge for the investigation more difficult. There are external factors that introduce other complications as well. If the charges involve PHS funds, that agency’s regulations mandate that the name of the subject of an academic integrity investigation be put into NIH’s “alert system.” It is not entirely clear what the ramifications of this action are. It has been suggested that an investigator’s name in the alert system might affect the proposal-award process, although recently OSI officials have said this is not the case. This practice within NIH is controversial and under review.

The uncertainties surrounding the alert system considerably raise the stakes for moving from an inquiry to an investigation. This may suggest that, with HHS funding at least, it might be prudent to delay the switch to an investigation as long as possible to avoid unnecessary—and possibly irreparable—harm to the reputation and livelihood of the respondent.
If an inquiry is meant to provide rapid triage of allegations, does that have implications for how many panel members should be involved?

At some institutions, an inquiry is done by one person alone. At other institutions, a team of two or more persons is put together. In trying to determine which approach to adopt, some connection should be made to the role an inquiry serves within the institutional process. Recall that the purpose of an inquiry is to determine whether allegations have sufficient merit that the allegations should be considered within an official institutional investigation. While an investigation is taxing for everyone involved, it will also provide more procedural protections for the respondent than the inquiry process does.

The main factors to be considered in selecting a format for the inquiry process are judgment, expertise, speed, and confidentiality.

Comment: The inquiry process can be conducted more rapidly and with greater assurance of confidentiality if the panel is small. On the other hand, more panel members broaden the perspectives and views brought to bear on the problem. Different allegations may require different numbers of reviewers (and different personnel) at the preliminary stages. On occasion, it may be appropriate to include panel members from outside the institution at the inquiry stage, although this is more typical in an investigation.

- When should the respondent be notified of allegations against him or her?
- How should a respondent be notified of allegations against him or her?
- What rights of notification does the respondent have at this stage?

Comment: In general, if the institution invokes its misconduct procedure, it seems appropriate and fair for the respondent to be notified at that time and to be provided with specifics of the allegations, the process that will be used to review the allegations, and what opportunity he or she will be given to respond to them.

C. Conducting an Effective and Credible Inquiry

The essential elements of any credible inquiry are that the fact-finder (or fact-finding mechanism) is independent, objective, expert and fair. These are the standards on which to judge an institution’s inquiry process.

Another key factor is the degree to which the institution’s leaders are supportive in terms of resources provided and commitment to the process. Efforts to keep such individuals informed of the nature of the charges and the process used to review them are well worthwhile for they will have to defend the process should it be subject to later criticism. From the beginning, those individuals should understand and have confidence in the staff, panel members, and process.

Before the Inquiry Starts: Laying the Foundation

Developing a plan for the process: who does what when

Regardless of the format an institution chooses for its inquiry process, a plan must be in place. Some institutions use a panel for the inquiry, others use one person. A one person review is not recommended; a panel provides balance and prevention against any individual bias. Is a different person appointed for each case, or is this responsibility
assigned on a standing basis? If a panel is used, it too may be appointed on an *ad hoc* basis or drawn from a standing committee.

It is important to assign responsibility for the various tasks that need to be performed. Some of these tasks will be mandated by your institution’s policy. Others will need to be delegated according to practice, custom, or on a case-by-case basis.

- Tasks to consider at this stage (many will recur at other points in the process) include determining who will be responsible for:
  - Selecting the panel
  - Charging the panel
  - Orienting the panel
  - Procedural compliance
  - Notifying the respondent
  - Notifying collaborators
  - Working with the accuser
  - Deciding who is to be told what
  - Selecting witnesses
  - Scheduling meetings
  - Securing evidence
  - Interviewing witnesses
  - Keeping records of the process
  - Interacting with university counsel, as necessary
  - Liaison with research sponsors, reporters, and other interested parties
  - Receiving the report of the panel
  - Making the decision for closing the matter or moving on to an investigation

*Comment:* Some of these items should be covered by your institution’s policy (e.g., selecting and charging the panel). On others, the policy may be silent. Whether applying your institution’s policy or allocating responsibility for the various tasks on an *ad hoc* basis, consider the areas of relative expertise of each of the participants as well as the time they have to devote to the process.

For example, it is not reasonable to expect busy professionals to spend time scheduling meetings and arranging for conference rooms in addition to the substantive evaluations that will be required. Other staff support may also be appropriate.

Many institutions have adopted a model in which a designated person serves as a “research standards” or compliance officer. That person is responsible for procedural compliance, and liaison with other parties (ranging from legal counsel to research sponsors). Alternatively, another institutional officer (such as a dean) may be responsible for these tasks. Either may also participate in the substantive decisions, although a dean is less likely to, especially if he or she has a significant role in determining whether to proceed to investigation and/or imposing appropriate disciplinary responses in the case of adverse findings.

An approach that divides the procedural and support role from that of evaluation—however accomplished—is one well worth considering. It can reduce the exposure of the panel members to unwarranted legal liability, assure that specialized expertise is consulted when needed (for example, in interacting with the media), and concentrate the abilities of the panel on the
substantive issues. (Additionally, provision of such support may increase the willingness and ability of very busy individuals to serve on review committees and panels.)

- Prior to the start of the inquiry proceeding, it is useful to consider the following:
  - What is the role of staff vs. the role of panel members?
  - What is the role of counsel?
  - What is the role of the accuser?
  - What is the role of the respondent?
  - What is the role of the official who appointed the panel?
  - What information should be made available to whom throughout the process?

Comment: The panel should be shielded during the process from ex parte communications from any of the participants. Every party should be cautioned not to interact outside of the process with the panel on the topic of their review; this will protect the panel members and will assist in maintaining the integrity of the review process.

The panel should have access to legal advice both upon request and to help avoid undue liability, but how this is to be structured will depend in large measure on how “legalistic” the proceedings are intended to be.

Given how strongly the participants (especially the person who raised the concern or lodged the allegation and the respondent/accused) will feel about the process, the more the inquiry can be “institutionalized” and their roles clearly prescribed, the stronger the resulting process. While it is critical to have sufficient input from the accuser, it is essential to avoid allowing the accuser to become a prosecutor.

The official appointing the panel and to whom it will report may want periodic updates on the process. Whether this should be done depends in large measure upon the participants and their relationships. While such information can be helpful in assuring that the official is not blind-sided by developments (and has sufficient confidence in the panel and process to be supportive of it) such communications can also undermine an otherwise solid process.

- Does the respondent have an obligation to cooperate?
- What should be done if the respondent refuses to cooperate?

Comment: Non-participation of the respondent can present many difficulties. Ideally, the misconduct policies of institutions should address the obligation of employees to cooperate, and provide an appropriate response when they do not. Aside from moral persuasion (which can be powerful, if properly applied), this question should be reviewed with your institution’s legal staff.

- How can the cooperation of other significant individuals be facilitated?
- Should counsel for any of the parties play a role in the inquiry process? If so, what role?

Comment: Because the lawyers for various participants can have an important effect on
the inquiry process, the role of counsel should be well developed and clearly set forth in your institution's misconduct policy and procedures. See the comment on this topic on page 15 in "During the Inquiry."

- What is the role of staff in the inquiry process?
- What resources will be made available to the panel? secretarial? legal? experts? budget? other staff?

**Forming the panel: screening for bias, stature, and expertise**

- If a panel is used, and must be selected, how many members should there be?

**Comment:** The University of Illinois uses a two-member inquiry team. One individual is appointed from the department in which the respondent holds his or her primary appointment or in which the activity in question has been conducted, and one individual from elsewhere in the university.

- What criteria should be used for the selection of members?
- Is it important to balance the panel with representation from both inside and outside the respondent's department?
- Are the criteria for panel membership primarily scholarly or primarily personal (e.g., personal integrity and good judgment)?
- Is it important to appoint panel members whose professional status is compatible with that of the respondent? (i.e., if the respondent is a faculty member, must all the members of the panel be faculty members, or are there circumstances in which an administrator or research professional might be an appropriate choice? If the subject of the investigation is a research professional, should the committee contain an individual from that employment classification? Or should/must it be all faculty members?)

**Comment:** University of Illinois panel members are chosen for both scholarly standing (e.g., quality of achievement) and personal integrity. If the respondent is a faculty member, at least one member of the panel must be a faculty member. Typically, both members are. There have been several occasions where it was not feasible to have a member from within the respondent's department, for reasons ranging from the small size of the department to personal considerations that would have resulted in bias or the appearance of bias on the part of the panel.

There are some indications that OSI believes that faculty members from the respondent's department should not be included because of the conflicts of interest this can introduce. While it can have this effect, participation of such individuals can also be very helpful and illuminating—if the panel members are selected with the potential for bias and conflict in mind, and if the panel also includes an individual (or individuals) with a different perspective to balance the first. Panel members should be asked to declare any conflicts of interest in advance to determine eligibility.
• Should the respondent be allowed to challenge the membership of the panel?
• On what grounds?
• How soon should this be required?
• Can bias develop after the process has started?
• Can bias be alleged after the process has started?
• Who determines whether or not to replace a panel member?

**The Inquiry Process**

**During the inquiry**

It is a useful practice to keep track of time and expense spent on the process. It may not be possible to develop an accurate sense of the time of the panel aside from its formal meetings, but it should be possible to make a record of administrative time (and expenses) incurred in each process you conduct. Over time, this information should provide an interesting insight into the functioning of universities' internal investigations and assignment of resources to them.

**When to notify the collaborators: what to say to them and in what form?**

*Comment:* Notification of collaborators depends upon the nature of the work called into question and the relationship of the accused to the collaborator.

• What are the institutional obligations to other parties: the accused, the whistleblower, and others?

**Charging the panel**

The main challenge in developing a charge for the panel or individual conducting the inquiry is to provide enough specificity to be fair to the respondent while leaving the inquiry panel free to examine relevant related information that may emerge in the course of the process.

One frequent complication is that countercharges will be made by the respondent as soon as he or she becomes aware of the specifics of the allegations.

• How specific must these counter charges be?
• Should or must they be in writing?
• Who receives them?
• What should be done if the panel uncovers additional information that would lead to amended charges? Does the process stop and begin anew, or can it continue with some appropriate notice of the revised scope?
• How should the required letters be phrased?
• How should one handle mixed allegations: scientific misconduct plus financial faglaging and/or sexual harassment; human subjects or animal abuse; conflict of interest; intellectual property disputes; etc?

*Comment:* All of the choices in these circumstances are difficult. On the one hand, it is desirable to examine all related conduct within the same process to avoid duplication of effort and the possible oversight of interrelations among elements of the allegations. On the other hand, distinct policies may apply, and examination
of the elements may require different expertises. At the least, some coordination of the examination must be arranged. As this is a common situation, it is another one worth considering in advance, and especially during development of the institution's misconduct policy and procedures.

**Orienting the panel**
- How do you work with panel members to assure a fair process?

*Comment:* This is a challenge, particularly if panels are assembled on an *ad hoc* basis to provide specialized expertise for each new case. Individuals who have never served in this capacity before may need to be reminded about the importance of confidentiality, and warned about the dynamics of the process in which they are participating. This can include heightened emotional tone of misconduct proceedings, and the difficulties of weighing evidence of different probative value.

The institution's policy should be carefully explained, and the role of the panel delineated, especially in relationship to the other parties in the process. The panel should be informed about the staff and other resources available to them, and have an opportunity to review their charge in an initial, orientation meeting before starting to review evidence or interview relevant witnesses.

If the panel is expected to make a determination as to intent, they may need special help. In addition, panels will wonder about the definition of misconduct be applied; this, too, will require support and assistance.

**Maintaining confidentiality: who needs to know what about the process?**
- Who attends the meetings?
- What roles do they play?
- Who is permitted to ask questions? Who is permitted to submit questions to the panel?
- What cross-examination of witnesses is appropriate? By whom?
  - Respondent
  - Accuser
  - Counsel

*Comment:* A key issue here is the role that lawyers for the various parties will play. Admission of lawyers for one party will lead to requests from other parties and witnesses to have (or be provided with) lawyers. The participation of lawyers can easily change the focus of the process from academic questions and priorities to legal ones, and the panel (not to mention the participants) may find itself overwhelmed.

The full involvement of lawyers in every aspect of the process represents one end of the spectrum; it usually accompanies a process that provides full due process rights throughout. At the extreme other end of the spectrum is a process in which attorneys are not permitted at all. Somewhere in between is a model used in a number of universities that allows persons who are being interviewed to have an attorney present to advise them, but limits the lawyers to an advisory role. Sometimes the lawyers are permitted to submit questions to the panel for its consideration (if accepted, the questions are posed by the panel,
not the attorney), but the lawyers are not permitted to cross-examine witnesses. As this question will inevitably arise, it should be addressed early.

- What level of staff support should be provided?
- How does the panel secure evidence?
- How does it decide what the evidence means?
- What does the panel need to know about interviewing techniques?
- Inquiry records—to tape or not to tape?

Comment: Advice on taping is all over the map—it is one that should be resolved in connection with your institution’s legal staff. Note that taping of interviews should be distinguished from the taping of the panel’s deliberations.

- What considerations apply to interactions within the institution: dean, vp, president, counsel, auditors, etc?
- What is the role of intent? Does lack of intent equal lack of misconduct?

Comment: Second only to the role of lawyers in the process, this is probably one of the most contentious and difficult issues in dealing with misconduct problems. However your institutional policy is written, you need to consider this issue in light of federal regulations (and interpretations by different agencies), traditional standards of fairness, and your institution’s policies.

- How do you decide on appropriate standards against which to judge behavior?
- How do you know if fabrication, falsification or plagiarism have occurred?

Comment: The inquiry panel is likely to want definitions against which to measure the conduct it examines. Unfortunately, definitions vary, and the question of intent is frequently a complicating factor. Consider in advance whether you have institutional definitions to provide for the panel, or whether you want the panel to use its own judgment in arriving at an answer to this question.

- How do you know if the practice in question “seriously deviates...”?

Comment: Good luck!

How do you decide when the inquiry is over?

Comment: This is not as simple as it sounds, and depends a great deal upon the model selected for the inquiry and the source of funds for the research in question. See comments in “What is an Inquiry?”

Ending the inquiry
Ending the inquiry properly depends on having an initial goal and a well-defined charge. Where the inquiry is launched without a clear statement of its goal, an inquiry panel will have difficulty determining when it has accomplished its mission. Where the charge lacks a precise statement of the scope of the review or issue(s) to be resolved, a panel may not ask the right questions or may omit relevant avenues of inquiry, while pursuing other irrelevant ones. Often this will result in a lengthy process of determining after the fact what is necessary to the investigation, and returning to parties and witnesses repetitively to secure
overlooked information. Additionally, the sheer volume of information gathered in a directionless inquiry often complicates the task of reaching concise conclusions.

- What standard should be used for the panel’s decision?
- Must the decision be unanimous?
- Who decides?
- Classifying seriousness of misconduct: deciding whether an investigation is necessary.
  What are the standards of conduct?
  Who decides?
  What definitions should be used?
- What if the panel finds unethical behavior that does not constitute misconduct by federal definitions? By the institution’s definition?
- Should the panel recommend discipline for unethical behavior?

**Communicating the panel’s findings**

Writing the report—elements, format, what to include, what to omit. See Sample Inquiry Report in the Sample Reports section.

*Comment:* NSF suggests in one of its “Dear Colleague” letters a series of items to include in an inquiry report. See Federal Regulations and Documents section.

- Should you share the draft report with the involved parties in order to allow them to comment before it is finalized?

*Comment:* Sharing the draft is the best possible approach for obtaining maximum accuracy and fairness.

- How does one determine whether an investigation should follow?
- Can a panel decide that there is misconduct and recommend disciplinary action without an investigation?
- What if there’s nothing left for an investigation to do?

**Post-Inquiry: Tying Up the Loose Ends**

**Unsubstantiated allegations: finalizing the inquiry**

- Discharging the panel

*Comment:* The panel will have served an important role in the process and may have strong feelings about it. Aside from providing an appropriate letter recognizing their service and thanking them for it, it may be useful to give them an opportunity to discuss the process and their findings with the decision-maker. This can leave them with a feeling of closure and can provide another opportunity to stress the importance of confidentiality without being insulting.

- Sealing the records

*Comment:* “Sealing” the records is commonly prescribed when allegations are unsubstantiated (and even sometimes when they are substantiated). What
records this applies to is not always so clear. At the very least, official personnel files should be examined and, if any materials pertaining to the inquiry appear, they should be removed. If the institution has a policy of sealing records, copies of the official report of the inquiry and materials generated during the process should be collected from panel members and any others who were provided materials. (Note that you want to number the copies when provided to the panel and emphasize at the outset that they must be returned.) The extras should be destroyed, and one official copy preserved in some official (and secure) location. The respondent’s retention of a private set of the materials is another matter: if the institution wishes to prevent this, it should take early steps (i.e., before transmission of the materials) to declare ownership of the materials and to request their return. Numbering and coding copies of materials may be appropriate.

Some institutions code their sealed files so names are not readily accessible from viewing the container (a sealed box or envelope). Some policies prescribe destruction of materials from the inquiry after a stipulated period of time. If this is the case, legal counsel should be involved in what is preserved and what is destroyed. Should litigation later result, destruction of records might be an issue of some import. Further, should the respondent wish the institution to take steps to “restore” his or her reputation, this can be complicated if all records have been destroyed.

• Dealing with the accuser: malicious and otherwise

Comment: An exonerated respondent is likely to consider taking steps against the person(s) who raised the concerns resulting in the inquiry. If the panel found that the questions were raised in good faith, the institution may need to intervene to prevent inappropriate retaliation.

If the allegations were lodged maliciously and/or with knowledge of their falsity, it should be the institution’s place to take some sort of disciplinary action if the accuser is an employee of the institution. What the institution’s role should be if the respondent wishes to pursue legal action against the accuser—whether or not an institutional employee—will likely be determined by institutional policies. It is a fairly common reaction on the part of respondents, though, and thus is a topic that bears some consideration before it arises in a particular case.

• “Restoring” reputations:
  Communicating the findings to members of the respondent’s department and other colleagues;
  What mechanisms exist?
  How effective are they?

• What should be done if appeals to the decision of the inquiry panel are made by the respondent, the accuser, or a member of the panel?

Handling new or renewed charges or new evidence

Comment: The presentation of new evidence, or the renewal of charges by one of the participants, is one of the stages in the process at which it is critical to try to review the material with an open mind. The two issues are somewhat different, but have a common basis, which is that someone remains unsatisfied with the outcome. The person may be unsatisfied because the inquiry did not
arrive at the truth of the matter, or may be unsatisfied because he or she does not accept the outcome. Either can be a difficult situation.

If the report of the inquiry conforms to the standards described in the publications of NSF and OSI, it should include an itemization of the bases for its findings. In theory, new evidence can be examined in light of those enumerated findings, and a determination made as to whether it merits, reopening the matter. The standard used should be: if the evidence is true, would it warrant a new inquiry? Conceptually, this can seem to be a straightforward issue; in practice, it rarely is, at least partially because of the conflict or bias that can arise from the conduct of the first inquiry. On the other hand, no inquiry can examine all possible evidence, and if new evidence surfaces, it must be examined—at least to some degree.

There are some similarities here to the question of anonymous allegations: they can't be ignored, but can be evaluated as to their credibility. Renewed charges from an individual whose previous charges—especially if repeated many times—have not been substantiated should not be dismissed out of hand, but may be less credible than renewed charges from another source.

The stronger the process in terms of its documented fairness to all parties, the better position of the institution to respond to this situation. Unfortunately, even scrupulous procedures can leave a party unsatisfied with the result. The best advice can be to have a highly credible review in the first place and strong documentation of the process for the scrutiny that will follow.

**Interacting with external parties:**
- Collaborators
- Funding agencies
- The press
- Other institutions

**Publicity**

**Transition to an investigation**
- Should any members of the inquiry panel participate in the investigation?
- What role does the inquiry report play in the investigation?