

Memorandum



Subject

Overview of FBI Guidelines, With Emphasis Upon
the Levi "Domestic Security" Guidelines

Date

March 4, 1982

To The Attorney General

From Hank Habicht *HH*

The current array of FBI Guidelines have grown out of the COINTELPRO revelations and the Church and Pike Committee investigations in 1974-75. Attorney General Levi during his confirmation hearings in 1975 promised to issue comprehensive guidelines to govern all major FBI operations. In 1975-77, a special committee convened by General Levi drafted guidelines which were submitted both to the Congress and the public for comment (only the foreign intelligence and counterintelligence guidelines were not made public). These guidelines are, however, purely Attorney General documents.

The most significant guidelines govern (1) Criminal Investigations of Individuals and Organizations; (2) FBI Use of Informants and Confidential Sources; (4) Domestic Security Investigations; (5) Methods of Obtaining Documentary Materials Held by Third Parties (Stanford Daily Guidelines); (6) Reporting on Civil Disorders and Demonstrations Involving a Federal Interest; and (7) Foreign Intelligence Collection and Foreign Counterintelligence Investigations (classified).

All of the guidelines follow a format similar to that of the Criminal Investigations Guidelines, which define the FBI's responsibilities, define stages such as "preliminary" or "full" investigations, detail the techniques which may be used and those which may not be used in carrying out the FBI's responsibilities, specify when Attorney General approval is required for certain actions and what reports may be made to the Attorney General, and set forth the circumstances under which information may be retained or disseminated outside the Department of Justice.

The Criminal Investigation Guidelines and the Informant and Confidential Source Guidelines (which ensure that FBI agents not use sources or informants as agents to perform or solicit criminal acts) were revised, as you may recall, by Attorney General Civiletti in December, 1980. The revision has been viewed by some as largely a symbolic act; Judge Webster does not apparently feel that these criminal and informant guidelines are unduly constraining. Nonetheless, when FBI charter legislation was back-burnered last summer, Rudy Giuliani's office and the FBI undertook a review of these guidelines, to determine whether fine tuning would be constructive. A status report on that effort is forthcoming.

The lengthy and detailed Foreign Intelligence/Counter-intelligence Guidelines will be largely superseded by the procedures governing intelligence and counterintelligence activities in the U.S., now being drafted pursuant to Executive Order 12333. Mary Lawton reports that this interagency effort is already far along.

The guidelines which have been most controversial are the Domestic Security Guidelines -- the "Levi Guidelines" criticized by many conservatives. These guidelines limit FBI authority to investigate domestic groups which are not demonstrably under foreign government control. The Guidelines prohibit inquiries or investigations unless target groups "may be engaged" in violent criminal activity; restrict recruitment or the placement of informants in domestic groups, even during approved preliminary investigations; limit the duration of investigations, and restrict the retention and use of information obtained during such investigations.

Manifestly, some bright-line regulation of FBI investigations of domestic groups is worthwhile. However, there is compelling criticism that existing guidelines unduly constrain our ability to learn about truly subversive and dangerous individuals and groups in advance of violent activity, such as the recent violent acts of the Weather Underground. In 1975, before these Guidelines, the FBI had nearly 10,000 ongoing domestic security investigations; now there are five. Senator Denton has said that he will soon hold hearings on the need for revision of the Domestic Security Guidelines.

A related problem, which I informed you about earlier, concerns the absence of clear criteria governing background investigations for federal employees seeking sensitive positions or access to classified information. Personnel security investigations are governed by a hopelessly outdated Eisenhower Executive Order (E.O. 10450). The effectiveness of these investigations has been criticized by many conservatives because of the absence of developed data on subversive domestic organizations. OLC is reviewing E.O. 10450, but if reform is indicated in this area, it should involve a coordinated revision of both the Domestic Security Guidelines and the standards for personnel background investigations.

Fortunately, we are not starting at square one in this review, but it must be moved along. Rudy's shop is coordinating review of criminal and informant guidelines and Mary Lawton is handling E.O. 12333 procedures. John Hotis of FBI has prepared a detailed review of the Domestic Security Guidelines, which presumably could serve as the basis for review and recommendations by Rudy, FBI, Mary and Ted. You may want to discuss the Domestic Security Guidelines with Judge Webster, and we will shortly get you more detailed reports on the other guideline projects.