



EXECUTIVE ORDER 12333

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TOP SECRET//COMINT



EO 12333

- **Background**
- **Main provisions**
- **Current issues**
 - **Targeting of U.S. persons**
 - **Information sharing**
 - **Overt collection**

(b)(7)(E)

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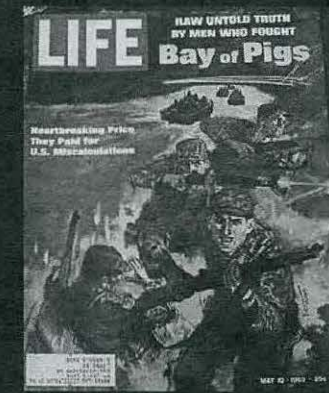
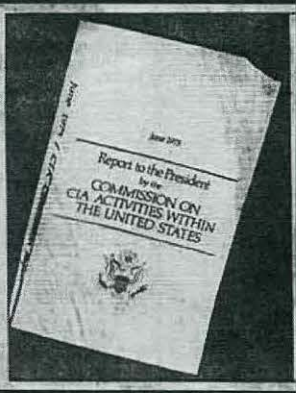
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PART I—BACKGROUND

1945-1976

- CIA was the dominant player in the Intelligence Community
- Authority to conduct intelligence activities and operations primarily from the National Security Act and from NSC directives, in response to developments in the Cold War
- Oversight was informal: NSC played some role, and the DCI briefed the President orally to obtain approvals for covert actions and other sensitive operations
- Congressional oversight colloquially described as BOGSAT—“bunch of guys sitting around a table”



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REGULATION OF INTELLIGENCE ACTIVITIES

- Constitution
- Statutes
 - FISA, NSL statutes
- Criminal prosecutions
- EO 11905 (1976)





PRIOR EXECUTIVE ORDERS

- EO 12036 (1978): “By virtue of the authority vested in me by the Constitution and statutes . . . in order to provide for the organization and control of United States foreign intelligence activities, it is hereby ordered . . .”
- EO 12333 (1981): “Timely and accurate 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 available. For that purpose . . . in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered . . .”



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PART II—MAIN PROVISIONS

- **Role of the Director of National Intelligence**
- **Other sectors**
- **Coordination inside the United States**
- **Limitations**
- **Oversight**



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ROLE OF THE DNI



- **Head of the IC**
- **Is the principal adviser to the President, NSC, and Homeland Security Council on intelligence matters**
- **Oversees the National Intelligence Program**



DNI . . . HIRING AND FIRING

- **DNI must concur in selection of:**
 - **Executive Assistant Director for National Security Branch of FBI**
 - **Director of NSA**
 - **Other intelligence officials**
- **DNI must be consulted in selection of:**
 - **DoD intelligence positions, including military positions**
 - **Assistant Attorney General for National Security**

Section 1.3(e)

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DNI . . . TASKING AGENCIES OUTSIDE THE IC

- **DNI may provide advisory tasking to agencies outside the Intelligence Community**
 - **Agencies must respond “to the greatest extent possible”**
 - **AG approves implementing procedures**

Sections 1.3(b)(18); 1.5(e)



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OTHER SECTORS

ORIGINAL EO 12333 (1981)

- Little consideration of the national intelligence effort at a non-federal level
- IC allowed to provide specialized equipment, technical knowledge, or assistance of expert personnel to local law enforcement agencies where lives endangered



REVISED EO 12333 (2008)

- State, local, and tribal governments are “critical partners”
- IC should take their requirements and responsibilities into account
- IC also may consider requirements and responsibilities of private sector entities

Sections 1.1(f);1.4(g); 2.6

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MAIN PROVISIONS . . .

COORDINATION

Inside the US—

- **Director of FBI coordinates clandestine collection of foreign intelligence through “human sources or through human-enabled means”**
- **FBI also coordinates counterintelligence activities**
- **All agencies inform the AG and DNI of intelligence activities not coordinated with the FBI**
- **AG approves all procedures for coordination**



MAIN PROVISIONS . . . OVERSIGHT

IC agency heads must:

- **Give officials responsible for privacy or civil liberties protection access to “any information or intelligence necessary to perform their official duties”**
- **Report violations of criminal law to the AG**
- **Report any intelligence activities that may have been unlawful to the Intelligence Oversight Board and DNI**

Sections 1.3(e); 1.6(b)(c) and (h)



MAIN PROVISIONS . . . PRIOR LIMITATIONS

- Generally, only CIA can conduct covert action (Section 1.7(a)(4)), and EO 12333 prohibits covert actions designed to have a domestic effect (Section 2.13)
- The prohibition on human experimentation remains (Section 2.10)
- The prohibition on assassination remains (Section 2.11)
- Members of the IC cannot use intermediaries to circumvent the prohibitions in EO 12333 (Section 2.12)



PART III—CURRENT ISSUES

- Collection against U.S. persons
- Information sharing—CT “data layer”
- Overt collection
- FBI’s Domestic Investigations and Operations Guide

(b)(7)(E)

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CURRENT ISSUES . . .

COLLECTION AGAINST U.S. PERSONS

"The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power..."

- Section 2.3: Agencies may collect information needed to protect safety of any person
- Section 2.5: AG must approve surveillance or search of US person for intelligence purposes where warrant would be required



USE OF THESE PROVISIONS IN GUIDELINES-DoD

“Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.” EO 12333 §3.5(c)

- DoD 5240.1-R—Procedure 5
 - Part 1—FISA
 - Part 2—Electronic surveillance or use of surveillance devices against US persons abroad where there is reasonable expectation of privacy
 - Part 3 and Classified Annex--Signals intelligence activities
- USSID SP0018—Not AG approved



5240.1-R PROCEDURE 5

- DoD and NSA officials may authorize emergency surveillance of U.S. person outside the United States when:
 - Time required to obtain the AG's approval would cause failure or delay in obtaining "significant" foreign intelligence, and failure or delay would result in "substantial" harm to national security
 - A person's life or physical safety is reasonably believed to be in immediate danger
 - The physical security of a defense installation or Government property is reasonably believed to be in immediate danger
- No more than 72 hours of collection without AG's approval
- Unless using life or physical safety provision, must find that target is agent of foreign power



PROCEDURE 5-EXAMPLES

(b)(1); (b)(3)

[Redacted content]

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NSD000316



CLASSIFIED ANNEX U.S. PERSON CAPTIVES

- Director of NSA may approve collection of US person's communications where the US person is reasonably believed to be held captive by a foreign power or by a group engaged in international terrorist activities
 - Added in 1988
 - Example of kidnapping of General Dozier in Italy
 - Previously authorized on the basis of presumed consent
- AG notified when DIRNSA authorizes collection
- AG does not have to approve collection



General Dozier

Classified Annex § 4.A.1(a)(3), p.12



CLASSIFIED ANNEX AND NON-US PERSONS

•For non-US persons outside the United States who enter this country “in circumstances that suggest that the alien is an agent of a foreign power,” NSA has 72-hour grace period

(b)(1); (b)(3)

[Redacted]

•For those (b)(1); (b)(3) must seek AG’s authorization. Examples:

(b)(1); (b)(3)

[Redacted]

Classified Annex §4.A.1(d)(2)

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AG GUIDELINES AND FISA

- **Procedures do not permit officials to authorize electronic surveillance as defined by FISA**
- **Procedures impose additional requirements**
- **Does FAA limit EO 12333 and the Guidelines?**
 - FAA requires FISC approval or AG's emergency approval
 - Section 704: No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes

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CURRENT ISSUES . . . INFORMATION SHARING

- 1981: recipient agency may determine whether information relevant to its responsibilities
- 2008: extended to SIGINT, subject to AG-approved procedures
- 2010: IC should “bridge the divides that separate datasets.”

Intelligence Community Review Panel, Report to the Director of National Intelligence on the Fort Hood and Northwest Flight 253 Incidents x-xi (April 15, 2010).



NCTC'S AUTHORITIES

- Serves as the Government's "primary organization" responsible for "analyzing and integrating all intelligence . . . pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism."
- Acts as "the central and shared knowledge bank on known and suspected terrorists and international terror groups" and ensures that other agencies "have access to . . . all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis."

National Security Act § 119(d)

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NCTC'S DATA LAYER PROJECT

(b)(1); (b)(3)

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DATA LAYER ISSUES

- Ability of NCTC to establish terms and conditions for data ingestion
- Oversight
 - Auditing
 - Civil Liberties Protection Officer
 - Reporting
- Dissemination
 - Assistance of other entities
 - Use of the data layer by other agencies or for other purposes



CURRENT ISSUES . . . OVERT AND PUBLICLY AVAILABLE

- Several agencies have only have authority to collect intelligence overtly or through publicly available sources Section 1.7(i)-(j)
- Is collection “overt” when only US Government affiliation is disclosed?

(b)(1)

- What has to be disclosed when collecting information online under these authorities?

SECRET

(b)(7)(E)



(b)(7)(E)



(b)(7)(E)





CHALLENGES . . .

“We will aggressively pursue emerging threats around the world and at home, and enhance our ability to gather and analyze actionable intelligence.”

AG Holder April 25, 2011

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