

From the “Little Red Book” to the “Purple” Book: Transforming Intelligence into a Profession One Page at a Time

**A Monograph
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Abstract

From the “Little Red Book” to the “Purple Book”: Transforming Intelligence into a Profession One Page at a Time, by Maj Andrew B. Stone, 88 pages.

Ethics-based decision-making problems perennially plague the U.S. Intelligence Community. Attempts by Congress and the Executive Branch to inculcate in the individual Intelligence Officer a sense of responsibility to both the organization and society and act according to sound ethical principles failed to take root. However, much of that failure has to do with the approach taken toward fixing what was perceived to be broken.

The author takes the position that what sets apart traditional professions from other trades is contained within Samuel Huntington’s fundamental and enduring characteristics of professions: Expertise, Responsibility and Corporateness. Using this framework establishes that Intelligence does not rate well when measured against Huntington’s criteria. From that analysis, the author offers a case study of the American legal profession as a means of discovering how that profession addresses some of the aspects found deficient in the assessment of Intelligence. In that case study, the Intelligence Community finds a model that it can adapt for its own quest for professionalization.

The monograph concludes that the quest for the ethical conduct is not lost, provided the following efforts to professionalize occur: the individual IO takes an active role in his professional development; the Director of National Intelligence and Intelligence Community members’ leaders embrace a permanent and living dialogue on ethics and integrity; Congress acts decisively in its Intelligence oversight role to require annual ethics/professional conduct rules reporting as a condition for funding; and the American people accept that, in intelligence and national security matters (as in law and medicine), there can be no “zero tolerance” policy.

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INTRODUCTION

In 1976, U.S. intelligence analysts arrived at their desks to find a gift—a 382-page pocket-sized red hardbound book. Titled *Intelligence Research Methodology: An Introduction to Techniques and Procedures for Conducting Research in Defense Intelligence*, Intelligence analysts eventually came to view the book as the “gold standard” reference for Intelligence analysis and research methodology for decades. Jerome Clauser, the Central Intelligence Agency’s (CIA) Director for Academic Affairs wrote that his book’s purpose was to, “provide guidance to the inexperienced researcher who must thread his way through a tortuous maze of procedures and steps as he defines his research problem, collects his information, analyzes it, and prepares his report.”¹ He published the work soon after the public revelation by the New York Times on December 22, 1974 that the CIA had systemic lapses in ethical conduct: since its inception 25 years earlier, the CIA had been conducting illegal activities even to the point of spying on U.S. citizens and subjecting unwitting participants to dangerous behavioral modification experiments.²

Clauser was largely silent on the subject of providing guidance, rules and procedures regarding ethical conduct, integrity and professional responsibility. This monograph intends to establish a departure point for the Intelligence Officer that can

¹ Jerome Clauser, *Intelligence Research and Analysis*, Edited by Jan Goldman, Lanham: The Scarecrow Press, Inc., 2008, xii.

² Seymour Hersh, "Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years." *The New York Times*, December 22, 1974: 1. See also Central Intelligence Agency, "Declassified Central Intelligence Agency Memorandum for Executive Secretary, CIA Management Committee, May 16, 1973 (Secret, Eyes Only) declassified June 2007," *The National Security Archive*, June 21, 2007. http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB222/family_jewels_full_ocr.pdf (accessed March 23, 2010).

(adapting Clauser's introductory words above) *provide guidance to the inexperienced Intelligence Officer (IO) who must thread his way through a tortuous maze of procedures and steps as he defines his ethical dilemma, recalls the Canons of Ethical Intelligence Conduct, applies the Rules of Professional Conduct and makes his decision that supports the mission, furthers national security and protects the American people.* The IO, the IC senior leadership, Congress and the American public can embrace the advent of ethics-based decision-making by establishing a permanent dialogue that eventually creates and maintains a corollary to the "little red book"³: the "little purple book of professional responsibility."

The U.S. Intelligence Community (IC) creates for its customers a "Decision Advantage"⁴ that is achieved when the IC "provide[s] objective and relevant support," to decision-makers in a manner that increases the precision and speed with which he can make informed decisions.⁵ Although it is not reasonable to expect the IC to predict the

³ Clauser, xii. The editor notes in his introduction to the revised edition notes the "sarcastic" comparison made by analysts in the 1970s to Mao Zedong's "The Little Red Book" published at nearly the same time.

⁴ For an overview of the U.S. Intelligence Community, see Office of the Director of National Intelligence, *History of the Office of the Director of National Intelligence*. <http://www.dni.gov/history.htm> (accessed December 14, 2008) and "National Intelligence: A Consumer's Guide." *Office of the Director of National Intelligence*. 2009. http://www.dni.gov/IC_Consumers_Guide_2009.pdf (accessed February 07, 2010). For an introduction to the Intelligence discipline, see Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, 3rd ed. Washington: CQ Press, 2006. See also Appendix A Overview of the Intelligence Community Architecture.

⁵ Office of the Director of National Intelligence, "Vision 2015: A Globally Networked and Integrated Intelligence Enterprise," *Director of National Intelligence*, July 22, 2008, http://www.dni.gov/reports/Vision_2015.pdf (accessed February 13, 2010), 10. Cited hereafter as DNI Vision 2015.

timing, location and modality of every attack upon U.S. interests worldwide,⁶ it is reasonable to expect that Intelligence Officers (IO)⁷ will take actions and make decisions that support U.S. national security objectives and protect the American people they serve. The events of the last decade strongly indicate that the U.S. IC's ability to do so in an ethical manner may be impaired, despite over sixty years' worth of efforts to "fix" it.

The American public views the U.S. IC with a skeptical eye.⁸ Mindful of Intelligence-related historical events of the last seven decades, the American people seem to have a right to be dubious. The modern era of the IC⁹ is replete with examples of IO involvement (from field agent to senior leaders) in ethically questionable activities. The 1950s, 1960s and 1970s were rife with now-acknowledged abuses of U.S. civil liberties by the IC: the systematic interception of mail to and from selected U.S. citizens that resulted in the "watch listing" of 1.5 million citizens (including Richard Nixon and several Congressmen); illegal investigation of 100,000 U.S. citizens by Army

⁶ Generally, U.S. adversaries taking active and passive measures to deny or deceive U.S. intelligence collection desire that their stratagems remain unknown. See Barton Whaley, *Stratagem: Deception and Surprise in War*. Whaley asserts that the Denial and Deception practitioner nearly always retains the advantage in that only he truly knows the truth; the target of those operations (passive or active) can only infer the D&D practitioner's true intent based on deductions and inferences made from observations.

⁷ The author uses the term, "Intelligence Officer" to describe the intelligence operative/collector and intelligence analyst alike. While the author purposefully combines the two "disciplines," it is not done to provoke. The author acknowledges that many in the IC view intelligence analysts and collectors differently. However, because the intelligence analyst is reliant upon another for his information (the intelligence collector), and the intelligence collector's data is transformed into actionable national intelligence by the intelligence analyst, there exists an inextricable interdependence between them. This interdependence—if not trust—requires one understand the other's needs, capabilities, and limitations in order to jointly produce useful intelligence to the nation's leaders.

⁸ Joseph Carroll, "Public Doubts "Smarts" of U.S. Intelligence Community," *Gallup*, April 26, 2005, <http://www.gallup.com/poll/16009/Public-Doubts-Smarts-US-Intelligence-Community.aspx> (accessed January 26, 2010). The telephone poll of a representative sample of the U.S. population indicated that 52% of Americans believed the Intelligence Community was not providing accurate intelligence information regarding the threats posed by Iran, North Korea, and others. Only 10% of those surveyed responded they were "very confident" that the IC was providing accurate information.

⁹ The modern era of the Intelligence Community begins with its formalization by the National Security Act of 1947.

Intelligence units; use of hallucinogenic drugs in behavioral-control experiments that resulted in the deaths of U.S. citizens; and manipulation of democratic elections in foreign countries.¹⁰ The 1980s saw the Iran-Contra affair wherein U.S. IOs illegally sold arms to Iran and used the proceeds to fund other illegal activities in direct violation of explicit language in other U.S. laws. More recently, allegations of kidnapping, confinement, torture and use of third-party cut-outs that engaged in human rights violations in prisoner interrogation, and the 2003 Iraq Weapons of Mass Destruction judgments are evidence that the perception exists grave errors were made by or with the assistance of the IOs.¹¹

The above events served as preludes to many changes exacted upon the IC. Yet, continued attacks from violent extremists (and other actors) against U.S. national interests at home and abroad since then leave stakeholders exasperated, wondering whether the IC has (or *can ever have*) the potential to meet its obligations to provide support to that elusive Decision Advantage. Americans perennially question Intelligence efficacy, even though there are more Intelligence successes than will ever be publicized.¹² It does not follow that the “ends justify the means” in all Intelligence work; rather, for matters of national security, the IO must often choose between undesirable choices.

¹⁰ Loch K. Johnson, "Congressional Supervision of America's Secret Agencies: The Experience and Legacy of the Church Committee," In *Intelligence and National Security: The Secret World of Spies, an Anthology*, edited by Loch K. Johnson and James W. Wirtz, 391-403, New York: Oxford University Press, 2008, 397.

¹¹ Lowenthal, 18-28.

¹² Pillar. Some suggest that preventing “surprise,” especially surprise attacks is an intractable problem. See Lowenthal, Ephraim Kam, *Surprise Attack: The Victim's Perspective*, Cambridge: Harvard University Press, 1988; Cynthia M. Grabo, *Anticipating Surprise: Analysis for Strategic Warning*. Edited by Jan Goldman. Lanham: University Press of America, Inc., 2004; and Whaley, Barton. *Stratagem: Deception and Surprise in War*. BartonWhaley, 1969, for additional information on surprise, stratagem and foreign denial and deception.

Bad vs. Wrong Decisions¹³

Problematic are those conscious decisions IOs make that contradict or undermine U.S. national security objectives. The Senate Select Committee on Intelligence (SSCI) “Report on the U.S. Intelligence Community’s Prewar Assessments on Iraq,” concludes that errors associated with that event were not simple errors of omission. Specifically, “Most of the major key judgments...either overstated, or were not supported by, the underlying Intelligence reporting. *A series of failures, particularly in analytic trade craft, led to the mischaracterization of the intelligence* [emphasis added].”¹⁴ The above infers that IOs deliberately perjured their analysis to meet what they perceived as the conclusions the policy-maker “wanted to hear.” This allegation fundamentally counters an Intelligence axiom: *Speak truth to power*.¹⁵ Presciently, Senator Dianne Feinstein asks whether,

the intelligence assessments were bad as well as wrong? This requires a *fine distinction between an intelligence assessment that is wrong, and one that is bad* [emphasis added]. Intelligence assessments are often wrong, for by their nature they are an assessment of the probability that a future event will take place. But wrong does not always mean bad. Sometimes an intelligence assessment follows the right logic and fairly assesses the amount, credibility and meaning of collected data, and still is wrong.¹⁶

Committee Chairman Senator Pat Roberts asserts there is a need for individual as well as institutional introspection:

Some have expressed concern that such criticism is not only unnecessary, but will also engender excessive risk aversion. I believe that, although that is possible, we

¹³ This distinction, between *bad* and *wrong* decisions was made by U.S. Senator Dianne Feinstein, U.S. Senate Select Committee on Intelligence, “Report on the U.S. Intelligence Community’s Prewar Assessments on Iraq,” July 7, 2004, 481. Cited hereafter as SSCI Report on Iraq Prewar Intelligence Assessments.

¹⁴ SSCI Report on Iraq Prewar Intelligence Assessments, 14.

¹⁵ DNI Vision 2015, 8.

¹⁶ SSCI Report on Iraq Prewar Intelligence Assessments, 481.

should not underestimate the character of the hard-working men and women of the Intelligence Community. While criticism is never easy to accept, professionals understand the need for self-examination and the men and women of the Intelligence Community are, first and foremost, true and dedicated professionals... *In order to begin the process of self-examination, however, one must recognize or admit that one has a problem. Unfortunately, many in the Intelligence Community are finding it difficult to recognize the full extent of this significant intelligence failure [emphasis added]...*The painstaking detail and harsh criticisms in this report are necessary ...to ensure that there is an honest accounting of the mistakes that were made so that they are not repeated.¹⁷

To be clear, intelligence activities should not shy away from ambiguous situations, citing fears of having conflicts with professional ethics and morality. One author asserts, “The ethical ethos of an intelligence organization is of great importance to understanding it as an institution.”¹⁸ Mark Lowenthal expresses well the uncomfortable position endured by the IO, while asserting that society benefits from certain safeguards:

Intelligence is not without its ethical and moral dilemmas, some of which can be excruciating...Intelligence, perhaps more than any other government activity, operates on the edge of acceptable morality, occasionally dealing in techniques that would not be acceptable elsewhere in government or in private life. For most citizens, the trade-off between ethics and increased security is acceptable, provided that the intelligence community operates with rules, oversight and accountability.¹⁹

The damning conclusions come not from being wrong about the time, the place or the mode of the attacks; rather, that in some cases, IOs perjured objective analysis to reflect personal political views. Further, that IOs “cherry-picked” evidence to support a predetermined political conclusion, knowingly violated U.S. law, ignored human rights violations or intentionally held intelligence data from other intelligence agencies

¹⁷ Ibid, 441-442.

¹⁸ Len Scott and Peter Jackson, "The Study of Intelligence in Theory and Practice," In *Intelligence and National Security: The Secret World of Spies, An Anthology*, by Loch K. Johnson and James J. Wirtz, 21-37, New York: Oxford University Press, 2008, 30.

¹⁹ Lowenthal, 273.

expressly in an effort to have an “edge” on others.²⁰ Allegations of IOs’ personal and professional misconduct—*bad* decisions—persist. “Wrong” decisions are those made by individuals who subscribe to ethical conduct but err. “Bad” decisions are made by individuals who consciously choose to contradict professional ethics principles and deliberately harm society. They include calculated moves which connect “too many dots” for purposes of personal gain or to create the illusion of sound analysis by deliberately rejecting valid data that refutes a popular belief or decision.²¹ If true, actions such as these deliberately subvert U.S. national security objectives and the American people’s security.

The Way Ahead

Considering the contemporary operating environment and what researchers understand about organizations and decision making in morally ambiguous circumstances, how can the IC secure ethical decision-making in national security matters? This author suggests that, because IOs frequently confront and must successfully navigate ethical dilemmas in their professional lives to a greater extent than most occupations, the professionalization of intelligence (through combined efforts of structural changes and organizational cultural changes) and the institutionalization of ethics-based decision making can help the IC provide “objective and relevant support.”²²

²⁰ Paul R. Pillar, "Intelligence, Policy and the War in Iraq," *Foreign Affairs* 85, no. 2 (March 2006): 15-27; Jan Goldman, ed, *Ethics of Spying: A Reader for the Intelligence Professional*, Lanham, Maryland: The Scarecrow Press, Inc., 2006; Lowenthal, 255-273.

²¹ U.S. President, *Remarks by the President on Strengthening Intelligence and Aviation Security*, January 7, 2010, <http://www.whitehouse.gov/the-press-office/remarks-president-strengthening-intelligence-and-aviation-security> (accessed March 16, 2010).

²² DNI Vision 2015, 10.

Absent ethical decision-making, there exists a high likelihood the Decision Advantage may be lost in the long term, a predictable result of unintended consequences.

Specifically, this paper addresses the above areas by first examining in Section Two, the current state of the IC followed by Section Three in which an examination of intelligence from the perspective of a profession is accomplished, looking for the characteristics of classical professions, using Samuel P. Huntington's qualifying criteria.²³ Section Four examines the American legal profession—assessing it for congruence with Huntington's model.²⁴ Section Five captures observations gleaned from the previous. Section Six concludes this monograph, illuminating a way ahead for the individual IO, IC leadership and Congress.

ATTEMPTS TO “FIX” THE IC

The IC was born from frustration, and its first sixty years' existence met numerous ethical lapses. The following highlights how Legislative and the Executive branches each attempted to “fix” the IC's ethical decision-making problems.

Congress Reshapes the IC

Revelations in 1974 that the CIA and other intelligence organizations illegally spied on U.S. citizens in the 1950s-1970s incensed the American peoples and ultimately produced permanent and robust Congressional Intelligence oversight committees. These

²³ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, Harvard University Press, 1957.

²⁴ The author draws examples from the State of Texas for illustrations of how the American legal system and profession exists at the state level. Generally, the legal system there is representative of the majority of states in the Union.

committees now use the power of the Congressional “purse strings,” to ensure the intelligence community appropriately utilizes its funds.²⁵

Just in the past 10 years, the legislative and executive branches levied many changes onto the IC—each one attempting to transform the institution. The 2001 terrorist attacks inspired the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act, allowing “...greater latitude in some domestic intelligence and law enforcement collection and took steps to improve coordination between these two areas.”²⁶ Congressional outrage over the combined failures to warn of the September 11, 2001 attacks stemming from lack of collaboration between various intelligence and law enforcement agencies combined with the faulty intelligence analysis leading to the 2003 invasion of Iraq spurred bipartisan, sweeping legislative reforms. The most significant of structural changes occurred when the Congress U.S. realigned the intelligence agencies in 2004 under the umbrella of a new statutory presidential advisory position, that of the Director of National Intelligence (DNI).²⁷

These legislative efforts represented hopes Congress could unilaterally recalibrate the U.S. IC. Each change conveyed a message: national security and the protection of American people were top priorities for Congress. Hence, Congress altered the bureaucratic structure. They eliminated legal impediments to intelligence sharing between intelligence and law enforcement agencies. Legislation alone, however, failed to

²⁵ See Loch K. Johnson, "Balancing Liberty and Security," in *Intelligence and National Security Strategist: Enduring Issues and Challenges*, edited by Roger Z. George and Robert D. Kline, 65-84, Rowman & Littlefield Publishers, Inc., 2006; see also Lowenthal, 30-53.

²⁶ Lowenthal, 27; See also "The USA PATRIOT Act: A Sketch," in *Intelligence and the National Security Strategist: Enduring Issues and Challenges*, edited by Roger Z. George and Robert D. Kline, 553-558, Lanham: Rowman & Littlefield Publishers, Inc., 2006.

²⁷ See Appendix A, Overview of the Intelligence Community Architecture.

restore ethical decision-making. These structural changes result from the desire to *do something*. That is not to say that Congress had bad intentions; admittedly, the legislative branch is limited in its means to effect change—legislation is not the only form of leadership.

Executive Branch Influence on IC Structure

Structural reforms are not limited in scope to only those passed into law. A review of IC initiatives shows the Executive Branch leadership actively attempted to reshape the IC after 2004. The Executive Branch leadership (including the President, National Security Council, National Intelligence Council, and IC agency leadership) influences organizational structure, though sweeping initiatives may be limited in scope to the extent they impinge on federal law. The various offices accomplish structural forms through a variety of means, including National Security Policy Directives, Presidential Executive Orders (EO), altering internal agency directorates, etc.

In the review of selected policy documents below, notice the word choice used by executive leadership to communicate how these cultural changes would occur. Rather than address change at the individual level, they state how the executive leadership intended to reform the intelligence enterprise's culture via new policy, programs, and processes—structural changes. Executive leaders declared that the emergent nature of contemporary threats required the intelligence agencies to shift their mindsets: from a “need to know” to a “responsibility to provide” culture, communicating the need to increase collaboration among the various intelligence agencies.²⁸ Vows by the Director

²⁸ Director of National Intelligence Dennis Blair, "United States Intelligence Community Information Sharing Strategy," *Office of the Director of National Intelligence*, February 22, 2008, http://www.dni.gov/reports/IC_Information_Sharing_Strategy.pdf (accessed February 11, 2010), 2.

of National Intelligence (DNI) to strengthen analytic integrity yielded ill-defined prescriptive standards for finished intelligence products.²⁹ In 2007, the ODNI established two successive roadmaps for the IC, the “100 Day Plan for Integration and Collaboration” and the “500 Day Plan for Integration and Collaboration,” respectively.³⁰ Those documents each described “Six Integration and Transformation Areas,” for the IC to pursue collectively over the subsequent 100 and 500 days, respectively. In each, the top-listed transformation area was, “Create a Culture of Collaboration.”³¹ The 100-Day Plan describes the imperative for its Culture of Collaboration,

Few transformation efforts have been successful when they did not address culture, attitudes, and day-to-day behaviors. To address these cultural issues, we must integrate IC personnel practices and create a culture of collaboration. Specifically, the Plan advances valuable human resources programs, modeled after the Department of Defense’s transformational Goldwater-Nichols Act, which will integrate the IC’s workforce by promoting ‘jointness’ through recruitment, training, exercises, education, retention, assignments and career and leadership development.³²

The intended outcome is a workforce that embraces diversity, rewards and institutionalizes collaborative behavior, but falls short of encouraging cultural reform in the sense of changing the individuals’ mindsets, preferences and actions.³³ The text reveals that initiatives within this focus area concentrated first on creating new structures, processes, and positions:

²⁹ Office of the Director of National Intelligence, "Analytic Transformation: Unleashing the Potential of a Community of Analysts," *Director of National Intelligence*, September 1, 2008, http://www.dni.gov/content/AT_Digital%2020080923.pdf (accessed February 9, 2009), 18.

³⁰ Office of the Director of National Intelligence, "500 Day Plan for Integration and Collaboration," *Office of the Director of National Intelligence*, October 10, 2007, <http://www.dni.gov/500-day-plan.pdf> (accessed February 20, 2010). Cited hereafter as ODNI 500 Day Plan.

³¹ Office of the Director of National Intelligence, "100 Day Plan for Integration and Collaboration," *Office of the Director of National Intelligence*, April 11, 2007, http://www.dni.gov/100-day-plan/100_day_plan.pdf (accessed February 20, 2010), 2. Cited hereafter as ODNI 100 Day Plan; ODNI 500 Day Plan, 1.

³² ODNI 100 Day Plan, 3.

³³ ODNI 100 Day Plan, 4.

More specifically, we must transcend the current agency-based linear model ... and develop a more mission-based model that is fluid, synchronizes collection, collaborates on analytic issues in real time, and broadens our partnership strategy.

Accordingly, this **integrated operating** [emphasis original] model will transform the traditional intelligence cycle ...promote accuracy, speed and agility without the constraints of organizational equities or functional stovepipes...operationalize the Intelligence Enterprise...To this end, we will need to clarify roles and responsibilities, streamline decision rights, and establish Enterprise-wide governance ...When this objective has been realized, the Intelligence Enterprise will be both agile and capable, and our partner-customers will benefit from an intelligence-based decision advantage.³⁴

The 500-Day Plan lists as its first enabling initiative the requirement to formalize the National Intelligence University (NIU).³⁵ A 2008 RAND technical report suggests that the NIU is a welcome addition to the IC,³⁶ stating it would be able to effectively address the, "...consensus among current analysts that more should be done to leverage value from the Community as a whole, in addition to strengthening individual parts."³⁷

Observations

Though effective in removing some of the formal impediments to institutional change, the reforms over the last seven decades have been limited in scope to making explicit changes to the measurable and observable attributes of the IC—in other words, structural changes. The anecdotal perception of IOs that “little has changed” since the reforms added another layer to the intelligence bureaucracy suggests that the structural reforms alone have thus far been ineffective. Dr. Pete Rustan, a senior intelligence

³⁴ DNI Vision 2015, 11.

³⁵ ODNI 500 Day Plan, 4. Though not specifically mandated in the 2004 intelligence reform legislation, the NIU seems to be the result of requirements in IRTPA for the DNI to consolidate and coordinate education and training initiatives across the IC.

³⁶ The NIU is primarily a virtual organization charged with evaluation and policy rather than a brick-and-mortar operation.

³⁷ Gregory F. Treverton and C. Bryan Gabbard, "Assessing the Tradecraft of Intelligence Analysis," *RAND, National Security Research Division*, 2008, http://www.rand.org/pubs/technical_reports/2008/RAND_TR293.pdf (accessed February 20, 2010), 37-38.

official with the National Reconnaissance Office (NRO) observes in a 2008 journal article that little seems to have changed in the IC culture in the intervening years since the September 11, 2001 attacks. More importantly, he observes little has changed since Congress implemented the monumental reforms: “Unfortunately, the largest and most established government organizations offer the strongest resistance to change because they have become highly bureaucratic, generally following processes established prior to the advent of the internet.”³⁸

Rustan estimates that thirty percent of the challenge still facing the U.S. Department of Defense (DoD) and the IC in creating fully integrated intelligence architecture lies in changing the organizational culture. He identifies two aspects of culture the IC must address: “the need to adopt commercial business practices...” and “...information sharing.” Furthermore, “Human nature is such that people often get attached to existing procedures and do not change their approach, even when the problem or circumstances surrounding the initial conditions have changed significantly.”³⁹

The IC’s evolution into a profession holds the potential to cure the IC’s loss of its moral compass by providing a needed cultural shift in the integration of ethics into the community—a cultural shift that resides in professions with similar characteristics. First, the author measures intelligence as a profession.

³⁸ Dr. Pete Rustan, "Building and Integrated Intelligence Network: Challenges and Opportunities," *High Frontier: The Journal for Space and Missile Professionals*, (U.S. Air Force Space Command) IV, no. 4 (August 2008): 10-14, 11.

³⁹ Rustan, 11.

INTELLIGENCE AS A PROFESSION?

This section measures intelligence as a profession. The author examines the IO using the same methodology Huntington applied in his analysis of the military officer. That is, by examining three characteristics of a profession as qualifying criteria: expertise, responsibility and corporateness.

The Concept of Profession

Members of the classical professions, most notably law, medicine, divinity, and commissioned military officership routinely encounter ethical dilemmas in their professional lives. A lawyer must determine how vigorously he chooses to defend in a trial an admitted terrorist who specifically targeted and maimed young girls walking to school by dousing them with gasoline and setting them afire. A physician selects which lifesaving measures may be appropriate for a cocaine-addicted infant condemned to the certainty of 50 years in a persistent, vegetative state, resulting in millions of dollars in medical expenses. The preacher must decide how to counsel a confessed child molester in his parish. A military officer must decide in an instant whether he calls in an airstrike on a fortified enemy position or conducts a room-to-room clearing operation on foot in the face of withering fire, unsure where and how many noncombatants are inside the building. Individuals make decisions—and those individuals are accountable for making them. There is no unnamed team, committee, branch, organization or “they” who makes the decisions in a professional’s life. These ethical dilemmas have no parallel in the daily “stock and trade” of Information Technology technicians, executives, bankers, engineers or academics.

One common thread links each of the above illustrative examples. The profession demands its members approach these dilemmas with the mindset that their actions must simultaneously serve their client and society. Each professional must instantly and correctly deduce what *is* ethical for the situation and the profession *and act* accordingly—else society suffers.

Intelligence is not so different. Many situations require the IO to make professional decisions with ethical and moral components and implications. These decisions occur in each phase of the intelligence cycles, generally Tasking, Collection, Processing, Exploitation, Analysis and Dissemination. The human intelligence (HUMINT) operative must choose: to what extent he blackmails a foreign official who is known to be addicted to illicit drugs, ethically compromised from greed and hungry for the company of indentured prostitutes; whether he partners with an “asset” known to sell children into sexual slavery; how many times he turns a blind eye to the techniques a strategic partner—to whose location he just rendered a suspected extremist for interrogation. The same applies to the signals intelligence (SIGINT) linguist asked to listen to conversations between U.S. citizens collected by foreign intelligence officers using U.S. equipment. The geospatial intelligence (GEOINT) analyst who accidentally finds during equipment calibration an illicit marijuana farm in the American Pacific Northwest faces the dilemma of anonymously “tipping” the local police to its whereabouts, contrary to U.S. laws that protect against unauthorized intelligence activities on U.S. soil. Similarly, the analyst, manager and senior officer may feel pressure to collect or select evidence that corroborates that which the decision maker has

already decided to be true, deliberately neglecting alternative competing hypotheses which might result in profoundly different (and unpopular) analytical conclusions.⁴⁰

If, then, Intelligence Officers (again, collector, analyst, manager and career senior intelligence officers alike) regularly encounter situations in their professional lives wherein their analysis can positively contribute to “the mission,” (national security) while simultaneously damaging society at large—dual loyalty to client and society—they could be considered professionals. Nevertheless, that claim begs the question: what makes a profession? For this paper, the author relies on political scientist Samuel P. Huntington’s enduring characteristics of professions: Expertise, Responsibility, and Corporateness.⁴¹

The Expertise of Intelligence Officers

There exists no single institution of higher learning charged with providing technical education for every IO. That is not a premise of Huntington’s concept of expertise, nor is it characteristic of other well-established professions. Instead, Huntington took a broader approach to expertise, acknowledging the need to retain a flexible approach to creating professional expertise:

[E]ducation consists of two phases...the first imparting a broad, liberal, cultural background, and the second imparting the specialized skills and knowledge of the profession. The liberal education...is normally handled by the general educational institutions of society devoted to this purpose. The second or technical phase of professional education...is given in special institutions operated by or affiliated with the profession itself.⁴²

⁴⁰ For additional readings detailing intelligence ethics vignettes case studies, see Jan Goldman, ed. *Ethics of Spying: A Reader for the Intelligence Professional*. Lanham, Maryland: The Scarecrow Press, Inc., 2006, 394-408.

⁴¹ Huntington, 7-10. See also Appendix B On Professions, for a fuller explanation of Huntington’s enduring characteristics.

⁴² *Ibid*, 8-9.

Each IC member organization establishes and executes its training and education program. They construct their curriculum based upon mission-specific needs.⁴³ Below are illustrative examples of how the IC members develop expertise in their “field of significant human endeavor.”⁴⁴ Many of the IC organizations (other than the military service components of the IC) are comprised either primarily or entirely of civil service employees. The CIA is representative of the non-military IC member organization. For the CIA’s IOs, specific education and training requirements vary according to job position within the Agency, though general trends emerge. All IOs (analyst and clandestine service positions) require baccalaureate degree or higher.⁴⁵ The CIA requires its entry-level analysts to attend a four-month Career Analyst Program at the Sherman Kent School for Intelligence Analysis where they learn “analytic tradecraft and methods.” The Agency also has advanced degree/ graduate academic programs for its analysts.⁴⁶

The DoD components require their IOs to have professional expertise, though each agency and military service is wholly responsible for devising its training and education program.⁴⁷ For the military service components, only the commissioned officer requires at least a baccalaureate degree. Enlisted troops are not only not required to have baccalaureate degrees, in some cases the military services waive high school

⁴³ Department of Defense, "Department of Defense Instruction 3305.02, General Intelligence Training," *Defense Technical Information Center*, November 28, 2006, <http://www.dtic.mil/whs/directives/corres/pdf/330502p.pdf> (accessed March 18, 2010), para 5.2; Detailed information regarding the curriculum of some IC schools is classified; hence, a sampling of publicly available information is used for illustrative purposes here.

⁴⁴ Huntington, 8.

⁴⁵ Central Intelligence Agency, *Career Opportunities*, September 21, 2009, <https://www.cia.gov/careers/opportunities/index.html> (accessed March 18, 2010).

⁴⁶ Central Intelligence Agency, *Intelligence and Analysis Careers*, November 30, 2009, <https://www.cia.gov/offices-of-cia/intelligence-analysis/careers-1/index.html> (accessed March 18, 2010).

⁴⁷ Department of Defense, "Department of Defense Instruction 3305.02, General Intelligence Training," *Defense Technical Information Center*. November 28, 2006, <http://www.dtic.mil/whs/directives/corres/pdf/330502p.pdf> (accessed March 18, 2010).

graduation as a prerequisite for military service, accepting instead a General Education Development (GED) high school equivalency diploma.⁴⁸ The author intends to take nothing away from the honorable service of the Non Commissioned Officer (soldier, sailor, airman or marine). Rather, it is important to recognize the U.S. military would not be successful if it were without the dedicated individuals whom are skilled at applying violence (or restraint as the situation and nation's objectives require), while at the same time they do not have the same expectations levied upon them regarding professional responsibility (discussed below).⁴⁹

In all cases, officers and enlisted personnel alike attend training to give them technical expertise as a prerequisite to performance of intelligence duties. Authorization and receipt of a particular personnel code (Military Occupational Specialty, Air Force Specialty Code, etc) signifies completion of certain intelligence-related training and education requirements, though the level of training and education program length, breadth and depth varies according to the service and rank (commissioned officer, non-commissioned officer or new enlisted troop). For example, the Army's Military Intelligence Basic Officer Leader Course is a 13-week program covering, "...enemy threat, unit training management, electronic warfare, human intelligence, signal intelligence, imagery intelligence, operations security support, counterintelligence, and

⁴⁸ Department of the Army, *Education Plus Program*, 2010, https://www.goarmy.com/popups/education_plus.html (accessed March 20, 2010).

⁴⁹ Huntington, 18.

tactical all-source intelligence production.”⁵⁰ A periodic return to education is requisite of all officers as they climb through the military ranks, though it is not generally required that military IOs receive additional education limited narrowly to only their professional field.⁵¹ However, all of the military services do require of their IOs some form of regular—generally annual—refresher/continuing education.

The only educational institution that offers a “joint” program (cross service and interagency) intelligence education resides within the Defense Intelligence Agency (DIA) at the National Defense Intelligence College (NDIC). NDIC executes programs of instruction at both the baccalaureate and master’s levels and issues a Master of Science of Strategic Intelligence (MSSI) degree. This ten-month MSSI program accepts commissioned officers, warrant officers and NCOs with baccalaureate degrees as well as civilians. Its core courses include topics such as globalization, social analysis, operational capabilities analysis, logic and reasoning, intelligence fusion, science and technology as well as strategy.⁵²

This measurement of intelligence with respect to expertise yields the following observations. First, the IO meets the first of the two-part expertise criterion (“a broad, liberal, cultural background”)⁵³ with the notable exception of the military services who

⁵⁰ Department of the Army, "Military Intelligence Course Basic Officer Leader," *Army Training Requirements and Resources System*, October 1, 2002. <https://atrrs.army.mil/atrrscc/courseInfo.aspx?fy=2010&sch=301&crs=3-30-C20&crstitle=MILITARY+INTELLIGENCE+BASIC+OFFICER+LEADER&phase=3> (accessed March 18, 2010).

⁵¹ Generally, Company Grade Officers return periodically for technical training and education in their narrow field (examples include the USA’s Captain’s Career Course taught by branch or warfighting function, the USAF’s Weapons School which teaches aircrew and others to become the chief instructor of weapons and tactics for their weapons system, etc).

⁵² National Defense Intelligence College, *Master of Science of Strategic Intelligence Required Core Courses*, 2009, <http://www.ndic.edu/mssi/corecourses.htm> (accessed March 18, 2010).

⁵³ Huntington, 8.

require only its commissioned officers to have baccalaureate degrees.⁵⁴ Neither NCOs nor young enlisted troops meet Huntington's expertise criteria, as they are not required to enter the profession with minimal broad education base above secondary school.

Huntington states,

To understand his trade properly, the officer must have some idea of its relation to these other fields⁵⁵ and the ways in which these other areas of knowledge may contribute....he cannot really develop his analytical skill, insight, imagination, and judgment if he is trained simply in vocational duties.⁵⁶

Second, while the IC does provide "specialized skills and knowledge of the profession,"⁵⁷ it does so in an uncoordinated fashion. With the possible exception of the DIA's NDIC MSSSI program, each IC member organization determines what constitutes the appropriate level of education and training. No IC member requires completion of an advanced/graduate professional degree as an entry requirement for IOs.⁵⁸

Third, the IC currently does not have broad core educational objectives for its IOs,⁵⁹ even though the charge and infrastructure exists in the NIU to establish Intelligence School broad accreditation guidelines as has the ABA for accredited law schools. Treverton and Gabbard observe, "Considerable value would accrue from a

⁵⁴ If only commissioned military officers (not NCOs or enlisted troops) were considered eligible Intelligence Officers, then the services would be compliant with Huntington's characteristics of professions. Even NCOs with baccalaureate degrees do not qualify under Huntington's definition of professionals. See Huntington, 11-18.

⁵⁵ Huntington names history, politics, economics, sociology, psychology, and natural sciences.

⁵⁶ Huntington, 14.

⁵⁷ Huntington, 9.

⁵⁸ Various specialized positions such as linguists, engineers, physicians, psychiatrists, etc do require advanced degrees as entry requirements but, overall, IOs are not required to have advanced academic degrees to the same extent as are required of the law, medical, divinity and professional officer professions. It is also important to note that Huntington distinguishes professional and non-professional commissioned officers.

⁵⁹ Department of Defense, "Department of Defense Instruction 3305.02, General Intelligence Training." *Defense Technical Information Center*. November 28, 2006. <http://www.dtic.mil/whs/directives/corres/pdf/330502p.pdf> (accessed March 18, 2010).

standard curriculum component that could be embedded in every Intelligence Community component school nationwide.” To that end, DIA offers an introductory intelligence course available to IOs from across the IC, but attendance is not compulsory.⁶⁰ Finally, this lack of specialized educational objectives for the IO—the second half of Huntington’s Expertise—contrasts sharply with the legal profession as portrayed in Section Four, thereby weakening the case that intelligence meets Huntington’s criterion.

The Responsibility of Intelligence Officers

Huntington describes the Responsibility characteristic of professions this way: “...a practicing expert, working in a social context, and performing a service, such as the promotion of health, education, or justice, which is essential to the functioning of society.”⁶¹ The intelligence failures noted in the introductory section illustrate that, at some level, IOs may not act as though they feel an obligation to both the decision maker and society. Huntington ascribes to this sense of civic-minded responsibility the necessity of establishing norms and standards, yet the profession offers little by way of norms and standards, other than broad ideals.⁶² This section measures the IC in the context of responsibility.

Deconstructing this characteristic of professions yields two essential components: social context and service essential to society. The IO’s social context is comprised of at least five separate polities. The first social context is the relationship formed between the IO and his immediate and extended networks (cultures and subcultures) of individual IOs. The second social context comes from the IO’s relationship with the bureaucratic

⁶⁰ Treverton and Gabbard, 38.

⁶¹ Huntington, 9.

⁶² ICD 203.

intelligence organization. The third social context is between the IO and society in the production of intelligence information about a foreign actor ostensibly only the IO can access (intelligence is generally defined as secret information gathered by secret means).⁶³ The last two categories are, perhaps, the most complex social contexts. The intelligence operative manages “assets.” These assets are, in the HUMINT field, other people. Many consider them traitors. Some are clearly criminals. Yet, the IO (analyst and operative alike) has a relationship with these assets. The final category is in the relationship, albeit contentious at times, between the intelligence analyst who defines requirements, and the intelligence operative/collector who fills those requirements.

The IO is, as a public servant, compelled to serve both client and society. Timeless and increasingly-complex ethical dilemmas challenge IOs daily. Lowenthal observed the IC, “engages in activities—spying, eavesdropping, covert action—that some people regard as antithetical to what they believe the United States should be as a nation...Some citizens have difficulty reconciling American ideals and goals with the realities of intelligence.”⁶⁴

In the area of responsibility, several key observations set the professional apart from the IO. First, the professional has an organic and rich understanding of what *is* as well as what *is not* ethical in their relationships with the various clients. A profession develops over a long period (years or decades) what Huntington describes as necessary for resolving these difficult situations: guidance.

⁶³ Lowenthal, 1-2. Lowenthal acknowledges that many associate intelligence activities with secrecy, but that all information gained which “meets the stated or understood needs of policy makers and has been collected, processed, and narrowed to meet those needs,” is intelligence.

⁶⁴ Lowenthal, 1.

The profession thus becomes a moral unit positing certain values and ideals which guide its members in their dealings with laymen. This guide may be a set of unwritten norms transmitted through the professional educational system or it may be codified into written canons of professional ethics.⁶⁵

To that end, the professional embraces and regularly conducts an ongoing dialogue on ethics and professional responsibility. This ongoing dialogue is both pervasive and persistent throughout one's legal career. This dialogue should include a significant portion of accredited schools' curriculum ("substantial instruction") dedicated to ethics and professional responsibility. The professional also requires regular education on the same subjects throughout one's career, and by that, the author means to say that it must be something other than "another in the long list of Computer-Based Training modules.

Next, the professional is compelled to conform to ethical guidelines via his agency's rules of procedure. Perhaps this is the most important and glaring gap in the IC today. This clear, written guidance simply does not exist for the IO. See Appendix E, Role of Ethics in Professions, for discussion regarding the efficacy of ethics-based decision making in the context of professions. Pfaff observes that the challenges of confirming the social responsibility are as complex for IOs as any profession:

Thus intelligence professionals, like military ones, must always take care not to act in such a way that disregards the notion that individual human life and dignity are valuable for their own sake and that people should be treated as an end in themselves and not merely a means.⁶⁶

⁶⁵ Huntington, 9-10.

⁶⁶ Tony Pfaff, "Bungee Jumping off the Moral Highground: Ethics of Espionage in the Modern Age," In *Ethics of Spying: A Reader for the Intelligence Professional*, edited by Jan Goldman, 66-103, Lanham: The Scarecrow Press, Inc., 2006, 67.

Nevertheless, of all the recent IC initiatives designed to enhance support of the ethical conduct, only one stands out as directly threatening the potential to transform the IO into a profession: the Performance-Based Pay initiative discussed next.

Performance-Based Pay: Undermining the Professionalization of Intelligence

The above attempts to quantify for the reader that the sense of social responsibility comprises one of the professional officer's two motivational elements;⁶⁷ again, separating the professional from the layman.⁶⁸ Accepting these criteria leads one also to accept that professional behavior is not "governed by economic rewards and punishments. The officer is not a mercenary who transfers his services wherever they are best rewarded..."⁶⁹

The "Performance-based Pay," plan harms attempts to project intelligence as a profession.⁷⁰ It cheapens the IO, making clear that social responsibility not highly valued by the IO or the executive leadership. This measure directly contradicts Huntington's model of professionalism: "Financial remuneration cannot be the primary aim of the professional man *qua* professional man."⁷¹ Furthermore, the premise of performance-based pay for professional service and, in particular, government service is untested:

For the detractor who points to programs like the USMC Aviation Continuation Pay (ACP), there is a significant difference in the program's founding premise. The military's ACP program is a short-term, non-recurring incentive that retains officers

⁶⁷ Huntington, 15. Note the other element of motivation is "technical love for his craft..."

⁶⁸ Huntington, 9-11.

⁶⁹ Huntington, 15.

⁷⁰ Office of the Director of National Intelligence, Intelligence Community Directive 654, "Performance-Based Pay for the Intelligence Community Civilian Workforce," April 28, 2008, http://www.dni.gov/electronic_reading_room/ICD_654.pdf, (accessed December 14, 2008). Cited hereafter as ICD 654, April 28, 2008.

⁷¹ Huntington, 9.

eligible to separate from the military whose critical experience levels the Marine Corps cannot otherwise gain except through many years' service, regardless of the cost. The ACP is not a permanent program; rather, the Marine Corps annually assesses it for utility, based upon attrition projections. Receipt of the ACP is contingent on continued service for a specified number of years and is in no way associated with performance appraisals.⁷²

In contrast, the IC's Performance-based pay system states, "...Personnel policies [that]... enable the IC to recruit, motivate and retain highly qualified individuals for the effective conduct of intelligence activities."⁷³ The idea that a performance-based pay system is created for recruitment and motivation purposes casts a pall on the IC rather than confirm to the American taxpayers of the officer's service to country over self. Presidential Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," states clearly the role of ethics in public service: "Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain."⁷⁴

⁷² United States Marine Corps, Marine Corps Bulletin 7220, "FY09 Aviation Continuation Pay (ACP)," September 25, 2008, <http://www.marines.mil/news/messages/Pages/MARADMIN540-08.aspx>, (accessed December 14, 2008).

⁷³ ICD 654, April 28, 2008.

⁷⁴ Office of the President of the United States, Executive Order 12674 of April 12, 1989 (as modified by E.O. 12731), "Principles of Ethical Conduct for Government Officers and Employees," October 17, 1990, Part I, Section 101, http://www.usoge.gov/laws_regs/exec_orders/eo12674.pdf, (accessed December 11, 2008).

What would be the effect of performance-based rifleman or fighter pilot's pay?⁷⁵ Measures like these might even be deleterious to the U.S. national security, as it would portray to both the American public and allies that something other than a call to serve his nation and the desire to perform well motivates a professional officer. For the IC, performance-based pay would be no less damaging. This Pay-for-performance initiative, combined with the ambiguity of norms and standards of performance codified *by the members themselves* further weakens the claim that intelligence is a profession.

The Corporate Character of Intelligence Officers

Corporateness in the professional sense extends beyond observable attributes, to the meta-cognitive level. Huntington describes it as a shared “sense of organic unity and consciousness of themselves as a group apart from laymen” that “manifest[s] itself in a professional organization that formalizes and applies the standards of professional competence and establishes and enforces the standards of professional responsibility.”⁷⁶ This sense of “organic unity” is an attribute that extends beyond formal organizational boundaries—reaching out to all members of the profession.⁷⁷

The lacking sense of corporateness seriously challenges intelligence as a profession. For, not only do the IOs from the sixteen IC members have different—sometimes overlapping and competing—missions, their organizational leadership

⁷⁵ This practice of paying \$500 bonuses to pilots in the American Volunteer Group (AVG) for each Japanese aircraft they downed over China in World War II was commonplace and acknowledged. However, this practice was an isolated activity applied strictly to employees of the Central Aircraft Manufacturing Company by the Chinese government under leadership of Claire Chennault, between his periods of active-duty service. The AVG later became the part of the U.S. Army Air Corps 23rd Fighter Group, the Flying Tigers, and the bonuses stopped. Source: Claire Lee *Chennault, Way of a Fighter; the Memoirs of Claire Lee Chennault*; Ed. by Robert Hotz. (New York: G.P. Putnam's Sons, 1949).

⁷⁶ Huntington, 10.

⁷⁷ Huntington did remind his readers that no profession, including law and medicine, are ideal; rather, they are strongest when they have most of the characteristics of a profession.

perennially competes with other IC members to find adequate funding with which to execute their mission.

Within IO subcultures (sections and divisions), one may observe unity of objective and harmonization of resources. Sometimes this prevails, even up to the directorate level. Almost invariably (based on anecdotal observations) this unity breaks between directorates (operations versus analysis) and most certainly between organizations. The post-IRTPA IC policy directives as recently as January 2007 acknowledge collaboration and information sharing failures—noting that some IOs (mistakenly) believed that intelligence information acquired by one IC agency is wholly the property of that agency, and that IC agency could refuse requests from others to view it for that reason:

No agency has the requisite expertise on its own...Collaboration must become the IC norm, not the exception. Technical, policy, and cultural impediments to collaboration among analysts and between analysts and collectors must be reduced as much as possible.⁷⁸

Furthermore, evidence exists of animosity between IC members in the form of unwillingness to grant reciprocity.⁷⁹ To counter this, the DNI recently issued an IC Policy Guidance (ICPG) memorandum directing each agency to accept other agencies' security clearance credentials.⁸⁰ The fact that in October 2008 the DNI formally addressed reciprocity issues further confirms the profession has little of that quality of

⁷⁸ ICD 200, para D1-D3.

⁷⁹ Reciprocity in the IC context is the willingness to accept the security clearance credentials of individuals from other agencies. This antagonistic behavior hampers the efforts to collaborate; IOs regularly use it as a coercive measure.

⁸⁰ Office of the Director of National Intelligence, "Intelligence Community Policy Guidance 704.4, Reciprocity of Personnel Security Clearance and Access Determinations," *Director of National Intelligence*. October 2, 2008, http://www.dni.gov/electronic_reading_room/ICPG_704_4.pdf (accessed March 19, 2010). Cited hereafter as ICPG 704.4.

corporateness Huntington describes. In this case, the ODNI's prior efforts to engender cultural change failed to take root.

The second major component of corporateness is the codification of the standards of professional responsibility and the self-enforcement thereof. The ODNI has made several efforts to establish for the IC enterprise some standardization. IC Directive 200 establishes eight criteria used in evaluating intelligence products: objective and politically independent analysis; collaboration; sound tradecraft; transparency in analytic processes; identify intelligence gaps; integration with non-IC partners; and knowledge management.⁸¹ Again, in June 2007 the ODNI affirmed these values by issuing IC Directive 203, "Analytic Standards": objectivity; independent of political considerations; timely; based on all-available intelligence sources; and proper analytic tradecraft.⁸² A June 2009 memorandum details a new process for developing, coordinating, finalizing and modifying IC Standards.⁸³ However, there exists no statement by the profession to its members to the effect that every *individual IO is personally responsible* (accountable) for observing rules of professional conduct, which formed the crux of Huntington's description of that sense of organic unity.

⁸¹ ICD 200, para D.

⁸² Office of the Director of National Intelligence, "Intelligence Community Directive 203, Analytic Standards," *Director of National Intelligence*, June 21, 2007. http://www.dni.gov/electronic_reading_room/ICD_203.pdf (accessed March 19, 2010). Cited hereafter as ICD 203.

⁸³ Office of the Director of National Intelligence, "Intelligence Community Policy Guidance Number 101.2, Intelligence Community Standards," *Director of National Intelligence*, June 12, 2009, http://www.dni.gov/electronic_reading_room/ICPG_101_2.pdf (accessed March 19, 2010). Cited hereafter as ICPG 101.2.

Intelligence has great room to grow regarding that “organic sense of unity and consciousness of themselves...” Huntington describes.⁸⁴ A statement contained within an annex to the DNI’s 2006 National Intelligence Strategy (NIS) betrays senior intelligence officer concerns:

The IC’s professionals, both military and civilian, must begin to see themselves not just as employees of the Central Intelligence Agency (CIA) or the National Security Agency (NSA), but also as part of something larger — an overarching national intelligence ‘service,’ unified by high standards and performance, common mission, and shared core values.⁸⁵

A 2008 federally funded independent study by the Project on National Security Reform,⁸⁶ “Forging a New Shield,” identifies the significant challenges faced by the IC in creating a sense of corporateness as seen from observers:

The extraordinary efforts required by the ODNI to build a team of intelligence professionals out of individuals focused on individual performance in specific agencies further illustrates the lack of incentives in the broader national security system’s talent management structures and processes. The ODNI is attempting to overcome bureaucratic resistance that doomed earlier efforts to achieve the same thing...⁸⁷

Furthermore, RAND analysts Treverton and Gabbard interviewed IOs in the course of a 2008 study titled, “Assessing the Tradecraft of Intelligence Analysis.” Those interactions generated the following observation: “No sense of [Intelligence] Community

⁸⁴ Huntington, 10.

⁸⁵ Office of the Director of National Intelligence, “The US Intelligence Community’s Five Year Strategic Human Capital Plan,” *Defense Technical Information Center*. June 22, 2006, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA507274&Location=U2&doc=GetTRDoc.pdf> (accessed March 20, 2010), 7.

⁸⁶ 2008 The Project on National Security Reform’s executive leadership for this report included at the time Dennis Blair who was nominated by the President and confirmed by the Senate as the DNI two months after the report’s release.

⁸⁷ Project on National Security Reform, “Forging a New Shield.” *Project on National Security Reform*, November 2008, <http://pnsr.org/data/files/pnsr%20forging%20a%20new%20shield.pdf> (accessed December 03, 2009), 271.

capability really exists.”⁸⁸ The RAND analysts conclude the IC is in great need to strengthen research, training and education particularly in analytic capabilities and methodologies.⁸⁹

This lack of corporateness persists today as indicated in the DNI’s August 2009 National Intelligence Strategy that indicates the IC still needs to create a professional culture.⁹⁰ Whereas the preponderance of critiques focus on individual performance, to date, the majority of IC reforms have been structural in nature—even those efforts directing a change in intelligence culture have been little more than structural changes camouflaged in the lexicon of organizational culture change.

Sixteen Missions, Shared Values?

One basic question the DNI should consider is whether the diverse IC components and its constituent IOs share enough values and principles that it is possible to create in intelligence a sense of organic unity and, further, attempt to transform intelligence into a profession. While the evidence above suggests insiders and observers alike see a need to do so, that may only occur should the disparate IC components currently possess similar values. The following examines the sixteen IC components and the larger federal government, looking for evidence there exist shared values.

One should examine what the constituent organizations hold as values. Identifying similarities (and differences) amongst the stakeholders can help determine whether their values align closely enough to consider strengthening the constituent

⁸⁸ Treverton and Gabbard, 37.

⁸⁹ RAND’s preference for quantitative analysis is indicated in the descriptor of report: “Technical Report-293.”

⁹⁰ Office of the Director of National Intelligence , "The National Intelligence Strategy of the United States of America." *Director of National Intelligence*. August 2009. http://www.dni.gov/reports/2009_NIS.pdf (accessed March 20, 2010), 16.

tradesmen into professionals. For, if the core values amongst the community members are too disparate, one should consider abandoning the idea. Similarly, if the values align with another, larger federation, there may be little compunction to divorce from that larger organization. DoD Directive 5500.7-R, Standards of Conduct, define the interplay of ethics and values for DoD service:

Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor and integrity that motivate attitudes and actions... Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions...⁹¹

Columbia University's John Lunistroth claims IC Directive (ICD) Number 200 essentially creates a code of ethics for the IC.⁹² However, it falls short of articulating the "standards by which one should act." A review of IC agency core values and mission statements reveals some emergent themes. The agencies generally hold the following as core values: service to country; selfless service, integrity and honor, respect, loyalty and excellence. These IC core values are consistent with those of the executive branch per E.O. 12674, and do not conflict with ethical values for employees of the Department of Defense.⁹³ See Appendix D, Core Values Across the IC.⁹⁴

Simply, the IC does not have among its IOs a sense of corporateness and it has been unable to develop one despite numerous statements, policy changes, directives and other changes designed to create a share vision. However, not all the news is bad. The

⁹¹ Department of Defense, Joint Ethics Regulation DoD 5500.7-R, November 29, 2007, para 12-500, http://www.dod.mil/dodgc/defense_ethics/ethics_regulation/jer1-6.doc, (accessed December 11, 2008), Cited hereafter as DoD 5500.7-R.

⁹² John Lunistroth, "A Proposed Analysts' Code of Ethics," *Defense Intelligence Journal* 16, no. 1 (2007): 157-63.

⁹³ DoD 5500.7-R, 155-157.

⁹⁴ Author was unable to uncover unclassified/public listings of Core Values for the National Reconnaissance Office or Drug Enforcement Agencies; the Department of Energy's values are focused at the institutional/ program level rather than the individual.

fact that, for the first time in American intelligence history, the DNI—despite all of the challenges in the job as defined by IRTPA—speaks for the entire IC and, by extension, the society he is trying to secure. Moreover, the general alignment of the IC members with regard to values portends an effort to resolve differences and move toward creating a culture of ethical decision-making, the absence of meaningful norms and standards again weaken claims that intelligence is a profession.

Conclusions

Huntington’s framework of enduring characteristics of professions is a useful tool for measuring any profession. This section measured the intelligence profession to determine to what extent that profession ascribed to Huntington’s characteristics. Congress and the Executive branch each directed structural changes. Some of those changes did remove formal impediments to creating Huntington’s “sense of organic unity.” These leaders also intended to change organizational culture, but continued examples of backsliding indicate that those changes failed to effect either cultural change or restore ethical conduct. Some initiatives like the Pay for Performance plan may turn out to be ineffective or even counterproductive—regardless, it tarnishes the IO as a professional.

Examination revealed that intelligence possesses some of each of the three enduring characteristics of professions, though seems particularly challenged in the areas of responsibility and corporateness. Huntington published his book ten years after the National Security Act was signed into law, yet he did not, in 1957, enumerate intelligence as a profession. Since Huntington does not address the IO, the natural question becomes this: If Huntington deliberately selected law, medicine and divinity as learned

professions, how do they measure against his criteria? To answer this question, the next section examines how the American legal profession closes the gaps in responsibility and corporateness that are lacking in intelligence.

AMERICAN LEGAL PROFESSION

This section examines how the American legal profession comprised of its various institutions, institutionalizes ethics and professional responsibility within its ranks and can serve as a model for intelligence professionalization. The legal profession did not accomplish this overnight; rather, it has taken over 100 years to get to where it is today. Emulating the legal profession will not guarantee intelligence becomes a profession, but the IO can take this model and adapt it for the exigencies inherent in intelligence work. Doing so will likely strengthen the IC and decrease the probability that the IC will again backslide into a culture wherein systemic ethical problems are the norm. Expertise, responsibility and corporateness define the framework for analysis.

Culturing a Profession: The American Bar Association

The American legal profession is inextricably linked to but distinctly separate from the American legal system, as it exists in the form of government institutions that include the court systems. Since 1878, the American Bar Association (ABA) represented the legal profession as an institution in the United States.⁹⁵ This first nationally organized bar was born of frustration whose roots are in a New York City bar association formed in 1870 by what one contemporary described as, “the decent part of the

⁹⁵ “History of the American Bar Association,” American Bar Association, <http://www.abanet.org/media/profile.pdf> (accessed December 13, 2008). Cited hereafter as ABA Profile August 2008.

profession.”⁹⁶ Specifically, the New York lawyers, “...boiled over in indignation because of the plague of corrupt lawyers, judges, and politicians in Boss Tweed’s new York.”⁹⁷ These “decent” lawyers separated themselves from the masses by subscribing to the ideal that ethics held a preeminent place in both society and law. However “high-minded” these lawyers may have been, this initial move by the small group of attorneys represented the beginning of an arduous—and incomplete journey—that continues today.⁹⁸ Arguably, the ABA’s storied history clouds these high-minded claims.

Friedman continues,

Bar associations in their early days made no attempt to recruit the mass of American lawyers. They were basically clubs of like-minded, high-minded lawyers. Indeed that was their point: they kept the riff-raff out and admitted only the ‘best elements’ of the profession. Their purpose was reform—drafting better laws, fighting against corruption, raising the prestige of the profession.⁹⁹

Early attempts to codify and enforce codes of ethics upon the profession struggled for coherence—at times these efforts focused solely on the legal professional to the detriment of the public consumer for whom the professional ostensibly advocated.

“Early on,” writes Friedman, “the ABA promoted codes of ethics for the bar and tried to upgrade the lawyer’s reputation by defining, and upholding, ethical conduct...The good side was the struggle for honesty and higher standards. The bad side was elitism, a kind of dogged conservatism on professional issues, and a failure to consider the rights of consumers of legal services.”¹⁰⁰ Despite this turbulent past, the American legal

⁹⁶ Lawrence M. Friedman, *American Law*, New York: W W Norton & Company, 1984, 244-45.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, 245.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* Although Friedman portrays the American legal profession’s contribution to society as somewhere between neutral and unfavorable, he does cede the necessity of lawyers to American society.

profession successfully established both a competent and ethically minded membership.¹⁰¹

Today, though individuals' membership in the national-level organization is remains voluntary, the ABA following is large enough (over 413,000 members)¹⁰² that its initiatives and interpretations can generally be considered representative even if not prescriptive as are the individual states' rules of procedure. Notably, the ABA's House of Delegates is comprised of 555 delegates, including 52 State Delegate, 222 State Bar Association delegates, 80 Local Bar Association delegates, and others.¹⁰³

The American Bar Association (ABA) and its subordinate standing committee, the Center for Professional Responsibility (CPR) sits at the nexus of this uncomfortable system of institutions. The Preamble to the ABA's Model Rules of Professional Conduct (MRPC) describes of its view of the profession and its uniqueness, stating,

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.¹⁰⁴

¹⁰¹ Simeon E. Baldwin, "Constitutional Law: 1701-1901," In *Two Centuries' Growth of American Law: 1701-1901*, 9-47, New York, New York: Charles Scribner's Sons, 1902, 13-21.

¹⁰² Ibid.

¹⁰³ ABA Profile August 2008.

¹⁰⁴ American Bar Association, *Model Rules of Professional Conduct*, 2009, Chicago: American Bar Association, 2009, 2-3. Cited hereafter as ABA MRPC 2009. "Model Rules of Professional Conduct Preamble and Scope," American Bar Association, <http://www.abanet.org/cpr/mrpc/preamble.html> (accessed February 21, 2010).

Expertise and the Legal Professional

A lawyer seeking to practice law in his respective state must meet certain requirements, as specified by the state.¹⁰⁵ The first of these usually includes initial formal education. For the State of Texas¹⁰⁶ (as for many states) a general education (baccalaureate degree) must precede education at a law school approved accredited by the American Bar Association, culminating in conferment of a Doctor of Jurisprudence degree (J.D.) or an equivalent degree.¹⁰⁷ The ABA specifies that each law school require every student to receive instruction of no less than 58,000 minutes (approximately 967 hours) over no fewer than twenty-four and no more than eighty-four months.¹⁰⁸ Furthermore, they must include in their core curriculum “substantial instruction,” in five broad subject areas related to the lawyer’s technical education, one of which includes, “the history, structure, values, rules, and responsibilities of the legal profession and its members...includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.”¹⁰⁹

Overall, the American legal profession requires its members to be substantially educated with liberal and technical educational foundations. Nevertheless, of greater

¹⁰⁵ “Consumer Resources Frequently Asked Questions- Center for Professional Responsibility,” American Bar Association, <http://www.abanet.org/cpr/consumer/faq.html#15> (accessed December 14, 2008).

¹⁰⁶ The author selects the State of Texas, as its execution of the legal system approximates that of the majority of the U.S.

¹⁰⁷ State Bar of Texas, *About the State Bar: State Bar of Texas*, http://www.texasbar.com/Template.cfm?Section=About_the_State_Bar&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13162 (accessed February 21, 2010).

¹⁰⁸ American Bar Association, “2009-2010 Standards and Rules of Procedure for Approval of Law Schools, Chapter 3: Program of Legal Education,” 2009, <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf> (accessed February 21, 2010), 24.

¹⁰⁹ American Bar Association, “2009-2010 Standards and Rules of Procedure for Approval of Law Schools, Chapter 3: Program of Legal Education,” 2009, <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf> (accessed February 21, 2010), 21.

import is the fact that they also require prospective and accredited schools to provide significant instruction in and ensure students exhibit performance in responsibility, values, ethics and principles.

The legal profession also requires its members to complete Minimum Continuing Legal Education (MCLE) at frequent intervals throughout their careers. Continuing legal education requirements vary by state, but generally mandate each lawyer complete a specified number of credit hours and/or classes annually. For the State of Texas, each attorney must complete fifteen hours of accredited MCLE each year.¹¹⁰ More telling than the breadth of subject areas covered by the compulsory continuing education requires, however, is that of the fifteen MCLE hours, three of those credit hours are explicitly required to be dedicated to ethics and/or professional responsibility.¹¹¹

Responsibility and the Legal Professional

Huntington wagers that professions, namely, law, serve their immediate clients but, uniquely to professions, simultaneously perform essential functions for society. A 1999 survey of legal professionals in Texas indicates both judges and lawyers see their role as necessary for the protection of society from criminals. However, the judges' and lawyers' opinions vary as to how well they do it, with the former's opinion statistically

¹¹⁰ State Bar of Texas, *Minimum Continuing Legal Education*, 2009, http://www.texasbar.com/Template.cfm?Section=Minimum_Continuing_Legal_Ed (accessed February 21, 2010).

¹¹¹ Supreme Court of Texas. "Texas Minimum Continuing Legal Education Rules (Article XII, State Bar Rules)." *State Bar of Texas, Current MCLE Rules, Regulations and Accreditation Standards*. January 27, 2005. http://www.texasbar.com/Template.cfm?Section=Minimum_Continuing_Legal_Ed&CONTENTID=10590&TEMPLATE=/ContentManagement/ContentDisplay.cfm (accessed February 21, 2010), § 6(B).

higher than the latter.¹¹² The legal profession confirms Huntington’s assertion with this note in the Preamble to its Model Rules of Professional Conduct:

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.¹¹³

In the above, one finds incontrovertible evidence that the social contract—that “special responsibility”—extends beyond one’s own actions to securing the actions of other members of the profession for the good of society.

The Corporate Character of the Legal Professional

This section examines the legal profession for congruence with the characteristics of Corporateness. Huntington’s use of the phrase, “professional man,” neatly captures his insistence that a profession is defined foremostly at the meta-cognitive level. In other words, the profession is in the mind of the member; should he and his colleagues consciously choose to act out of personal gain rather than the good of society, the profession ceases to exist in any meaningful form. Toward Huntington’s sense of unity, the MRPC states:

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon

¹¹² Supreme Court of Texas, State Bar of Texas and Texas Office of Court Administration, “The Courts and the Legal Profession in Texas: The Insider's Perspective,” *State Bar of Texas*, May 1999, <http://www.texasbar.com/Template.cfm?Section=reports&CONTENTID=12874&TEMPLATE=/ContentManagement/ContentDisplay.cfm> (accessed 8 2010, March), 5.

¹¹³ ABA MRPC 2009, 3.American Bar Association, “Model Rules of Professional Conduct Preamble and Scope,” American Bar Association, <http://www.abanet.org/cpr/mrpc/preamble.html> (accessed February 21, 2010).

enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.¹¹⁴

The profession is a federation of state and local bar associations, with no state bar association subordinated to a national organization.¹¹⁵ Because the states are the basic building blocks of the American legal system, they establish the rule of law via legislation; the judicial procedures to be followed are then fashioned through the combined efforts of the state bar association and judiciary. These structures form the skeleton for executing the rule of law in each state.

For Texas, a lawyer's professional conduct is actually compelled by the state supreme court, not the quasi-governmental state bar association. The Supreme Court of Texas, by statute, has administrative control over the State Bar of Texas. It prescribes and promulgates the rules under which attorneys shall operate in that jurisdiction and, "The Court is also the sole authority for licensing attorneys in Texas and appoints the members of the Board of Law Examiners which administers the Texas bar examination."

¹¹⁶ That is not to say, however, that the supreme judiciary establishes normative standards on its own. Rather, they draw heavily from the state bar associations for improvements to existing guidance.

Because individual states form the nexus of judicial processes, it is necessary to look at how, generally, those states help the lawyer maintain his sense of corporateness in the legal profession. First, states mandate that prospective attorneys demonstrate

¹¹⁴ ABA MRPC 2009, 4.

¹¹⁵ The American Bar Association is not a hierarchical bureaucracy as is the judiciary (state and/or federal) and, to an extent, the Intelligence Community.

¹¹⁶ Supreme Court of Texas. *Welcome to the Supreme Court of Texas*. February 19, 2010. <http://www.supreme.courts.state.tx.us/supreme.asp> (accessed February 28, 2010).

competence in that state's law, normally by passing an examination administered by a third party. Second, most states mandate practicing lawyers become members of a state or local bar association. Third, lawyers create corporateness for themselves through execution of the MCLE on a frequent and ongoing basis. Finally, the judiciaries prescribe certain norms and standards of performance, and compel them lawyers to approach legal dilemmas and act within them in an ethical manner.¹¹⁷ The author examines each in turn.

Licensing

Receipt of formal education is, on its own, inadequate. Most states require attorneys to be licensed to practice law in its judiciary. Licensing, as distinct from formal education, is a relatively simple institutional construct: before one may counsel or represent others in legal matters, each prospective attorney must pass a written exam administered by a third party. This written exam establishes an individual's competence in many areas of state law. The use of a written bar examination is not, however, the only way in which a profession may institutionalize normative performance standards.

Continuing Education

Until recently, 10 of the 15 continuing education hours must have been completed in a "participatory" manner—in other words, sitting in classrooms or seminars with the balance being completed via self-study. Beginning in June 2010, the Texas MCLE requirements significantly change; the Texas Bar is removing the "participatory" requirement altogether, preferring to focus, "...on content of a CLE activity, and not on delivery method." More precisely, Texas lawyers will no longer have to interact with

¹¹⁷ State Bar of Texas. *About the State Bar: State Bar of Texas*. http://www.texasbar.com/Template.cfm?Section=About_the_State_Bar&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13162 (accessed February 21, 2010).

others in a face-to-face manner. Virtual and on-demand content delivery methods of approved CLE will soon replace in-residence attendance of local, regional or statewide seminars. Currently, the State Bar of Texas recognizes 45 distinct MCLE subject areas. More telling than the breadth of subject areas covered by the compulsory continuing education requires, however, is that of the 15 MCLE hours, three of them are explicitly required to be dedicated to ethics and/or professional responsibility.¹¹⁸

Professional Conduct

According to the ABA, the strength of the legal profession as an institution to serve society largely unencumbered by government regulation resides in its individual members' ability to meet their professional obligations:

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.¹¹⁹

The various state bar associations on whole recognize the legitimacy of the overall national-level effort to standardize maintain high standards of the professional's conduct as a means of maintaining professional strength. The ABA's Center for Professional Responsibility (CPR) does just that. The CPR, a permanent standing committee at the ABA, reviews, defines and interprets acceptable conduct, both in form and content, for the legal profession. It accomplishes this through the Model Rules of Professional Conduct (MRPC), which (as the name suggests) is a model the ABA offers

¹¹⁸ State Bar of Texas.

¹¹⁹ ABA MRPC 2009, 3.

to the state bar associations and judiciaries for consideration in drafting or updating disciplinary rules of procedure.

The Rules have their roots in the 1908 adoption by the ABA of the Canons of Ethics.¹²⁰ The influence of these eight canons can still be seen in the 2009 Rules, though they have been substantively revised over the years. The use of the term “canon” instructs the professional that there exist certain provisions that are, “most solemn and unvarying,” authoritative, accepted principles—orthodox.¹²¹ The canonical themes remain in the MRPC today. The MRPC Scope section defines the role of the Rules:

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms “shall” or “shall not.” These define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role. Many of the Comments use the term ‘should.’ Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.¹²²

Once the ABA ratifies suggested changes to the Rules, states regularly draw from this model--adopt or adapt--for their own use and inclusion in formal regulatory statutes to suit their particular needs. As stated above, the ABA has no authority to compel the states’ highest courts to adopt these practices; however, the organization strongly encourages state bars to work with their respective judiciaries to do so, and have met with

¹²⁰ ABA MRPC 2009, ix.

¹²¹ *Webster’s Ninth New Collegiate Dictionary*. Springfield: Merriam-Webster, Inc., 1991, 202.

¹²² ABA MRPC 2009, 3.

success. Some states adopt the MRPC outright while others adapt it to meet the state's unique needs, given constraints present in that system.

Building Confidence in the Legal Profession

The American legal profession actively pursues ethical professional among its members. Ethical dilemmas confront doctors, clergy and commissioned military officers, lawyers alike in the daily execution of their professional activities. Problematic is that independent polling data from a representative sample of U.S. citizens shows a low confidence in lawyers (fourteen percent of respondents to a 1998 ABA-sponsored survey rated their opinion of the legal profession as extremely or very confident).¹²³ A December 1998 report from the State Bar of Texas relates survey results of Texans who indicated they believed forty percent of lawyers to be honest and ethical; sixty-one percent agreed that "most" lawyers are honest and ethical. This does, however, stand in stark contrast to the same respondents' ratings of judges (seventy-one percent agreed judges are honest and ethical).¹²⁴ Other polling data indicates a persistent decline in the public's perception of lawyers' level of prestige, declining from thirty-six to twenty-six percent in annual surveys administered since 1977.¹²⁵

Yet the public perception does not necessarily support any notion that the American legal profession is ethically bankrupt. Rather, the vigor with which the legal

¹²³ M/A/R/C Research, "Perceptions of the U.S. Justice System," *American Bar Association*, 1998, <http://www.abanet.org/media/perception/perceptions.pdf> (accessed March 8, 2010), 49-50.

¹²⁴ Texas Supreme Court, Texas Office of Court Administration, and State Bar of Texas, "Public Trust and Confidence in the Courts and the Legal Profession in Texas," *State Bar of Texas*, December 1998, <http://www.texasbar.com/Template.cfm?Section=reports&CONTENTID=12681&TEMPLATE=/ContentManagement/ContentDisplay.cfm> (accessed 8 2010, March), 4.

¹²⁵ The Harris Poll, "Firefighters, Scientists and Doctors Seen as Most Prestigious Occupations: Real estate brokers, Accountants and Stockbrokers are at the bottom," *American Bar Association*, August 4, 2009, http://new.abanet.org/marketresearch/PublicDocuments/harris_poll.pdf (accessed March 8, 2010), 1.

profession investigates professional ethics complaints disciplines its members (up to and including permanent disbarment from practicing in that state) separates the legal profession from other “professional” organizations that do not police its members and, if necessary, expel those non-conforming members from the profession itself.¹²⁶ The ABA compiled the following 2008 disciplinary statistics: 120,406 complaints were filed (additional 30,945 complaints were pending from prior years) against the 1,440,105 active lawyers in the United States. Of those complaints, 76,708 were investigated and ultimately led to 5,048 lawyers being charged with violations. For those lawyers found to have violated disciplinary rules in that jurisdiction, the punishment ranged from private sanction (1,937) up to and including involuntary disbarment (489).¹²⁷ The American legal profession clearly takes an active role in promoting ethical behavior by policing itself.

Despite public perception to the contrary, legal professionals see their own conduct and ethics differently than the public.¹²⁸ A 1999 report, “The Courts and the Legal Profession in Texas: The Insider's Perspective,” surveyed Texas judges, lawyers and other court personnel. The responses were somewhat surprising as these insiders’ answers stand in contrast to the public perception of them. Where the public reported a relatively low percentage of lawyers were somewhat or very honest and ethical, 80 percent of judges and 54 percent of lawyers believed the Texas courts to be “very” or

¹²⁶ The author intends here to separate the classical professions from other “professionals” who do not meet all of Huntington’s characteristics of a profession. Lawyers, doctors, clergy and military officers all, to some extent, actively pursue ethical conduct and discipline members of their profession who fail to meet ethical norms and standards.

¹²⁷ American Bar Association Standing Committee on Professional Discipline, “Survey on Lawyer Discipline Systems 2008,” *American Bar Association*, June 1, 2009, <http://www.abanet.org/cpr/discipline/sold/08-results.pdf> (accessed February 8, 2010).

¹²⁸ M/A/R/C Research, 6.

“somewhat” honest and ethical.¹²⁹ Even so, Texas judges and lawyers alike cited professionalism and training as the top weaknesses of the Texas court system; this acknowledgment should be viewed as representative of a healthy profession—one that is concerned about bringing its members up to perform in a more ethical and honest fashion.¹³⁰ Therefore, even though public polling data does not support the perception that the American legal profession operates with a high sense of ethics and professional responsibility, the members of the profession who see each others’ work on a daily basis do consider the profession to be operating that way (in spite of the ethical dilemmas presented regularly to them).

Conclusion

The American legal profession continues to grow in membership and complexity. As the profession grows, it is challenged to maintain high performance standards across its diverse membership. Expertise, responsibility and corporateness are enduring characteristics that characterize identity and maintain the legal profession. Expertise establishes the idea that, for the legal profession, the members must be thoroughly educated in all aspects of the American system of law in order to be considered a full member of that profession. In regards to responsibility, lawyers’ understanding of their role in society is fundamental to that society’s success. Finally, the observable vestige of

¹²⁹ Supreme Court of Texas, State Bar of Texas and Texas Office of Court Administration, "The Courts and the Legal Profession in Texas: The Insider's Perspective," *State Bar of Texas*, May 1999, <http://www.texasbar.com/Template.cfm?Section=reports&CONTENTID=12874&TEMPLATE=/ContentManagement/ContentDisplay.cfm> (accessed 8 2010, March), 2.

¹³⁰ Supreme Court of Texas, State Bar of Texas and Texas Office of Court Administration, "The Courts and the Legal Profession in Texas: The Insider's Perspective," *State Bar of Texas*, May 1999, <http://www.texasbar.com/Template.cfm?Section=reports&CONTENTID=12874&TEMPLATE=/ContentManagement/ContentDisplay.cfm> (accessed 8 2010, March), 24-60.

the legal professional's mindset is a set of normative standards designed to protect the public:

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.¹³¹

ANALYSIS, OBSERVATIONS AND RECOMMENDATIONS

Sections one and two revealed that ethics-related problems perennially plague the IC. Congress and the executive branch tried on multiple occasions to correct IC performance, but the results are at best inconclusive. Although these efforts failed to realize desired endstates, they were both well intentioned and did yield positive results. These changes eliminated many formal impediments to collaboration and established for the first time a nonparochial principal advisor to the President on intelligence matters. Until the ODNI began its operations, a unified profession was unimaginable.

Previous sections compared intelligence and, separately, the legal profession, to Huntington's analytical template, looking for evidence that refining the intelligence profession holds the potential to for a culture of ethical decision-making to take root in the IC. Instead, that analysis revealed that intelligence suffers from systemic problems in expertise, responsibility and corporateness. Compared to the much larger legal profession (over 1.44 million practicing lawyers compared to less than 100,000 total personnel in the IC only a fraction of which are IOs)¹³² Intelligence is most significantly challenged to maintain unity and civic-mindedness in professional conduct. Huntington

¹³¹ ABA MRPC 2009, 3.

¹³² Associated Press, "Spy Chief Discloses Total Number of U.S. Intelligence Personnel," *USA Today*, April 20, 2006, http://www.usatoday.com/news/washington/2006-04-20-intelligencepersonnel_x.htm (accessed March 19, 2010).

acknowledges the challenge of professionalizing: “In practice, no vocation, not even medicine or law, has all the characteristics of the ideal professional type...In practice...[a profession is] strongest and most effective when it most closely approaches the professional ideal; it is weakest and most defective when it falls short of that ideal.”¹³³ The question now is how can intelligence become a strong profession that approaches the ideal?

Career CIA officer J.E. Drexel Godfrey suggested in 1978 that, “...sweeping structural change for the [Central Intelligence] Agency...will amount to little more than tinkering if not buttressed by a radical new personnel policy that places a premium on ethical values.”¹³⁴ That observation seems to have been prophetic: nearly thirty years later, it still holds true. Although IOs have written about intelligence ethics, their efforts have yet to catalyze the IC leadership and IOs alike to embrace change. The DNI can help place that premium on ethical values—but he cannot do it alone or by decree. This section offers some insight as to how one might inculcate an ethics-based culture in the IC drawing both from organizational change theory and from American law as a model profession whose conduct regularly entails navigation of ethical dilemmas similar in scope to those faced by IOs.

Culturing Professional Conduct: Incremental, Not Revolutionary Change

As discussed above, the structural changes strengthened Intelligence by assembling the IC member organizations into a federation consolidated under “new

¹³³ Huntington, 11.

¹³⁴ J.E. Drexel Godfrey, "Ethics and Intelligence," In *Ethics of Spying: A Reader for the Intelligence Professional*, edited by Jan Goldman, 1-17, Lanham, Maryland: The Scarecrow Press, Inc., 2006, 15.

management”: the DNI. Since organizations and institutions are comprised of formal structures as well as cultures, subcultures, and individuals,¹³⁵ structural change is a necessary, though insufficient condition for altering organizational performance. Some organizational change studies suggest meaningful and enduring changes—those potential courses of action with the propensity to transform an institution—must address both structural and cultural impediments. To that end, the DNI must promote—*culture*—professional conduct among its IOs, but in such a way as to engender enduring change. Some organizational change theorists see that one type of cultural change efforts have an enduring quality to them: incremental change.¹³⁶ Hence, if organizational culture includes the people comprising an organization with a formal structure, and professionals comprise a distinct culture or subculture within an organization, then one should direct organizational cultural change efforts toward the characteristics of that subculture which are judged wanting, but using incremental, not revolutionary means.

Expertise

Incremental change for the IC can begin with initial training and education of the IOs. Although it may not be realistic (or necessary) to educate IOs to the same degree as are lawyers (minimum of 58,000 minutes of graduate-level education), it is possible to standardize education via accreditation requirements. Establishing a minimum number of instructional hours over a specified minimum and maximum number of months make it more likely that a prescriptive core curriculum for all accredited IC schools which

¹³⁵ Bryan Lawson, *How Designers Think: The design process demystified*, Fourth. Burlington, MA: Elsevier Ltd, 2006, 242-245; See also Appendix C Organizational Change for a brief discussion of the effectiveness of these two types of change in theory and practice.

¹³⁶ See Appendix C, Organizational Change for additional information.

includes “substantial instruction” in ethics and professional responsibility would begin IC transformation. Research supports the assertion that attention to personal and professional ethics improves workplace performance. See Appendix E, Role of Ethics in Professions for additional detail.

Responsibility

There can be no doubt that the vast majority of IOs are dedicated to service to the nation, and desire to perform honorable service to it. However, these IOs are presented with morally ambiguous situations, in want of guidance, yet find little written about ethical principles to “live by” in their professional lives. To that end, one must clarify first that Intelligence does provide service essential to the functioning of society: that is, the Decision Advantage in the context of national security matters. In addition, IOs must formally acknowledge that their clients include human assets, the agency, the IC, The Constitution, and the American People. They must also acknowledge that the responsibility to serve and devotion to Intelligence furnish professional motive over financial remuneration. Clauser adds, “in intelligence research, more than egos or reputations are at stake; consequently, intellectual honesty is imperative...”¹³⁷ Chomeau and Rudolph might propose the above principles mirror the guidelines contained within the Chomeau-Rudolph Proposal whose guidelines include Duty, Honor, Country, and the principles of Just War theory.¹³⁸

¹³⁷ Ibid, 30.

¹³⁸ John B. Chomeau and Anne C. Rudolph, "Intelligence Collection and Analysis: Dilemmas and Decisions," In *Ethics of Spying: A Reader for the Intelligence Professional*, edited by Jan Goldman, 114-125, Lanham, Maryland: The Scarecrow Press, Inc., 2006, 118.

Corporateness

The common thread that stitches together—creates the sense of unity—law as a profession remains the active pursuit of dialogue on ethics-based culture and decision-making. A review of IC agency values yields evidence that, although not exactly aligned, the sixteen IC components hold some common values. Loch Johnson, former assistant to Senator Frank Church who in 1975 led the investigation into the CIA abuses observes, “The best assurance against future [Intelligence Community] abuse lies, as the ancient philosophers realized, in the selection of individuals of the highest integrity for positions of power.”¹³⁹ Provided the IC agencies diligently work to hire individuals with integrity,¹⁴⁰ it is troubling, then that Johnson warns recent resistance to lawmakers’ probes into intelligence failures by senior IC leaders portends the need emphasize “renewed attention to the question of intelligence accountability.”¹⁴¹

Maintaining the Intelligence Community: Licensing

If creating a professional body of IOs whom are characterized as having expertise, a sense of responsibility, and act according to the principles of ethical responsibility, the IC should require its young analysts to demonstrate that competence via written examination similar in form and scope to the multi-state bar exam legal professionals must pass as a prerequisite to practicing law. Administered by the ODNI, this “bar exam” moves intelligence further along the path of professionalization and gives the DNI greater confidence that licensed IOs have met his minimum requirements for entry into the intelligence enterprise.

¹³⁹ Johnson, 401.

¹⁴⁰ Chomeau and Rudolph, 124.

¹⁴¹ Ibid.

Intelligence Officer-Model Rules of Professional Conduct

The IC does not need another Code of Ethics, as the guidance found in, DoD 5500.7-R, ICD 200, and individual agencies' Core Values statements suffice the macro-level requirements. Rather, the IC and IOs need an Intelligence Officer's Model Rules of Professional Conduct (IO-MRPC) patterned in content and form from the ABA's Model Rules of Professional Conduct. The IO-MRPC facilitates an incremental cultural change in both IC senior leadership and IO: as each participates in the construction the IO-MRPC, each becomes vested in it.

The title distills the essence of the construct. First, the IO-MRPC is targeted at, written for and by the IOs themselves. Next, "Model" articulates that the construct is an evolving framework that requires separate deliberation and ratification by each IC member organization—every IC agency is free to adopt the IC-MRPC in full; alter, add or delete rules as required; or reject the IC-MRPC outright. Third, "Rules" invoke the idea that, when formally adopted by the IC agency, the construct is prescriptive. Finally, "Professional Conduct" establishes for the IO that these rules define imperatives, permissible and proscribed activities. Appendix F, Draft IO-Model Rules of Professional Conduct Subject listing begins the dialogue for implementing this idea.

Permanent Dialogue: The Administrative Structure

The following begins, rather than concludes, the discussion detailing *how* the IC can provide the structural resources for IOs to grow their profession as expressed above. The IC would be served well in examining the ABA's implementation of the MRPC as a model for devising, administering and maintaining an enduring IO-MRPC. The IO-MRPC administrative process ensures a pluralistic approach to ethics yet allows adaptation as required for individual agency or mission needs; it is defensible and easily

communicated; it is flexible and responsive to changing needs. The IO-MRPC must have the following characteristics as necessary, but not sufficient conditions:

- Clearly articulates the IO Canons of Ethical Conduct (IO-CEC);
- It is drafted by and with the inputs of IC delegates, and is administered by a permanently-staffed non-parochial Intelligence Center for Professional Responsibility (IC-CPR);
- The Model Rules are an evolving framework that is regularly reviewed;
- The Model Rules must be ratified by the Director of National Intelligence and sent to the IC Departmental, Program Manager and Service Executives for consideration by each IC member independently of the others;

IC Center for Professional Responsibility

This author proposes the DNI establish the Intelligence Community's Center for Professional Responsibility (IC-CPR) as a direct support activity. Support activity leadership reports directly to the DNI, thereby strengthening the institution's independence while maintaining a close relationship with the ODNI executive leadership. A direct support activity would likely more flexible and responsive to IC needs, provide an appropriate forum for discourse, and be less encumbered by multiple bureaucratic layers.

A suitable alternative places the IC-CPR inside an existing IC school.¹⁴² Though in early 2010 the NIU is not a brick-and-mortar institution, then-Principal Deputy DNI General Michael Hayden stated NIU was designed as a DNI support activity in response to Congressional concerns over intelligence training. The NIU mandate is to, "integrate training, education, and related research efforts across the Community... coordinating the

¹⁴² Examples: National Defense Intelligence College, Sherman Kent School of Intelligence Analysis, National Cryptologic School, etc.

work of training and education elements across the IC,” which makes it a good candidate for hosting the IC-CPR.¹⁴³

FINAL THOUGHTS

Ethical decision-making problems perennially plague the IC, but this is not intractable. Professionalization leads to the ethics-based decision-making culture required of the U.S. IC. Huntington describes three enduring characteristics of professions as expertise, responsibility and corporateness. A review of Intelligence against Huntington’s evaluation criteria indicates it does not currently meet those criteria, but there exists both the potential to professionalize and, in the legal profession, a template for doing so. The IC now has in its structure under the DNI’s leadership, a rare opportunity to capitalize on the momentum afforded recent structural changes.

The legal profession shows that what sets them apart from the layman resides in its professional ethos—the way in which the individuals approach difficult ethical dilemmas—a sense of personal obligation to balance his service both to the client and society. Where the legal profession thrives through its members’ general and technical expertise, sense of personal responsibility and reliance upon an enduring investment in common values and normative standards, so too can the IC and the individual IO thrive.

One author suggests that the individual IOs must first “think of themselves as constituting a *profession* [emphasis original]...their ethos would tell them *who they are*,

¹⁴³ Director of National Intelligence, *General Michael V. Hayden Before House Permanent Select Committee*, July 28, 2005, http://www.dni.gov/testimonies/20050728_testimony.htm (accessed February 8, 2010), Cited hereafter as DNI HPSCI Statement July 28, 2005.

not *what they do*.”¹⁴⁴ The arguments contained in this monograph echo that sentiment. However, this monograph continues further than the existing body of knowledge on intelligence ethics. Uniquely, this monograph suggests *how* to create that ethos through pragmatic means able to shepherd the IO toward understanding *who* the IO is as a professional. The IO finds in the model of the legal professional the ways and means to complete the transformation if both the IOs and the IC member organizations choose to move towards a professionalization of intelligence. To that end, the IC should establish an IC Center of Professional Responsibility, draft the IO-Model Rules of Professional Conduct, and submit them to the DNI for ratification and dissemination to the IC members’ senior leadership for consideration.

Accountability: Oversight and the IO-MRPC

The IC can best help the decision-maker retain the Decision Advantage in the long term if Congress and the American public are confident that the secretive U.S. Intelligence Community acquired its information in an ethical manner. The Congressional Intelligence Oversight Committees should make intelligence program funding contingent on the DNI’s annual report to those committees the content of each IC member’s “Purple Book”: Intelligence Officer’s Rules of Professional Conduct. The only way to ensure the Intelligence Officer—Model Rules of Professional Conduct remain a viable, evolving and enduring framework is to compel accountability for its maintenance.

¹⁴⁴ Albert C. Pierce, "The Value of an Ethos for Intelligence Professionals," In *Intelligence Ethics: The Definitive Work of 2007**, edited by Michael Murphy Andregg, 7-10. St. Paul: Center for the Study of Intelligence and Wisdom, 2007.

APPENDIX A: OVERVIEW OF THE INTELLIGENCE COMMUNITY ARCHITECTURE

The 1941 Pearl Harbor attack precipitated the drafting of the National Security Act of 1947, creating a permanent Intelligence Community and the Central Intelligence Agency under the Director of Central Intelligence (DCI).¹⁴⁵ The 2004 Intelligence Reform and Terrorism Prevention Act (IRTPA) significantly amended the 1947 law. It created the position of Director of National Intelligence (DNI), named as the principal intelligence advisor to the President on intelligence matters. The same legislation explicitly forbade the practice of “dual-hatting,” stating the DNI may not simultaneously hold a position as the head of any intelligence agency or component, which had been policy since the Director of Central Intelligence (DCI) had been established with the National Security Act of 1947.¹⁴⁶ The DNI has statutory authority over acknowledged the National Intelligence Program (NIP) funds distribution from Congress, though he does not directly control funding provided to intelligence components embedded in the Department of Defense.¹⁴⁷

The Intelligence Community is now comprised of sixteen component organizations organized in three broad categories: Program Manager, Departmental and [military] Services (See Figure 1. The U.S. Intelligence Community). The heads of those organizations are

¹⁴⁵ Lowenthal, 20.

¹⁴⁶ United States Senate, "Intelligence Reform and Terrorism Prevention Act of 2004," *United States Government*, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s2845enr.txt.pdf (accessed December 14, 2008). Cited hereafter as IRTPA 2004.

¹⁴⁷ IRTPA 2004.

responsible to the DNI, though the DNI has limited authority over them.¹⁴⁸

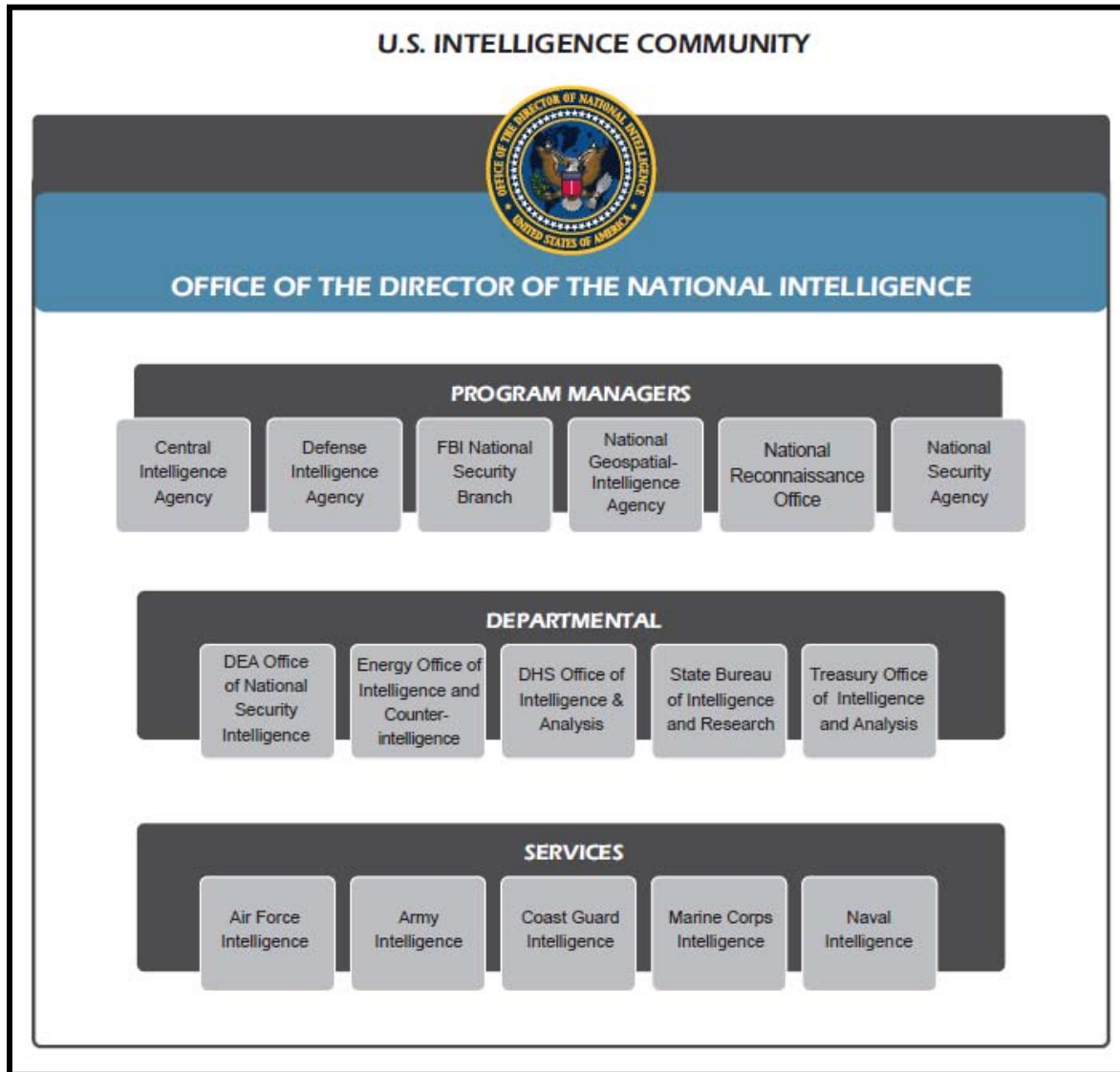


Figure 1. The U.S. Intelligence Community

(source: http://www.dni.gov/IC_Consumers_Guide_2009.pdf, 9)

¹⁴⁸ For additional information regarding and the initial standup of the ODNI, see the National Intelligence University publication, "Reforming Intelligence: The Passage of the Intelligence Reform and Terrorism Prevention Act," http://www.dni.gov/content/IRTPA_Reforming-Intelligence.pdf (accessed February 14, 2010) and "Intelligence Report Conference Summary," *United States Senate*, December 12, 2004, http://www.hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=fc9bfe80-c24a-4970-a116-eb3a8ed9ab11 (accessed February 15, 2010).

APPENDIX B: ON PROFESSIONS

This appendix informs the reader as to what professions entail, from the perspective of four contemporary philosophers. The author places primary emphasis on Samuel Huntington's perspective throughout the paper, though offers three other perspectives as well in this appendix for comparative purposes. He establishes three, "distinguishing characteristics of a profession as a type of vocation."¹⁴⁹ Malham Wakin establishes the taxonomy for professionalism. Arthur Dyck assembles a list of universal characteristics of professions. Manuel Davenport offers two methods for determining whether an occupation is a profession.

Huntington: Distinguishing Characteristics of a Profession

Huntington argues in his 1957 book, *The Solder and the State*, a profession can reasonably separated from other occupations as evidenced by the essential oils of a profession: expertise, responsibility and corporateness. At the root of this exploration is a problematic conflation of the terms, "professional" and "profession." Huntington illuminates the problem, describing literature that conflates the, "... 'professional' as contrasted with 'amateur' rather than in the sense of 'profession' as contrasted with 'trade' or 'craft.'"¹⁵⁰

Huntington establishes three enduring characteristics of professions:

Expertise

...Specialized knowledge and skill in a significant field of human endeavor.

His expertise is acquired only by prolonged education and experience...intellectual in nature and capable of preservation in writing...

Institutions of research and education are required for the extension and transmission of professional knowledge and skill. Contact is maintained between the academic and practical sides of a profession through journals, conferences, and the circulation of personnel between practice and teaching.

¹⁴⁹ Huntington, 8.

¹⁵⁰ Huntington, 7-8.

[E]ducation consists of two phases...the first imparting a broad, liberal, cultural background, and the second imparting the specialized skills and knowledge of the profession. The liberal education...is normally handled by the general educational institutions of society devoted to this purpose. The second or technical phase of professional education...is given in special institutions operated by or affiliated with the profession itself,¹⁵¹

Responsibility

...a practicing expert, working in a social context, and performing a service, such as the promotion of health, education, or justice, which is essential to the functioning of society...

The client of every profession is society, individually or collectively...

This social responsibility distinguishes the professional man from other experts with only intellectual skill...The responsibility to serve and devotion to his skill furnish the professional motive...

Financial remuneration cannot be the primary aim of the professional man...compensation normally is only partly determined by bargaining on the open market and is regulated by professional custom and law...

The performance of an *essential service not regulated by the normal expectation of financial rewards* [emphasis added] requires some statement governing the relations of the profession to the rest of society...The profession thus becomes a moral unit positing certain values and ideals which guide its members in their dealings with laymen. This guide may be a set of unwritten norms transmitted through the professional educational system or it may be codified into written canons of professional ethics.¹⁵²

Corporateness

The members of a profession share a sense of organic unity and consciousness of themselves as a group apart from laymen...manifest[ing] itself in a professional organization which formalizes and applies the standards of professional competence and establishes and enforces the standards of professional responsibility...

Membership...along with the possession of special expertise and the acceptance of special responsibility, thus becomes a criterion of professional status, publicly distinguishing the professional man from the layman...

In associational professions...the practitioner typically functions independently and has a direct personal relationship with his client. The bureaucratic professions...possess a high degree of specialization of labor and responsibilities...the profession as a whole renders a collective service to society as a whole. These two categories are not mutually

¹⁵¹ Huntington, 8-9.

¹⁵² Huntington, 9-10.

exclusive...The associational professions usually possess written codes of ethics since each practitioner is individually confronted with the problem of proper conduct toward clients and colleagues.¹⁵³

While Huntington clearly articulates those characteristics of professions, Wakin offers that a discussion of the taxonomy of professions is prescient to any discussion of them.

Wakin: A Taxonomy of Professionalism

Malham Wakin establishes the framework for discussing professions. He argues there exists a, "...[n]ecessary distinction between a job and a profession, or between a profession and a vocation. For each, in ascending order, gives a greater sense of involvement, fulfillment, and satisfaction."¹⁵⁴ Wakin further clarifies stating,

If a job is something to get paid for doing from eight to five, if it is something to leave behind on the way home, then it becomes something distinct and separate from our total lives. If it is a profession, then it surrenders to a larger part of our lives; there is a greater involvement, a more total commitment. We see this heartening sense of accomplishment in many doctors, some lawyers, and a few great teachers. When a man's work is his vocation, however, then we see a total engagement of his life and personality, a complete outlet for self-expression, a conclusive realization of his potential. Such a vocation clearly marks and distinguishes the best of what a good man has in him.¹⁵⁵

In the above description Wakin ascribes value to professions and vocations as distinct from jobs in the way the former assigns a part of his totality to another. Man's subjugation of some personal needs in favor of the needs of society at large (profession) and, finally, to a higher calling (vocation) indicates these actions and the individual's ontology form a mindset that is both desirable and worthy of distinction. This taxonomy of occupations—jobs, professions, vocations—forms the theoretical basis for examining the IO.

¹⁵³ Huntington, 10.

¹⁵⁴ Malham Wakin and Paul Briand, "The Vocation of Arms," Essay in *Integrity First: Reflections of a Military Philosopher* (Lanham: Lexington Books, 2000), 53-55.

¹⁵⁵ Ibid, 55.

Next, Arthur Dyck offers a slightly different perspective as to what are he describes as universal to professions.

Dyck: Universal Characteristics of Professions

Arthur Dyck notes, in the essay, “Ethical Bases of the Military Profession,” little disagreement amongst philosophers in *what* constitutes the attributes of a profession. He too offers three universal characteristics that generally mirror Huntington, though leaves out the aspect of corporateness. Dyck’s characteristics: “(1) special or unique competence in the performance of special tasks and services; (2) general or social competence in the performance of professional and community-related tasks and services; and (3) a professional-client relationship.”¹⁵⁶

Next, Davenport offers the student of professions two methods for determining whether an occupation is a profession.

Davenport: Testing for Professions

Manuel Davenport argues the applicability of the term, Profession, to the armed forces.¹⁵⁷ He asserts that an occupation is designated as a profession via one of two generally accepted means: First, the historical approach simply asks, “Has this occupation been recognized in the history of civilization to be a profession?”¹⁵⁸ Davenport offers the following alternative method to determine an occupation’s status that aligns closely with Huntington: “The work done by members of this occupation is recognized by the public to be crucial and necessary...In order to

¹⁵⁶ ,Arthur J. Dyck, "Ethical Bases of the Military Profession." In *The Parameters of Military Ethics*, edited by Lloyd J. Matthews and Dale E. Brown, 103-112. Washington: Pergammon-Brassey's International Defense Publishers, Inc., 1989, 105.

¹⁵⁷ Manuel Davenport, “Professionals or hired Guns? Loyalties are the Difference,” Essay in *Military Ethics: Reflections On Principles--the Profession of Arms, Military Leadership, Ethical Practices, War and Morality, Educating the Citizen-Soldier*. (Washington, DC: National Defense University Press, 1987), 5.

¹⁵⁸ Ibid.

enter this occupation certain specified minimal requirements must be met...Members of this occupation state and enforce a code of ethical responsibilities.”¹⁵⁹

¹⁵⁹ Ibid, 5-6.

APPENDIX C: ORGANIZATIONAL CHANGE

This appendix briefly examines contemporary literature addressing organizational transformation, looking for clues as to what types of change have the propensity to increase organizational performance. The author poses in this paper that structural changes alone failed to elicit the desired performance from the IC. This chapter establishes that there are, generally, two types of change: structural and cultural. Furthermore, that neither type of change applied on their own, is likely to yield a significant alteration in organizational performance should a large change be desired by the leadership.

Structural Changes

Making structural changes—altering hierarchical lines—for increasing bureaucratic efficiency and efficacy is not a new concept. However, recent research suggests this type of organizational change ultimately falls short of altering the interactions within and between the various subcultures, which exist within those organizations.¹⁶⁰ A recent empirical assessment of Australian hospital systems yields the following observation: “the most important axis on which hospital decision-making rests continues to be the profession rather than the CD [clinical directorate].”¹⁶¹ The author concludes his study,

...call[s] into question the alleged benefits said to accrue from this kind of structural change...the position reached here brings to the fore the need to develop micro-level change strategies if the goal is to alter behavior within organizations. It is suggested that these are lacking in most restructuring efforts. Culture change requires more than a mere reconfiguration of the organizationally-sanctioned divides. Altering the boxes-on-the-chart or approving new formal structural designs is unlikely to penetrate the deeply sedimented patterns of relatively autonomous action that reflect organizational culture in professionally-based organizations, and this argues for new change models which

¹⁶⁰ Jeffrey Braithwaite, "An Empirical Assessment of Social Structural and Cultural Change in Clinical Directorates," *Health Care Analysis*, 14 (December 2006): 185-193.

¹⁶¹ Braithwaite, 185.

elucidate how to revamp established social systems, professionalized sub-cultures and entrenched structuring behavior.¹⁶²

Further analysis of the healthcare industry in the United States and abroad challenged efficacy of structural changes in making any difference in productivity, "...let alone demonstrably improving productivity or outcomes."¹⁶³ These researchers extract that, "Organizational theorists think that such restructuring-as-tinkering rarely modifies the operating assumptions, norms and behavior of participants, and when it does, the shifts are marginal."¹⁶⁴

Cultural Reform

If, as suggested above that the structural changes do not reliably modify individual human behavior, is it possible to redirect the organization's mindset? Organizational theorists offer some relief here, offering prospective approaches for cultural change—effective and otherwise. Hatch is also quick to point out, however, an irresolvable difference exists between positivist and interpretive epistemologies in that the former "assumes you can discover what truly happens...through categorization and scientific measurement of the behavior of people," where the latter assumes, "knowledge can only be created and understood from the point of view of the individuals who live and work in a particular culture or organization."¹⁶⁵ Regardless of the epistemological perspective, organizational culture—and, by extension, organizational cultural change—addresses the individual stakeholders operating inside an organization and the thoughts, preferences and decisions they make.

¹⁶² Braithwaite, 192.

¹⁶³ Jeffrey Braithwaite, Johanna Westbrook, and Rick Iedema, "Restructuring as Gratification," *Journal of the Royal Society of Medicine* 98 (December 2005): 542-544, 542.

¹⁶⁴ Braithwaite, Westbrook, and Iedema, 543.

¹⁶⁵ Mary Jo Hatch, *Organization Theory*, 2nd Edition, Oxford: Oxford University Press, 2006, 13.

Organizational theorist Pasquale Gagliardi offers there exists three distinct types of organizational change. First, “apparent” cultural change is a type that is deliberate, but lacks significant meaning. Second, “revolutionary” change attempts to force an outsider’s perspective to the detriment of the established organizations, sub organizations and individuals. He concludes only the “incremental” cultural change shows promise to change a culture in that it, “...reaches the deep level of cultural values and assumptions.” Furthermore incremental cultural change is a “strategy that implies different, but not incompatible, values stretches the organizational culture to include new values alongside its old ones.”¹⁶⁶ The author suggests in the body of this monograph that incremental change is compatible with and desirable for the IC’s pursuit of ethical decision-making.

Real cultural change, “is a long (not short)-term endeavor, and it is much harder [than structural alterations].”¹⁶⁷ The transformation occurs when the members of an organization “move beyond mere recognition...” and incorporate into daily practice those actions that confirm social and cultural values, they are institutionalized—part of the institution itself.”¹⁶⁸ This passage articulates the desired endstate for cultural change among IOs.

A Hybrid Approach to Organizational Transformation

Both the advocates of structural and, separately, organizational cultural change seek to increase efficiency and efficacy by altering organizational behavior. However, cultural change can only offer greater promise than structural change if existing formal organizational structures do not block or impede efforts to change the culture. Hatch notes that organization development analysis of British Airways (BA) in the 1980s illustrates that only the combined efforts of

¹⁶⁶ Hatch, 208-211.

¹⁶⁷ Braithwaite, Westbrook, and Iedema, 543.

¹⁶⁸ Hatch, 85-86.

structural and cultural change can yield significant and enduring results. Their analysis shows that in 1982 alone BA lost \$900 million; yet by 1987 the combined efforts of structural and cultural change yielded great results for the company. Goodwin and Burke state, “BA went from government ownership and a bureaucratic command and control culture that was facing huge losses and a decreasing market share to....a service-oriented and market-driven culture with profits of over \$400 million (USD) and a rising market share.”¹⁶⁹

A note of caution: The details of how BA achieved this success are interesting, though cannot be taken out of context in direct application toward IC transformation. IOs (as well as physicians and lawyers), in contrast to BA employees, are confronted daily in their professional lives with significant ethical dilemmas which they must resolve correctly according to the compelling and prescriptive guidance of their professional membership.

¹⁶⁹ Hatch, 310.

APPENDIX D: CORE VALUES ACROSS THE IC

This appendix briefly illustrates the IC member’s organizational core values explicitly included in core values, mission or vision statements. It allows the reader to compare values against other IC members. This analysis forms the basis for the claim that IC values are closely-enough aligned that professionalization efforts would not fail based upon competing or incompatible objectives comprising the IC organizations. The shaded areas serve only to highlight that some of the core values are common across the IC.

	Accountability	Caring	Collaboration	Creativity/ Innovation	Courage	Customer-Focused	Duty/ Service	Excellence	Fairness	Honesty	Honor	Integrity	Lawfulness	Leadership	Learning/ Curiosity	Loyalty	Political Independence	Professionalism	Promise Keeping	Prudence	Respect	Responsible Citizenship	Selflessness	Sound Tradecraft	Teamwork	Vigilance
DoD 5500.7-R	X	X							X	X	X		X				X			X		X	X			
CIA								X	X			X										X				
DHS					X		X															X				X
DIA				X	X		X					X		X	X											X
DOS	X						X					X					X					X				
FBI	X	X								X		X	X	X								X				
NGA						X		X														X				
NSA	X		X		X				X	X		X	X		X	X	X					X				X
TREAS	X						X	X				X										X				
U.S.A				X			X					X	X				X					X		X		
U.S.A.F.							X	X				X										X		X		
U.S.C.G.							X					X										X				
U.S.M.C.				X			X					X										X		X		
U.S.N.				X			X					X										X		X		
ICD 200			X			X					X		X		X	X	X	X	X	X	X	X	X	X	X	X

Table 1. Core Values Across the IC

Sources: Intelligence Component Webpages (Core Values)

APPENDIX E: ROLE OF ETHICS IN PROFESSIONS

This appendix briefly examines how the pursuit of ethics among professionals affects the membership, organization and protects the American people.

Many organizations and businesses actively promote the necessity of ethical codes for guiding their members through ethical dilemmas. However, research indicates the exact role of personal and organizational values in daily decision-making remains elusive. Generally, research supports the idea that individual conduct and decision-making shapes organizational performance. Greenfield, et al. analyzed undergraduate business majors' responses to survey questions relating to ethical dilemmas.¹⁷⁰ The evidence provides insight as to the role of ethics in decision-making.¹⁷¹ The authors conclude that earnings management¹⁷² decisions and an individual's "ethical orientation" are related:

...one's ethical orientation mediates the impact of personal benefit on earnings management behavior. Although prior research...[suggests] that personal benefit mostly explains an individual's inclination to participate in earnings management, *we find that one's ethical position might be equally, if not more, important in understanding earnings management behavior* [emphasis added]. In particular, the more relativistic an individual's ethical orientation, the more likely he/she is to engage in earnings management practices. Conversely, the more idealistic an individual's ethical orientation, the less likely he/she is to engage in earnings management behavior. *Further, individuals with a higher level of professional commitment are less likely to engage in earnings management practices while individuals with a lower level of*

¹⁷⁰ A. C. Greenfield, Jr., Carolyn Strand Norman, and Wier Benson, "The Effect of Ethical Orientation and Professional Commitment on Earnings Management Behavior," *Journal of Business Ethics* 83, no. 3 (December 2008): 419-434, 419-428.

¹⁷¹ It is important to acknowledge the fact that Greenfield et al, did not study classic professions in the Huntingtonian sense; rather, they studied prospective businessmen whom would be "professional" in the sense that they are not "amateurish." See Huntington, 8-17.

¹⁷² Greenfield et al, 419-421. Earnings management is a series of self-serving "reporting methods and earnings estimates that do not accurately reflect their firms' underlying economics... distorts the stock price of a firm and it reduces the firm's value because of its unfavorable effect on manager's efforts."

professional commitment are more likely to engage in earnings management behavior [emphasis added].¹⁷³

Others suggest values (organizational and personal) interact with other situational factors in a holistic manner. This holism—a multivariate view of the situation at hand—affects the decisions made by those individuals in the context of organizational culture:

In conclusion, we affirm the person–situation interaction approach as demonstrative of the influence of multiple situational and dispositional variables on ethically related compliance. Moreover, we further assert the value-pragmatics hypothesis finding that both (1) multiple values and (2) contending values have opposing motivational force and bearing upon, in combination with each other, and situational factors, compliance in organizational settings.¹⁷⁴

Research also supports that individuals' attitudes relate to the congruence (or contention) among the personal and organizational values. Posner and Schmidt cite another's observation that the highest likelihood of, "...conflict experienced by managers was when organizational expectations (values) were clear but these individuals were uncertain about whether these individuals were uncertain about whether these demands were consistent with their own personal values," adding,

In our study, we found that managers in this predicament reported the same feelings as those who were not clear about either their personal or organizational values: They were unfavorably disposed toward both their work and their organization. It appears that alienation is fostered when people meet organizational demands but do so with some degree of ennui about the consistency between their behavior and their beliefs."¹⁷⁵

It seems clear then the pursuit of a culture of ethical conduct, both personal and organizational, helps the individual and, by extension, the organization to realize greater

¹⁷³ Greenfield, et al., 427.

¹⁷⁴ George W. Watson and Robyn Berkley. "Testing the Value-Pragmatics Hypothesis in Unethical Compliance." *Journal of Business Ethics* 87, no. 4 (July 2009): 463-476, <http://proquest.com> (accessed March 9, 2010), 475.

¹⁷⁵ Barry Z. Posner and Warren H. Schmidt, "Values congruence and differences between the interplay of personal and organizational value systems," *Journal of Business Ethics* 12, no. 5 (May 1993): 341-347, <http://proquest.com/> (accessed March 10, 2010), 346.

performance. When contention exists between the two, conflict arises and detrimental attitudinal shifts occur. A culture of ambiguous values and constant contention cannot promote efficient or efficacious activity, especially in professions inundated daily by ethical dilemmas. However, as attorney Arthur Lachman points out in a 2007 article in *The Journal of the Professional Lawyer*, it is entirely plausible that organizations whose “product” is not motivated by profit but, instead, by service to society (like lawyers and IOs), may be more sensitive to contention between personal and organizational values:

Nearly all of the organizational decision making research by social scientists to date has focused on regular profit-making entities. As we evaluate the available research and attempt to apply it to lawyers and law firms, it is important to keep in mind that the situation of legal professionals differs in important ways from corporate managers and board members who serve primarily the interests of the entity’s investors.¹⁷⁶

A 1994 study of ethical decision-making compared graduate students in business with those studying law.¹⁷⁷ In the results of this study, one can begin to see what Huntington distinguishes as the difference between true professionals and others:

This social responsibility distinguishes the professional man from other experts with only intellectual skills. The research chemist, for instance, is still a research chemist if he uses his skills in a manner harmful to society. But the professional man can no longer practice if he refuse to accept his social responsibility...¹⁷⁸

That study surveyed graduate students at two points during their graduate education—at matriculation and graduation. Each of the student populations had ethics courses available to them, though only one of the two law schools surveyed mandated its students to take the course. The results surprised the researchers. The retest (nearing graduation of their respective degree

¹⁷⁶ Arthur J. Lachman, "Are they just bad apples? Ethical behavior in organizational settings: An introduction," *The Journal of the Professional Lawyer*, 2007, <http://www.abanet.org/cpr/pubs/lachman.pdf> (accessed March 9, 2010), 4.

¹⁷⁷ Donald L. McCabe, Janet M. Dukerich, and Jane E. Dutton, "The effects of professional education on values and the resolution of ethical dilemmas: Business school vs. law school students," *Journal of Business Ethics* 13, no. 9 (September 1994): 693-700.

¹⁷⁸ Huntington, 9.

program) yielded the law students scored significantly higher in the ethical dilemma survey than they had upon matriculation. The business students, however, showed no discernible difference, though the male students actually showed a slight regression in some areas of the test. While the researchers hypothesized that the law schools attracted, on whole, more ethically-minded students than did the business schools, this author suggests that the difference lies, instead, in the nature of the disciplines—the civic responsibility of the former being a primary factor.¹⁷⁹

Whereas businesses managers work for, as described by Lachman above, “profit-making entities...who serve primarily the interests of the entity’s investors,” legal professionals serve, instead, to protect both his client and the public. In this respect, the IO is more closely aligned to the legal professional. The legal profession’s inculcation of ethical conduct (formal education, experiential learning and mentoring by senior law partners, and mandatory continuing legal education including ethics and professional responsibility) described in Section 3 promotes higher performance because their daily professional activities involve dilemmas that society and the profession demands be resolved in an ethical and professionally-responsible manner.

¹⁷⁹ McCabe, et al.

APPENDIX F: DRAFT IO MODEL RULES OF PROFESSIONAL CONDUCT SUBJECT LISTING

ABA Model Rules of Professional Conduct¹⁸⁰	Intelligence Officer Model Rules of Professional Conduct (Draft)¹⁸¹
Preamble and Scope	Preamble and Scope
1.0 Terminology	1.0 Terminology
CLIENT-LAWYER RELATIONSHIP	CLIENT-INTELLIGENCE OFFICER RELATIONSHIP
1.1 Competence	1.1 Competence
1.2 Scope of Representation and Allocation of Authority between Client and Lawyer	1.2 Allocation of Authority between Asset and Intelligence Officer
1.3 Diligence	1.3 Diligence
1.4 Communication	1.4 Vigilance
1.5 Fees	1.5 Communication
1.6 Confidentiality of Information	1.6 Accountability
1.7 Conflict of Interest: Current Clients	1.8 Risk Management
1.8 Conflict of Interest: Current Clients: Specific Rules	1.9 Integrity
1.9 Duties to Former Clients	1.10 Counterintelligence
1.10 Imputation of Conflicts of Interest: General Rule	1.11 Minimum Trespass
1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees	
1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	
1.13 Organization as Client	
1.14 Client with Diminished Capacity	
1.15 Safekeeping Property	
1.16 Declining or Terminating Representation	
1.17 Sale of Law Practice	
1.18 Duties to Prospective Client	

¹⁸⁰ ABA MRPC 2009.

¹⁸¹ Inspiration for the IO-MRPC topic list includes ABA MRPC 2009; Kent Pekel, "The Need for Improvement: Integrity, Ethics and the CIA," In *Ethics of Spying: A Reader for the Intelligence Professional*, edited by Jan Goldman, 52-65, Lanham: The Scarecrow Press, Inc., 2006; Chomeau and Rudolph; Godfrey; R.V. Jones, "Intelligence Ethics," In *Ethics of Spying: A Reader for the Intelligence Professional*, edited by Jan Goldman, 18-38, Lanham: The Scarecrow Press, Inc., 2006.

ABA Model Rules of Professional Conduct¹⁸⁰	Intelligence Officer Model Rules of Professional Conduct (Draft)¹⁸¹
<p>COUNSELOR</p> <p>2.1 Advisor</p> <p>2.2 Intermediary [Deleted 2002]</p> <p>2.3 Evaluation for Use by Third Persons</p> <p>2.4 Lawyer Serving as Third-Party Neutral</p>	<p>ANALYST</p> <p>2.1 Duties to Operative/ Collector</p> <p>2.2 Objectivity</p> <p>2.3 Independence of Political Considerations</p> <p>2.4 Analytic Rigor, Standards of Tradecraft</p> <p>2.5 Use of Multiple Sources</p> <p>2.6 Minority and Dissenting Views</p> <p>2.7 Attribution</p> <p>2.8 Collaboration and Coordination</p> <p>2.9 Intelligence Sharing</p> <p>2.10 Safeguarding Intelligence Information</p> <p>2.11 Reciprocity</p> <p>2.12 Timeliness</p>
<p>ADVOCATE</p> <p>3.1 Meritorious Claims and Contentions</p> <p>3.2 Expediting Litigation</p> <p>3.3 Candor toward the Tribunal</p> <p>3.4 Fairness to Opposing Party and Counsel</p> <p>3.5 Impartiality and Decorum of the Tribunal</p> <p>3.6 Trial Publicity</p> <p>3.7 Lawyer as Witness</p> <p>3.8 Special Responsibilities of a Prosecutor</p> <p>3.9 Advocate in Nonadjudicative Proceedings</p>	<p>OPERATIVE/COLLECTOR</p> <p>3.1 Duties to Analyst</p> <p>3.2 Safeguarding Operations</p> <p>3.3 Conflict of Interest: Current Assets</p> <p>3.4 Duties to Prospective Asset</p> <p>3.5 Duties to Active Assets</p> <p>3.6 Asset with Diminished Capacity</p> <p>3.7 Declining or Terminating Relationship with Assets</p> <p>3.8 Duties to Former Assets</p> <p>3.9 Special Conflicts of Interest for Former and Current Government Officers and Employees</p> <p>3.10 Transfer of Asset Control</p>
<p>TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS</p> <p>4.1 Truthfulness in Statements to Others</p> <p>4.2 Communication with Person Represented by Counsel</p> <p>4.3 Dealing with Unrepresented Person</p> <p>4.4 Respect for Rights of Third Persons</p>	<p>TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS</p> <p>4.1 Truthfulness in Statements to Others</p> <p>4.2 Foreign Intelligence Services</p> <p>4.3 Partners and Allies</p> <p>4.4 Temporary Coalitions</p> <p>4.5 Non-state Actors</p> <p>4.6 Non-Governmental Organizations</p> <p>4.7 Discrimination: Innocents and Noncombatants</p> <p>4.8 Interrogation</p>

ABA Model Rules of Professional Conduct¹⁸⁰	Intelligence Officer Model Rules of Professional Conduct (Draft)¹⁸¹
<p>LAW FIRMS AND ASSOCIATIONS</p> <p>5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers</p> <p>5.2 Responsibilities of a Subordinate Lawyer</p> <p>5.3 Responsibilities regarding Nonlawyer Assistants</p> <p>5.4 Professional Independence of a Lawyer</p> <p>5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law</p> <p>5.6 Restrictions on Right to Practice</p> <p>5.7 Responsibilities regarding Law-Related Services</p>	<p>AGENCY</p> <p>5.1 Responsibilities of Senior Officers</p> <p>5.2 Responsibilities of Supervisors</p> <p>5.3 Responsibility to Protect IO Identity</p> <p>5.4 Responsibilities regarding Non-IC Personnel</p> <p>5.5 Professional Independence of an IO</p> <p>5.6 Unauthorized Operations</p> <p>5.7 Joint Operations</p> <p>5.8 Restrictions on Unilateral Operations</p> <p>5.9 Confidentiality of Information</p> <p>5.10 Privacy</p> <p>5.11 Just Cause</p> <p>5.12 Just Intent</p> <p>5.13 Proportionality</p>
<p>PUBLIC SERVICE</p> <p>6.1 Voluntary Pro Bono Publico Service</p> <p>6.2 Accepting Appointments</p> <p>6.3 Membership in Legal Services Organization</p> <p>6.4 Law Reform Activities Affecting Client Interests</p> <p>6.5 Nonprofit and Court-Annexed Limited Legal Services Programs</p>	<p>PUBLIC SERVICE¹⁸²</p>
<p>INFORMATION ABOUT LEGAL SERVICES</p> <p>7.1 Communications concerning a Lawyer's Services</p> <p>7.2 Advertising</p> <p>7.3 Direct Contact with Prospective Clients</p> <p>7.4 Communication of Fields of Practice and Specialization</p> <p>7.5 Firm Names and Letterheads</p> <p>7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges</p>	

¹⁸² “Public Service” for the legal profession addresses how each member should donate some of his services to society: either at large through legal services organizations or for individuals whom otherwise might be unable to obtain adequate legal representation. The author finds no analogous transference to Intelligence, as it would be inappropriate for an IO to “donate” government intelligence resources to assist individuals. Similarly, the author finds no connection to “Information About Legal Services.”

ABA Model Rules of Professional Conduct¹⁸⁰	Intelligence Officer Model Rules of Professional Conduct (Draft)¹⁸¹
MAINTAINING THE INTEGRITY OF THE PROFESSION 8.1 Bar Admission and Disciplinary Matters 8.2 Judicial and Legal Officials 8.3 Reporting Professional Misconduct 8.4 Misconduct 8.5 Disciplinary Authority; Choice of Law	MAINTAINING THE INTEGRITY OF THE PROFESSION 8.1 Bar Admission and Disciplinary Matters 8.2 Oversight 8.3 Reporting Professional Misconduct 8.4 Misconduct 8.5 Disciplinary Authority

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