



Written by [Joe Wolverton, II, J.D.](#) on February 22, 2013

## New Defense Clandestine Service Blends Civilian and Military Operations

The federal government is expanding the spy network, this time by adding an intelligence agency at the Department of Defense. The Defense Clandestine Service (DCS) is now active and operating under the Pentagon's Defense Intelligence Agency (DIA). According to the organization's website, [DCS's mission will be to conduct:](#)



human intelligence (HUMINT) operations to answer national-level defense objectives for the President, the Secretary of Defense, and senior policymakers. The civilian and military workforce of the DCS conducts clandestine and overt intelligence operations in concert with the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and our Military Services to accomplish their mission in defense of the Nation.

The basic idea is that the new spies will work in conjunction with their counterparts at the CIA's National Clandestine Service to expand the scope of the federal intelligence community's surveillance operations.

Re-tasking the DIA to a more CIA-like reliance on human intelligence gathering is part of this mission.

To successfully carry out this new covert program, the Pentagon has provided the DCS with plenty of staff. As noted by [the Washington Post](#) in December, "When the expansion is complete, the DIA is expected to have as many as 1,600 "collectors" in positions around the world, an unprecedented total for an agency whose presence abroad numbered in the triple digits in recent years."

As [the Washington Post story reports](#), not all of the new "collectors" will work undercover. Over the next five years, however, DCS will identify and train many more operatives who will be assigned to deep-cover positions and will work with the military's Joint Special Operations Command (JSOC).

It is this blending (convergence) of the civilian intelligence apparatus with the traditional military establishment that is not only worrisome and a threat to the Fourth Amendment, but may be a violation of the law, as well.

In the days since the attacks of September 11, 2001, the CIA has become nothing less than an armed unit of the U.S. armed forces. Routinely agents of this otherwise intelligence-gathering organization are deployed with special-ops soldiers on assignments in the "War on Terror."



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Regardless of potential legal problems, this convergence of the civilian and military resources is not being hidden.

In [a paper exploring the legal ramifications of the increasing military/civilian convergence](#), Professor Robert Chesney of the University of Texas School of Law describes an appearance by former Director of the CIA Leon Panetta where he tries to justify his operational control of the raid that killed Osama bin Laden. Professor Chesney writes:

Leon Panetta appeared on PBS Newshour not long after the raid that killed Osama bin Laden. He was the Director of the Central Intelligence Agency at that time, and during the course of the interview he took up the question of the CIA's role in the attack. It had been "a 'title 50' operation," he explained, invoking the section of the U.S. Code that authorizes the activities of the CIA. As a result, Panetta added, he had exercised overall "command."

This surely confused at least some observers. The mission had been executed by U.S. Navy SEALs from Joint Special Operations Command (JSOC) after all, and both operational and tactical command seemed to have resided at all times with JSOC personnel. But for those who had been following the evolution of the CIA and JSOC during the post-9/11 period, Panetta's account would not have been surprising. The bin Laden raid was, from this perspective, merely the latest example of an ongoing process of convergence among military and intelligence activities, institutions, and authorities.

The DCS website confirms the federal government's quest for civilian/military convergence. Under the heading "What Does a Case Officer Do?" DCS states, "Our elite corps of Case Officers deploy globally alongside warfighters and interagency partners to protect our National security."

Soldiers ("warfighters") and spies working together to "protect our national security" globally, including inside the United States.

Professor Chesney summarizes the relevant legal (and constitutional question) in his paper. He writes:

the convergence trend undermines the existing legal architecture along the rule-of-law dimension by exposing latent confusion and disagreement regarding which substantive constraints apply to military and intelligence operations. Is international law equally applicable to all such operations? Is an agency operating under color of "Title 50" at liberty to act in locations or circumstances in which the armed forces ordinarily cannot?

[Title 50 is the section of the U.S. Code](#) governing the legal authority of the CIA. [Title 10, on the other hand](#), is the provision covering the authority of the armed forces. As the two sections reveal, there are "distinct spheres of intelligence and military operations and that each is subject to a distinct set of standing statutory authorizations and constraints."

Regardless of these legal and statutory realities, for years the National Defense Authorization Act (NDAA) has included funds for the purchase of combat gear for use by the Department of Homeland Security (and other domestic intelligence and security departments of the federal government) to help control mobs in cases of national emergency.

These purchases, along with the convergence of intelligence operations being accomplished by the creation of the Defense Clandestine Service and the deployment of CIA agents in the role of soldiers, intentionally blur the lines around military authority over the civilian population.

The DCS declares that it is "mission focused" and that mission is to accelerate the convergence of the



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military and the civilian authorities and obliterate constitutional boundaries around privacy and civil liberties.

Finally, there is no denying that the surveillance state is expanding and that Americans at home and abroad are nearly constantly under the watchful and never-blinking eye of intelligence officers. From phone taps to traffic cameras connected to the National Security Agency, the federal government is not only violating statutory law, but is circumventing the Constitution. On several fronts, the United States is being treated as a theater of the “War on Terror” and citizens are being treated as suspects.

*Photo: the Pentagon*

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