

Moral Relativism and Dangerous Ethical Dilemmas in the U.S. Intelligence Community

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Introduction

With the 2018 nomination of Gina Haspel to be the first female director of the CIA,¹ the issue of ethics in the U.S. Intelligence Community has drawn a new wave of attention, with the media shedding light on Haspel's background and her connection to secret black sites. As such, many have asked whether the IC does enough to safeguard ethics in its practices.

Currently, several mechanisms exist for the purpose of regulating intelligence, including congressional oversight, internal counterintelligence, official processes for the authorization of covert action, and the use of lawyers specifically employed to ensure the legality of all actions. However, due to the nature of the intelligence community, these safeguards are often insufficient to properly regulate secret activities. This means that a sense of ethics and morality is theoretically needed for the proper administration of intelligence as the supposed last safeguard against the misuse of resources. However, in actuality, it is unclear what role ethics play in daily activities due to the trade-off between what is 'right' and what produces favorable results.

This issue is relevant because the problem of ethical relativity cuts right to the heart of the relationship between secrecy, intelligence, and national security. It directly influences the actions of the Intelligence Community, and therefore, the success of its mission. While some might argue that ethical corner-cutting is necessary to protect national security and is therefore in the best interest of the United States, it is clear that the debate around the trade-off between ethics and security is still ongoing, with no end in sight. This essay will therefore explain these concerns and demonstrate that the aforementioned safeguards are insufficient to deal with ethical issues raised by recent events, including the controversy over the use of torture at secret black

¹ Maegan Vazquez, "She Could Be the First Woman Ever to Run the CIA." *CNN Politics*. March 14, 2018.

sites, the violation of civil liberties, and the question of whether the ends justify the means in all of the IC's actions. The analysis will include an overview of the primary safeguards implemented in the system; the problems with covert action, espionage, and questionable assets; and the controversy over the destruction of evidence of torture used at black sites; before concluding with a brief discussion of the significance and impact of these in-depth issues and a recommendation for its remediation.

Analysis

As previously mentioned, secrecy sits at the very core of the IC and its mission, which means that great care must be taken when dealing with issues that may be complicated by secrets. Indeed, the nature of the IC and its role sets up an intrinsic ethical dilemma created by the direct conflict between ethics and secrecy (or what produces the most favorite outcome for national security), which must be included in such considerations. Scholar and former CIA official Mark Lowenthal warns of the dangers of this trade-off:

“Does secrecy inherently lead to a temptation or willingness to cut corners or take steps that might be deemed unacceptable if they were not cloaked in secrecy? ... the nature of some aspects of intelligence--primarily collection and covert action-- combined with the fact that they are undertaken in secret, might lower an intelligence officer's inhibitions to commit questionable actions.”²

Coming from an expert on security issues who served many years as a member of the Intelligence Community, this perspective highlights the fact that ethical issues plague even the most routine actions in the daily life of an intelligence officer. Since the job of the IC is to protect national security, this often results in ethics being sacrificed or having to take a backseat

² Mark Lowenthal, *Intelligence: From Secrets to Policy*, 438.

to other considerations. However, a sense of morality on the part of individual operators and analysts is not the only safeguard, as there are several institutional mechanisms that provide a first line of defense against potential injustices.

Primary Safeguards of the IC

Currently, integrity of the IC is protected by more than just a sense of ethics. One chief avenue for this is congressional oversight, defined as the “responsibility of the legislative branch to monitor and indirectly supervise federal programs, agencies, and policies related to intelligence matters,”³ including an emphasis on both ensuring security and acting as a check on the IC’s power. In terms of its effectiveness, though, congressional oversight has a more limited impact in reality. According to the class speaker on congressional oversight, the oversight committees typically handle budget, whistleblower cases, and other general oversight issues, but not specific operational intelligence.⁴ Depending on what all is included in that prerogative, there is potential for gaps in the supervision. To illustrate this issue, the 9/11 Commission Report concluded in 2004 that oversight of the Intelligence Community was severely lacking and required changes, including the addition of more transparency and activism,⁵ for an overall strengthening of oversight.⁶ So even though Congress is meant to be a strong institutionalized check on the power of the IC, it is not fulfilling its duties effectively, thereby allowing for unethical decisions and actions to slip through the cracks. One political scientist makes the

³ K.A. Beyoglow, “Congressional Oversight in Intelligence” presentation.

⁴ Guest speaker on congressional oversight.

⁵ Ibid.

⁶ Kean Commission, “9/11 Intelligence Failure,” *Intelligence: The Secret World of Spies*, 461.

argument in *The Washington Post* that stronger congressional oversight is needed, and that it would not be a detractor from the IC, but a benefit to its mission:

“Accountability and secrecy are not either/or substitutes. Both are necessary for effective foreign policy in democracies. Without a capacity to keep secrets, the U.S. would not be able to anticipate, deceive or suppress the capabilities of potential threats and competitors. But without accountability, the public may come to believe that secrecy is being abused to cover-up incompetence or corruption.”⁷

In essence, while there is definitely a tangible trade-off between ethics and secrecy, both elements are important aspects of maintaining a strong IC, so the two must be balanced. Having strong oversight assures the American people that even though much of the intelligence work is kept secret and cannot be seen directly by the public, there is at least some mechanism keeping it in check. Having this public trust is crucial, because it empowers the IC to carry out its duties to the best of its abilities. Therefore, the U.S. cannot simply allow its intelligence agencies to run rampant in the name of national security, since it would be counterproductive in the long run to do so.

In addition to congressional oversight, ethics in the Intelligence Community are further guarded by counterintelligence efforts to find and protect against spies and double agents among the IC’s ranks using internal safeguards such as compartmented classification and polygraphs.⁸ These prevent unethical members from actively working against the community while in a position of power with access to vulnerable information about sources and methods. However, they have not always been successful at doing so, as spies in the past have been able to steal information and pass it to the U.S.’s enemies. These spies include Aldrich Ames, a Russian mole

⁷ Michael Colaresi, “Why the CIA Should Want More Congressional Oversight, Not Less.” *The Washington Post*. December 12, 2014.

⁸ Lowenthal, *Intelligence: From Secrets to Policy*, 223-227.

in the CIA⁹ who was able to pass a polygraph test while simultaneously committing espionage against the United States.¹⁰ Obviously, even the best counterintelligence methods are not infallible, so the IC cannot rely on them alone to ensure the integrity of its own officers. They also create new ethical challenges of their own relating to privacy concerns and just how invasive counterintelligence should be allowed to be.¹¹

Also important is the establishment of officially sanctioned processes for the authorization of activities such as covert action. Strict processes are needed because covert action is inherently dangerous for both delicate foreign policy situations and the individuals risking their lives in those missions. This process includes the requirement of a Presidential Finding, a signed document that is required by law in writing which must go through several checks before ever reaching the IC to allow it to begin action.¹² Therefore, all covert action is initiated and signed off by the President, meaning that the IC cannot just decide where and when to carry out covert actions, contrary to popular belief. For example, these Presidential Findings include the one that President Bush issued after the September 11, 2001 attacks to CIA and the Department of Defense allowing them to take all measures needed to capture or kill al-Qaeda leaders.¹³ This gave them the legal authority that they needed to carry out any actions related to the attacks, such as critical CIA support for the military in Operation *Enduring Freedom* in Afghanistan,¹⁴ which could not have been made possible otherwise. Indeed, covert action is rather well-regulated

⁹ K.A. Beyoglow, "Covert Action" presentation.

¹⁰ Lowenthal, *Intelligence: From Secrets to Policy*, 223.

¹¹ *Ibid*, 234.

¹² *Ibid*, 253.

¹³ Andrew Koch, "U.S. Central Intelligence Agency Force: Covert Warriors," *Intelligence and the National Security Strategist* (2006), 514.

¹⁴ Anthony Williams, "CIA Support to *Enduring Freedom*," *Intelligence and the National Security Strategist* (2006), 493.

relative to other intelligence operations, since it involves presidential approval and congressional notification, as well as consultation with lawyers to ensure that all appropriate steps are taken to protect the integrity of the process.

Covert Action, Espionage, and Dubious Assets

Despite the legal justification and regulation from the Presidential Findings, covert action is one area where the risks involved mean that ethics often do not take a precedence over national security and the need to achieve a certain outcome. For reference, covert action is considered to be the use of intelligence for “activities influencing a situation and using political, military, diplomatic, economic and information where the activity is temporarily hidden” to accomplish a goal.¹⁵ Covert action includes a wide range of steps from propaganda, political activity, and economic activity to coups and paramilitary operations, with a ladder of varying degrees of violence and plausible deniability associated with each.¹⁶ Indeed, it is a powerful tool with enormous consequences that is meant to be an option of last resort only,¹⁷ so it requires strict safeguarding from abuse of the system.

One example where this was not done correctly was in the case of the Reagan administration’s Iran-Contra Scandal, which included a “questionable delegation of authority,” presidential findings that were “post-dated and signed *ex post facto*,” the unethical merging of policy issues, and a lack of effort to keep Congress informed.¹⁸ All of these problems were quite obviously related to a lack of adherence to ethical norms, and yet they were still able to occur even with the system of Presidential Findings in place, showing that even though the formal

¹⁵ K.A. Beyoglow, “Covert Action” presentation.

¹⁶ Lowenthal, *Intelligence: From Secrets to Policy*, 257.

¹⁷ K.A. Beyoglow, “Covert Action” presentation.

¹⁸ Lowenthal, *Intelligence: From Secrets to Policy*, 255.

structure seems to be a strong ethical safeguard, there are still ways around it that can be abused, and it still has many ethical questions.

In terms of the techniques allowed, there are some limits. President Ford issued Executive Order 11905 in 1976 to outlaw political assassination, which was later reaffirmed by multiple presidents.¹⁹ Despite this, the mission to kill Osama Bin Laden could be considered an assassination that took place with the ban still in effect. While the attack was legally authorized by the Presidential Finding issued after 9/11, it still raises questions about whether the use of assassination itself is ethically justified in any case, regardless of the context.

“The morality of sanctioned assassination depends mainly on whether and when one can justify murder... the only time when we should consider assassination is when we need to eliminate a clear, immediate, lethal threat from abroad.”²⁰

This again ties into the question of whether the ends justify the means-- one can ask whether the U.S. had to resort to killing Osama Bin Laden to stop him from planning further terrorist attacks. Perhaps the answer in this case is yes, since his role in organizing terrorism was very clearly an immediate and lethal threat, but in other instances, the most ethical outcome is not always the most obvious, which creates a tough moral gray area.

There is also another key ethical concern presented by espionage and the recruitment of foreign assets. It is an open secret that foreign governments all carry out espionage, though they know it violates national and international laws.²¹ By attempting to turn foreign nationals, intelligence services purposely persuade them to violate the laws of their home countries and put themselves in danger, though it is deemed necessary for the sake of the access to key information

¹⁹ Bruce Berkowitz, “Assassinations as an Instrument of American Foreign Policy,” *Intelligence: The Secret World of Spies* (2015), 293.

²⁰ Ibid.

²¹ Guest speaker on ethics in intelligence.

that they have to offer.²² There is also no guarantee that these assets are moral people either, and they are often motivated by money, sex, or revenge,²³ in other words, their primary concerns are generally not morality or simply doing the right thing, and intelligence agencies taking advantage of that must be careful to ensure that these motivations never shift out of alignment with the goals of its case officers. The United States is no exception to this fault either, as it heavily prioritizes access and utility over integrity in the assets that it recruits. One scholar notes that there is “A difficult choice between access to useful information that cannot be obtained through other means and the distasteful prospect of paying money to a terrorist or narcotics trafficker,”²⁴ like the case where the CIA paid a former-terrorist asset in Venezuela in 1995.²⁵ The necessity of working with unfavorable people for the sake of information gathering shows how ethics get pushed aside when there are more pressing concerns, and the fact that the U.S. has worked with former terrorists shows just how little influence ethics has in those transactional-type partnerships. One scholar sums up the relationship between asset and handler well, stating that “An asset is not a commando or hero... this means that not only may the asset not be a nice person, it also means he was not selected because he was brave, smart, or particularly hardworking.”²⁶ This is therefore very important for the IC to remember and watch out for when sacrificing ethics in order to work with potentially unethical or untrustworthy sources.

²² Ibid.

²³ K.A. Beyoglow, “Covert Action” presentation.

²⁴ Lowenthal, *Intelligence: From Secrets to Policy*, 445.

²⁵ Ibid.

²⁶ Garrett Jones, “Working With the CIA.” *Intelligence and the National Security Strategist* (2006), 504.

Black Sites, Torture, and the Destruction of Enhanced Interrogation Tapes

From the suspension of habeas corpus during the Civil War to post-9/11 warrantless wiretaps and torture,²⁷ the infringement of civil liberties has always been a problem in the pursuit to protect national security. These issues have particularly been raised with the use of enhanced interrogation techniques at the U.S. base at Guantánamo Bay and other secret prisons around the world, where prisoners have been held for years and subject to what many consider to be torture in attempting to get information from them.²⁸ In this case, the collection itself and the methods used are suspect. Indeed, the Eighth Amendment to the Constitution bans torture, but because the definition is so subjective, it can be twisted to game the system by calling it “enhanced interrogation” and outsourcing it to bases outside of the United States.²⁹ There are also other practical issues to consider when using torture to extract information, since many people under duress will give false information or confess to actions that they did not do.

In one similar black site, tapes were made of the detention and interrogation of one al-Qaeda affiliate, Abu Zubaydah.³⁰ However, once the agency realized that they had captured evidence of their own officers--supposedly visibly identifiable on the tapes--waterboarding Zubaydah, it decided to destroy the tapes, citing the fear that one day the tapes may be released and then used to target those involved.³¹ While the decision itself was questionable, there were also major problems with the process that was used to carry it out.

In his book, the then-chief legal officer of the CIA, John Rizzo, writes about the events surrounding the tapes and the agency’s decision to destroy them. He reported being pushed to

²⁷ Lowenthal, *Intelligence: From Secrets to Policy*, 440.

²⁸ Guest speaker on ethics in intelligence.

²⁹ Lowenthal, *Intelligence: From Secrets to Policy*, 450.

³⁰ John Rizzo, *Company Man: Thirty Years of Controversy and Crisis in the CIA* (2014), 4.

³¹ *Ibid*, 6.

approve the destruction of the tapes despite his concerns about it, and even after he stayed firm in his refusal, the tapes were destroyed anyway.³² Ignoring the advice of the agency's legal expert and attempting to coerce him into approving something that he cannot in good faith allow, then doing it anyway, clearly undermines the independence of the Office of the General Counsel and shows that the position it is supposed to hold in that process is not actually an effective tool for protecting ethics. If government actors can just go around lawyers whenever they want, they do not provide any actual barrier to unethical actions.

Furthermore, even congressional oversight did not stop the destruction of the tapes, as Rizzo mentions that the heads of the intelligence committees in Congress were briefed on the proposal in January 2003 and never did anything to stop it. He notes that even though one did write a letter expressing concerns about it, in the end, "none of the leaders ever followed up about the issue until the story leaked to the media almost five years later."³³ Later, after the Office of the Inspector General's May 2004 report again brought the issue to their attention over a year later, the inaction continued:

"None of the four leaders would ever ask to look at the tapes. None of them ever inquired about their status, even though the CIA had put them on notice more than a year earlier that the Agency intended to destroy the tapes at some point. None of them ever asked anything about the tapes. Not, that is, until the shit hit the fan years later, courtesy of the *New York Times*."³⁴

Evidently, even given multiple opportunities to scrutinize the decision, officials in Congress did not provide the sufficient level of oversight that was needed to acknowledge or stop what they later deemed to be unethical once it reached the media and the broader public.

³² Ibid, 8.

³³ Ibid, 9.

³⁴ Ibid.

In the end, the tapes had to pass through multiple layers of institutional safeguards, including Rizzo's Office of the General Counsel and the Congressional leaders (and even White House lawyers who expressed their disapproval), and each time they found a way around them or the safeguards were simply insufficient. This demonstrates that there are clear gaps in the Intelligence Community's handling of ethical dilemmas, and they must be addressed to prevent similar mishandlings from occurring in the future. Indeed, bureaucracy is often criticized for being too slow or gumming up the process of getting things done, but in this case, there clearly were not enough bureaucratic stop-gates to prevent the tapes from being deleted.

On the overall question of whether the ends justify the means when it comes to the use of torture, opinions are varied and split. Many in the media and the general public feel that torture can never be justified,³⁵ while the in-class speaker on ethics in intelligence felt that ethics in a post-9/11 world can be subjective and situational because of the context creating the need for activities like enhanced interrogation. The speaker, who had personal experience with the program, concluded the evening with a summary of the ethical trade-off: "The program was effective, but the question is, could you have gotten the same information without resorting to enhanced techniques? It's unknowable."³⁶

Conclusion

In summary, the U.S. Intelligence Community currently has several safeguards against the misuse of resources, such congressional oversight, counterintelligence measures, covert action authorization processes, and internal lawyers who evaluate all actions for any issues that

³⁵ Bruce Drake, "Americans' Views on Use of Torture in Fighting Terrorism Have Been Mixed." *Pew Research Center*. December 9, 2014.

³⁶ Guest speaker on ethics in intelligence.

may arise. However, these paper barriers are not always enough to protect the integrity of decisions, and morality on its own is not strong enough to prevent unethical actions from taken place. Ethics are very important for aligning the IC with the overall values of the United States, but it is not sufficient to expect that they will be protected to the fullest extent without some way to translate them into tangible and effective protections. One recommendation to help address this problem is to strengthen the power of the Office of the Director of National Intelligence (DNI) and expand its the role to act as a watchdog for all of the agencies in the Intelligence Community. This would be intended to allow it to be more involved in the daily operations of each agency and simultaneously cut down on stove-piping while also acting as a real check on misuse of resources. It would also be beneficial to have the DNI as a primary source of first-level oversight because it would allow for the protection of sources and methods as well as keeping tradecraft secrets within the community itself, unlike the current risk of leaks through congressional oversight. However, one negative consequence would be the appearance of a loss of autonomy, and indeed, the agencies would likely feel that it was an infringement upon their own sovereignty as independent agencies. While they may protest against this action at first, they would likely realize that greater oversight is beneficial to them in the long run (as discussed previously) as a source of credibility.

This reform is greatly needed because the nature of secrecy in intelligence means that the agencies are entrusted with a high level of discretion when it comes to regulating their own actions, and the IC must be able to define and implement clear lines when it comes to ethics. Having one designated office for the promotion of a consistent set of ethics common to every agency in the community is important both for adhering to American values and doing what is

right, while also maintaining credibility and public support. It would also be a huge step towards the redemption of the IC's reputation in the eyes of the public and in the context of historical and modern abuses of power. Without it, the IC would not be able to properly carry out the mission of the U.S. government, adhere to American values, and uphold public trust in intel institutions, all of which are important to the continued success of the community.

Bibliography

- Berkowitz, Bruce. "Assassinations as an Instrument of American Foreign Policy." *Intelligence: The Secret World of Spies*. Loch Johnson and James Wirtz, eds. Oxford: Oxford University Press, 2015. 292-296.
- Colaresi, Michael. "Why the CIA Should Want More Congressional Oversight, Not Less." *The Washington Post*. December 12, 2014. https://www.washingtonpost.com/news/monkey-cage/wp/2014/12/12/why-the-cia-should-want-more-congressional-oversight-not-less/?utm_term=.9d2a95e4ebd1.
- Executive Order 12333: United States Intelligence Activities*, signed December 4, 1981.
- Jones, Garrett. "Working With the CIA." *Intelligence and the National Security Strategist*. Roger George and Robert Kline, Eds. Lanham: Rowman & Littlefield Publishers, Inc., 2006. 497-507.
- Kean Commission, "9/11 Intelligence Failure." *Intelligence: The Secret World of Spies*, Loch Johnson and James Wirtz, eds. Oxford: Oxford University Press, 2015. 429-465.
- Koch, Andrew. "U.S. Central Intelligence Agency Force: Covert Warriors." *Intelligence and the National Security Strategist*. Roger George and Robert Kline, Eds. Lanham: Rowman & Littlefield Publishers, Inc., 2006. 509-515.
- Lowenthal, Mark. *Intelligence: From Secrets to Policy*. Los Angeles: Sage, 2017.
- Rizzo, John. *Company Man: Thirty Years of Controversy and Crisis in the CIA*. New York: Scribner, 2014.
- Vazquez, Maegan. "She Could Be the First Woman Ever to Run the CIA," *CNN Politics*. March 14, 2018. <https://www.cnn.com/2018/03/13/politics/who-is-gina-haspel/index.html>.
- Williams, Anthony. "CIA Support to Enduring Freedom," *Intelligence and the National Security Strategist*. Roger George and Robert Kline, Eds. Lanham: Rowman & Littlefield Publishers, Inc., 2006. 493-495.
- In-class lectures and speakers, GOVT-426: The US Intelligence Community, 2018.