PRESIDENTIAL LIMITATIONS ON
THE ETHICAL USES OF COVERT ACTION

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ABSTRACT

This thesis is an ethical investigation of the use of covert action in support of the broad national security objectives of the nation as articulated by the President of the United States. The U.S. Constitution and U.S. laws empower the President as the sole individual able to authorize covert action. This thesis argues that while the President may have the legal authority to authorize covert action, such operations may not be ethical. Covert action stands apart from traditional intelligence activities because it operates beyond information gathering while covert action involves activity intended to interfere with the internal affairs of a sovereign state in a way that is not attributable to the United States. The President must rely on intelligence professionals to carry out authorized covert action. The burden of acting ethically would lie in the hands of both the President and intelligence professionals.

After demonstrating this point, this thesis develops a general framework for a code of ethics for intelligence officers. The National Security Council (NSC) and its staff guide the development of covert action plans. Historically, the NSC guided operations that were intended to repel communism, to test the limits of
drugs on unwitting test subjects, and to prevent nuclear war. As a bureaucracy of the Executive branch, the NSC has far-reaching influence over the national security actions of the nation. One concern with a body with such great power is explained by Guy B. Adams and Danny L. Balfour in Unmasking Administrative Evil. These authors illustrate that organizations can administratively sanitize “evil” behavior and convince bureaucrats that a particular action is rational and proper in terms of efficiency. They use the example of the efficient, bureaucratic, rationalized system of exterminating Jews in Nazi Germany. Arguably, covert action can also be viewed as an administrative evil that can rationalize almost any action in the name of national security. This thesis argues that covert action is indeed needed in defense of the nation; however, it should be used in a measured way and with specific, limited objectives as articulated by the President.

The structure of the argument is as follows. Chapter One introduces the concept that although covert action is lawful, such action may not be ethical. While covert action is not a new tool of the state, its use and abuse returns to a recurring question: What are the ethical uses of covert action? Chapter Two illustrates that after the president approves a covert action, intelligence officers complete the directed actions, then examines whether intelligence work is a profession that requires the use of a code of professional ethics in the fulfillment of the directed actions. Intelligence work is a profession, although it does not perfectly fit the pattern of other traditional professions. As a profession, it must
operate within a written professional code of ethics. Chapter Three defines the legal and ethical distinctions in intelligence work and points out how law and ethics are sometimes two separate issues. Chapter Four shows how even the mere perception of covert action can have unintended consequences on U.S. foreign policy. In Ethics and Intelligence after September 2001, author Michael Herman suggested evaluating whether the intelligence action promotes or discourages responsible government behavior and good inter-state relationships or avoids war. Chapter Five asserts that there is a place for covert actions in the defense of the nation, especially in the Global War on Terror. Daily, the President receives a great deal of advice—both right and wrong—from a team composed of employees who have various agendas; however, the President is the final arbitrator on all decisions, particularly covert action. In reviewing historical use of covert action, the previous attempts to replace a communist government or leader with one more supportive of U.S. objectives were challenging, if not impossible, to accomplish. Therefore, the limits of covert action must be faced with a realistic perspective. In the pursuit of national security objectives, intelligence professionals and their code of professional ethics may be the key to achieving both realistic and ethical operations that would allow the general American public to be proud of the operations in decades after the information is declassified.
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>CHAPTER ONE</td>
<td>1</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td></td>
</tr>
<tr>
<td>CHAPTER TWO</td>
<td>4</td>
</tr>
<tr>
<td>THE PROBLEM OF ETHICS AND INTELLIGENCE: IS INTELLIGENCE WORK A PROFESSION BOUND BY A CODE OF ETHICS?</td>
<td></td>
</tr>
<tr>
<td>CHAPTER THREE</td>
<td>36</td>
</tr>
<tr>
<td>LEGAL AND ETHICAL DISTINCTIONS IN INTELLIGENCE WORK</td>
<td></td>
</tr>
<tr>
<td>CHAPTER FOUR</td>
<td>50</td>
</tr>
<tr>
<td>ETHICAL CHALLENGES IN THE CONDUCT OF COVERT ACTION</td>
<td></td>
</tr>
<tr>
<td>CHAPTER FIVE</td>
<td>59</td>
</tr>
<tr>
<td>PRESIDENTIAL LIMITATIONS ON THE ETHICAL USES OF COVERT ACTION</td>
<td></td>
</tr>
<tr>
<td>END NOTES</td>
<td>76</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>90</td>
</tr>
</tbody>
</table>
CHAPTER ONE
INTRODUCTION

The Global War on Terror exemplifies non-traditional global security challenges that the United States must confront. Public discourse concerning intelligence activities in the U.S. has brought to light abuses of power and corruption by U.S. Government officials and at times has threatened civil liberties as guaranteed by the U.S. Constitution. It is the duty of the President “to preserve, protect, and defend the Constitution of the United States from all enemies foreign and domestic.”

The President arguably has no limit in his duty to protect the U.S. national security interests. Intelligence activities are actions that an agency within the Intelligence Community (IC) is authorized to conduct. It is one of the tools that the President has available to fulfill his security responsibility in order to acquire information that is often concealed, protected by a nation, or not intended to be publically available that will assist the President in making decisions.

Specifically, this thesis will evaluate several historical examples of presidential uses of covert action. Covert action is an intelligence activity involving the use of military or political operations undertaken in a manner that disguises the identity of those taking the action; usually employed in situations where openly operating against a target would jeopardize the operation’s success. Although covert action is lawful, such action may not be ethical. While covert action is not a new tool of the state, its use and abuse returns two
recurring questions: What are the ethical uses of covert action? Does intelligence work qualify as a profession?

In this thesis, intelligence officers are defined as skilled subject-matter experts who study and evaluate information from many sources. From the information, they develop useable assessments that are consumed by policymakers. Intelligence officers may perform their work from a desk in the United States or abroad illustrating the worldwide significance of their profession. In order to adequately evaluate the ethical uses of intelligence or covert action, it is necessary to begin by determining whether intelligence officers are professionals. This point is essential. As in the medical and legal professions, a code of ethics is central to the discipline, serving as a guide to assist intelligence officers in understanding what actions are ethical or unethical.

Some intelligence officers engage in or assist in the planning of covert action and the question remains: What are the ethical limits in what the president can direct intelligence officers to do when engaging in covert action? Michael Walzer explained the modern concept of “dirty hands” as meaning “…that a particular act of government may be the right thing to do in utilitarian terms and yet leave the man who does it guilty of a moral wrong.” In this context, a president may authorize a covert action in accordance with law; however, the individuals who carry out those actions may be committing a moral wrong. The core elements constituting a profession will be contrasted against historic uses of intelligence activities to answer the question. All Presidents inherit a national
security apparatus that includes the option of covert action. In the pursuit of this duty to protect the nation, covert action must be performed in accordance with established policies and laws as well as with the highest standards of professional intelligence ethics.

Although covert action may be permitted under U.S. laws, such actions may not be ethical. The president is not alone in deciding whether covert action is appropriate. The U.S. Congress also asserts its Constitutional oversight authority and engages in dialogue with the intelligence officers who carry out covert missions to ensure that U.S. operations are appropriate.
CHAPTER TWO
THE PROBLEM OF ETHICS AND INTELLIGENCE:
IS INTELLIGENCE WORK A PROFESSION
BOUND BY A CODE OF ETHICS?

One common perception of intelligence work or spy-craft is that there are no ethical limitations on how to perform the job or mission. The rules governing these activities and restraints developed to regulate these darker aspects of human conflict are defined as the ethics of intelligence. Intelligence activities operate under the authority of law; however, considerations of professional intelligence ethics can characterize operations as unethical although they may be legal. The fallacy of intelligence work is justifying any action in the name of national security.

Spying—including clandestine information-gathering and assassinations—has existed since biblical times.¹ Modern-day spy activity includes covert action, targeted killings, and legalized torture. The norms that appeared settled as a result of the Church Committee hearings in the 1970s faced new challenges due to the post-September 11, 2001 security environment.² Reconciling secret U.S. Government activity and democracy is a struggle. Yet when a balance is established between national security and international law, intelligence work can be a national treasure. Reputed author of “The Art of War,” Sun-Tzu (circa 300 BC) wrote about the importance of having accurate information about your
enemy. Sun-Tzu characterized spying as both information and action. To be effective, spies had to operate in secret: “When these types of agents are all working simultaneously and none knows their methods of operations, they are called ‘The Divine Skein’ and are the treasure of a sovereign.” The U.S. IC is comprised of a federation of Executive branch agencies and organizations that work separately and together to discover threats to the country. The IC works to provide this knowledge to the President.

An intelligence officer’s job is to perform various functions and tasks related to the collection, analysis, and the production of information from many sources that provide primarily the “First Customer” or President with meaningful assessments. In other words, the limitations of the actions of intelligence officers are defined by law. Does that mean those actions are ethical? Understanding ethical boundaries in intelligence work would guide intelligence practitioners in knowing boundaries and protecting U.S. credibility in the international community.

Professionals such as those in the medical and legal disciplines are bound by a code of ethics. If intelligence officers are also considered professionals, then the actions of intelligence officers, especially in the conduct of covert actions, operate within established ethical boundaries. Those professional intelligence boundaries would also constitute presidential limits on the ethical use of covert action.
Members of the newly formed organization of the American Medical Association (AMA) met in 1847 and established uniform standards for professional education, training, and conduct. The code defines medicine’s integrity and the source of the profession’s authority to self-regulate. Similarly, the American Bar Association (ABA) advances high ethical conduct and professionalism by lawyers and judges. Since 1978, the ABA’s Center for Professional Responsibility seeks to interpret standards in legal ethics, professional regulations, competence, and client protection mechanisms. Both the AMA and ABA are two well-established professional associations that are examples of bodies that self-regulate the members of its profession.

The ethical and professional guidance provided can protect both the practitioner and the clients. For example, when an individual files a complaint against a physician or lawyer, a process is used to determine the validity of the complaint. The intelligence community seems to lack this type of professional organization and is governed by laws, executive orders, and agency regulations versus its own membership. The value of using the AMA and ABA models of a professional regulating body for the intelligence community is to show that they are both professions that require specialized knowledge, operate independently, and involve public trust. It is not a precise science to regulate the ethics of a profession; however, the benefits of having a body of experts to consult and make professional judgments are beneficial to society.
The concept of professional implies more than technical competence or mastery of requisite skills. As in the military, character traits such as loyalty, honor, and integrity are valued. The military functions under various codes of moral principles, such as the Geneva Conventions and the United States’ Uniform Code of Military Justice. The reason for having such codes for the military is that the military has special moral permission to perform acts that conflict with the values of everyday morality. These acts relate to its role as the agent of a civil authority.\textsuperscript{10}

Similar to the military, the IC has special moral permission to perform work to support national security objectives. Non-military personnel, such as intelligence officers, have special authority to conduct foreign intelligence missions and by virtue of this special moral authority, should also have ethical limitations. Ethical boundaries for civilians would function as a check and balance to their special moral authority to use the power of the government for secret purposes. Since military personnel wears uniforms, it is apparent when the military is exercising its power. This is not the case with intelligence officers who are trained to operate in secret.

A profession is a paid occupation, especially one involving prolonged training and formal qualification.\textsuperscript{11} According to U.S. Code 8, section 1101, the term “profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”\textsuperscript{12} Professionals are privileged to have
confidential information about perfect strangers. People are dependent upon professions to protect this confidential information and to apply timely and competent application of the knowledge and skills in the profession.

Intelligence officers, by description and job duty, are expected to acquire and use information not readily available to the public to discover the actions and intentions of targets. Special skills are necessary to acquire the most valuable guarded information. Noted intelligence expert and author of "A Short Course in the Secret War," Christopher Felix described spies as follows:

. . .those who inform in secret, those who are not what they appear to be, those who accept hospitality in order to probe the weaknesses by which the host can be brought to his knees, those whose true purposes are masked behind a tissue of lies and stealth…. 13

While not all intelligence officers may engage in direct deceit with a generous host, information that they gather must be carefully protected and analyzed with the highest of ethical standards.

The information that intelligence officers gather is essential for a sovereign to better provide for the defense of its subjects, according to Thomas Hobbes.14 Hobbes further suggested that if a sovereign failed to engage in the use of intelligence, it would be morally reprehensible.15 However, even when a president uses intelligence products, there are still challenges in interpreting the meaning of the information, as was the case with the claims that the Iraqi Government possessed weapons of mass destruction (WMD).
Former Iraqi President Saddam Hussein had invaded Kuwait in August 1990 and then President George H.W. Bush was concerned that the Iraqi Government was pursuing the development of nuclear weapons. National Security Directive 54, authorized the U.S. to seek the removal of Hussein from power.\textsuperscript{16} The U.S.-led UN coalition was able to negotiate Iraq to agree to inspections and monitoring to ensure the weapons of mass destruction programs were dismantled. The UN Special Commission on Iraq had its inspections interrupted and Hussein proved that he was not willing to honor his agreements.\textsuperscript{17}

Shortly after his election, President George W. Bush decided not to accept the status quo that continued during then President William J. Clinton’s tenure. As part of a U.S. campaign against the status quo, the U.S., with the assistance of Britain, published reports indicating that Iraq’s WMD programs had continued. In his national security briefings, the President was provided with a compelling amount of evidence that would cause him to eventually wage war against Hussein. Then Director of CIA George Tenet provided key judgments to the President from an October 2002 National Intelligence Estimate (NIE). The NIE judgment was that Iraq continued its WMD programs in defiance of the UN resolutions and restrictions. Iraq had rebuilt its missile and biological weapons facilities that were damaged during Operation Desert Fox. The estimate also judged that Hussein could make a nuclear weapon by obtaining weapons-grade fissile material within several months to a year. The NIE provided the President
with a large list of activities that the Iraqi Government engaged in to reconstitute its WMD programs.¹⁸

Tenet provided a response to a letter dated October 7, 2002 to the Chairman of the U.S. Senate Intelligence Committee on Hussein’s intentions. Tenet explained that Hussein may engage in terrorists attacks with conventional or chemical and biological weapons against the United States if threatened enough. The U.S. Senate investigated in September 2006 postwar findings about Iraq’s WMD programs and its suspected links to terrorism and how they compare with pre-war assessments. U.S. Senator Rockefeller maintained that a wall exists between the world of intelligence collecting, analyzing, producing and how policy-makers use the intelligence as a basis for policy.¹⁹

Stephen F. Barker pointed out that there is some common confusion between professions and occupations.²⁰ Typically, law and medicine are clear professions, while jobs involving manual labor are not. A profession involves “special ethical problems worthy of philosophical attention.” Intelligence officials regularly deal with special ethical problems and sometimes policymakers raise concerns. For example, Henry Lewis Stimson who served as Secretary of War from 1911 to 1913 and who was Secretary of State from 1929 to 1933, had fundamental disagreements with intelligence operations that were meant to assist him with his missions. After being briefed on a code-breaking operation called the “Black Chamber,” Stimson reportedly denounced the telegraphic intercepts in order to preserve his diplomatic relations with various countries.²¹
While the intelligence professionals may have acted lawfully and ethically, then-Secretary of State Stimson decided that based on his own moral standards, he would not be able to use the information gathered for the benefit of his official duties. Stimson would be excluding a vital state tool by refusing to use intelligence information based off of these telegraphic intercepts. It was legal for the U.S. to engage in this type of intelligence collection; however, in Stimson’s opinion, it was not ethical to do so.

**Characteristics of a Profession: Intelligence Work Requires Precision**

Barker observed the following: a profession limits entry into an occupation by means of licensing procedures; entrants must have extensive theoretical education; organized into an association which dedicates itself to maintaining standards; and must issue and control the standards for the discipline in a code of conduct. He also noted secondary characteristics as follows: indispensable for the public good; members of the occupation are independent practitioners who service individual clients; work is not manual; profits do not depend much on the deployment of capital.  

It is the responsibility of a skilled intelligence analyst to continuously engage in a process to validate information. In human operations, asset validation must be carefully and continuously used to vet sources, especially when the asset is being paid for information. The process “…reduces uncertainty, and provides decision-makers the confidence that the Intelligence Community has exercised due diligence in assessing the reliability of its
information,” according to a Senate Intelligence report.²³

S. Michael Plaut, Associate Professor of Psychiatry at the University of Maryland School of Medicine, attempted to define a profession with the following characteristics: specialized body of knowledge; set of skills; group mission or identity; and standards of behavior and practice. The primary professional mission is to serve the public.²⁴ These areas established by Dr. Plaut are indeed present in intelligence work.

However, looking throughout history, the concept of profession has witnessed an evolution. In Medieval times, occupations identified as professions included medicine, the law, the clergy, and university teaching. In the sixteenth century, the term profession meant an occupation in which learned knowledge is applied to the affairs of others. The cleric would profess faith and dedication to the faith, the physician would profess to use medical knowledge to promote the bodily health of others for good ends, the lawyer would profess willingness to use his or her mastery of the law to promote justice. Educators would profess dedication to an educational ideal of service.²⁵ Intelligence officers would profess political and military truths. They all have an obligation to follow the law, moral code of conduct, and to be free of undue influence from domestic or foreign powers in providing accurate assessments to the president. Intelligence practitioners have an obligation to protect and defend the nation from national security threats. They possess specialized knowledge of how to accomplish that mission beyond what the average citizen could do. Based on comparing the
criteria of other established professions, while not a perfect match, intelligence practitioners are professionals.

**Professional Intelligence Products: Free of Political Influence**

Intelligence products are one source that the president and other policymakers may use to make informed decisions. The Senate Select Committee on Intelligence (SSCI) released 5 June 2008 report that examined whether policymakers had made conclusions about whether deceased Iraqi President Saddam Hussein had a WMD program consonant with intelligence reports at the time. The report admitted analytical deficiencies in the processing of intelligence; however, it also suggested that political manipulation might have been used to substantiate its public claims.26

Alleged evidence of political pressure of intelligence officers included Vice President Richard Cheney’s repeated visits with CIA intelligence officers whose assessments were not in total agreement with the administration’s assumptions. Cheney reportedly went to CIA almost a dozen times to meet with analysts, and he had also sent his Chief of Staff, I. Lewis Libby, to CIA headquarters to follow up on his concerns.27 Any executive decision to send military troops to engage in combat should be made after reviewing all available information. It seems reasonable and essential for Cheney to have asked pressing questions to his intelligence briefer and to seek additional information. However, the interactions of policymakers with intelligence analysis should be free of any political pressure or influence to modify analysis.
University of Arizona Professor of Psychology Robert B. Cialdini has investigated and researched persuasion techniques and contends that influence of authority figures can lead to automatic deference. According to Cialdini, from birth people are trained that obedience to proper authority is “right,” while disobedience is “wrong.” This training is reinforced beginning in childhood through rhymes, stories, and songs. It is obvious even in the earliest stories of the Old Testament; it was the failure to obey the ultimate authority that resulted in expulsion from paradise for Adam and Eve. 

Cialdini analyzed social psychology experiments conducted by Yale University psychologist Stanley Milgram designed to measure the obedience of study participants to perform a job that may have conflicted with their personal conscience. The Milgram experiment made the point that individuals were just following orders to fulfill a job duty. Through his study of the Milgram experiments, Cialdini also pointed out that authorities could wield influence because of their titles and credentials.

It is not clear whether Cheney’s repeated visits to the CIA were in fact a form of influence, not only on the analysts, but also on their immediate, and since removed, leadership. The bipartisan Senate Select Committee on Intelligence report did not find any evidence of attempts of the Vice President to influence analysts to change intelligence reports. While he did not tell them to change the assessments, his presence and perceived power and authority as the Vice President might indeed “coerce” someone in a lesser position to change his mind.
on a particular analytical concept. \(^{30}\)

Presidents regularly asked probing questions dealing with intelligence information and have requested supplemental information on national security questions. Having intelligence analysts from any IC agency meet with a president or vice president is also valuable, provided there is no political pressure or expectation to modify unduly the intelligence analysis. Having a policymaker regularly travel to meet with analysts could be compared to a judge who meets with a grand jury in the deliberation room. The judge may have already made a sentencing decision, but he may meet with the jury to guide the deliberation process in order to ensure a conviction and carry out the predetermined sentence. Judges guide the administration of justice and oversee the grand jury; however, there are protocols to ensure that the judge is acting ethically. Otherwise, the case and charges may be dismissed due to a mistrial. Intelligence officers may be protected from undue influence similar to that of a jury by having a written code of ethics accompanied with a duly constituted board of intelligence officers that oversees the standards of the profession.

**Differences Between Business Ethics and Professional Ethics**

All occupations operate under some form of ethical conduct; however, professional ethics is unique in several ways. Professions have in common that each requires mastery of an extensive body of book learning. Entrants are required to commit themselves to a distinctive ideal of service that imposed ethical demands to which ordinary citizens were not subject. Barker defended
the concept that professional ethics should remain a separate field of its own and should not be blended into the ethics associated with business ethics or the ethics of various occupations.\textsuperscript{31} Professional ethics has its own set of subject matter and ethical resolutions that benefit the greater whole when the moral options are studied as its unique field.

Professional ethics is a distinct field of study from business ethics because the latter does not impose on an individual any ethical obligation to negotiate his contract in such a way as to promote the well being of other groups in society. By understanding the self-interest associated with the business world and non-professional jobs, one may be able to clearly see the challenges of considering certain jobs professional. Barker highlighted the example of a realtor as a professional, objecting because realtors are salespeople. A realtor is a participant in commercial life and any code of ethics that realtors adopt for themselves will have little effect on curbing their self-interest, which is to make a sale. A code of ethics would possibly be geared toward gaining favorable publicity and maintaining their fee structure.\textsuperscript{32}

“When we accept a license to practice, we give up certain personal freedoms in return for the standards of our profession,” according to Barbara Hull Foster, Assistant Attorney General of Maryland.\textsuperscript{33} Although professionals such as lawyers and physicians may also be guided by making profits; the profession operates with a code of ethics and obligates one’s expertise to be used for the public benefit. It could be to promote good health, to uphold justice, or to defend
the nation. The obligation to act regardless of profit makes a profession unique in this regard. If a professional fails to act, then the code is enforced by a process to evaluate competency that could result in the revocation of a license to practice in the profession. Historically, the professional did not receive a salary, but rather an honorarium. In the early 20th Century, doctors in England were paid by their patients on a voluntary basis according to the financial status of the patient. The quality of the service was not limited due to the amount of money that the patient paid.  

The professional has knowledge that was acquired and perfected over centuries. This knowledge is freely shared with those admitted to the profession. With this training, the professional is obligated to add to the knowledge base. The fruits of labor, research, and advances are published to advance the profession, according to Dr. Alan A. Klass. A lawyer may take a pro bono case, or a physician may treat a patient who may not have health insurance. Professional ethics are separate from business or occupational ethics because doctors and lawyers can perform their duties autonomously and, as such, need to be part of a community of other professionals or licensing board in order to ensure that the public is protected from malpractice.

**Governance of a Profession**

Klass explained that internal control of professional standards or code of ethics must lie with its own membership and cannot be exercised by government appointees or party representatives. The professional body can also deny
entrance into the profession and expel members. Klass explained that the governance of professional responsibility had its beginning in the university, was granted corporate form by the law of the land, and was driven by the aspiration toward excellence.

Bernard Gert specified that an adequate professional code of ethics must: clarify what counts as violating a moral rule in that profession and specify the duties of that profession which are related to avoiding causing harm (related to moral rule) and related to preventing or relieving harm (related to a moral ideal). Individuals who are members of a particular profession would best be suited to adequately create professional standards and an ethical code of conduct.

The standards that are established within its own membership serves to assist a practitioner or professional in the proper course of action. Professionals are responsible for appropriately applying the standards of the profession. In the GWOT, the standards used to combat global security challenges have raised ethical concerns. Specifically, interrogation methods used by the U.S. military and intelligence officials to gain information from suspected terrorists have sparked a great deal of controversy, especially following the declassification of a U.S. Department of Justice memorandum dated March 14, 2003.

This memorandum outlined the legality of interrogations of alien unlawful combatants held outside the United States. Deputy Assistant Attorney General John C. Yoo concluded that the Fifth and Eighth amendments do not extend to alien enemy combatants held abroad. The events of September 11, 2001 had
“triggered” the nation’s right to self-defense in order “to provide for the common defense.” Yoo acknowledged that the president “may employ secret agents to aid in his work as Commander-in-Chief.” Moreover, Yoo cited several court cases that empower the president to “…resist force by force…without waiting for any special legislative authority.”

According to testimony to the Senate Select Committee on Intelligence, Allen S. Keller, Associate Professor of Medicine at New York University School of Medicine, had treated a patient who he claimed was tortured. Keller raised concerns as a medical professional about “enhanced” interrogation programs reportedly used by the CIA. These programs include methods involving stress positions, shaking and beating, temperature manipulation, prolonged isolation, sensory overload, and water boarding. Techniques used in enhanced torture do not necessarily leave physical scars, but can cause severe physical and psychological suffering, according to Keller. Stress positions restrain individuals for extended periods, keeping them in painful positions that could cause long-term musculoskeletal pain and torn ligaments. Shaking can result in intracranial hemorrhages (bleeding of the brain). Sensory bombardment with light and noise can cause disorientation and adrenergic response resulting in increased heart rate and increased blood pressure. Water-boarding or mock drowning is when a prisoner is bound to an inclined board and water is poured over the prisoner’s face, creating the terrifying fear of drowning. This procedure causes a prisoner to gage and choke in terror.
The question of how to handle known or accused terrorists has garnered public attention and scrutiny due to both proven and suspected abuses that have occurred around the world by both the U.S. military and the CIA. Perhaps nowhere is the alleged abuse more notorious than at Guantanamo Detention Center in Cuba. Although an updated version of the U.S. Army Field Manual bans torture and degrading treatment of prisoners, at the time of a March 30, 2008 Meet the Press interview, the Army rules did not apply to the CIA, according to CIA Director General Michael Hayden, U.S. Air Force.42

President Barack Obama mandated on January 22, 2009 that various sections of Army Field Manual 22.3 and Army Field Manual 34-52 be used by the CIA and Department of Defense human intelligence collectors in executing interrogations of detained individuals.43 The new prohibitions forbid forced nakedness, hoeding, water-boarding and other procedures that have been publicized since September 11, 2001 terrorist attacks.44 Hayden added the following:

But to limit us to what America’s Army thinks they can train young soldiers to do under minimal supervision against lawful combatants in a transient battle field situation, when our circumstances are completely different, means we’re undercutting our ability to defend the nation.45

When asked by then Meet the Press host Tim Russert whether water boarding was torture, Hayden asserted that it is more important what the Department of Justice believes.46 Hayden’s statement implies that his opinion is less relevant than legal opinion. In other words, if the United States Government sanctions an
action by law, then no further ethical evaluation is necessary. Anything the CIA would do would need to be approved and signed off by the Department of Justice to be consistent with the Constitution and U.S. international obligations, according to Hayden. On the contrary, five days after the events of September 11, 2001, Vice President Cheney asserted the following:

We also have to work, though sort of the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies if we’re going to be successful. That’s the world these folks operate in. And so it’s going to be vital for us to use any means at our disposal, basically to achieve our objective.  

This point demonstrates that law and intelligence ethics do not always equate to the same concept. A procedure such as water-boarding was legal for the CIA to conduct but not the U.S. Army—a clear dichotomy of legality that eroded the morale standing of U.S. policy.

The World Medical Association’s “Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in Relation to Detention and Imprisonment defined torture as:

The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason. Torture regardless of the reasons for using it, is not justified by any purpose or rationale. It is considered a crime against humanity and societies that create laws, policies, and regulations. To authorize its practices means that morale
blame may not be solely laid on the individual who conducts the techniques but also with the policymakers.\textsuperscript{49}

Former U.S. President George W. Bush has consistently defended harsh interrogation practices, citing intelligence breakthroughs as in the case of al-Qaeda lieutenant Zayn al-Abidin Muhammad Hussein (a.k.a. Abu-Zubaydah). Apparently Abu-Zubayda was the first U.S. prisoner in the GWOT to apparently undergo water boarding.\textsuperscript{50} Judicial and legislative investigations of the Bush Administration’s use of water-boarding and other methods found some individuals accountable. An unidentified CIA official states:

\begin{quote}
We were done a tremendous disservice by the administration. We had no background in this; it’s not something we do. They stuck us with a totally unwelcome job and left us hanging out to dry. I’m worried that the next administration is going to prosecute the guys who got involved, and there won’t be any presidential pardons at the end of it. It would be O.K. if it were John Ashcroft or Alberto Gonzales. But it won’t be. It’ll be some poor G.S.-13 who was just trying to do his job.\textsuperscript{51}
\end{quote}

The importance of having a code of ethics for intelligence officers can guide individuals who are performing their duties in support of the GWOT to act ethically. The concept of having an association similar to the ABA and the AMA may also mitigate problems. Intelligence professionals, especially those serving in field assignments, could seek ethical guidance and do it in a way to protect classified missions.

Federal and state laws can permit the use of established professional standards in judicial proceeding in determining whether a professional is guilty of malpractice. For example, New Hampshire state law considers the
recommended professional standards as evidence in defense of malpractice or breach of duty in the performance of professional services. When a professional “has acted with due care having in mind the standards and recommended practices and procedures of his profession, and the training, experience and professed degree of skill of the average practitioner of such profession...” he or she would most likely be innocent of malpractice.

Is Intelligence a Profession?

After reviewing the characteristics defining the elements of a profession, we may now examine whether intelligence work is a profession by comparing the job requirements of intelligence officers in the Central Intelligence Agency (CIA), National Security Agency (NSA), and the Defense Intelligence Agency (DIA). These three intelligence agencies were chosen because they are representative of part of the larger intelligence community and also reflect both human and technical intelligence collection disciplines. These three agencies are representative of civilian and military workers.

Licensing Procedures and Limitations of Entry

Lawyers must pass a bar exam while medical doctors have a series of board examines in order to be eligible to practice in their professions. While the phrase “license to kill” is popularly recognized from James Bond spy movies what licensing, exists for intelligence officers? Intelligence officer applicants must be U.S. citizens and successfully complete a thorough medical and psychological exam, a polygraph interview, and an extensive background investigation.
According to the CIA’s employment website, it employs various intelligence analyst positions that provide finished intelligence to policymakers for decisions of national importance. “Skilled subject-matter experts” study and evaluate information from many sources and create assessments for the highest levels of government. The CIA analysts monitor and assess foreign political developments, leadership, economic issues, military threats, and science and technology. In the analytical job descriptions, the requirements state that a bachelor’s or master’s degree is required along with regional expertise and writing skills. Foreign language proficiency is desired.

It is worth noting that only the medical/health intelligence analyst position requires a license. Applicants must have a degree in medicine along with a current license to practice in a U.S. jurisdiction. Applicants must also be able to qualify for board certification in internal medicine.53

CIA intelligence analysts, the Clandestine Service (CST) Program, and the Professional Trainee (PT) Program are the entry-level programs for field-based Core Collector careers. The CST trains and certifies individuals to perform the full range of steps leading to clandestine recruitment and handling of sources who have access to vital, protected foreign intelligence.54 These positions require a minimum of a Bachelor’s degree and several years of work experience. Again, no license or certification is required. Upon being hired, the applicants receive internal training. The internal training would constitute the internal certification process. In the Army, for example, once one receives training past
basic soldiering, he is awarded with a Military Occupational Specialty. This specialty constitutes a “license” to practice the said profession.

After the terrorist attacks of September 11, 2001, the U.S. Government hired many new intelligence analysts. If there are no board exams or licensing requirements specific to the skills of the job, then how can intelligence work be included as a profession? One area for which the National Security Agency (NSA) hires is cryptanalysis (also known as code breaking), which is the analytic investigation of an information system with the goal of illuminating hidden aspects of that system. This field of study is a core discipline necessary for the NSA to accomplish its mission and provide intelligence information to policymakers. No specific major is targeted for cryptanalysis: the NSA hires individuals with technical and non-technical degrees ranging from mathematics to history.55

The DIA employment website offers the most detailed skills required of its intelligence officers and actually uses the term “professionals” in describing the critical work they perform in defense of the United States in the areas of military and political intelligence.56 Yet again, there is no license or test required to serve in the advertised position.

After meeting the education and work experience requirements, federal employees must take an oath of office before being permitted to perform the job duties. This oath is located in United States Code (U.S.C.) 5, section 3331 that states:
I, [name], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.57

All federal employees must take the oath of office to swear to support and to defend the Constitution of the United States of America. Like other employees, intelligence officers must work "to establish Justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty." The wording of the oath dates back to the Civil War and was called the Ironclad Test Oath. In 1862, Congress required a two-part oath. The first part affirmed that you were not and had not supported the Confederacy while the second part addressed how you would perform your duties in the future. It established a clear, publicly sworn accountability.

In 1873, Congress dropped the first part of the Ironclad Test Oath, and in 1884 adopted the wording that is now used today.58 The U.S.C. 5 oath is the generic profession of federal employees in the executive branch. This solemn oath of office would constitute as the legal and ethical obligations to perform one’s profession with the national security interests of the nation over financial or other rewards. Both the Legislative and Judicial branches have similar oaths of office.

In a leadership conference of the Office of Personnel Management, former Justice of the Supreme Court of Virginia John C. Thomas commented to his
audience that many in the room were part of the “very backbone of the United States Government.” Thomas noted that many permanent federal employees see various administrations, political appointees, and elected officials come and go, yet the work of the United States Government is in the hands of trusted public servants. As in other federal executive agencies, government employees who are intelligence officers are part of the national security bureaucracy and as such continue employment even during the transition to a new administration with the exception of its top leadership.

**Extensive Theoretical Education or Specialized Body of Knowledge**

Intelligence officers must possess skills that would apply to the profession and must demonstrate a competent level of performance and knowledge. In order for an intelligence officer to be successful, a great deal of training must be mastered, especially when operating under a civilian cover in a foreign country. In a previously classified document, A.S. Rogov warned undercover Soviet case officers about the pitfalls of civilian cover in which Soviet intelligence officers abroad had not practiced proper tradecraft and were identified as spies. As a result of not practicing the professional tradecraft, Soviet spies were identified by counterintelligence officers and were not able to effectively complete their mission of meeting covertly with sources. Although this example pertains to Russian spy-craft, the importance of an intelligence officer practicing specialized skills involved with cover is essential in remaining effective.

Other specialized knowledge for intelligence officers would be the ability to
gain access to special information that is not readily available to the public concerning military capabilities of a target country; scientific and technology skills to evaluate warfare capabilities; political and national defense policies; missile and space intelligence; and analytical skills to make sense of complex and technical information.\textsuperscript{61}

Michael Herman defined intelligence in terms of information and information gathering. Herman maintained that it is “…not doing things to people…no one gets hurt.” Toni Erskine maintained that it would be “…odd to ask whether intelligence, as information were ethical, just, or morally acceptable.”\textsuperscript{62} The point that Erskine made is that intelligence is an activity and requires action such as “…gathering information from espionage and communications interception to aerial photography.” Erskine focused his ethical evaluation on the actions involved with the act of collecting intelligence. In my view, the foundation of ethics in intelligence work originates with the collective whole of the profession that is made up of highly skilled individuals. This process would evaluate how the information or intercepted communication was obtained. Secondly, on the ethics of how an intelligence professional would use the information that was collected. This ethical evaluation should include accurately assessing the information and how to appropriately share the information. Both Herman and Erskine agreed that covert action belongs to a category separate from intelligence gathering. While this thesis is focused on covert action, the fundamental basis for determining what is ethical or unethical lies with
understanding the ethical foundations of intelligence work. The president and Congress may create and pass laws that contain ethical frameworks for the conduct of intelligence; however, their efforts are insufficient because they do not possess the expertise associated with all aspects of intelligence missions.

An Association that Maintains Professional Standards

Professional standards may originate from federal laws, department, or agency policies. Ultimately, the code of ethics must come from within the membership of the profession. The intelligence community is organized under the Director of National Intelligence (DNI). Under the Bush Administration, Director J.M McConnell acted as the Principal Advisor to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to national security.63

The DNI directs the collection process and makes policies associated with planning and direction; collection; processing and exploitation; analysis and production; and dissemination. Director McConnell has decades of military and intelligence experience. Looking back at previous directors, John Negroponte had neither the military or intelligence background, but rather only decades of political background from his tenure at the Department of State. Current DNI Dennis C. Blair is the third director and previously served as Combatant Commander for the U.S. Pacific Command prior to retiring in 2002. Blair was also the first Associate Director of Central Intelligence for Military Support at the CIA. He comes with a great deal of intelligence and military experience. On the
other hand, current Director of the CIA Leon E. Panetta has very little intelligence experience.

Panetta served as an Army intelligence officer from 1964 to 1966. He also served as Chief of Staff to former President Clinton. Prior to that, he was Director of the Office of Management and Budget and was a Member of Congress. While Panetta is highly regarded as a competent government administrator, he is at a disadvantage because he does not have the institutional knowledge of intelligence as a profession. How effectively can Panetta be in maintaining ethical standards for covert operations and other intelligence activities?

The Offices of the DNI, the CIA, the NSA, and the DIA websites do not list any codes of ethics that govern the actions of intelligence officers. Klass explained that the members of the profession should be the ones to review and govern ethical issues associated in the conduct of the profession. The DNI is a presidential appointee who has decades of military and intelligence experience; however, the practitioner must be the ones to establish the professional codes of conduct. The absence of the code of ethics for intelligence officers may be expected from the DNI because it should be created and maintained by a body of intelligence practitioners who have the ability to sanction or expel those who violated accepted ethical practices. This is not to say that the various ethics and legal offices in the Office of the DNI or other government agencies do not have ethical standards for their personnel. Many codes of ethics cover the ethical
uses of a government vehicle or the types of credit card charges that you may make with your official charge card. The type of code of ethics that seems to be absence in intelligence is an ethical code that governs intelligence operations.

Codes of ethics may serve as a starting point to help answer that question of what is professionally right from wrong. Even with documents, conventions, laws, and supervision by officers, various alleged abuses by military personnel have surfaced related to the abuse of detainees in Guantanamo, secret CIA prisons for Al-Qaida suspects, and accusations of unjust killings of innocent Iraqis in Haditha by U.S. soldiers. The Hague, the Geneva Conventions, the Charter of the United Nations, and various U.S. Joint Chiefs of Staff military manuals attempt to distinguish just conduct from other types of killing of human beings. As military leaders do for its uniformed members, intelligence officers must also indoctrinate its members of the profession to operate within moral bounds.

Elected officials are accountable and must ensure that all agencies and programs within the U.S. Government are functioning according to laws and ethical standards that reflect U.S. values. Sissela Bok wrote about how lies and lying are part of our society. Bok advocated ruling out deception and opting for honest ways to deal with problems; however she conceded that lies for the purpose of national defense may be justified. “Honesty ought not to allow the creation of an emergency by the enemy, when deception can forestall or avert it.” Bok further warned that when the truth is discovered, there are high costs to
our friends. She noted the U-2 incident of 1960 when a U.S. spy plane was shot down over the former Soviet Union. Official government lies to cover-up the covert mission of the plane were eventually admitted that resulted “…in the spiraling loss of confidence by U.S. citizens in the words of their leaders. In this case, the burden on being truthful with the American public overshadowed the fact that the former Soviet Union was using non-military facilities to cover up nuclear missiles targeted against the United States.

This leads to the question of whether it was immoral or unjustified to conduct the flights? Would it be more just to be completely transparent in the field of national security and consequently allow an adversary to freely develop a defensive advantage? In this case, the advantage would have allowed the Soviets to develop their nuclear stockpiles. If the purpose of these U-2 flights were acknowledged, the effectiveness found in their secrecy would be diminished. Exposing the flights would have also risked the lives of U.S. pilots; the Soviets would have shot them down to protect their own clandestine nuclear plans.

In The Republic, Plato maintained that every form of government tends to become corrupted, and he posed the question, “Who guards the guardians?” These guardians of the nation include intelligence officers among other national security professionals. Intelligence officers can, too, lose sight of ethical ways of conducting business. Therefore, a licensing board with the ability to maintain professional and ethical standards for the profession of intelligence would
become even more valuable. The enforcement mechanism for this type of board could ultimately “disbar” and prevent future practice of intelligence. If a violation of law were committed, the penalties would be already defined. This board would address questions of ethics in intelligence operations and would ideally assist in the guidance and mission conduct to avoid the violation of any laws.

**Indispensable for the Public Good**

Since the intelligence community operates in secrecy, it is sometimes difficult for the public and academic community to appreciate the achievements and accomplishments in defense of the nation. It is at times, through leaks, that the public learns mostly of failures and abuses; however, through the failures, the public also can see that the work that is conducted is for the public good. With the concurrence of NSA, in 2002, White House spokesman Ari Fleischer officially released an example of the damage caused by classified information being unlawfully released to the public. Fleischer explained:

> And let me give you a specific example why, in our democracy and in our open system, it is vital that certain information remain secret. In 1998, for example, as a result of an inappropriate leak of NSA information, it was revealed about NSA being able to listen to Osama bin Laden on his satellite phone. As a result of the disclosure, he stopped using it. As a result of the public disclosure, the United States was denied the opportunity to monitor and gain information that could have been very valuable for protecting our country.\(^{72}\)

By nature of the spy business, intelligence officers possess or attempt to gather information that is protected, usually by a foreign power. The information gathered is then protected by U.S. laws and then specifically by a classification
system. Information has control markings or dissemination control markings, and only individuals that have the appropriate clearances may rightfully access the information.\textsuperscript{73} It is critical for the preservation of national security that intelligence officers and those individuals with access to protected information protect it accordingly, regardless of political disagreements.

**Independent Practitioners**

The intelligence collection cycle shows that it takes a team of experts to successfully accomplish an operation; however, intelligence officers in the field would have the most independence to accomplish a task. The Office of DNI is seeking applicants who possess the art of persuasion, negotiation, interviewing, and problem-solving skills. The ability to work in ambiguous and unstructured situations would make an intelligence officer very independent in the conduct of an assignment.\textsuperscript{74} Arthur Hulnick and Daniel Mattausch expressed the skills of intelligence officers as follows:

> Professional standards require intelligence professionals to lie, hide information, or use covert tactics to protect their "cover," access, sources, and responsibilities. The Central Intelligence Agency expects, teaches, encourages, and controls these tactics so that the lies are consistent and supported ("backstopped"). The CIA expects intelligence officers to teach others to lie, deceive, steal, launder money, and perform a variety of other activities that would certainly be illegal if practiced in the United States. They call these tactics "tradecraft," and intelligence officers practice them in all the world's intelligence services.\textsuperscript{75}

The sources and methods of gathering intelligence are hidden intentionally from public scrutiny and because of this secrecy, codes of conduct for the profession of intelligence is essential. David L. Perry maintained that often when procedural
questions surrounding oversight of intelligence agencies are examined, what is often missed is substantive ethical analysis of intelligence operations themselves. Perry attributed that gap in intelligence and ethics literature in part because of a misconception that the idea that ethical principles are not appropriate to apply to “statecraft” or international statecraft.\textsuperscript{76}
CHAPTER THREE

LEGAL AND ETHICAL DISTINCTIONS IN INTELLIGENCE WORK

There are obvious distinctions between what is legal versus what is ethical throughout the various eras of American history. For example, slavery existed until the passage of the 13th Amendment in 1865; children were forced to work in mines and factories until the Fair Labor Standards Act was passed in 1938; women did not have the right to vote until suffrage in 1920; and Rosa Parks defied the law and arguably sparked the Civil Rights movement when she refused to give up her seat on the bus to a white passenger. In the realm of national security, the president has both Constitutional and an ethical responsibilities to protect the United States. He may instruct the intelligence community to respond within the scope of the law.

Some U.S. laws providing executive agencies with the ability to follow terrorists were in need of modernization to provide the president with the full range of options to engage in modern intelligence operations. A recent example of a legal and ethical challenge for the president involved Congress’ modernization of the Foreign Intelligence Surveillance Act of 1978 by enacting the Protect America Act (PAA) of 2007. The authority granted in PAA allowed the IC to “…close an intelligence gap by enabling intelligence professional to collect, without a court order, foreign intelligence on targets located overseas…,”
according to an October 2007 statement of administration policy from the Executive Office of the President.¹

The Administration’s main concern was that PAA authority was scheduled to expire in February 2008, unless Congress reauthorized the law resulting in a change in the way intelligence professionals conducted their work. At the time, Members of Congress had major concerns over privacy rights, the limits of information that may be acquired, and the granting of legal protection from lawsuits for companies that were alleged to have assisted the government in good faith. President George W. Bush was particularly concerned that by making PAA temporary, “It does not provide certainty for our intelligence professionals” to have the tools to protect the nation from threats to national security.²

Authorization for technical intelligence collection, such as PAA, can be difficult, and the threshold for covert action appears even more rigorous. Even by reviewing historical uses of covert action and identifying the urgency for the United States to respond to national security threats, covert action is morally difficult to rationalize, yet it is justified when ethically conducted. Covert action “is an activity of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly…”³ Covert action is not a viable substitute for good foreign policy, but rather should complement public foreign policy objectives. A poorly executed covert action can damage
public trust in U.S. elected officials. A failed covert action could lead to grave foreign policy implications and provoke, rather than prevent, political unrest.

Appropriate use of covert action does have major ethical hurdles; however, there is a place and value for this critical tool of the state.

**Authorization of Covert Action in 1952**

In 1952, NSC Directive 5412 empowered the CIA with the mission of conducting covert action because it “seemed desirable” to use the existing agency, rather than creating a new bureaucracy to carry out covert actions as directed by the NSC. Executive Order 12333 states:

> The Director of the Central Intelligence Agency shall: Conduct covert action activities approved by the President. No agency except the Central Intelligence Agency (or the Armed Forces of the United States in time of war declared by the Congress or during any period covered by a report from the President to the Congress consistent with the War Powers Resolution, Public Law 93-148) may conduct any covert action activity unless the President determines that another agency is more likely to achieve a particular objective.

It is not enough for policymakers to simply know information about adversaries. Intelligence must be used to transform information into policy and balance the overt activities in international relations. Some of the early examples of covert actions aimed to counter the spread of communism. NSC directives sought to impair relations between China and, what was then, the U.S.S.R. in order to slow the growth of the military and economic potential of the Soviet bloc. The goals would strengthen other nations that sought to repel communism.
On March 15, 1954, U.S. President Dwight D. Eisenhower and the NSC believed that the United States was a victim of “vicious” covert activities of the U.S.S.R., Communist China, and groups dominated by these countries and collectively referred to as “International Communism.” These groups were attempting to discredit U.S. democracy and national security objectives of world peace. As a result, the NSC recommended that the overt foreign activities of the U.S. Government be complemented by covert action.⁷

Historical uses of covert actions were specifically aimed at developing underground resistance movements and facilitating guerrilla operations in order to perform U.S. tasking or objectives in the event of war. Covert action also established bases of operation, trained assets or spies who would remain in the country, and it also established safe houses.⁸ Covert action could also involve the use of propaganda in an attempt to sway public opinion into believing a false message that could place blame on an unsuspecting person or group.

Other covert activities were related to the following issues: political action, economic warfare, sabotage, demolition, escape, evasion, evacuation measures, subversion against hostile states or groups, support of indigenous and anti-communist elements, and deception plans. NSC Directive 5412 specified that the covert-related operations shall not include armed conflict by recognized military forces, espionage, or counter-espionage. The use of uniformed military personnel would attribute the actions back to the United States and would interfere with the president’s ability to conduct foreign affairs.⁹
Directive 5412 responded to the NSC’s perceptions that the USSR and Communist China engaged in their own covert activities to discredit the United States and other powers of the free world. The CIA was already authorized to conduct espionage and other operations abroad and would carry out covert actions. The goal of Directive 5412 was to impair relations between the USSR and China and to slow down the economic and military growth of the Soviet bloc. Even before the United States had a need to go to war with communists nations, the Directive 5412 called for the development of underground resistance and covert guerrilla operations so that the United States could use in the event of war.

Ethics May Vary in Periods of War

Ethics fuse ideas of personal morality and social consequences. An ethical covert action would be the sum of the evaluation of the reasons that the policymakers planned the operation and the ways in which individual intelligence officers followed high moral standards in carrying out an operation. Morality and social consequences would be viewed differently during a war, according to author of “Just and Unjust Wars” Michael Walzer, where various conventions and rules that govern moral behavior exist. These rules provide terms that would govern a soldier’s right to kill, whom the soldier can kill, and methods for a moral surrender.

The use of intelligence could also have various distinctions for what actions are ethical during times of peace and war. “Moral conduct means acting within a
constraining framework of principles that are independent of consequential considerations.\textsuperscript{13} Michael Herman, author of Ethics and Intelligence after September 2001 suggested evaluating whether the intelligence action promotes or discourages responsible government behavior and good inter-state relationships or avoids war. In the international arena, it is assumed that nations will employ intelligence officers to collect information on a variety of issues ranging from national security issues to commerce. Covert action however is a way for intelligence officers, and now special operations forces, to actively engage in operations that would gravely affect U.S. foreign affairs.

Some covert actions are perceived as more ethical than others. These instances involve covering up for the purposes of technical collection. For instance, covering up for U.S. spy planes to fly over Russia to use technical means to verify arms control compliance would be an ethical and just use of covert action because the collection event did not aim to harm human life: it was limited in duration, and was a way of verifying a previously established agreement.\textsuperscript{14} In comparison, an action in which an intelligence officer paid money to a third party assassin for killing individuals in Cuba or Chile would be considered highly unethical because human lives are targeted. Additionally, world leaders would not be promoting responsible government behavior as Herman explained.

**Intelligence Operations and Christian Ethics**

Darrell Cole, assistant professor of religious studies at Drew University
maintained that spies are like soldiers in that they are just doing a job for which they employ tactics that need justifying. He considered how Christian ethics may handle the moral problems of spying through the view of individuals, such as Aquinas, Luther, Calvin, and Grotius whose works played an important role in shaping Christian theology and philosophy. In his treatise, “On Temporal Authority: To What Extent It Should Be Obeyed” and “Whether Soldiers, Too, Can Be Saved,” Luther answered that Christian soldiers can do their jobs without losing God’s favor and eternal life.

Luther followed in the tradition established by Ambrose, Augustine, and Aquinas by concluding that “just soldiering” is viewed as an act of love. The method that Luther used to determine an ethical framework for soldiering was based on Fathers Ambrose and Augustine in the discussion of Scripture from the Bible that seems favorable to the work of soldiers and the fighting of just wars. Cole examined whether the same can be said for spying.\textsuperscript{15}

The work of spies was documented in the Bible and is sometimes considered the “second oldest profession.”\textsuperscript{16} As the children of Israel made their way to the Promise Land, Joshua son of Nun, sent two spies into Jericho to “view the land,” which, arguably, meant to conduct surveillance and gather information prior to entering. The King of Jericho learned that these two men had entered a gated or secure area in Jericho. In order to avoid captivity, the two spies sought the assistance of a prostitute named Rahab, who had believed that these men were sent from God for a special purpose. Rahab hid the men on her rooftop
concealing them with stalks of flax. She denied any knowledge of their whereabouts when questioned and in exchange for her assistance, the spies agreed to compensate her.

In this example, the work of the two spies required quickly gaining the trust of someone who could have been a potential enemy. Rahab provided a cover story and expected compensation for her services. As a result, the two spies were able to escape capture and returned to Joshua to provide their intelligence report. Coleman maintained that in this example, spying seemed to be consonant with God’s will and with human flourishing. He added that Rahab was heralded by other Christian writers in Hebrews (Hebrews 11:31) as a person to emulate.

Cole argued that spying maybe justifiable when the profession is conceived as a kind of use of force that is governed by the just war criteria. Spying takes its moral character from those who authorize it, with what justification, to what ends, and with what methods, according to Cole. He concluded that Christian ethics may support the subject of spying and submitted the following restrictions:

- Classical Christian just war tradition can be used to support the argument that spying may or may not be just;
- Spies must adhere to the rules of just war;
- Just spies may not use inherently unjust means in their work;
- Just spies cannot target the innocent or commit acts in which more evil than good is the likely outcome;
- Just spies may use any means necessary to kill the enemy (given the
above strictures);

- Just spies may not participate in covert operations in a neutral or friendly nation where no due care has been taken to preserve the sovereignty of the nation;

- There is no dishonor to stealth when the target is a proper one;

- Spies may lie in word and in act when in the line of duty; and

- Spies may participate in an assassination when due care is taken for proportionality in the case of an assassination in enemy-occupied territory and when a just regime change within an enemy nation, achieved with proportionality is the likely outcome. ²⁰

Cole conceded that Christian ethics can hinder spies in their work; however, that is the price to pay for being just.

**Just Causes for Covert Action**

Covert action must be planned with ethical intent and carried out by intelligence officers who exercise professional ethics. Ideally, covert action would be a tool to avoid a traditional all-out war and to achieve specific objectives. However, the just use of covert action should be rightly justified. In preparing a target country for intelligence operations, it becomes difficult to ethically judge whether an operation is just because operations may be prepared before the reason to use the newly acquired sources or capabilities exist.

CIA Deputy Director for Plans Richard Bissell testified to Congress in 1975 that, “It was the normal practice in the Agency and an important part of its mission to create various kinds of capability long before there was any reason to be certain whether those would be used or where or how or for what purpose.” ²¹
Toni Erskine would consider this a realist approach, also referred to as raison d’état, that included pre-emption and reciprocity. Acting in the interest of the state is complying with a moral principle.\textsuperscript{22} By using a consequentialist approach, Erskine pointed out that placing national self-interest before broader international obligations would be deemed immoral. Michael Herman advocated evaluating intelligence to be judged on its manifest consequences. In other words, intelligence collection and intelligence as knowledge are examined separately and then integrated into an ethical balance sheet. The means employed to gather intelligence can be morally justified by the positive impact of the knowledge acquired.\textsuperscript{23}

For deontologists, an ethical balance sheet cannot guide our moral deliberations, according to Erskine. Ethical evaluation must be made with reference to the goodness or badness of the actions themselves.\textsuperscript{24} Deontologists cannot condone some methods of intelligence collection regardless of the important knowledge that could be produced. Torturing a terrorist, paramilitary, or any other human to acquire intelligence is prohibited from a deontological perspective.

Examples according to the deontological approach are found in the work of Immanuel Kant, who had an “unsparing moral indictment” of intelligence activities, according to Erskine. In The Metaphysics of Morals, Kant maintained “…that a state is prohibited—even in self-defense—from using its own subjects as spies and for using them or even foreigners…for spreading false reports.”\textsuperscript{25}
Kant would discourage the use of covert intelligence and the individuals that it employs for its collection because it would destroy the trust between nations which is needed to establish peace. Moreover, applying covert action would inherently establish a universal law, thereby making covert activities legitimate for other nations. Erskine concluded that it is difficult to determine whether intelligence practitioners are moral agents because intelligence collection encompasses a variety of disciplines, which vary from open sources to paying spies for information.

The realist, the consequentialist, and the deontological approaches that Erskine analyzed provided various ethical frameworks in which to begin to evaluate moral agents engaged in intelligence operations. However, Erskine acknowledged that in borrowing principles from the Just-War tradition, a fourth approach that could provide a framework for ethics in intelligence activities include “Just Espionage” and “Just Intelligence.”

The Just-War Theory provides the essential elements for deciding to enter into war and includes: just cause, legitimate authority, public declaration, just intent, proportionality, last resort, reasonable hope of success, and end of peace. Most of these criteria could also be used to decide whether to consider covert action. Instead of the public declaration, policymakers should consider whether all policy goals were attempted publicly and with consultation of executive agencies and Congress.

The public declaration has both a moral and legal application before
entering into war. Morally, the declaration of war would be an ultimatum to compel action. However, it would be counter-productive to announce or threaten the use of covert action. In the practical conduct of war, military officers are responsible for disciplining soldiers who do not follow orders or who violate laws. In the conduct of covert action, it is less clear how discrimination and proportionality can be balanced legitimately in a covert plan.

Proposed Code of Ethics for Intelligence Officers

In the nature of intelligence or spy work, ethical problems may arise from conflict between an intelligence officer’s responsibilities to improve national security and the preservation of human rights. How far can an intelligence officer go to accomplish a mission? Medical and legal professionals have defined a written code of ethics, basing their codes on both personal responsibility to the profession and a collective responsibility to give back to the knowledge gained over time. As an initial step, intelligence professionals may consider the following proposed professional code of ethics:

Intelligence officers must practice the highest personal moral standards and speak freely when confronted with ethical concerns.

- An intelligence officer shall be dedicated to providing the president and policymakers with competent intelligence that was lawfully collected with compassion and respect for human dignity and rights.

- An intelligence officer shall continue to study, apply, and advance target knowledge and collection techniques, as well as maintain a commitment to
collaborate with other intelligence professionals across organizations, directorates, and the academic community.

- An intelligence officer shall recognize a responsibility to participate in activities contributing to the improvement of the intelligence community and the betterment of junior officers.

Lawyers are expected to seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.\(^3\) Intelligence professionals are not necessarily trained to rewrite laws; however, these professionals may provide impact assessments or feedback to Congress of how effective current U.S. laws allow for the prosecution of targets.

- An intelligence officer shall respect the law and recognize a responsibility to seek changes in those requirements when targets devise technology or other methods designed to circumvent U.S. laws.

In order to facilitate the legal disclosure of feedback or information to Congress, the committees dealing with intelligence oversight should consider creating an intelligence community classified e-mail alias to allow any intelligence professional the ability to share their ethical concerns with the oversight committees. This type of e-mail alias and exchange could possibly reduce leaks to the media and would satisfy an intelligence professional’s need to share information or to clear his or her concerns in a lawful manner.

- An intelligence officer shall uphold the standards of professionalism, be truthful in all reporting to policymakers regardless of his position or political disposition, and strive to expose intelligence officers or those engaging in espionage, fraud or deception to appropriate security officials and to the Inspector General.
- An intelligence officer shall have a special confidence that when he lawfully violates the privacy of targets—whether individuals, groups, corporations, or government or non-government entities by technical or human means—the information gained shall be used for sanctioned purposes to accomplish national security objectives.

- An intelligence officer, regardless of employment status, shall be vigilant to national security threats and shall report such threats to appropriate authorities, including the Federal Bureau of Investigation.

The authorities of intelligence professionals are prescribed in various laws and agency policies; however, intelligence officers are also guided by personal conscience and should also seek the advice of professional peers. An intelligence professional should strive to attain the highest level of skill in order to improve the quality of national security.

- An intelligence officer, while targeting or interrogating an individual, shall respect human life and shall be free to choose whether to participate in intelligence activities that may result in the loss of human life.

- An intelligence officer shall preserve, protect, and defend the Constitution of the United States and fulfill national security objectives. A professional ethics association for intelligence officers would allow for the exploration of a code of ethics. It would give its membership the ability to discuss proposed covert action plans and other intelligence missions to set the best course of action for being lawful and ethical.
CHAPTER FOUR

ETHICAL CHALLENGES IN THE CONDUCT OF COVERT ACTION

Even the perception of covert action can have unintended consequences. As a result of perceived U.S. covert action, the concerns of Chinese dissidents were discredited, and the dissidents were labeled as “foreign hostile forces.” According to a Department of State cable from the American Embassy in Beijing, in April 1995, the United States warned its consulates and the Secretary of State that internal Chinese Government documents alleged that U.S. actions incited dissent in China. In March 1995, the Chinese Propaganda Department issued a classified notice to the Chinese media, warning of a covert U.S. strategy against China.

Instead stirring dissidents to cause anti-regime actions, the Chinese Government maintained the United States was providing money and support for dissidents to enter the Chinese business sector in order to gain influence and “attack the system from within.”¹ Even though it is unclear whether the United States actually sponsored a covert action against China with political goals to help dissidents, even the appearance of such action has negative consequences for foreign policy.
Administrative Evil: Unwitting Test Subjects in Project MKULTRA

To maintain a totalitarian state, Adolf Hitler used terror, legislation, propaganda, and the civil service structure. Germany’s professional civil service operated within the boundaries of German law. As such, Hitler was able to make public servants feel as though their actions in facilitating the Holocaust were appropriate and legal. One example was in the financing of rail transport, essential in the destruction process. Bureaucratic procedure required that that Gestapo offices paid the German Rail Authority for the services that took Jews to death camps. In financing the transport, every effort was made to preserve the façade of legality and proper procedures. Civil servants carried out orders that resulted in the genocide of individuals, a genocide that was made efficient by the legal use of the government infrastructure.2 Just as Hitler’s bureaucracy became a facilitator for evil, intelligence officers or even the United States bureaucracy likewise could become a tool for administrative evil?

In July 1963, CIA Inspector General J.S. Earman expressed his concerns to the Director of Central Intelligence and objections to the administration regarding a covert program to test hallucinogens and other techniques on unwitting U.S. citizens. President Dwight D. Eisenhower apparently approved a covert project named “MKULTRA,” which was first started in 1953 for the purpose of researching and developing “…chemical, biological, and radiological materials capable of employment in clandestine operations to control human behavior.”3 The created product of MKULTRA could only be used for operational
purposes with the personal authorization of the Deputy Director/Plans. Over the 10-year life of the program, the experiments included radiation, electro-shock, and hallucinogenic substances. Furthermore, the CIA Technical Services Division was accused of testing on unwitting U.S. citizens in 1955 by Earman.

This particular covert program differed from others because the “normal procedures for project approval, and accounting were waived.” The inspector general reported that the concept of manipulating human behavior to be “distasteful and unethical.” Any already highly-classified covert program that does not use the established administration procedures should raise a red flag in the minds of all participants. MKULTRA or any other program that experiment on unwitting individuals is inherently unethical and should be immediately stopped. If the CIA had a professional intelligence board to consult on operations that involve ethical dilemmas, MKULTRA could have ended sooner.

**Covert Operation in Cuba, 1960**

U.S. intelligence efforts attempting to replace Cuban President Fidel Castro have consistently proved to be failures. Even if the U.S. were successful in replacing Castro, communism in Cuba would most likely continue because it is a system that is working for them. Due to health issues in July 2006, Castro handed power to his brother Raul Castro and in February 2008, Fidel resigned. The change of power had little impact on Cuba’s political system because communism in Cuba is greater than one individual.\(^5\)
A more common use of U.S. covert action involved regime change. The ethics of regime change can be questioned based on the importance that the United States places on democracy and fair elections. Covert action often goes a step beyond the traditional information campaign and sometimes adds a paramilitary component to ensure mission success. Regardless of its actual measure of success, Allen Dulles explained a covert action, in March 1960, that the president’s national security team was planning that was intended to “effect change in Cuba.” This plan included the formation of a moderate opposition group that was in exile to attempt to “restore the revolution” that Castro had betrayed. A medium wave radio station would carry out covert broadcasts into Cuba, as well as the concurrent establishment of a network of dissidents on the island. Eisenhower agreed to an eight-month plan to train a paramilitary force. One major concern of this plan was the thousands of Americans residing in Cuba, many of them businessmen with assets tied to the island. Warnings were issued to them to gradually return to the United States for safety reasons.6

The CIA reportedly was engaged in assassination plots against various foreign leaders, including Castro. Crime figures Sam Giancana and Santos Trafficante were apparently requested to Kill Castro.7 Notably, 48 years after the covert action plan, Fidel Castro’s legacy and communist roots are still vital in Cuba. In hindsight, authorizing this particular covert action would not be ethical because it involved a unilateral decision by the United States to effect an internal change in the politics of a sovereign nation by using deceit. The action sought to
create a propaganda campaign and a paramilitary force that would again be contrary to this nation’s democratic roots; the essence of the campaign created the potential for violence rather than a legitimate political discussion. There are other means—such as through the UN or some other cooperative international body—that are more ethical approaches to accomplish U.S. objectives in Cuba without compromising the basics tenants of democracy.

CIA tradecraft encourages its officers to lie, hide information, or use covert tactics to protect their cover. The CIA backstops the cover stories for operational purposes. Perry argued that it would be highly problematic to grant the profession of intelligence with a strong moral role-differentiation. In other words, intelligence officers do not have immunity to moral scrutiny. Covert action is at times accomplished by the U.S. providing funds to foreign nationals who are willing to complete U.S. objectives. Perry maintained that secret financial support for foreign political leaders is morally complex. Others may consider it a form of humanitarian intervention. For example, the CIA aided centrist political parties in postwar France, Italy, and Japan to counter covert Soviet aid to communist parties there. Former CIA Director William Colby claimed that covert aid to anti-communists politicians in Italy during the 1950’s gave aid to the democratic forces to obtain their goals and did not bribe them to follow American direction. The United States is not the only country to attempt to covertly pay politicians.
The idea of foreign governments covertly paying off U.S. Congressmen came to light particularly in 1977 when the U.S. Congress was investigating charges that South Korea paid some Members of Congress to bribe them. National Security Advisor Zbigniew Brzezinski informed President Jimmy Carter on June 23, 1977 that newspaper headlines publicly accused the Korean Government of paying Members of Congress. Carter wanted to be personally involved in any investigations that requested intelligence documents that may address the Korean payments because providing classified documents for an investigation could compromise sources and methods.10

Making a moral judgment on the use of covert action is difficult because it is a tool of the state used for national security purposes. The reasons for rejecting a covert action would depend mostly on the threat that the action targets and whether all other tools of the state, such as diplomacy, were exhausted. The President is the sole individual who can authorize covert action and would act out of good faith to the leadership of the country that is being targeted while acting in good faith to protect the United States. There is no precise fact that can demonstrate that a particular covert action is unethical and that is a reason to depend on a professional association of intelligence officers to assist in making judgments on the work conducted in its discipline.

On the other hand, James Rachels, University Professor of Philosophy at the University of Alabama, explained that, “a truth of ethics is a conclusion that is backed by reasons: The correct answer to a moral question is simply the answer
that has the weight of reason on its side." Additionally, Rachels warns that while the idea that moral judgments cannot be proved is appealing, it may not be true. He used examples of how a student could explain why a test administered by a professor was unfair.

Determining fairness is a moral judgment and a basic moral value. The student could point out that the test included questions not covered in the readings or the class, the test was so long that no one could complete it within the time allowed, and the material tested was more trivial versus substantial. If we used this type of criteria to evaluate covert action, we may find that U.S. actions are unethical, but they are still the best option to accomplish an objective.

For example, is it fair for the United States to secretly give money to a pro-democratic Chinese politician in order to promote democracy and U.S. interests? The alternative is that without giving more money, more communist leaders could be elected complicating U.S. objectives even more. This type of covert action could be unfair because it is destabilizing the political system of China. It may be unfair because our government publicly honors the sovereignty of China while secretly engaging in subversive actions. How much of a national security threat is the communist system to the United States?

The national security threat of communism is minimal compared to the Islamic Republic of Iran with the anti-U.S. rhetoric of Iranian President Mahmud Ahmadinejad. Any type of covert action appears to involve lying and, in effect, violates trust. Rachels noted that we can support our moral judgments with good
reasons and can provide explanations of why those reasons matter. In ethics, rational thinking consists in giving reasons, analyzing arguments, and setting out and justifying principles.\textsuperscript{12}

**Dirty Hands in Covert Action**

Michael Walzer explained that politicians often need to make tough decisions that may have a moral impact. Elected officials are empowered to act on behalf of the electorate. In the course of their jobs, they allegedly deal with the dilemma of dirty hands in a systematic way. Elected officials rule over the land, making laws, and restraining the actions of society.\textsuperscript{13} Walzer provided more dramatic examples of this theory in which a leader must determine whether to authorize torture of a captured rebel leader who is believed to know the location of hidden bombs or attack plans. The leader orders the individual tortured because he was convinced that it was for the sake of the whole society. Yet the leader believes that torture is wrong and is an abominable deed. St. Augustine’s melancholy soldier example understood that war is just and that killing during a just war is necessary but a sad thing to do.\textsuperscript{14} When the politician ordered the prisoner tortured, he committed a moral crime and is guilty. Walzer explained that you would know the moral politician by his dirty hands. You would know the moral man because his hands would not be dirty. You would know the politician because he would pretend that his hands were clean.

While it is true that politicians need to make tough moral decisions, sometimes in secret, it is also necessary to use as much restraint as possible as
well as other options before committing moral crimes. The U.S. Government functions under a system of check and balances. The Judicial and Legislative branches need to be vigilant in ensuring that the Executive obeys the laws, upholds the Constitution, and protects the nation. It is up to the electorate to make sure to elect good, moral leaders.
An intelligence officer, as a member of the intelligence profession, is an agent of the U.S. President and a public citizen who has special responsibility for the quality of national security for the United States. The use of the term bureaucracy distinguishes an employee who may be appointed for a certain period of time. Regardless of changes in an administration, a bureaucrat remains in his or her job role and is not released from employment due to changes in the political tide. As an agent of the president, an intelligence officer performs various functions and tasks related to the collection, analysis, and the production of information from many sources that provide the president with meaningful assessments. With the direction and authorization of the president, intelligence officers may also engage in hands-on activities to effect change in a foreign country.

Two days after being sworn into office, President Barack H. Obama clarified some questions regarding the use of water boarding and how to legally and ethically conduct interrogations. Mandated via Executive Order dated January 22, 2009, the new standards for ensuring lawful interrogations are contained in the Army Field Manual 2-22.3 and must be used during interrogations. The order clarified that an employee “…. may not in conducting interrogations, rely upon any interpretation of the law governing interrogation…”¹
This order appears to eliminate any differences in legal opinion that were provided by the Department of Justice during the Bush Administration. The order revoked Executive Order 13440 of 20 July 2007 and orders issued to or by the CIA from 11 September 2001 to 20 January 2009. This order also mandated that the CIA shall close any detention facilities that it currently operates and shall not operate any such detention facility in the future.

With the stroke of a pen, the new president was able to refocus legal policy to reflect his own viewpoint. In other words, the personal ethics of the president clearly can—and have—created limits and boundaries to gaining intelligence from detainees. On the other hand, if the ethics of the president created a policy that permitted extreme, harsh interrogation methods, then the ethics of the intelligence profession would be able to create a safeguard against preventing human rights abuses.

President Richard Nixon explained the criteria that he used for deciding legal action to David Paradine Frost (born 7 April 1939) a journalist as follows:

…If the president, for example, approves something because of the national security, or in this case because of a threat to internal peace and order of significant magnitude, then the president’s decision in that instance is one that enables those who carry it out, to carry it out without violating a law. Otherwise they’re in an impossible position. Arguably, the ethical limitations on the president’s use of covert action should be built into the ethical code of the intelligence professionals. A president could request a particular covert action; however, the due diligence of the intelligence
professional would compel the operation to be maintained within the ethical bounds of the intelligence profession.

Unlike a lawyer, intelligence professionals are not advisors or advocates to the president and do not make or suggest policy. Intelligence professionals do not advocate for any particular position, but rather provide facts and observations, along with analysis on the impact of a particular policy decision. The National Security Advisor to the President and the Director of National Intelligence would be expected to articulate opposing viewpoints, although both positions are appointed ones and, as such, each individual works at the pleasure of the president.

Having an appointed official lead the intelligence profession can corrupt its professional ethics. Alan A. Klass, medical doctor at the University of Manitoba explained that internal control of professional standards or code of ethics must lie with its own membership and cannot be exercised by government appointees or party representatives. In response to whether the Director of the CIA and Director of National Intelligence would stay in office during the new administration in January 2009, McConnell said:

The message that both Gen. Hayden and I have delivered to the incoming administration is, "We view ourselves as professionals -- as apolitical professionals -- and we are available to serve at the pleasure of the president. Typically presidents do replace appointees; however, the controversy over these two individuals relates to their support of President Bush's controversial warrantless wiretapping policies. McConnell added that "If they [president-elect transition team] choose others, that's fine. We're happy with that. We have other things to do."
President Obama did replace both individuals.

Since covert action is an extreme departure in conducting state business, the president has an ethical and statutory obligation to be involved in each detail surrounding covert action. However, NSC staffer Paul B. Henze informed National Security Advisor Zbigniew Brzezinski of his belief that the NSC staff should have more autonomy in the preparation and planning of covert action. Henze maintained that it was not the intent of the Hughes-Ryan Amendment to have the president “preoccupy himself with the details of covert action and make a new finding each time an additional objective, [referred to as a new Department of State] ‘Perspective’ was added to the list.” The Hughes-Ryan Amendment to the Foreign Assistance Act of 1961 stipulated “that no appropriated funds could be expended by the CIA for covert actions unless and until the president found that each such operation was important to national security….“

Traditional intelligence collection may also violate some aspects of state sovereignty, however, if the action is for the collection of information, it is more acceptable than the U.S. attempt to influence foreign elections, orchestrate a coup, or kill a target. In early 2007, President George Bush authorized the U.S. military to kill or capture Iranian operatives inside Iraq as part of an aggressive strategy to counter Iran’s influence. Previously, the U.S. policy was to “catch-and-release” in order to send a message to Iran before escalating tension. As part of the catch and release initiative, U.S. forces reportedly collected DNA samples from some of the Iranians without their knowledge and also scanned
their retinas before releasing them. The Pentagon’s additional authority to use U.S. funds to co-opt foreign forces to assist in the Global War on Terror adds an even more complicated role for Congress to provide the necessary oversight to ensure that the actions of the military and intelligence officers are in accordance with U.S. values.

There is a place for covert actions in the defense of the nation; however, it cannot and should not be the new standard for countering terrorism or targeting terrorists. It should not replace a government deemed unacceptable by the United States or provide resources to third parties to carry out this task for the benefit of the United States. The actions of the NSC reflect directly on the president because it is the president’s staff, not an independent agency. The impact of the NSC staff in the Iran-Contra Affair illustrates the political abuses and impact of the NSC on international affairs. The president is not alone in deciding whether covert action is ethical. Authorized Members of Congress must be consulted at all phases of any covert action, especially if there will be any post-covert action cover-up.

Even with documents, conventions, laws, and supervision by officers, various abuses by military personnel have surfaced related to the abuse of detainees in Guantanamo, secret CIA prisons for Al-Qaida suspects, and unjust killings of innocent Iraqis in Haditha by U.S. soldiers. The Hague, the Geneva Conventions, the Charter of the United Nations, and various U.S. Joint Chiefs of Staff military manuals attempt to distinguish just conduct from other
types of killing of human beings. It is important for military leaders and intelligence leaders to indoctrinate soldiers and intelligence officers to operate within moral bounds.

**Congressional Oversight**

The duties and responsibilities of the Director and the heads of other departments, agencies, elements, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be implemented in accordance with applicable law, including Title V of the Act. The requirements of applicable law shall apply to all covert action activities as defined in this Order.

On 15 January 1976, Gerald Ford, the U.S President at the time, made clear to U.S. Representative Otis G. Pike, Chairman of the Select Committee on Intelligence, that public discussion of covert activities would be detrimental to U.S. national security. It would be damaging to the effective conduct of foreign affairs if a covert operation were revealed. Other governments would lose any confidence in collaborating with the United States in clandestine programs.

Apparently, Pike wanted to debate whether the United States should engage in covert action; however, Ford countered that it should not be resolved by a systematic exposure of past and current programs. Ford noted that although the media had speculated about U.S. involvement in a covert action, there existed a serious difference between that exposure and having a Congressional committee issue a report. Additionally, Ford asserted that
because the Select Committee on Intelligence had access to covert action documentation and expert testimony, there was no need to reveal the existence of covert action.\textsuperscript{13}

The amount of information sharing with oversight boards and Congress may differ between various presidential administrations. For instance, on May 7, 1979, Standsfield Turner, who was the CIA Director at the time, informed National Security Advisor Brzezinski that he failed to share with the Special Coordination Council (SCC) that unwitting persons were being used in covert actions. The CIA brought this issue to the attention of the Intelligence Oversight Board (IOB). The CIA General Counsel had eventually concluded that there was no illegality or impropriety involved, according to Turner.

It is not clear whether the unwitting persons were U.S. citizens since parts of the original documents were redacted completely. The IOB maintained that it had no reason to question the General Counsel’s finding. This fact should have been briefed to the SCC at the time that the activity was reviewed, particularly before the president reviewed the proposed covert action plan. Turner assured Brzezinski that at that time, no changes were needed in the modus operandi for the unspecified operation.\textsuperscript{14}

Congress continued to assert its oversight authority into the covert action process and provided recommendations for improvement. U.S. Representative Les Aspin expressed concerns to then President Jimmy Carter, on December 10, 1979, regarding the crafting of covert action plans. Sections of the letter were
redacted making it unclear which countries were referenced, however Aspin was
cconcerned that the CIA did not have a clear idea of the identities of the main
operatives of country “X.” He did not recommend that the United States become
involved in the reconstruction of politically repressive foreign military forces that
would associate the U.S. with supporting this unidentified force.

Aspin requested that CIA provide him with the type of program it
envisioned with respect to the Presidential Finding. The CIA’s plans were too
general and should have been more ambitious, considering the language of the
Presidential Finding, according to Aspin. Aspin’s recommendations to the
President were that findings should not be presented for signature until
intelligence needed to design and assess the proposed covert action was
completed. Aspin also required that in cases where the operational facts on the
ground require the CIA to depart from a finding in some significant way (parts
redacted), the NSC Special Coordination Committee should immediately review
the departure. 15

In order to prevent future abuses of covert action, Congress must continue
to assert its oversight authority. In a 1991 debate for intelligence authorizations,
Michigan Congressman David Bonior expressed concerns regarding the
oversight problems of covert activities. Several reforms grew out of the
“devastating consequences” of the Iran-Contra affair. Bonior claimed that
Congress was not being informed of covert action, even though the law required
it. The Iran-Contra Affair involved a small group of senior officials that reportedly
did not inform the Secretary of State, the Congress, or the American public of the arms-for hostage deal. In this example, a small group of people decided to operate unlawfully, but they also with little ethical considerations for the foreign policy implications of their actions. Furthermore, the cover-up illustrated an ethical dilemma that included altered chronologies, shredded documents, and lies to Congress. Working on the NSC does not grant an employee the permission to lie to Congress or disregard U.S. laws.

Covert action and clandestine missions are sometimes difficult to distinguish. The GWOT requires that the United States use all of its tools to pursue terrorists wherever they may operate. As early as 2005, the U.S. Congress had provided the Pentagon with additional authority along with a $25-million-a-year budget, “to provide support to foreign forces, irregular forces, groups or individuals” who are engaged in supporting military operations by U.S. special operations forces to combat terrorism. Congress did specify that this authority does not authorize covert action; however, the distinction between traditional covert action and the authority provided to the Pentagon in the war on terror is difficult to make.

The Pentagon may be adopting a broad definition of its authority to conduct “traditional military activities" and “prepare the battlefield." Traditional military activities are now often more open to the public than ever, thanks to the use of embedded reporters who travel with military units. Essentially, this new authority allows U.S. soldiers to pay informants and recruit foreign paramilitary fighters to
perform intelligence activities, instead of rely on the CIA for intelligence support.  

In a covert action, emphasis is placed on concealment of the identity of those conducting the operation; in a clandestine operation, on the other hand, emphasis is placed on concealment of the operation.  

Under Secretary of Defense General James R. Clapper Jr. apprised the Senate Armed Services Committee that the U.S. military is not engaging in covert activities, but rather clandestine. Clandestine activities can support covert action.

Regardless of the semantics, the outcome of clandestine activities supporting covert actions can have a grave impact on U.S. foreign policy and must be monitored closely and aggressively by Congress.  

Former Head of the Defense Human Intelligence Service W. Patrick Lang expressed concern with the expansion of authority and questioned whether the individuals are “really qualified” to carry out these types of missions.

Oversight of the military and intelligence agencies, especially those who conduct covert action, is necessary and must take place in order for the Constitutional checks-and-balances system to do its job. Ideally, military and intelligence professionals would conduct themselves to ethical standards; however, ultimately, elected officials are accountable and must ensure that all agencies and programs within the U.S. Government are functioning according to laws and ethical standards that reflect U.S. values. Plato in “The Republic” maintained that every form of government tends to become corrupted, and he
posed the question, “Who guards the guardians?” These guardians of the nation include intelligence professionals among other national security professionals.  

Members of Congress have a primary role in oversight of intelligence activities. Each member assumes his or her respective office with various professional backgrounds and may not have much experience with intelligence activities. However, a lack of experience in intelligence activities is no excuse for a lack of oversight. In fact, coming from outside of the intelligence bureaucracy may prove more beneficial since the individual may bring an alternative view to proposed and ongoing operations. Of the many functions of the U.S. Government, covert action has one of the greatest opportunities to both preserve and gravely damage U.S. national security. Members of Congress, therefore, must understand that allowing a president to use covert action, especially in the GWOT, could result in unintended consequences to U.S. foreign policy. Covert action allows the U.S. Government to operate, without acknowledging its actions, within a sovereign state in order to work around current treaties, agreements, or protocols to effect changes in the politics of a state, to provide weapons and resources to warlords or sub-state actors, and to capture and kill targets.

Intelligence officers are expected to recruit individuals who are able to fulfill tasks on behalf of the U.S. Government or provide information. By virtue of a foreign national working on behalf of the CIA, that individual is already breaking the laws of his own nation because he is working for another government’s intelligence service. The requests or missions that the intelligence officer
provides to the recruit may go beyond what the intelligence officer would want to
do himself. An individual who was recruited to kill an African politician was
described in a CIA memorandum as follows:

   He is indeed aware of the precepts of right and wrong, but if he is given an
   assignment which may be morally wrong in the eyes of the world, but
   necessary because his case officer order him to carry it out, then it is right,
   and he will dutifully undertake appropriate action for its execution without
   pangs of conscience. In a word, he can rationalize all actions.26

Perry noted that using criminals as U.S. intelligence assets or sources bear a
strong burden or moral justification by the case officers because they could pose
even greater threats to the societies in which they are secretly sheltered.27

   The U.S. Congress had unsuccessfully attempted to legislate morality of
the CIA in its National Intelligence Charter (S.2525) that was introduced in 1978.
The bill remained in the Senate Select Committee on Intelligence without further
action. This statutory proposal was an attempt to combat the alleged abuses of
the American intelligence activities by increasing Congressional oversight
particularly for “…any activity abroad to further United States programs in such a
manner that the role of the United States is not apparent…”28 In other words,
Congress was referring to covert action in addition to its other proposed limits on
intelligence activities.

   Senate bill 2525 proposed the prohibition of hiring of individuals for
intelligence gathering purposes who were employed as clergy, promoters of
education, the arts, humanities, cultural affairs, and journalists. The bill was
destined to preserve certain institutions and consider them “off limits” to
intelligence officers. Similarly, the U.S. Government would not use individuals at religious organizations, academic institutions, the Peace Corps, or any government program promoting education for spying purposes. It would make it a crime for any U.S. employee anywhere in the world to assassinate any foreign official. The use of torture of individuals, support to terrorist organizations, creations of food or water shortages would also be prohibited.

The unraveling of standards is cause for intelligence officers to collectively form a duly qualified association or board that would be responsible for developing the recommended practices of the profession. Such an intelligence board would provide the intelligence practitioner with on-going guidance in the professional conduct of official duties while also providing the president and Congress with the ethical limitations on the actions that intelligence officers are instructed to take.

Conclusions

Covert action is a legal and viable option in modern-day security policy; Every elected president inherits a national security apparatus that includes the option of covert action. But, as with so many other professions, covert action is not simply a question of whether we have the legal right to use it. There are also major ethical concerns that arise with the use of covert action. Such concerns are arguably amplified because of the inherently secret nature of covert action. Therefore, in the pursuit of his duty to protect the nation, a president must not simply assure that approved covert action follows established policies and laws,
but he must also guarantee that it adheres highest standards of ethics. Indeed, this is no simple task.

Foremost, intelligence officers, as professionals, must actively engage in ethical considerations in their profession. Implementing professional standards for intelligence work will help place limits on what the president can expect an employee to do during a covert operation. The GWOT has arguably brought to light the need and challenges involved with developing such professional standards because human safety is at risk. In gathering secret, guarded information from terrorists organizations, intelligence professionals will need to set limits on how far the profession will go when developing sources or seeking information from detainees. At no point should torture be permitted. It is a flagrant violation of human rights and an affront to the integrity to both the individual practitioner and the intelligence profession.

A president may assert that his actions are legal; however, the case of PAA shows that the ethics of intelligence operations depends upon who is in charge of the intelligence agencies at a particular time period. Ideally, a covert project such as MKULTRA would not be authorized in the 21st Century because of the ethical problems associated with testing on unwitting patients. While these same medical ethical standards to which we adhere today were also in place at the time of MKULTRA, policymakers at the highest levels of the U.S. Government authorized the testing to take place. This case therefore demonstrates how the interpretation of ethics in intelligence work may change over time. A professional
intelligence ethics body duly authorized to make authoritative decisions will help regulate ethics, preventing ethical standards from being determined by the personal interpretations of key decision makers in office.

Historical events -- whether it is a regime change in Cuba, disinformation campaigns, or targeted killings, or electoral candidates – have shown that covert action goes beyond the traditional information-gathering operations. The lofty plans attempt to effectuate amazing changes in a country; however, history has further proved that even a third-world government leader, such as Fidel Castro, could resist U.S. plots and continue to be successful in his own right to rule Cuba as he desires. Undoubtedly, a remarkable amount of time, resources and effort were devoted toward planning and implementing covert action on the Castro regime. Unfortunately, those efforts made very little positive impact on Cuban-U.S. relations. In fact, failed U.S. attempts appeared to provide Castro with more confidence.

Intelligence operations have inherent ethical issues associated with them because they are using the power of the state for secret purposes. An individual may rely on the tenants of Christianity or other religious traditions, the teachings of philosophers, or the diversity of his upbringing to outline his ethics in making a decision on covert action. But while these values might provide a framework for one’s decision-making in terms of the ethics of covert action, it does not make the decision an easy one. This is because there is no single standard in place to determine what is ethical; we can merely easily determine what is legal. Covert
action should not be judged on the greater outcome but rather by the intent and purpose.

The President authorizes covert action based on recommendations of the NSC. It is then the responsibility of the intelligence professional to carry out the objectives while preserving the ethical boundaries of his profession. This situation is similar to a defendant hiring an attorney; the defendant’s objective is to be found innocent or at least obtain a reduced sentence. The defendant could ask the lawyer to push the boundaries of presenting his case; however, the lawyer must proceed in accordance with the ethical framework that was established by the ABA. The problem with this example is that the ethical framework for intelligence officers is one of the greatest secrets. One could conclude from historical examples that the President can authorize almost any operation with very little disagreement from the NSC.

While U.S. laws provide the legal framework for the execution of covert action, the limitations of covert action and intelligence activities are best bound by ethical choices. It is difficult to legislate morality because each situation to defend the United States against a threat is unique. The President must have all options available to deal with national security threats, and creating legislation that limits the ethical boundaries of intelligence activities is not in the best interest of the nation. Legislating torture, assassinations, or disinformation campaigns against foreign leaders will stifle the success of missions that may one day be necessary to defend the nation. The decision to push the ethical boundaries of
covert action will depend on the President himself and his advisers. In the absence of codified ethics, the personal ethics of each professional and the membership of the intelligence officers will function to guide the choices that the President may be presented with in the face of a crisis. It is certainly not a simple issue, but it is one that must be addressed in order to ensure the continuance of the intelligence profession.
ENDNOTES

CHAPTER ONE


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CHAPTER TWO


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9 Ibid.


15 Ibid., 360.


17 Ibid.


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