

February 2011

Portland, Oregon

This is an UNCLASSIFIED presentation



OVERVIEW

- FBI policies embodied in 2008 AG Guidelines
- FBI internal oversight
- DOJ oversight
- External oversight



FBI POLICIES EMBODIED IN 2008 AG GUIDELINES



2008 AG Guidelines

- Clearly defined and delineated ability to conduct assessments in order to satisfy calls for FBI to become an "intelligence driven" organization
 - Must have proper purpose; no specific factual predication required
- Continued prior policies regarding predicated investigations



First Amendment & Profiling

- Neither assessments nor investigations may be based:
 - Solely on activities protected by the First Amendment
 - Solely on the race, ethnicity, national origin, or religion of the subject
 - On a combination of only those factors.



Broad Privacy and Civil Liberties Protections

- The FBI must conduct its investigations and other activities in a lawful and reasonable manner that respects liberty and privacy and avoids unnecessary intrusions into the lives of law-abiding people."
- These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States."



Privacy Act

- FBI prohibited from collecting information about how people exercise First Amendment rights unless it is pertinent to or within the scope of authorized law enforcement activities.
- Information gathered in violation of the Privacy Act is removed from FBI files.

Oregon Statute 181.575 Specific information not to be collected.

No law enforcement agency . . .

- . . . may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership . . .
- . . . unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.

Attorney General Guidelines.

These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.

Privacy Act.

[Agencies shall]. . .

- . . . maintain no record describing how any individual exercises rights guaranteed by the First Amendment . . .
- . . . unless pertinent to and within the scope of an authorized law enforcement activity.



"Least Intrusive" Authorized Investigative Method

- Investigators required to use least intrusive investigative technique feasible, if operationally sound and effective.
- Applies to assessments and predicated investigations



Investigative Techniques During Assessments

- Obtain publicly available information
- FBI and DOJ records and information
- Other government records and information
- Online services and resources
- Human sources



Investigative Techniques During Assessments (con't)

- Interview or request information from the pubic
- Accept volunteered information
- Observation or surveillance not requiring a court order (public spaces)
- Grand jury subpoena for telephone or email subscriber information

FBI INTERNAL OVERSIGHT



General Approach to Ensuring Compliance with Guidelines

- Legitimate concerns raised about assessment authority
- Concerted effort to make policies <u>very</u> clear
- Concerted training effort to ensure workforce understands policies and can correctly apply them



Supervisory Reviews by Experienced Agents/Analysts

- Supervisory review/approval required to open assessment or investigation
- "Sensitive" matters require legal review and high level approval
- Case file reviews (every 90 days)
- More intrusive investigative steps require higher level supervisory review



Inspection Division

- Review of assessments looking specifically at First Amendment/racial profiling issues
- Found tiny number of potential issues
- Re-audit this year; results not in yet

DOJ OVERSIGHT





- Full investigations of US persons and all SIMs are reported to DOJ
- Conducts "National Security Reviews" with FBI OGC
- Conducts "minimization" and "accuracy" reviews associated with use of FISA authority



Role of Prosecutor

- DOJ policy requires United States Attorneys' Offices to review and stay current on all terrorism investigations.
- DOJ policy requires notification, consultation, and approval for significant developments in terrorism cases.
 - AAG for National Security
 - Deputy Attorney General, Attorney General



Role of Prosecutor

- Most intrusive steps (e.g., wiretaps) require active involvement by prosecutor
 - Ensure legal requirements are met
 - Intimately involved in strategic decisions (i.e., it might be legal, but is it the best way to proceed)

EXTERNAL OVERSIGHT



External Oversight

- Office of Inspector General
- President's Intelligence Oversight Board
- Privacy & Civil Liberties Oversight Board
- Congressional Committees
- Public oversight via press and FOIA