

Intelligence

Ethics:



The Definitive Work of 2007*

Published by the Center for the Study of Intelligence and Wisdom

Edited by Michael Andregg

About the Eyes

A spy asked, "Why the eyes?"

They are the eyes of my daughter, who deserves a decent world to grow up in.

They are the eyes of your mother, who deserves a decent peace to grow old in.

They are the eyes of children blown to shreds by PGMs sent to the wrong address by faulty intelligence.

And they are the eyes of children blown to shreds by suicide bombers inspired by faulty intelligence.

They are the eyes of orphans and they are the eyes of God, wondering who fears ethical thought and why.

Grandmother says it is time to grow up. The nation is in danger and the children are in peril.

So sometimes you can set long books of rules aside and use the ancient Grandma Test.

If she were watching, and knew everything you do, would she really approve?

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A generic Disclaimer :

Many of our authors have had diverse and interesting government backgrounds and some are still on active duty. Others are professors of intelligence studies with active security clearances. Six countries are represented here, and more submitted essays for review. This generic disclaimer applies to all submitters, reviewers and editors. The views expressed here are 100% entirely those of the authors in their private capacity and do not reflect the policies, opinions or doctrine of any government, bureaucratic unit, school, company or group of any kind. Therefore, we pray, they may speak their truths plainly instead of merely parroting some party line. That may be the most pervasive violation of the concept of speaking truth to power on this earth today.

Intelligence

Ethics:

The Definitive Work of 2007*

*** Publisher's Note: Of course this is an outrageously ambitious title. We intend it as a challenge to readers. Do better than this, please!**

In fact, as one author notes, there is an actual FEAR of "Ethics" among significant elements of the international and national intelligence communities.

Therefore we can be confident that very few books on Intelligence Ethics (whatever that is) will be published this year, or any year. Half that are published will be lame rationalizations. And most official works focus on fiscal responsibility, not torture, propaganda or black ops. Most of those are written by lawyers, whom everyone knows are the wizards of ethics.

So we say, do us a favor and write or publish something better! Do better, please, before the shortage of ethics so obvious to polite society obscures the good works that intelligence professionals undoubtedly do each day. We need that good work done well.

The definitive work of 2006 was "Ethics of Spying: A Reader for the Intelligence Professional," edited by Jan Goldman, intel-professor at NDIC, Scarecrow Press of Lanham, Maryland, 2006.

page**Table of Contents:**

ii.	Glossary of Intelligence Acronyms
iii.	Process, and a Forward from the Judges
v.	Forward of the editor: Why Bother with “Intelligence Ethics” Anyway?
=====	
1.	John Hollister Hedley, USA, <i>U.S. President’s Daily Briefs</i>
3.	Shlomo Shpiro, Israel, <i>Intelligence Ethics in Israel</i>
7.	Albert C. Pierce, USA, <i>The Value of an Ethos for Intelligence Professionals</i>
11.	Stefan Brem, Switzerland, <i>Special Ethics for Special Services?</i>
14.	Gregory F. Treverton, USA, <i>The “New” Ethics of Covert Action</i>
16.	Jan Goldman, USA, <i>Ethics Phobia and the U.S. Intelligence Community: Just say “No”</i>
18.	Virendra Sahai Verma, India, <i>Intelligence Officers as Professionals</i>
22.	Coleen Rowley, USA, <i>Moral Dilemma in the Intelligence Community and Lack of Constructive Options</i>
26.	John Tolson, United Kingdom, <i>Ethics and the Intelligence Analyst: Contrasting US and UK Approaches.</i>
29.	Uri Bar-Joseph, Israel, <i>The Professional Ethics of Intelligence Analysis</i>
32.	Melvin A. Goodman, USA, <i>CIA Failures of Tradecraft and Intelligence Prior to the Second Iraq War</i>
36.	Stuart Farson, Canada, <i>A View from the Sidelines: Dilemmas and Consequences Resulting from the Anglo-American Intelligence on Iraq</i>
40.	Michael Herman, United Kingdom, <i>Why Should Intelligence Professionals Attend to Intelligence Ethics?</i>
43.	Afterword by Brian Snow, USA, <i>and a Model Code of Ethics and Standards for American Intelligence Professionals</i>

Glossary of Intelligence Acronyms, Titles and Terms used here.

(The total of acronyms, jargon and codes used by agencies could fill another book. In fact, they have filled many books. These are just a few terms used in this reader.)

AMAN – Israeli military intelligence.

CIA – Central Intelligence Agency (USA).

DIA – Defense Intelligence Agency (USA).

DO – The Directorate of Operations at CIA, now renamed the National Clandestine Service.

Ethicsphobia – Fear of ethics as a subject, or of ethical behavior itself.

FISA – Foreign Intelligence Surveillance Act (USA).

FOIA – Freedom of Information Act (USA).

IC – Intelligence Community.

INR – The Bureau of Intelligence and Research at the U.S. Department of State.

GCHQ – Government Communications Headquarters; or British signals intelligence group.

MOSSAD – Israeli foreign intelligence.

NDU – National Defense University (USA).

NIC – National Intelligence Council (USA).

NIE – National Intelligence Estimate (USA).

NIO – National Intelligence Officer (USA).

NSA – National Security Agency (USA).

ODNI – Office of the Director of National Intelligence (USA).

Politicization – A cardinal sin among intelligence analysts when policy contaminates analysis.

SIS – Senior Intelligence Service (USA).

SISME – Italy's main military intelligence group.

Shabak – Israeli domestic intelligence and counterintelligence, focused on Palestinians.

SNIE – Special National Intelligence Estimate (USA).

WMD – Weapons of Mass Destruction, generally nuclear, biological or chemical.

WPA – Whistleblower Protection Act (USA).

**The Process and a
Forward from the Judges:**

These essays were originally presented in a series of Roundtables on Intelligence Ethics for the intelligence studies section of the International Studies Association, on March 2, 2007. They were then presented to a panel of four judge/editors whose task was picking the best half among them for a reader designed to be short and accessible to a larger audience. Two are senior editors of major intelligence journals, one is a former Chancellor of America's National Intelligence University System, and one is an operator. All were offered a chance to comment, but most chose to remain anonymous for fairly obvious reasons. One of the world leaders in communicating inside views to the outside world offered the following thoughts to frame the difficult issues that make "intelligence ethics" appear like one of the world's great oxymorons.

Ethical Intelligence: A Contradiction in Terms?*Loch K. Johnson,**Regents Professor, University of Georgia, and Sr. Editor of Intelligence and National Security*

Hats off to Dr. Michael Andregg of the University of St. Thomas in St. Paul, Minnesota. He has gathered together a fine set of essays on intelligence ethics, written by an All-Star team of experienced intelligence scholars and practitioners. Their succinct observations drive to the heart of a subject that every intelligence scholar—indeed every citizen—ought to contemplate. As a *New York Times* reporter has put it, “Is there such a thing as an ethical spy?” (1)

It is tempting to dismiss “intelligence ethics” as a classic oxymoron. After all, intelligence can be an unsavory business. It is not just smart people who sit in government offices analyzing data to make sense of the world for the President and other policy officials (although this is a key aspect of the business). Intelligence also entails: stealing secret documents from adversaries; bribing disreputable individuals to spy against their own countries; planting propaganda in newspapers and magazines overseas; and plotting to overthrow foreign governments. What does all this have to do with morality?

It would be a mistake, though, to wave aside the subject, however rough and tumble the secret world of espionage may be. Not a single intelligence activity carried out by the United States is without a moral dimension. Those in the intelligence business (intelligence officers), as well as those responsible for guiding them (policy officials in the executive branch and lawmakers on Capitol Hill), may ignore ethics—but only at great peril to the nation’s reputation not to mention their own. The United States is a democracy, with a proud tradition of fair play in international affairs and a desire to be a respected world leader—not just for our military and economic might, but for our embrace of human values as well.

While Americans may be just as guilty of moral slips as anyone from time to time, most citizens in the United States take seriously our standing abroad and insist that some limits be placed on the activities of our spy agencies. That is why in 1974 the United States established a procedure for the careful review of all covert action proposals; why in 1976 President Gerald R. Ford signed an executive order that banned assassination plots; why in 1978 the Congress required a warrant process for domestic surveillance operations. That is why today the allegations about extraordinary renditions and secret CIA prisons abroad have created so much controversy across our nation and around the world. There are limits; there are ethical conditions that make sense. The United States is not North Korea. Therefore, we wrestle with the problem of where to draw bright ethical lines; and how to maintain our security while, at the same time, presenting ourselves to the world as a genuinely moral people.

For these reasons, a solid collection of essays on intelligence and ethics—a topic too long overlooked by scholars—is most welcomed. Each essay offers a different take on the subject, but several of the authors point to the failure of intelligence officers to tell the truth to policy officials as one of the most troubling ethical lapses in the American system. I join those who view this “politicization” of intelligence as the cardinal sin. There are other extremes too, that should be avoided by intelligence officers, and the nation needs to do a better job at defining the moral boundaries within which we expect our intelligence agencies to operate. These are some of the reasons why we need to pay attention to this subject, and I can think of no better place to start than with this insightful, lucidly written, and thoughtful collection.

(1) Scott Shane, “Outfitting Spies With New Tool: Moral Compass,” *NY Times* (Jan. 28, 2006), p. A1.

Forward of the editor: Why Bother with “Intelligence Ethics” Anyway?

Why should intelligence professionals attend to intelligence ethics? Some observe that there is a State Department for polite diplomacy – isn’t ethics for spies an oxymoron anyway? Practitioners know that when tension is high, rules fly. So why worry about ethics for spies?

Because spies will be happier human beings at the end of their careers if they attend to ethics, with healthier families and brighter prospects for the tranquil retirement most would like.

Because professionals in any field strive to be artists of their craft. To do that effectively in the hyper-complex world of international affairs and secret power systems requires moral artistry as well as technical, analytic and operational brilliance. Rationalization is not artistry.

Because civilization is in danger, and a contemptible reputation reduces allies, increases enemies and corrodes morale in the heartland.

The last few years have been particularly difficult on the American IC, which has received harsh criticism from many sectors. Some barbs reflected genuine and tragic failures. Some reflected policy failures looking for a scapegoat. But by any measure or perspective, the last few years have been quite difficult for intelligence professionals in the IC generally, and this has stimulated a moment of reflection and bureaucratic support for ‘ethics’ whatever that is.

One of the sadder secrets of the secret world is that tradecraft induces mental illness, not in everyone but in many, plus there is that morally corrosive environment some speak about. Divorce, alcoholism and other signs of serious stress are high among veterans of the IC, and professional ethics provides a real antidote to some of the most toxic causes of those problems. Thus we are serious when we say that you may retire more peacefully this way.

Every nation needs allies, and in a multipolar world with manifold dangers, holding the moral high ground has strategic importance. Coalition operations unfold much more smoothly in an atmosphere of trust that can be enhanced by enlightened leadership, or destroyed by reckless agents, agencies or leaders. Excellent intelligence liaisons can be the cement that holds coalitions together, like concrete, to accomplish some common task of life and death.

So I say that intelligence professionals **MUST** be interested in “intelligence ethics” (whatever that is – which is not completely clear or easy to understand) because decades of scandal have tarnished the images and reduced the effectiveness and power of even the largest intelligence agencies today. Anyone can be a thief or a thug; professionals strive to rise above that.

You should care about this subject because civilization is in danger, because the broader effort to professionalize intelligence affairs requires development of a real professional ethos, and because you as human beings will profit from attention to genuine ethics. Like aspirin or good hygiene, ethics can have many, diverse and sometimes quite unpredictable benefits.

U. S. President's Daily Briefs

Remarks prepared for ISA Roundtables on Intelligence Ethics, Chicago, March 2, 2007

By John Hollister Hedley, USA, CIA (retired), ODNI consultant and Senior Intelligence Service in the U.S. Intelligence Community.

My personal perspective on intelligence ethics focuses on the critical interface at the top of the process whereby intelligence informs policy on a daily basis. I did not realize it at the time, but the crux of this was previewed for me as a graduate student doing research at the Harry S. Truman Presidential Library. I looked up to see the former president himself—so proud of his then-new library—watching me scribbling away. “You’re telling it like it is, aren’t you?” he said with a smile. “You’re not just trying to make me look good!”

Truman’s jocular remark resonated some years later when I actually was in a position to make decisions about whether to make a President—or his policy, or a situation of particular interest to him—look better, if not good. My opportunities—my challenges—arose in the editing of intelligence reports and analysis for inclusion in the President's Daily Brief—the PDB—and when sitting down, one-on-one, with the most senior of policy readers of this most sensitive intelligence product. I see in these actions the ultimate test for the intelligence professional of telling truth to power.

In my professional experience, the ethics test came most significantly (and repeatedly) in these two ways: The first would involve an editorial decision—often made well after a customary workday would have ended—as to whether to pull a certain item, or to recast it by striking or inserting language that would modify its meaning. The second would come when meeting alone—at the beginning of the following workday or earlier—with the National Security Adviser, the Vice President, the Secretary of Defense, or the Chairman of the Joint Chiefs of Staff, to go over that morning’s PDB along with cables, intercepted messages, clandestine reports, and other material I had selected to update or complement the PDB itself. In each such case, there was an opportunity to distort or slant the message, to include or omit something, and—when alone with that senior policymaker—to interject comments that could stress a certain interpretation or soften it.

To me, these opportunities represent in microcosm the ultimate interface between intelligence and policy, in which ethics and integrity are uniquely intertwined with the intelligence officer's professional commitment to objectivity. Objectivity is the key to credibility—and in intelligence, credibility is the coin of the realm. As a baseball umpire is said to have declared when asked how he knew where the pitch was, "I calls 'em as I sees 'em." Intelligence professionals must call them as they see them—and be very careful how they see them. **Intelligence professionals must learn to check their political views and policy preferences at the door, and not allow them to color the rendering of a professional judgment at any step of the intelligence process.**

To a degree perhaps surprising to someone unfamiliar with the inner workings of a Washington intelligence organization, the working climate at CIA actually has, in my experience with the PDB, walled off the workplace from the bluster of partisan politics. Objectivity is the intelligence officer's byword, and intellectual honesty the core value. No matter how much one might personally wish to see policies that would expand healthcare on the one hand or cut taxes on the other (or both!), or whether one favors or opposes US military intervention in a particular crisis, when it comes to helping the government better understand what is going on in the world, the only rule to follow is to be scrupulously objective. There is no room in intelligence judgments for partisan advocacy or opposition. It is an article of faith that you do not craft an assessment the way you would like things to be, but let the chips fall where they may. Doing otherwise is neither wise nor effective.

The policymakers whom intelligence seeks to inform need to get the straight story, unvarnished. If they do not, the failure on the part of the purveyor of intelligence to tell it like it is will come to light—inevitably—and inevitably will exact a loss in credibility, which is far worse than a loss of popularity. Such a failure is likely to result in a loss of access as well as a loss of confidence, both of which are critical to performing the mission.

It has been my privilege to be involved in producing intelligence for eight Presidents – five Republicans and three Democrats – at degrees of distance ranging from halfway around the world to inside the White House Situation Room. Whatever the partisan rhetoric or the legislative agenda of these Presidents, without exception they have been serious and conscientious about their role in foreign policy and as commander in chief. Some I admired more than others, but each, in my view, has had the best of intentions. Obviously they have differed dramatically in style, policy choices, and effectiveness, **but each has needed the best intelligence he could get**—whether or not he always got it, wanted it, or heeded it.

One is tempted to observe that it would be nice if, for their part, Presidents and their inner circle of key advisers and policymakers, who realistically cannot be expected to be objective about the policies they pursue, would always think kindly of those who as a matter of professional ethics adhere steadfastly to that standard. Were the makers of policy to do so they would not—when the judgment calls are not going their way—apply any political litmus test for loyalty or succumb to scapegoating with regard to the messengers who bring news they need but do not want to hear.

But the attitude of policymakers is another story. This is a story—my own story—of intelligence ethics, based on my experience with personal choices made and those made by colleagues and by the boss in those years when I was directly involved in how intelligence was conveyed at the top, at the conclusion of the process of informing policymakers. The character of my associates and the spirit of professionalism at CIA reinforced the guiding principle of objectivity. Happily, my experiences came at a time when objectivity—if not always welcomed—was expected and counted upon by those receiving the PDB. It is my firm belief that an historian at some future date—a fair-minded historian—will be convinced that on this watch of which I was a part, the PDB—this unique vehicle for direct intelligence input—consistently met the test of integrity and the highest standard of intelligence ethics.

Intelligence Ethics in Israel

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Why do we need intelligence ethics?

The Israeli state gives its intelligence services very wide powers to combat terrorism and safeguard its democratic order. These powers include the rights to arrest, interrogate, conduct deep incursions into personal privacy and limit individual freedoms, even carry out assassinations. Laws and regulations strive to limit those powers and prevent their misuse or abuse. However, in the vast scope of intelligence activities, there are many times when those laws are not enough to guide or limit the activities of the individual intelligence officer. This is especially true of the case officer, who often works alone or in small groups, abroad, and at times without immediate access to his or her superiors. Intelligence officers often face factual problems and emotional dilemmas. Laws and regulations sometime provide solutions to problems but rarely answers to emotional dilemmas.

This is where intelligence ethics come in. These ethics provide a set of behavioral guidelines, based on certain beliefs and views regarding the role of intelligence in society and interactions between citizen and intelligence officer. Ethics begin where written laws and regulations end, and provide a set of ‘recommendations’ to guide the activities of intelligence officers. Unlike laws and service regulations, which are set in paper and enforced by investigatory powers and the courts, ethics depend much more on the willingness of individual officers to comply. These ethics are also more open to interpretation. Thus ethics develop and evolve over time, reflecting changes in the internal and external environments of intelligence activities.

This paper sets out to examine the evolution of intelligence ethics in Israel over a period of almost six decades, from 1948 to the present day. It will outline the main elements of intelligence ethics in Israel and highlight specific incidents or operations which impacted on the development of intelligence ethics. The paper will concentrate on the following five elements of intelligence ethics:

- Telling the truth
- Protecting your sources internally as well as externally
- Resisting internal cover-ups
- Respect for religions
- Individual moral character

Lying Outside – Telling Truth Inside

The most basic principle of intelligence ethics in Israel is telling the truth inside the organization. This element may seem self-explanatory, even banal, but the history of intelligence teaches us otherwise. The world of intelligence has been full of expert liars, and indeed, telling the truth is often considered the least desirable option. Agents and case officers, working under false identities over long periods of time, develop different perceptions of the ‘truth’ or ‘truths’ in plural. But the truth, or true and full reporting, is the core of effective intelligence work. Israeli intelligence officers are taught from the outset that they are expected to lie to the whole world, only not to their superiors and colleagues. Lies, half truths or omissions can endanger lives, wreck operations and worse of all, could taint assessments. For those who lie professionally, it not so easy to make a clear break between lying situations and situations of telling the truth. But telling the truth inside the organization is a basic element in Israeli intelligence ethics.

Protection of Sources – Externally and Internally

The dream of every case officer is to recruit and run the one source who would bring in the ‘golden nuggets’ of crucial information for the security of the state. Once a source is recruited, or an agent infiltrated, the temptation is to use him or her to the maximum. There is always an inherent balance between maximizing the use of any given source, on one hand, and increasing the risk of its exposure by the opposition, on the other. One element of intelligence ethics is to protect your source from internal as well as external threats. In practical terms, this means protecting the source not only from the enemy but also from over-exploitation by overzealous superiors within your own organization. Expediency could easily lead to abuse of human sources, and it is up to the case officer to resist, to the best of his or her powers, demands from above that could over-exploit the source and hasten his exposure.

‘Organizational Culture’ and Internal Cover-ups

Intelligence work is prone to mishaps, failures and catastrophes. Every intelligence service strives to keep such scandals secret from the media and public. The usual argument for keeping such affairs secret is that their exposure may adversely affect intelligence sources and methods. That is, of course, the price of democracy that a service must be prepared to pay for failing to prevent the problem in the first place.

Until the mid 1980s, the Israeli intelligence community had a reputation for effectively concealing its failures and scandals. Intelligence officers were not only forbidden to talk to the press but it was also considered unethical to tell the truth to the judicial authorities. A culture of cover-ups developed inside the services, which extended even to large-scale perjury. For example, during terrorism trials, Shabak officers consistently lied at courts when questioned about physical abuse of suspects during interrogation. Even extreme failures were successfully hushed up for decades.

Two events in the mid-1980s, known as the ‘Bus 300 Affair’ and the ‘Nafsu Affair’, dramatically changed that culture of cover-ups. In the Bus 300 Affair, Shabak officers were ordered to kill in cold blood two Palestinian terrorists who were captured alive after

kidnapping an Israeli bus. Only the insistence of senior Shabak officers forced an investigation and the resignation of the responsible head of Shabak. In the Nafsu Affair, an IDF officer, Izat Nafsu, was tortured by Shabak interrogators after being suspected of treason. Nafsu was sentenced to a long prison term based on false evidence, but later released by the Israeli Supreme Court. The ethics which developed out of these affairs make it almost impossible today for such events to take place.

Intelligence Ethics and the Jewish Religion

Religion plays an important part in Israeli everyday life, even though the majority of Israelis would not define themselves as religious. Religion has traditionally been part of the Zionist ethos, a mixture of Jewish tradition and modern democratic principles. Respect of religions is part of intelligence ethics in Israel. During their early training, intelligence officers are taught about religions and expected to respect other religions, even in extreme situations such as during physical interrogations or operations in the Palestinian areas.

Four key religious principles dictate Jewish attitudes towards security measures and risk-taking. Those principles are written in the Torah, the first five books of the Bible, and have become key elements in interpreting the Halacha, the Jewish laws:

- ***“He shall live by them (the laws)”***

The need to live, and not die, is an ultimate rationality for Jewish life. Life itself is sacrosanct and the continuity of life, therefore, is a religious decree. This principle is, however, waved in three cases, where it is considered better to die than be forced to: commit murder, incest or to worship other gods. Intelligence officers are expected to have respect for human lives, even of enemies.

- ***“He who comes to kill you, you shall kill him first”***

The need for pre-emptive defense, accentuated by the inferiority in numbers of the Jewish people throughout the ages, provides the justification for many intelligence operations.

- ***“Thou shall not stand idle while thy friend bleeds”***

Each individual bears social responsibility that extends to the entire community. This responsibility is not only in words but also by deeds. In practical terms, an intelligence officer is expected to risk himself for others. Refusal to carry out operations, even extremely dangerous ones, is almost unknown in Israel. It is an integral part of intelligence ethics to undertake risks not only for one's self but for others. This principle also extends to caring for injured comrades or the families of fallen officers, who remain a part of the wider 'intelligence family'.

- ***“Thou shall make war by cunning”***

The use of intelligence and covert action is a legitimate tool of war and defence policy. This verse is used as the motto of the Mossad and appears on its emblem. The Jewish religion recognizes the need for 'dirty tricks' and for activities which in other circumstances would have been unacceptable, in order to provide security for the community and preserve Jewish continuity. In the early decades of the Israeli intelligence community, religious people were rarely employed and almost never in operational positions. Religion did not play a significant role in everyday intelligence life. However, this trend is slowly changing in recent years,

especially in AMAN and the Shabak, where religious officers are nowadays employed even as case officers in the field. For those people, intelligence ethics sometime may come into conflict with religion. It has become acceptable for religious intelligence officers to consult with certain military chaplains or rabbis, without divulging operational secrets. Those military rabbis can then answer ethical and moral questions in accordance with the Jewish Halacha.

Individual Moral Standards

Intelligence officers in Israel have always been expected to have a higher moral standard than the average citizen. In the early years of the state, this arose out of a perception that intelligence personnel were among the social elite and expected to behave impeccably in their personal life. But personal life has its ups and downs, and despite the strict ethical code, many intelligence officers experienced personal crises and scandals. However, those were usually hushed up in order not to spoil the general image.

In more recent years ethics of moral standards have changed, mirroring deep changes in the wider Israeli society. Intelligence officers are no longer expected to be model family members and paragons of society, but at least to avoid scandalous divorces and noisy interpersonal affairs. In the late 1980s, the media reported sensationally on how the newly-appointed Head of the Shabak, Yaacov Perry, was playing the saxophone in internal parties. A renegade Mossad recruit, Victor Ostrovski, reported in a book on sex parties and orgies at Mossad headquarters. However, everyone even remotely acquainted with Israeli society knows such reports to be pure imagination, not for the lack of sexual drive but because Mossad employees are simply ordinary people, and that kind of behavior is not tolerated in Israeli society.

Conclusions

Intelligence ethics in Israel are a combination of four basic sources:

- Ideology (Zionism)
- Religion (Jewish)
- Democracy (tradition)
- Morals (personal)

The importance of intelligence ethics expand in the murky and shadowy world of counter-terrorism warfare. Laws and regulations are often insufficient, and ethics augment those rigid rules by providing a behavioral framework supported by basic elements of the individual Israeli identity: Zionist ideology, Jewish religion, democratic tradition and personal morals.

As part of their work, intelligence officers are often expected to carry out dangerous, illegal, even violent and deadly activities. Laws and service regulations are legal barriers to the excess of power. Ethics provide the moral base for carrying out such activities when justified by real security needs. In this sense, laws and ethics balance one another, providing the working environment for intelligence work.

Perhaps the strongest evidence of the importance of intelligence ethics is the open discussion in recent years about what constitute these ethics. Their importance will grow even further as the war on terrorism expands all over the world.

The Value of an Ethos for Intelligence Professionals

*By Albert C. Pierce, USA **

National Defense University, Washington, DC

This paper argues that the U.S. intelligence community would benefit from developing an ethos for the intelligence profession, analogous to the professional military ethic. The argument unfolds in four parts: (I) the U.S. intelligence community¹ finds itself now in a position analogous to that of the U.S. military 30 years ago, in the aftermath of the Vietnam War, (II) how the U.S. military brought itself out of the mid-1970s trough into which it had fallen, (III) what the U.S. intelligence community could do today to begin to heal itself, and (IV) what an ethos is and how one could help the intelligence community “get well.”

I. The U.S. military in the 1970s and the U.S. intelligence community (IC) today.

More than 20 years ago Richard E. Neustadt and Ernest R. May wrote a lucid and useful book, *Thinking in Time: The Uses of History for Decisionmakers*.² Its central thesis is that “use of history can stimulate imagination: Seeing the past can help one envision alternative futures.”³ I would argue that the situation the U.S. intelligence community finds itself in today is roughly analogous to that of the U.S. military 30 years ago, and that in thinking about this analogy, leaders and students of the intelligence community can extract some useful wisdom.

Towards the end of the U.S. involvement in Vietnam and in the years that followed its departure from that war-torn country, there was growing recognition, both outside the U.S. military and later within it, that the most powerful armed forces in the world (or the second most powerful, if one accepts a view common then that the Soviet Union had the most powerful military forces in the world) failed to defeat a third- or fourth-rate military power in a war that lasted (for the Americans) roughly a decade. These failures were more at the operational and strategic levels than at the tactical levels, but they were failures nonetheless. Further, the U.S. military had failed in its efforts to build an effective indigenous South Vietnamese military establishment. Perceptions of these military failures among the broader public led to a marked loss of public confidence in the U.S. military.

There were also significant failures internal to the military. As the military turned more introspective, it recognized its own failures in leadership development, personnel management (including rotation patterns for battlefield commanders in Vietnam) and training, among other areas. There were ethical failures as well. At the tactical and operational levels, they included reliance on (often fabricated) body counts in official reports, the creation of free-fire zones (often at disregard of the legitimate rights of Vietnamese non-combatants), and war crimes (sometimes perpetrated by small units and not just isolated individuals). At the strategic and political levels, there were breakdowns in providing professional military advice to political decisionmakers⁴ and public statements at odds with battlefield realities (“the light at the end of the tunnel”), the latter leading to loss of public confidence in senior military leadership.⁵

* The views expressed here are those of the author and do not necessarily reflect the views of the National Defense University or the Department of Defense.

Taken together, these failures raised serious questions about responsibility and accountability—who was responsible for which failures, and who was being held accountable?

Looking even briefly at the situation of the U.S. intelligence community today, one sees marked similarities. There is a widespread perception that the most formidable (and expensive) intelligence apparatus in the world failed to predict the 9-11 attacks and that it was almost, if not completely, wrong about weapons of mass destruction programs and arsenals in Iraq. The now-famous “slam dunk” conclusion by the Director of Central Intelligence only reinforced the public impression of the incompetence of the intelligence community.

To complete the parallels with the military and Vietnam, there were internal ethical failures within the intelligence community, which are only beginning to emerge in the public press and discourse. Among the most serious of these failures are matters of bias in the analysis of intelligence, politicization of intelligence, and how dissenting views were handled—all of which cut deeply into the professionalism of the intelligence business, where analysis should “exhibit rigorous treatment of evidence, inference, and judgment.”⁶

II. How the U.S. military redeemed and resurrected itself. There was no master plan; this was not a coordinated, top-down, senior leadership-driven effort. The work was done and the progress was made by various players at the mid- to senior-levels, in various places, sometimes working in parallel and even coordination with others, at other times working seemingly alone.⁷

For present purposes, let me highlight some key themes that emerge from those various efforts. The first theme, both in time-sequence and in importance, is introspection and self-reflection, a looking inward, not outward. The first wave of military reflection on the Vietnam experience largely pointed to others outside the military, blaming variously the press, the politicians, and the public: press coverage critical of the war and emphasizing the negative aspects turned the American people against the war, the politicians with their fingers in the wind lost their courage, and the American people lost heart. But the second wave looked inward, and came to different conclusions that were not necessarily inconsistent with those of the first wave, but which were more productive in the “physician-heal-thyself” mode.

A second theme emerged from the first—a back-to-basics drive that asked, “Who are we?” in addition to and more important than, “What did we do, or fail to do?” This led serious military professionals back to reading military history and military theory, a search for the profession’s roots and reason for being. It also led to some clear-eyed analyses of internal problems, such as the use of quantitative measures (even for things that were essentially unquantifiable), personnel policies, and leadership development. Such studies, often conducted by relatively junior officers, led to major changes in the way the various services did business.

This led to the third theme—the revitalization of professional military education, in particular the critical role of the various command-and-staff colleges and war colleges. There was a renaissance of the study of history, theory, and strategy, and new emphasis on topics that had been heretofore not central to the curricula of these schools, including the media, civil-military relations, ethics, and the Law of War. This was an *intellectual* effort that involved not only renovating of these schools’ curricula, but also producing a number of books by military professionals that analyzed and critiqued the *military’s* performance during Vietnam.⁸

Professional military journals, many of them published by the various war colleges, became another source of intellectual ferment and professional introspection.

Taken together, these initiatives, and the profound changes they led to, produced the armed forces of the 1990s and beyond, whose performance in the 1991 Gulf War was a far cry from that in Vietnam—especially at the operational and strategic levels.

III. The makings of a “get-well” plan for U.S. intelligence today. In one way the intelligence community’s challenge is more complex and demanding than that of the military 30 years ago: Today’s work has to be done in the context of the most comprehensive reorganization of the intelligence community since the late 1940s; in the 1970s the military did not have to deal with a reorganization anywhere near this one in scale and scope. Further, the intelligence community today has to come to grips with these problems *in the midst* of an ongoing conflict, in contrast to what was done by the military 30 years ago in a *post-war* environment. Nonetheless the basic concepts and the recommended (by me anyway) approach are the same.

Put briefly here, the intelligence community needs to engage in serious introspection and self-reflection, and get beyond blaming the political leaders, the press, and others for the intelligence professionals’ own failures. This must be a bottom-up process at least as much as a top-down one, and mid- to senior-level career professionals, who are the leadership of the future, must take the initiative. There are real limits to what can be done, or imposed, from above; the secret to success is getting substantive and procedural buy-in from down below in the career ranks. Professional education/development must have a resurgence and renaissance, and the internal professional journals can and should play a key role. Outsiders can and will play a role, but the real impetus, energy, and work must come from and be done within the community.

One major theme of this effort should be to begin to think of intelligence as a *profession*, like medicine, the clergy, the law, or the military. A central element of all professions is an *ethos*, which leads me to the last section of this paper.

IV. An Ethos for Intelligence. An *ethos* is broader and deeper than a professional code of ethics. Let me address two aspects here: What an ethos is and does, and how one might go about developing one.

First, what is an ethos, and what does it do? The *Encyclopedia of Ethics* says that the word *ethos* comes from the Greek word for *character*. On the individual level, Aristotle “presupposes that there is an *ethos*; this ethos implies that virtue does not consist just in knowing what is to be done; rather, knowledge of virtue must lead to an actual virtuous life. This knowledge itself depends on the manner in which a man is, has made himself to be.”⁹ An ethos is more about *who you are* than about *what you do*. A professional code of ethics, which is best developed in light of and derived from an ethos, is about what you do.

The philosopher Michael Boylan says that in ancient Greece, *ethos* meant “what is customary. Customs and expected behaviors lend much of the flavor that any profession is said to possess....The ethos is the standard-bearer for the profession.”¹⁰ Boylan cites other descriptions of an ethos: “culturally embedded norms that guide and direct that culture” and

“a web of values, meanings, purposes, expectations, and obligations... [that] legitimize the operating norms of any society, including a profession.”¹¹ An ethos, then, informs and guides the development of a code of professional ethics.

Let me underscore a point already made: intelligence professionals need to think of themselves as constituting a *profession*, like medicine, the clergy, the law, and the military—a profession that transcends functional divisions (analysts, scientists, operatives, and so forth) as well as organizational divisions (CIA, DIA, NSA, and so forth). For members of this profession, their ethos would tell them *who they are*, not *what they do*—the latter is subject to, even defined by, the functional and organizational divisions that now characterize the intelligence community.

Second, a few brief words on how to develop such an ethos. The military experience is informative here, especially since it too exists in the broader setting of public/government service. An ethos is organic, and it must be grown from within, in what will be more of a bottom-up than a top-down process. It will require serious and protracted introspection and self-reflection that are intellectual in nature. Here too the role of professional education and development will be more helpful, even necessary, than any set of values written and promulgated from on-high. An ethos for intelligence should anchor the profession of intelligence inside the domain of national security, which in turn sits inside the domain of public service.

In summary, the U.S. intelligence community can and should learn from a historical analogy—the U.S. military in the 1970s—and it should include as a central element in its own “get-well” plan developing a concept of itself as a profession, which, like all professions, has an articulated ethos.

¹ When I use “intelligence community” here, I do not mean the overall organizational structure of the various intelligence agencies, but rather the entire group of intelligence professionals from the various agencies.

² The Free Press, 1986.

³ *Ibid.*, p. xv.

⁴ See especially H.R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff, and the Lies that Led to Vietnam*, Harper Perennial, 1997.

⁵ See Jodie T. Allen, Nilanthi Samaranayake, and James Albright, Jr., “Iraq and Vietnam: A Crucial Difference in Opinion,” Pew Research Center, March 22, 2007, available at <http://pewresearch.org/pubs/432/iraq-and-vietnam-a-crucial-difference-in-opinion>.

⁶ Jack Davis, “Defining the Analytic Mission: Facts, Findings, Forecasts, and Fortunetelling,” in *Intelligence and the National Security Strategist*, Roger Z. George and Robert D. Kline, eds., Rowman & Littlefield Publishers, Inc., 2006, p. 295.

⁷ Important parts of efforts, especially inside the U.S. Army, are well told in James Kitfield, *Prodigal Soldiers: How the Generation of Officers Born of Vietnam Revolutionized the American Style of War*, Potomac Books, Inc., 1995.

⁸ Three of the best of these are, in my opinion, Colonel Harry G. Summers, Jr., *On Strategy: The Vietnam War in Context*, first published by the Strategic Studies Institute at the U.S. Army War College in 1981; Lt Gen Bruce Palmer, Jr., *The 25-year War: America’s Role in Vietnam*, University Press of Kentucky, 1984; and Major Andrew F. Krepinevich, Jr., *The Army in Vietnam*, The Johns Hopkins University Press, 1986.

⁹ Joseph Kuckelmans, “History of Western Ethics: II. Twentieth-Century Continental, Part I,” *Encyclopedia of Ethics, Vol. I*, Lawrence C. Becker and Charlotte B. Becker, eds., Garland Publishing, Inc., 1992, p. 525.

¹⁰ *Basic Ethics*, Prentice Hall, 2000, p. 154.

¹¹ *Ibid.*

Special Ethics for Special Services? ^H

By Dr. Stefan Brem

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Recent scholarly and media attention has been directed toward incidents where intelligence services in several Western democracies have allegedly misbehaved. On both sides of the Atlantic, intelligence services have made news – not necessarily in support of their original mission. Most prominently, in the United States, as the primary driver in the war against terrorism, domestic surveillance programs, renditions, secret prisons, pictures from Abu Ghraib and Guantànamo have raised opposition both domestically and internationally against this very campaign and have severely undermined the morale in the U.S. intelligence community. A journalist-intelligence connection has put into question Germany’s peaceful stance over Iraq. And in the Clearstream scandal over financial misbehavior and corruption with the alleged, but unproven involvement of French presidential candidate, Nicolas Sarkozy—who won the election on May 6, 2007 against the Socialist candidate Segolène Royal—the French domestic intelligence service also played an inglorious role. More countries and cases could be cited and they all raise the question whether intelligence services have different moral standards than other government agencies and private actors. This essay addresses that issue and asks whether there is actually a need (much less a necessity) for a distinct set of moral standards and ethics for intelligence services and, if yes, how they should be framed. It tries to assess the need for ‘special intelligence ethics’ vs. the general responsibility as human being, citizen and public employee to behave ethically.

I will argue in this essay that *there is no need for special ethics*. But clear rules, procedures and oversight are required for a well functioning and reliable intelligence community.

In this essay I will not further elaborate on general ethical principles. Everybody has a sense of it, but to define it—in a nutshell—is not that easy. Similarly, I will not cover particular areas of intelligence ethics, such as ethics of intelligence sharing, ethics of covert actions, ethics and the intelligence analyst, etc. as there are already other scholars and practitioners contributing more authoritatively on these issues to the project.

What I will do, however, is focus on the dilemma between protecting the country vs. obeying the law (and by extension assuring people’s rights to life and integrity). Thereby, I would argue that you can reconcile this dilemma with the “do no harm” principle as practiced with the Hippocratic Oath in the medical profession. As a secondary principle “lesser evil” standards should be applied. ¹

^H The views expressed in this essay do not necessarily reflect the official position of the Swiss Government or its agencies and offices

1. “Intelligence Ethics: laying a foundation for the second oldest profession” by Michael Andregg, in: Handbook of Intelligence Studies, edited by Loch Johnson, Routledge (Taylor and Francis) London and New York, 2007.

This notion also reflects the general ideas of international humanitarian law (as part of the broader *Just War* theory), namely: discrimination and proportionality. This means—according to *jus in bello*—in case of an armed conflict that military means should discriminate between combatants and civilians (first principle) and be proportional to the threat and the goals (second principle).

More specifically, how can this dilemma be solved? There are several international treaties and agreements that cover for example torture both in the area of international humanitarian law and human rights: The Universal Declaration of Human Rights (1948), The International Covenant on Civil and Political Rights (1966), The Convention against Torture (1984), The Geneva Conventions (1949) and The Additional Protocols (1977).

There are also more specific international guidelines such as the *Guidelines on Human Rights and the Fight against Terrorism* that were adopted by the Committee of Ministers of the Council of Europe on 11 July, 2002. ²

What can be derived from these international agreements and national laws and regulations (in particular the constitution) and how can they be boiled down to specific rules, procedures and oversight over the intelligence services? At the outset, it is absolutely clear that these legal institutions are not the same as an ethical code, but I would argue that they are mutually dependent and re-enforcing each other.

It is all too obvious that intelligence services do have special powers (that is part of their tasks), but they have to be covered by the law and there has to be accountability, transparency and oversight.

In this sense the aforementioned guidelines by the Council of Europe lists several important principles from which I want to highlight just five:

- ***Prohibition of arbitrariness:*** All measures taken by states to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision (para. II);
- ***Lawfulness of anti-terrorist measures:*** 1. All measures taken by states to combat terrorism must be lawful. 2. When a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued (para. III);
- ***Absolute prohibition of torture:*** The use of torture or of inhuman or degrading treatment or punishment, is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted (para. IV);

2. The “Guidelines on Human Rights and the Fight against Terrorism” can be retrieved on the following website: http://www.coe.int/t/dc/files/themes/terrorism/lignes_directrices_en.asp.

- ***Provisions on collection and processing of personal data:*** Within the context of the fight against terrorism, the collection and the processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing, in particular: (i) are governed by appropriate provisions of domestic law; (ii) are proportionate to the aim for which the collection and the processing were foreseen; (iii) may be subject to supervision by an external independent authority (para. V); and
- ***Measures that interfere with privacy:*** 1. Measures used in the fight against terrorism that interfere with privacy (in particular body searches, house searches, bugging, telephone tapping, surveillance of correspondence and use of undercover agents) must be provided for by law. It must be possible to challenge the lawfulness of these measures before a court. 2. Measures taken to fight terrorism must be planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force and, within this framework, the use of arms by the security forces must be strictly proportionate to the aim of protecting persons against unlawful violence or to the necessity of carrying out a lawful arrest (para. VI).

How could this approach work in reality? The ongoing intelligence reform processes – in particular in Eastern Europe – show the importance of a legal framework. Switzerland is also active in this area. In the context of its broader mandate on Security Sector Reform (SSR), the Geneva Centre for the Democratic Control of Armed Forces (DCAF)³ supports several countries particularly in South-Eastern Europe in the area of intelligence reform (capacity building, empowerment of the parliament, establishing legal instruments, etc.). It is clear that new laws and reform in itself do not automatically mean compliance and implementation, but it is an important first step and *sine qua non* in the important endeavor to create intelligence ethics in these transformation countries. Intelligence reform and ethics are long-term endeavors and allegedly short-term gains by unethical or even illegal measures have to be put into context with the long-term negative consequences. The blowback of Abu Ghraib and Guantànamo, secret prisons and renditions more than consume the potential benefits of allegedly gained tactical information—if proven true at all.

In the context of counter-terrorism—in the end—it is all about “winning hearts and minds” and not about “all gloves off.”

3. For further information on DCAF’s activities you may visit its website at www.dcaf.ch. See also Hans Born and Ian Leigh. Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies. Publishing House of the Parliament of Norway, Oslo, 2005.

The “New” Ethics of Covert Action

By Gregory F. Treverton, ex-National Intelligence Council (NIC)(USA), currently Director of RAND Corporation’s Center for Global Risk and Security.

In the bad old days of the Cold War, the argument for covert action – that is, actions that might not be secret but where the link to the United States government was not apparent or acknowledged – boiled down to “if they, the Soviets can do it, so can (or must) we.” That rationale never was entirely satisfactory, on either ethical or instrumental grounds. After the fall of communism and 9/11, covert action has changed in two main ways, one of which eases ethical considerations while the other raises new ones, of accountability in a democracy if not ethics.

First, the scope for doing openly what might earlier have been done covertly has increased dramatically since the 1970s. Sovereignty has become less absolute, and international law has come to recognize people, not just nation-states. In that sense, international law has moved in a very “American” direction, even if Americans do not always like the results, as with the creation of the International Criminal Court. But international practice, if not law, has come to recognize that some behavior by national leaders justifies external intervention, even with force of arms.

In the 1980s, the Reagan administration was moved to create the National Endowment for Democracy (NED), on the model of the (then West) German party foundations, like the Konrad Adenauer Stiftung. They are instruments of the major parties but are supported openly by government money. More important, the endowment now works with scores of kindred organizations, both from other governments and from the private sector. For instance, before Slobodan Milosevic fell from power in 2000, the endowment and other U.S. government sources openly funded opposition parties and groups to the tune of some \$25 million.

Indeed, the whole operation was almost a carbon copy, done overtly, of what the United States had done earlier covertly, in Chile for instance. The post-mortem could have been written by a CIA operative about Chile – for instance: “Foreign assistance should focus not only on political parties but should continue to support a broad range of nongovernmental organizations, labor unions, think tanks, and media.”

To be sure, openness and company do not settle the question of whether intervention is justified. But they do make it easier to debate the question. The CIA seems all but out of the business of Chile-style political actions to sustain opposition forces or overturn regimes. In 2006, the Bush administration proposed major funding in support of Iranian opposition groups, but it did so openly, through the State Department. The imperative to act covertly will return because open support from the United States would be the kiss of death for almost any group in the Arab world. But the bias toward openness should remain.

In fact, the other big change after 9/11 is that most covert actions are not very secret. They are mostly paramilitary actions in support of broader, mostly military counterterrorism

operations. The campaign against terror has thrown CIA covert operators and Pentagon Special Forces together in new ways. The successes of that cooperation, in Afghanistan and Iraq, have been impressive. Because the operations are not very secret and because they are part of the broader campaign against a fearsome foe – transnational terrorism – the questions of how to square them with America’s values are less evident. Yet the process is making for less clarity about who does what, and why. More important, it is complicating who *authorizes* lethal force and on what basis.

CIA covert operations require a presidential finding, one transferred in secret to the relevant committees of Congress. Existing findings apparently provided authorization for the CIA to conduct *Predator* attacks on suspected terrorists in 2002 and 2006. By contrast, a similar operation conducted by the military special forces could be set in motion simply by the chain of command from the president as commander-in-chief. That difference raises two issues of authorization and accountability.

One is whether the finding process has become a sham in an era of terrorism. The difference in authorization may be less than meets the eye if findings have become so broad in the war on terror as to cover almost any CIA operation, anywhere. If so, however, the problem lies with the breadth of the findings. If they are so broad as to cover almost anything, then the finding process has become a sham.

The more specific concern is military actions in countries where the U.S. military is not already fighting. Where the war on terror is a hot war, in Afghanistan and Iraq, for instance, both broad findings for the CIA and discretion for the commander-in-chief may be defensible. Yet, the prevailing legislation, the Intelligence Authorization Act of 1991, exempted “traditional military activities” from the finding process. While that phrase is not defined in the act, the conference report indicated that it included actions related to “anticipated” hostilities. The report defined “anticipated” hostilities as those for which operational planning has already been approved; covert actions would then become part of preparing the battlespace.

However, at various times Pentagon officials have insisted that the language gives them license for activities years in advance of any overt military involvement. This debate plays to fault lines in Congress. While the intelligence committees have tried to assert that any covert special operations action in a country where U.S. forces are not already present is a covert action, the armed services committees control funding for such activities. Gridlock thus results.

In the scheme of things, this debate may be a relatively minor piece of a much larger debate about American tactics in the badly misnamed “war on terror.” **But this piece could be fixed, and it should be.** In general, if the U.S. is to conduct covert operations, they should be done by the CIA. Not only does it have the capability, but any proposal passes through several levels of review within the Agency, then to interagency review before going to the President. In those – rare – circumstances when special forces are required to conduct an operation where no U.S. forces are engaged in fighting, it should be considered a covert action and approved through the finding process.

Ethics Phobia and the U.S. Intelligence Community: Just Say “No”

By Jan Goldman, National Defense Intelligence College, USA

Ethicsphobia exists in the United States Intelligence Community. It is a largely undiagnosed affliction that needs to be recognized if it is to be prevented from spreading. Already, it has taken hold of individuals outside of the intelligence community; but this ailment also occurs inside the intelligence community. It probably will not be wiped out in our lifetime, but with research and a better understanding of the problem, it might be controlled.

What is ethicsphobia? Well, ethics is a set of principles or standards that one lives by to conduct their daily lives; professional ethics is a set of principles or standards that guide the conduct of how one performs their work. A phobia is defined as a persistent, abnormal, and irrational fear of a specific thing or situation that compels one to avoid it, despite the awareness and reassurance that it is not dangerous. Examples include the fear of spiders known as *arachnophobia*, the fear of heights known as *acrophobia*, and *catagelophobia*, the fear of being ridiculed. Ethicsphobia is the fear of performing ethical conduct.

Nobody knows how or where a phobia comes from and ethicsphobia as it relates to the US Intelligence Community has no established origin. Nathan Hale, the revolutionary war hero whose statue stands in front of the C.I.A. famously announced, *"I only regret that I have but one life to lose for my country"* just before being executed by the British for being a spy. He also said, *"Every kind of service, necessary to the public good, becomes honorable by being necessary."* This has led some people to erroneously believe, that the utilitarian concept as it applies to the intelligence community is that the greater good for the most individuals is by and of itself ethical. Consequently, intelligence work holds no ethical boundaries because the work requires that there be no boundaries since it relates to the protection of a nation and its citizens. Former Director of Central Intelligence Allen Dulles once said, *"The last thing we can afford to do today [in 1963] is to put our intelligence in chains. Its protective and informative role is indispensable in an era of unique and continuing danger."* More succinctly, according to William 'Bill' Donovan, considered by many as the father of central intelligence in the United States after World War II, *"In an age of bullies, we cannot afford to be sissies."* The perception that ethics has no role in intelligence work can be seen from U.S. Circuit Trial Judge Richard Posner, an astute observer of national security affairs who recently wrote *"Intelligence is the second oldest profession, only with fewer morals."*

It is unfortunate that at the institutional level, ethicsphobia can be seen at several intelligence agencies, where ethics is not something to be promoted, celebrated, and displayed, but rather feared, hidden, and closely guarded. At one intelligence agency, when I called to ask for their code of ethics, I was told "it is only available to agency employees"; while another agency informed me that I would need to file a request under the Freedom of Information Act. Yet another ethics officer informed me that "if it isn't a rule or regulation, it was considered ethics." Of course, it is important to understand that 'ethics begin where rules and regulations end.' For most Americans, law and ethics are intertwined, leading most people erroneously to believe that if it is legal it must be ethical and all things ethical are legal. The Office of Government Ethics, staffed by lawyers, publishes the rules and regulations of conduct for all federal government employees. But law and ethics may at times diverge, and in intelligence work it is not uncommon to view this work outside the boundaries of legal constraint, thus, it is easy to see how it may also be considered unethical work.

Recently, in a survey of U.S. Army interrogators, they were asked: 'If the United States amended the laws and allowed torture in some instances to gain intelligence information, would you be willing to participate in such an activity, provided it was completely legal?' The response was approximately 64 percent of the interrogators said 'no', while 33 percent said 'yes'. In January 2006, the International Intelligence Ethics Association was formed and held the first conference on the role of ethics in intelligence and national security. Typical of the misconception of the conference was this comment on an internet list server devoted to national security affairs and operated by military intelligence personnel. One respondent wrote, about the conference..."... the people who wish to talk about 'the legal and ethical aspects of intelligence operations' these are the very people who don't understand or appreciate our freedoms and the sacrifice and cost that those freedoms carry and don't understand the paradox of our profession. (Or perhaps they do understand the paradox and wish to use the law to destroy what is left of our unique or covert capabilities?)". In the New York Times, which carried coverage of the conference on the front page, this comment from a former CIA operative with 33 years experience was also recorded: *"Depending on where you're coming from, the whole business of espionage is unethical...intelligence ethics is an oxymoron. It's not an issue. It never was and never will be, not if you want a real spy service."*

Why must a 'real spy service' require that its members have no ethics? It is important to understand that while the work may be considered unethical, we need to distinguish how we conduct our work if that work is to be considered conducted by professionals. As professionals it is important that intelligence workers embrace ethics – not fear it!

Ethics does have a role to play in intelligence, just like any profession seeking legitimacy. Ethics does not have to be considered a hindrance to the profession, but rather a facilitator of getting and keeping the best and the brightest individuals this country has in the service of their nation. For most professions, one of the key components is to have a "code of ethics." Sociological elements to be considered a profession usually comprise at least 6 attributes. These attributes include extensive training, an intellectual component, service to society, autonomy of work, credentialing, and a code of ethics. Some professions include law with a code of ethics established by the American Bar Association, the Hippocratic Oath for medicine; as well as codes of ethics for chemical engineers, anthropologists, journalists and nurses, to name a few professions. For the intelligence professional, there is no established widespread code of ethics.

In conclusion, and on an optimistic note, I am extremely confident that ethicsphobia likely applies to an extremely small percentage of individuals in the Intelligence Community. However, the perception of the work that is performed in the service of this nation should not be confused with how that work is performed. To overcome ethicsphobia in the U.S. Intelligence Community it must be understood that ethics does have a position in the individual's conduct in the performance of their job by both those that perform that work, and those that are the consumers of this work. Intelligence is a profession that includes understanding tradecraft, skills, and knowledge particular to performing work for national security and ethical conduct must be embraced not feared in performing that work.

The views expressed in this article are those of the author and do not reflect the official policy or position of the Defense Intelligence Agency, Department of Defense or the US Government.

Intelligence Officers as Professionals

By Virendra Sahai Verma, Col. (retired), Army of India, 30 years military intelligence, Currently a research scholar at Jawaharlal Nehru University, New Delhi, India.

“A Profession has become a moral unit positing certain values and ideals which guide the members in their dealings with laymen.”¹

Intelligence is one of the three oldest professions. The Indian classic, Kautalaya's *The Arthashastra*, written about 5000 years ago advises the King that, “After Royal Councilors and ministers have been appointed, the creation of an entire network of secret agents was the next task, because they were necessary for the security of the kingdom and for the furthering of the objective.”² Approximately 2300 years ago in China a lineage of military leaders had put their collective wisdom into written form for the first time into a text which in the west is called, “*The Art of War*”; in China it is known as the “Sun Tzu.”³

The modern intelligence officer is a professional person in the same manner as that of physician, lawyer and architect. The recognition of intelligence officers as a professional body gives it a unique dimension to its responsibilities for society and the nation. A professional pursues a “sense of being called to a work that is fulfilling of self and that helps and changes the lives of others.”⁴ The businessman may earn more money, and the politician may get more power, but a professional commands more respect. Huntington defines three distinguishing characteristics of a profession, namely, “expertise, responsibility and corporateness.”⁵

Expertise

The professional man is an expert with specialized knowledge which is acquired after prolonged education and experience. Professional knowledge has a history and is capable of preservation in writing. The members of the profession keep in contact with each other by journals, conferences and circulation between practice and teaching.

The intelligence officer is an expert in, one, planning and execution of collection, analysis and assessment of information, two, planning and execution of special operations, three, advice to government on threat analysis and help in formulation of external and internal policies of the government as per its resources. The intelligence officer requires, in fact more than other professionals, a general educational background of history, politics, economics, international relations, sociology and psychology and a sound knowledge of intelligence tradecraft and skills.

Responsibility

The essential and general character of his service and monopoly of his skill impose upon the professional man the responsibility to perform the service when required by society. This

social responsibility distinguishes the professional man from other experts. They have only intellectual skills. The profession calls upon its members to follow certain values and ideals. The ethics of the profession are either codified or in unwritten form.

The motivation of the professional intelligence officer is not money alone. He is inspired to perfect himself in service to the society and the nation. Integrity would thus be the most desirable quality. To quote Sun Tzu, *“Knowledge leads to victory and spies lead to knowledge. The goal is not merely advance warning, but understanding how something set in motion will turn out.”*⁶ The Treatise further says about a responsible role of intelligence, *“Each day an army in the field costs one thousand gold pieces. Yet real knowledge of the enemy can give you victory in a day. Such knowledge can only be obtained through spies.”*⁶

Corporate Character

A profession has organic unity and is conscious as a group. The membership of a professional organization makes the vocation different from others. The organization may be associations which have written codes or may be bureaucratic in character with professional responsibility to society with unwritten or written codes.

Intelligence officers are professionals as members of bureaucratic organizations. They are much more than a creation of the state. The professional is expected to make his or her own judgment of the issues based on past experience and knowledge. The cadres below officers in the intelligence services are part of the organization but are not professionals. Some of them like photo experts, interpreters, or interrogators are valued specialists but are not managers. Their work is important, but does not meet all the requisites of a profession.

Intelligence Officers as Professionals

The vocation of an officer in the intelligence services meets the principal criteria of professionalism. In practice, no vocation, not even medicine and law would meet all these characteristics. The motto of the intelligence services ought to be ‘Serve the Nation with Responsibility.’

Professional Ethics

A profession must capture the full dedication of those who are competent both morally and intellectually to meet the challenges. It must offer the most talented a complete and fulfilling vocation. “In the hands of morally insensitive persons the noble purpose of the profession would fall with tragic consequences to the state and society and to humanity in general.”⁷

There would be clash between the profession and the consumer. The consumer may be a state or a member of the society. Both client and advocate want to win. A lawyer is trained to exercise caution amidst confusion. He takes pleasure in a fine point of law. It is a duty of the professional to reduce the difference and present the reality to the consumer. After setting the highest standards of professional competence, the intelligence officer must give his true assessment of the situation. Thereafter, the superior political wisdom of the statesman must prevail.

Professions Under Siege

Not long ago, Bernard Shaw made a somewhat tense charge, “Every profession is a *conspiracy* against laity.” This happens when it begins to lose the public faith and regard. The profession is a monopoly. This is obtained by license to practice and form a guild or trade union. Most of the public professions are under attack. The problem in contemporary professions is lack of ethics and competence. They will not recover without recovery of mental and moral force.

Intelligence services are under severe criticism, especially after Iraq, for allowing misuse by political leadership. There are similar instances of such misuse in other countries including my own, India. Distorted values, lack of professional integrity and corruption have affected the image of intelligence. Even some of the “most skillful” performances of “subduing the other’s military without battle,” in the words of Sun Tzu, have been overshadowed.

Intelligence Reforms

The age of virtue is prevailing. Every profession is trying to reform itself for providing honest and committed service to the society. There is a universal realization that intelligence advice with malice is of no benefit to the sponsors. It certainly harms the target country. If there is one profession which needs sound ethics it is intelligence. This is because a wrong decision can cause calamitous damage to the sponsor and to the world in general. History has numerous examples. Vietnam, when the CIA continued to feed misleading reports to check communism. This prolonged US involvement in a failed war. Intelligence failed to judge the political pulse of Iran during the Shah’s rule. Covert operations in Angola in 1975 were incompatible with American principles and ideology. In 1956, at Cuba, the CIA’s support to Batista turned Fidel Castro towards Russia. Later, the Bay of Pigs invasion in April, 1961 is another example of the CIA misjudging intelligence. The Indian Army’s induction in Sri Lanka in 1987 following an accord between Prime Minister Rajiv Gandhi and President Jaywardhene was done with “no background intelligence work.”⁸ This may be the closest Indian example to the U.S. misadventure in Iraq. It resulted in pulling back Indian troops after three years and caused 1155 soldiers to be killed and many more injured.

Intelligence agencies operate in a secret and unaccountable world. It is generally not possible to know their aims and activities. Similarly tax payers would not know whether they are providing value for money. They have unlimited funds at their disposal. As per one estimate, the world wide cost of intelligence fraternity is \$30 billion a year.^{9*} It is therefore very important that the officers should be guided by professional ethics. * [editor’s note: This was in 1989; the current global total is closer to \$100 billion per year, half spent by the U.S.]

Integrity

Integrity will be the most important ingredient in an intelligence officer. He works in the province of uncertainty. He must forego personal advantage, lucre, and above all ego. His responsibility is to enhance the security of state. He must have moral courage to mention the truth, even when truth is quite unpopular. Institutional practices which place individual integrity under unwise and unnecessary stress must be removed by intelligence reforms.

“Duty, Honour and Country”

This well known, powerful statement at the US Military Academy at West Point echoes “Honour, Safety and Wellbeing of the Nation comes first, of Troops next, and last is Your Own” taught at the Indian Military Academy in Dehradun. Both have been strong influences on the ethical behavior of thousands of military officers of their armed forces. There is need to have similar exhortations at professional academies graduating intelligence officers with a strong emphasis on integrity.

Self Policing and Leadership

Self policing like the Hippocratic Oath for doctors can benefit. However, this would not be sufficient. Intelligence men, more than others due to the immense power they hold, need moral and intellectual leadership. There are many scattered men and women of talent in intelligence services who are willing to be led in the path of integrity and morality by enlightened leadership.

“Laws of War”

“Laws of War” are based on custom and usage for humanity and public consciousness. They have inspired civilized people of the World. Treaties such as The Hague and Geneva Conventions are based on these customs and usages. However, “The Laws of War” apply only in times of hostilities. This would not cover overt and covert intelligence activities. Intelligence services are gaining in power across the World. In the future, unless some conventions for intelligence agencies are developed by the civilized world along the lines of the “Laws of War” and moral self restrictions are placed, humanity will see much more devastation. There is an urgent need to bring their operations under some such moral conventions. It is a fact that “Laws of War” are often violated or ignored, but humankind is better with them than without.

Reshaped Intelligence

Like any other modern profession, intelligence services have to move out from cold war outlooks to fit with the information age of openness. In the immediate future, at least for ten to fifteen years, our focus is likely to be on terrorist groups and their activities, and rogue states. Economics will be the new driver, not politics. The new objectives will need more open sources like travelers and residents of the region. Information should be shared with NGO’s working in the region. Outstanding academics should be hired for in-depth study of foreign policy issues. Similarly economic analysts from the stock market may provide valuable inputs which for an intelligence analyst may be difficult due to their training and inward-looking approach to information.

Fee for Service

The widespread concern about the high cost of intelligence leads one to alternatives. One such alternative is ‘fee for service.’ The present system leads to excess information, and deficits of wisdom. It promotes tendencies to classify information as intelligence which is openly available. The cure for this problem is the private information industry. The secret of

their success lies in their ability to interact more with consumers and accommodate with market demand. The fee would provide a better prospect for quality information than ‘free goods.’ The problem would be in tactical information. The market may also become dry and we can not afford the same. However, market principles would be useful to “empower the consumer through market like arrangements while recognizing the limits of those arrangements.”¹⁰ Slim and efficient agencies function better than empire building agencies.

Notes:

1. Samuel P Huntington, ‘*Officership as a Profession*’, editor, Malham M Wakin, War, Morality, and the Military Profession, London, 1986, pp 23.
 2. Kautalaya, *The Aarthashastra*, Penguin classics, Ed LN Rangarajan, Calcutta, 1992, pp 498.
 3. ‘Conflict is an inescapable part of human life,’ Sun Tzu teaches, ‘since aggression and response can only lead to destruction. We must learn to work with conflict in a more profound way, crucial to this is knowledge.’ *The Art of War*, Sun Tzu, The Denna Translation, Shambala, Boston and London, 2002, pp 221.
 4. Lerner Max, *The Shame of the Professions*, in Wakin, editor, London, 1986 above, pp 138.
 5. Huntington, pp 24. Huntington had discovered in this essay only one volume in English which analyzes officership as a profession.: Michael Lewis, *England’s Sea officers: The Study of the Naval Profession, London 1939*. He argues in this paper that intelligence officers have a “higher calling” in the service of society and is a profession.
 6. Sun Tzu, *The Art of War*, pp 219.
 7. Jacques Barzun, *Professions under Siege*, ed. Wakin, 1986 above, pp 123.
 8. Kadian Rajesh, *India’s Sri Lanka Fiasco-Peace Keepers at War*, New Delhi, 1990, pp 110.
 9. James Rusbridges, *The Intelligence Game*, The Bodley Head, London, 1989, pp 3.
 10. Gregory F. Treverton, ‘*Reshaping National Intelligence for an Age of Information*,’ Cambridge, UK, 2003 pp 245.
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Moral Dilemma in the Intelligence Community and Lack of Constructive Options

By Coleen Rowley, FBI attorney (retired) and Time Magazine Person of 2002 (shared).

I write not from any academic perspective but mostly from being a whistleblower whose post 9-11 memo to the FBI Director led directly to a comprehensive investigation by the Department of Justice’s Inspector General (IG) of various mistakes made by the FBI pre 9-11. This IG investigation, in turn, furnished the basis for some of the 9-11 Commission’s findings. Ethics was largely what motivated me to write the memo. I had been responsible for giving two types of ethics training in our Minneapolis Division of the FBI: the rule-based Office of Government Ethics type (which began in the mid 1990s) as well as the more universal “law enforcement ethics” which could be described as general Sunday School for law enforcement officers (which began in the late 1990s in the FBI). Ironically, a one hour law enforcement power point presentation was mandated just one week before 9-11 as part of a “stand-down” training day in every FBI office nationwide. So when I saw FBI officials almost immediately begin distorting and sugarcoating the truth of all the problems and mistakes that allowed the 9-11 attacks to be carried out, two slides from that power point came back:

“DO NOT: Puff, Shade, Tailor, Firm up, Stretch, Massage, or Tidy up statements of fact;”

and

“Misplaced Loyalties:

As employees of the FBI, we must be aware that our highest loyalty is to the United States Constitution. We should never sacrifice the truth in order to obtain a desired result (e.g. conviction of a defendant) or to avoid personal or institutional embarrassment.”

Confronted with FBI officials flagrantly violating their own ethics principles so quickly afterward and coupled with the fact that unless the dirty laundry was aired and the painful truth actually unraveled, we would not be able to effectively fix the significant mistakes, I undertook to get the truth out by writing a 13 page “whistleblower memo.” In May of 2002, I hand delivered this memo to FBI internal affairs and to the Director’s office and also outside the FBI to two Senators on the Joint Intelligence Committee.

One quickly sees that the combination—the more appropriate term would be evolution—of becoming a “whistleblower” after previous involvement in studying or teaching ethics is not really unusual. It is actually the norm. In fact just about one year prior to my whistleblowing experience, the two FBI supervisors who were the ones who had been responsible for *developing* the FBI’s law enforcement ethics training curriculum were forced to become whistleblowers and ended up testifying to the Senate Judiciary Committee. (The dirty laundry they aired and testified about concerned the FBI’s double standard of investigation and punishment of wrongdoing by higher level officials in the Bureau as compared to wrongdoing by lower ranking personnel.) Obviously, becoming sensitized to universal ethics principles, especially the need for truth and clarifying what one’s highest loyalty should be, can actually lead to greater (not less) moral dilemma if there is no constructive outlet for practicing and adhering to the ethics code. The sad reality is therefore that development of an ethics code for intelligence professionals, coupled with institution of an effective training program and model compliance system are only the first steps. Without affording actual mechanisms for surfacing and addressing fraud, waste, abuse and problems, and also providing job protection for those whom the code and training have inspired to do the right thing, any progress gained from these first steps will prove mostly illusory. This brings me to the focus of my paper about moral dilemma in the U.S. intelligence community and the current lack of constructive options.

One of the best examples I know of is illustrated by Frederic Whitehurst, a former FBI chemist, who was fired and suffered years of vilification prior to having many of his concerns about the FBI Laboratory being vindicated. As a result of his efforts, great improvements were ultimately made including the accreditation of the FBI laboratory. The sad early part of his story, however, repeats and repeats itself across the board in the U.S. federal government largely because the protections of the federal “Whistleblower Protection Act (WPA),” passed unanimously in 1989, have since been totally eviscerated. The only court in Washington DC where one can seek legal redress under the WPA has erected an almost impossibly high standard of proof, called “irrefragable proof,” something higher than that required for criminal convictions! Something like 99 of 100 WPA lawsuits that have been brought to this particular court since 1989 have been dismissed. Even following the exact protocol prescribed in the Act, which entails making one’s complaint to the proper internal authority, usually an agency’s internal affairs, head Director, or an outside Inspector General, (but not an employee’s direct supervisors), has proven to be more of a trap for the unwary than any kind of true protection.

This leaves the various government agencies free, even when they don't go so far as to outright fire an employee, to engage in lesser forms of harassment and the common but quite effective retaliatory actions like taking away job duties, conducting a retaliatory investigation and charging the person with an offense; discrediting or humiliating the whistleblower by questioning the person's mental health, professional competence, reliability or honesty; and/or setting the person up by giving impossible assignments and then firing or demoting him or her for non-performance. Often even the most "successful" (that is, those that end up vindicated) whistleblowers, after enduring such things, end up leaving their agency, too disheartened to pursue their chosen career.

Given this environment, a question I am commonly asked, in the course of my broader talks on "ethical decision-making," is why would any rational person knowingly subject him/herself to such personal costs for the benefit of the public at large? The truth is that only a small minority of federal government employees who do not allow personal cost-benefit to control their actions, who, in effect, believe in a higher cause or purpose, including the government ethics code of service to the Constitution, U.S. taxpayers and the public, will dare to follow their consciences and do the right thing in this type of environment. The truth is that more of those who work for a private employer in the corporate environment, due to the much stronger protections now afforded by the recently enacted Sarbanes-Oxley Act, will be inclined to report fraud, corruption or abuse than those who work for the government and are supposed to serve the public.

The sad plight of government whistleblowers in general, however, can be said to decline to an even lower level for those who work in the federal intelligence/national security community as they do not have any actual statutory protection under the WPA and therefore have no right to any day in court (as illusory as that right may be, given this court's "irrefragable" stance). A lukewarm version of the WPA applies, by force of regulation only, for example to FBI agents, CIA operatives, and other national security agency employees. Enforcement of such regulations more or less depends upon the goodness of the hearts of the agencies' higher-ups. I don't know if anyone remembers the weekend after my letter to Director Mueller leaked to the press detailing some of the pre 9-11 lapses and calling for an internal investigation. That next Sunday morning, I think it was news show interviewer Tim Russert who had to ask then Attorney General Ashcroft three times whether I would be fired and only on the third time did Ashcroft give an ambivalent nod that Russert interpreted to mean he could stop asking. It was, no doubt, the overwhelming and rather unprecedented congressional and media support that accompanied the leaking of my letter, (something that perhaps the source of the leak understood far better than I did at the time), that, in effect, probably saved my job. For even though I had vaguely heard of the WPA and had tacked on my request for "federal whistleblower protection" to the end of my letter, I had no idea it was such a weak thing.

In addition to the previously mentioned paradox about corporate employees in the United States currently enjoying more protection than government employees, another significant paradox affects the intelligence community due to its legitimate need and dependence upon secrecy. **Secrecy, by its very nature, works against ethical decision-making because it shields wrongdoing and problem areas. Secrecy is diametrically opposed to the "sunshine is the greatest disinfectant" theory of good government.**

For example, the FBI teaches to its own agents as part of its law enforcement ethics training, that the best way to discern between right and wrong is through use of the “transparency test.” That is, if your actions would be totally transparent and everyone would know, or say, if Grandma was looking over your shoulder, would you still do it?

The cloak of secrecy, which is necessary to some extent for the effective operation of government agencies involved in national security investigations/operations, on the other hand, fosters an environment where the incentives to avoid embarrassment and the disincentives to step forward combine. Moreover, the cloak of secrecy sets the groundwork for less ethical decision-making to begin with and therefore potentially more fraud, abuse and corruption in need of being disclosed and corrected than in other government operations that are more open and transparent. Of course any **over-secrecy** just compounds this entire problem! And over-secrecy has emerged as a significant problem due to over-classification, government use of the “state secrets privilege,” expanded usage of employee secrecy agreements (even for non-classified information) and the Attorney General’s rescinding of the Department of Justice’s prior more open FOIA policy.

Patrick Henry, one of our country’s first patriots to tell it like it is, framed it this way,

“To cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man and every friend to his country.”

The intelligence community’s need for secrecy also provides it with another harassment/retaliatory tool, just short of firing an employee, that the other government agencies do not generally have: the removal of the whistleblower’s security clearance. In the FBI, for example, all employees, even clerical staff, are required to hold a “top secret clearance” so if the necessary security clearance is yanked, the employee cannot do his or her prior job and is usually sent home. **“Security clearance reprisal”** is an unusually effective method by the agency for circumventing any other employment protections enjoyed by an intelligence community employee.

National security intelligence gathering involves decision-making with life and death consequences, much the same as, say, nuclear plant operations. Just as we obviously wouldn’t want nuclear plant safety officials looking the other way if there was a leaking valve or a gauge off kilter in a nuclear plant, we don’t want to be running these risks in the area of national security. But we are running such risks due to the lack in the intelligence/security community of any effective, independent and constructive mechanism of surfacing issues and concerns, mistakes, fraud, waste, abuse and breaches of law, (ideally, before these things get bigger, uglier and harder to deal with). Such concerns cover the gamut, like the several-years-in-the-making “FISA wall” that prevented more aggressive, effective investigation and intelligence gathering (“connecting the dots”) pre 9-11 to things like the FBI’s knee-jerk “post 9-11 detentions” of immigrants and the Department of Justice torture memo which eroded civil rights, international law and America’s reputation. We not only need to: 1) conquer our “ethics phobia;” 2) develop an appropriate universal ethics code for intelligence analysts and officers; and 3) institute effective training programs; but we also need **4) systems of vetting questions and complaints with enforceable job protection in place for those who engage in good faith in the process.**

ETHICS AND THE INTELLIGENCE ANALYST

By John Tolson, United Kingdom Ministry of Defence.

Contrasting US and UK Approaches

1. Compared with the US intelligence community, there is much less emphasis in the UK on formal education and training on intelligence ethics. Broadly, this can be explained by the contrasting traditions of government. The US written constitution with its system of checks and balances stresses such issues, with formal oversight machinery in place to ensure that certain standards are maintained. By contrast, the UK parliamentary system has traditionally been perceived to be based on a value system where every participant knew the standard of behaviour that was expected of them. But writing in 1989 about the need for oversight of the intelligence services “on the American pattern”, Professor R.V. Jones, a key figure in the development of modern British intelligence analysis, particularly on scientific issues, opined that once there had been little need for oversight.....

“.....at least as regards the dangers of the services overstepping the limits of reasonable conduct. The oversight that was needed then was more in looking for inefficiencies in the system.....But moral standards have fallen since the days when an Englishman’s word was his bond as we have seen in other walks of public life ... It cannot be guaranteed that that this is never likely to affect the conduct of intelligence affairs, with all the temptations that they may afford.”

2. Circumstances have changed since 1989. The most significant milestone being the 1994 Intelligence and Security Act which both openly avowed the existence of the UK’s three intelligence agencies and established oversight machinery in the form of the Intelligence and Security Committee (ISC). A second milestone was Lord Butler’s “Review of Intelligence on Weapons of Mass Destruction” in 2004 which, among other things, considered intelligence ‘best practices’ and produced recommendations designed to improve professional standards, particularly for all-source intelligence analysts. More broadly, the Civil Service Code applies to most individuals engaged in intelligence analysis in the UK. They are “expected” to abide by a value system based on “integrity”, “honesty”, “objectivity” and “impartiality”. Applied to the UK IC, this document can be seen as effectively integrating best practices with ethical considerations.

3. A practical consequence of these differences between the US and UK approaches is that there is a much reduced body of source material on the UK theory and practices than there is in the US, although this is beginning to change. The major driver is increased awareness of moral dilemmas in the light of efforts to counter global terrorism and nuclear proliferation and the conduct of military operations in Iraq and Afghanistan.

Practical Problems for the Analyst

4. However, where the UK literature on intelligence ethics does consider the practical problems for individuals or groups at the working level in intelligence organisations, it concentrates on issues affecting the collectors of intelligence. This note focuses on ethical issues from the standpoint of the intelligence analyst, a term used here to refer primarily to the

intelligence specialist charged with analysis and assessment drawing on information from a range of unclassified and classified sources. The individual may be a subject matter expert (SME) working exclusively in one field for all or part of his or her career or one who moves around different subject areas building up experience and expertise in the processes and practices of intelligence analysis on the way, or be one of several variations between the two.

5. It seems obvious to assert that all such analysts should have a developed understanding of the ethical framework in which he or she must work, though among UK defence intelligence analysts at least, who constitute the bulk—about 60 to 70 percent—of the core group of all-source intelligence analysts routinely engaged in strategic analysis, this appears to be implicit rather than explicit. Inevitably there is much common ground with those specialising in intelligence collection, and areas of difficulty in common, though the overall perspective is distinctly different.

6. There are three main areas where ethics need to be considered. In conceptual terms, “ethics” is assumed to be the “right way” to perform all-source analysis, based on a “code of values”, with the process of abiding by this code requiring “professional integrity”. This is different from analytical “best practice” – the application of critical thinking, analytical tools and technique, avoiding analytical pitfalls, etc.

7. The first of these areas is the collection of intelligence and the nature of the relationship between the analyst as consumer or customer, with the organisation or individuals responsible for supply. As noted, intelligence collection as an activity has attracted the most attention from both academics and professionals in the field as the ethical problems involved are all too apparent. They go right to the core of the debate about whether or not the means used to collect intelligence as a whole have any ethical justification or must simply be regarded as a necessary evil where the ends justify the means.

8. Analysts must assess the worth of information received from various sources using their own professional skills, weighing it against data already received (from other sources) and the proven (or otherwise) reliability of the sources. There must be an assumption that the information received has been similarly professionally obtained, processed and assessed by the collection agencies. These are issues of tradecraft or best analytical practice. Ethical issues may arise where the analyst becomes aware, or merely suspects, that information from a particular source had been obtained by, for example, torture or by exertion of undue physical or psychological pressure. To be able to do this credibly the analyst should have a working knowledge of the collector’s tradecraft and its ethical foundations, but this may not be the norm. Clearly these can be emotive and highly personalised issues with much scope for misunderstanding and confusion on both sides.

9. The ability of the individual analyst to actually gain sufficient access to the details associated with agent motivation and willingness to supply information is variable in the UK system though the official position seems clear. The Cabinet Office’s *National Intelligence Machinery* states ...

“Secret intelligence is information acquired against the wishes and (generally) without the knowledge of the originators or possessors. Sources are kept secret from readers, as are the many different techniques used.”

But exceptionally, analysts have privileged access to source material working extremely closely with the collectors to the benefit of both, usually in terms of getting the most from particular human sources. This brings into sharp focus the potential ethical responsibility the analyst shares with the collector of intelligence. To what extent does, or should, the user of a particular line of intelligence reporting have moral responsibility for how and from whom it is collected?

10. The second area is the core contribution of the all source analyst to the processing of information and intelligence i.e. added-value through analysis and assessment. Like a member of any profession, he or she must depend upon their own training and experience to form a judgement of the facts as they are exposed to the analytical process. Ethical dilemmas arise where pressure may be put on the analyst from a manager or an external source with the aim of achieving changes in the analysis or assessments which are contrary to the judgement of the analyst. It is possible to envisage many variations here: pressure to ignore or heavily downplay a particular report because of the possible inconvenient policy or operational consequences, pressure to distort the analytical process in order to come up with a preferred conclusion, self-pressure by the analyst on the basis of a pre-conceived view of what a senior officer may want and the possible consequences of not providing it, etc. These add up to the prevention by any means of the application of best analytical practice to the process of analysis and assessment. Further, an analyst's personal, moral or religious beliefs may, consciously or unconsciously, affect the process of analysis and assessment. Although such traits should be identified by pre-employment vetting, managers of analyst teams need to be well aware of the potential pitfalls and the implications.

11. The third area concerns the use to which an intelligence assessment is put and the moral issues that might arise. Release of a particular assessment to another country may result in the adoption of dubious policies or actions against its own citizens; a piece of analysis informing the targeting process might involve attacks on military related facilities and collateral damage in the form of civilian casualties. Clearance procedures may well be scrupulous and legal, the proposed target and method of attacking it designed to minimise the risk to non-combatants, but an individual may still have misgivings. This is likely to be particularly apparent where analysed data may be used for the targeting of individuals with the unambiguous aim of killing them.

Ethical Guidance

12. Given this uncertainty and potential dilemmas where does or should the analyst seek his or her ethical guidance? There is a strong flavour of "if you can't stand the heat get out of the kitchen" brand of argument here. Analysts may well face "crises of conscience" at various times during the course of their work as problems of the kind described arise. For a defence intelligence analyst it is reasonable to expect before joining that, at some time, they may find themselves working in support of military operations likely to result in the death or injury of friendly and/or enemy personnel, including civilians. But where the prospect of major military operations impacts on large numbers of analysts, perhaps for the first time in their experience, then the circumstances can stimulate an urgent re-think of a personal moral position. The legal position will be important: in the UK that the operations concerned can be justified under the

various tents of “just war” and are judged legal by the senior law officers of the Crown. But this will be only one factor for the individual concerned and not necessarily decisive.

Further Study

13. It is clear from this review that there is a need for further study of ethical aspects of the work of the all-source intelligence analyst in the UK. The focus should be on provision of practical guidance for both analysts and their managers. Development of a code of values with practical examples, tackling key matters such as the responsibility that the user should have for the intelligence he or she receives, will probably be necessary. Study of these and the related issues should form a firm basis for defining future training needs.

The Professional Ethics of Intelligence Analysis

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Preface

Very much like military work, intelligence is a highly complex craft that involves a variety of skills. In military studies literature, Huntington's definition of the military profession, as the "management of violence," has dominated the field for nearly fifty years. Analogously to Huntington's logic, the essence of the intelligence profession can be defined as *"the processing and the management of information relevant to national security, in order to make reality as clear as possible."* The centrality of analysis for obtaining this goal, and the fact that the source of most intelligence failures is at the analytical stage, makes the analyst the prime professional in intelligence work – the equivalent of Huntington's staff officer in the military sphere. Consequently, the professional ethics of intelligence is the ethics of intelligence analysis. As such it should serve in two roles: first, as an ideal way of thinking and acting that all intelligence-makers should strive to achieve, and, second, as a standard for measuring the level of professionalism of a given intelligence organization.

The many studies of intelligence failures, from biblical times to the post 9/11 era, show that their sources can be traced to two main types of human behavior: unintentional mistakes in information processing, defined here as **unmotivated biases**; and intentional deviation from the proper way to analyze intelligence data, mostly in order to gain influence or escape punishment, i.e., **motivated biases** in information processing.

This paper proposes two ethical principles which, if practically adopted, can reduce the likelihood of falling victim to motivated and unmotivated biases in intelligence analysis and, thus, to raise the analysts' level of professionalism and reduce the likelihood of intelligence failures.

Unmotivated biases: the principle of "I do not think that I know what I do not know"

In depth studies of intelligence failures have demonstrated that in many cases the adherence to a mistaken preconception despite the availability of sufficient information to cast doubt about its validity, is the main source of the problem. This was the case in intelligence failures to accurately estimate the opponent's behavior in events such as Pearl Harbor (1941); the outbreak of the Korean War (1950); the Chinese intervention in the war (1950); the Suez War (1956); the Soviet decision to put missiles in Cuba (1962); the invasion of Czechoslovakia (1968); the Soviet military intervention in the Egyptian-Israeli War of Attrition (1970); the Yom Kippur War (1973); the Iranian Revolution (1979); the Soviet invasion of Afghanistan (1979); the collapse of the Soviet Block (1990); Iraq's invasion of Kuwait (1990); the Indian nuclear test (1998); the 9/11 terrorist attacks (2001); and the estimation of Iraq's WMD arsenal (2002-03).

Cognitive psychology offers a number of theories to explain the human tendency to prefer beliefs over facts, to err in making complicated judgmental tasks, and to prevent members of a small group from raising doubts about its dominant way of thinking. Most notable among these theories are cognitive dissonance, confirmation bias and heuristic judgment at the individual level and the dynamics of groupthink at the small group level. Their role in facilitating intelligence estimation failures is well documented in academic literature and intelligence organizations are aware nowadays of their destructive impact. Consequently, such organizations look for ways to decrease the influence of these biases, as demonstrated, for example, by the CIA's publication of Heuer's book, *Psychology of Intelligence Analysis*, or by the institutionalization of the "Devils Advocate" mechanism in Israel's Military Intelligence analytical process. And yet, the failure of the American intelligence community in estimating Iraq's WMD capabilities is clear proof that dominant preconceptions can remain unchallenged even today.

Therefore, this paper maintains that the assimilation into the analytical system of intelligence organizations of **the Socratic principle which casts doubts about everything we believe that we know**, may – by challenging again and again the fundamental assertions that dominate the analytical process – reduce the analysts' tendency to cling to their mindsets and ignore information that casts doubt about their validity. This higher level of awareness of the possibility that we are wrong is likely to compel us again and again to check our basic assumptions, especially when we are certain that they are valid, and thus to reduce the chances of falling to the same traps that have caused disastrous intelligence failures in the past.

Motivated biases: "The truth, the whole truth, and nothing but the truth"

While the role of unmotivated biases in facilitating intelligence failures is well documented, the impact of motivated biases has so far attracted less academic attention. However, there is no doubt that intentional ignorance of evidence which intelligence makers have found inconvenient to express, played a critical role in creating intelligence blunders, starting with the ten (out of twelve) spies of the Bible who misled the Israelites about the nature of the land of Canaan and ending with more recent events, such as, Stalin's intelligence officers who concurred with his estimate that Hitler would not invade the USSR in 1941 for

fear for their fate if they told him what they really thought; the intentional underestimation by Military Intelligence of the Viet Cong force prior to the Tet offensive; the overestimation of the strength of the Soviet system and the might of the "evil empire" since Bill Casey became DCI in 1980, which hampered the analysts' ability to correctly estimate the collapse of the USSR in the late 1980s; and, finally, the "slam dunk" estimation and the NIE of Iraq's WMD capabilities which suited so well the White House political agenda prior to the war in 2003.

Certainly, there is a clear difference between a dictatorial system, in which telling the consumer the truth, the whole truth and nothing but the truth, may cost the intelligence professional his life or freedom, and democratic environments in which the ultimate cost for such a behavior is one's career. This explains why providing a politically inconvenient but authentic estimation to a dictator is quite unlikely, as recent evidence from Iraq under Saddam Hussein so vividly shows. But this cannot serve as an explanation and a justification for such behavior in a non-dictatorial relationship.

The debate that is taking place in the USA between those who regard the impact of the intelligence product on the decision-making process as more important than its "objectivity," and those who maintain that "objectivity" should be preserved at all cost, is quite unique. As far as I know, no such debate takes place in other countries, e.g., Britain or Israel, where the quality rather than the impact of the intelligence product constitutes the highest value. **The legitimacy, even in a partial form, that is given in the USA to painting the product in colors that suit the political consumers' needs is a clear deviation from the juridical principle that puts truth above all. *** *It opens the way to both political pressure on behalf of politicians and yielding to such pressure on behalf of intelligence makers.*** The ultimate result may be embarrassing estimation fiascos which can cost dearly, as was evident in Vietnam forty years ago and is evident now in the futile war in Iraq. The professional imperative to tell the consumer "the truth, the whole truth, and nothing but the truth" is a major ethical barrier against such behavior.

[* editors note: See "**politicization**" in the glossary, in Loch Johnson's forward and in the essay below. Many of our authors think politicization is the cardinal sin among analysts. But this is also very difficult to avoid because if you lose the ear of policy-makers, what good was the best, most accurate and honest analysis in the world? That dilemma is apparently eternal.

Operators face other dilemmas of equal magnitude, and in fact the ethical priorities of different types of intelligence professionals are not identical. That discussion would require more space than we have here today.]

CIA Failures of Tradecraft and Intelligence Prior to the Second Iraq War

By Melvin A. Goodman, 24 years at CIA (retired) and 18 years at NDU, currently a Senior Fellow at the Center for International Policy, Washington D.C., USA.

CIA managers and senior analysts violated every norm of the intelligence analysis process in helping the Bush administration make its case for war against Iraq. There are filters in the directorates of intelligence and operations to prevent the introduction of fabrications into finished intelligence products, but managers and analysts ran through a series of red lights. As a result, forged intelligence on Iraqi purchases of uranium from Niger was used to justify a statement in the Presidential State of the Union address of 2003. The CIA should have conducted a counter-intelligence investigation of such an intelligence fabrication that ended up in the hands of the President, but did not do so. Analysts, like investigative reporters, should be particularly leery of sole source information, but single source intelligence on Iraq's so-called mobile biological laboratories was central to Secretary of State Powell's UN speech prior to the war. Powell and Tenet lied in claiming there were multiple sources for this information. Again, there was only one primary source on possible links between Iraq and Al Qaeda; this source was rendered to Egypt and tortured in order to garner that information. CIA director Tenet then used this corrupt information to try to influence the Senate intelligence committee on the reasons for going to war. Sole source information was then used in the NIE of October 2002, when one of the major reasons for producing an estimate is to exploit the multiplicity of sources that are central to good intelligence. The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction concluded in March 2005 that CIA's senior management was "remiss in not raising concerns" with senior policymakers before the war, but the corruption of the intelligence process points to corruption within the entire intelligence directorate.

The CIA and DIA were also remiss in not being more skeptical of the intelligence information received from members of the Iraqi National Congress (INC), who were trying to draw the United States into a war against Saddam Hussein by making the case for Iraqi WMD and Iraqi links to terrorists. The two agencies funded this collection and then used this collection in intelligence distributed to the White House and the NSC. And prior to the start of Operation Iraqi Freedom on March 19, 2003, false information from INC sources was used to support key intelligence assessments that were widely distributed throughout the intelligence community. The sole source for mobile biological weapons laboratories was affiliated with the INC; the same was true for intelligence linking Iraq to training of non-Iraqi Arabs on aircraft hijackings. CIA operatives wrote memoranda calling attention to the inaccuracy of the INC information at the same time that CIA analysts were inserting this information into their own assessments. And despite their skepticism of INC intelligence, both CIA and DIA often distributed the information without noting the origin of these dubious sources, an egregious violation of analytical tradecraft.

CIA and the Niger Forgery. The allegation that Iraq was trying to purchase nuclear materials from Niger was one of the keys to the administration's case for war. The first report of such a purchase appeared in a DIA intelligence highlight on February 13, 2002, which Vice President Cheney used to hammer the CIA about its views on Iraq's search for enriched

uranium. The CIA had doubts about the authenticity of the reporting and asked Ambassador Joseph Wilson to visit Niger to get additional details on a possible purchase. The request originated in the DO's Counter Proliferation Division, where Wilson's wife, Valerie Plame, worked as a clandestine officer under non-official cover. According to several reporters, the proposal to send Wilson to Niger came from Plame's colleagues and not Plame. During this period, Marine Corps General Carleton Fulford and Ambassador Barbro Owens-Kirkpatrick conducted their own investigations and reported back to their departments, the Joint Chiefs of Staff and the State Department, respectively. Wilson, Fulford, and Owens-Kirkpatrick reported emphatically there was no substance to the intelligence reporting that Iraq was trying to buy uranium yellowcake from Niger.

In addition to these missions, European intelligence liaison repeatedly told the CIA that the Niger reporting was a crude forgery. French intelligence dismissed the reporting as early as mid-2001 and as late as January 2003. The French view was authoritative because the French ran the international consortium that produced uranium ore in Niger. The Italians were also dismissive, and even the popular Italian magazine "Panorama" refused to print the documents because the fabrication was so obvious. International organizations, including the International Atomic Energy Agency, also considered the documents to be fraudulent. There is no question that the CIA tried to have it both ways, initially making an effort to stop the White House from citing the intelligence in any public arena but reporting the allegations in their own intelligence products. The fact that we still do not know who created the phony intelligence and why it was created points to the ineptitude of the counter-intelligence capabilities of both the FBI and the CIA, or perhaps a cover-up of an operation that would implicate former or current American intelligence officers. This would not be the first time that CIA "black propaganda" or misinformation designed for a European audience ended up in the United States, even in the White House, as unintended blowback.

The Wilson trip became controversial because it led to the outing of Wilson's wife, Valerie, whose non-official cover status was protected by federal legislation passed in 1982. The CIA picked Wilson for the Niger trip because of his knowledge of the uranium industry and African politics; the agency hoped that Wilson's bona fides would serve to disabuse Cheney of his zealous campaign to use the Niger documents to assert that Saddam Hussein was trying to reconstitute Iraq's nuclear capabilities. The two-year investigation of the outing of Plame, which led to the unusual but not unprecedented jailing of *New York Times* reporter Judith Miller, revealed the extent of the risks that the White House would take to protect its specious case for war.

Ambassador Wilson's investigation ultimately exposed the intelligence used in the president's State of the Union speech prior to the war as an intelligence fabrication. And when the White House persisted with the fiction of linking Iraq to uranium purchases in Niger, Wilson published an article in the *New York Times* in July 2003 to denounce these efforts. The article enraged Cheney, who orchestrated a program to intimidate Wilson and to prevent other officials or former officials from revealing the misuse of intelligence in the run-up to the Iraq War. Scooter Libby was authorized to leak the language of the 2002 NIE that falsely tied Iraq to Niger and to float the name of Wilson's wife, Valerie Plame, and her affiliation with the CIA. This information was given to at least six journalists in Washington and New York, but

only Robert Novak published the information. Cheney's central role in ridiculing Wilson and "outing" his wife serve as *prima facie* evidence of the vice president's passionate case for going to war and protecting the intelligence reasons for doing so.

The CIA was playing an unusual game. On the one hand, it was trying to quell the use of the fabricated report in the public statements of the White House; on the other hand, it was placing language in an NIE giving credibility to the idea of Iraq and foreign acquisition of uranium. Although there was a consensus within the intelligence community that the clandestine reporting on a Niger deal was a fabrication produced by members of the Italian military intelligence service (SISME), the CIA's National Intelligence Council produced the key information wanted by the White House in October 2002. The NIE concluded that Iraq was "shifting from domestic mining and milling of uranium to foreign acquisition."

CIA'S FAILURE OF INTELLIGENCE

CIA's failure in the run-up to the Iraq War was a total corporate breakdown, with the senior leadership of the agency itself as well as the senior managers of both the intelligence and operational directorates playing key roles.

Intelligence Analysis. President Harry Truman wanted a CIA to make sense out of the vast amount of information available to the intelligence community and to make sure that the most trenchant analysis found its way to key policy and decision-makers. The failure at Pearl Harbor was due in part to the failure to analyze and distribute intelligence; the failure of 9/11 was about an inability to connect the dots and to share information. In other words, over a period of sixty years, there had been no progress in preventing attacks against American interests or even the United States itself. But the intelligence failure in the run-up to the invasion of Iraq was far worse, involving the perversion of the intelligence process and the politicization of intelligence data. A former director of the State Department's INR, Thomas Hughes, concluded that policymakers use intelligence the way a drunk uses a lamppost—for support and not for illumination. In the case of the Iraq War, intelligence offered too much support, too little illumination.

The process of intelligence analysis begins in the CIA's directorate of intelligence, which is responsible for providing premonitory intelligence for policymakers, and the intelligence community's National Intelligence Council, which is responsible for producing National Intelligence Estimates (NIEs) or Special National Intelligence Estimates (SNIEs). These estimates are the major corporate product of the intelligence community, signed by the director of national intelligence and represent the views of all 16 agencies of the community. The council has fewer than 100 people, including a dozen national intelligence officers (NIOs) who are considered serious experts in their respective fields. The estimate that the council produced in October 2002 is probably the most politicized NIE in the history of the CIA.

Intelligence analysis is never an easy or clear-cut process, and when intelligence analysts believe—as they did in the fall of 2002—that the United States was going to war, there is a tendency to resort to worst-case analysis in order to cover their bets. In the case of

the Iraqi war, virtually all intelligence analysis on WMD was based on information that was collected prior to December 1998, when the UN inspection team left Iraq. An internal CIA study concluded that all agency analysis was based on “untested, long-held assumptions” and technical analysis that equates programs with capabilities.” It is the latter methodology that leads to worst-case analysis, which exaggerated the power of the Soviet Union and the Warsaw Pact in the 1980s and did the same with Iraqi military capability in the 1990s. The fact that the CIA significantly underestimated Iraqi strategic holdings prior to Desert Storm in 1991 probably led to the exaggeration of Iraqi military capabilities throughout the decade. CIA errors regarding the Soviet invasions of Hungary in 1956 and Czechoslovakia in 1968 led to exaggerations of Soviet intentions in the 1970s and 1980s.

Although CIA political and regional analysts did provide some warning to the White House regarding the chaos and discontinuity following an American invasion, CIA military and technical analysis ultimately caved in to White House pressure and gave the Bush administration the intelligence it needed to make the case for war. The NIE in October 2002, which was requested by the chairman of the Senate intelligence committee, not the White House, was a perfect example of worst-case analysis to allow analysts to protect their reputations when American forces encountered Iraqi forces and WMD capabilities. Similarly, the CIA’s Counterterrorism Center prepared finished intelligence on possible links between Iraq and Al Qaeda that was exceedingly aggressive because of the pressure from the White House.

The bottom line is that politicization compromises the essential qualities of ethical intelligence analysis: accuracy, objectivity, and honesty.

The Holy Grail of the intelligence profession is to guard against politicization and thus ensure effective intelligence analysis in order to preserve national and international security.

A View from the Sidelines: Dilemmas and Consequences Resulting from the Anglo-American Intelligence on Iraq.

By Stuart Farson, Simon Fraser University, British Columbia, Canada.

Truth telling is deeply embedded in many of the world's cultures and religions. It is an intrinsic dimension of democratic governance. In Westminster systems, for example, constitutional conventions require ministers to account for the actions of their departments. To ensure such accountability Parliament has powers to subpoena records and place witnesses under oath. "Misleading" Parliament remains an egregious offense.¹ Truth telling is also an essential component of the criminal court system.

Paradoxically, lying and deception are often said to be essential features of intelligence work, even in democratic states. However, deception campaigns have sometimes been found to have unintended consequences. For example, propaganda planted in foreign media sources has sometimes found its way back into a country's domestic media. This paper argues that other forms of "blowback" may be at hand where intelligence is used publicly to support a particular policy option. In this instance the impact may not be merely on the domestic environment but rather on the policy and organization of intelligence in third party states.

It is frequently argued that intelligence activities need to be ethically based. Yet the intelligence work of democratic states is replete with tensions between conflicting principles and objectives. Among the more obvious are:

- The obligation to protect national security without simultaneously destroying the democratic fabric;
- The coincident pressures on government to be transparent without revealing national security sources and methods;
- The requirement to comply with the rule of law domestically while breaching the laws of foreign states;
- The obligation to provide truthful accounts while simultaneously hiding the truth through obfuscation, deception and sometimes outright lies.

Collectively, these make the study of intelligence fertile ground for debating whether and how ethical principles can be applied to the "secret world." There is no intention here, however, to adopt a holistic approach. Nor are principles underscoring covert action or human source conscription of concern.² Rather, the focus is on the interface between intelligence analysis and intelligence consumption, a process frequently epitomized by the phrase: "talking truth to power."

I want to discuss the ethical implications of this notion in the context of Anglo-American intelligence on Iraq from a Canadian perspective in terms of five arguments broached at last year's CASIS conference.³ The first argument concerns a position adopted by Mark Lowenthal regarding intelligence in Iraq. This, it is to be recalled, had purported that

Saddam Hussein possessed weapons of mass destruction (WMD) and would likely share them with Al Qaeda. Furthermore, such intelligence was used to pressure other states into joining a United States (U.S.) – led coalition to overthrow the Iraq regime. It is now known that the intelligence presented to the United Nations (U.N.) and elsewhere was seriously flawed. There were no WMDs. And no links to Al Qaeda have been established. Clearly, U.S. and British motives remain in doubt. Yet Lowenthal has posited that such intelligence has been extensively analyzed and that further examinations will likely be unproductive.⁴

While U.S., British and Australian administrations may well want discussions of their “intelligence failures” to go away, this story, as journalists would say, “has legs.” From an academic perspective much remains to ponder, particularly regarding the ethical dimensions. Members of the various executive branches clearly by design, or as the result of misinformation, deceived the international community, their own legislatures, and their various publics in order to justify the case for war. And while the focus of oversight has so far been leveled at their intelligence communities, these administrations have largely avoided scrutiny and remain unaccountable. There is also an interesting comparative analysis yet to be performed among the so-called “five-eyes.” Why did Canada and New Zealand not join the coalition to invade Iraq? Were the reasons purely political or were they based on different views of the existing intelligence or ethical concerns?⁵

In this context, Jean-Paul Brodeur’s argument is of interest. He posited that an essential feature of criminal intelligence work was veracity, i.e. using intelligence to establish whether certain things are or are not true.⁶ In the case of the Iraq War, it is highly likely that the Chrétien government would not have participated in an invasion without a U.N. resolution providing multilateral legitimacy. However, it also appears that Canadian analysts talked truth to power. They correctly assessed that no U.N. resolution would be forthcoming; that there was insufficient intelligence to conclude that Iraq had WMDs or that an on-going development program existed; and that no immediate action was warranted.⁷

The third argument was raised by Jennifer Sims. She argued in favour of doing away with “talking truth to power.”⁸ Her premise was that intelligence is not in the truth business. This argument rested on two quite formidable planks. First, she argued that intelligence does not try to provide “truth” to anyone. At best, it submits an assessment of the available analyzed information. It should not be read as definitive but rather as work in progress reflecting a “best guess” scenario. Second, she argued that intelligence frequently fails, and that this should be anticipated. Clearly, in practical terms, Sims is correct. Intelligence is often incomplete and fails to be preventative. But the question remains: was the expression – “talking truth to power” meant to be viewed in such practical terms? I would argue not. Rather it was intended as a guide for ethical behaviour.

The fourth argument was first raised by Richard Clark. He posited that a “crisis of confidence” had resulted from the discrepancy between what was said to exist in Iraq and what was subsequently found not to be there. This argument was rebutted by both Sir Richard Dearlove,⁹ the former head of Britain’s Secret Intelligence Service, and Henry Crumpton,¹⁰ the current U.S. Ambassador for Counter-terrorism. What was not discussed was in whom this “crisis of confidence” had—or had not—developed. While it may be possible that U.S. and

British administrations – and their respective intelligence communities—have sensed no crisis, it is unlikely that their reputations remain untarnished among either their own citizens or – perhaps more significantly – the foreign intelligence communities with whom they share intelligence.

The final point was made by Sir Richard Dearlove. He was asked to comment on a remark he had made previously elsewhere—namely that Canada was a “freeloader” when it came to foreign intelligence.¹¹ He argued that if Canada were to establish a foreign intelligence service, it could be of enormous help to the allied cause because it could go where others could not. He took it as a given that Canada’s interests were always necessarily coincident with those of its long-time intelligence partners. There appeared to be no concern that Canadians might not in the future be able to [visit] such places anymore. Since World War 2 Canada has enjoyed “special intelligence relationships” with both the U.S. and Britain as the result of the UKUSA and other intelligence sharing arrangements.¹² While Canada has benefited significantly from these arrangements, they have also made it potentially vulnerable to selectivity and inaccuracy in the intelligence shared.

While it is well known that Canada has never had a foreign intelligence service, the fact that Canada tends to view its intelligence through a different lens than its traditional partners is often missed. Instead of using intelligence to advance national interests, it has been primarily defensive in nature, geared to thwarting threats against the country and its interests. That is why the Canadian Security Intelligence Service (CSIS) may investigate “security threats” inside *and* outside Canada.¹³ And while it is true that there has been more talk of Canada establishing a greater foreign intelligence capacity since 2001 than at any other time in the nation’s history, any decision in the future to enhance such a capacity may not be merely the result of allied entreaties. Rather, it may be an unintended consequence of the Iraq War and a subsequent reflection of Canada’s need for a more robust and independent foreign intelligence capacity.

Arguably, individual countries—even the major intelligence players—cannot hope to thwart the “new terrorism” on their own. Cooperation and intelligence sharing are indispensable, especially between neighbours like Canada and the U.S. with what are now multi-functional and multi-faceted borders.¹⁴ And trust and confidence in partners are essential to effective co-operation.¹⁵

If the arguments presented here are correct, our notion of “talking truth to power,” far from being abandoned, may deserve some revision. While intelligence has an obligation to provide truth to power—warts and all—and should not proffer “slam dunks” when there are none to be assured, there should also be a greater obligation on power to talk truth as well, especially with its close intelligence partners. To do otherwise may have other unintended and potentially undesirable consequences.

Notes:

1. These powers have been used sparingly but sometimes informally. Giuliano Zaccardelli, then Commissioner of the Royal Canadian Mounted Police (RCMP), was recently forced to take the oath when he appeared before the House of Commons Standing Committee on Public Safety and National Security for the second time on intelligence provided by the RCMP to the U.S. relating to Maher Arar. He then admitted that he had “made a mistake” in his earlier testimony, resigning shortly thereafter. See: Jeff Sallot, “The Chief’s Troubles Grow.” *Globe and Mail* (December 6, 2006). For informal use of powers to obtain documents see: Stuart Farson, “In Crisis and in Flux?: Politics, Parliament and Canadian Intelligence Policy.” *Journal of Conflict Studies*, XVI:1 (Spring, 1996): 30-56, especially 37-38.
2. These have been covered by various authors in Jan Goldman (ed.), *Ethics of Spying: A Reader for the Intelligence Professional*, (Lanham, Maryland: Scarecrow Press, 2006).
3. For conference details see: Canadian Security and Intelligence Studies 2006 International Conference, “9/11 + 5: Security & Intelligence in the Eye of the Storm” October 26-28, 2006, Crowne Plaza Hotel, Ottawa. Hereafter referred to as CASIS, 2006. At: <http://www.casis.ca/english/index.html>.
4. Mark Lowenthal, “9/11 and Iraq: Lessons Learned and Unlearned, Real and Imagined.” CASIS, 2006.
5. While Eddie Goldenberg, Prime Minister Jean Chrétien’s Chief Policy Advisor between 1993 and 2003 covers the decision-making process regarding Iraq in detail, he makes no mention of the role of intelligence. See: *The Way it Works: Inside Ottawa*, (Toronto: McClelland and Stewart, 2006).
6. Essentially there are three possible answers: true, false, or not proven. In the latter case more intelligence collection and analysis are needed.
7. Confidential interviews with the author.
8. Jennifer Sims, “A Contrarian’s Approach to Intelligence Transformation,” CASIS 2006.
9. Sir Richard Dearlove, “The Role of Intelligence and the Emerging New World Order,” CASIS 2006.
10. Henry Crumpton, “A New Era of Conflict,” CASIS 2006.
11. See Colin Freeze, “Canada urged to build foreign spying agency,” *Globe and Mail*, March 4, 2006.
12. This is not to say it has a broader “special relationship,” despite the fact that it is by far the largest trading partner of the U.S..
13. CSIS’ role outside Canada has expanded during the last decade. It is now known, for example, to have operated recently in Afghanistan, Lebanon and Iraq. See: Michelle Shepard, “Spies operating abroad: CSIS chief,” *Toronto Star*, October 28, 2006.
14. For the changing nature of the borders see: Stuart Farson, “Rethinking the North American Frontier after 9/11,” *Journal of Borderlands Studies*, 21:1 (Spring 2006): 23-45.
15. Credence in what intelligence is available is critical. Arguably the differences between the U.S. and Canada in the Maher Arar case are causes of on-going friction. While Canada has held a public inquiry exonerating Mr. Arar of terrorism, and has agreed to pay substantial compensation, the U.S. still maintains it has intelligence suggesting terrorist links. For broader ramifications see: Doug Saunders, “A World of Maher Arars,” *Globe and Mail*, (February 24, 2007).

Why Should Intelligence Professionals Attend to Intelligence Ethics?

By Michael Herman, ex-GCHQ (35 years, United Kingdom) with secondments to the Cabinet, Founding Director of the Oxford Intelligence group at Nuffield College Oxford, and Special Professor of Intelligence at Nottingham University.

Most of us—though not the arch-realists—feel that states' actions have an ethical dimension, in the same way as any other human activity. There is no reason why government intelligence should be excluded. So what are the ethical considerations that bear on it, and are they major ones?

Intelligence's origins are in war and diplomacy. Its activities have always included covert information-gathering and covert action, and for the last century and a half it has also been governments' expert on foreigners and internal enemies in security matters including 'warning'. Its targets are essentially 'the other': 'them' rather than 'ourselves'. Ethical judgments about it have to be based on what it does, and how it influences the governments it serves. These can be taken in turn.

On intelligence's own activities, those of spies and traitors have always attracted opprobrium, but it is difficult to find much historical evidence that governments have been condemned for employing them. Some monarchs valued their international honour, but this was rarely held to debar intelligence's covert methods. There was some liberal sensitivity in nineteenth century Britain, as when the interception and decoding organization was closed down in the 1840s when it became known that its information on an Italian revolutionary living in this country was being passed to the Austrian government. In the course of that century the distinction also began to emerge between acceptable and unacceptable standards of diplomatic information-gathering, and the traditional view of the diplomat as a licensed spy became weaker. But intelligence received little ethical consideration until after 1919, when the Soviet Union's clandestinity and hostility to the capitalist world combined with the Wilsonian demand for international openness to make intelligence more significant and controversial. An American Secretary of State closed the government's main code-breaking organization and gave his often-quoted explanation that 'gentlemen don't read each other's mail'. But these words were actually his rationalization much later, after the Second World War; and until then intelligence remained quite a small part of most governments' peacetime apparatus.¹

The Cold War then made it far more important than before, in a context in which ethical judgments about it were non-existent in the USSR and limited in the West. Both sides played hardball in their intelligence activities. None of them caused the Cold War but the scale of some of them—particularly of Soviet espionage and Western naval and aircraft collection around the Soviet periphery (and in the 1950s flights over the Soviet Union itself)—confirmed and intensified perceptions of threat and hostility on both sides. The Cold War was partly an intelligence war, and intelligence 'incidents', such as the regular expulsion of 'diplomats' for

¹ For the date of the quotation about reading each other's mail, see correspondence in Intelligence and National Security vol.2 no.4 (October 1987).

unacceptable activities, were a significant part of it. It is depressing that significant Cold War-style collection still seems to continue between the former adversaries.

Nevertheless since the Cold War ended intelligence has become increasingly directed against non-state targets, particularly terrorism. It has usually been assumed that there are no ethical restraints on intelligence's wartime methods, except for the legal safeguards provided in twentieth century law for prisoners-of-war and civilians in occupied territories; but claims that counterterrorism is now 'at war' with its enemies now raise questions about the legal and moral restraints appropriate to the interrogation of terrorist suspects, and about the increased scope given to intelligence's monitoring of citizens' communications and activities.

Moreover not all current intelligence is counterterrorism, and the long-standing ethical issue remains of covert collection on legitimate states: the so-called 'spying on friends'. How does collection for purposes of 'national interest', considerably broader than security, rank among the moral hierarchy of causes? Does promoting national economic well-being warrant methods that might be justified by considerations of national security or international humanitarianism? ²

So much for intelligence's own activities; but there is also the effects of its output. Government anywhere is a hand-to-mouth affair, and its decisions can be ill-considered or irrational for any number of reasons. A justification for good intelligence judgments is that governments that take notice of them tend to be more sensible than those that manage without them. Yet all governments prefer intelligence that supports their policies and do not welcome bad news. Intelligence has to be useful on politically charged issues, and has to reconcile credibility with objectivity and truthfulness. Good intelligence can be useless, and bad intelligence can be worse than useless. Ethical judgments based on its effects on government depend on its product's quality, governments' attention to it, and the ethical standards of governments' own aims and action, but the prize of encouraging rational, 'evidence-driven' government is considerable.

So what ethics apply to intelligence's effects overall? Judgements can be of an absolute kind that condemns some activities as intrinsically wrong in themselves, irrespective of circumstances. Kant deprecated espionage even in war.³ David Kahn, the author of the standard work on code-breaking, concluded that 'Cryptanalysis is itself an aggression.... a trespass. Moreover it is surreptitious, snooping, sneaking: it makes government hypocritical'.⁴ On the other hand the ethicist can be a consequentialist, judging intelligence by its effects on

² See the British Foreign and Commonwealth Office's 'ten strategic international priorities' for 2007 (accessed on FCO website 28 May 2007). These included 'Preventing and resolving conflict through a strong international system, and 'Promoting sustainable development and poverty reduction', but also 'Supporting the UK economy and business ...'. What kinds and degrees of covert collection are justified by these varied objectives?

³ H.Reiss (tr. H.B.Nisbet), Kant: Political Writings (Cambridge: Cambridge University Press, 1991), pp. 96-97.

⁴ D.Kahn, The Codebreakers (London: Sphere edition, 1973), p.456.

international society, or sometimes within states. Sir Michael Quinlan has argued that it necessarily has an 'ethical debit', as a secret activity in open democracies, sometimes working with unpleasant regimes, and sometimes engaged in what would normally be reprehensible activities.⁵ Considering consequences in this way probably points to intelligence's limitation, rather than any widespread elimination.

The conclusion must be the unsurprising and pragmatic one, that ethical considerations should play a part in deciding what intelligence should do, but as one consideration along with others. Law provides one pointer towards ethics, but not necessarily an overriding or even reliable one. The CIA was said to employ 60 lawyers some years ago, which sounds quite enough for legal inputs alongside ethical ones. Perhaps intelligence should become less a zero-sum contest between states, and more a collaborative activity between them against common non-state threats, against whom almost any intelligence methods may be acceptable in good causes.⁶ Ideas of Just War may provide a basis for ideas of moderation and Just Intelligence.⁷

But moderation and pragmatism still beg questions about the criteria to be applied to the realities of intelligence decisions in democracies. The ethical decisions are mainly apparently small ones, perhaps with cumulative effects, typically taken by a tired British Secretary of State working by himself through his official box of papers at two in the morning, and faced with a submission for his approval for an intrusive intelligence operation. What ethical standards—absolutist, consequentialist or realist—do we expect him to apply?

Equally important—perhaps more influential, over time—is the attitude of the intelligence practitioner. As with much long-term government service, his (or her) profession is probably not for those with ultra-sensitive consciences. Yet most people in intelligence see it as a worthwhile cause with beneficial results nationally and internationally. Governments sometimes use rough methods, fall below their normal standards, or are seriously mistaken; but practitioners are usually willing to give them the benefit of the doubt up to a point.

But only up to a point. Intelligence's justification lies in its professional standards, which need some distancing from government and a willingness to persuade it of unwelcome truths. Cultivating an intellectual independence of this kind is inseparable from making comparable ethical judgments about intelligence's own activities and the government actions it informs.

Ethics are a necessary input to intelligence professionalism, not an option.

⁵ Michael Quinlan, 'The Future of Covert Intelligence' in Harold Shukman (ed) Agents for Change: Intelligence Services in the 21st Century (London: St. Ermin's Press, 2000), pp.66-67.

⁶ See the author's '11 September: Legitimizing Intelligence?' in International Relations vol. 16: pp. 227 - 241.

⁷ For the idea of 'Just Intelligence' see Michael Quinlan, 'The Future of Covert Intelligence' and the present author's 'Modern Intelligence Services: Have They a Place in Ethical Foreign Policies?', both in Shukman, Agents for Change, 2001, pp.68, 307-8.

Afterword: and a Model Code of Ethics and Standards for IC Professionals to consider as they develop a professional ethos of their own.

By Brian Snow, USA, 34 years NSA (retired), and Senior Intelligence Service in the U.S. Intelligence Community. He is now convener of a working group on Intelligence Ethics.

I am not a professional ethicist; instead I had a 34 year career in the U.S. Intelligence Community and held several very senior positions. I strongly believe that intelligence officers need the help and guidance a code of mission ethics can provide, and I applaud the authors of these papers for seeking a path that will lead us there.

The “Forward of the Editor” focused primarily on how ethics can lead to better mental health for practitioners and better results for their employers, stressing the value of enhanced trust among nations whose intelligence organizations behave ethically.

I will take a slightly different, more pragmatic tack. I do believe the vast majority of intelligence officers acting on behalf of their nations are personally driven by the need to do the right thing as well as the expedient or locally effective thing. But they are all human, and subject to typical human frailties. Their actions have the power to gravely affect their nation and its citizens; and they act in secrecy. We all have seen cases where persons with power in public positions have acted irresponsibly, and the untoward impact their actions can have on innocents. What then are the temptations for those who have power and act in secrecy?

Bluntly, ethics codes for intelligence officers will increase the safety of their nation and its citizens. Such codes will lead to increased internal discussion of planned operations and technology initiatives, and will lend support in these discussions to those officers who truly want to “do the right thing,” and mitigate the effect of the more rambunctious, risk-taking members of the work force; and yes, there are such in the workforce. Will ethics codes solve all such problems? No. But they certainly will help, and that is enough reason to encourage them.

I repeat; the vast majority of intelligence officers are honorable, patriotic souls doing their best in a difficult and important business. Let’s not lose sight of that. But they have power and they work in secrecy, so there are temptations.

Do we really need ethics codes for intelligence officers? Yes; for our own safety’s sake as citizens.

So to our authors and others; press on. The work is needed.

Brian Snow, August, 2007.

The following Draft "IC-Mission Ethics" is the work of about 40 individuals concerned with the need for clear ethical guidance to Intelligence Officers. Actual guidance for professionals in the field is sometimes disturbingly ambiguous, despite whatever polite society thinks or thick books of rules and regulations say. This working group is about 1/3rd people with substantial IC experience, 1/3rd professional ethicists, and 1/3rd other. We have been working on language that tries to bridge the many varieties of professional intelligence work to find something both universal and practical (outsiders may not appreciate how different some of our specialties are, and how unusual some of the ethical dilemmas we encounter are).

In any event, we invite all to consider this attempt at drafting a professional code of ethics and standards that covers the essentials concisely. It is a work in progress.

DRAFT Intelligence Community "Mission Ethics"

Preamble:

Intelligence work may present exceptional or unusual ethical dilemmas beyond those of ordinary life. This code should be read as guidelines rather than as rigid rules admitting no exceptions. Ethical thinking and review should be a part of our day to day efforts; it can improve the chances of mission success, preserve our alliances, protect our nation's and our agency's integrity, and protect us from the consequences of bad choices. Therefore, we adhere to the following standards of professional ethics and behavior:

1. First, do no harm to U.S. citizens or their rights under the Constitution.
2. We uphold the Constitution and the Rule of Law; we are constrained by both the spirit and the letter of the laws of the United States.
3. Expediency must never be an excuse for misconduct.
4. We are accountable for our decisions and actions and support accountability processes to ensure our adherence to these principles.
5. Statements we make to our clients, colleagues, overseers and the U.S. public will be true, and structured not to mislead or unnecessarily conceal in any way.
6. We will seek to resolve difficult ethical choices in favor of constitutional requirements, the truth, and our fellow citizens.
7. We will address the potential consequences of our actions in advance, especially the consequences of failure, discovery, and unintended consequences of success.
- 8a. We will not make decisions that impose unnecessary risk on innocent parties.
- 8b. If an action might result in harm to our citizens, seek authorization from a national authority external to your agency that is in your chain of command.
9. Although we may work in secrecy, we will work so that when our efforts become known, our fellow citizens will not be ashamed of us and of our efforts.
10. We will comply with all public and international human rights agreements that our nation supports.

This reader is published by the Center for the Study of Intelligence and Wisdom (**CSIW**) at Ground Zero Minnesota. Ground Zero Minnesota (or **GZMN**) is a 501(c)3 education non-profit that was started in 1982 to promote greater public awareness of nuclear weapons and related security issues under the mandate

“Top quality, non-partisan, education for informed democracy and human survival.”

From 1982 – 1986 we sponsored over 3,000 educational programs from small rural class rooms, churches and civic groups to national TV audiences and major conferences. From 1986 – 90 GZMN continued to sponsor some hundreds of programs each year in schools, churches and civic organizations, and 27 candidate dialogues with sitting Minnesota Congress-people, Senators and their prime opponents (3 election cycles; 9 out of 10 each time). Those **dialogues** were deliberately structured differently than traditional ‘debates’ and involved students from typically 6 high schools in a region on a panel interviewing their Representative and his or her opponent before large audiences in a positive, community problem-solving kind of way. This community based, problem-solving tone, engaging both the professional military and peace communities to better solve common problems of a civilization in crisis, is as important as any content.

Since 1991 Ground Zero MN has moved into video production for large audiences rather than sponsoring large numbers of events, but we still do a few dozen live programs each year, most at colleges and churches. We have worked on the environment, energy and human rights issues along with our traditional national and international security themes. One of our most popular videos is a half-hour primer on student debts, and we’ve been invited to lecture as far away as Pusan National University in S. Korea (3 times) on global energy futures and sustainable development. Our mandate has been shortened but remains nearly the same: **Education for Informed Democracy and Human Survival**. Over the years we have been endorsed by 3 Commissioners of Education, and by the entire Minnesota Congressional delegation. Our book “On the Causes of War” won a national peace writing award in 1999, has been translated into Italian and republished in Canada, and is freely available on the web along with this reader on Intelligence Ethics, a draft of which has already been used for at least one class at the CIA. But there is nothing secret here, just perspective. Hard copies are \$10 in the US and Canada.

More information on Ground Zero Minnesota and the **Center for the Study of Intelligence and Wisdom** (CSIW) can be found at www.gzmn.org.

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