The Attorney General's Guidelines for Domestic FBI Operations (AGG-DOM)

Office of the General Counsel
Updated 6/02/08 based on 5/12/08 final draft
This presentation is UNCLASSIFIED/FOR OFFICIAL USE ONLY

Implementation

- AG signed on ?
- Effective 1 October 2008?
- Unclassified; markers for provisions in classified Guidelines supplement
- Implementing FBI policy manual will be effective same date as Guidelines
- Entire MIOG and NFIPM being replaced with new CPO policies – during 2008/2009

Highlights

- Generally uniform rules for criminal, national security, and foreign intelligence collection cases
- Broader authorities in "assessments" (threat assessments/leads checking)
- Reduced reporting requirements

Highlights (con't)

- Expanded authorities for investigative assistance and joint operational support to federal, state, local, tribal, and foreign agencies (Part III)
- Express recognition of and authorities for FBI's:
  - Special Events missions
  - Intelligence Analysis and Planning missions (Domain Management)
Overarching Principle - Respect for Civil Liberties (Introduction, 2nd paragraph)

"Investigations and other activities must be carried out in a lawful and reasonable manner that respects liberty and privacy and avoids unnecessary intrusions into the lives of law-abiding citizens... [and thus] provide the American people a firm assurance that the FBI is acting properly under the law."

Scope (Part I.A)

- AGG-DOM apply to FBI investigative activities conducted:
  - Within the "United States" (see VII.T - means all areas under territorial sovereignty of the US); or
  - Outside the territories of all countries

Five AG Guidelines Repealed by AGG-DOM (Part I.D.1)

- (1) General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (2002)
- (2) National Security Investigations and Foreign Intelligence Collection (2003)
- (3) Collection, Retention, and Dissemination of Foreign Intelligence (2006)

Five AG Guidelines Repealed by AGG-DOM (Part I.D.1) (con't)

- (4) Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Intelligence, Counterintelligence, or International Terrorism Intelligence Investigations (1988)
- (5) Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (1976)
Four General Authorities— FBI is Authorized to: (Part I.B)

- Conduct investigations (criminal and national security) and collect foreign intelligence (Part II)
- Provide investigative assistance to federal, state, local, tribal, and foreign agencies (Part III)
- Conduct intelligence analysis & planning (Part IV)
- Retain and share information (Part VI)

General Principles - Protect US and its People (Part I.C.1)

- FBI shall fully utilize its authorities under AGG-DOM to protect the United States and its people from crimes in violation of federal law and "threats to the national security," and to further the foreign intelligence objectives of the US

Definition: "Threat to the National Security" (Part VII.S)

- "International terrorism" (see VII.J)
- Espionage and other "intelligence activities" (see VII.I), sabotage, and assassination, conducted by, "for, or on behalf of "foreign powers" (see VII.C and G), organizations, or persons;
- "Foreign computer intrusion" (see VII.D); and
- AG determined matters per EO 12333

General Principles – Choice of Methods (Part I.C.2)

- Least intrusive investigative method feasible will be used, considering the effect on privacy/civil liberties of individuals and potential damage to reputation
- Choice of methods is a matter of judgment
- FBI shall not hesitate to use any lawful method consistent with AGG-DOM, where the degree of intrusiveness is warranted in light of seriousness of the matter concerned—particularly concerning terrorism (balancing test)
Levels of Investigative Activity (Part II)

- Assessments
- Predicated Investigations:
  - (1) Preliminary Investigations
  - (2) Full Investigations
  - Enterprise Investigations

Assessments - Authorized Activities (Part II.A.3)

- Unlike preliminary or full investigations, there is no required "predication" for conducting an assessment
- Instead, an assessment may be conducted for an authorized "purpose" if the assessment addresses 1 of 4 assessment "authorized activities" [next 3 slides]
Assessments - Four Authorized Activities (Part II.A.3.a)

Assessment activities that may be carried out for an authorized "purpose" include:

1. Seeking information, proactively or in response to investigative leads, relating to:
   - activities constituting violations of federal criminal laws or "threats to the national security"
   - the involvement or role of individuals, groups, or organizations in such activities OR
   - matters of foreign intelligence interest

Assessments - Four Authorized Activities (Part II.A.3.c) (cont')

Assessment activities that may be carried out for an authorized "purpose" include:

4. Seeking information to identify, assess the suitability, credibility, or value of, validate, or maintain the cover or credibility of "human sources" (see VII.A.1) who may be able to provide or obtain information relating to criminal activities in violation of federal law, "threats to the national security," or matters of foreign intelligence interest.

Assessments - Eight Authorized Investigative Methods (Parts II.A.4.a and VII.L)

- (1) Obtain "publicly available" information
- New definition—deletes "could lawfully be seen or heard by any casual observer" expands to include physical searches
- Adds "or is obtained by other observation that is not subject to Part V.A.11-12" [ELSUR and physical searches]
- New includes physical, video

Outside the Scope
Assessments — Eight Authorized Investigative Methods
(Part II.A.4.b. and c) (con't)

- (2) Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel
- (3) Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies (underlined is new)

New Definition – Publicly Available (Parts II.A.4 and VII.L)

Information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, is made available at a meeting open to the public, is obtained by visiting any place or attending any event that is open to the public, or is obtained by other observation or surveillance that is not subject to Part V.A.11-12 (ELSUR or physical searches)

Assessments — Eight Authorized Investigative Methods
(Parts II.A.4.d and e and VII.V) (con't)

- (4) Use online services and resources (whether nonprofit or commercial)
- (5) "Use" and recruit human sources in conformity with AGG Regarding the Use of FBI Confidential Human Sources (effective 06/13/2007) "Use" means obtaining information from, tasking, or otherwise operating such sources

Interview or request information from members of the public and private entities
Assessments – Eight Authorized Investigative Methods
(Part II.A.4.g and h) (con't)

- (7) Accept information voluntarily provided by governmental or private entities
- (8) Engage in observation or surveillance not requiring a court order

Predicated Investigations – Approval to Open (Part II.B.2)

- Initiation of a preliminary or full investigation requires supervisory approval at a level or levels specified in FBI policy (to be determined)
- An full investigation to collect foreign intelligence must be approved by a SAC or an FBIHQ official as provided in FBI policy
- "SAC" includes Acting SAC, ADIC, or Direct designated FBIHQ officials (VII.P)

Predicated Investigations – Circumstances Warranting Investigation (Part II.B.3.a) (PI/Full)

(1) An activity constituting a federal crime or a "threat to 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
Definition: Foreign Intelligence Requirements (Part VII.F)

- (1) National intelligence requirements issued by DNI, including National Intelligence Priorities Framework; National HUMINT Collection Directives, or successor directives
- (2) Requests to collect foreign intelligence by the President or Intelligence Community officials designated by the President; and
- (3) Directions to collect foreign intelligence by the AG, DAG, or official designated by AG

Predicated Investigations – Circumstances Warranting Foreign Intelligence Collection (Parts II.B.3.c & 4.b.i) (Full only)

- The only “predication” for a full foreign intelligence investigation is that “the investigation may obtain foreign intelligence that is responsive to a foreign intelligence requirement”
- No “articulable basis . . . that reasonably indicates” analysis required
- Full investigations only; no preliminary foreign intelligence investigations (II.B.4)

Duration of Preliminary Investigations (Part II.B.4.i.i)

- Must be concluded within six months of its initiation
- “SAC” may extend up to six months (can NOT delegate to ASAC) but “Acting SAC” is included in SAC definition and can extend
- Extensions of preliminary investigations beyond one year require FBIHQ approval
Case Initiation Notice
Requirements to DOJ (Part II.B.5)

- Assessments: no notice requirements
- Predicated cases:
  - Case initiation notice to DOJ required in
    such instances
  - Notice in each of these instances shall be
    as soon as possible but NLT 30 days
    after initiation of the investigation
  - Not much specification of content of
    notice; FBI policy will describe

Notice Requirements – Sensitive
Investigative Matter (Part II.B.5.a)

- (1) Field office notifies FBIHQ and US
  Attorney (or other appropriate DOJ official) of
  a field-initiated preliminary or full
  investigation involving a "sensitive
  investigative matter" (FBIHQ gives same
  notice for HQ-initiated cases)
- DOJ NSD must also be notified if the
  investigation concerns a "threat to the national
  security"
- All notices shall identify all sensitive matters
  involved in the investigation

Definition – Sensitive
Investigative Matter (Part VII.N)

- "An investigative matter involving a
  domestic public official, political
  candidate, religious or political
  organization or individual prominent in
  such an organization, or news media, or
  any other matter which, in the judgment of
  the official authorizing an investigation,
  should be brought to the attention of FBI HQ
  and DOJ officials"

Case Initiation Notices
to National Security Division DOJ
(Parts II.B.5.b & C.3) (con’t)

- FBI shall notify DOJ NSD of the initiation of:
  (2) Any full investigation of a US person relating
  to a threat to the national security
  (3) Any full investigation to obtain foreign-
  intelligence

- Any enterprise investigation (EI)
  - criminal EI cases – notice to Organized Crime
    and Racketeering Section, DOJ Criminal Division
    - Field must also notify any relevant USAO (except
      in espionage cases) and FBIHQ of EI cases

Outside the Scope
Annual Reports (Part VI.D.1.a)
- From FBI to DOJ NSD concerning FBI "foreign intelligence collection program, including information concerning the scope and nature of foreign intelligence collection activities in each FBI field office."
- All other annual reports eliminated

Enterprise Investigations (EI) (Part II.C.1) - Definition
- Full investigation of a group or organization may be initiated as an EI if there is an articulable factual basis for the investigation that reasonably indicates that the group or organization may have engaged or may be engaged in, or may have or may be engaged in planning or preparation or provisional support for 1 of 5 listed activities:

Enterprise Investigations (EI) (Part II.C.1) - Definition (con't)
- (1) A pattern of racketeering activity as defined in 18 USC 1961(5)
- (2) "International terrorism" (defined in Part VII.) or other "threat to the national security"
- (3) Domestic terrorism as defined in 18 USC 2331(5) involving a violation of federal criminal law

Enterprise Investigations (EI) (Part II.C.1) - Definition (con't)
- (4) Furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or
- (5) An offense described in 18 USC 2332b(g)(5)(B) [federal crimes of terrorism] or 18 USC 43 [force, violence, and threats involving animal enterprises] [18 USC 43 is new]
Predicated Investigations - Authorized Investigative Methods: Parts II.B.4 and V.A.11-12

- All lawful methods may be used, except that ELSUR and physical search warrants (more strict than Criminal AGG) may NOT be used in a preliminary investigation.
- Some methods have special restrictions, review, or approval requirements.
- All 8 methods authorized in an assessment may be used in a predicated investigation.

Enterprise Investigations (EI)-

**Scope (Part II.C.2)**

- EI may examine the structure, scope, and nature of group/organization including:
  - Relation to "foreign power," if any
  - Identity/relationships of members/persons who may be acting in furtherance of its objectives
  - Its finances and resources;
  - Its geographical dimensions; and
  - Its past and future activities and goals.

Predicated Investigations - Authorized Investigative Methods: Include (Parts V.A.2-3 and 6)

- Mail covers
- Physical searches of personal or real property where no warrant or court order is legally required because no reasonable expectation of privacy (e.g., trash covers)
- Polygraph examinations

Predicated Investigations - Authorized Investigative Methods - New Rule: Consensual Monitoring - (Part V.A.4)

- "Consensual monitoring" (see VII.A) of communications, including consensual computer monitoring.
- Prosecutor clearance no longer required in criminal cases.
- FBI legal review by CDC or OGC required in all cases.
Consensual Monitoring — 4 Part
Definition of "Sensitive Monitoring
Circumstance" (Part VII.O) (cont)

(1) Investigation of member of Congress,
Federal judge, Executive Branch member at
Executive Level II or above, or a person
who has served in such capacity within the
previous 2 years;
(2) Investigation concerning an offense
involving bribery, conflict of interest,
or extortion related to performance of
official duties of a Governor, LT Gov, or
AG of a state/territory or judge/justice of
the highest court of state/territory;

Predicated Investigations —
Authorized Investigative Methods —
(Cont)

- Use of closed-circuit television, direction
finders, and other monitoring devices
- Prior legal review by CDC or FBI OGC
required to ensure compliance with all
applicable legal requirements
- These methods usually do not require
court orders or warrants unless they
involve physical trespass or non-
consensual monitoring of communications
Undercover operations (UC)
• In criminal investigations, UC must be carried out in conformity with POG on FBI Undercover Operations.
• If threats to national security or foreign intelligence involved, UC involving religious or political organizations require FBIHQ approval, with DOJ NSD participation in the review process.

Accessing stored wire and electronic communications and transactional records (18 U.S.C. §2701-2712)
• Use of pen registers/trap and trace devices:
  • 18 U.S.C. §3121-3127 (criminal)
  • 50 U.S.C. §1841-1846 (FISA)

Compulsory process authorized by law:
• Grand Jury and other subpoenas
• National Security Letters
• FISA Business Record orders (50 U.S.C. §§1861-63) [for "tangible things"]
* Predicated Investigations - Authorized Investigative Methods - Special Requirements (Part V.B.1)
  
  - Contacts with Represented Persons:
    - If individual known to be represented by counsel in a particular matter, follow applicable FBI and DOJ procedures in the absence of prior notice to counsel

* Predicated Investigations - Authorized Investigative Methods - Otherwise Illegal Activities (OIA) (Parts V.C and VII.B)
  
  - OIA rules apply to FBI agents and "employees" (includes employee of another agency working under FBI control/direction)
  - OIA in criminal undercover operation - follow 2002 AGG "Undercover Operations"
  - OIA by human source - follow 2006 AGG "Confidential Human Sources"

* OIA in national security and foreign intelligence cases:
  - Limited SAC approval authority
  - NSD DOJ approval authority for remainder

* Assistance to Other Agencies - General (Part III)
  
  - Under Part III, FBI may provide investigative assistance to other federal, state, local, tribal, or foreign agencies including joint operations and activities
  - Part III does NOT limit FBI's investigative authorities under Part II - III adds additional authorities; may use either Part II or Part III, as appropriate
Assistance to US Intelligence Community (Part III.A)

- FBI may provide investigative assistance (including operational support) to authorized intelligence activities of other US Intelligence Community agencies

Assistance to Other Federal Agencies (Part III.B.1)

- FBI may provide assistance to any federal agency in the investigation of:
  - Federal crimes
  - Threats to national security
  - Foreign Intelligence collection
  - Any other legally authorized purpose (e.g. support of Secret Service protective responsibilities)

Assistance to State, Local, or Tribal Agencies (Part III.C)

- FBI may provide investigative assistance to state, local, or tribal agencies in investigation of matters that may involve:
  - Federal crimes;
  - Threats to the national security; or
  - For other legally authorized purposes

Assistance to Foreign Agencies – (Part III.D.1)

- At the request of foreign law enforcement, intelligence, or security agencies, FBI may conduct investigations or provide investigative assistance to investigations by such foreign agencies, consistent with US interests and with due consideration of the effect on any US person
Assistance to Other Agencies — Applicable Standards and Procedures — Methods not Authorized in Assessments (Part III.E.3)

Three requirements to use investigative methods not authorized in assessments:

1. Same FBI supervisory approval as would be required for that technique in a predicated investigation.
2. If "sensitive investigative matter" involved, must give DOJ same notice as if it were a predicated investigation (Part II.B.3).

Assistance to Other Agencies — Applicable Standards and Procedures — General (Part III.E)

Authorized FBI Investigative assistance under Part III includes joint operations and activities.

All lawful methods may be used under Part III.

Special rules if using techniques not authorized in assessments.

Assistance to Foreign Agencies — Agent Notification to AG (Part III.D.2)

FBI may not provide assistance to foreign law enforcement, intelligence, or security officers conducting investigations within the US unless such foreign officers have provided prior notification to the AG (18 USC 951 — Agents of Foreign Governments does not include diplomatic or consular officers or attaches).

Assistance to Foreign Agencies — (Part III.D.1) (cont.)

Must coordinate/notify CIA if required by FBI/CIA MOU.

FBI shall notify DOJ NSD w/30 days of investigation or assistance under prior slide if:

1. FBI implementing policy requires FBIHQ approval for the assistance; AND
2. Assistance relates to a threat to the national security.

FBI may not provide assistance to foreign law enforcement, intelligence, or security officers conducting investigations within the US unless such foreign officers have provided prior notification to the AG (18 USC 951 — Agents of Foreign Governments — does not include diplomatic or consular officer or attaché).

Must coordinate/notify CIA if required by FBI/CIA MOU.

FBI shall notify DOJ NSD w/i 30 days if:

1. FBI implementing policy requires FBIHQ approval for the assistance; AND
2. Assistance relates to a threat to the national security.
FBI may conduct analysis of:

- Matters relevant to US foreign affairs
- Threats to and vulnerabilities of the US, including domestic and international:
  - Criminal threats and activities; and
  - Activities, circumstances, and developments affecting national security
- Special Events Management

Analysis may encompass:

- Present, emergent, and potential threats and vulnerabilities;
- Their contexts and causes; and
- Identification and analysis of means of responding to them
Intelligence Analysis and Planning - Reports and Assessments Generally (Part IV.B)

- FBI may conduct research, analyze info, prepare reports/assessments concerning:
  - Types of criminals or criminal activities;
  - Organized crime groups;
  - Terrorism and other threats to national security;
  - Foreign intelligence matters; or
  - Scope and nature of criminal activity in particular geographic areas or sectors of the economy

Intelligence Analysis and Planning - Intelligence Systems (Part IV.C)

- FBI may operate intelligence, identification, tracking, and other information systems:
  - In support of authorized investigative activities, or
  - For such other or additional purposes as may be legally authorized (e.g., intelligence and tracking systems relating to terrorists, gangs, or organized crime groups)

Retention of Information (Part VI.A)

- (1) FBI shall retain records relating to activities under AGG-DOM
- (2) FBI shall maintain a database/records system that permits, with respect to each predicated investigation, the prompt retrieval of:
  - Status of investigation (open or closed);
  - Dates of opening and closing; and
  - Basis for the investigation

Permissive Information Sharing - Generally (Part VI.B.1.a)

- Consistent with law and agreements with other agencies concerning dissemination of information they provided, FBI may disseminate information obtained or produced under AGG-DOM:
  - (1) Within the FBI and to other DOJ components
**Permissive Information Sharing**

**Generally (Part VI.B.1.b and g) (con't)**

1. To other federal, state, local, or tribal agencies if related to their responsibilities.
2. Other IC elements may decide whether info is related to their responsibilities.
3. If dissemination of the information is otherwise permitted by the Privacy Act (5 U.S.C. § 552a).

**Permissive Information Sharing**

**Generally (Part VI.B.1.d) (con't)**

5. To foreign agencies if three conditions met:
   - Info is related to their responsibilities;
   - Dissemination consistent with US interests; and
   - FBI has considered effect dissemination may reasonably be expected to have on any identifiable US person.

**Permissive Information Sharing**

**Generally (Part VI.B.1.e-f) (con't)**

6. If information is publicly available, does not identify US person, or is disseminated with the consent of the person to whom it concerns.
7. If dissemination is necessary to protect the safety or security of persons or property, to protect against or prevent a crime or threat to national security, or to obtain information for the conduct of an authorized FBI investigation.

**Required Information Sharing**

**Generally (Part VI.B.2)**

FBI shall share and disseminate information as required by all statutes, treaties, Executive orders, Presidential directives, National Security and Homeland Security Council directives, policies, and AG-approved policies and MOUs/MOAs.
Information Related to Criminal Matters
- Coordination with Prosecutors (Part VI.C.1)

- In investigation relating to possible criminal activity in violation of federal law, case agent shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances warrant or as requested by the prosecutor.

Information Related to Criminal Matters Outside FBI Jurisdiction (Part VI.C.2)

- Field office shall promptly refer credible info concerning serious criminal activity to LE agency having jurisdiction unless disclosure would jeopardize ongoing investigation, endanger safety of an individual, disclose identity of human source, interfere with a source's cooperation, or reveal legally privileged information.
- If no full disclosure within 180 days, field office must notify FBIHQ in writing of facts and circumstances; HQ notifies DAG.

Information Related to Criminal Matters
- Reporting FBI Personnel for Criminal Activity (Part VI.C.3)

- When it appears that an FBI agent or "employee" (see VII.B) has engaged in criminal activity during an investigation, notify US Attorney's office or an appropriate DOJ Division (if human source - proceed under AG Human Source Guidelines).
- Approved Otherwise Illegal Activities or minor traffic offenses are excepted from reporting requirement.

National Security and Foreign Intelligence Information Sharing - General Rules (Part VI.D)

- Responsibility to provide information to agencies with relevant responsibilities to protect US from terrorism, except as limited by specific constraints on such sharing.
- Dissemination of FISA Info - AG approval required for use in criminal proceeding.
- NSL statutes - some statutory restrictions.
- Human source identity disclosure governed by AG Human Source Guidelines.
National Security and Foreign Intelligence Information Sharing — DOJ — US Attorney Offices (Part VI.D.1.c-e)

- Designated personnel (with clearances and training) in relevant US Attorney Offices shall have access to and receive information from FBI concerning national security and FI.
- Espionage cases: NSD must authorize US Attorney Office access (NSD has 60 days to decide after FBI notifies NSD of espionage case).
- If NSD authorizes, access in US Attorney Office is limited to designated personnel.

Questions ???

FOR OFFICIAL USE ONLY 81

FOR OFFICIAL USE ONLY 82