Opinion: Public needs to know the government is watching

By Steve Kubby

Information released recently in a story by John Shiffman of Reuters explained how a secretive U.S. Drug Enforcement Administration unit is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans.

Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin – not only from defense lawyers but also sometimes from prosecutors and judges. The Reuters documents show that federal agents have been trained to "re-create" the investigative trail to effectively cover up where the information originated, a practice that some experts say violates a defendant's constitutional right to a fair trial.



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If defendants don't know how an investigation began, they cannot know to ask to review potential sources of exculpatory evidence – information that could reveal entrapment, mistakes or biased witnesses.

The unit of the DEA that distributes the information is called

the Special Operations Division, or SOD. Two dozen partner agencies comprise the unit, including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security. It was created in 1994 to combat Latin American drug cartels and has grown from several dozen employees to several hundred.

Today, much of the SOD's work is classified, and officials asked that its precise location in Virginia not be revealed. The documents reviewed by Reuters are marked "Law Enforcement Sensitive," a government categorization that is meant to keep them confidential.

"Remember that the utilization of SOD cannot be revealed or discussed in any investigative function," a document presented to agents reads. The document specifically directs agents to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD."

With these new revelations by Reuters about the DEA's secret SOD program, we can see how any of us can be targeted – in secret – by agents who are trained to trigger a criminal investigation against anyone.

It happened to me and my family and it can happen to you as well. In our case, we believe we would never have been investigated had it not been for an anonymous letter sent to South Lake Tahoe law enforcement on July 2, 1998, during the final months of my campaign as the Libertarian Party nominee for governor of California.

According to former *Auburn Journal* City Editor Patrick McCartney, this anonymous letter may not have caught the attention of the North Tahoe Drug Task Force were it not for two key fabrications:

> “First the letter claimed the authorities could ‘expect to find 1,500 to 2,000 plants.’ The exaggeration could have been a deliberate lie to pique the interest of federal DEA members of the Tahoe task force. For it is well known in criminal-justice circles that federal prosecutors are only interested in pursuing cases involving more than 500 or 1,000 plants in some jurisdictions.
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> “And then the second fabrication, one conceivably meant to play on the justice system’s responsibility for protecting children from harm.’The other word going around is that he believes it is helpful to give pot to his two year old daughter on a regular basis.’ What allegation could outrage a police officer more than the thought that some zealot would force marijuana on his child?
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> “The anonymous letter that launched the Kubby investigation was replete with innuendo and rumor, and overly aware of ‘the astonishing fact that this person is running for California governor!
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> “Did the task force seek to confirm the allegation that Kubby was selling marijuana to support himself and his political campaign? No. The narcotics officers never sought to buy marijuana from Kubby. They never stopped anyone leaving the Kubby home and searched for marijuana. They never observed any trafficking activity whatsoever.”

As a result of this anonymous letter, which we now believe was created by the DEA’s SOD program, our family was subjected to a home invasion of 21 heavily armed officers, our accounts cleaned out, our office equipment seized, resulting in us becoming bankrupted, and charged with 19 felonies that would have resulted in sentences of 40 years to life had we been convicted. Thankfully a jury acquitted my wife. The jury refused to convict me on the marijuana charges, but I was convicted of felony possession of a mushroom stem and peyote button found in our guest bedroom.

Although this conviction was later dismissed by Judge David Nelson in Mendocino County, these covert actions nearly killed me and have damaged my family terribly. Despite the narrative about drug dealers, it was our family and my political activities that ended up being secretly surveilled and targeted by the feds.

As my 17 year old daughter said, “It’s one thing to read about government surveillance, but it is another to have your life turned upside down by them.”

Living here in Lake Tahoe can be a wonderful blessing, but our family has learned the hard way that all of us are under surveillance and even if you are walking the straight and narrow, the government can step on you and try to squish you like a bug. The good news is that it is still possible in this country to take your case before a jury and obtain justice.

As Thomas Jefferson so famously observed: “I consider Trial by Jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution.”

Steve Kubby is a resident of South Lake Tahoe.