

Testimony of  
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Acting Assistant to the Secretary of Defense for Intelligence Oversight  
United States Department of Defense  
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Before the  
United States Senate  
Committee on the Judiciary

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Good morning Mr. Chairman, Senator Leahy, and Members of the Committee. It is my privilege to appear before you today. I am Bill Dugan. I am the Acting Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)). I am here to discuss the Intelligence Oversight program of the Department of Defense.

I am responsible to the Secretary and Deputy Secretary of Defense for the Department of Defense Intelligence Oversight program. The purpose of the Intelligence Oversight program is to enable DoD intelligence components to effectively carry out their authorized functions, while at the same time ensuring their activities that affect United States persons are carried out in a manner that protects their Constitutional rights and privacy.

I've used the term "United States persons." It is an important one because it refers to more than just United States citizens. The term also includes lawful permanent residents, corporations incorporated in the United States (unless directed or controlled by a foreign government), and unincorporated associations substantially composed of lawful permanent residents and/or U.S. citizens.

We operate under Executive Order 12333, "United States Intelligence Activities," which was issued by President Reagan in December 1981. The DoD implementing Regulation is DoD 5240.1-R, entitled "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons." This DoD regulation was approved by the Attorney General and was issued in December 1982; these are the Attorney General approved guidelines for the DoD intelligence community regarding activities that affect United States Persons.

The Secretary of Defense established the predecessor office to the Office of the Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)) in 1976, to implement the original Executive Order on U.S. Intelligence Activities issued by President Ford. President Ford's executive order was issued in response to the investigations that revealed the misuse of

intelligence assets, both DoD and non-DoD, to collect information on civil rights protestors, anti-Vietnam war demonstrators, as well as community and religious leaders and labor leaders during the 1960's and early 1970's. What began as a force protection mission for DoD organizations, evolved, through mission creep, lack of clear rules, and the lack of meaningful oversight, into an abuse of the Constitutional rights of United States persons by Defense intelligence and counterintelligence personnel. These matters were thoroughly investigated by the Congress, including this committee, in the 1970s - I am referring to the investigations conducted by Senator Ervin, as well as Senator Church - the Church Committee - and Representative Pike - the Pike Committee. Since 1976, the ATSD(IO) has been charged with preventing a recurrence of these types of transgressions and we do this through our Intelligence Oversight program which I will describe.

We are a very small office, by design; I have 10 personnel slots. We sit at the head of a proactive partnership with the intelligence staffs, Inspectors General, and General Counsel and legal advisors of the Joint Staff, Combatant Commands, Military Services, and the Defense intelligence agencies to include the National Security Agency, Defense Intelligence Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency in the management and direction of the DoD Intelligence Oversight program.

We seek to ensure DoD intelligence, counterintelligence, and intelligence-related organizations, as well as all intelligence activities performed by non-intelligence units, conduct their activities in accordance with federal law, Executive Order 12333, Presidential directives, and DoD directives, regulations, and policies. We place special emphasis on the protection of information on United States persons. Our second area of emphasis is on ensuring improper activity by intelligence personnel is identified, reported, investigated, and then action taken to keep it from happening again.

Each quarter we prepare the Defense Department's Intelligence Oversight Report. This report describes any significant Defense Intelligence Oversight issues that warrant the attention of the Secretary and Deputy Secretary of Defense and the President's Foreign Intelligence Advisory Board. To prepare it, we receive each quarter the reports of the Joint Staff, the Combatant Commands, the Military Services, and the Defense intelligence agencies. It is reviewed and signed jointly by the DoD General Counsel and the ATSD(IO) and then approved by the Deputy Secretary of Defense. The Quarterly Intelligence Oversight Report is then provided to the Intelligence Oversight Board of the President's Foreign Intelligence Advisory Board.

Personnel in my office also conduct intelligence oversight inspections of DoD intelligence activities worldwide to ensure that DoD intelligence activities are conducted in accordance with law, executive order, DoD regulation and policy. We are assisted in this inspection process by the Inspectors General of the combatant commands, the military services, and the Defense intelligence agencies.

I would like to describe how the process works regarding the collection of United States person information by DoD intelligence components.

First, no one in DoD intelligence has a mission to collect information on United States persons. What we have are missions such as foreign intelligence, counterintelligence, counterterrorism, Signals intelligence, and the like.

In the course of performing our mission, we run across or find information that identifies United States persons. That is when the rules in the DoD Regulation, DoD 5240.1-R, kick in. If the information is necessary to the conduct of the mission such as I just described, for example, counterterrorism, and if it falls within one of the 13 categories prescribed by the Executive Order 12333 and DoD regulation, then the intelligence component can collect the information. The 13 categories are:

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. [with a foreign nexus/connection]
8. Personnel security.
9. Communications security.
10. Narcotics. [international narcotics activity]
11. Threats to safety. [with a foreign nexus/connection - such as international terrorist organizations]
12. Overhead reconnaissance.
13. Administrative purposes. [training records - a narrowly drawn category]

If the intelligence component is unsure if the information they have obtained is proper for them to keep, the Intelligence Oversight rules allow them to temporarily retain the information for 90 days solely to determine whether it may be permanently retained.

Thus it is possible for DoD intelligence components to have information on United States persons in their holdings.

Finally, if an intelligence component is in receipt of information that pertains to the function of other DoD components or agencies outside DoD, such as the FBI, the intelligence component can transmit or deliver the information to them for their independent determination whether it can be collected, retained, or disseminated in accordance with their governing policy.

Thank you.