FBIHQ DIOG Training Session D

DIOG Section 6: Preliminary Investigations

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<th>Investigation</th>
<th>Preliminary</th>
<th>Jurisdiction</th>
<th>Operation</th>
<th>Asigned</th>
<th>Affiliation Status</th>
<th>Site</th>
<th>Suspense/Reappr</th>
<th>Date</th>
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As of May 19, 2009
Before initiating or approving a PI, you need to determine that:

- An authorized purpose and adequate predication exists
- No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment
- It is an appropriate use of personnel and financial resources

Predication for a PI includes "information or allegation" that:

- A federal crime or a threat to the national security has, is, or may occur, or
- An individual, group, property or activity is or may be a target of federal criminal activity or threats to the national security, and
- The investigation may obtain information relating to the subject(s) involvement in such activities or protect against the activity or threat
Objectives of Pls
- To determine if a federal crime has occurred, is occurring or will occur
- To determine if planning or preparation for a federal crime is taking place
- To obtain evidence
- To identify, locate and apprehend the perpetrators
- To identify threats to the national security

Duration of Pls
- Must be concluded within six months
- May be extended up to six months by the SAC (cannot be delegated, but an appropriately designated A/SAC may approve)
- Can be extended beyond one year by FBIHQ for "good cause"
DIOG Section 6:
Preliminary Investigations

"Good Cause" considerations:
• Has investigation revealed incriminating or exculpatory information?
• Has progress been made to determine if the PI should be closed or converted to FI?
• Will another six months reveal information to convert or close the PI?
• Is there predication now to convert or close PI?

Sensitive Investigative Matters
• Initiating a PI with a Sensitive Investigative Matter requires CDC review, SAC approval and written FBIHQ notification
• Must provide written notification to the USAO within 30 days of initiation

[Must cease until CDC review and SAC approval is obtained]
Sensitive Investigative Matters include investigations of:

• A domestic public official (involving corruption or national security threat)
• A political candidate (involving corruption or national security threat)
• A religious or political organization, or individual prominent in such
• News media
• Matters having an academic nexus
• Any other matter which should be brought to the attention of FBIHQ or DOJ, in the judgment of authorizing official

Authorized Investigative Methods in a PI

All lawful methods may be used in a PI, except for mail opening, a Rule 41 search warrant or a FISA order, electronic surveillance requiring a judicial order or warrant, or Title VII FISA requests. Authorized methods include, but are not limited to, those listed below:

• Obtain publicly available information
• Access and examine FBI and other DOJ records, and obtain information from any FBI or other DOJ personnel
• Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies
### DIOG Section 6: Preliminary Investigations

**Authorized Investigative Methods** (cont.)

- Use online services and resources (whether non-profit or commercial)
- Use and recruit human resources
- Interview or request information from members of the public and private entities
- Accept information voluntarily provided by governmental or private entities
- Engage in observation or surveillance not requiring a court order
- Grand Jury Subpoenas for telephone or electronic mail subscriber information

<table>
<thead>
<tr>
<th>Mail covers</th>
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<tbody>
<tr>
<td>Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy</td>
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<td>Consensual monitoring</td>
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<td>Use of closed-circuit television, direction finders, and other monitoring devices</td>
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<td>Polygraph examinations</td>
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<tr>
<td>Undercover operations</td>
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</table>
**DIOG Section 6: Preliminary Investigations**

**Authorized Investigative Methods (cont.)**
- Grand jury subpoenas, other subpoenas and National Security Letters
- Accessing stored wire and electronic communications and transactional records
- Pen registers and trap and trace devices

**Prior to using a method, you must consider:**
- Will the method further the investigation?
- Is the method the least intrusive and is it reasonable?
- Is it an appropriate use of personnel and resources?
Administration of a PI
- File reviews every 90 days (60 days for probationary agents)
- Conversion to a Full Investigation must be documented on a EC with SSA approval
- Conversion to a Full Investigation with a SIM requires CDC review, SAC approval and FBIHQ notification
- Conversion to a Full investigation requires all relevant notifications to be completed (i.e. notification on USPER relating to a threat to national security)

Closing a PI
- Close PI via EC (SSA must ensure all leads and methods have been completed or terminated)
- EC must state the reason for closing
- SSA approval
- PI with a SIM requires SAC approval to close
• Your agent requests to open a PI?
• What action will you take?
### DIOG Section 7: Full Investigations

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Participant</th>
<th>Duration</th>
<th>Comments</th>
<th>Approved</th>
<th>Justification Note</th>
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<th>Repeatability</th>
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<tr>
<td>PI Example</td>
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As of May 19, 2009
DIOG Section 7: Full Investigations

• Overview: The AGG-DOM authorizes a second level of investigative activity-predicated investigations. Full investigations may be initiated if there is an “articulable factual basis” of possible criminal or national threat activity.

• Three types
  – Single and Multi-subject
  – Enterprise
  – Positive Foreign Intelligence

Predication to Open: an articulable factual basis of that reasonably indicates one of the following:

1. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.
DIOG Section 7: Full Investigations

Predication to Open: an articulable factual basis of that reasonably indicates one of the following (cont):

2. An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat.

3. The investigation may obtain foreign intelligence that is responsive to a Positive Foreign Intelligence Requirement (See DIOG classified Appendix for additional guidance).

Standards for Initiating or approving a FI:

1. An authorized purpose and adequate predication exist.

2. No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment.

3. FI is an appropriate use of personnel and financial resources.
UNCLASSIFIED FOUO

DIOG Section 7:
Full Investigations

- Approval Process:
  - The purpose and predication must be documented in the
    initiating EC, effective date when EC is approved
  - Requires prior SSA approval
  - Written notification to the FBIHQ substantive unit
    - A full investigation on a United States Person related to a
      National Security matter, FBIHQ Unit must notify DOJ
      NSD within 30 days
  - File Reviews
    - Every 90 days, probationary agents - 60 days
    - No annual LHM, unless required by substantive unit
  - Other reporting notifications
    - Additional notifications may be required by division
      program guides

UNCLASSIFIED FOUO

DIOG Section 7:
Full Investigations

- Investigative Methods
  - All methods from Preliminary Investigation plus:
    - Electronic Surveillance
    - Foreign Intelligence Collection Under Title VII and
      FISA
    - Physical Searches, mail openings with warrant or
      court order
    - Note re: Consensual Monitoring — in a state that
      requires two-party consent, the SAC must approve this as
      OIA under DIOG Section 17. Per DOJ policy, this OIA
      authority may be delegated to an ASAC or SSA — if done in
      writing.
STANDARDS FOR INITIATING OR APPROVING USE OF AN INVESTIGATIVE METHOD IN A FI (prior to use):
1. The investigative method is likely to further the purpose of the FI
2. The investigative method is the least intrusive, reasonable under the circumstances
3. The method to be used is an appropriate use of personnel and financial resources.

Investigations are deemed "Sensitive Investigative Matters (SIMs)" when they involve activities of:
- A domestic public official (involving corruption or national security threat)
- A political candidate (involving corruption or national security threat)
- A religious or political organization, or individual prominent in such
- News media
- Matters having an academic nexus
- Any other matter which should be brought to the attention of FBIHQ or DOJ, in the judgment of authorizing official
DIOG Section 7: Full Investigations

- Sensitive Investigative Matter - Full Investigation:
  - Requires CDC review, SAC approval and written notification to the appropriate FBIHQ substantive Unit Chief and Section Chief. EC must include Sensitive Investigative Matter in title.
  - If sensitive matter arises after the initiation of a full investigation, investigative activity must cease until CDC review, SAC approval, and proper notice to FBIHQ.

- Closing Full Investigations:
  - All investigative activity is exhausted
  - SSA must assure that all pending investigative methods have been completed/terminated (mail covers, pens etc.)

- Closing approvals
  - SSA with notification to FBIHQ substantive Unit
  - Closing SIMS
    - SAC approval with written notification to FBIHQ substantive Unit and Section
DIOG Section 7: Full Investigations

Examples:

Student Organization Scenario

- What action would you take?
Student Organization Scenario

Would you open an assessment?

Student Organization Scenario

What action would you take?

...
Student Organization Scenario

- What action do you take?

- What action would you take?
**Investment Fraud Example**

**DIOG Section 8:** Enterprise Investigations

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Predication</th>
<th>GROUP</th>
<th>DIVISION</th>
<th>DEPT</th>
<th>APPROVED</th>
<th>Initiation Note</th>
<th>FF</th>
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<td></td>
<td>An investment fraud scheme involving the misappropriation of funds by a company executive</td>
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As of May 19, 2009
DIOG Section 8: Enterprise Investigations

- May only be opened as a full investigation
- Focus on groups or organizations that may be involved in the most serious criminal activities or national security threats to examine the structure and scope, and nature of the group including:
  - Relationship to a foreign power;
  - Identity and relationship of its members, employees, or persons who are acting in furtherance of its objectives;
  - Its finances and resources;
  - Its geographical dimensions;
  - Its past and future activities;
  - Its capacity for harm

DIOG Section 8: Enterprise Investigations

- Replaces the former REI and TEI investigations
- Includes any partnership, corporation, association or other legal entity, and any union or group of individuals associated, in fact although not a legal entity
- A PI may be used to determine whether a group/organization is an “Enterprise” — subject to the same requirements (for a PI)
DIOG Section 8: Enterprise Investigations

- Follow the same requirements as other predicated investigations
  - No investigative activity may be based solely on race, ethnicity, national origin, religion of the subject, or activities protected by the First Amendment
  - Must have articulable factual basis for an appropriate use of personnel and financial resources
  - Must utilize least intrusive methods to obtain evidence and/or intelligence

Predication to Open:

The legal authority for an enterprise investigation is based on the predication wherein the group or organization may have engaged, or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for the following:
## DIOG Section 8: Enterprise Investigations

- International terrorism (AGG-Dom, Part VII.J, or other threat to the national security);
- Domestic terrorism (18 U.S.C. § 2331(5) involving a violation of federal criminal law;
- Furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or

### Duration
No time limit— as long as necessary to achieve purpose

### Documentation
EC

### Approval
Prior SSA approval with FBIHQ and DOJ Notification (Counterterrorism division requires FBIHQ approval prior to SSA opening the EC)

### File Review
Every 90 day period (Probationary Agents every 60 days)

### SIM
CDC Review, SAC approval, and notification to USAO and FBIHQ within 30 days

### Responsible Entity
Investigative squads
DIOG Section 8: Enterprise Investigations

The following authorized investigative methods can only be used in full/enterprise investigations:

- Electronic Surveillance authorized by Title III, FISA, or Executive Order 12333
- Physical Searches, including Mail Openings, authorized by Rule 41, FISA, or Executive Order 12333

CLOSING AN ENTERPRISE INVESTIGATION:

1. SSA approval (if opened at HQ — Unit Chief) — SSA must ensure all investigative methods have been completed/terminated (CTD requires FBIHQ approval prior to SSA closing the EI)
2. Notice to FBIHQ Unit — UACB the EI is considered closed 30 days after notice to HQ (if opened at HQ — notice to FO)
3. If the EI involved a SIM, the SAC must approve the closing and written notification must be provided to FBIHQ Unit and Section (if initiated at HQ, Section Chief must approve — notice to FO) — UACB 30 days after HQ notice
As an SSA, would you authorize an enterprise investigation if:

Authorized to provide investigative assistance to other federal, state, local or tribal, or foreign agencies when the investigation has objectives consistent with the FBI's investigative objectives

May provide assistance - even if it is not for one of the purposes identified as grounds for an FBI investigation or assessment - if providing the assistance is otherwise authorized by law

May provide assistance to foreign agencies in the investigation of foreign law violations pursuant to international agreements

May use appropriate lawful methods in any authorized investigative assistance activity
**DIOG Section 12: Assistance to Other Agencies**

- Further authorized to provide technical and scientific assistance to all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other federal agencies.
- Authorized investigative assistance with such agencies includes participation in joint operations and activities consistent with a "federal nexus".
- Assistance to a domestic or foreign agency requires appropriate case file documentation: (i) the name and type of agency; (ii) the investigative methods used; (iii) the opening and closing dates of the request; and (iv) notifications required for the investigative activity.

**The AGG-Dom permits FBI personnel to provide investigative assistance to:**

A. Authorized intelligence activities of other USIC agencies;
B. Any federal agency in the investigation of federal crimes, threats to the national security, foreign intelligence collection, or any other purpose that may be lawfully authorized;
C. The President in determining whether to use the armed forces pursuant to 10 U.S.C. §§ 331-33, when DOJ-authorized;
D. Collect information necessary to facilitate public demonstrations in order to protect the exercise of First Amendment rights and ensure public health and safety, when DOJ-authorized;
E. State or local agencies in the investigation of crimes under state or local law where authorized by federal law (e.g., felonious killing of state and local law enforcement officer; violent crime against travelers; serial killings).
F. State, local, or tribal agencies in the investigation of matters that may involve federal crimes or threats to national security, or for such other purposes as may be legally authorized; and

G. Foreign agencies in the investigations of foreign law violations pursuant to international agreements, and as otherwise set forth below, consistent with the interests of the United States (including national security interests) and with due consideration of the effect on any United States person.

- The FBI is further authorized to provide technical and scientific assistance to all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other federal agencies. 28 C.F.R. § 0.85(g).

Standards for Providing and Approving Investigative Assistance to Other Agencies

- The determination of whether to provide FBI assistance to other agencies is both statutory and discretionary and must be based on consideration of the following factors:
  1. Assistance is within the scope authorized by the AGG-Dom;
  2. Assistance is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
  3. Assistance is an appropriate use of personnel and financial resources.

DI0G Section 12.4
Section 12: Assistance to Other Agencies

Required documentation in the "case file" for assistance to a domestic or foreign agency:
- the name and type of agency;
- the investigative methods used;
- the opening and closing dates of the request; and
- notifications required for the investigative activity.
DIOG Section 12:
Assistance to Other Agencies

- Why and when to use the
  - Record Retention: The use of form permits the FBI to create and maintain an AGG-Dom required database of records allowing the prompt retrieval of the status of the assistance activity (opened or closed), the dates of opening and closing, and the basis for the assistance activity.
  - Document Dissemination of Unclassified Information: The form should be used to document the dissemination of information to: USIC Agencies; U.S. Federal Agencies; State, Local, or Tribal Agencies; and Foreign Agencies.

AGG-Dom, Part II, EA and DIOG Section 14.4

- Dissemination to Foreign Agencies must be in accordance with the FBI Foreign Dissemination Manual, dated May 23, 2008.
- Classified information must be disseminated pursuant to applicable federal law, Presidential directive, Attorney General policy and FBI policy.
- Dissemination of information to other agencies must be consistent with Director of National Intelligence directives, the AGG-Dom, DIOG Section 14, FBI Foreign Dissemination Manual, and any applicable MOU/MOA, law, treaty or other policy.
DIOG Section 12: Assistance to Other Agencies

- **Sensitive Investigative Matter:** Any assistance to other agencies involving a SIM requires CDC review, SAC approval, and notification to the appropriate FBIHQ substantive UC and SC. If assistance is to a foreign agency, notification to the OIO UC and SC is also required.
- Additionally, FBIHQ must provide notice to the DOJ Criminal Division or NSD as soon as practicable, but not later than 30 calendar days after the initiation of any assistance involving a SIM (see classified appendix for additional notice requirements).

DIOG Section 12: Assistance to Other Agencies

- **United States Intelligence Community Agencies:**
  - May provide investigative assistance or operational support to authorized intelligence activities of other USIC agencies
  - Assistance must be in compliance with interagency MOA/MOU
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using FD-999
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies
DIOG Section 12: Assistance to Other Agencies

- United States Federal Agencies:
  - May provide assistance to any other federal agency:
    - in the investigation of federal crimes or threats to the national security or
    - in the collection of positive foreign intelligence
    - for any other purpose that may be legally authorized
  - Technical assistance to any other federal agency must follow DIOG Section 12.6
  - Assistance must be in compliance with any MOA/MOU

- United States Federal Agencies (continued):
  - Actual or Threatened Domestic Civil Disorders (require prior AG approval)
  - Public Health and Safety Authorities in Relation to Demonstrations (require prior AG approval)
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using FD-999
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies
DIOG Section 12:
Assistance to Other Agencies

- State, Local, or Tribal Agencies:
  - May provide investigative assistance in the investigation of matters that:
    - may involve federal crimes or threats to the national security
    - or
    - for other legally authorized purposes (such as a specific federal statutory grant of authority)
  - May provide other material, expert personnel (NCAVC; Behavioral Science), scientific and technical assistance to state, local, and tribal agencies. (See 28 C.F.R. § 0.85[g] and DIOG Section 12.6)
DIOG Section 12: Assistance to Other Agencies

- State, Local, or Tribal Agencies (continued):
  - Assistance must be in compliance with MOA/MOU or treaties
  - Prior SSA Approval required when assistance uses investigative methods beyond those authorized in assessments and must be documented using
  - Other limitations/approvals required for joint ops, SIM, particular investigative methods, specific technologies

Foreign Agencies:
- Legat's primary responsibility
  - Requests for assistance will likely come to the FBI through the Legat

- FBI may conduct investigations or provide assistance to investigations by foreign agencies
  - Consistent with U.S. interests
  - With due consideration on the effect on any U.S. Person
  - Following MOU/MOA, MLAT or other treaties
DIOG Section 12: Assistance to Other Agencies

Foreign Agencies (continued):
- Prior SSA approval required for all assistance to foreign agencies (not just for those investigative methods beyond assessments)
- All assistance must be documented in the
Foreign Agencies (continued):

- All dissemination of information to foreign agencies must be conducted in accordance with the FBI Foreign Dissemination Manual.
The creation and maintenance of authentic, reliable, and trustworthy records is a critical component of every FBI responsibility and function and is required by law. The FBI, like all other Federal agencies, is required by the Federal Records Act to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency." This practice of ensuring "adequate and proper documentation" is essential to efficient and economical agency operations by guaranteeing that information is documented in official files, where it will be accessible to all authorized staff that may need it.

Without complete and accessible records, the FBI cannot conduct investigations, gather and analyze intelligence, assist with the prosecution of criminals, or perform any of its critical missions effectively.
• The dissemination of records about U.S. citizens and legal permanent resident aliens that are accurate, complete, timely and relevant for agency purposes, to the extent that they can reasonably be so, is required by the Privacy Act.

• And without complete and accessible records on which to verify the accuracy, relevance and timeliness of information that the FBI disseminates, we cannot participate effectively in information sharing activities and we risk litigation from individuals adversely affected by the information.

• Consistent with the Privacy Act and any other applicable laws and memoranda of understanding (MOU) or agreement (MOA) with other agencies concerning the dissemination of information, the FBI may disseminate information obtained or produced through its authorized activities.

• All FBI information sharing activities undertaken by the FBI shall be in accordance with Corporate Policy Directive 12D, "FBI Sharing Activities with Other Government Agencies," and 95D "Protecting Privacy in the Information Sharing Environment," and any amendments thereto and applicable succeeding policy directives.

• The FBI must share and disseminate information as required by statutes, treaties, Executive Orders, Presidential directives, National Security Council directives, Homeland Security Council directives, DNI directives, Attorney General-approved policies, and MOUs or MOAs, as consistent with the Privacy Act.
DIOG Section 14: Overview
Retention and Sharing of Information

- All information sharing with a foreign government related to classified national security and foreign intelligence must adhere to the FBI Foreign Dissemination Manual effective 05/23/2008 and effective policies governing an MOU.
- Dissemination of information acquired under the FISA is, to the extent provided in that Act, subject to minimization procedures and other requirements specified in that Act. Information obtained through the use of NSLs may be disseminated in conformity with statutory obligations or limitations, and the general standards of AGG-Dom.

For questions about privacy concerns
### DIOG Section 14: Retention and Sharing of Information

**Information Management and Retention**

- AGG-Dom Requires:
  - Maintenance of records in "database or system of records"
  - Prompt retrieval of information regarding the status of investigations
  - Retention of records according to a retention plan approved by NARA

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### Fired Employee Scenario

- What should be done with this information?
Fired Employee Scenario

• What action can be taken?

Is this okay?
Fired Employee Scenario

- Can he do this?
Fired Employee Scenario

• What needs to be done?

• Can you approve this?
Fired Employee Scenario

- Do you approve the plan?

Fired Employee Scenario

- Can these actions be taken?
Judge Scenario

- What action would you take?
- Assessment?
- Preliminary Investigation?
- Full Field Investigation?

Based on the complaint, you are considering the following actions:

- Can the Case Agent conduct interviews?
- Can the Case Agent review police and court records?
- Can the Case Agent recruit and use human sources?
- Can the Case Agent issue a GJ subpoena for the
- Can the Case Agent conduct surveillance of the judge?
Judge Scenario

- Does this affect how the investigation proceeds?
**Judge Scenario**

- What issues do you consider?

**Bridge Scenario**

- Should this information be documented?
- What would you do if you received this information?
Scenario

- Alternate scenario:
- Should this information be documented?
- What would you do if you received this information?

You decided not to initiate an assessment with the limited information provided.
Scenario

- How should the complaint be documented by the agent?
- Would you now take any action upon receipt of this second complaint?
Scenario

- Are the agent's actions okay?
- Does the new information affect your decision to open an assessment or a predicated investigation?

- The agent initiates a Type 1 Assessment on the activities of the UNSUBS.
Scenario

Do you approve the request to polygraph the CRS?
Scenario

- If yes, what type of assessment could be initiated?

Scenario

- What do you do with this information?
Scenario

• What do you do with this information?

Scenario

• What is your response? What do you do with this information?
Scenario

- What do you do with this request?

Scenario

- What do you do with this request?
DIOG Train the Trainer Course
Next Steps

1) 
2) 
3) 

Economic Espionage Scenario
Economic Espionage Scenario

- What action would you take?
Economic Espionage Scenario

- What action would you take?