Session C – Quantico
Privacy, Civil Liberties, Strategic Analysis & Intel Collection, and PFI Full Investigations
SSA ...

Division ...

– (Tel Number)
Overall Training Objective:

Provide an instructional foundation on the DIOG and then apply the knowledge gained by using hypothetical examples and scenarios. Upon completing this course of instruction you should have a firm grasp of the concepts and principles underpinning the DIOG.
Participation Standards:

Questions are welcome; however, if your question is about a specific set of facts that may divert the training objective, please direct your question to one of the Training team members at a break for a response.

During the scenario exercises, participants will be called upon to provide their response to particular facts or circumstances. Each Unit/Section should select a representative to speak for the Unit/Section and rotate that responsibility among the group. The scenarios are meant to prompt discussion, but the presenters must keep the scenario moving forward. Please understand that everyone may not be able to voice their perspective in the group setting. Keep in mind there may be several avenues to reach the same justified conclusion. You may use your handouts and training aids to inform your decision.
DIOG Section 1: Scope & Purpose

- DIOG applies to all investigative and intelligence collection activities conducted by the FBI
  - within the United States
  - in the United States territories
  - outside the territories of all countries
- DIOG does **not** apply to investigative and intelligence collection activities of the FBI in foreign countries
  - governed by AGGs for Extraterritorial FBI Operations (national security and criminal)
In addition to this policy document, each FBIHQ substantive Division has a **Policy Implementation Guide (PG)** that supplements the DIOG.

As a result, numerous FBI manuals, electronic communications, letterhead memoranda, and other policy documents are incorporated into the DIOG and Division PGs, thus, consolidating FBI policy guidance.
The AGG-Dom replaces the following six guidelines:


- The Attorney General’s Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006)

- The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988).

- The Attorney General’s Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976)

- The Attorney General’s Procedures for Lawful, Warrantless Monitoring of Verbal Communications (May 30, 2002) [only portion applicable to FBI repealed]
Policy Environment for Domestic Operations

Constitution, Statutes, and Executive Orders

AG GUIDELINES (AGG-Dom)
Apply to domestic national security and criminal investigative activities, including interagency coordination and intelligence analysis.

FBI's Domestic Investigations and Operations Guide (DIOG)

Program Policy Implementation Guides

Program Guide

Program Guide

Program Guide
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<tr>
<th>1. Scope and Purpose</th>
<th>10. Sensitive Investigative Matter</th>
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<td>11. Investigative Methods</td>
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<td>3. Core Values, Roles and Responsibilities</td>
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<td>5. Assessments</td>
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<td>7. Full Investigations</td>
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<td>8. Enterprise Investigations</td>
<td>17. Otherwise Illegal Activity</td>
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<td>9. Foreign Intelligence</td>
<td>Appendices</td>
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</table>
The Test...

50 questions
- Multiple Choice
- True/False

* Max 20 mins each question
Taking the test...

- Access to testing site
- Materials
  - DIOG
  - Charts
  - PowerPoint slides
  - Notes

*Max 20 mins each question*
15.1. Overview

The AGG-Dom provide specific guidance and authorization for intelligence analysis and planning. This authority enables the FBI to identify and understand trends, causes, and potential indicia of criminal activity and other threats to the United States that would not be apparent from the investigation of discrete matters alone. By means of intelligence analysis and planning, the FBI can more effectively discover criminal threats, threats to the national security, and other matters of national intelligence interest, and can provide the critical support needed for the effective discharge of its investigative responsibilities and other authorized activities. (AGGDom, Part IV)
DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- Responsibility to protect the American public, not only from crime and terrorism, but also from incursions into their constitutional rights; accordingly, all investigative activities must fully adhere to the Constitution and the principles of civil liberty and privacy.

- Provisions of the AGG-Dom, other AG guidelines, and oversight from DOJ components, are designed to ensure FBI’s activities are lawful, appropriate, and ethical, as well as effective in protecting civil liberties and privacy.

- DOJ and FBI’s Inspection Division, Office of Integrity and Compliance, the OGC, other Bureau components, and you share responsibility for ensuring the FBI meets these goals.
DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion of the subject or the exercise of First Amendment rights.
- Corollary to this AGG requirement is the Privacy Act, which states that each agency that maintains a system of records shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity." 5 U.S.C. 552a(e)(7).
• What can you do with this information?
  •
  •
  •
FIRST AMENDMENT RIGHTS:

Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate.
FIRST AMENDMENT RIGHTS (cont.):

- No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject.

- If an assessment or predicated investigation touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity
All activities must be consistent with the Attorney General’s 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (forbids the use of racial profiling and requires activities involving the investigation or prevention of threats to the national security to comply with the Constitution and laws of the United States)

The DIOG stresses several points in each section:

- No investigation or assessment can be commenced based solely on race, ethnicity, national origin, religion, or exercise of First Amendment rights
- The FBI must use the least intrusive method that is feasible under the circumstances
- In connection with Foreign Intelligence collection, agents must operate openly and consensually with U.S. Persons, to the extent practicable
- All investigative activities must have an “authorized purpose”
DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to **individuals:**

1. Permits the consideration of ethnic and racial identity information based on specific reporting;

2. The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected when gathering information about or investigating the organization; or

3. Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person
DIOG Section 4: Use of Race or Ethnicity

DIOG Guidance on use of Race or Ethnicity

As to a community:

1. Collecting and analyzing demographics – if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness

2. Geo-Mapping ethnic/racial demographics – if properly collected

3. General ethnic/racial behavior – cannot be collected, unless it bears a rational relationship to a valid investigative or analytical need

4. Specific and relevant ethnic behavior

5. Exploitive ethnic behavior – by criminal or terrorist groups
The AGG-DOM and the DIOG require that the "least intrusive" means or method be considered and, if operationally sound and effective, used to obtain intelligence or evidence in lieu of a more intrusive method.
By emphasizing the use of less intrusive means, employees will be able to balance:

Our need for evidence/intelligence

vs.

Mitigating potential negative impact on the privacy and civil liberties of people/public
Primary factor in determining “intrusiveness”:

- The degree of procedural protection that the law and the AGG-DOM provide for the use of the particular method.

- Examples of “more intrusive” methods: Search Warrants, wiretaps, UCOs

- Examples of “less intrusive” methods: checks of government databases, state or local criminal record checks, commercial databases, interviews
DIOG Section 4: Privacy and Civil Liberties, and Least Intrusive Methods

Items to consider when determining the relative intrusiveness of an investigative method:

- Is method permitted prior to the initiation of an assessment?
- Is the method relevant to the assessment or investigation?
- Will the information collected or obtained likely further the investigative objective?
- What alternatives exist for gathering the same information?
- Are those alternatives relatively less intrusive?
- What time span is involved in using the investigative method (days, weeks, months)?
- What confidence level is associated with the information gathered using the investigative method?
- Will the method resolve a pending investigative issue quickly?
DIOG Section 4: Least Intrusive Investigative Method

Factors to Determine "Intrusiveness":

1. Nature of the information sought
2. Scope of the information sought
3. Scope of the use of the investigative method
4. Source of the information sought
5. Risk of public exposure
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**DIOG Section 5 & 11: Investigative Methods**

**Authorized Methods for Assessments and Predicated Investigations**

Red indicates methods not allowed under a particular operational activity; Green indicates methods allowed.

<table>
<thead>
<tr>
<th>Obtain publicly available information</th>
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<tbody>
<tr>
<td>Access and examine FBI and other DOJ records, and obtain information from any FBI or DOJ personnel</td>
</tr>
<tr>
<td>Access and examine records maintained by, and request information from, other federal, state, local, tribal, or foreign governmental entities or agencies</td>
</tr>
<tr>
<td>Use online services and resources (whether nonprofit or commercial)</td>
</tr>
<tr>
<td>Use and recruit human sources in conformity with AG Guidelines Regarding the Use of FBI Confidential Human Sources</td>
</tr>
<tr>
<td>Interview or request information from members of the public and private entities [includes pretextual interviews]</td>
</tr>
<tr>
<td>Accept information voluntarily provided by governmental or private entities</td>
</tr>
<tr>
<td>Engage in observation or surveillance not requiring a court order</td>
</tr>
<tr>
<td>Mail covers</td>
</tr>
<tr>
<td>Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)</td>
</tr>
<tr>
<td>Consensual monitoring of communications, including consensual computer monitoring, is subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, monitoring must be approved by the Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the National Security Division</td>
</tr>
<tr>
<td>Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or FBI OGC</td>
</tr>
<tr>
<td>Polygraph examinations</td>
</tr>
<tr>
<td>Undercover operations</td>
</tr>
<tr>
<td>Compulsory process as authorized by law, including Federal Grand Jury and other subpoenas and National Security Letters (Federal Grand Jury subpoenas for telephone and electronic mail subscriber records can be used during type 1 and 2 Assessments only)</td>
</tr>
<tr>
<td>Accessing stored wire and electronic communications and transactional records</td>
</tr>
<tr>
<td>Use of pen registers and trap and trace devices</td>
</tr>
<tr>
<td>Electronic surveillance</td>
</tr>
<tr>
<td>Foreign Intelligence collection under Title VII of FISA</td>
</tr>
<tr>
<td>Physical searches, including mail openings, where a warrant or court order is legally required because there is an expectation of privacy</td>
</tr>
</tbody>
</table>
## Investigative Methods/Approvals Chart

<table>
<thead>
<tr>
<th>Authorized Method and DOIG Reference**</th>
<th>Approval Levels for Assessments and Predicated Investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Assessments</td>
</tr>
<tr>
<td>1 5.9A Obtain publicly available information</td>
<td>None Required</td>
</tr>
<tr>
<td></td>
<td>Not Permitted</td>
</tr>
<tr>
<td>2 5.9B Physical surveillance of a person or group (Consult the DOIG for information and field guidelines for surveillance)</td>
<td>None Required</td>
</tr>
<tr>
<td>3 5.9C Access and examine FBI and other Department of Justice (DOJ) records, and obtain information from any FBI or other DOJ personnel</td>
<td>None Required</td>
</tr>
<tr>
<td>4 5.9D Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies</td>
<td>None (Unless such approval is required by MOU or other agreements)</td>
</tr>
<tr>
<td>5 5.9E Use online services and resources (whether nonprofit or commercial)</td>
<td>None Required</td>
</tr>
<tr>
<td>6 5.9F Interview or request information from members of the public and private entities</td>
<td>None Required except for contact with represented persons, members of U.S. Congress, or their staffs, White House personnel, or other substantive division requirements</td>
</tr>
<tr>
<td>7 5.9G Accept information voluntarily provided by governmental or private entities</td>
<td>None Required</td>
</tr>
<tr>
<td>8 5.9H Use and recruit human sources</td>
<td>None Required (utilized)</td>
</tr>
<tr>
<td></td>
<td>SAC Approval</td>
</tr>
<tr>
<td>9 5.9I Federal Grand Jury subpoenas for telephone or electronic mail subscriber information</td>
<td>US Attorney Office Approval (Type 1 and 2 Assessments Only)</td>
</tr>
<tr>
<td>10 5.9C Pattern Based Data Mining</td>
<td>SORC</td>
</tr>
<tr>
<td>Authorized Method and DIOG Reference*</td>
<td>Assessment Levels</td>
</tr>
<tr>
<td>--------------------------------------</td>
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<tr>
<td>11 11.3 Mail covers</td>
<td></td>
</tr>
<tr>
<td>12 11.4 Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>13 11.5 Consensual monitoring of communications, including consent to computer monitoring</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>14 11.6 Consensual monitoring of communications, including consent to computer monitoring, with a sensitive monitoring circumstance</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>15 11.7 Use of closed-circuit television, direction finders, and other monitoring devices</td>
<td></td>
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<tr>
<td>16 11.8 Polygraph examinations</td>
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<tr>
<td>17 11.9 Undercover operations, Group II</td>
<td></td>
</tr>
<tr>
<td>18 11.10 Undercover operations, Group I</td>
<td></td>
</tr>
<tr>
<td>19 11.11 Compulsory process as authorized by law; Federal Grand Jury and trial subpoenas</td>
<td></td>
</tr>
<tr>
<td>20 11.12 Administrative Subpoenas: Drugs</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>21 11.13 Administrative Subpoenas: Sexual Exploitation</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>22 11.14 Administrative Subpoenas: Healthcare Fraud</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>23 11.15 National Security Letters</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>24 11.16 Accessing stored wire and electronic communications and transactional records</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>25 11.17 Use of pen registers and tap and trace devices</td>
<td>Not Permitted</td>
</tr>
<tr>
<td>26 11.18 Electronic surveillance</td>
<td></td>
</tr>
<tr>
<td>27 11.19 Physical searches, where there is reasonable expectation of privacy, including mail openings</td>
<td></td>
</tr>
<tr>
<td>28 11.20 Acquisition of foreign intelligence information in conformity with Title VII of the Foreign Intelligence Surveillance Act</td>
<td></td>
</tr>
</tbody>
</table>

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As of May 19, 2009
DIOG Section 15: Intelligence Analysis and Planning

- **Overview:** Authority for planning and developing intelligence analysis to support the intelligence functions and missions of the FBI is incorporated in AGG-Dom, Part IV. This section elaborates upon the means by which the investigative assessments outlined in AGG-Dom, Part II are authorized for the FBI to undertake in executing its mission to discover and avert criminal threats and threats to US national security.

- The term “assessment” as used within the DOJ to describe aspects of investigative activity should not be confused with the intelligence community use of the same word to describe intelligence analysis products such as an intelligence assessment.
DIOG Section 15: Intelligence Analysis and Planning

- Strategic Planning and Analysis: The FBI is authorized to develop overviews and analysis of threats to and vulnerabilities of the United States and its interests in areas relative to the FBI’s responsibilities. The FBI employs the following methodologies to identify, target and assess these threats:
  - Domain Management
  - Collection Management
  - Written Intelligence Products
  - Geospatial Intelligence (GEOINT)
• **Domain Management** (cont.): Domain Management is undertaken at the Field Office and national levels. All National Domain Assessments must be coordinated in advance with the Directorate of Intelligence. All information collected for Domain Management must be documented in

• **Collection Management**: A formal business process through which Intelligence Information Needs and Intelligence Gaps (e.g., unknowns) are expressed as Intelligence Collection Requirements (questions or statements requesting information), prioritized in a comprehensive, dynamic Intelligence Collection Plan.
DIOG Section 15:
Intelligence Analysis and Planning

Written Intelligence Products: The FBI produces written intelligence products which represent the results of collection efforts in the field (raw intelligence) and analytic judgments made from the compilation and synthesis of relevant raw intelligence (finished intelligence).

US Person Information: Information regarding US persons is not to be included in intelligence products if the pertinent intelligence can be conveyed without including identifying information. An exception would be if the context for usage is publicly accessible information, i.e., the white powder anthrax letter addressed to Senator Tom Daschle in October 2001.
DIOG Section 15: Intelligence Analysis and Planning

- **Raw Intelligence**: This represents information collected from sources which is generally considered to be unvetted or not confirmed by other reporting means. Such reporting information is typically captured in Intelligence Information Reports (IIRs), FD 302s and ECs.

- **Finished Intelligence**: Such reports represent judgments made by intelligence analysts in the field or at FBIHQ regarding the synthesis of multiple, relevant raw intelligence source reports which indicate probable intent or action by threat actors of either a criminal or national security nature. FBI finished intelligence products used are the Intelligence Bulletin (IB), Intelligence Assessment (IA) and Special Event Threat Assessment (SETA). Domain Assessments and briefings can also represent finished intelligence products.
**Intelligence Systems:** The FBI is authorized to operate intelligence, identification, tracking and information systems in support of authorized investigative activities or for such other additional purposes as may be legally authorized, such as intelligence tracking systems related to terrorists, gangs, or organized crime groups.

Information is shared both internally within the FBI and externally to LE or USIC partners as appropriate based on the classification and handling instructions established by the managers of the programs which have created these files or reports. Common information platforms used for sharing and receiving intelligence products are Law Enforcement Online (LEO), Intellink (both Secret and Top Secret for the USIC) and [redacted] for the counter-terrorism community.
Geospatial Intelligence (GEOINT) is the exploitation and analysis of imagery and geospatial information to describe, assess and visually depict physical features and geographically-referenced activities on the Earth. Mapping is an activity under GEOINT and may be used in assessments (Domain Management; Collection Management) and predicated investigations.
### DIOG Section 9: Foreign Intelligence

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Predication</th>
<th>Duration</th>
<th>Documentation</th>
<th>Approval</th>
<th>Justification Review</th>
<th>SIM</th>
<th>Responsible Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>PFI Full</td>
<td>Investigation may obtain foreign intelligence that is responsive to a foreign intelligence requirement</td>
<td>Until the requirement is met; No time limit</td>
<td>EC</td>
<td>Prior DIOCMS notice to DOJNSO within 30 days</td>
<td>Every 60 days; If probationary employee, every 60 days</td>
<td>CDC Review, SAC Approval; Section Chief approval</td>
<td>FIG</td>
</tr>
</tbody>
</table>
DIOG Section 9: Foreign Intelligence

- **Foreign Intelligence** is “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorists.”

- A **Foreign Intelligence Requirement** is a collection requirement issued by USIC and accepted by the FBI DI. Foreign Intelligence Requirements from the USIC fall into two categories which are
  - **FBI Requirements** are those that address national security issues that are within the FBI’s core national security mission
  - **Positive Foreign Intelligence Requirements** are those that address the military, economic and foreign relations concerns of foreign governments, which are within FBI’s responsibility as part of the USIC but are not directly related to national security concerns
DIOG Section 9: Foreign Intelligence

- Requirements in the first category that are accepted by the DI as “FBI Requirements” will be worked within a properly authorized Type 3 Assessment or incidental to a predicated case worked by a substantive squad.

- Foreign Intelligence Requirements that fall into the second category will be worked exclusively under [ ] and will be referred to as "Positive Foreign Intelligence" Requirements.
DIOG Section 9:
Positive Foreign Intelligence

- Positive Foreign intelligence (PFI) collection in the FBI is a requirements-based activity

- Under the AGG-Dom, there are two categories of “authorized activity” under which PFI may be collected:
  - a (non-predicated) Assessment relating to “a matter of foreign intelligence interest” responsive to FI requirements
  - a Full Investigation predicated on an FI requirement
  - Both must be requirements-based and approved by FBIHQ DI

- In collecting FI, the FBI will generally be guided by nationally-determined intelligence requirements, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives issued under the authority of the Director of National Intelligence
PFI Full Investigations

- Used when a collection capability (source) is established or positively identified.
- PFI requirement must have been accepted by the FBI as the agency with "primary" collection responsibility.
- The authorized purpose must be documented in the opening EC [ ]
- Must be approved in advance by DI, CMS, CPMU - Files opened by the Field Office.
- Sensitive PFI matters require field office CDC review, SAC approval & CMS Section Chief approval.
- Unique PFI file number for each DI, CMS, CPMU approved PFI requirement.
- Approval EC from CPMU will contain explicit directions regarding the approved PFI investigation title, requirement, etc.
- No duration limit for PFI full investigations.
Privacy Act / USPER Considerations

• PFI is not about people – it is about a foreign power’s capabilities, intentions or activities…
  – Avoid identifying individuals (USPERS) in PFI files unless ID is essential to satisfy the collection requirement.
  – If you must ID U.S. persons (covered by the Privacy Act) limit any/all identifying info to basic identifiers.
  – If you must ID U.S. persons (covered by the Privacy Act) do not index the person in ACS.
  – Utilize [ ] or a Type 5 assessment to record information about prospective or potential sources, etc.
DIOG Section 9: Example

- Should Indianapolis open a PFI Assessment?
DIOG Section 9:
Example
Thank you...

SSA