DOES INTELLIGENCE OVERSIGHT SUPPORT OR HINDER COUNTERINSURGENCY (COIN) AND HOMELAND DEFENSE OPERATIONS?

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By

Victor H Harris, B.A.

Georgetown University
Washington, D.C.
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Victor H Harris, B.A.

Mentor: Professor R Palarino, Ph.D.

ABSTRACT

This document begins with a description of the necessity of intelligence as a tool for fighting a counterinsurgency. From analyzing two theorists on the practice and theory of counterinsurgency it will become clear that the population is the key to countering the efforts of an insurgent force.

Standards of practice in obtaining intelligence are the means to maintaining an effective counterinsurgency. The established laws and guidelines for gathering intelligence will be studied. The evolution of intelligence gathering in the United States brings to light the necessity of laws and guidelines for gathering intelligence both within and outside our nation’s borders. The laws developed serve to constrain the intelligence gathering agencies not restrain them.
Constraints place limits of the method of gathering intelligence, while restraints keep agencies from gathering intelligence.

The current conflict in Iraq and Afghanistan serve as examples to exemplify the effects of improper intelligence gathering techniques. When intelligence oversight laws were set aside the insurgency gained strength. Once sound theories were placed into practice and intelligence oversight and international laws were followed the insurgence lost support; or rather the counterinsurgency gained support.

The function of gathering intelligence can be fulfilled within the civic and humanitarian laws in place. In fact, following international humanitarian laws enhances the credibility of action at home and abroad. Intelligence oversight laws do not place undue constraints on operators, but provide guidance in proven methods of supporting counterinsurgency and homeland operations.
# TABLE OF CONTENTS

COPYRIGHT.................................................................ii

ABSTRACT.................................................................iii

PART I - THE PEOPLE

CHAPTER 1 - INTRODUCTION........................................1
  1.1 - Introduction to the Problem..........................1
  1.2 - Methodology...............................................6

CHAPTER 2 - COUNTERINSURGENCY OPERATIONS PRACTICE AND THEORY.............10
  2.1 - Control of Population.................................10
  2.2 - Local Level Security Forces.......................15
  2.3 - Intelligence Gathering...............................17
  2.4 - Troop Commitment....................................19
  2.5 - External Support.....................................21

PART II - THE RULES

CHAPTER 3 - INTELLIGENCE OVERSIGHT (IO) AS ESTABLISHED BY CHURCH COMMITTEE..24
  3.1 - Church Committee..................................24
  3.2 - Civilian Agency Actions...........................26
  3.3 - Military/FBI Actions...............................33
  3.4 - Constitutional Law..................................38
3.5 - EO 12333/DOD Directive 5420.1-R...........52

CHAPTER 4 - COMPARISON OF THEORY AND PRACTICE........56

4.1 - Conflict........................................56
4.2 - Theory...........................................57
4.3 - Practice.........................................60

PART III - THE WAY AHEAD

CHAPTER 5 - CRITIQUE OF THE IMPACT BEYOND THEORY
IN THE COIN EFFORT.....................68

5.1 - Reshuffling the Deck.....................68
5.2 - Methodology and Evaluating the Impact.....69
5.3 - Iraq............................................69
5.4 - Afghanistan..................................75
5.5 - Effects of Intelligence Oversight........81

CONCLUSION.............................................84

BIBLIOGRAPHY...........................................87
CHAPTER 1

INTRODUCTION

1.1 Introduction to the Problem

To answer if intelligence oversight supports or hinders counterinsurgency (COIN) and homeland defense operations there needs to be a clear understanding of what intelligence oversight is. Additionally, what do intelligence oversight laws bring to the battlefield; to the war on terror? In January 2009 President Barrack Obama signed Executive Order 13491 which brought all United States Government agents under one common standard of interrogation just as Executive Order 12333, signed by President Ronald Reagan in December 1981, brought all United States Intelligence agencies under one common standard of collection.1 Interrogations are a function of intelligence gathering and this executive order will strictly enforce consistency with regards to techniques, approaches, and treatment of detainees as

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described in Army Field Manual 2-22.3.\textsuperscript{2} The result of standardizing collection methods throughout the intelligence community strengthens the effects of intelligence oversight at every agency that deals with human intelligence (HUMINT) collection. Standards of practice across the board will enable HUMINT agents to stay within their scope of practice in any environment that they may be asked to manage. Until the signing of Executive Order 13,491 the rules of engagement for detainees in Guantanamo Bay, Cuba were different from those for detainees in Iraq or Afghanistan.

Intelligence operators have felt that placing constraints on their intelligence gathering, both domestically and abroad, places an undue burden on their capabilities and hampers the efforts of their leaders in a time of terrorist hostility. An increasing number of Americans feel that constraining our intelligence gathering assets has dramatically deteriorated our ability to forecast and provide early warning to

domestic law enforcement assets. In their efforts to safeguard our nation, intelligence gathering agencies have had to balance the fourth Amendment rights of Americans with the need to disseminate pertinent adversarial information. The events of September 11, 2001, are a very real result of the improper application of laws which have brought about intelligence-gathering constraints due to past wrongdoings. These laws on intelligence oversight were formed after America’s last military counterinsurgency operation in Vietnam and domestic unrest of the late 60s. Since that time, U.S. intelligence operators have not had to conduct intelligence-gathering operations in a counterinsurgency environment under the new restrictive guidance. Many feel that the new laws hinder operations in the fight against our nation’s adversaries. Lawmakers, in the aftermath of the 9/11 attacks, have questioned the wisdom of constraining the capabilities of the U.S. intelligence community. They may not understand or have the foresight to see that the restraints placed on the
methods of gathering intelligence on America’s perceived adversaries may be of greater support than allowing the intelligence community free rein on all methods of gathering and extracting information; which may not be reliable due to the method of extraction. In the past this free rein resulted in countless violations of individual rights guaranteed in the Constitution. A quote attributed to Benjamin Franklin; "All human situations have their inconveniences. We feel those of the present but neither see nor feel those of the future; and hence we often make troublesome changes without amendment, and frequently for the worse."³

Due to laws and presidential directives that regulate the actions of intelligence gathering bodies of the United States, intelligence analysts and operators have the perception that a “wall” has been created that has had the effect of constricting movement toward a collaboration within the intelligence community. To overcome this perception a move toward a unity of

effort, as referenced in the 9/11 commission, can be built with no additional changes in current laws. The key is education and understanding in implementing the guidance enacted by executive orders promulgated by the Church Committee.

The current intelligence oversight laws which effected the information sharing of the various intelligence agencies in the U.S. were instituted in the late 70s and early 80s as a result of a congressional inquiry chaired by Senator Frank Church (D-ID) in 1975, hereafter referred to as the Church Committee. The Church Committee is the abbreviated term used to reference the United States Senate Select Committee to Study Government Operations with Respect to Intelligence Activities. The committee was initiated as a result of growing unrest over reports by the media of government agencies collecting information on American citizens.

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1.2 Methodology

This document will focus on describing the necessity of intelligence as a tool for fighting an insurgency by examining two theorists; David Galula, author of *Counterinsurgency Warfare: Theory and Practice* and Bard O’Neill, author of *Insurgency & Terrorism: from revolution to apocalypse*.

David Galula’s experience is in conducting counterinsurgent operation while in the French Army assigned to China, Greece, Indochina, and, most notably, Algeria. Galula provides direction in the containment of an insurgency. He sets out to define the laws of counterinsurgency warfare, develop an understanding of correlating principles, and to delineate the corresponding strategy and tactics. Bard O’Neill a professor at the National War College and director of Middle East studies; and director of studies of insurgency and revolutions, provides a systematic and comprehensive approach at analyzing and comparing insurgencies, revolutionaries, and terrorist movements.
In part one of this document the two theories; one focused on counterinsurgency warfare; the other on the development of an insurgency and terrorism are analyzed in the scope of intelligence oversight laws recommended by the Church Committee and established by Presidential executive order. Commonalities and distinctions in theories are explored and analyzed to establish the best avenue to gain the most benefit from intelligence gathering techniques. Effective techniques are those that provide the greatest chance of obtaining the support and providing security for the population. Additionally, discussed will be the use of security forces in a combination of local security and national military to provide the best combination of intelligence gathering.

The focus of part two is the recommended establishment of intelligence oversight laws and policies by the Church Committee. How the laws came to be and the actions of government agencies and departments that led to the need for such laws. It will
also look at the evolution of intelligence gathering in this country and case laws that formed the standard operating procedures for gathering intelligence. Additionally in part two there will be a comparison of theory and the practice in the field.

The way forward is discussed in part three. How the coalition forces in Afghanistan and Iraq reshuffled the deck to start over. Part three will look at the impact beyond the theory to actual practice of counterinsurgency techniques. An evaluation of both Iraq and Afghanistan will be discussed by evaluating the political, economic, military, social, and infrastructure advances since counterinsurgency theories have been put into practice. Both countries have distinct issues; however both indigenous populations have a desire to succeed in determining their own form of government and future.

In conclusion; chapter two sets the table as to what is needed to successfully counter an insurgency. Chapter three establishes the rules of engagement to win
the counterinsurgency. Chapter four will compare theory and the unsuccessful practice of counterinsurgency operation as it relates to early military operations in the Middle East. Chapter five shows how putting theory into practice and following the rules has led to a successful turnaround in winning over the people and countering a once menacing insurgency.
CHAPTER 2
COUNTERINSURGENCY OPERATIONS PRACTICE AND THEORY

2.1 Control of Population

Look at any book or article written about combating an insurgency or fighting as a counterinsurgency and you will almost always find that the population is a key factor in the struggle. An insurgency and a counterinsurgency are two sides of the same struggle. Much like a game of chess between two adversaries each move must be critically and tactically analyzed for effect. The effect and response by the opposing force is a consideration but second to the effect and response by the population. Both sides of the struggle have a need to predict the action of the opposing side as well as the effect on the population. The game is thus played on two dimensions; the direct fight against the opposing force and the empathy of the population.

To counteract the asymmetry of an established force an insurgency must depend on the population to survive. Civilian support plays a critical role in the strategy
and dictates the conditions of the struggle. Galula, in his first chapter of *Counterinsurgency Warfare*, addresses population as an objective. “The population represents new ground. If the insurgent manages to dissociate the population from the counterinsurgent, to control it physically, to get its active support, he will win the war because, in the final analysis, the exercise of political power depends on the tacit or explicit agreement of the population or at worst, on its submissiveness.”

Galula placed a great deal of importance on the control of the population as have other theorists. Galula sees military action essential; however, secondary to providing political freedom which would bring access to the population.

Much like Galula, Bard O’Neill, professor of international affairs at the National War College and author of several books on the subject of revolution and terrorism places high emphasis on the effects of the population by revolutionaries, insurgents, and

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counterinsurgent forces. O’Neill hypothesizes that the general population may react to either force in one of two supporting manners; active or passive.

During the initial stages of an insurgency active support is the most desirable type of support for the insurgent force. Active support provides an insurgency with the structure to form an opposition. Active agents are those who are willing to make sacrifices and risk personal harm for the movement. Active agents provide direct support to insurgent operations. Direct support could come from participants in a demonstration, paramilitary operation, providing safe a house, equipment, medical assistance, and especially intelligence.² Active supporters of an insurgent movement are the life line of the movement. During the 1960s there was a cultural revolution in the U.S. that fought the establishment; the government. The youth of America was fighting for the freedom of minorities, for feminists, against nuclear proliferation, and against

the large scale war in Vietnam that was killing hundreds of young men. The number of riots and demonstrations in the U.S. increased dramatically in the late 60s. In 1965, there were four major riots, including a large scale riot in Watts, California; in 1966, there were 21 major riots and demonstrations; and in 1967, there were 83. These had necessitated the deployment of National Guard forces 36 times during that period. The Department of Defense was actively involved in minimizing the efforts of what may have appeared to be an internal insurgency. As will be further discussed the Army responded with increased surveillance and investigations on the personalities and organizations involved.

An insurgency may gain freedom of movement with the inaction of the masses. A quote often attributed to English philosopher and statesman, Edmund Burke, “All that is required for evil to prevail is for good men to

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do nothing,”⁴ is a perfect illustration of how an insurgency can gain momentum and worldwide legitimacy with relatively few active supporters. The passive segment of the population that neither helps nor hinders an insurgency or counterinsurgency will, by default, prolong the struggle. If the passive segment shifts its alliance to one group over another the masses will be heard. Passive support is comprised of individuals who “do not want to get involved” in the actions of either group. By not opposing the actions of the insurgency they allow it to continue and fester like a sore on the population. Passive supporters may not realize that their inaction is encouraging an insurgent to continue to actively carry out their goals. If an insurgent senses that they have freedom of movement among a passive population it will bolster and encourage unlawful and destructive acts against the general population. Passive support is often given by those who

have no formal affiliation with government; those who may be too busy trying to survive day by day. They may feel that they have no vested interest in change or are too occupied by their daily lives to concern themselves with other’s ambitions. Security, the loss of security and civil liberties may be the only thing to push them to pick a side.

2.2 Local Level Security Forces

The counterinsurgency must provide the community with a sense of security. Security forces, specifically the civil police, have the responsibility of protecting the population from internal and external threats. Security forces must guard against alienating the local population by not allowing themselves to respond to insurgent actions in an indiscriminate manner. Civil police have the responsibility of maintaining law and order in the community. They are the first line of defense against insurgents. As insurgents often commit

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unlawful acts to gain their objectives it is the local law enforcement officer who has the greatest probability of contact with the insurgents. Consequently, they have the greatest influence on the local population from the counterinsurgency side. They are usually an accepted point of contact between the government and the people. The local people may be more readily accepting of legal restraints if local police, rather than a military force, enforce them. Because of their recurrent duties within the community local police are usually better trained, organized, and equipped than the military to gather intelligence on local conditions and to handle low levels of violence, conspiracy, and subversion. Local law enforcement elements must work to weaken the relationship, productive or destructive, between the insurgents and the community. As is the case in Iraq, the American forces have made efforts in building up the Iraqi Police Force to conduct law enforcement duties in an effort to put an Iraqi face on counterinsurgent operations.
2.3 Intelligence Gathering

The local cop “on the beat” will be the first line of intelligence gathering for the counterinsurgency. They are the observers and the extension with which the government provides internal order. Because they are the closest extension to the people from the government they will be targeted for infiltration. The insurgency will attempt to neutralize their capabilities. The civil police should be able to identify the social make-up of the community in which they regularly patrol. They will have the ability to identify social groups by race, religion, national origin, tribe, economic class, political party, ideology, and education level. By identifying the social organization of an area the counterinsurgent elements may be able to identify common characteristics among the classes and divisions within them. That local connectivity with the community will assist in identifying composite factions based on their

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political activities, such as those who are actively or passively supporting the government forces or insurgents; as well as those who are neutral. They may be able to evaluate the composite strength of each element and identify the issues which may motivate the political behavior of each group.

The formation of an Iraqi Police Force to support counterinsurgency operations is a direct execution of direction presented by David Galula in his book, *Counterinsurgency Warfare*. Because both the police and military forces were disbanded at the conclusion of offensive operations the United States needed to restore law and order in the urban environment in order to manage insurgent actions. It was the extended time that it took to establish a police force that enabled insurgent forces to thrive and establish a foothold in the communities around Baghdad. Had a competent professional law enforcement element been in place at the beginning of the transition from combative operations to stabilization operations the law
enforcement officials may have gathered the intelligence of the formation of an insurgency and countered its effect on the population.

2.4 Troop Commitment

Supporting the efforts of the local civil law enforcement officers is the national military force. The national military force is farther removed from the community and initially may not be adequately trained nor prepared to conduct a counterinsurgent operation. To activate or redirect a national army is costly. To garrison the force in an urban environment may bring further resentment from the population as the British found in New England in the mid-1770s. What was true then is true now; an insurgency is cheap while the building up of forces to establish a successful counterinsurgency is costly. Disorder is cheap to create and costly to prevent. If an insurgent distributes anthrax in the mail the entire mail system

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is suspect and must be checked. When insurgents blow up airplanes, every airport must be guarded; when they blow up buildings, every federal building must be secured.

It is the responsibility of the counterinsurgency to maintain order and the proportion of expenditure to that of the insurgency is greater. In many democracies a large display of military formations in areas where it is more common to find civil law enforcement officers could have the effect of placing the population in a more guarded mind-set. This display of military force may give the population a sense of losing freedoms and an onset of martial law. The population will have to get accustomed to dealing with the increased military presence. The counterinsurgency will have to convince the population that the military presence is a necessary and beneficial solution to the problem. Of course the credibility of the military prior to the insurgency will determine the difficulty of establishing a familiarity with the communities. It is to the benefit of the counterinsurgency to have a professional, laudable
military force with the confidence of the population. A counterinsurgent force without confidence of the population will have a difficult time in gathering intelligence on an insurgent cell. It is imperative that the counterinsurgent leader understand how to balance the use of military force with the civil law enforcement force. The military should be placed in a supporting role to the civil law enforcement. Coordinating efforts should be made whenever possible in the arrests and detaining of suspects. Arrests should be led by the local law enforcement using standard legal methods. To the greatest possible extent military forces should be used to safeguard the community from insurgents; not to conduct law enforce activities.

2.5 External Support

Nothing has helped small businesses like the technologies which encompass globalization. Globalization allows a small business to present their products to the world. Globalization can likewise introduce a small insurgency to the world. It used to
be that an insurgent leader would have to take his plight to the United Nations in order to get worldwide sympathy and support. With today’s globalized marketplace a small regional insurgency can obtain not only sympathetic support but active support in the form of monetary assistance, recruits, intelligence, and even legitimacy. Take as an example the plight of the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka. LTTE is a separatist group fighting to create an independent Tamil state inside the borders of Sri Lanka. Part of its administrative organizational structure includes an international relations wing that conducts both fund raising and logistical support to the tune of $200-300 (USD) million per year.8 By bringing recognition to their plight, a regional or localized insurgency can place scrutiny on the actions of a counterinsurgency and gaining worldwide sympathy. The scrutiny will be placed more on the actions of the

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legitimate power rather than on the actions of the insurgent actors. The more ruthless the counterinsurgency appears to the world population the greater the opportunity for the insurgency to gain support. The U.S. lost a great amount of support when it became known that they were using torture as a technique of interrogation in the prisons of Iraq.

The life line of an insurgency is tied to the community. An insurgency without the support of the community cannot sustain itself. In that sense it is just like a democratic state. Some members of the community will actively support a change in the political landscape. Some members will choose to support the status quo. Yet another group, the majority, will choose to do nothing. It is to the advantage of both forces to garner the support of the large uninspired mass in order to effect change. When support for change overcomes the stagnant majority the wheels of change begin to turn. This was the case in the United States in the mid70s.
CHAPTER 3

INTELLIGENCE OVERSIGHT (IO) AS ESTABLISHED BY CHURCH COMMITTEE

3.1 Church Committee

The current intelligence oversight laws which effected the information sharing of the many intelligence agencies in the U.S. were instituted in the early 1980s as a result of a congressional investigation into intelligence gathering activities by the CIA, FBI, and Department of Defense after information came to light at the conclusion of the Watergate affair in 1974. The committee was initiated as a result of growing unrest over reports by the media of government agencies collecting information on American citizens. The congressional committee was chaired by Senator Frank Church (D-ID) in 1975, hereafter referred to as the Church Committee. The Church Committee is the abbreviated term used to reference the United States Senate Select Committee to Study Government Operations with Respect to Intelligence Activities. The Church Committee asked the question: how does the government
balance personal liberties with national security. There was much opposition to what the Church Committee was looking into. Some saw the actions of the committee as a watchdog investigation into an unchecked executive branch; others as an unnecessary airing of our intelligence gathering methods and capabilities that undermined our efforts. In the end, it produced the most sweeping reformation of intelligence gathering procedures for American intelligence gathering agencies. The legacy of the Committee affects all Americans and is ever so present in today’s commitment to struggle against terrorism. For almost eight years after the September 11 attacks on the American people, controversy over efforts of the Bush administration to safeguard the American public was a constant partisan political fight. The administration’s commitment to safeguard the country often hinged on the edge of legality while the political opposition positioned themselves as the self-appointed watchdog of the nation. The problem with a self-appointed watchdog is that it can easily become a
lapdog; only barking when it senses a danger to its own interest.

3.2 Civilian Agency Actions

It is through the Church Committee hearings that the public was able to understand the depth in which intelligence agencies affected Americans on a daily bases. In particular were the actions of the Central Intelligence Agency (CIA). The CIA has the mission of collecting information that reveals the plans, intentions and capabilities of our [United States of America] adversaries; produce timely analysis that provides insight, warning and opportunity to the President and decision makers charged with protecting and advancing America’s interests; conducting covert action at the direction of the President to preempt threats or achieve US policy objectives.¹ Although its areas of operation are outside the United States, CIA clandestine operations made use of American citizens and

American institutions within the U.S.\(^2\) To a country attached to the idea of independent private institutions the actions of the CIA compromises the integrity of our nation’s democracy. The CIA used academic institutions, the media, and religious institutions to conduct clandestine operations. These actions require careful evaluation, given the significant role these institutions play in preserving the freedom of our society.\(^3\)

The covert use of academic institutions for operational support to carry out propaganda and intelligence gathering brings into question the integrity of the private sector in relation to governmental influence. All actions conducted by the institution will be questioned with having a possible hidden agenda in support of an American intelligence gathering agency. This is a common premise which

\(^2\)Senate. Committee to Study Government Operations with Respect to Intelligence Activities. 94\(^{th}\) Cong., 1\(^{st}\) sess., 1975, Book 1, Ch X, 180.

\(^3\)Ibid.
plagues communist countries today. As is the case with
China, it is common acceptance that all communications
with the business sector are directly communicated to
the communist Chinese government. Once it is discovered
that government intelligence gathering agencies are
using what was perceived to be independent private
institutions as instruments of the government they
forfeit their ability to interact with the world
community as an independent entity.

In addition to the use of academic institutions,
the CIA also used private philanthropic organizations as
a means to pass large amounts of funds to support
operational missions and influence people in need.
These actions suggest a misuse of America’s generosity.
It brings into question the actual generosity of the
American public. By covertly providing financial
support in the form of grants on behalf of a foundation
or “front men” drawn from prominent citizens and lawyers
representing clients wishing to remain anonymous the
true intent of the gift is lost.
A well known case of covert support by the CIA was the funding of the National Student Association (NSA) from 1952 – 1967. In this case the CIA maintains that the funding of the NSA was based on shared interest and not the manipulation of the association members and officers. As support for the organization progressed the CIA moved from blank-check support to the operational use of individual members. Individuals were used for operational missions such as reporting on Soviet and Third World persons of interest and observing Soviet security practices. A member at one point was asked to report on Soviet counterintelligence procedures and asked to purchase a piece of Soviet manufactured equipment. Additionally, the CIA directly influenced the process in which the NSA selected its officers. The CIA sponsored Summer International Seminars for NSA leaders and potential leaders. This was a “vehicle for the CIA to identify new leaders and promote their candidacy for elective positions in the National Student
Association.” By influencing the leadership of the organization the CIA was able to move from a covertly funded organization providing support to friends into controlling of their actions. The CIA’s cover was blown when a former leader of the NSA revealed that their organization had received covert support from the CIA. The NSA statement brought on a storm of criticism from both the public and U.S. Congress. In addition to the covert relationship with the NSA, the CIA’s influence also penetrated academia exchange programs sponsored by the United States Congress. Once exposed, the United States Congress found it unacceptable that Americans would be going overseas under a cultural or academic exchange program funded openly by Congress and at the same time serve an operational purpose directed by the CIA.5

A troubling relationship exposed by the Church Committee was the CIA’s relationship with the American

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4Ibid., 185.
5Ibid., 191.
media. The affiliation of the CIA with the American media jeopardized the credibility of the American press and risked the possibility of propagandizing the U.S. public. The CIA used the American press for cover and intelligence gathering. The CIA was able to gain access to a large number of foreign newspaper, periodicals, press services, news agencies, radio and television stations, commercial book publishers, and other foreign media outlets.\(^6\) In an effort to influence the opinion of the public overseas the CIA entered into contracts with writers and book publishing houses to distribute books abroad without revealing any U.S. influence, covertly subsidizing foreign publications of authors with a favorable message without the known link of the U.S. government. Over a thousand books were produced, subsidized, or sponsored by the CIA with over 25 percent written in English.\(^7\) The significance of this number is that those books written in English would generally be

\(^6\)Ibid., 192.

\(^7\)Ibid., 202.
read by English speaking readers, more commonly found in the United States. The Church Committee’s concern with this domestic “fallout” was that the CIA was actually covertly influencing the opinions of the American public. One could not know if a published book was the work of a private writer or a contracted writer for the CIA. The integrity of the free press, the first amendment, appeared to be trampled upon by the government agency placed in charge of manipulating the world stage to its advantage.

In an even more shocking revelation it was learned that the CIA had several contractual relationships with clergymen. While the number of American clergymen was small, less than 20, the use of Third World clergymen was more extensive. At issue is the question of trust. With the CIA having clandestine relationships with any number of organizations; academic, media, businesses, and religious institutions how could the public, foreign or domestic, trust that the American government did not have seditious intentions in infiltrating these
institutions in an open society. A sentiment of mistrust would permeate the country.

3.3 Military/FBI Actions

Our founding fathers, in authoring the American Constitution, wanted to institute a distinct division between military and civilian authority. They placed civilian authority over military and as James Madison wrote, in referring to the working Constitution, in Federalist Papers #41, “The Union itself, which cements and secures, destroys every pretext for a military establishment which could be dangerous.”

This country was not established with a strong domestic military presence, therefore it would be counter to the founding fathers intent to allow the military establishment to monitor or tread on the Constitutional rights of the citizenry. To further express the division of the two, Congress enacted the Posse Comitatus Act in 1878 which strictly forbade the use of federal troops from “executing the law…except in cases and under

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circumstances expressly authorized by the constitution or act of Congress." For this reason in the aftermath of September 11, 2001, and hurricane Katrina in the fall of 2005, National Guard troops under orders of state governors secured airports and assisted in law enforcement duties in Louisiana. Federal troops were precluded from enforcing laws without the consent or request of the state governors to the federal government.

As early as May 1917 the Army created an Intelligence Bureau with a Military Information Division headed, and championed for its creation, by Colonel Ralph Van Deman. As the Chief, Colonel Van Deman was given the authority to hire civilians, correspond directly with departments, agencies, and individuals within the War Department. The new organization was to collect, gather, and disseminate information domestically and abroad. He was in charge of espionage and counterespionage activities and coordination with

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9The Posse Comitatus Act, 18 U.S. Code, Section 1385 (June 8, 1878).
allied military intelligence for use by forces in the field.\textsuperscript{10} The Intelligence Bureau recruited volunteer civilians to serve as investigators to report on "unpatriotic" conduct within the United States. Colonel Van Deman grew his intelligence gathering section by commissioning civilians into the Army Reserves and by the use of volunteer investigators.\textsuperscript{11} His agents were soon scattered throughout the country working among dissident union workers and aliens in urban areas of the country. Soon Colonel Van Deman’s forces were so involved in investigating and arresting civilians that the work for the Attorney General’s office was so great that they requested that all enemy agents be reported and vetted through the Justice Department. Colonel Van Deman’s forces had made such an impression on the War Department and the President that upon their request Congress appropriated additional funds to support the


investigative effort. In the fall of 1917 Colonel Van Deman augmented his capabilities by accepting the American Protective League’s (APL) offer to assist in civilian investigations where investigations by uniformed investigators may be unproductive.

The APL was a volunteer organization with no legal or government status in support of the Bureau of Investigation, predecessor to the Federal Bureau of Investigations (FBI). In some cases, APL recruited individual members and in other cases they simply absorbed organizations already working with local law enforcement agencies. The APL worked with federal law enforcement agencies to identify and eradicate radical anarchists, anti-war activists, and left-wing labor and political organizations from the United States during the WWI era. They conducted investigations of private citizens who may have “unpatriotic” intentions. The APL had created a “web” of operatives that claimed 300,000
members by the end of 1918.\textsuperscript{12} Using a private organization with no legal or government status the Bureau of Investigations was able to collect information on citizens without the burden of the Bill of Rights. As the war came to an end the APL was disbanded and other groups stepped in to fill the void of providing information on fellow American citizens to the Military Information Division (MID) for the Bureau of Intelligence. As organizations such as the APL were disbanded other sources of information were sought. The most prominent volunteer group to provide support was an organization Congress chartered to support veterans of the war; the American Legion.\textsuperscript{13} The relationship between the American Legion and the Military Information Division was even more beneficial for gathering information within the borders of the United States. The American Legion was chartered by Congress to support


veterans who had already once answered the call to duty in support of their country. They were familiar with the military culture and held an inherent dedication of support toward their brethren in arms.

3.4 Constitutional Law

As the Church Committee analyzed the actions of the military and other intelligence gathering civilian agencies, it looked at what encroachments were made against the rights of citizens of the United States. Two amendments were found to have been encroached upon by the agencies in question. The first of which is the first amendment right of free speech: Citizens were investigated as suspects of a crime for expressing their opinion on political matters. In addition to violating the First Amendment rights of the citizenry these organizations also violated the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

Intelligence gathering agencies took it upon themselves

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\textsuperscript{14}U.S. Constitution amend. 4.
to gather information on the activities and conversations of private citizens. Wiretapping and eavesdropping without probable cause or warrant were conducted in violation of fourth amendment rights, the same fourth amendment rights which in recent case law has been bestowed upon illegal aliens in immigration cases.\textsuperscript{15}

A concern of the Church Committee was how the government, civilian and military intelligence elements, were monitoring how individual Americans exercised their rights guaranteed by the first amendment. The committee identified four types of surveillance or investigative activities against private citizens and organizations which may have violated the traditional legal restraints established by the Constitution.\textsuperscript{16}

The collection of information about the political activities of private citizens and private organizations

\textsuperscript{15}Immigration and Naturalization Service (INS) v. Lopez-Mendoza, 468 U.S. 1032 (1984).

\textsuperscript{16}Senate. Committee to Study Government Operations with Respect to Intelligence Activities. 94th Cong., 1st sess., 1975, Book III, Ch XI, 787.
was the first of the four to be assessed. In the late 1960s the Army and National Guard were called upon to assist in controlling civil rights demonstrations. In preparation for future missions of civil unrest the Army took it upon itself to conduct a systematic process of collection of information concerning civilians and organizations that might be involved in future political protests. Detailed collection plans were disseminated calling for the collection of any and all information on the most wide ranging personalities and organizations within the United States. The techniques utilized to carry out the surveillance comprised of covertly infiltrating private organizations by military agents at demonstrations and meetings. Military agents would pose as media personnel and gather information from unsuspecting organization members.

The second was the monitoring of private radio transmissions by the United States military. The military, knowing it was violating public law, continued to intercept the content of private radio transmissions.
This action was a violation of Section 605 of the Communications Act of 1934.\textsuperscript{17} After the monitoring had begun the Army command in charge of transmission monitoring sought to gain approval from The Federal Communications Commission (FCC). The FCC, after receiving a legal opinion from the Attorney General, advised the Army that such monitoring of public transmission was illegal.\textsuperscript{18} Despite the legal opinion from the Attorney General the Army continued to monitor private transmissions. Initially it monitored transmission of U.S. citizens during demonstrations where troops had been committed. On occasion, it was carried out in advance, or in the absence, of troop commitments.

The third questionable activity was investigations of private organizations considered to be “threats” to the military. All military services conduct

\textsuperscript{17}Communications Act of 1934, Public Law 416, 73\textsuperscript{rd} Cong., 2d sess. (June 19, 1934).

\textsuperscript{18}Senate. Committee to Study Government Operations with Respect to Intelligence Activities. 94\textsuperscript{th} Cong., 1\textsuperscript{st} sess., 1975, Book III, Ch XI, 790.
investigations and counterintelligence operations against its own personnel in order to maintain a sense of operational security. Each military service has a responsibility to keep its personnel, installations, and operations safe from threats. They do not have the authority to monitor non-affiliated civilians and organizations simply because of their anti-military beliefs. The military was monitoring the actions of these anti-military groups in concurrence with civil disturbance collection efforts. Most of the information collected on these groups was obtained from the local law enforcement agencies and news media; however, it was quite common for the service to insert their own undercover agents and informants into these groups.

The fourth questionable activity conducted by the military was in assisting law enforcement agencies in the surveillance of private citizens and organizations. Once again the Posse Comitatus Act prohibits the military from “executing the law.”\textsuperscript{19} Despite the

\textsuperscript{19}The Posse Comitatus Act, 18 U.S. Code, Section 1385, (June 8, 1878).
prohibition on assisting law enforcement, military intelligence had regularly provided assistance to civilian law enforcement agencies. In the late 1960s, in Chicago, military intelligence agents turned over files on non-affiliated civilians and private organizations to local police. In Washington, D.C. Army intelligence elements participated in an FBI raid in a civilian rooming house and provided funds for the police department intelligence division. In addition to assisting local police departments and the FBI the military was called upon by the Justice Department to assist in analyzing intelligence information received during the 1972 national political conventions and other domestic intelligence information.

By the time of the Martin Luther King assassination riots, the Secretary of the Army had been formally designated Executive Agent for DOD on civil disturbance

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matters. The Department of Defense (DOD) reasoned that since they may be called upon to suppress domestic violence it was within their authority and responsibility to conduct surveillance and investigations on dissenting personalities and organizations which may be expected to become involved in protest activities. The Army was pressed for information on individuals and organizations involved in domestic dissent by the White House, the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense. Army agents receiving demands from such a list of agencies considered the demands for information to be of sufficient authority to obtain information by whatever means necessary. It was the position of DOD that the techniques employed to carry out these surveillance and investigations were not a violation of the citizenry’s first amendment rights.

The Fourth Amendment of the U.S. Constitution guards against unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.\(^{22}\)

Over the years technological advances have become more reliant on wireless capabilities and the laws on what constitutes search and seizures have evolved. In the case of Olmstead v. United States (1928), the U.S. Supreme Court found that wiretapping was not within the confines of the Fourth Amendment because, first, in the placement of wiretaps for the purpose of “eavesdropping” there is no actual physical invasion of the defendant’s premises. Second, the evidence obtained had been secured by hearing and the interception of a conversation would not qualify as seizure because it was not a tangible item.\(^{23}\) Six years after the decision of

\(^{22}\)U.S. Constitution amend. 4.

\(^{23}\)Olmstead v. United States, 277 U.S. 438 (1928).
Olmstead v. United States, Congress enacted the Federal Communications Act. Section 605 of the Federal Communications Act states that "no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, purport, effect, or meaning of such intercepted communication to any person." Since then there have been a number of court decisions which have paved the way to ensuring that the use of warrantless wiretaps are a violation of the citizenries' fourth amendment rights. Though the use of wiretap information was not allowed to prosecute citizens, the law was ambiguous enough to allow intelligence gathering agencies the latitude needed to collect and retain information collected from such wiretaps under the umbrella of national security.

As a result of congressional hearings on domestic surveillance such as the Church Committee the Foreign Intelligence Surveillance Act (FISA) was introduced by

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24Communications Act of 1934, Public Law 416, 73rd Cong., 2d sess. (June 19, 1934).
Senator Ted Kennedy of Massachusetts and co-sponsored by a bipartisan group of nine other Senators in May 1977. The act was introduced to provide judicial and congressional oversight of covert surveillance activities on foreign element within the United States, while still maintaining the secrecy needed to protect national security. FISA allowed intelligence gathering agencies to collect information within the United States without a court order for up to one year. Only if a United States citizen was involved was the agency required to obtain judicial authorization within 72 hours.25 Currently, courts are still dealing with the government’s assertion that conducting electronic surveillance without the acquisition of a warrant is within the latitude of the law for the purpose of national security. The ambiguity and secrecy of the information was the source of conflict that marked the political landscape from 2001 – 2006. No sooner had one congressional committee secured the fourth amendment

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rights of the citizenry than another independent group of Senators pressed to breach the barrier to allow domestic surveillance under the banner of national security.

“What we obtain too cheap, we esteem too lightly: - "Tis dearness only that gives every thing its value."\(^{26}\) A quote from Thomas Paine in an essay titled The American Crisis. One week after the attacks on the United States on September 11, 2001 a joint resolution by the U.S. Congress authorized the President the use of Military Forces “to protect United States citizens both at home and abroad.”\(^{27}\) The resolution commonly cited as the Authorization for Use of Military Force (AUMF) gave the President the authority to go to war against those responsible for the attacks on the American people. This resolution along with the PATRIOT Act dramatically expanded the powers of the President in what was


\(^{27}\) Authorization for Use of Military Force, Public Law. 107-40, 107\(^{th}\) Cong., 1\(^{st}\) sess. (September 18, 2001).
referred to as the War on Terror. AUMF permitted the President to go to war without a declaration of war by the congress. The USA PATRIOT Act which stands for *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, increased the ability of law enforcement agents to access information on the citizenry previously protected by the fourth amendment. It also eased foreign intelligence gathering within the United States.\(^{28}\) The new law was used to bypass intelligence oversight and international humanitarian laws which precipitated the improper handling of detainees in a search for actionable intelligence. The knee jerk reaction to this “American Crisis” was the catalyst to the fallout that shaped the American political landscape for years. In six weeks most of the strides that had been made in the defense of the citizenries’ fourth amendment rights from the unchecked activities of the civilian and military intelligence

\(^{28}\)The USA PATRIOT Act, Public Law 107-56, 107\(^{th}\) Cong., 1\(^{st}\) sess. (October 26, 2001).
gathering agencies in the 1960s were swept away. It appears that only the intelligence oversight guidance enacted by Executive Order 12333 in 1981 have been able to hold back the tide of completely unchecked intelligence gathering activities. It has been left to one branch of government to balance the scales of justice and defend the fourth amendment for the people; the judiciary branch.

The Bill of Rights, the first ten amendments to the constitution, was the cause of debate during its conception. Many in the congress petitioned against amending the Constitution. The most vocal opposition was Mr. Roger Sherman of Connecticut. In his words he stated:

The amendments reported are a declaration of rights; the people are secure in them, whether we declare them or not; the last amendment but one provides that the three branches of Governments shall each exercise its own rights. This is well, secured already; and, in short, I do not see that they lessen the force of any article in the Constitution; if so, there can be little more
difficulty in comprehending them whether they are combined in one, or stand distinct instruments.\textsuperscript{29}

Mr. Sherman saw no need to restate what had already been addressed in the original Constitution.

Fortunately for the American citizenry there were two champions of the need for a declaration of rights. These two forward thinking founders were James Madison and Thomas Jefferson. In a letter from Madison to Jefferson, written on October 17, 1788, Madison states in what may be considered a great sense of intuition or knowledge of human nature:

Although it be generally true, as above stated, that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasion on which the evil may spring from the latter source; and on such, a bill of rights will be a good ground for an appeal to the sense of community. Perhaps, too, there may be a certain degree of danger, that a succession of artful and ambitious rulers may, by gradual and well-timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist at all, it is prudent to guard against it, especially when the precaution can do no injury.\textsuperscript{30}

\textsuperscript{29}Gordon Lloyd and Margie Lloyd, \textit{The essential Bill of Rights: Original Arguments and Fundamental Documents}, (Lanham, MD: Univ Pr of Amer, 1998), 349.

\textsuperscript{30}Ibid., 327.
Jefferson found the letter from his friend Madison most agreeable and so stated in his response and went on to add to Madison’s argument for a bill of rights “the legal check which it puts into the hands of the judiciary.” Additionally, both Madison and Jefferson understood that they may not be able to obtain approval for all the amendments. In light of this, Jefferson responded; “Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can.” Two insightful men in our nation’s history whose fortitude to demand the addition of rights for the citizenry has enabled countless to receive due process despite encroachments by government agencies.

3.5 EO 12333/DOD Directive 5240.1-R

Executive Order 12333, signed by President Ronald Reagan, is propagated within the military by DOD Directive 5240.1-R. The directive is itemized in fifteen procedures rather than chapters. The purpose of

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31Ibid., 330.
32Ibid.
these procedures is “to enable DOD intelligence components to carry out effectively their authorized functions while ensuring their activities that affect U.S. persons are carried out in a manner that protects the constitutional rights and privacy of such persons.” Each of the fifteen procedures is explicit in providing guidance on the activities of DOD intelligence components. After Procedure 1, the General Provision, where applicability, scope, and purpose are discussed the directive is broken into three sections. Procedures 2 through 4 provide authority by which components may collect, retain, and disseminate information about U.S. citizens/persons. Procedures 5 through 10 set the guidance with respect to the use of collection techniques to obtain information for foreign intelligence and counterintelligence purposes. Procedures 11 through 15 direct the different facets of DOD intelligence activities which include the oversight

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of such activities.\textsuperscript{34} Like all directives there is always a clause that allows for requesting deviations from the policy. “Requests for exception to the policies and procedures established herein shall be made in writing to the Deputy Under Secretary of Defense (Policy), who shall obtain the written approval of the Secretary of Defense and, if required, the Attorney General for any such exception.”\textsuperscript{35} All actions stop at the Secretary of Defense. He is the decision maker on matters of HUMINT collection. If unlawful interrogations were condoned it would have had to have been authorized by him.

There were many mistakes made in the past which affect the way we do intelligence gathering business in the present. The American public, dissatisfied by the techniques used by intelligence agencies in gathering information on the American public, made a conscious effort to demand change. Encroachments on the civil

\textsuperscript{34}Ibid.

\textsuperscript{35}Ibid., 1-2.
liberties of the American public where made known by a congressional committee tasked to ask to look into government operations with respect to intelligence activities. The committee found that it needed to find answer how does the government balance personal liberties with national security. National security was the dilemma that gave intelligence agencies the perception that spying on Americans was an acceptable practice. It was this same dilemma that drove current intelligence agencies into authorizing interrogations which included torturous techniques. These techniques which are counterproductive in a counterinsurgency operation were discovered and publicized to the determent of the coalition forces in Iraq.
CHAPTER 4

COMPARISON OF THEORY AND PRACTICE

4.1 Conflict

Understanding what kind of a fight you are in can be complicated and may require different tactics. It may be difficult to isolate and differentiate the characteristics of a revolution, insurgency, or a civil war. A revolution is primarily described as an elementary change in power or formation that takes place in a somewhat short period of time; relative to historic conventional state on state conflicts of the European continent. It can be a complete change in the government such as the creation of a new constitution or a modification of customary rule. Revolutions such as the French Revolution lasted 10 years (1789-1799). The American Revolution, or insurgency, began in 1763 after England eliminated the French military threat to the British American colonies. It can also be said that it was the British parliament which began the conflict by increasing taxation on the colonies to pay for the
protection of the Empire. While actual military conflict began in 1775, acts of rebellion had begun long before the first shot was fired. Civil wars are characterized as conflict within the same culture, society, or nationality. They are fights for political power or control of an area. Today we refer to areas of the United States as red and blue states. Whether called an insurgency, a revolution, “The War of the rebellion,” or “The War of Northern Aggression,” it is all conflict and the same general rules for controlling the situation apply.

4.2 Theory

David Galula recognized that the key characteristic nature of all conflict is the inherit asymmetry. The established force, or counterinsurgency, has the majority of tangible assets as well as the resources and legitimacy. The answer to successfully countering an insurgency is having the ability to bring the asymmetric tangibles against the insurgent intangibles. According to Galula’s theory there are four laws of conducting a
counterinsurgency, all of which are predicated on the resolve of the population.

“The first law, the support of the population is as necessary for the counterinsurgency as for the insurgent.”¹ How is the population steered to the counterinsurgent and away from the insurgency? Galula’s theory is that by providing a safe environment for the population the insurgents can be expelled from an area. This may be accomplished with as strong a military action as possible with the effect of destroying the insurgent political organization. However, without following up with concentrated police action it will be impossible to keep the insurgent force from returning and rebuilding in the area. The cooperation of the population will be required.

“The second law, support is gained through an active minority.”² Galula goes on to clarify this law


²Ibid., 53.
by stating, “In any situation, whatever the cause, there will be an active minority for the cause, a neutral majority, and an active minority against the cause.”

The goal is to have the active minority for the counterinsurgency cause to stimulate the neutral majority towards support of the counterinsurgency. The difficulty is in finding that favorable minority and organizing it against the insurgent minority.

“The third law, support from the population is conditional.” The support of the population will waver with the perception of who has the will, means, and ability to command the area. So long as the insurgency has the ability to harass those who may stand in their way others will cower into hiding their political affiliations. Not until the counterinsurgency can show that they have the ability to protect the community will the silent majority feel safe enough to openly support the counterinsurgency.

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3Ibid.

4Ibid., 54.
“The fourth law, Intensity of effort and vastness of means are essential.” The counterinsurgency must show strength and resolution to free the population from the insurgency. They must convince the population that the counterinsurgency will ultimately win. This will require a large concentration of effort, resources, and personnel on the part of the counterinsurgency. We have come to know these actions as military surges.

4.3 Practice

Theories are easy to formulate, but in practice are difficult to manage. If anyone had questions about the true nature of American forces in Iraq the questions were answered in the spring of 2004. Accounts of abuse, physical, psychological, and even sexual came to the attention of the world when the actions of American Soldiers were reported by Seymour M. Hersh, a long time contributor to The New Yorker. This report was followed by the release of photos taken by soldiers depicting abuse and torture. These actions proved to be

\(^5\)Ibid., 55.
indisputable evidence that the American forces did not enter Iraq on a white horse; but wearing white sheets. The perception was that they came ready to suppress and subjugate the Iraqi people.

Marking the lowest point in the counterinsurgency effort was the day CBS News reported to the American public and the world, the abusive treatment of human beings conducted by American soldiers in a historic prison known as Abu Ghraib. A countless number of investigations were conducted by U.S. Army and Department of Defense investigators both before and after the airing of photographs on CBS news on 28 April, 2004.

The International Committee of the Red Cross (ICRC) completed a report on the treatment of detainees by coalition forces in February 2004 which found serious violations of international humanitarian laws." As

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early as May 2003 the ICRC had sent a memorandum to U.S. Central Command in Doha based on over 200 allegations of the ill-treatment of captured personnel; and again in early July the ICRC sent a working paper to the coalition forces detailing approximately 50 allegations of ill-treatment in the military intelligence section of one of the detention camps near the Bagdad International Airport.\(^7\) Within this working paper the description of hooding and tortuous activities by coalition forces was brought to the attention of coalition leadership. In response to reports of ill-treatment of detainees and riots within the prison the commander of U.S. Central Command initiated an inquiry into interrogation and detention procedures in Iraq. The inquiry was conducted by Major General (MG) Geoffrey Miller, who at the time was in charge of the military prison at Guantanamo Bay, Cuba. MG Miller’s report sets the stage for greater abuse by establishing a new direction of priorities within the prison. MG Miller instituted the axiom

\(^{7}\) Ibid.
“detention operations functions must act as an enabler for interrogations.”

MG Miller, a trained artillery officer whose only qualification to run a prison was as a deputy chief of staff for personnel and installation management for the U.S. Army was viewed as the subject matter expert to get things straight. He believed that military police guards in the prison should support military intelligence interrogation operations by setting the conditions in order “to drive the rapid exploitation of internees to answer...theater and national level counter terrorism requirements.”

“Setting the conditions” would come to mean abuse so they will want to talk.

Guidance on how to “set the conditions” was vague at best. It was up to the young military police guards to use their imagination to facilitate the interrogations. In the end these actions were

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9Ibid.
counterproductive, and even disruptive, to counterinsurgency operations. Photographic evidence of the ingenuity of these young military police guards were viewed worldwide. They showed the humiliation of Arab men by forcibly arranging them in various sexually explicit positions for photographing as well as allegations of sexually abusing female detainees.

Seymour Hersh, in his book, *Chain of Command*, relays a conversation he had with an senior Iraqi weapons scientist living abroad who said that “several women detained at Abu Ghraib had ‘passed messages to their families imploring them to smuggle poison to them to end their lives, while others have passed similar messages insisting that they must be killed immediately upon release from prison.’”¹⁰ The shame and humiliation would be unbearable and only death may save the family from further dishonor. It is difficult for a power to sway the population in its favor if it continues to violently disrupt lives. U.S. military forces need to

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leverage its technological advantage to selectively target people of interest. By using biometric data with reach back capabilities to the United States our military forces will provide near instant information that will enable a unit in theater and elements on patrol to surgically engage persons of interest.

The following year in May 2005, an unconfirmed story about interrogators flushing a Qur’an down a toilet in Guantanamo Bay lead to rioting all around the Muslim world against Americans.\textsuperscript{11} After the atrocities committed in Abu Ghraib it was easy for the world to accept that such desecration of a holy book would be conducted by American forces. Fragile alliances between coalition partners in the war against terrorism were strained as the public reaction turned deadly. This revelation, which has never been found to be true, gave the insurgents a reason to rally against American and coalition forces. It bolstered claims of the desecration of the Muslim religion by Americans and

inevitably encouraged recruitment. Whether the allegations of desecration were true or simply lies by suspected terrorist in an attempt to fracture the coalition, it turned out to be an effective weapon.

Propaganda of this kind is only effective if there is just the smallest inclination of possibility. If just a small portion of the allegation is plausible an insurgent can spin a tale to influence the attitude of the community. The counterinsurgency must be effective at preventing condition which may allow for this type of assault while conducting human intelligence (HUMINT) operations. HUMINT is the collection of information by a trained human intelligence collector.\textsuperscript{12} Interrogation of detainees and debriefing of civilians in the community are a source of valuable information. However, these sources must be exploited in the least intrusive and effective manner in order to minimize the danger of exposing a source or violating international or intelligence oversight laws. Transparency when possible

is an effective precaution to fighting the effects of numerous accusations of unlawful activities.

Had the actions of the military and civilian agencies in the Abu Ghraib Detention Center followed the proper intelligence oversight directives in their day to day operations in both Iraq and Afghanistan the coalition forces would have enjoyed a greater amount of legitimacy and world support.
CHAPTER 5
CRITIQUE OF THE IMPACT BEYOND THEORY IN THE COIN EFFORT

5.1 Reshuffling the Deck

After accepting that there indeed was an insurgency in Iraq, the coalition forces, led by the United States, began to develop tactics based on theories of counterinsurgency. To catch glimpses into the minds of the forces fighting the insurgency in Iraq and Afghanistan one needs only look at the blueprint for fighting as a counterinsurgency written and developed by the U.S. Army and U.S. Marines in December 2006. Field Manual 3-24, Counterinsurgency, is the doctrinal method for U.S. forces to engage an insurgent force. It provides principles and guidelines for counterinsurgency operations. This manual is in response to the many setbacks endured by U.S. forces before and after the Abu Ghraib incident. Effective techniques that were in use in the mid-twentieth century have found resurgence in the current fight in both Iraq and Afghanistan.
5.2 Methodology and Evaluating the Impact

To evaluate the impact that has been accomplished by the coalition in both Iraq and Afghanistan one must look at the effects on politics, security forces (both military and police), economic, social, and infrastructure. As these concepts mature the confidence of the population in the abilities of the government to provide for the people will continue to increase. Legitimacy in the efforts of the national power translates to effective control and provides the momentum toward a way of life that supports a stable nation.

5.3 Iraq

Indicators that theory and practice are effective in fighting an insurgency have emerged in Iraq. On the political front, Iraq has had several elections. In 2005 Sunni participation in the Anbar province was 2%. In 2009 the expected Sunni participation was 60%.\(^1\) The

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political landscape continues to develop and a National Election Law was passed that will continue to place the nation on a steady drive toward a democratically elected parliamentary system.

The Iraqi Security Force is the name for the entity that encompass the Iraqi military, paramilitary, and police force. The Iraqi military, under the Ministry of Defense, has the duty of conducting counterinsurgency operations. The police force, under the Ministry of Interior, has the responsibility of safeguarding the public and providing internal security at the local level. With extensive support the Iraqi Security Force has worked in unison to support the counterinsurgency fight. The Ministry of Defense is still plagued with cronyism in the placement of key allies rather than competent professionals. This distracts from ministerial capabilities. However, through the use of a Military Inspector General that conducts scheduled and unscheduled inspection, audit, and investigations progress has been established in increasing the
legitimacy and transparency of the ministry.\textsuperscript{2} The Iraqi Federal Police force has exceeded the expected effectiveness which has allowed U.S. advisors to shift advising at the battalion level to the brigade level.\textsuperscript{3} As the military and police force continue to work in tandem the intelligence gathering issues which are within the scope of this document will continue to concern the two elements. The absence of an Iraqi Intelligence Law that outlines the roles and mission of each element with clear legal authorities and command and control systems continues to impede progress between the elements. The responsibility and purview of each element is not clearly established and the legal limitations for information collection are neither established nor agreed upon.\textsuperscript{4} It would appear that the Iraqi Security Force will confront the intelligence oversight matter that U.S. intelligence gathering


\textsuperscript{3}Ibid.,45.

\textsuperscript{4}Ibid.
agencies faced. Depending on the interpretation of the Iraqi constitution by the Iraqi court the legal parameters of intelligence gathering may be vastly different.

Economically Iraq is moving forward. In October 2009 the International Monetary Fund (IMF), despite economic difficulties, projected Iraq’s real gross domestic product (GDP) growth rate to be 4.3%. On December 12, 2007, Iraq paid back an Emergency Post-Conflict Assistance loan of $470.5 million which had been issued by the International Monetary Fund in September 2004. This debt, which was paid in full two years ahead of schedule, enabled Iraq to qualify for the IMF Stand-By Arrangement loan program and receive $744 million. With the acceptance of these IMF loans Iraq had to agree to economic reforms that strengthen the financial management of the Central Bank of Iraq. These were containing consumer price inflation below 12%, GDP growth rate above 7%, and structural reform in the oil

\(^5\)Ibid., 11.
sector. These actions and others at the macroeconomic level will place Iraq on an economically stable platform.⁶

As the political landscape changes for the better the social aspects of life begin to improve. There has been a dramatic drop in sectarian violence. The population begins to expect stability in their daily lives. Social networks are created within the community, town, city, and province. A sense of nationalism has been created and, despite the sectarian violence, polls show that Iraqis would rather have a unified country than be split into regional states.⁷ In a poll conducted in March 2009, results demonstrated that 64% of Iraqis would prefer a democratic form of government over the 19% that would prefer an Islamic state and 14% that would prefer a single strong leader, a government

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such as that of the previous regime. These figures were up from March 2007 when the rates were 33% for democratic government, 22% for Islamic state, and 43% for a single strong leader.\(^8\)

Infrastructure in the country has been at a steady climb. Provincial reconstruction teams provide assistance in areas of need. The team consists of military officers, diplomats, and subject matter experts in support of the local governments. They provide manpower and monies to support reconstruction projects that support infrastructure in their area of operation. Utilities, schools, and facilities for the community are common support projects.

The military surge in 2007 was one theory of counterinsurgency that was put into practice that has paid dividends. From June 2007 to the present coalition force deaths have dropped from triple digit losses per month to single and low double digit losses. Increase in the number of troops on the ground and guidelines on

\(^8\)Ibid.
HUMINT collectors based on Intelligence oversight laws have provided the necessary tools to turn around a situation which was spiraling out of control. Only time will tell if a resurgence of an insurgency will develop once coalition forces leave Iraq. The final test of the success of the coalition will be if the Iraqi Security Forces were given the tools to succeed.

5.4 Afghanistan

The situation in Afghanistan is not quite the same as in Iraq. After the ousting of the Taliban regime the developing political landscape in Afghanistan is more in line with that of a revolution. The Afghan population has proven that they will not allow their country to be governed by a foreign government. They want and expect success. They fought the British in the 19th century and the Soviets in the 20th. Today, in the 21st century, the political landscape has evolved to a more inward struggle. Elections held in 2004 and 2009 were marred with fraud, intimidation, and violence. Corruption continues to be an accepted practice. However, unlike
the actions of previous invaders, the government is led by Afghan nationals. Since the election of a president yearly polls from 2005 to 2009 show that support for the Taliban has always been below 5% and over 80% of Afghans would prefer the current government rule Afghanistan over any other form or group.9 Additionally, polls show that while Afghans may be far less confident of the direction of their country’s future; democracy as a political way of life is slowly working its way into the fabric of the nation.

Like Iraq, the Afghan National Security Forces consisting of the Afghan National Army (ANA) and the Afghan National Police (ANP). The Ministry of Defense has responsibility for the ANA and its military mission. The Ministry of Interior has responsibility for the ANP and its mission to safeguard the population at the local level.

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The ANA forces have demonstrated an increased capacity and ability to lead military operations. In January 2009 the first 84 officers graduated from the internationally-accredited National Military Academy of Afghanistan (NMAA) and received commissions. The academy will provide an influx of professionally trained young officers for the Army and Air Corps.¹⁰

The Afghan National Police has not had any problems meeting retention and recruiting goals. Effectiveness and level of professionalism has increased. Polling data has shown that the police have popular support and Afghans have a propensity to serve.¹¹ Additionally, the Ministry of Interior is developing a senior-level vetting system to validate the current quality of its leaders and ensure merit based promotions will continue.¹²

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¹¹Ibid., 37.

¹²Ibid.
The economy in Afghanistan is more than just the cultivation of poppies for the production of opium. Farmers have found the benefits of farming legal crops such as olives and saffron. In the western province of Herat saffron has proven to be easier and cheaper to produce than poppy. Land value has more than doubled due to the saffron production. In the town of Islam Qala, near the Iranian border, a $20 million border customs facility has been built with 800 acres of space and 85,000 square feet of building space to improve trade and transit, provide greater security, and increase the capabilities of narcotics and contraband interdiction. The facility is expected to increase revenue to the province. In the eastern province of Nangarhar opium is believed to have been replaced by the resurgence of the olive business. With the assistance

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of the Italian government and United States Agency for International Development (USAID) the once declining olive business has seen a revival. Afghan farmers are eager to work their land with legal productive crops.\textsuperscript{15}

As the economy and trade within Afghanistan continue to develop the social ties that bind Afghans to one another also strengthen. For the past thirty years Afghans have been in a state of war to maintain their country’s sovereignty. Afghans are looking to be prosperous as a sovereign nation. Currently Afghanistan’s society is made up of fragmented groupings of ethnic and religious regional groupings with tribal ties which make them vulnerable to outside forces. The election of a president and National Assembly together with the development of a new moderate Islamic Constitution Afghans are progressing towards a stable and productive state.

Placing Afghanistan on the road to recovery is the result of efforts by coalition partners to rebuild the country’s infrastructure that was dismantled by years of Taliban rule. The lion’s share of the work to rebuild the infrastructure in Afghanistan has fallen to coalition military forces. President Obama has committed additional troops to support the effort. However, along with the additional troops he has committed FBI and drug enforcement agents to assist in suppressing drug labs and traffickers in an effort to secure Afghanistan’s newly developed infrastructure.\textsuperscript{16} With an influx of law enforcing government agencies to support Afghanistan’s security forces compliance with HUMINT and intelligence oversight laws and policies will be vital to continue the progress in impeding insurgent forces.

5.5 Effects of Intelligence Oversight

Intelligence oversight laws provide guidelines to our intelligence gathering agencies. Not only to what is acceptable in our culture but acceptable internationally. International laws are based on humane treatment of individuals. Interrogations, if conducted properly, will provide intelligence. However, an interrogation conducted properly may not be conducted ethically. For this reason it is important to provide direction and guidance to interrogators. Properly can be violent and torturous or it can be within accepted ethical controls. If an insurgent believes that capture will lead to a violent incarceration there is little incentive to accept surrender. The pool of potential informants is reduced and HUMINT intelligence collection becomes more difficult.

The fall of 2006 was a time of enlightenment for military forces engaged in counterinsurgency operation. A new Field Manual 2-22.3, Human Intelligence Collection Operations was introduced to replace Field Manual 34-52,
Intelligence Interrogation. The new manual provided constraints to interrogators that were more in line with international laws which prohibit torture. Field Manual 3-24, Counterinsurgency was introduced three months later. The “new awakening” has enabled commanders in the field to take control of a situation that was spiraling out of control. Approximately six months after the introduction of these two manuals casualties by coalition forces began to drop. In 2008, for the first time since 2003, the start of combat operations, coalition forces saw a reduction of coalition deaths. In 2007 there were 961 coalition deaths. In 2009 it was down to 150.\textsuperscript{17}

Without providing classified information as to what has changed in the way detainees are processed it is difficult to point to specific instance that have turned the tide in Iraq. Insurgents have lost the support of the population. The people see a much brighter future.

They are willing to take a chance in what the coalition is creating in their country. They no longer see the coalition forces as intruders but as facilitators in establishing a prosperous future for their progeny. Intelligence oversight laws and policies are the foundation of HUMINT operations. How we extract information from the population has a great deal to do with the manner in which we are seen by the indigenous population. If they respect the way we are doing business they will respect what we are trying to accomplish. If the coalition forces were to revert back to the time when intelligence oversight guidelines were not being followed the indigenous population would revert back to supporting insurgent operations to extricate the occupying force by any means possible.
CONCLUSION

Does intelligence oversight support counterinsurgency and homeland defense operations? The evidence points to yes; it does support counterinsurgency and homeland defense operations. Intelligence oversight laws adhere to both the protection of civil liberties of U.S. citizens and international humanitarian laws.

The key to defeating an insurgency is to isolate the insurgent force from the people. Win their hearts and minds and you will win the fight. It is imperative that the people believe in the counterinsurgency’s ability to secure the community in a moral and ethical manner. Indiscriminate acts against the community in an effort to root out insurgent forces may have the effect of pushing the community away from the counterinsurgency. It is imperative that the counterinsurgent intelligence gathering agencies do not become so dependent on interrogations that they fail to diligently work clandestine human intelligence and technologically
Initial intelligence gathering in Iraq and Afghanistan proved to be counterproductive when intelligence personnel focused a majority of their efforts on conducting massive security sweeps that indiscriminately provided subjects for interrogations. Interrogation activities conducted outside the scope of acceptable international humanitarian laws worked to furnish empathy from the world community to the insurgent force.

So much was said about the actions of the U.S. in isolating terror suspects in Guantanamo Bay, Cuba and insurgents in Abu Ghraib prison that the purpose of restraining suspect individuals was lost to the world community. As legitimate as the intentions may have been in the beginning, the actions of the U.S. military was lost when activities counter to international humanitarian laws were considered the norm. Military leadership lost focus and the methods perceived to expedite the extraction of intelligence were sanctioned.
These accepted methods of interrogations were counter to established counterinsurgency theories.

It was not until the coalition forces began to utilize counterinsurgency theories in practice that the tide turned against the insurgent forces and both Iraq and Afghanistan began to rise out of chaos and into the beginnings of emerging democratic states.

Intelligence oversight laws, which support international humanitarian laws, support counterinsurgency and homeland defense operations.
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