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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179296



MAR 29 1976

The Honorable Don Edwards  
Chairman, Subcommittee on Civil  
and Constitutional Rights  
Committee on the Judiciary  
House of Representatives

*HERE TO*

*AGC 102*

Dear Mr. Chairman:

In response to your Subcommittee's request, we are furnishing you herewith our comments on the draft guidelines for controlling the FBI's domestic intelligence operations which were released on March 10, 1976, by the Attorney General.

In chapter 11 of our February 24, 1976, report on the FBI's domestic intelligence operations, to the Chairman, House Committee on the Judiciary, and in testimony before your Subcommittee on the same day, we discussed the various sections of the January 1976 draft of the Attorney General's guidelines.

Our comments on what we consider to be major changes in each section of the March 1976 draft guidelines follow.

INITIATING AND CONTINUING INVESTIGATIONS

Prior to March 10, 1976, the Domestic Security Investigations draft guidelines contained references to antiriot law violations and FBI reporting on civil disorders and demonstrations. The March draft completely revised this approach with the issuance of a separate set of guidelines entitled, "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest."

Basically, these guidelines were designed to separate domestic security investigations from other FBI functions of gathering information to (1) assist the President in determining whether Federal troops are required at civil disorders, (2) provide limited information to the Department of Justice relating to demonstration activities, and (3) provide information for the purpose of assisting the Secret Service in its

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protective responsibilities. The civil disorders guidelines will allow the FBI to initiate narrow investigations only at the request of the Attorney General or at the written request of the Secret Service Director or his designee.)

The separation of the FBI's investigative role in domestic intelligence cases from actions relating to civil disorders and demonstrations is advantageous. The separation more clearly defines the scope and purpose of domestic intelligence investigations. The civil disorder guidelines recognize that the FBI's investigation of such matters is in fulfillment of certain duties and responsibilities of the Justice Department other than those related to domestic intelligence. Moreover, the civil disorder guidelines adequately address the need to restrict the scope of such investigations and provide for guidance by the Attorney General to the FBI as to when it is allowed to initiate such investigations.

The January guidelines allowed two types of investigations-- preliminary and full. The revised guidelines provide for three types of investigations--preliminary, limited, and full.

During preliminary investigations the FBI is allowed to secure information from the following: (1) FBI indices and files, (2) public records and sources of information, (3) Federal, State, and local records, (4) existing sources of information and informants, and (5) physical surveillance and interviews of persons for the limited purpose of identifying the subject.

*END (DO NOT ASK any further)*

The January guidelines allowed the use of interviews and surveillances in preliminary investigations for purposes other than identifying the subject, but only on the condition that the Special Agent in Charge or FBI Headquarters provided written authorization for the interviews. The March guidelines prohibit the use of interviews and surveillance in preliminary investigations for purposes other than identifying the subject. The March guidelines, however, create a new level of investigative effort--the limited investigation. Limited investigations may only be used after it has been determined that preliminary investigative techniques are inadequate to determine if there is a factual basis for a full investigation.

One advantage of using the limited investigation is that it provides the Special Agent in Charge of the field office and FBI Headquarters with an additional point at which a decision must be made concerning the continuance of the investigation and the consequences of certain investigative techniques. Furthermore, it provides the Department of Justice with another level to measure FBI investigative effort.

The use of full investigations was not substantially revised by the March guidelines.

The March guidelines state that preliminary investigations must be related to allegations that activities involve or will involve the use of force or violence and involve or will involve the violation of the cited Federal laws. As such, the focus of preliminary investigations is more clearly aligned with our recommendations that domestic intelligence investigations focus on groups that have used or are likely to use violence.

The March guidelines, however, still do not adequately address the recommendations on pages 150 and 161 of our report that restrict the circumstances under which the FBI could investigate individuals associated with groups and that call for the Attorney General to be involved in deciding under what circumstances the FBI should be allowed to initiate investigations of individuals associated with groups.

Our recommendations designed to restrict when the FBI can open investigations of individuals associated with groups were based on our finding that about 37 percent of the cases on individuals included in our sample were initiated because the individuals were associated with groups characterized by the FBI as warranting domestic intelligence investigation. Thus, our recommendations started from the premise that the domestic intelligence operations of the FBI would be group oriented. Accordingly, we believed it necessary for the Attorney General to be involved in determining the groups warranting investigation before the FBI would be allowed to initiate investigations of individuals associated with the groups.

The March guidelines still allow the FBI to initially determine when to initiate investigations of individuals. The Attorney General and the Department generally will not be involved in the process until the FBI has, at least, investigated an individual for 90 days. We continue to believe it is important to involve the Department in the initial decision to allow the FBI to initiate domestic intelligence investigations and that our recommendations referred to previously are an appropriate way to do this.

In other words, if our recommendations were enacted into law, we assume that on the day they became effective the FBI would have to present to the Attorney General the names of all organizations it has under investigation as part of its domestic intelligence operations and the circumstances warranting the investigations.

Our recommendations would permit the FBI to investigate a group if the Attorney General had determined that the group possessed a possibility for using violence. Leaders of such groups could also be investigated. However, individual members or persons suspected of being members of such groups would not be investigated unless the FBI had information that a member has committed or is likely to commit an act of violence. The FBI could continually assess the group's propensity for violence by use of informants or confidential sources.

The second type of group that could be investigated would be those that the Attorney General had determined possessed a probability of using violence. Our recommendations will allow the FBI to investigate all individuals associated with these groups.

No groups or individuals should be investigated merely because of their beliefs. However, our recommendations would not preclude the FBI from investigating any individuals whom the FBI learns may be plotting the imminent use of force or violence. We assume any such investigation would be a criminal investigation.

#### SOURCES AND TECHNIQUES

One of the major changes in the guidelines involves the deletion of preventive action measures contained in the January draft. The provision, according to the Attorney General, was removed from the March guidelines because it had widely been misinterpreted as being an affirmation of COINTELPRO. We never believed the preventive measures section of the guidelines would have legitimized such actions. The elimination of this technique, however, removes the most controversial section of the guidelines.

Nevertheless, we still believe it is necessary to legislate that certain types of actions are not permissible. Our recommendation relating to preventive action took a positive tone in terms of saying that nonviolent emergency measures could be taken when there was probable cause to believe violent actions posed an immediate threat to life or property and would substantially interfere with the functioning of Government. We assumed that by legislating what could be done, all other types of preventive actions would not be sanctioned by law. If the issue of preventive action is not addressed legislatively, there could still be disagreements as to what type of action is legal and appropriate. Legislation could clarify the situation.

TERMINATING INVESTIGATIONS

The previous guidelines allowed preliminary investigations to be extended for one 90-day period. The March revision stated that preliminary and limited investigations together may take 90 days and may be extended by FBI Headquarters for 90 days, but placed no limit on the number of 90-day extensions that could be granted. Under this revision there is a potential for preliminary and limited investigations to continue well over the previously set maximum of 180 days when, in fact, the purpose is to obtain information within a relatively short period of time to determine if a full investigation is warranted. Therefore, this change is inappropriate.

The Department review process of full investigations has been improved in the March guidelines by requiring the Department to state in writing that continuing a full investigation is warranted. Previously, written notification was not necessary. The revision thus places the Department on record concerning its decision and will require the Department to evaluate each investigation.

DISSEMINATION AND RETENTION OF  
INVESTIGATIVE INFORMATION

Guidelines concerning civil disorders and demonstrations state that information may not be indexed in a manner which permits retrieval of information by reference to a specific individual. These guidelines also note our concern as stated on page 125 of the report, that the Secret Service, the major recipient of FBI information, is not retaining the information. The guidelines provide that the Department should review its dissemination agreements with the Secret Service. They do not, however, indicate that the FBI or Department intends to review dissemination agreements with other recipients of FBI information or the usefulness of FBI-provided information to them.

Neither set of guidelines--domestic security or civil disorder--mention when information relating to an individual's activities will be disseminated. We have expressed concern, particularly regarding the possibility that disseminated information might indicate the subject's association with a properly classified group when, in fact, the subject's association has not yet been established. We believe the issue should be addressed and that our recommendation on page 162 of our report is a proper way to do it.

The guidelines do not consider our recommendation that the FBI limit the type of information collected to that which is relevant to the case and that personal or social data should not be collected unless it is justified to the Special Agent in Charge of the field office that the information is pertinent and necessary to the investigation. We believe this should be addressed.

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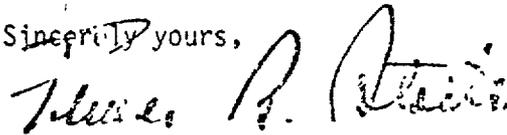
The Deputy Assistant Attorney General in charge of the committee responsible for preparing the Attorney General's FBI guidelines told us that on April 1, 1976, the FBI will begin implementing the March 1976 drafts of the domestic security and civil disorders guidelines on a test basis for 1 year.

The Deputy Assistant Attorney General stated that FBI investigations in the domestic security area will be monitored by a Departmental oversight unit of about five persons. The unit, presently being formed, will be in the Department's Office of Policy and Planning but will report directly to the Attorney General. The unit will be primarily responsible for reviewing all investigative reports received from the FBI on domestic intelligence matters and making decisions on all investigations of such matters requiring Departmental approval. During the test period the unit will also be responsible for continuously reviewing the Attorney General's draft guidelines for problem areas and notifying the guidelines committee so that appropriate revisions can be made and implemented whenever necessary.

The Deputy Assistant Attorney General told us that various options involving the oversight unit and its relationship to the Department's Criminal and Civil Rights Divisions regarding the handling of civil disorders and demonstrations were still being considered. We were also advised that the permanent role and functions of the unit would be studied and more clearly defined during the test period.

Although the March guidelines are a positive step toward defining the purpose and scope of domestic intelligence operations, we continue to believe legislation is needed. If you believe further discussion of these matters would be worthwhile, please advise us.

Sincerely yours,



Comptroller General  
of the United States