



Office of the Attorney General
Washington, D. C. 20530

July 19, 1995

MEMORANDUM

TO: Assistant Attorney General, Criminal Division
Director, FBI
Counsel for Intelligence Policy
The United States Attorneys

FROM: The Attorney General

SUBJECT: Procedures for Contacts Between the FBI and the
Criminal Division Concerning Foreign Intelligence and
Foreign Counterintelligence Investigations

The procedures contained herein, unless otherwise specified by the Attorney General, apply to foreign intelligence (FI) and foreign counterintelligence (FCI) investigations conducted by the FBI, including investigations related to espionage and foreign and international terrorism. The purpose of these procedures is to ensure that FI and FCI investigations are conducted lawfully, and that the Department's criminal and intelligence/counterintelligence functions are properly coordinated.

A. Contacts During an FI or FCI Investigation in Which FISA Surveillance or Searches are Being Conducted.

1. If, in the course of an FI or FCI investigation utilizing electronic surveillance or physical searches under the Foreign Intelligence Surveillance Act (FISA), facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed, the FBI and OIPR each shall independently notify the Criminal Division. Notice to the Criminal Division shall include the facts and circumstances developed during the investigation that support the indication of significant federal criminal activity. The FBI shall inform OIPR when it initiates contact with the Criminal Division. After this initial notification, the Criminal Division shall notify OIPR before engaging in substantive consultations with the FBI, as discussed in paragraph 5, below.

2. The FBI shall not contact a U.S. Attorney's Office concerning such an investigation without the approval of the Criminal Division and OIPR. In exigent circumstances, where immediate contact with a U.S. Attorney's Office is appropriate

because of potential danger to life or property, FBIHQ or an FBI field office may make such notification. The Criminal Division and OIPR should be contacted and advised of the circumstances of the investigation and the facts surrounding the notification as soon as possible.

3. If the Criminal Division concludes that the information provided by the FBI or OIPR raises legitimate and significant criminal law enforcement concerns, it shall inform the FBI and OIPR. The Criminal Division may, in appropriate circumstances, contact the pertinent U.S. Attorney's Office for the purpose of evaluating the information. Thereafter, the FBI may consult with the Criminal Division concerning the investigation to the extent described in paragraphs 5 and 6, below.

4. The FBI shall maintain a log of all contacts with the Criminal Division, noting the time and participants involved in any contact, and briefly summarizing the content of any communication.

5. The Criminal Division shall notify OIPR of, and give OIPR the opportunity to participate in, consultations between the FBI and Criminal Division concerning an FI or FCI investigation. If OIPR is unable or does not desire to participate in a particular consultation, the Criminal Division will, after the consultation takes place, orally inform OIPR of the substance of the communication in a timely fashion.

6. Consultations between the Criminal Division and the FBI shall be limited in the following manner: The FBI will apprise the Criminal Division, on a timely basis, of information developed during the FI or FCI investigation that relates to significant federal criminal activity. The Criminal Division may give guidance to the FBI aimed at preserving the option of a criminal prosecution. (For example, the Criminal Division may provide advice on the handling of sensitive human sources so that they would not be compromised in the event of an ultimate decision to pursue criminal prosecution.) The Criminal Division shall not, however, instruct the FBI on the operation, continuation, or expansion of FISA electronic surveillance or physical searches. Additionally, the FBI and Criminal Division should ensure that advice intended to preserve the option of a criminal prosecution does not inadvertently result in either the fact or the appearance of the Criminal Division's directing or controlling the FI or FCI investigation toward law enforcement objectives.

7. In a FISA renewal application concerning such an investigation, OIPR shall apprise the Foreign Intelligence Surveillance Court (FISC) of the existence of, and basis for, any contacts among the FBI, the Criminal Division, and a U.S.

Attorney's Office, in order to keep the FISC informed of the criminal justice aspects of the ongoing investigation.

8. In the event the Criminal Division concludes that circumstances exist that indicate the need to consider initiation of a criminal investigation or prosecution, it shall immediately notify OIPR. The Criminal Division and OIPR shall contact the pertinent U.S. Attorney's Office as soon thereafter as possible.

9. Any disagreement among the Criminal Division, United States Attorneys, OIPR, and the FBI concerning the application of these procedures in a particular case, or concerning the propriety of initiating a criminal investigation or prosecution, shall be raised with the Deputy Attorney General.

B. Contacts During an FI or FCI Investigation in Which No FISA Surveillance or Searches Are Being Conducted

1. If, in the course of an FI or FCI investigation in which FISA electronic surveillance or physical searches are not being conducted, facts or circumstances are developed that reasonably indicate that a significant federal crime has been, is being, or may be committed, the FBI shall notify the Criminal Division. Notice to the Criminal Division shall include the facts and circumstances developed during the investigation that support the indication of significant federal criminal activity. The Criminal Division may, in appropriate circumstances, contact the pertinent U.S. Attorney's Office for the purpose of evaluating the information.

2. The FBI shall not contact a U.S. Attorney's Office concerning such an investigation without the approval of the Criminal Division, and notice to OIPR. In exigent circumstances, where immediate contact with a U.S. Attorney's Office is appropriate because of potential danger to life or property, FBIHQ or an FBI field office may make such notification. The Criminal Division and OIPR should be contacted and advised of the circumstances of the investigation and the facts surrounding the notification as soon as possible.

3. If the Criminal Division concludes that the information provided by the FBI raises legitimate and significant criminal law enforcement concerns, it shall notify the FBI and OIPR. Thereafter, the FBI may consult with the Criminal Division concerning the investigation.

4. The Criminal Division will be responsible for orally informing OIPR of its contacts and consultations with the FBI concerning such an investigation.

5. The FBI shall maintain a log of all contacts with the Criminal Division, noting the time and participants involved in

any contact, and briefly summarizing the content of any communication.

6. In the event the Criminal Division concludes that circumstances exist that indicate the need to consider initiation of a criminal investigation or prosecution, it shall immediately notify OIPR. The Criminal Division and OIPR shall contact the pertinent U.S. Attorney's Office as soon thereafter as possible.

7. If, during an FI or FCI investigation, a FISA electronic surveillance or search is undertaken after the FBI has consulted with the Criminal Division, the procedures set forth in section A., above, shall apply.

8. Any disagreement among the Criminal Division, United States Attorneys, OIPR, and the FBI concerning the application of these procedures in a particular case, or concerning the propriety of initiating a criminal investigation or prosecution, shall be raised with the Deputy Attorney General.