DoD HUMINT LEGAL WORKSHOP

FUNDAMENTALS OF HUMINT TARGETING

Assistant General Counsel -

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Class Objective

- To provide an overview of legal restrictions on targeting US persons (USPs):
  - Executive Order 12333, as amended
  - DoD Regulation 5240.1-R

- Rules for Targeting Members of Sensitive Source Categories (USPs or Foreign Nationals (FNs)) inside and outside the US
  - DoD Instruction 5200.42, dated 8 Dec 2009 “Operational Use Restrictions”
Authorities

- EO 12333
  - Authority and Direction from the President for DIA to conduct intelligence activities
  - Also includes restrictions on what type of intelligence we can collect and how we can go about doing it
- DoD 5240.1-R Activities of DoD Intelligence Components that Affect USPs
  - Implements procedures for executing EO 12333
  - Approved by DOJ
DoD 5240.1-R Activities of DoD Intelligence Components that Affect US Persons

Collection Framework:

- Procedure 2 Collection of Information About USPs
  - General Rule = No collection on USPs
  - Defines USP
  - 16 Exceptions to the general rule
- Procedure 3 Retention of Information About USPs
- Procedure 4 Disseminating Information about USPs

Special Procedures (5-12):

- Procedure 10 Undisclosed Participation
- Procedure 11 Contracting for Goods and Services

Dealing with Violations (14,15)
Procedure 2 US Person Definition

- A United States Citizen
- A Permanent Resident Alien
- An unincorporated association substantially composed of U.S. citizens or Permanent Resident Aliens
- A corporation incorporated in the U.S. that is not controlled or directed by a foreign government
- Presumption: A person or organization outside of the U.S. is presumed not to be a U.S. Person unless information to the contrary becomes known.
You may collect on USPs if the information falls into one of 16 categories:

1. Information obtained with consent
2. Publicly available information
3. Persons acting for a foreign power
4. Organizations owned or controlled by a foreign power
5. Person believed to be involved with terrorist organization or activities
6. MIAs, POWs, KIAs, or targets, victims or hostages of international terrorists
7. Commercial organizations believed to have some relationship with foreign organizations or persons
8. Persons involved in collecting CI for a foreign power or terrorist group
9. Potential sources of assistance to intelligence activities
Info That May Be Collected

- 10. Protection of intelligence sources and methods
- 11. Persons believed to threaten the security of DoD personnel or facilities
- 12. Information collected as part of a lawful personnel or communications security investigation
- 13. International narcotics activities
- 14. Information supporting protection and safety of persons thought to be target, victim, or hostage of international terrorists
- 15. Overhead reconnaissance not directed at a specific US Person
- 16. DIA administrative determination
ReCap: Rules for Foreign Nationals Vs. US Persons

- Basic Rule for US Persons under Procedure 2 5240.1-R:
  - Thou shall not collect on US Persons
  - Unless the collection falls under one of 16 exemptions
  - Normally rely on Exemption for Potential Source of Information or Assistance to US Intelligence Community
Application of Knowledge

Pages 19-24 are withheld in full and not provided.
Questions

(b)(3), 10 USC 424

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