



OFFICE OF THE

CHIEF MANAGEMENT OFFICER

DoD Civil Liberties Overview

November 12, 2020

Mary Fletcher

Directorate of Oversight and Compliance

Defense Privacy, Civil Liberties, and Transparency Division



Overview

What are Civil Liberties?

Why do We Need a Civil Liberties Program?

DoD Civil Liberties Program and Structure

Responsibilities

Complaint Process



Civil Liberties

U.S. Constitution, Article I, Section 9, limits Congressional power in 3 ways:

- ✓ Prohibits Bills of Attainder
- ✓ Prohibits *Ex Post Facto* laws
- ✓ Writ of Habeas Corpus





What are Civil Liberties?



- ❖ Freedoms guaranteed to individuals by the U.S. Constitution to protect us from government tyranny
- ❖ Restrains governmental power
- ❖ Establishes freedoms that the government may not legally intrude upon



Safeguards of Liberty



First Amendment

- ✓ Freedom of religion
- ✓ Freedom of speech
- ✓ Freedom of the press
- ✓ Freedom of assembly
- ✓ Right to petition the government

Second Amendment

- ✓ Right to keep and bear arms

Third Amendment

- ✓ Prohibits government from forcing individuals to house soldiers in their home during peacetime



Safeguards of Justice

Fourth Amendment

- ✓ Freedom against unreasonable search and seizure

Fifth Amendment

- ✓ Grand jury indictment required for felony charges
- ✓ Protection from double jeopardy
- ✓ Prohibits punishment without due process of law
- ✓ Right against self-incrimination
- ✓ Takings clause – limits power of eminent domain





Safeguards of Justice

Sixth Amendment

- ✓ Right to fair and speedy trial by impartial jury
- ✓ Right to public trial (no secret proceedings)
- ✓ Right to legal counsel, to call and confront witnesses
- ✓ Right to hear charges against you

Seventh Amendment

- ✓ Right to jury trial in civil cases

Eighth Amendment

- ✓ Protection against unreasonable bail and fines
- ✓ Protects against cruel and unusual punishment



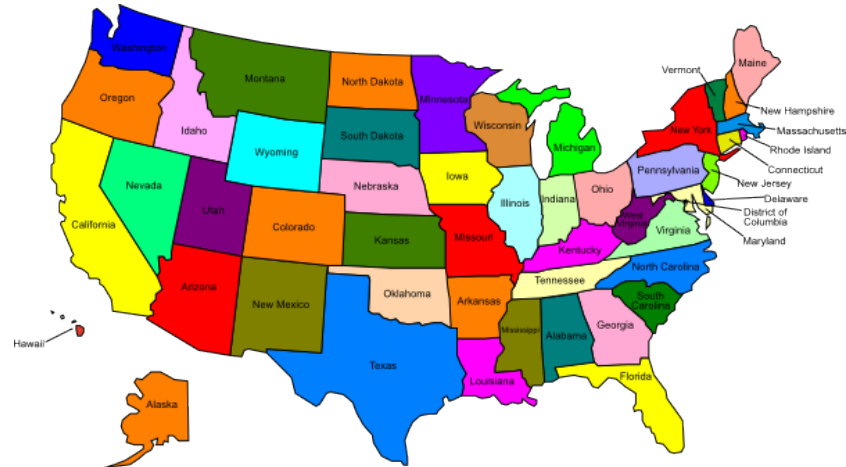
Preservation of Rights

Ninth Amendment

- ✓ Rights which belong to the people are not confined to those named in the Constitution

Tenth Amendment

- ✓ Any power that the Constitution does not assign to the Federal Government is retained by the states.





Civil Liberties vs Civil Rights

Civil Liberties

Freedoms guaranteed to individuals by the Constitution to protect against government tyranny

Civil Rights

Legal rights that protect individuals from discrimination based on protected characteristics, like race, gender, disability



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Findings of Congress

- ❑ Report of the 9/11 Commission (2004) recommended enhancing the government's powers and programs in the intelligence, homeland security, and law enforcement arenas to better protect against terrorism and other risks



- ❑ The Commission also recognized these powers would increase risks to privacy and civil liberties.
- ❑ It recommended additional safeguards for civil liberties



Findings of Congress

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.



Findings of Congress

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.



Findings of Congress

(3) The National Commission on Terrorist Attacks Upon the United States correctly concluded that 'The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home.

Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.'



Act of Congress

- ❑ Section 803, “Implementing Recommendations of the 9/11 Commission Act of 2007”
- ❑ DoD was one of 8 agencies required by the law to develop an active civil liberties program
- ❑ These agencies also had to appoint a Privacy and Civil Liberties Officer





Privacy / CL Officer

A senior officer reporting to agency head who:

- Assists the Secretary/Director in considering privacy and civil liberties concerns
- Periodically investigates and reviews department actions, policies, procedures, guidelines
- Establishes a venue to address potential violations



Oversight Agency

The Privacy and Civil Liberties Oversight Board (PCLOB) was established in 2004 to provide:

- ❑ **Advice and counsel** to the President, departments, and agencies on development and implementation of counterterrorism policy.
- ❑ **Oversight** in the form of continual review of counterterrorism policies, and implementation thereof, to ensure appropriate privacy/CL protections



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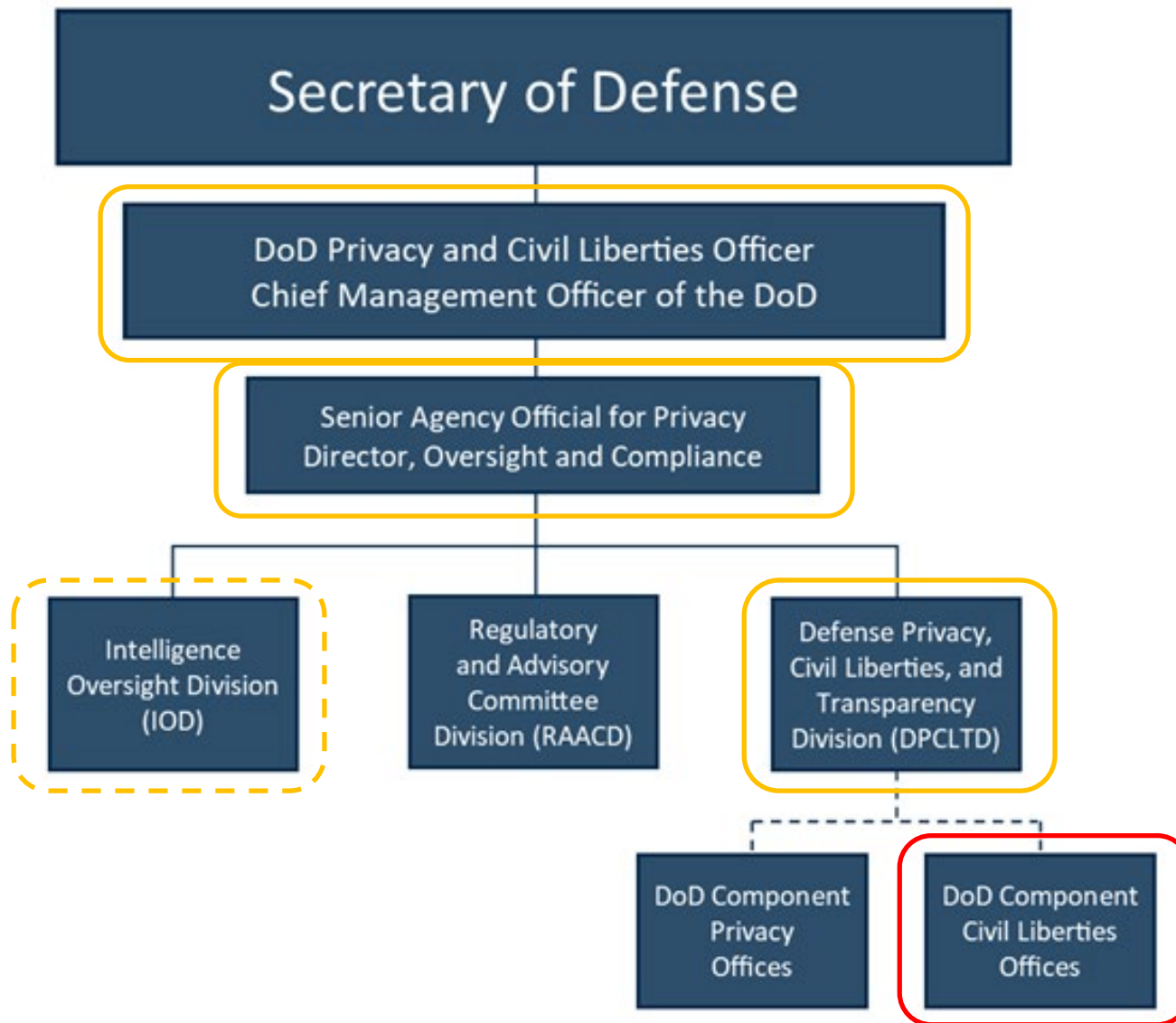
DoD Civil Liberties Program

- ❑ Secretary of Defense appointed the Chief Management Officer to serve as the **DoD Privacy and Civil Liberties Officer**
- ❑ The **Defense Privacy, Civil Liberties and Transparency Division** was established within the Directorate of Oversight and Compliance





The DoD PCL Program Structure





The DoD CL Program Structure

Privacy & Civil Liberties Officer



Lisa Hershman

Chief
Management
Officer

[reports to SecDef]

Senior Agency Official for Privacy



Joo Chung

Director,
Oversight &
Compliance

[reports to CMO]

Senior Intelligence Oversight Official

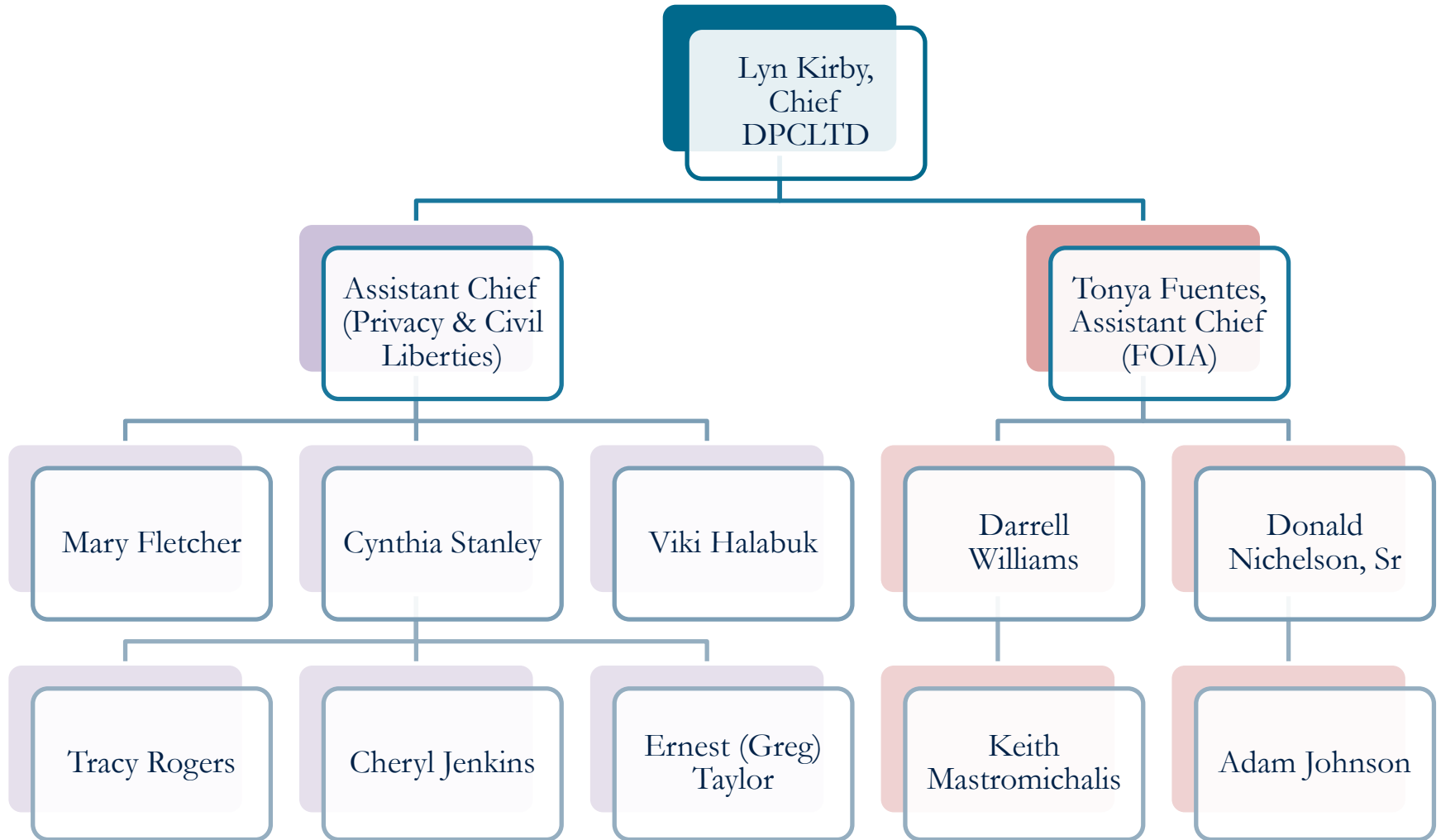


Mark Dupont

Deputy Director,
Oversight &
Compliance



DPCLTD Structure



As of November 2, 2020



DoD Civil Liberties Policy

- ❑ DPCLTD promulgated DoD Instruction 5400.11, *DoD Privacy and Civil Liberties Programs*
- ❑ DoDI 5400.11 requires all Components, to include each military Service, to appoint a Senior Component Official for Privacy (SCOP) and Privacy and Civil Liberties Officer (PCLO) to carry out the component privacy and civil liberties program



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Privacy & Civil Liberties Officer

As the DoD Privacy and Civil Liberties Officer, the Chief Management Officer (CMO):

- Reports directly to the Secretary
- Coordinates with the Department Inspector General
- Is advised of policy changes and consulted by decision makers



Privacy & Civil Liberties Officer

- Is given access to the Secretary and resources
- Protects personnel from reprisals for making a complaint
- Reports semi-annually on DoD CL activities:
 - To Congressional Committees
 - To the Privacy and Civil Liberties Oversight Board (PCLOB)
 - To the Public



Director, O&C

The Director of Oversight and Compliance:

- Serves as the Senior Agency Official for Civil Liberties
- Assists the Privacy & Civil Liberties Officer (PCLO) in meeting her statutory duties
- Provides oversight of the Department's activities and policies to ensure protection of civil liberties



- ❑ Conducts training and guidance for Component Civil Liberties Programs
- ❑ Collects data and provides reports for the Director of Oversight and Compliance and the CMO
- ❑ Coordinates with Intelligence Oversight to meet statutory reporting requirements.





DoD Components

- Provide mechanisms for submitting privacy and civil liberties complaints or alleged violations, in accordance with DoD 5400.11-R.
- Receive and act on complaints from the public and DoD employees.
- Submit semi-annual summaries of complaint and responsive actions taken.



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Example Complaint

- **Description of Complaint:** Alleged First Amendment violation. The complainant, a retired member who is currently an employee of a government contractor, alleged that installation security personnel required him to remove a bumper sticker that read “Fire Trump” from his personally owned vehicle. The complainant alleged that this requirement violated his right to freedom of speech under the First Amendment.
- **Findings:** The complaint was investigated and substantiated by the installation Inspector General. Eight security forces personnel were trained on appropriate procedures regarding bumper stickers that have potentially offensive messages, and the complainant received an apology.
- **Disposition:** Responsive Action Taken.



Contact DPCLTD

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