The DoD Intelligence Oversight Program
A Department Level Perspective
Enabling Learning Objectives (ELOs)

- Identify the **key directives** guiding intelligence oversight.

- Describe the **Defense components** to which the IO Program applies.

- Describe the **Joint IG’s responsibilities** for providing independent oversight of intelligence activities.
Enabling Learning Objectives (ELOs)

• Identify the **reporting requirements** for:
  Questionable Intelligence Activities (QIAs)
  Significant/Highly Sensitive Matters (S/HSMs)

• Describe the **inspection methodology** used by the DoD SIOO as a model for Joint IG IO inspections

• Define:  **U.S. Person**
  **Defense Intelligence Component**
  **Questionable Intelligence Activity**
  **Significant/Highly Sensitive Matter**
AGENDA

• Intelligence Oversight “Why We Have It”

• The OSD IO Community
  The Players, Relationships, and Regulations

• Essentials for Successful IO Programs
  What an IO Program Is…and Isn’t
  Roles and Responsibilities

• Inspection Techniques and Trends
Intelligence Oversight
A Brief Historic Overview
Background
“Why We Have It”

VIETNAM ERA
ANTI-WAR MOVEMENT

PROJECT SHAMROCK
PROJECT MINARET

CIVIL RIGHTS
MOVEMENT

CONGRESSIONAL HEARINGS

Senator Frank Church
Representative Otis Pike

HUGE C.I.A. OPERATION REPORTED
IN U.S. AGAINST ANTIWAR FORCES,
OTHER DISSIDENTS IN NIXON YEARS

INTELLIGENCE ACTIVITIES AND THE
RIGHTS OF AMERICANS

MILITARY SURVEILLANCE OF
CIVILIAN POLITICS
“Army surveillance of civilians … in the 1960’s was both massive and unrestrained … over 1,500 plainclothes agents.”

“… not so much a conscious effort to subvert the freedoms … a classic example of a burgeoning bureaucracy going out of control …”
BACKGROUND

“Why We Have It”

PROJECT SHAMROCK
PROJECT MINARET

VIETNAM ERA
ANTI-WAR MOVEMENT

CIVIL RIGHTS
MOVEMENT

CONGRESSIONAL HEARINGS

EXECUTIVE ORDERS

HUGE C.I.A. OPERATION REPORTED IN U.S. AGAINST ANTIWAR FORCES, OTHER DISSIDENTS IN NIXON YEARS

Senator Frank Church  Representative Otis Pike
BACKGROUND
EXECUTIVE ORDER 12333

- President Reagan signed E.O. 12333 in 1981
- Validated by subsequent administrations
- Updated in 2008 and still current
The purpose of the Intelligence Oversight program is:

- to enable DoD intelligence components to effectively carry out their appropriately authorized functions...

- while ensuring their activities that affect U.S. persons are carried out in a manner that protects the constitutional rights and privacy of such persons.
The Intelligence Oversight Community and Regulations
DoD Intelligence Components

SERVICES
- U.S. ARMY
- U.S. NAVY & USMC
- U.S. AIR FORCE

AGENCIES
- NSA
- DIA
- NGA
- NRO

NATIONAL GUARD
- ARMY NATIONAL GUARD
- AIR NATIONAL GUARD

CCMDs
- NORTHCOM
- SOUTHCOM
- EUCOM
- CENTCOM
- PACOM
- AFRICOM
- SOCOM
- STRATCOM
- TRANSCOM

Other organizations, staffs, and offices when used for intelligence or CI activities to which Part 2 of E.O. 12333 applies.
Key Orders, Directives, and Regulations

• Executive Order 12333

• DoD Directive 5240.01

• DoD Manual 5240.01 + DTM 08-052
  (DoD 5240.1-R remains in effect for Procedures 11-15)

• DoD Directive 5148.11 (to be replaced by DoDI 5148.11)

• Joint Staff Regulation CJCSI 5901.01C

• Combatant Command Policies and Regulations

• Service and Agency Regulations
  - AR 381-10
  - SECNAV Instruction 3820.3E
  - SECNAV Instruction 5000.34
  - MCO 3800.2
  - DIAD 5240.200
  - NGA Instruction NI 8900.4R5
  - NSA 1-23
  - AF Instruction 14-104
DoDM 5240.01
Content Fundamentals
1. **APPLICABILITY**: ALL PERSONNEL CONDUCTING INTELLIGENCE ACTIVITIES UNDER DOD AUTHORITIES

2. **COLLECTION**

3. **RETENTION**

4. **DISSEMINATION**

RULES FOR HANDLING IDENTIFYING INFORMATION ABOUT U.S. PERSONS
PROCEDURE ONE: SCOPE

DOES NOT APPLY TO:

- Law Enforcement of Civil Disturbance Activities
- Defense Support to Civil Authorities
- Humanitarian Assistance
- Disaster Readiness, Response, and Recovery
- Environmental and Security Vulnerability Studies
- Mapping, Charting, and Geodesic Missions
- National Manager for National Security Systems Activities
A. A **U.S. CITIZEN**

B. An Alien Known by a Defense Intelligence Component to be a **PERMANENT RESIDENT ALIEN**

C. An **UNINCORPORATED ASSOCIATION** Substantially Composed Of U.S. Citizens Or Permanent Resident Aliens

D. A **CORPORATION INCORPORATED IN THE U.S** Except For A Corporation Directed And Controlled By a Foreign Government Or Governments
Information that identifies a United States person may be collected by a DoD intelligence component ... 

only if the USPI is necessary for the performance of an authorized intelligence mission

and only if the USPI falls within one of the following categories:
PROCEDURE TWO: Collection

1. Publicly Available Information
2. Information Obtained with Consent
3. Foreign Intelligence
4. Counterintelligence
5. Threats to Safety
6. Protection of Intelligence Sources, Methods, and Activities
7. Current, Former, or Potential Sources of Assistance
8. Persons in Contact with Sources or Potential Sources
9. Personnel Security
10. Physical Security
11. Communications Security Investigation
12. Overhead and Airborne Reconnaissance
13. Administrative purposes
PROCEDURES THREE and FOUR: Retention and Dissemination

Information that identifies a United States person may be retained by a DoD intelligence component if collected IAW Procedure 2.

Information that identifies a United States person may be disseminated without consent only:

- If the information is publicly available

- When collected and retained IAW Procedures 2 and 3

- When the recipient is reasonably believed to need the information to perform a governmental function and is:
  ✓ Element of the Intelligence Community
  ✓ DoD Element or Contractor
  ✓ Other Federal Government Entity
  ✓ State, Local, Tribal, or Territorial Government
  ✓ Foreign Government or International Organization Pursuant to Agreement
  ✓ Assistance to the Component
  ✓ Protective Purposes (e.g., safety and security of persons or property)
  ✓ Required Dissemination (e.g., statute, treaty, PD, MOU, court order)
5-9. INTRUSIVE COLLECTION TECHNIQUES

- Electronic Surveillance
- Concealed Monitoring
- Physical Searches
- Searches and Examination of Mail
- Physical Surveillance

10. UNDISCLOSED PARTICIPATION IN ORGANIZATIONS
11. CONTRACTING FOR GOODS AND SERVICES

12. ASSISTANCE TO LAW ENFORCEMENT

13. EXPERIMENTATION ON HUMAN SUBJECTS FOR INTELLIGENCE PURPOSES
14. EMPLOYEE CONDUCT

- Employee Training
- Employee Responsibility to Conduct Activities IAW Applicable Regulations
- IG Inspection Responsibilities
- Oversight Responsibilities of Intelligence Component Leaders

15. QUESTIONABLE INTELLIGENCE ACTIVITIES

- Identification of Reportable Activities
- Reporting Responsibilities
- Investigative Responsibilities

Questionable Activities Frequently Involve More Than U.S. Person Issues
Intelligence Oversight Programs

DoD SIOO
Intelligence Oversight Programs
More Than a Three Ring Binder

• Training
  ✓ Tailored Content and Presentation Format
  ✓ Records Management

• Day to Day Command and Control
  ✓ IO incorporated in planning and execution
  ✓ Legal review of proposals, plans, and executions

• Independent Assessment
  ✓ Assessment from the outside looking in – Generally the IG

• Response Mechanism
  ✓ Internal and External Reporting systems and processes
  ✓ Timely and Thorough Command Inquiry
  ✓ Appropriate Corrective Action
Shared Responsibility

Director or Commander

Inspector General

Legal Counsel

INTELLIGENCE OVERSIGHT
Roles and Responsibilities

Commanders or Directors:

- Support an active program
- Designate appropriate oversight officials
- Provide for appropriate training
- Provide reprisal protection for persons reporting questionable activities
- Implement correct action to address substantiated allegations
JAGs and GCs are responsible for:

- Initial legal review of intelligence activities and plans
- Continued monitoring of intelligence activities’ legality
- Cross talk with IGs as appropriate
Intelligence personnel

- The first line of defense
- Know the standards and comply
- Willingly and actively serve as IOO’s and participants in day-to-day control and execution of intelligence activities
- Report any:
  - Questionable Intelligence Activities
  - Significant or Highly Sensitive Matters
Roles and Responsibilities, cont.

DoD SIOO and GC DoD

- Develop IO Policy and issue guidance
- Inspect and provide Department-level legal review of intelligence activities and plans
- Monitor progress and review findings of inquiries and investigations
- Inform and advise OSD Officials and report to the President’s Intelligence Oversight Board and DNI
Intelligence Oversight Reporting
PROCEDURE 15: IDENTIFYING, INVESTIGATING, AND REPORTING QUESTIONABLE ACTIVITIES

Responsibility is Shared By:

✓ COMMANDERS AND LEADERS
✓ EMPLOYEES
✓ INSPECTORS GENERAL
✓ JAGs and GCs
✓ GC DoD and DoD SIOO
Intelligence Oversight Reporting

• Questionable Intelligence Activities (QIA)

• Immediate and Quarterly Reporting

• Significant or Highly Sensitive Matters (S/HSM)
A QUESTIONABLE INTELLIGENCE ACTIVITY IS ONE THAT MAY VIOLATE:

- Law
- Executive Order
- Presidential Directive
- Intelligence Community Directive
- DoD Policy
- Service, Agency, or Command Policy or Regulation

...and is Incident to an Intelligence or Intelligence-Related Activity or misuse of an intelligence authority
• Impugn the Reputation or Integrity of the DoD IC
• Call Into Question the Propriety of an Intelligence Activity
  ➢ Activity Involving Congressional Inquiries or Investigations
  ➢ Activity That May Result in Adverse Media Coverage
  ➢ Activity That May Impact on Foreign Relations or Foreign Partners
  ➢ Activity Related to Unauthorized Disclosure of Classified or Protected Information
REPORTABLE ISSUES

• Questionable Intelligence Activities (QIA)
  ✓ Report Quarterly

• Significant or Highly Sensitive Matters (S/HSM)
  ✓ Report Immediately

• Crimes Reported to the Attorney General

• Congressional Testimony, Notifications, Reports, or Briefings
  ✓ Individual Members of Congress
  ✓ Congressional Committees
  ✓ Members of the Congressional Staff
IO Inspection Program
Attributes of the Best IO Programs

- Command and Leader Involvement
- Identified Responsibilities and Standards
- Formally Designated IO Officials
- Training – EARLY, OFTEN, CREATIVE
  - Tailored to the Organization and Mission
- Active Part of all Operational Planning and Execution
- Active SJA/GC Involvement
- QIA and S/HSM Reporting
  - Timeliness
  - Prompt and Appropriate Investigation and Corrective Action
Inspection Methodology

Objectives

• Assess compliance with laws & policy

• Identify potential or emerging areas of concern affecting the Component and/or Defense Intelligence Enterprise

• Identify and promulgate best practices

• Improve DoD intelligence oversight policy and processes
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation
- Execution
- Follow-up
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation
- Execution
- Follow-up
Inspection Methodology
Policy

• DoDD 5148.11, “Assistant to the Secretary of Defense for Intelligence Oversight,” April 24, 2013

• New DoD Instruction 5148.11, “Intelligence Oversight,” TBD

• All other policies governing intelligence, counterintelligence, and intelligence-related activities
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation
- Execution
- Follow-up
• **General** (DoDD 5240.01, DoDM 5240.01)

• **Functional**
  - HUMINT
  - SIGINT
  - MASINT
  - CI
  - GEOINT
Inspection Methodology
Process

- Policy
- Checklist
  - Schedule
- Preparation
- Execution
- Follow-up
Inspection Methodology
Schedule

1\textsuperscript{st} Qtr FY 17 **USTRANSCOM – NGB**
2\textsuperscript{nd} Qtr FY 17 **USSOUTHCOM – USPACOM**
3\textsuperscript{rd} Qtr FY 17 **NSA – USCENTCOM**
4\textsuperscript{th} Qtr FY 17 **DIA – NAVY**

1\textsuperscript{st} Qtr FY 18 **DTRA/JIDA - ARMY**
2\textsuperscript{nd} Qtr FY 18 **NGA - USSOCOM**
3\textsuperscript{rd} Qtr FY 18 **USEUCOM - NRO**
4\textsuperscript{th} Qtr FY 18 **USSTRATCOM/USCYBERCOM**

1\textsuperscript{st} Qtr FY 19 **DSS - PFPA**
2\textsuperscript{nd} Qtr FY 19 **AIR FORCE - USAFRICOM**
3\textsuperscript{rd} Qtr FY 19 **USNORTHCOM - USMC**
4\textsuperscript{th} Qtr FY 19 **USFK - USFJ**
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation ✓
- Execution
- Follow-up
Inspection Methodology
Preparation

- Notification Memo (POC, SIIs)
- Read-Ahead Documents
  - Implementing Guidance
  - SOPs
  - Training POI
  - Mission Brief
  - Previous Inspection Reports
  - QIAs
- SMEs
• Intelligence and intelligence-related ACCMs and SAPs

• Command processes to assess Service Component compliance with laws and policy governing the conduct of intelligence activities

• Command processes for collecting and handling USPI in support of information operations

• Command processes to evaluate for permanent retention USPI

• Use of cover to facilitate open source collection
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation
- Execution
- Follow-up
Inspection Methodology
Execution

• 30-day review
• 1-5 inspectors from DoD SIOO, OUSD(I), others
• 1-3 day site visit at HHQ and other locations
Report findings, recommendations, observations, and best practices to SECDEF and Component Head (approximately 60 days after site visit)

- Identify Areas for Improvement and Best Practices
- Note Areas for DoD Policy and SIOO Support Improvement
- No Surprises
Inspection Methodology
Process

- Policy
- Checklist
- Schedule
- Preparation
- Execution
- Follow-up
Inspection Methodology
Follow-up

• DoD SIOO works with Component to resolve discrepancies – continuous support

• Identify trends for senior leader insight

• Special Interest Items

• Incorporate policy improvement suggestions during revision cycle
Inspection Methodology
Continuous Engagement

• Staff Assistance Visits
• Ride-Along’s
• Limited notice inspections
• Investigations
What We Are Seeing
A Generally Compliant Community

• NON-COMPLIANCE MOSTLY INADVERTENT
  • Unjustifiable Files on Domestic Groups
  • U.S. Person Data Improperly Included in Products
  • Inappropriate Maneuver Commander Taskings
  • Inappropriate Open Source Netsurfing

• OCCASIONAL INTENTIONAL NON-COMPLIANCE
  • Willful Disregard of Regulations for a Perceived Greater Good
  • Contractor Misconduct
  • Employment of Unauthorized Source Nets
  • Misuse of Intelligence Resources for Personal Gain
Past Problem Areas

- Operators get trained, leaders don’t
- Lack of familiarity with regulations
- Intelligence collection and production actions get ahead of authorities and approvals
- IO (Intelligence Oversight) and IO (Information Operations) processes blur
Identify the key directives guiding IO.

- E.O. 12333 -- The Presidential Order
- DoDD 5240.1 -- The DoD Implementing Policy
- DoDM 5240.01 -- The DoD Guidelines

Describe the Defense Intelligence Components

- All DoD organizations that perform foreign intelligence or counterintelligence Missions or functions

Describe the Joint IG’s responsibilities for providing independent oversight of intelligence activities.

- Commanders - Enforce Standards, Train, Report, Inquire, Correct
- IC Professionals – Comply with Standards, Report
- Inspectors General – Inspection and Oversight, Report, Inquire
- Legal Advisors - Legal Review, Report
- DoD SIOO & DoD GC – Oversight, Review, Report
ELO Review

- **Identify the reporting procedures** for QIAs and S/HSMs.
  -Governed by Procedure 15, DoD 5240.1-R and DTM 08-052
  -Report QIAs Quarterly
  -Report S/HSMs Immediately

- **Describe the inspection methodology** used by the DoD SIOO as a model for Joint IG’s IO inspections.
  -Policy
  -Checklist
  -Schedule
  -Preparation
  -Execution
  -Follow-up

- **Define the following:**
  -U.S. Person
  -Questionable Intelligence Activity
  -Significant/Highly Sensitive Matter
U.S. PERSON

“Who...or What...Are They?”

A. A **U.S. CITIZEN**

B. An Alien Known by a Defense Intelligence Component to be a **PERMANENT RESIDENT ALIEN**

C. An **UNINCORPORATED ASSOCIATION** Substantially Composed Of U.S. Citizens Or Permanent Resident Aliens

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  ➢ Activity That May Impact on Foreign Relations or Foreign Partners
  ➢ Activity Related to Unauthorized Disclosure of Classified or Protected Information
“What’s It All About?”
A Summation in Four Bullets

- Command, Control, and Supervision of Intelligence Activities
- Rules for Governing the Professional Conduct of Intelligence Professionals
- A Program to Protect Privacy and Civil Liberties
- A System of Ethics and Accountability
http://dodsiioo.defense.gov/
QUESTIONS?