The Department of Defense Intelligence Oversight Program
Objectives

After viewing this presentation, you should be able to:

- Identify the key directives guiding intelligence oversight.
- Describe the components involved in intelligence activities.
- Identify the reporting procedures for questionable intelligence activities.
- Describe the IO inspection methodology.
Agenda

1. Intelligence Oversight (IO): Why We Have It
2. The DoD IO Community
3. Policies and Regulations
4. Reporting Questionable Intelligence Activities and Significant or Highly Sensitive Matters
5. Essentials for Successful Programs
6. Resources and Summary
Intelligence Oversight: Why We Have It
History of Intelligence Oversight
Enable DoD intelligence personnel to carry out their legitimate functions effectively while protecting the constitutional rights and privacy of U.S. Persons.
U.S. Person Defined

- U.S. citizens
- Lawful Permanent Residents (LPR)
- Certain unincorporated associations
- Corporations incorporated in the U.S.
Executive Order 12333:
• Signed by President Reagan in 1981
• Validated by subsequent administrations
• Updated in 2008

PREAMBLE
Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence possible. For that purpose, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the National Security Act of 1947, as amended (50 U.S.C. 401a) and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

PART 1: Goals, Directors, Durable, and Responsibilities with Respect to United States Intelligence Efforts
1. Goals. The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.
   a. All means, consistent with applicable Federal law and this order, and with full consideration of the rights of United States persons, shall be used to obtain reliable intelligence information to protect the United States and its interests.
   b. The United States Government has a solemn obligation, and shall continue in the conduct of Intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.
   c. Intelligence collection under this order should be guided by the need for information to respond to Intelligence priorities set by the President.
   d. Special emphasis should be given to detecting and countering:
      (1) Eavesdropping and other threats and activities directed by foreign powers or their Intelligence services against the United States and its interests;
      (2) Threats to the United States and its interests from terrorism; and
      (3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.
   e. Special emphasis shall be given to the production of timely, accurate, and insightful reports, responsive to decisionmakers in the executive branch, that draw on all appropriate sources of information, including open source information, meet rigorous analytic standards, consider diverse analytic viewpoints, and accurately represent appropriate alternative views.
   f. State, local, and tribal governments are critical partners in securing and defending the United States from terrorism and other threats to the United States and its interests. Our national Intelligence effort should take into account the responsibilities and requirements of State, local, and tribal governments and, as appropriate, private-sector entities, when undertaking the collection and dissemination of information and intelligence to protect the United States.
   g. All departments and agencies have a responsibility to prepare and to provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance.

1.2 The National Security Council
   a. Purpose. The National Security Council (NSC) shall act as the highest ranking executive branch entity that provides support to the President for review of, guidance for, and direction to the conduct of all foreign intelligence.
Intelligence Oversight in U.S.

- Congressional Oversight
- Other Government Agencies
- President’s Intelligence Advisory Board and Intelligence Oversight Board
The DoD Intelligence Oversight Community
The OSD IO Community

SecDef
DepSecDef

USD(I)

ATSD(IO)

DoD IG

DoD GC
Principal Clients

- OSD
  - USD (I)
- Joint Staff
- Services
  - U.S. Army
  - U.S. Navy and U.S. Marine Corps
  - U.S. Air Force
Principal Clients, cont.

• The National Guard
  o Army National Guard
  o Air National Guard

• Agencies
  o National Security Agency
  o Defense Intelligence Agency
  o National Geospatial-Intelligence Agency
  o National Reconnaissance Office
Principal Clients, cont.

- Combatant Commands (COCOMS)
Shared Responsibility

INTELLIGENCE OVERSIGHT

Director or Commander

Inspector General

Legal Counsel

You!
Roles and Responsibilities

Directors or Commanders:

• Ensure an active program
• Designate appropriate officials
• Ensure appropriate training
• Provide protection from reprisal for reporting questionable activities
• Correct substantiated allegations
IGs conduct IO inspections to ensure:

- Employees understand rules and responsibilities
- Reporting procedures exist
- Intelligence activities comply with policies and regulations
- JAG/GC are consulted about legalities
JAGs and GCs are responsible for:

- Initial legal review of intelligence activities plans
- Continued monitoring of intelligence activities’ legality
Intelligence personnel are the first line of defense. They must:

- Know the standards and comply
- Report any:
  - Questionable intelligence activities
  - Significant or highly sensitive intelligence-related matters
The ATSD(IO) conducts inspections at select locations and is responsible for:

- Monitoring inquiries
- Reviewing findings
- Informing and advising appropriate OSD officials
- Reporting to Executive Branch and Congress
Intelligence Oversight Policies and Regulations
Key Orders, Directives, and Regulations

- Executive Order 12333
- DoD Directive 5240.01
- DoD 5240.1-R
- Supplemented by DTM 08-052
DoD Baseline Documents: 5240.01 and 5240.1-R

- 5240.01
  - Establishes oversight policy
- 5240.1-R
  - Establishes the rules for conducting intelligence activities
Mission-Specific Policies and Regulations

- Joint Staff Regulations CJCSI 5901.01B
- Combatant Command Policies and Regulations
- Service and Agency Regulations
  - AR 381-10
  - SECNAV Instruction 3820.3E
  - SECNAV Instruction 5000.34
  - MCO 3800.2
  - Air Force Instruction 14-104
  - DIA Regulation 68-4
  - NGA Instruction NI 8900.4R5
  - NSA Internal Guidance
1. Applicability
2. Collection
3. Retention
4. Dissemination
Procedure 1: Applicability

- Establishes to whom regulations apply:
  - DoD Intelligence components
  - Any organization or person engaged in intelligence or intelligence-related activities

- Establishes to whom regulations DO NOT apply:
  - Law enforcement components

- Requires compliance with all applicable policies and procedures
Procedure 2: Collection

Authorizes collection of information regarding U.S. persons only if:

• Necessary to conduct a function assigned to the collecting components
• Approved by authorized commander or director
• The nature of the collection falls within any of the 13 defined categories
Procedure 2: Collection, cont.

1. Information obtained with consent
2. Publicly available information
3. Foreign intelligence
4. Counterintelligence
5. Potential sources of assistance to intelligence activities
6. Protection of intelligence sources and methods
7. Physical security
8. Personnel security
9. Communications security
10. Narcotics (international)
11. Threats to safety
12. Overhead reconnaissance
13. Administrative purposes
Most prevalent sources of information:

1. Information obtained with consent
2. Publicly available information
3. Foreign intelligence
4. Counterintelligence
7. Physical security
11. Threats to safety

Require discernable foreign connection
Procedure 3: Retention

Authorizes retention of information regarding U.S. persons only if information was collected:

- Pursuant to Procedure 2
- Incidentally to an authorized collection
- For a temporary period not to exceed 90 days
Procedure 4: Dissemination

Authorizes dissemination of information regarding U.S. persons without consent only if:

• Information was collected and retained under Procedures 2 and 3

• Recipient is reasonably believed to need such information and is a recognized party as defined by the procedure
Intrusive collection techniques:

5. Electronic surveillance
6. Concealed monitoring
7. Physical searches
8. Searches and examination of mail
9. Physical surveillance
10. Undisclosed participation in organizations
11. Contracting procedures
12. Assistance to law enforcement
13. Experimentation on human subjects
14. Employee Conduct
   - Employees shall conduct intelligence activities in accordance to EO 12333 and DoD 5240.1-R
   - Leaders shall ensure adherence to the oversight policies and regulations

15. Reporting Questionable Activities
   - Such activities must be identified, evaluated, and reported
Reporting Questionable Intelligence Activities (QIA) and Significant or Highly Sensitive Matters (S/HS)
Who is Responsible?

- Commanders or Directors
- IGs
- JAGs and GCs
- Intelligence personnel
- ATSD(IO) and DoD GC
Reportable Issues

- Questionable intelligence activities
- Significant or highly sensitive matters
- Crimes reported to the Attorney General
- Congressional testimony, notifications, reports, or briefings
  - Congressional committees
  - Individual members of Congress
  - Members of the Congressional staff
A questionable intelligence activity is one that may violate a law, Executive Order, DoD policy or regulation, or a service, agency, or command policy or regulation.
A significant or highly sensitive activity is one that can impugn the reputation or integrity of the DoD intelligence community and/or challenge the propriety of an intelligence activity.
The reporting format requires the following:

- Description of the incident
- Reference to policy, procedure, or regulation applicable to the activity
- Explanation of significant or highly sensitive incident
- Analysis of how or why incident occurred
• Assessment of effect on national security, international relations, civil liberties, and privacy rights
• Remedial action taken or planned
• Actions taken if incident involves improper handling or compromise of classified information
The DoD Inspector General provides a mechanism to report allegations of violations that involve classified information.


DoDIG provides the following list of violations that should be reported to the DoD Hotline via the classified reporting mechanism:

- Breach of classified systems involving Special Access Programs (SAPs)
- Nuclear Surety
- Unauthorized Disclosures
- Intelligence Community Whistleblower Protection Act (ICWPA)
- Security violations/compromise
- Intelligence Oversight

After seeking resolution locally, or if unable to do so, contact the DoDIG before taking any “self-help” action.
STOP
The DoDIG can only accept UNCLASSIFIED complaints on this website. However, instructions for submitting a classified complaint are contained on this website. If you need information about how to submit a classified complaint, select one of the buttons below.

The Department of Defense Hotline - Classified Complaints

Select the Type of Classified Complaint You Would Like to Submit:

- **SECRET Complaint**
  Classified Complaints involving up to SECRET information.

- **TOP SECRET Complaint**
  Classified Complaints involving up to TOP SECRET information

- **ICWPA Complaint**
  Classified Complaints filed under the Intelligence Community Whistleblower Protection Act

http://www.dodig.mil/hotline/classifiedcomplaint.html

Instructions for submitting SECRET, TS, or ICWPA complaints are found on this site.
Essentials for Successful IO Programs
In the past, the best IO programs:

- Directly involved leadership
- Tailored training programs
- Integrated planning
- Involved legal advisors
- Established procedures for reporting and resolving IO issues
Kinds of Infractions

- Inadvertent non-compliance
  - Getting ahead of authorities
  - Lack of familiarity with regulations
  - Inappropriate open-source netsurfing
  - U.S. persons’ data improperly included in reports

- Intentional non-compliance
  - Prisoner abuse by military intelligence personnel
  - Contract translator misconduct
  - Misuse of intelligence resources for personal gain
IO Inspections: Suggested Methodology

• Tailor the approach to the command
• Understand the command and control relationships
  o Review internal SOPs and policies
• Conduct organization and mission briefings
  o What are the ongoing or planned operations?
  o What supporting activities are ongoing or planned?
  o What controls are in place?
  o What oversight mechanisms are in place for compartmented programs?
• Interview senior leadership and all personnel involved in intelligence activities
• Examine pertinent documents and files
  o Hard copy files
  o Electronic files
  o Previous inspection reports and internal interviews
  o Training records
  o Product review
  o Records of reports and investigations under Procedure 15
What resources does ATSD(IO) have?

Website: http://atsdio.defense.gov

ATSD(IO) Reference CD, Checklists, & Training Materials
Summary
Review of Objectives

You should now be able to:

1. Identify the key directives guiding intelligence oversight
2. Describe the components involved in intelligence activities
3. Identify the reporting procedures for questionable intelligence activities
4. Describe the IO inspection methodology
Intelligence oversight is:

- The command, control, and supervision of intelligence activities
- The rules for governing the professional conduct of intelligence professionals
- A program to protect privacy and civil liberties
- A system of ethics and accountability
ATSD(IO) Website

Visit us on the web!

http://atsdio.defense.gov
Other Ways to Contact ATSD(IO)

7200 Defense Pentagon, Washington, DC 20301-7200

571-372-6363
Or 703.697.1346
Questions?