



DEPARTMENT OF DEFENSE  
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SECRET HAS BEEN

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INFO MEMO

October 7, 2002, 4:00 P.M.

TO: THE SECRETARY OF DEFENSE

THROUGH: William J. Haynes II, General Counsel *WJ Haynes*

FROM: Richard L. Shiffrin, Deputy General Counsel (Intelligence) *RS*

SUBJECT: HUMINT Authorities

- Relevant to the discussion this past Saturday, the Department of Defense authority to engage in HUMINT activities derives from several sources:
  - **50 U.S.C. 403-5(b)(4), The National Security Act of 1947, § 105(b)(4).** “Consistent with section 103 and 104 of this Act [responsibilities and authorities of the DCI], the Secretary of Defense shall ensure through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;”
  - **50 U.S.C. 403-5(b)(5), The National Security Act of 1947, § 105(b)(5).** “Consistent with section 103 and 104 of this Act [responsibilities and authorities of the DCI], the Secretary of Defense shall ensure through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches;”
  - **50 U.S.C. 403-5(c), The National Security Act of 1947, § 105(c).** “The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.”

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- **National Security Council Intelligence Directive No. 5, "U.S. Espionage and Counterintelligence Activities Abroad," § 4.a (1972)**

"Subject to the provisions of paragraph 2 above [relating to coordination with DCI], other departments and agencies with commands or installations located outside the U.S. and its possessions may conduct supplementary espionage in order to satisfy departmental intelligence needs;

- **National Security Council Intelligence Directive No. 5, "U.S. Espionage and Counterintelligence Activities Abroad," § 8.a (1972)**

"In active theaters of war where U.S. forces are engaged, or when the President so directs [ , e]xcept as provided in subparagraph b below [circumstances in which CIA may continue to independently conduct espionage and counterintelligence operations], the entire Central Intelligence Agency organization conducting espionage and clandestine counterintelligence operations in or from a theater shall, as a component force be under the direct command of the U.S. Theater Commander, in accordance with agreements separately reached between the Director of Central Intelligence and the Secretary of Defense, and shall provide espionage and counterintelligence support to military operations."

- The Department of Defense authority to engage in HUMINT activities is affected by the following legal authorities:

- **50 U.S.C. 403-5(a)(2), The National Security Act of 1947, § 105(a)(2).**  
"The Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure appropriate implementation of the policies and resource decisions of the Director of Central Intelligence by elements of the Department of Defense within the National Foreign Intelligence Program;"
- **50 U.S.C. 403-5(a)(3), The National Security Act of 1947, § 105(a)(3).**  
"The Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Foreign Intelligence Program;"

NOTE TO  
SECRET

Suggest you and  
DCI discuss how  
you want to  
arrange the command  
relationships for Iraq.

WJ Haynes

