

Mr. R. J. O'Malley

12/21/81

J. M. Sturgis, Jr.

**PROPOSALS FOR CHANGE IN ATTORNEY GENERAL
GUIDELINES FOR FOREIGN INTELLIGENCE COLLECTION
AND FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS
(FCIG)**

PURPOSE:

To present the suggestions of Intelligence Division (INTD) for modification of the FCIG to (1) conform certain provisions to E. O. 12333; (2) to change or eliminate provisions no longer mandatory under E. O. 12333; and (3) to simplify not only the language but the format of existing guidelines.

RECOMMENDATION:

That Legal Counsel Division (LCD) and Criminal Investigative Division (CID) review the attached side-by-side Guidelines and draft changes and explanations. Comments and suggestions should be furnished to INTD Staff, Room 4843.

Enclosure

1 - Mr. J. A. Mintz
1 - Mr. C. P. Monroe
1 - Mr. E. J. O'Malley
1 - Mr. J. E. Nolan, Jr.
1 - Mr. J. B. Hotis
1 - Mr. R. W. Gants
1 - Mr. J. P. Hengemuhle
1 - Mr. D. K. Pettus
1 - Mr. J. L. Tierney
1 - Mr. J. M. Sturgis, Jr.

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(10)

CONTINUED - OVER
SECRET MATERIAL ATTACHED

Memorandum from J. M. Sturgis, Jr.
to Mr. E. J. O'Malley
Re: Proposals for Change in Attorney General
Guidelines for Foreign Intelligence Collection
and Foreign Counterintelligence Investigations
(FCIG)

DETAILS:

On 12/4/81, the President signed E. O. 12333, to replace E. O. 12036 as the intelligence executive order. It remains the duty of the Attorney General to establish regulations for the conduct by the FBI of foreign counterintelligence and international terrorism investigations and activities. E. O. 12333, as did its predecessor, contains changes in some areas which should likewise be incorporated in the FCIG. Principal among these is the change in the standard for dissemination of information among intelligence agencies, the definition of counterintelligence and the definition of U. S. persons.

Prior to the effective date of E. O. 12333, INTD had been reviewing the FCIG from the standpoint of improving the method of presentation of the various sections in order to increase clarity and ease of interpretation, as well as to eliminate redundancy and legalistic language. It is noted that the current FCIG is the result of a number of additions and some changes beginning in 1976, through the revision of May, 1980. There was a significant change in 1980 in the rigid language that was added throughout the document in addition to the changes mandated by E. O. 12036.

The Attorney General sought our ideas on Guidelines modification in early 1980, but it was obvious that until a new executive order was issued, any change suggested may have to again be modified if the new executive order made fundamental changes. INTD has therefore assembled its suggestions and awaited the executive order.

To assist the review of the proposed changes, in addition to the brief explanation sheet attached, the following general comments are added:

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DETAILS: (CONT'D)

International Terrorism

Note that the definition of counterintelligence in 3.4(a) of E. O. 12333 removes "international terrorist activities" from its former modifier "pursuant to the direction of a foreign power." This confused the definition, but now terrorism stands alone to be appropriately defined. E. O. 12333 dropped the definition of "international terrorism" for brevity, and the FCIG proposal is to add the FISA definition for consistency.

CID should also note the suggested changes in dissemination occasioned by the more permissive intelligence community rules in E. O. 12333, as well as the broader authority delegated to the Attorney General to approve searches for international terrorism purposes.

Legal Counsel Division

LCD should examine the format and substantive changes in the section on physical search, which were modified to eliminate the language derived from Presidential Directive 19. Presidential Directive 19 has been replaced by a general delegation to the Attorney General in Section 2.5 of E. O. 12333. The draft proposals, while creating a system for Attorney General approval of the search of real and personal property, requires that in those circumstances where a warrant would be required in a criminal context, the Attorney General may approve the search.

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DETAILS: (CONT'D)

Two specific items to note: in the draft, the general authority of the Attorney General to search residential property, i.e., nondiplomatic or commercial property is keyed to the requirements of the Foreign Intelligence Surveillance Act, on establishing an agent of a foreign power (including the "criminal standard" for U. S. persons), making the necessary connection with a need to protect against hostile activities, and requiring specific approval of physical entry. Also, in connection with the search of personal property, the standards for Attorney General approval are the same that currently exist. A provision is added, however, that would specifically recognize the authority, with Attorney General approval to search the vehicle of an official of a criteria country under specified circumstances.

LCD should also examine the proposals for change in mail cover language, the provisions relating to undisclosed participation, contracting with an academic institution and television cameras and other monitoring.

A General Note

Reviewers should be aware that while the current Guidelines appear on the left side of the page and proposals on the right, in some instances language was dropped from the current Guidelines as indicated by strike-outs, but the change was not significant enough to transfer to the right side. The draft proposals, therefore, include elimination of language struck from current Guidelines as well as additions, as appear on the right.