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## CIA Ethics Education: Background and Perspectives

### Baseline Approaches to Ethics Education

In the Central Intelligence Agency (CIA), there are two distinct categories of ethics education: One applies to all government agencies and the other to the conduct of activities in the intelligence community specifically.

- The Ethics in Government Act (EIGA) (P.L. 95-521), enacted in 1978, established financial disclosure guidelines and restrictions on outside earned income for employees of all government agencies. The EIGA also established the Office of Government Ethics (OGE) whose mission is to provide overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. OGE oversees government departments and agencies including the CIA. Its focus is generally on records administration and training related to potential conflicts-of-interest, outside employment, interpersonal relationships, and gifts. The CIA's ethics program, mandated through the EIGA, includes ethics orientation for new employees and mandatory annual ethics refresher training for the entire workforce. The most recent OGE assessment of the CIA's ethics program was completed in November 2017. OGE does not have jurisdiction over the CIA's intelligence activities.
- CIA officers also receive extensive ethics training specific to intelligence, which includes case studies of ethically challenging operational scenarios, to prepare them for the operational side of their jobs. This training includes familiarization with the legal authorities for the conduct of intelligence activities, principally Executive Order 12333, *The Intelligence Community*, as amended, and CIA's AR 2-2, *Law and Policy Governing the Conduct of Intelligence Activities*. However, while these baseline references spell out *dos* and *don'ts* from a legal standpoint, there is little mention of ethics per se. Section 2.1, of E.O. 12333, for example, merely requires intelligence collection be done in a manner that is "respectful of the principles upon which the United States was founded."

### Perspectives on Intelligence Ethics

Some former employees and others with experience at the agency have been critical of CIA's ethics program as focusing too much on legal compliance in a reactive, ad hoc manner that falls short of a comprehensive approach to ethics education at the CIA. Legalism, or "an ethical attitude that holds moral conduct to be a matter of rule following" characterizes the ethical culture of the intelligence community, these critics have noted.

Arguing that CIA's formal ethics program falls short of a more comprehensive approach to ethics education, former

CIA officer Paul Ericson, in his essay, *The Need for Ethical Norms*, advocates for an established set of ethical norms or code of conduct:

Although many of us have discussed the ethics of our profession, little has been done organizationally to capture these thoughts. Rather than possibly hamstringing future options by formalizing Agency dos and don'ts, we seem to prefer risking a repetition of behaviors which have jeopardized our organizational standing and credibility in the past. We can ill afford to allow this trade-off to continue.

Others are skeptical of introducing training on morality into what is often viewed as the inherently amoral environment of covert action or clandestine foreign intelligence. As former Director of Central Intelligence William Webster once put it, "*In the United States, we obey the laws of the United States. Abroad we uphold the national security interests of the United States.*"

This viewpoint conforms to the *realist* perspective of international relations, which holds a state's interests to be the preeminent driver of foreign policy, as a frame of reference for individual conduct. Subscribers to the realist perspective do not so much ignore personal morality as believe that it is not particularly relevant to relations between states. In the international context, the national interests of the United States provide a moral imperative of their own, they argue.

The *realists*, or those skeptical of introducing personal morality into training on ethics and into the practice of intelligence, have also observed that an evolution of legal standards—such as those governing the treatment of detained combatants engaged in terrorism—while still short of a comprehensive approach to ethical considerations, has resulted in a demonstrable improvement in ethical behavior. They cite the Detainee Treatment Act (2005), the landmark Supreme Court decision *Hamdan v. Rumsfeld* (2006), and Executive Order 13491 (2009), *Ensuring Lawful Interrogations* as examples of policy that has come to define improved standards for the ethical treatment of detainees.

Yet critics of realism and the legalistic approach to the practice of intelligence maintain that this approach contributes to an *ends justify the means* mentality that leaves intelligence professionals susceptible to making regrettable decisions in the midst of morally ambiguous situations. They also counter that the post 9/11 conflict with terrorism is distinguished in part by its adversaries: collections of individuals, rather than a state, who are

organized and motivated by violent extremist ideologies. Personal morality, rather than any realist norm of interstate relations, remains relevant in their opinion.

### Landmarks in U.S. Policy on the Ethical Treatment of Detainees

**Detainee Treatment Act (2003).** For the first time prescribed the Army Field Manual for Human Intelligence Collector Operations (FM 22-2.3) standards for interrogation of detainees in an armed conflict. Prohibits “cruel, inhuman or degrading treatment or punishment.”

**Hamdan v. Rumsfeld (2006).** Supreme Court decision that military commissions for Al Qa’ida detainees violated Common Article 3 of the Geneva Conventions.

**Executive Order 13491 (2009).** Established Common Article 3 of the Geneva Conventions as the “minimum baseline” standard for the treatment of detainees in an armed conflict. Prohibits interrogation techniques not authorized by FM 22-2.3

Some writers on the ethics of intelligence have suggested a third approach: Applying the principles of the law of war to sensitive intelligence activities, especially those that can have serious implications for U.S. foreign policy and relations between states. Law of war principles, they argue, can provide a guide to individual conduct even in situations short of war that may pose a threat to U.S. national security. They include:

- military necessity: the principle that allows for engagement with an adversary only if it is an absolute military [intelligence in this case] necessity and does not violate the other principles of the law of war;
- prevention of unnecessary suffering: the activity must not cause unnecessary suffering to anyone engaged by a legitimate operation;
- proportionality: the activity must be proportional to the legitimate threat it is targeting; and
- distinction: the activity must be conducted so as to discriminate or distinguish the target from the surrounding civilian population.

### Personal Standards of Conduct

In lieu of a definitive resolution of these competing perspectives or an established set of ethical norms, many agency employees have tried to navigate the challenging, uncharted situations in their work by observing personal standards of conduct. In a study written before 9/11, interviews of CIA employees revealed common perspectives on personal conduct, including: the importance of integrity, accountability, always speaking truth to power, and conducting oneself in a manner that the American people would support.

Former FBI agent and interrogator, Ali Soufan, while highly critical of the overall CIA interrogation program after 9/11, also commended CIA interrogators he observed who refused to support certain interrogation methods that were legal at the time. The declassified executive summary of the Senate Select Committee on Intelligence (SSCI) study on CIA’s detention and interrogation program

provides additional examples of unease among CIA personnel with the use of enhanced interrogation techniques.

Given the uncertainty of the operational circumstances in which CIA officers may find themselves, the agency has had provisions for opting out of assignments. David Perry in *Ethics of Spying*, (Jan Goldman, ed.), refers to

CIA's standing policy that any employees having ethical concerns 'may report them in confidence to the [CIA] Inspector General.'...There is further indication that CIA has maintained a form of 'conscientious objector' status for its personnel relative to certain morally problematic assignments.

### Principles of Professional Ethics

In 2014, former Director of National Intelligence, James Clapper, contending with the question of what sort of ethical guidelines should govern the intelligence community, introduced the *Principles of Professional Ethics* in the National Intelligence Strategy. These principles are broader than those some had envisioned for CIA officers alone, since they apply personal, organizational, and corporate standards of behavior to employees of all 17 component organizations of the intelligence community in every intelligence discipline. The principles include: (1) selfless dedication to United States security; (2) seeking the truth and obtaining, analyzing, and providing intelligence objectively; (3) defending the Constitution and complying with the laws of the United States; (4) demonstrating integrity; (5) protecting sources and methods, remaining accountable and exercising proper stewardship of resources; (6) improving performance, demonstrating innovation, and collaborating with colleagues; and (7) encouraging diversity.

### Relevant Statutes

Title 18, U.S. Code, Chapter 113C, §2340

Title 42, U.S. Code, Chapter 21D, §2000dd, §2000dd-2

### Further Reading

Paul G. Ericson, *The Need for Ethical Norms*, (Washington DC: CIA Center for the Study of Intelligence), posted May 8, 2007

Arthur S. Hulnick and Matthew W. Mattausch, “Ethics and Morality in United States Secret Intelligence,” (Cambridge: Harvard Journal of Law and Public Policy), Spring 1989

Jan Goldman, ed., *Ethics of Spying*, (Lanham, MD, Scarecrow Press), 2006

Kent Pekel, *Integrity, Ethics and the CIA: A Need For Improvement*, (Washington DC: CIA Center for the Study of Intelligence), 1998

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