



# Office of the Attorney General

Washington, D.C.

September 29, 2008

MEMORANDUM FOR THE HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

Subject: The Attorney General's Guidelines for Domestic FBI Operations

I am issuing today the Attorney General's Guidelines for Domestic FBI Operations. These new Guidelines will make the FBI's operations in the United States more effective by providing simpler, clearer, and more uniform standards and procedures. The affected activities include: (i) the FBI's investigations and information gathering relating to federal crimes, threats to the national security, and foreign intelligence, (ii) investigative assistance by the FBI to other federal, state, local, tribal, and foreign agencies, (iii) the FBI's intelligence analysis and planning functions, and (iv) FBI information sharing.

The new Guidelines will replace the following existing guidelines:

- The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002).
- The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) (with respect to domestic operations).
- The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006).
- The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988) (with respect to domestic operations).
- The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976).
- The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) (with respect to the FBI but not other agencies).

**I. BACKGROUND OF THE NEW GUIDELINES**

The FBI's current responsibilities require it to be both an agency that effectively detects, investigates, and prevents crimes, and an agency that effectively protects the national security and collects and analyzes intelligence. Criminal law enforcement has always been central to the FBI's functions, but the national security and intelligence aspects of its mission have increased in scope and importance since the September 11, 2001, terrorist attacks on the United States.

These Guidelines reflect how the FBI and the policies governing its domestic operations have evolved in the period following the terrorist attacks. Based on decisions and directives of the President and the Attorney General, inquiries and enactments of Congress, and the conclusions of national commissions, it was recognized that the FBI's functions had to be expanded and better integrated to meet contemporary realities:

[C]ontinuing coordination . . . is necessary to optimize the FBI's performance in both national security and criminal investigations . . . . [The] new reality requires first that the FBI and other agencies do a better job of gathering intelligence inside the United States, and second that we eliminate the remnants of the old "wall" between foreign intelligence and domestic law enforcement. Both tasks must be accomplished without sacrificing our domestic liberties and the rule of law, and both depend on building a very different FBI from the one we had on September 10, 2001. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 466, 452 (2005).)

Consistent with these objectives, the FBI has reorganized and reoriented its programs and missions, and the guidelines issued by the Attorney General for FBI operations have been extensively revised over the past several years. Nevertheless, the principal directives of the Attorney General governing the FBI's conduct of criminal investigations, national security investigations, and foreign intelligence collection have persisted as separate documents involving different standards and procedures for comparable activities. The new Guidelines integrate and harmonize standards, and thereby provide the FBI and other affected Justice Department components with clearer, more consistent, and more accessible guidance, and make available to the public in a single document the basic body of rules for the FBI's domestic operations.

In relation to the FBI's national security and criminal investigation functions, the new Guidelines generally harmonize investigative standards and procedures. Investigation of threats to the national security, including international terrorism and espionage, can be both an exercise of the FBI's national security powers and an exercise of its authority to investigate federal crimes. The new Guidelines eliminate arbitrary differences in applicable standards and procedures that depended merely on how an activity was labeled ("national security" versus "criminal law enforcement"). For example, under current guidelines, if a matter is labeled as

“criminal,” an FBI agent may conduct physical or photographic surveillance based on a tip; the procedural requirements for doing so are more exacting in national security investigations. Similarly, human sources – referred to as informants or assets in the current guidelines – may be affirmatively tasked to seek information when the purpose is to check leads in ordinary criminal investigation, but the standards are more restrictive when the purpose is to gather information about threats to the national security. The new Guidelines will resolve such discrepancies.

At the same time, the Guidelines confirm that national security activities present special needs for coordination and information sharing with other components and agencies with national security responsibilities, including the Department's National Security Division, other U.S. Intelligence Community agencies, the Department of Homeland Security, and relevant White House agencies and entities. Notification, consultation, and information sharing provisions that relate particularly to national security activities accordingly are continued in the new Guidelines.

In addition to assuring that similar conduct is governed by similar rules, regardless of what label may be attached to the underlying activity, the new Guidelines also provide adequate standards, procedures, and authorities to reflect that the FBI is a full-fledged intelligence agency – with respect to both intelligence collection and intelligence analysis – and a key participant in the U.S. Intelligence Community.

Legislative and administrative reforms after the September 11, 2001, terrorist attacks, have recognized and enhanced the FBI's role as the primary collector of foreign intelligence within the United States, and have mandated that the United States' foreign intelligence collection activities become more flexible, more proactive, and more efficient in order to protect the homeland and adequately inform the United States' crucial decisions in its dealings with the rest of the world:

The collection of information is the foundation of everything that the Intelligence Community does. While successful collection cannot ensure a good analytical product, the failure to collect information . . . turns analysis into guesswork. And as our review demonstrates, the Intelligence Community's human and technical intelligence collection agencies have collected far too little information on many of the issues we care about most. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 351 (2005).)

The new Guidelines accordingly provide standards and procedures for the FBI's foreign intelligence collection activities that are designed to meet current needs and realities and to optimize the FBI's ability to discharge its foreign intelligence collection functions.

Further enhancement of the FBI's intelligence analysis capabilities and functions has been

recognized consistently as a key priority in the legislative and administrative reform efforts following the September 11, 2001, terrorist attacks:

[Counterterrorism] strategy should . . . encompass specific efforts to . . . enhance the depth and quality of domestic intelligence collection and analysis . . . . [T]he FBI should strengthen and improve its domestic [intelligence] capability as fully and expeditiously as possible by immediately instituting measures to . . . significantly improve strategic analytical capabilities . . . . (Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, S. Rep. No. 351 & H.R. Rep. No. 792, 107th Cong., 2d Sess. 4-7 (2002) (errata print).)

A "smart" government would *integrate* all sources of information to see the enemy as a whole. Integrated all-source analysis should also inform and shape strategies to collect more intelligence . . . . The importance of integrated, all-source analysis cannot be overstated. Without it, it is not possible to "connect the dots." (Final Report of the National Commission on Terrorist Attacks Upon the United States 401, 408 (2004).)

The new Guidelines accordingly incorporate more comprehensive and adequate authorizations for the FBI to engage in intelligence analysis and planning, and to draw on all lawful sources of information in doing so.

Finally, the new Guidelines incorporate effective oversight measures that involve many Department of Justice and FBI components and have been adopted to ensure that all FBI activities are conducted in a manner consistent with law and policy.

## II. IMPLEMENTATION

I am directing all affected components to implement the new Guidelines, including training of those whose activities, wholly or in part, must conform with these Guidelines, and making the standards and procedures of these Guidelines permanently a part of their training programs and operations. The training and implementation measures adopted by the FBI and other affected components will be designed to ensure that all personnel comply with and carry out the new Guidelines and that the objectives of the Guidelines are realized. The key objectives that will guide components in their implementation activities and policies include:

- (i) fully using the authorities provided by the Guidelines to protect the United States and its people both from terrorism and other threats to the national security and from victimization by all crimes in violation of federal law, and to further the foreign intelligence objectives of the United States; and
- (ii) conducting all activities under the Guidelines in a lawful and reasonable manner that

respects liberty and privacy.

Initial training of affected personnel in the new Guidelines is to be carried out promptly and must be completed by the new Guidelines' effective date of December 1, 2008, as provided below.

The following principles and directives will define and control the relationship of the new Guidelines to other guidelines and policies, and the transition to the new Guidelines from previous operating standards and procedures:

**A. RELATIONSHIP TO OTHER GUIDELINES AND POLICIES**

Although the new Guidelines repeal and replace several existing guidelines sets, other guidelines affecting FBI activities will remain in effect. These include the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources ("Human Source Guidelines"), and the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The Procedures for Lawful, Warrantless Monitoring of Verbal Communications ("Consensual Monitoring Procedures") will also remain in effect with respect to agencies other than the FBI.

As noted, the Human Source Guidelines will remain in effect. A Memorandum for All Federal Prosecutors from the Deputy Attorney General, entitled New Attorney General Guidelines Regarding the Use of FBI Confidential Human Sources (May 30, 2007), stated that the rules governing the authorization of otherwise illegal activity in national security investigations would be different from those in the Human Source Guidelines. The portions of the Deputy Attorney General's memorandum that so stated are hereby rescinded. The relevant provisions of the Human Source Guidelines will continue to govern the authorization of otherwise illegal activity by Confidential Human Sources in all types of investigative activity.

The Consensual Monitoring Procedures will remain in effect, but will be inapplicable to the FBI following the effective date of the new Guidelines. The new Guidelines contain provisions concerning consensual monitoring in FBI investigative activities that will supersede the Consensual Monitoring Procedures in relation to the FBI. This does not affect the applicability of the Consensual Monitoring Procedures to the activities of other agencies.

My memorandum of December 19, 2007, entitled "Communications with the White House," articulated standards and procedures for communications between the Department of Justice and the White House with respect to pending criminal or civil enforcement matters. That memorandum exempted communications relating to national security cases from certain general restrictions and was not concerned with communications relating to foreign intelligence. Part VI.D.2 of the new Guidelines provides standards and procedures, generally carried forward from

the pre-existing guidelines, for sharing of national security and foreign intelligence information with the White House by the FBI. Part VI.D.2 is consistent with the December 19, 2007, memorandum. The FBI accordingly may disseminate national security and foreign intelligence information to the White House in conformity with Part VI.D.2, without being subject to further limitations or requirements that arise from the December 19, 2007, memorandum.

These new Guidelines provide standards and procedures for FBI activities within the United States. They do not apply to extraterritorial operations, carried out by FBI agents or human sources in foreign countries. I will be issuing a separate set of new guidelines for extraterritorial operations, the Attorney General's Guidelines for Extraterritorial FBI Operations. However, certain of the existing guidelines that are repealed by the new Guidelines for domestic operations currently apply in part to extraterritorial operations, including the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, and the Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations. To ensure that there will be no gap in the existence of guidelines standards for extraterritorial operations, I am directing that these existing guidelines remain in effect in their application to extraterritorial operations until the Attorney General's Guidelines for Extraterritorial FBI Operations are issued and take effect, notwithstanding the more general repeal of existing guidelines by the new Guidelines for domestic FBI operations.

**B. EFFECTIVE DATE AND OTHER TRANSITIONAL MATTERS**

The new Guidelines will take effect on December 1, 2008.

The FBI shall adopt such measures as may be needed to effect an orderly and expeditious transition to the new Guidelines, without disruption or impediment to ongoing activities within their scope, including transitional policies defining applicable requirements and procedures for activities that commence prior to the effectiveness of the new Guidelines and continue after their effectiveness. The FBI shall keep the Deputy Attorney General, the Assistant Attorney General of the Criminal Division, and the Assistant Attorney General for National Security informed of such measures as directed by the Deputy Attorney General. The FBI shall also, as directed by the Deputy Attorney General, keep the Deputy Attorney General informed concerning the general progress of implementation and provide to the Deputy Attorney General for review any policies the FBI may adopt in the implementation of the Guidelines.

Part VI.D.1.d of the new Guidelines requires the National Security Division, in consultation with the Executive Office for United States Attorneys and the FBI, to establish certain policies relating to counterintelligence investigations. I am directing these components to carry out the necessary consultation promptly and to complete the preparation of these policies by

the new Guidelines' effective date of December 1, 2008.

Part VI.D.1.a of the new Guidelines directs the FBI to provide annual reports to the National Security Division concerning the FBI's foreign intelligence collection program. As a final transitional measure, I am directing the FBI to provide these reports semiannually rather than annually in the first reporting year. This will enable the National Security Division and the FBI to gain experience promptly in the preparation of these reports and the nature of the information in the reports that will be useful to the National Security Division in the discharge of its responsibilities. Specifically, the initial report, covering the period December 1, 2008, to March 31, 2009, will be due on July 1, 2009; the second report, covering the period April 1, 2009, to December 31, 2009, will be due on April 1, 2010; and the annual report for 2010 and each calendar year thereafter will be due on April 1 of the succeeding year.