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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. chart	re revised domestic security/terrorism guidelines, 4p	n.d.	B2 B7e
2. executive summary	re same topic as item 1, 3p	n.d.	B2 B7e
3. guidelines	The Attorney General's Guidelines on General Crimes, Racketeering Enterprises and Domestic Security/Terrorism Guidelines [draft], 19p	n.d.	B2 B7e
4. memo	Robert Kimmitt to Fred Fielding re Attorney General guidelines, 1p	2/10/83	B2 B7e

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
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- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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JAN 25 1983



United States Department of Justice

ASSOCIATE DEPUTY ATTORNEY GENERAL

WASHINGTON, D.C. 20530

January 25, 1983

MEMORANDUM FOR: Richard A. Hauser
Deputy Counsel to the
President

FROM: Stanley E. Morris
Associate Deputy Attorney General

I am enclosing a fact sheet on fair housing which you requested yesterday. It outlines what our policies have been and some products of our litigation. It is general regarding our position on fair housing legislation because we will need to maintain some flexibility until we have determined what the situation is on the "Hill".

If you have any questions, call me or Brad Reynolds.

cc: Edward C. Schmults
Brad Reynolds



HOUSING DISCRIMINATION ENFORCEMENT FACT SHEET

January 20, 1981 to December 31, 1982

The President and the Attorney General have committed this Administration to the full and fair enforcement of the civil rights laws. The right of equal opportunity to housing without regard to race, creed, color, national origin or handicap, is central to our concerns. This fact sheet is intended to set forth information concerning the Administration's enforcement of nondiscrimination in housing, with an emphasis on the efforts of the Civil Rights Division of the Department of Justice.

I. Litigation Activity

A. Approximately 130 investigations of alleged discrimination in housing have been undertaken since the beginning of this Administration.

B. Indictments in eight cases have been obtained which charge criminal interference with housing rights on the basis of race.

C. Three systemic, or "pattern and practice," suits have been filed alleging racial discrimination in housing. We recently filed suit against Cicero, Illinois, charging the town with unlawful housing and employment discrimination. The complaint alleged that Town officials

had harassed black persons trying to move into the community and that, for explicitly racial reasons, the Town refused to participate in the Community Development Block Grant program.

We have also filed two suits against large apartment complex owners in the Boston area and in the Detroit suburbs. Additional actions will be filed in the near future. Over a dozen potential lawsuits are being actively investigated by the Civil Rights Division, and many of those are likely to be recommended for litigation within the next six months.

D. Negotiations in several cases have led to consent decrees designed to remedy previous violations and bring an end to discriminatory conduct.

E. The Department of Justice has received additional referrals of pattern and practice complaints from the Department of Housing and Urban Development which are currently under active investigation.

F. In the Havens Realty case we successfully argued in the Supreme Court that "testers" should be granted standing to challenge discrimination in the sale, rental or financing of housing, thus increasing the effectiveness of enforcement of anti-discrimination laws in the housing area.

G. In the City of Birmingham case, we are arguing in the Court of Appeals for the Sixth Circuit that officials who clearly and demonstrably act in response to the racially motivated desires of their constituents with respect to housing decisions are guilty of discriminatory conduct.

II. Legislative Activity

Revision of the Fair Housing Act will be before the Congress this session, and the Department has been actively working with the Department of Housing and Urban Development and others in the Administration on the various legislative proposals currently under consideration.

In this regard, consideration is being given to specific amendments to the existing law that are designed, among other things, to enhance the statute's enforcement provisions, expand its coverage in several particulars and address the current exemptions from Title VIII liability. We are reviewing the different alternatives that have been proposed and anticipate being in a position shortly to announce an Administration position with regard to fair housing legislation.

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 8, 1983

TO: Michael M. Uhlmann
Special Assistant to the President

Fred F. Fielding
Counsel to the President

FROM: Edward C. Schmults
Deputy Attorney General

Per your request, there is attached a side-by-side comparison of the principal features of the Levi Guidelines and our revisions to those guidelines. In combination with the Executive Summary and Questions and Answers we have prepared, this should facilitate White House review of this matter. I hope that you can get back to us this week so that we can begin briefing the relevant Members of Congress.

Many thanks.

Attachment

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The November 20, 1982 Human Events article basically summarizes the primary conservative criticisms of the Levi Guidelines and cites examples of specific cases closed under the guidelines. Discussion of the particular cases is inappropriate in light of the classified nature of some of the material and the pendency of litigation regarding some of these matters. The following summary discusses the manner in which the new guidelines address the basic philosophic objections to the Levi Guidelines.

◦ The Levi criminal standard.

The new guidelines apply a "reasonable indication" test rather than the Terry v. Ohio stop and frisk standard of the Levi Guidelines. They require that there be a nexus to crime in the activities of an enterprise under investigation but do not require that a crime be underway or imminent.

◦ The restriction on data available to Secret Service.

The new guidelines make clear that the FBI is authorized to provide investigative assistance to the Secret Service.

◦ The inability to investigate terrorists linked to foreign countries if they commit no crime in this country.

International terrorism cases are investigated under the Foreign Counterintelligence guidelines rather than the Domestic Security/Terrorism guidelines, but there is ample authority to investigate such cases.

◦ The downgrading of personnel security investigations.

The new guidelines make clear that they do not affect the FBI's responsibility under the federal personnel security program.

◦ The limits on the early development of informants.

The guidelines permit the use of new informants at the preliminary inquiry stage of an investigation.

° The inability to investigate "subversion" per se without any criminal nexus.

Given the constraints of the Privacy Act of 1974 (5 U.S.C. 552a(e)(7)), the new guidelines retain the requirement that there be some nexus to crime before an individual's exercise of First Amendment rights may be investigated.

° The inability to begin an investigation until a crime has been committed.

The new guidelines permit the FBI to start a preliminary inquiry based on an allegation or information.

° The inability to investigate those who advocate the overthrow of the government.

The new guidelines make clear that investigations may be triggered by statements advocating violence or indicating an apparent intent to engage in crime.

Q. In the view of many, the Levi Guidelines were successful in preventing the abuses of COINTELPRO and similar activities by the FBI. Does this change signal a lessening of commitment to monitor FBI activities?

A. The Levi Guidelines were originally promulgated on an experimental basis with the idea that they would be reviewed after the experience under them could be adequately assessed. Other guidelines issued at that time, such as the Foreign Intelligence Guidelines, have already been reviewed and revised. We believe that it is appropriate at this time to revise the Domestic Security Guidelines in light of our experience. In our view, the Levi Guidelines are no longer adequate to deal with the fluid structure of present day terrorist groups which do not have the organizational framework with which we were familiar in the past. This is a primary reason for adopting the enterprise concept. In addition, experience has taught us that informant coverage has been diminished to the point where adequate intelligence is difficult to obtain. Added to these concerns is the growing complexity for field agents of discrete sets of guidelines that have been adopted over the years providing different standards, different reporting periods, and different approval levels for investigations that are closely related. The consolidation of the Domestic Security Guidelines with the other provisions governing criminal and criminal intelligence investigations permits us to streamline the rules for the agents who must conduct these investigations. We remain committed to the highest standards of professionalism in conducting domestic security/terrorism investigations, consistent with the law and rights of our citizens.

Q. Since the new guidelines retain the criminal standard of the Levi Guidelines, isn't it true that the FBI will be unable to investigate a group until they have engaged in or about to engage in criminal activity?

A. The new guidelines do require that there be some nexus to crime before individuals or organizations may be investigated. This criminal nexus, however, is far from being a standard for investigation. It merely requires some indication that the group under investigation is working toward criminal activity now or in the future. Certainly it does not require probable cause in the sense that would be necessary to obtain a search warrant or make an arrest.

The standard for investigation in the new guidelines differs from the Levi standard in that it does not suggest degrees of certainty or probability. It merely requires a reasonable indication based on all the surrounding facts or circumstances that the enterprise to be investigated is organized for the purpose of achieving its ends eventually through criminal activity.

Q. Like the Levi guidelines, the new guidelines provide no authority to investigate support groups or front groups. Thus they contain the same restriction that has proved so troublesome in the past. Isn't it true that the FBI will be limited to investigating only those groups already engaged in illegal activity?

A. The use of the enterprise concept in the new guidelines specifically addresses the problem of distinguishing between core groups and support groups. Rather than focusing on organizational structure under a given name or set of leadership, the new guidelines focus on the enterprise as a whole. Thus, when the FBI begins an investigation it will be looking at the basis of financial support and the activities of persons related to the enterprise whether or not they can be said to be members in the formal organizational sense. This change will permit the Bureau to look at the enterprise as a whole and will not require separate justifications for investigations of those who might be designated as support persons versus those engaged in the activities under investigation.

Q. The retention of the so-called criminal nexus appears to block investigation of totalitarian or revolutionary groups that are not themselves engaged in illegal activity. Will it not be impossible to focus on factions of those groups which might indeed be violent?

A. The use of the enterprise concept not only permits investigations of support groups surrounding a core enterprise it also permits investigation of factions within an otherwise lawful group if there are indications that they may be involved in furthering their goals through illegal force or violence. The investigations would concentrate on the faction rather than the group as a whole but the guidelines would permit investigation of that element of the organization which is bent on furthering its purposes through illegal activity.

- Q. Do the new guidelines permit investigation of those who advocate violent overthrow of the government even though they have yet to engage in any activity?
- A. The new guidelines make clear that there are circumstances in which advocacy of criminal activity may trigger an investigation. They recognize the limitations imposed by the First Amendment and by the Privacy Act of 1974. At the same time they take note of the fact that words can indicate an intent to take action and that the role of intelligence investigations is preventive as well as prosecutorial. The guidelines call attention to the fact that advocacy should be viewed in the context in which it is made. Some radical statements may be recognized as harmless puffery or rhetoric whereas others, in the context in which they are made, may be a clear warning of illegal activity to follow. In those circumstances investigation would be authorized.

Q. Why is it that the guidelines continue to inject the Department of Justice into investigative issues when this is a matter that should be left to the professional judgment of the FBI?

A. The responsibility for federal law enforcement is vested in the Attorney General. As the head of the Department, he has responsibility for the performance of the FBI as well as other elements of the Department. At the same time the new guidelines recognize that the degree of Departmental involvement in FBI investigative decisions under the Levi Guidelines may be too burdensome in present circumstances. Accordingly, the new guidelines provide for notice to and annual review of investigations by the Department of Justice but do not require departmental approval either to initiate or to continue investigations. Moreover, the time constraints for reporting have been extended so that review within the FBI Headquarters is on a semi-annual rather than a quarterly basis.

Q. Isn't it true that the guidelines require the FBI to come to the Department of Justice for permission before it uses certain techniques in domestic security cases?

A. The Domestic Security/Terrorism Guidelines acknowledge the existence of other departmental policies and instructions which do require advance permission before use of certain techniques. Some of these, such as the requirement for approval of electronic surveillance under Title III, are mandated by statute. Others are generalized policies of the Department on such matters as consensual monitoring or pen registers and these are applicable to all investigative activities of all components of the Department. They are not unique to the Domestic Security/Terrorism Guidelines.

Q. Do the new guidelines retain the complex levels of investigation for domestic security/terrorism cases found in the Levi Guidelines?

A. The new guidelines simplify the investigative structure. Domestic security/terrorism investigations are conducted on one level only; that is a full investigation. Inquiries short of a full investigation are to be conducted under the general crimes guidelines. There are no separate preliminary inquiries for domestic security/terrorism cases, nor are there any "limited investigations" as described in the Levi Guidelines.

Q. Will the new guidelines permit the FBI to collect the sort of information on American organizations that will assist the Secret Service in protecting the President and other officials of our government?

A. The guidelines permit the FBI to provide investigative assistance in support of the Secret Service protective responsibilities so long as the basic requirements of criminal enterprise investigations are met. In addition, under separate guidelines, the FBI is authorized to conduct investigation upon specific request of the Director of the Secret Service.

Q. Do the guidelines authorize investigations of disloyal individuals and organizations to provide a pool of information to assist the Office of Personnel Management in its loyalty/security investigations?

A. The guidelines deal with domestic security/terrorist enterprise investigations and do not address FBI responsibilities in connection with the Federal Loyalty Security Program other than to point out that nothing in the domestic security guidelines limits the FBI's existing authorities under statute and executive order to investigate applicants and employees under the Federal Personnel Security Program.

Q. Under the Levi Guidelines the FBI was prohibited from collecting even publicly available information accessible to the average newspaper reader. Is this continued under the new guidelines?

A. The new guidelines specifically permit collection of publicly available information to the full extent permitted by the Privacy Act. The Levi Guidelines, in fact, contained no reference to the collection of publicly available information. The constraint in this regard was contained in the provisions of the Federal Privacy Act of 1974 which prohibit the collection of any information on how an individual exercises First Amendment rights except when authorized by statute or in the course of a lawful law enforcement investigation. Until recently this prohibition had not been subject to judicial or, indeed, executive construction and therefore was approached with caution by the FBI. A recent decision of the Sixth Circuit Court of Appeals in Jabara v. Webster suggests that publicly available information could be collected as part of an intelligence investigation. This requires further analysis but the guidelines make clear that the FBI is authorized to collect such information to the extent permitted by the Privacy Act.

Q. Isn't it true that the new guidelines continue to restrict the techniques available during a preliminary inquiry.

A. The guidelines acknowledge external restrictions on the use of particular techniques during preliminary inquiries, although most techniques, such as the use of informants, are permitted. For example, they note that electronic surveillance is not permitted at the preliminary stage. This is not a restriction of the guidelines themselves but rather an acknowledgement of the Fourth Amendment and statutory requirement that there be probable cause to believe that crime is being or is about to be committed before electronic surveillance may be used. Similarly, probable cause is required under federal statute and under the Fourth Amendment to open first class mail. Since that opening requires a warrant the guidelines note this. Existing Postal Regulations likewise require probable cause before a mail cover may be instituted and the guidelines acknowledge this fact as well. Since a preliminary inquiry begins far short of probable cause it is self-evident that those techniques are not available at the preliminary stage.

Q. Do the guidelines permit the FBI to use informants to gather intelligence on organizations under investigation?

A. The guidelines clearly permit the use of new informants to obtain information as part of domestic security/terrorism investigation. In addition, they permit the use of informants in preliminary inquiries conducted under the general crimes investigation authority. This will permit the FBI to obtain information at an earlier stage than was often the case under the Levi Guidelines.

Q. Under the Levi Guidelines domestic security/terrorism investigations were terminated if the group did not engage in a criminal act within the course of a year. Is that same "one crime a year" standard applied in the new guidelines?

A. The new guidelines expressly encourage the continuation of investigations even though the activities of a group may be temporarily dormant so long as the fundamental basis for the investigation continues to exist. We have known of groups in the past that because of external activity, such as a pending prosecution, have instructed their members to "lay low" for a period of time. Yet the goals of these organizations have not changed and their potential for reviving their illegal activities continues to exist. Noting this, the new guidelines authorize the continuation of coverage perhaps with the lower expenditure of resources, in order to have the necessary intelligence when the groups become active again.

Q. Given the unreliability of informants of the types used in Abscam don't you feel it is a severe infringement of First Amendment rights to use people like this in essentially political organizations?

A. The guidelines do not permit investigation of lawful political organizations. They authorize investigation of criminal enterprises which pose a threat of unlawful violence. The use of informants remains subject to the informant guidelines which require that informants be instructed on the limits of their conduct.

Q. How can you justify the use of informants in a preliminary investigation when all you have is a mere allegation, unsubstantiated, of criminal conduct?

A. There are no preliminary domestic security/terrorism investigations under the new guidelines. The inquiries that will be conducted will be subject to the general crimes guidelines, already in place, which are focused on specific criminal activity not on general intelligence gathering. Under these circumstances we see no reason to limit the use of informants in these preliminary inquiries.

Q. Isn't the reference in the guidelines to the prevention of criminal activity an attempt to reinstate the COINTELPRO tactics which were condemned by the Church and Pike Committees?

A. In our view the prevention of criminal activity is an inherent responsibility of law enforcement. The very concept of organized crime investigations has always included the prevention of future crimes by the criminal enterprise as well as the prosecution of those involved in crimes in the past. The same concept is fully applicable to enterprises whose goals are political or social rather than financial so long as the techniques of criminal violence constitute the means they chose to obtain those goals. Nothing in these guidelines authorizes or encourages the abusive aspects of the COINTELPRO techniques. The emphasis is on the prevention of criminal violence not the exercise of lawful First Amendment rights. This is made clear in the general principles at the outset of the guidelines.

- Q. The fact that you are changing the Domestic Security/Terrorism Guidelines indicates the uncertainty of these provisions as a protection for the American public against law enforcement abuses. Shouldn't the standards for FBI investigation be set by Congress so that there will be a firm statutory basis for assessing FBI performance?
- A. Congress has authorized FBI investigations in general terms in the provisions of 28 U.S.C. 533 that permit the Attorney General to appoint officials to detect and prosecute crimes against the United States and engage in other investigative activities within his responsibility. Further, FBI investigations are authorized each year by Congress in the Department of Justice Authorization Act. We do not consider it appropriate for Congress to prescribe the sort of administrative detail that is contained in these guidelines. For example, the Domestic Security/Terrorism Guidelines provide for notice of investigations to be given the Office of Intelligence Policy and Review and for review of investigations by that Office. When the Levi Guidelines were first issued no such Office existed. Subsequently, an Investigations Review Unit was created but it was later merged into the new Office. Were Congress to attempt this level of detail in enacting provisions relating to the FBI, constant changes would be required to comport with organizational changes within the Department. Those techniques which the Congress has considered most sensitive, such as electronic surveillance and mail opening, are already regulated by statute governing all federal investigative agencies. In our view it would be inappropriate to single out the FBI for particular regulations in this area.

Q. Why are these guidelines limited to domestic terrorism? Shouldn't international terrorism be covered as well?

A. International terrorism investigations are conducted under the Foreign Intelligence and Foreign Counter-intelligence Guidelines because of the unique nature of international terrorism. Those cases may well involve organizations whose activities in this country do not violate U.S. federal law but nevertheless warrant investigation by the FBI because of the federal government's international responsibilities. This was recognized by Judge McLaughlin in his opinion in U.S. v. Falvey, 540 F.Supp. 1306 (E.D.N.Y. 1982). Moreover, by statute, international terrorism investigations fall within the provisions of the Foreign Intelligence Surveillance Act rather than Title III. Thus the Congress has recognized that it is more appropriate to approach these investigations as part of the foreign intelligence and foreign counterintelligence responsibility of the FBI rather than under its law enforcement responsibility.

Q. Doesn't the criminal enterprise approach permit the FBI to investigate organizations which are engaged in no violation of law but merely have common purpose with other more violent organizations?

A. The Domestic Security/Terrorism Guidelines focus on enterprises whose purpose is unlawful violence. It is this enterprise which is being investigated and not groups that may style themselves as support, underground, aboveground or by some other artificial distinction. The focus remains, however, on the unlawful goal. The lawful activities of sympathetic groups would not be the focus for investigation. Their furtherance of the illegal goal, however, would be.

Q. The Levi Guidelines required specific and articulable facts as a basis for a full investigation. This standard was based on existing Fourth Amendment law. How can you justify the deviation from this constitutional standard?

A. The standard of the Levi Guidelines was indeed a Fourth Amendment standard articulated by the Supreme Court in Terry v. Ohio. The court's standard, however, was addressed to the actual stopping and frisking of an individual on suspicion of crime; a form of "lesser search". These guidelines deal with the initiation of investigations; that is, the collection of information. The standard should not, in our judgment, be as strict as the Terry standard unless intrusions equal to Terry are involved. Where the Fourth Amendment standard either for stop and frisk or indeed for actual search applies under our Constitution it continues to apply under the guidelines. The standard of these guidelines, it should be noted, parallels the standard which has applied to organized crime investigations since those guidelines were issued in 1980.

Q. When the Levi Guidelines were issued in 1976, Congress had extensive opportunity to conduct hearings before the guidelines were actually adopted. Why have you not followed this practice?

A. At the time those guidelines were adopted the very concept of guidelines of this nature for an investigative agency was novel. Moreover, the Congress had just completed extensive investigations of the FBI investigative practices. Then, apparently, the Attorney General considered it appropriate and useful to have the extended hearings on this untried mechanism of control. Since that time the Department of Justice in two Administrations has had substantial experience with the drafting and implementation of guidelines in diverse fields of activity. We no longer consider it necessary to have such extended public debate on what are essentially internal operating procedures. When the General Crimes Guidelines were adopted, of which the Domestic Security/Terrorism Guidelines are now becoming a part, no formal or extended hearings were conducted. I am satisfied that these guidelines carry out our responsibility to ensure professional and effective law enforcement.

Q. Do you anticipate a dramatic increase in the number of domestic security/terrorism investigations as a result of these guidelines?

A. If our domestic security/terrorism investigations are as successful as our organized crimes investigations have been in recent years under similar guidelines, I would anticipate that the number of investigations necessary would diminish rather than increase. On the other hand, it must be recognized that we do not control the number of incidents or indeed the number of enterprises warranting investigation; we respond to perceived law enforcement needs as they develop. Thus we cannot predict what the investigative needs or our law enforcement responsibilities will be in the future under these guidelines.

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