



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 6, 2001

MEMORANDUM

TO: Criminal Division:
Michael Chertoff, Assistant Attorney General
Bruce Swartz, Deputy Assistant Attorney General
Jim Reynolds, Chief, TVCS
John Dion, Chief, ISS

Office of Intelligence Policy and Review:
James Baker, Counsel for Intelligence Policy

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Larry Parkinson, General Counsel
Neil Gallagher, Assistant Director, NSD
Dale Watson, Assistant Director, ITD
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FROM: Larry D. Thompson 

SUBJECT: Intelligence Sharing

This memorandum clarifies current Department of Justice policy governing intelligence sharing, and establishes new policy. On July 19, 1995, the Attorney General adopted Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations (1995 Procedures). The 1995 Procedures remain in effect today. On January 21, 2000, the Attorney General adopted additional measures regarding intelligence sharing in response to the Interim Recommendations proposed by Special Litigation Counsel Randy Bellows (Interim Measures). The Interim Measures also remain in effect today. The purpose of this memorandum is to restate and clarify certain important requirements imposed by the 1995 Procedures and the Interim Measures, and to establish certain additional requirements. This memorandum does not discuss all

of the current requirements, and the fact that a particular requirement is not discussed here does not mean that it is no longer in effect.

1. Sharing Information.

The 1995 Procedures require the FBI to notify the Criminal Division when "facts or circumstances are developed" in an FI or FCI investigation "that reasonably indicate that a significant federal crime has been, is being, or may be committed." This notification requirement is mandatory and is to be followed by the FBI absent a specific exemption for a particular investigation granted by me or the Attorney General after discussions with the Core Group (see Part 4). Several aspects of the notification requirement bear emphasis.

First, the "reasonable indication" standard as used in the 1995 Procedures is identical to the "reasonable indication" standard in the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations, which use it as the standard for the initiation of federal criminal investigations. Those guidelines explain that term as follows: "The standard of 'reasonable indication' is substantially lower than probable cause. In determining whether there is reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or impending violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient."

Second, the term "significant federal crime" should be understood to include any federal felony. Thus, for example, the term includes various offenses that fall under the jurisdiction of the Criminal Division's Internal Security Section, such as espionage (18 U.S.C. 793, 794) and unauthorized removal of classified material (18 U.S.C. 1924). It also includes various offenses that fall under the jurisdiction of the Criminal Division's Terrorism and Violent Crime Section, such as use of a weapon of mass destruction (18 U.S.C. 2332a) and providing material support to a designated foreign terrorist organization (18 U.S.C. 2339B).

Third, when notification is required under the "reasonable indication" standard, it is required without delay. Notification should be made to the appropriate Deputy Assistant Attorney General in the Criminal Division with oversight review of the Terrorism and Violent Crime Section or the Internal Security Section. Where appropriate, immediate notification (by secure telephone if necessary) should precede a more complete discussion at a monthly briefing (see Part 3).

Fourth, in keeping with paragraphs A.1 and B.3 of the 1995 Procedures, the FBI shall inform OIPR before it contacts the Criminal Division pursuant to the notification provisions in any FI or FCI case, whether or not FISA activity is being conducted. OIPR shall be given a reasonable opportunity to be present for such contacts.

2. LHMs.

All Letterhead Memoranda (LHMs) in FI or FCI cases, and all FBI memoranda requesting initiation or renewal of FISA authority, shall contain a section devoted explicitly to identifying any possible federal criminal violation meeting the 1995 Procedures' notification standards (see Part 1).

The FBI will provide to OIPR two copies of all LHMs in FI or FCI cases involving U.S. persons or presumed U.S. persons. This requirement includes LHMs in both espionage and terrorism cases, and is therefore an expansion of the Interim Measures. OIPR will make one copy of these LHMs available for pickup by the Criminal Division. The Criminal Division shall adhere to any reasonable conditions on the disclosure of the LHMs that the FBI or OIPR may require.

3. Monthly Briefings.

The FBI shall provide monthly briefings to the Criminal Division concerning all FI and FCI investigations that meet the 1995 Procedures' notification standards (see Part 1).

Prior to each briefing, the Criminal Division shall, based on the LHMs received under Part 2, identify for the FBI the investigations about which it requires additional information. The FBI shall provide the Criminal Division with that information at the briefing. In addition, the FBI shall brief the Criminal Division on any other matters that meet the current notification standards (see Part 1) and that, for

whatever reason, the FBI did not previously disclose to the Criminal Division.

OIPR shall be provided with reasonable advance notice of these briefings and may attend them.

4. Core Group.

The Interim Measures established a Core Group consisting of the FBI Assistant Directors for the Counterterrorism and National Security Divisions, the Counsel for OIPR, and representatives of the Office of the Deputy Attorney General. The Core Group is to resolve disputes concerning application of the 1995 Procedures in particular cases. Thus, for example, if the FBI or OIPR is uncertain whether a particular case satisfies the "reasonable indication" standard for notifying the Criminal Division, the matter shall be brought to the attention of the Core Group. Other disagreements that arise from application of the 1995 Guidelines shall also be brought to the attention of the Core Group. The Core Group will then make a recommendation to me or to the Attorney General for a final decision on the matter.