The U.S. Intelligence Community has become a favorite target for critics in recent years, whether as a result of the perception of faulty intelligence in the run-up to Operation Iraqi Freedom,\(^1\) the charge that certain interrogation tech-
niques used by the Intelligence Community were overly severe, or other claims. For example, there is an emerging consensus that it was wrong for the Central Intelligence Agency (CIA) to have conducted certain procedures that agents from the Federal Bureau of Investigation (FBI) understood as prohibited. Criticism has been levied against several professional groups within the Intelligence Community: decision makers, analysts, and operations officers. Most of this criticism has an ethical dimension contending that the Intelligence Community not only did something incorrectly, but also should have done better in some ethical sense. Such criticism suggests that both the Intelligence Community and the American people would benefit from an arrangement wherein intelligence professionals were part of a common ethical framework so that information could be gathered, analyzed, and acted upon not by the agency whose ethical guidance permitted it, but by the agency most professionally competent to handle the job.

Admittedly, there are concerns over instituting such an ethical framework. Although the Intelligence Community has a rich tradition of accepting oversight, some in the Community are reluctant to be second-guessed by outsiders. Formal legal restrictions are difficult to formulate expeditiously as new situations warrant. They may also subject ethical judgments to partisan political debates that some critics believe are best left out of the intelligence business. There are also secrecy considerations when the ethical standards might apply to classified procedures or programs.

Nevertheless, there is an analogous framework in which professionals have formulated some ethical guidelines to shape their professional duties and con-

5. See, e.g., Press Release, Office of the Dir. of Nat’l Intelligence, Statement of the Director of National Intelligence Dennis C. Blair (Apr. 16, 2009), available at http://www.dni.gov/press_releases/20090416_1_release.pdf (contending that the Intelligence Community should not be “subjected to... [the] pain” of being second-guessed when the policies it pursues prove unpopular, as was the case with the military during the Vietnam War).
6. The former Director of National Intelligence, for example, has argued that laws—specifically the Foreign Intelligence Surveillance Act—have failed to “keep up with the technology revolution” in broader society. Mike McConnell, A Key Gap in Fighting Terrorism: Private Firms Need Liability Protection, WASH. POST, Feb. 15, 2008, at A21.
7. For example, Attorney General Eric Holder’s decision to name a prosecutor to investigate CIA counterterrorism practices has been described as opening “a political war that President Obama, the CIA and above all the country will live to regret.” Editorial, Prosecuting the CIA, WALL ST. J., Aug. 25, 2009, at A14.
duct: the Model Rules of Professional Conduct formulated by the American Bar Association (ABA Model Rules).\textsuperscript{9} The ABA Model Rules were designed to govern the professional behavior of attorneys using standards developed by those who were most aware of the ethical problems facing them: other lawyers.\textsuperscript{10} Admittedly, the Model Rules are in no sense complete, and lawyers have developed ways around them. However, the law is still there to punish attorneys who violate its provisions; the Model Rules’ ethical obligations supplement, but do not replace, criminal and civil liability.\textsuperscript{11} Offenders are punished by their peers not for breaking the law, but for breaking ethical obligations binding upon every attorney.\textsuperscript{12}

This Note will explore the need for an Intelligence Community-wide ethical framework and will propose that the Office of the Director of National Intelligence (ODNI) establish Intelligence Community Rules of Professional Conduct modeled on the ABA Model Rules of Professional Conduct. Part I briefly sketches ethical concepts applied in this Note. Part II deals with the current ethical and legal landscape surrounding the intelligence profession. In Part III, I use the example of the ABA Model Rules to demonstrate how the Intelligence Community could develop comparable rules of conduct to govern intelligence officers and steer their activities in an ethical direction.

My goal in this Note is not to condemn or condone as unethical or ethical any of the issues presently facing the Intelligence Community. Rather, I am animated by a concern that as the United States moves towards a truly nationalized intelligence workforce, differences in ethical guidance across agencies will only serve to weaken the Intelligence Community’s domestic support, international standing, and the overall effectiveness of its mission. Intelligence professionals deserve to have a consistent source of guidance on their ethical duties and obligations, regardless of which agency pays their bills or houses them on a temporary duty assignment. Similarly, the American public deserves to know that the nation’s intelligence mission is being conducted by individuals who are not only issued security clearances verifying their trustworthiness for sensitive positions, but are guided by a set of consistent ethical principles. It is also important for the intelligence business not to be thought of merely as a livelihood, but as a profession imbued with a special—and profound—public trust. As such, ethical and professional standards can and should be higher than those of other career paths.

It is important to note from the outset, however, that there are a considerable number of different job roles within the Intelligence Community.\textsuperscript{13} From ana-
lysts and case officers to technical support specialists and construction engineers, the Intelligence Community counts among its human capital representatives a myriad of professional competencies. With this in mind, this Note argues that though the Intelligence Community should adopt a widespread ethical program binding on all its employees, supplemental ethical guidance should be offered as appropriate for each job family within the Intelligence Community. In this Note, most of my discussion centers on the general rules suitable for all Intelligence Community employees and associates.

I. INTRODUCTION TO ETHICS

Ethics has a variety of definitions. In one view, ethics is framed in terms of a personal pursuit; Geoffrey Harpham calls it “the site of a desire for a clean conscience.” In other conceptions, ethics has the more practical goal of “systematizing, defending, and recommending concepts of right and wrong behavior.” Though there are different branches of ethical theory, in this Note I am most concerned with normative ethics, or the development of standards concerning “right” and “wrong” conduct. There are three primary schools of normative ethical thought: virtue ethics, consequentialist ethics, and deontological ethics.

Virtue ethicists, such as Aristotle, maintain that it is less important to learn rules of behavior than to foster good habits of character, such as benevolence, fortitude, and sincerity. By developing these good acts of character, one will then consistently act pursuant to those character habits. A second theory of normative ethics is consequentialism, which maintains that acts should be judged exclusively by their consequences. Jeremy Bentham’s theory of utilitarianism falls within this category. Consequentialist theories often are criticized because any action—for example, the killing of innocents—can be ethically justified under their aegis.
In this Note, I will be discussing the third category in the normative school, deontological ethics, because it is a rules-based system in which situational contexts are deemphasized. In this theory, ethics is conceptualized mostly as a series of rules or obligations; choices are “right” if they are done in accordance with these rules. Though a number of scholars have different interpretations of deontological ethics, in this Note I am most animated by the thinking of Immanuel Kant. According to Kant, good consequences alone cannot make an act ethical, as in the case when someone intends to do harm but accidentally brings about good. Such an action should not be considered ethical, because it was done without respect for moral law. Kant argued that we should focus on ethical obligations irrespective of personal preferences or emotive state. Kant preferred categorical imperatives (propositions that must always be necessary) to hypothetical imperatives (propositions compelled by particular desires in a given situation). If I can answer the question—Would I like this rule to always be followed?—in the affirmative, it is a categorical imperative. Conversely, if the answer to the question—Would I like this rule to always be followed?—is negative, but I believe the rule is appropriate in a given situation, it is a hypothetical imperative.

Because my goal in this Note is to propose a system of ethical norms that applies across the Intelligence Community in all circumstances, I prefer developing categorical rather than hypothetical imperatives. My preference is animated by the fact that categorical imperatives deemphasize (albeit not completely) situation-dependent rationales for behavior that would not otherwise be considered appropriate—a useful trait given recent debates concerning White House national security directives of contested legality.

Is a categorical system even possible? Problems arise if categorical rules conflict. For example, one hypothetical categorical rule might be that an Intelli-
gence Community officer shall always protect the nation’s security. Another hypothetical categorical rule might be that an Intelligence Community officer shall never steal. These two rules would conflict if an officer was ordered to steal Enemy X’s secret nuclear weapons plans, which Enemy X intended to use against the United States. Kant’s approach does not provide a simple answer. The British philosopher W.D. Ross provided a possible analytical framework to deal with this quandary. Ross argued there is a distinction between “prima facie duties” and “actual duties.”

The prima facie duties to protect national security and not to steal are weighed before every action, and the prevailing duty in a given situation is the actual duty. This scenario is essentially a reversion to what Kant described as a hypothetical imperative: the duty to protect national security prevailing over the duty not to steal.

Thus, despite my preference for categorical ethical rules, I recognize that in some contexts conflicting rules will require a determination as to which prevails. It is important, however, that the relative weight given to each rule should be consistent across the Intelligence Community. In other words, the identification of an actual duty should not depend on a given officer’s home agency. And, to the extent possible, Intelligence Community-wide rules should be, as consistently as possible, categorical rather than hypothetical imperatives. Shared ethical guidance and training would lessen the extent to which hypothetical imperatives result in diverging actual duties across the Intelligence Community.

More generally, my preference for a deontological construction of ethics—which ultimately devolves into a series of duties—should not be confused with simply proposing rules of conduct. Though closely related to standards of conduct, deontological ethical rules are always predicated on achieving a desired ethical condition within an ethical framework. In this sense, deontological ethics begins with virtue-based theories of morality and then imposes a series of obligations necessary to achieve them. Thus, in choosing a deontological framework for ethical rules, this Note does not propose what have been characterized as exclusively “rules-based” or “principles-based” ethical modalities. Instead, it is proposing an ethical construct not only based upon a series

26. Cf. id. at 142–43 (arguing that the prima facie duty to inform one’s neighbor does not become an actual duty to tell one’s neighbor about one’s love life).
27. Kant argued that judgment played a considerable role in “the application of moral theory to practice.” John R. Silber, Procedural Formalism in Kant’s Ethics, 28 REV. METAPHYSICS 197, 198 (1974). Thus, it is not enough to simply develop a set of rules for the Intelligence Community—officers must be given the training they need in order to exercise the appropriate judgment to discern how their actions should be shaped by ethical guidelines. See id.
28. The ethical framework is paramount. As one scholar has noted, “deontologists of all stripes hold that some choices cannot be justified by their effects—that no matter how morally good their consequences, some choices are morally forbidden.” Larry Alexander & Michael Moore, Deontological Ethics § 2, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2007), http://plato.stanford.edu/entries/ethics-deontological.
of normative rules, but also mindful of the need to promote a broader awareness of ethical conduct within the Intelligence Community so that officers are capable of reasonable ethical discernment in the inevitable situations where rules are absent or conflicting.

II. THE CURRENT ETHICAL LANDSCAPE

The ethical issues facing the modern intelligence professional grow daily, and their multiplication is one of the principal reasons I advocate developing Intelligence Community-wide model rules of professional conduct. In this Part, I will explore what ethical standards are already in place to bind the Intelligence Community as a whole. In order to demonstrate the disparate sources of ethical guidance that affect officers employed by different agencies, I will then discuss ethical standards at individual Intelligence Community agencies.

A. INTELLIGENCE COMMUNITY-WIDE STANDARDS

The National Intelligence Strategy of the United States of America says little about the ethical obligations of the intelligence professionals working under the leadership of the Director of National Intelligence. It never mentions the words “ethics” or “ethical.” Instead, the document focuses on revamping the nation’s intelligence methods, mindset, and leadership to make the intelligence business a truly national endeavor. This goal is admirable and was long in development, but it is not sufficient to guide intelligence officers through all the difficult ethical choices they face.

The 2009 revision of the Strategy includes some ethical goals, but like the goals identified in the 2005 Strategy, they fall short of ethical rules that have the force needed to achieve consistent ethical outcomes. The strategic vision identified in the 2009 Strategy affirms that the Intelligence Community must “exemplify America’s values” by “operating under the rule of law, consistent with Americans’ expectations for protection of privacy and civil liberties, respectful of human rights, and in a manner that retains the trust of the American people.” Revealingly, the document makes no mention of any policy concordant with American values or ethical principles, save for one nod to the Intelligence Community’s duty to “[p]romote robust consultation and oversight”

on privacy and civil liberties issues. This one brief reference hardly addresses the breadth and depth of ethical dilemmas facing the Intelligence Community.

Interestingly, the 2005 Strategy contained some basic ethical goals that were removed in the 2009 release. On democratization, the 2005 Strategy commanded all Intelligence Community professionals to “[s]upport diplomatic and military efforts (including pre- and post-conflict) when intervention is necessary.” Similarly, the 2005 Strategy admonished intelligence professionals to “[f]orge relationships with new and incipient democracies that can help them strengthen the rule of law and ward off threats to representative government” and to “[p]rovide policymakers with an enhanced analytic framework for identifying both the threats to and opportunities for promoting democracy.” These goals are affirmative: they acknowledge that the Intelligence Community is committed to encouraging democratic norms, and instruct Intelligence Community professionals to put these ideals into action. However, the Strategy did not state any consequences for failing to uphold these democratic norms. Thus, officers who engaged in the practice of extraordinary rendition, where suspects were sent to other—often undemocratic—countries in order to be interrogated, conceivably could have violated the Strategy without being subjected to any identifiable penalties for doing so. Similarly, the 2005 Strategy did not clearly instruct intelligence analysts to resist despotic regimes around the world. These examples demonstrate that the ODNI had the opportunity to provide a series of ethical goals in the Strategy to guide the Intelligence Community’s work, but ultimately fell short of creating any concrete rules by which to operate.

Other provisions of the 2005 Strategy alluding to ethical guidance had similarly aspirational qualities. For instance, the 2005 Strategy said that the Intelligence Community must “[i]mprove analytic methods and practices across the [Intelligence] Community, ensuring rigor and the exploration of alternative analysis.” This hints at a quasi-ethical framework wherein intelligence analysts are expected to be free from undue influence, render solid analytic judgments, and give policymakers the best assessment possible. However, there were no stated consequences for failing to conduct analysis in the systemic way alluded to by the goal; hence, there was no standard by which performance could be independently judged.

The 2005 Strategy reminded the Intelligence Community that its activities must be “[c]onsistent with applicable laws and the protection of civil liberties and privacy.” This provision, which is repeated or paraphrased several times throughout the 2005 Strategy and the 2009 release, reflects a concern that

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34. Id. at 14.
35. Office of the Dir. of Nat’l Intelligence, supra note 32, at 8.
36. Id.
37. Id. at 12.
38. Id. at 11.
39. Id. at 2, 3, 5, 11.
40. Office of the Dir. of Nat’l Intelligence, supra note 30, at 2, 14.
has animated the American public for some time: that the Intelligence Community will use its powers to chill public debate, favor a political party, or trammel upon important First and Fourth Amendment protections. Although it is noteworthy that the Strategy explicitly values civil liberties and the rule of law, it is equally important that the document provides no concrete sense of how intelligence professionals, most of whom are untrained in the law, are supposed to adhere to these principals. Moreover, other pressing ethical concerns remained unaddressed in the 2005 Strategy. It is of great concern that in some cases, the 2009 version identifies even fewer ethical considerations that should animate intelligence professionals.

The defense community has promulgated a series of regulations designed to promote ethical conduct. The Department of Defense’s Standards of Conduct Office produces a comprehensive system of ethical regulations binding on the defense community, including the Defense Intelligence Agency and National Security Agency. There is no Intelligence Community-wide analogue.41

Admittedly, there are certain ethical guidelines that apply to all members of the Intelligence Community insofar as they are employees of the Executive Branch. The U.S. Office of Government Ethics, for instance, fulfills a purpose similar to the Department of Defense’s Standards of Conduct Office. Standards of ethical conduct for Executive Branch employees are proved in 5 C.F.R. § 2635.42 The Office of Government Ethics’ guidance mostly concerns ensuring that Executive Branch employees faithfully give credence to the notion that “[p]ublic service is a public trust.”43

Executive Order 12,95844 is the most comprehensive regulation specifically and exclusively dealing with the conduct of Intelligence Community employees, but it examines the issue through the lens of security rather than ethics. Executive Order 12,958, as amended by Executive Order 13,292 by President George W. Bush, provides simply that a person is eligible for access to classified information if:

1. a favorable determination of eligibility for access has been made by an agency head or the agency head’s designee;
2. the person has signed an approved nondisclosure agreement; and
3. the person has a need-to-know the information.45

President William J. Clinton promulgated Executive Order 12,968 to comple-

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42. 5 C.F.R. § 2635 (2009).
43. Id. § 2635.101(a).
ment Executive Order 12,958 to provide more explicit ethical guidance. By the terms of Executive Order 12,968, access to classified information was granted:

only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.46

Under this version of the Executive Order, the precise standards by which individuals are judged suitable or unsuitable for a security clearance remain somewhat opaque; for example, what does “strength of character” mean in this context? However, the Executive Order at least suggests that Intelligence Community employees’ security clearances are dependent, in part, upon their ability to conduct themselves ethically.

Most Intelligence Community employees must have security clearances to perform their jobs, just as attorneys are dependent upon their bar admission to a given jurisdiction in order to practice in that location. Both security clearances and bar admissions have ethical dimensions that are bound up in professional obligations. To be a good attorney, one must conduct oneself ethically; to act unethically is to be a faulty attorney, and to risk being disbarred and losing one’s ability to practice.47 Similarly, in order to be a good intelligence professional, under the Clinton-era Executive Order 12,968 one must possess certain values: trustworthiness, loyalty, discretion, honesty, and so forth.

Although the ABA Model Rules reference ethical traits similar to President Clinton’s Executive Order 12,968, the Model Rules more systematically frame attorneys’ duties in terms of professional conduct and ethical behavior. Furthermore, they regulate all attorneys within a jurisdiction, not merely those of a particular firm or practice area.48 There is no analogue within the Intelligence Community. Intelligence Community professionals are left with the relatively sparse guidance provided under scattered security-related Executive Orders, Congressional legislation, agency-specific policy directives, and ODNI public statements. Moreover, Intelligence Community requirements are generally framed in terms of security, not ethics. While the ABA’s Model Rules offer a comprehensive picture of behavior appropriate to a professional attorney, there is no

47. Interlocking provisions of the Model Rules make clear that attorneys are subject to special obligations and that violations of the Model Rules can subject the attorney to disciplinary proceedings. See Model Rules of Prof’l Conduct pmbl. §§ 1, 4–13, R. 8.1–8.5 (2008).
48. During the fractious drafting process of the Model Rules, some attorneys from different practice areas thought they should be governed by their own set of ethical guidelines. See Schneyer, supra note 10, at 171–72. The drafters attempted to resolve this quandary by distinguishing between the different contexts in which attorneys operate, albeit under the same ethical framework. Id. at 176–78.
Intelligence Community-wide document that systematically defines the nature of an honest analyst, a good military interrogator, or the like.

B. AGENCY–SPECIFIC STANDARDS

Individual agencies have promulgated their own guidance on certain ethical issues. As a group, military-affiliated agencies, including the Defense Intelligence Agency, National Security Agency, and individual service intelligence branches, are subject to the ethical guidance of the Joint Ethics Regulation. The first section of the Regulation states that its purpose is to provide “a single source of standards of ethical conduct and ethics guidance.” The regulations closely mirror the provisions of 5 C.F.R. § 2635.52

The military also is subject to ancillary ethical guidance regarding the treatment of detainees, such as those at Guantánamo. Here, the ethical dimensions of intelligence operations are perhaps at their most lucid. President George W. Bush signed a military order on November 13, 2001 establishing procedures for dealing with the detention of terrorists captured during the War on Terrorism.53 The Order provides a consequentialist ethical justification for the detention of such individuals:

Section 1. Findings.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism . . . I find . . . that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism


51. Id. § 1–100.

52. Section 2–200 of the Joint Ethics Regulation provides explicitly that the Department of Defense regulations are intended to supplement 5 C.F.R. Part 2635 (2009), which is also binding upon Department of Defense employees. Joint Ethics Regulation, supra note 50, § 2–200.

against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.54

Perhaps in light of the seriousness of the Order, the findings used in Section 1 are strikingly within a consequentialist ethical framework. The order establishes a detention regime in order to save American lives and reduce the danger of successful terrorist operations undertaken against American interests. Surprisingly, however, the Military Order is short on guidance as to how the military will treat those individuals detained pursuant to the order:

Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.55

Based on events that unfolded at Guantánamo, a growing number of critics believed that the treatment of detainees at the naval base was not humane, and thus, in violation of the military order.56 The order itself struck an ethical tone, justifying practices in light of a defense of democratic principles. Not surprisingly, critics of the Guantánamo practices also adopted strongly ethical terms, contending that the procedures vitiated the very same democratic norms.57

In response to such criticism, in 2005 Congress passed the Detainee Treatment Act,58 which prohibited cruel, inhuman, or degrading treatment of detainees in military custody. The Act thus had three important additions to the ethical

54. Id. § 1.
55. Id. § 3.
framework of President Bush’s 2001 military order. First, it proffered a standard familiar to constitutional law scholars, namely “cruel, inhuman, and degrading treatment.” Second, it made this standard more explicit by limiting interrogation tactics to those permissible under the Army Field Manual on Interrogations. Third, it regulated not only military activity, but also the interrogation techniques used by others as applied to persons in military custody. The third provision meant that all interrogators, including CIA officers, were bound to follow the Army Field Manual so long as the individual they were questioning was in military custody. At least one observer noted that, in practice, the third provision might permit the CIA or other intelligence agencies to violate the Army Field Manual on Interrogations so long as the individual being questioned was not in military custody. A range of notable commentators sought to fill in this gap and address other concerns. For instance, former Senator Chuck Hagel wrote:

[T]he need for a uniform, specific standard of conduct throughout the government has become clear. The [Detainee Treatment Act] did not apply to all agencies, creating ambiguity in an area where there should be none. With the revelation of a separate CIA program that operates outside the bounds of acceptable interrogation techniques, the world has further questioned America’s word.

We are in a war of ideas against a radical extremist ideology. Effective and aggressive intelligence operations are essential to our security. But in our effort to protect the nation, we must remember our greatest strength: the principles of human rights that we have upheld throughout our country’s wars and conflicts. It is vital that the world can trust what we say and have confidence in what we do. There must be no doubt that this great nation does not torture.

Congress, then, must explicitly define acceptable interrogation practices.

Senator Hagel presented a strong ethical case, framed in terms of human rights, for a clear, consistent set of guidance on the way the U.S. Government treats those in its custody for terrorism-related offenses. Congress attempted to

59. Id. §1003(a).
60. Id. §1002(a).
61. Id.
do just that when it voted to use the Army Field Manual as a “single, government-wide standard” for interrogation practices, but President Bush vetoed the effort in March 2008. In January 2009, President Barack Obama reversed President Bush’s policy and signed an Executive Order requiring all interrogations to follow the Army Field Manual. Interestingly, President Obama framed his decision in ethical terms, commanding that “our [American] ideals give us the strength and moral high ground” against al-Qa’ida.

The struggle to define consistent ethical standards to deal with detainees suggests a deeply balkanized Intelligence Community, even though each agency in the Community is ostensibly dedicated to the same overarching mission: the protection of the United States. Such division of ethical labors only serves to exacerbate inter-agency tensions and undermine the shared purpose that the ODNI has repeatedly tried to promote. Moreover, although President Obama’s Executive Order has helped bring some cohesion to interrogations, broader detention issues remain in flux and there is little, if any, Community-wide ethical guidance to shape conduct consistent with an established set of rules on these other issues.

Though less obvious than the programs listed above, intelligence analysis also may have an ethical dimension to it. Analytic standards ultimately are deontological lenses through which analysts can systematically evaluate their peers’ work products within a shared framework. Although it has not framed the standards in terms of ethics per se, the ODNI continues to work on Intelligence Community-wide standards of analytic integrity. Much like the programs enumerated above, however, much of the work on this effort depends on the agency in question. The CIA’s Sherman Kent School for Intelligence Analysis is a case study for the notion that analytic education can be done comprehensively, and the CIA has a host of initiatives designed to ensure that its analysis is as objective as possible. The government’s experiences with prewar assessments of Iraq’s weapons of mass destruction program demonstrate that such programs may still be insufficient. The military has a strong analytic education program

65. Id.
69. See generally OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, 100 DAY PLAN FOR INTEGRATION AND COLLABORATION (2007) (outlining six areas to increase integration and facilitate collaboration throughout the Intelligence Community); OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, 500 DAY PLAN FOR INTEGRATION AND COLLABORATION (2007) (same).
at the National Defense Intelligence College.\textsuperscript{72} Other programs, such as the analytic training and guidance offered to FBI analysts, are less robust.\textsuperscript{73} The ODNI has issued guidance to open up analytical training at individual agencies to all Intelligence Community employees, a move that will likely help to break down the agency-specific “winners and losers” of analytic integrity, but more work remains to be done. Enterprise-wide rules that incorporate the notion of competence as an ethical pursuit could help in this respect.

C. OBSERVATIONS AND THE NEED FOR REFORM

From a broader perspective, the business of intelligence is still mostly fractured, and in this respect it is perhaps unsurprising that the field of ethical guidance is equally piecemeal. The ethical questions an individual intelligence officer is likely to ask—Is my role in this military detention and interrogation ethical? Is my analytic tradecraft becoming of my professional duty? What if my personal ethical judgments differ from those I am being told I should have as an intelligence professional?—are still likely to be answered by an individual agency’s ethics office. These answers are likely to be dependent, not on a shared sense of what appropriate conduct would look like, but on the individual agency’s regulations and management’s sensibilities.

This situation encourages ethical discernment of a proposed act at an immediate level, even though many of the implications of the act will be felt on a broader scale. In essence, because there are few ethical regulations to guide an intelligence officer’s conduct in a given situation, the officer must make judgments without the benefit of such guidance. Even when there is some guidance on point, the chances are high that the regulations were promulgated by the individual officer’s employing intelligence agency—and therefore may not reflect the considered views of the entire Intelligence Community or policymakers, whose ability to monitor individual agencies’ regulations may be limited.

An individual officer’s actions also may rise to the point that they have systemic effects. In that case, one officer’s decision to engage in conduct that is perceived as unethical could cause considerable damage to the public image of the United States, harm the ability of the Intelligence Community to conduct operations, or result in other negative consequences.\textsuperscript{74} Moreover, the officer’s


\footnotesize{\textsuperscript{74} Instances of prisoner abuse by some military personnel at Abu Ghraib, for example, were widely criticized from a variety of vantage points, including the U.S. Government. Moreover, the mistreatment may have had a deleterious effect on some U.S. operations. See Seymour M. Hersh, The Gray Zone, NEW YORKER, May 24, 2004, at 38, 44.}
action may encourage others to act similarly; if the trend is not corrected, the action could be seen as “ethical” simply because it has been permitted to spread by example.

A deontological construction avoids some of these issues by promoting a rules-based approach to ethical guidance. In order for the rules to be effective, however, the guidance has to encompass the entire Intelligence Community so the rules reflect the considered views of experts from a variety of agencies and perspectives. Moreover, consolidating ethical guidance has the benefit of decreased monitoring costs for policymakers, who would only need to look to one place to determine what rules shape intelligence officers’ behavior.

More to the point, Intelligence Community-wide ethical rules would directly respond to the public’s claim that the Intelligence Community could act better than it has in the past. Replacing the fragmented constellation of ethical guidance—to the extent there is even guidance—with a consolidated set of ethical rules that bind the entire Intelligence Community would send a clear message that rules will shape behavior in order to promote better outcomes. This is strikingly similar to the thinking that went into the development of legal ethics standards, including the ABA Model Rules. Like the ABA Model Rules, Intelligence Community-wide ethical rules also could help to promote a shared sense of identity and purpose among intelligence officers; by working within the same ethical framework, clashes between intelligence agencies over ethical standards would be reduced or eliminated. Morale within the Intelligence Community could not help but improve as a result.

To respond to these problems and develop a more professional, integrated intelligence workforce that clearly and consistently rises to meet the challenge of ethical issues that cut across all agencies, the Intelligence Community should adopt Model Rules of Professional Conduct modeled on the American Bar Association’s guidance to practicing attorneys.

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75. A predecessor to the ABA Model Rules, the Canons of Professional Ethics, was promulgated at least in part to better position the legal profession to perform its unique societal role and restore the “profession’s prestige in the eyes of the general public.” James M. Altman, Considering the A.B.A.’s 1908 Canons of Ethics, 71 FORDHAM L. REV. 2395, 2413 (2003). Similarly, the ABA Model Rules represented an attempt to respond to public criticism with a set of guidelines that more accurately reflected the changed regulatory context at the time. See Schneyer, supra note 10, at 168–70, 172–74; AM. BAR ASS’N SPECIAL COMM. ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 2–3 (1970), available at http://www.abanet.org/cpr/reports/Clark_Report.pdf.

76. Cf. Johnston, supra note 3 (revealing a rift between the CIA and FBI over interrogation techniques); Lichtblau & Shane, supra note 3 (describing “trench warfare” between FBI and military over interrogation techniques); Shane, supra note 3 (reporting testimony from congressional hearings by FBI and intelligence officials on disagreements over interrogation techniques).

77. Morale within the Intelligence Community recently has been described as low, at least in part due to uncertainty over potential prosecutions of intelligence officers. See Walter Pincus & Joby Warlick, Ex-Intelligence Officials Cite Low Spirits at CIA, WASH. POST, Aug. 30, 2009, at A2. Having a consistent set of ethical guidelines in place before the officers act might prevent some of this uncertainty by making it clearer when ethical and legal norms would be violated.
III. THE EXAMPLE OF THE ABA MODEL RULES: INTELLIGENCE COMMUNITY RULES OF PROFESSIONAL CONDUCT

The ABA Model Rules of Professional Conduct set out professional standards for practicing attorneys. Though the Rules are not themselves binding, they are incorporated in whole or in part by forty-seven states. In proposing that the Intelligence Community adopt a set of rules modeled loosely on the example of the ABA Model Rules, I wish to highlight five key areas where any Intelligence Community rules should follow the ABA Model Rules’ example of ethical guidance: A) treating one’s profession as an ethical pursuit; B) placing one’s professional role within a broader social and political framework; C) proffering specific guidance on issues particular to a given profession; D) binding the entirety of practitioners to make competence and expertise the primary qualifications, rather than ethical flexibility; and E) ensuring the integrity of the profession through dedicated disciplinary processes. Taken as a whole, these areas will respond to the problems identified in Part II of this Note and overcome some of the difficulties the ABA Model Rules have experienced in encouraging ethical behavior.

A. WORKING IN AN ETHICAL PROFESSION

First and foremost, the ABA Model Rules make clear that a “lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”78 Being an attorney is thus an ethical pursuit to find justice. All of one’s work has an ethical dimension. As the Rules provide, “[i]n all professional functions a lawyer should be competent, prompt and diligent.”79 The standards for an attorney are unlike those for a businessperson or writer: an attorney has special ethical obligations that flow directly from his or her profession. Importantly, competence is framed as an element of the profession’s overall ethical nature. As James Altman has argued, “[P]rofessionalism and legal ethics were inextricably intertwined: the lawyer who acted as a member of the profession was a lawyer who acted ethically and the lawyer who acted ethically was a true ‘professional.’ [Legal ethics standards] made such legal professionalism a morally robust concept.”80

Similarly, members of the Intelligence Community have a special obligation to competently ensure the safety of the United States and security for the American way of life. Doing the work of intelligence is inherently an ethical pursuit for these ideals. As the National Intelligence Strategy suggested, albeit in hortatory and nonspecific language, intelligence professionals are expected

79. Id. pmbl. para. 4.
80. Altman, supra note 75, at 2506.
81. See supra notes 30–40 and accompanying text.
to fulfill their ethical obligations in their work. This means being competent in one’s work and being ethical in the act of working; otherwise, the objectives of the Intelligence Community’s mission are undermined.

The Intelligence Community Model Rules of Professional Conduct should make clear that Intelligence Community employees have a “special responsibility,” in the words of the ABA Model Rules, to have ethical standards beyond those of other Executive Branch employees. The intelligence professional is not unlike an attorney. The successful operation of justice or policy depends upon an ethical performance of work often shrouded in mystery, with great potential consequences and minimal public understanding or awareness. In these situations, professionals have a special duty to ensure that their work is of the highest possible quality. Much as the judicial system depends on lawyers acting pursuant to the ABA Model Rules, even when few are looking, so too should policymakers depend on intelligence officers consistently holding themselves to the highest standards.

An Intelligence Community-wide standard making clear that intelligence officers are expected to act in an ethical manner at all times, and that they have a special responsibility to perform their work according to the highest ethical standards, would be an incremental but not revolutionary step. There is already language to this effect in various ODNI policy documents, but it has not been consolidated into a single ethical guidance document and therefore it is difficult to see the strong connection between this ethical obligation and others imposed upon intelligence professionals.

Given the above, a rule might be written as follows:

Intelligence Community professionals are public servants, stewards of the Nation’s trust, and protectors of the Nation’s democratic principles and human rights obligations. All such professionals have a special ethical obligation to competently and vigorously serve in the Nation’s interests, consistent with the laws of the United States and good faith moral judgments guided by the basic principles underlying these rules. Competence requires the knowledge, skill, thoroughness, and preparation reasonably necessary for an Intelligence Community professional to reasonably perform his or her duties.

The thrust of this rule is to identify the basic principles guiding the Intelligence Community’s work. It emphasizes the ethical obligation owed by Intelligence Community professionals to the broader interests of the United States as opposed to simply the physical security of the nation. The rule underscores the importance of preserving the nation’s stated democratic principles and humanitarian interests, borrowing themes from the 2005 National Intelligence Strategy. It also borrows language regarding both the special nature of the

82. See Office of the Dir. of Nat’l Intelligence, supra note 30, at 2, 14.
84. See Office of the Dir. of Nat’l Intelligence, supra note 32.
B. WORKING WITHIN A BROADER SOCIAL AND POLITICAL CONTEXT

As the preceding section made clear, both attorneys and intelligence officers operate in a broader social and political context. The ABA Model Rules remind attorneys of the importance of this fact: “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.”86 Importantly, attorneys must resolve ethical ambiguities within the general framework of the Model Rules. Even when the Rules fail to adequately address a situation, attorneys must resolve the issue “through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.”87 Finally, the Rules recognize that attorneys act within a broader legal and regulatory framework.88

Likewise, intelligence officers should be reminded of their role within the social and political process. Socially, officers are bound to the American people, who pay their salaries and whom they are charged with protecting.89 Politically, officers are bound to provide candid assessments and to multiply, rather than limit, potential policy options.90 Intelligence Community members, as unelected professionals, should never attempt to influence policy unduly.91 At the same time, intelligence officers should know that their activities reflect upon the social and political systems that support them.

Currently, efforts to this effect have been articulated in sporadic ODNI statements and in the analytic and operational guidance documents promulgated

86. Id. pmbl. para. 13.
87. Id. pmbl. para. 9.
88. See, e.g., id. scope para. 15 (noting that the Model Rules “presuppose a larger legal context shaping the lawyer’s role,” including “laws defining specific obligations of lawyers and substantive and procedural law in general”).
89. See George J. Tenet, Dir. of Cent. Intelligence, Remarks to the University of Oklahoma (Sep. 12, 1997), available at https://www.cia.gov/news-information/speeches-testimony/1997/dci_speech_091297.html (“No one with the responsibility to tend to the nation’s security, no one with the responsibility to protect the American people, would ever suggest we do so without our intelligence capabilities. . . . I haven’t the slightest doubt about what the President and American people expect of us: First and foremost, they expect the Intelligence Community to help protect the lives of Americans everywhere.”).
90. For a good discussion of the way intelligence professionals need to maintain their candid relevance with policymakers, while simultaneously guarding against any politicization of their work, see Richard N. Haass, Supporting US Foreign Policy in the Post-9/11 World: Policymakers and the Intelligence Community, 46 STUDIES IN INTELLIGENCE 1, 10–11 (2002), available at https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/pdf/v46i3a01p.pdf.
91. Cf. id. at 11–13 (describing how intelligence analysts should work with policymakers).
by various intelligence agencies. The ODNI should consolidate this guidance in a single document binding upon all intelligence officers under its direction. Intelligence officers work for both the American people and the President and Commander in Chief of the United States. The Intelligence Community Model Rules of Professional Conduct should acknowledge that discrepancies can develop between the obligations both loyalties place on intelligence officers. The Model Rules also should provide guidance as to which duty should receive preference.

A rule responsive to these principles might be written as:

Intelligence Community professionals play a vital role in the preservation of the physical, economic, and democratic aspects of the Nation. The fulfillment of this role requires an understanding by Intelligence Community professionals of their relationship to the Government, American people, and their legal system. Intelligence Community professionals are bound to expand and advise, rather than limit or decide, policy options. Similarly, Intelligence Community professionals are bound to preserve and defend the fundamental democratic and humanitarian principles of American society through their actions. The nature of the intelligence profession carries with it the possibility of conflicting guidance and obligations. At all times, Intelligence Community professionals should be guided by the terms of these rules and the basic principles upon which the rules rely.

This rule has several goals. First, it highlights the social context within which Intelligence Community professionals act, building upon language in the ABA Model Rules. Second, it provides some guidance regarding the scope and nature of officers’ obligations with respect to the rest of the government. It briefly sketches the general preference that Intelligence Community officers be guided by the principles underlying the Community-wide rules rather than an individual agency’s interpretation of an ethical obligation. One way to make this guidance even clearer—and address the ethical ordering problem identified in the earlier discussion of deontological ethics—would be to set up a system that clearly identifies a presumption of control. For example: “The order of these rules controls the degree to which deference is owed to a given rule. In the event of a conflict among rules, the lower-numbered rule shall prevail, unless the conditions set forth below are met.”

92. See, e.g., 5 C.F.R. § 2635.101(a) (2009) (discussing the notion that “[p]ublic service is a public trust”); Office of the Dir. of Nat’l Intelligence, supra note 30, at 2 (“[T]he [intelligence] Commu-


94. See supra Part I.
The rule could then go on to identify an exclusive means to avoid these requirements. One approach may be to have a signed statement by the President of the United States and the Director of National Intelligence identifying the rules in conflict, the action in which the conflict arises, the steps taken to resolve the conflict, and the reasons a higher-numbered rule should receive preference. This would be one—though certainly not the only—way to avoid the deontological conflict-of-rules problem.

C. GUIDANCE ON PROFESSION-SPECIFIC MATTERS

As with the legal profession, intelligence officers face a variety of ethical considerations that are not typical to other professions; specific ethical guidance therefore should be available to deal with these concerns. The ABA Model Rules have provisions dealing with ethical obligations of law firms and associations,95 public service,96 and information and advertising about legal services.97 These guidelines help to ensure that all lawyers play by the same rules regarding matters that they are in a unique position to know about. The lay observer, for example, will probably have little comment regarding the ethical obligations of attorneys working in law firms versus the public sector. However, having dealt with these issues firsthand, attorneys have formulated rules of sensible effect.

More importantly, although external regulations—laws passed by a state legislature—can supplement or overrule guidelines developed by attorneys, the preference of the Model Rules is for self-government:98

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.99

This language is instructive in the intelligence field and could be incorporated wholesale with few revisions into Intelligence Community-wide rules. Intelligence officers, though certainly within the control of the President and Commander in Chief, nonetheless should be free from the type of government overreaching of which the ABA Model Rules warn. In the aftermath of Watergate, the Church Committee made clear the dangers of intelligence services

95. See Model Rules of Prof’l Conduct R. 5.1–5.7 (2008).
96. See id. R. 6.1–6.5.
98. Id. pmbl. para. 10.
99. Id. pmbl. para. 12.
being used for partisan political purposes.\textsuperscript{100} The reaction following Watergate was to enhance Congressional oversight of the intelligence services and to put forward new legislative and judicial control mechanisms, such as the Foreign Intelligence Surveillance Act.\textsuperscript{101} Some have argued that this degree of supervision is detrimental given the rapidly changing, technologically sophisticated adversaries the Intelligence Community now faces.\textsuperscript{102} If this is the case, then codified language similar to the ABA Model Rules, recognizing the Intelligence Community’s special needs for self-government and the especially grave responsibilities that come from these needs, would be powerful reminders to intelligence officers of their ethical obligations.

Specific guidance on detainee treatment and analytic integrity almost certainly would be candidates for inclusion in profession-specific rules based on the example of the ABA Model Rules. In order for these rules to have any practical effect, however, they must be binding upon all those within the Intelligence Community engaging in a given regulated area.

D. BINDING THE ENTIRE INTELLIGENCE COMMUNITY

In order to avoid a situation in which intelligence officers are selected to perform tasks, not based on their competence to do so, but on their ethical ability to do so, any Intelligence Community-wide rules should follow the example of the ABA Model Rules and regulate activity across the entire profession. This is a practical consideration more than an ethical one. To make the integrated, collaborative community desired by the ODNI, intelligence officers should come to think of themselves as part of the same profession. Their individual roles will of course differ, but by establishing that all Intelligence Community officers will be held to the same ethical standards, the ODNI would avoid the ethical balkanization of the Intelligence Community. One way of phrasing a rule might be:

The purpose of these rules is to foster consistent ethical behavior within the Intelligence Community. These rules are therefore applicable as against all regular, term, and appointed employees and contractors, working for, on

\textsuperscript{100} See Mark Benjamin, \textit{The Government is Reading Your Mail}, \textit{SALON}, Jan. 5, 2007, http://www.salon.com/news/feature/2007/01/05/mail_cover/index.html. The Church Committee, formally known as the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, was created in January 1975 to investigate allegations that the CIA was conducting intelligence operations against American citizens. As a result of the Committee’s voluminous report, a variety of reforms were instituted, including the creation of the Senate Select Committee on Intelligence. See generally Christopher Hayes, \textit{The Secret Government: How Congress Can Investigate It}, \textit{NATION}, Sept. 14, 2009, at 11.


behalf of, or under the clandestine or direct control, of the Intelligence Community. Other rules may impose additional duties to supplement these rules, but in no case shall the ethical rules or obligations of an Intelligence Community member agency displace, diminish, or deny the force or application of these rules.

This rule is designed to diminish differences among agencies’ ethical guidance. Division is detrimental to the Intelligence Community for several reasons. First, it fosters qualitative differences among agencies (encouraging the animosity between CIA and FBI interrogators, for example).103 Second, it degrades the reliability of information being provided to senior policymakers (who would have to judge an agency’s information and operations by reference to standards that differ across agencies, officers, policymakers, and time).104 Third, it is a disservice to the American public, which would be uncertain that ethical obligations related to a given activity, such as interrogations, were consistently applied and fairly implemented in the first place.105

E. ENSURING INTEGRITY THROUGH DISCIPLINARY ACTION

A final instructive element of the ABA Model Rules is its disciplinary provisions. Violations of the Model Rules are to be dealt with in disciplinary proceedings that may result in an attorney being disbarred or banned from practicing law in a given jurisdiction. In addition to obligating every attorney to follow the provisions and spirit of the Model Rules, the Rules command lawyers to report their peers’ violations.106 Although in practice there are few, if any, consequences for failure to report violations, the message is one of fostering a culture of compliance. The Intelligence Community already has a strong tradition of peer reporting on security matters, and it would be a relatively simple, but critical, step to encourage peer reporting of potential ethical violations. By making violators accountable to their peers, the Intelligence Community could further strengthen its professionalism and actively rebut public and political presumptions of abuse. A notional rule to this effect would be:

All Intelligence Community professionals have an affirmative obligation to report violations of these rules to the Inspector General, Office of the Director of National Intelligence. It is a violation of these rules to not report what one

103. See e.g., Johnston, supra note 3; Lichtblau & Shane, supra note 3; Shane, supra note 3.
104. See supra note 69 and accompanying text.
105. See OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, supra note 30, at 2 (highlighting the need for the Intelligence Community to operate in a way consistent with the American public’s expectations and “in a manner that retains the trust of the American people”). When the public has perceived an inconsistency within the Intelligence Community itself, the reaction has been swift. See e.g., Richard A. Clarke, Op-Ed., The Trauma of 9/11 Is No Excuse, WASH. POST, May 31, 2009, at B1; Johnston, supra note 3; Lichtblau & Shane, supra note 3; Shane, supra note 3.
believes to be a violation of these rules, whether or not the reported action later proves to be a violation. In no case shall one who, in good faith, reports a potential violation be reprimanded, disciplined, or otherwise treated unfavorably due to his or her reporting.

Admittedly, the ABA has struggled to discipline attorneys through the Model Rules to the degree desired by the American public. One reason is that states differ considerably on what qualifies as unprofessional behavior. Similarly, because few measures are taken against attorneys who fail to report their colleagues’ violations, despite the ethical obligation to do so, many attorneys are reluctant to report violations and in so doing disturb complicated personal, financial, and professional relationships.

The Intelligence Community cannot guarantee complete compliance with any set of ethical guidelines, nor can it credibly promise to ferret out those individuals who fail to report violations when they are made aware of them. However, the Intelligence Community has several tools the legal profession and ABA do not. For instance, because all intelligence officers sign privacy waivers and are subject to initial and periodic background investigations, polygraphs, and other screenings, the Intelligence Community has the ability to detect and deter noncompliance with its ethical rules to a much higher degree than the ABA or state bar associations. For instance, during routine polygraph examinations, there could be questions regarding unreported ethical violations. Failure to report a violation would be a punishable offense. Other initiatives could complement this approach.

The rules proposed above are only a start. A more complete Intelligence Community Rules of Professional Conduct, developed under the auspices of the Office of the Director of National Intelligence and incorporating significant advice from outside parties, remains to be drafted. The Intelligence Community Rules of Professional Conduct would have a simple goal: an integrated, ethically conscious intelligence workforce whose behavior is more consistently aligned with shared ethical goals. By using the ABA Model Rules as a basic template for these rules, the Intelligence Community can draw upon the former’s rich history of encouraging ethical conduct while at the same time respecting

107. The inability of the legal profession to develop a credible, effective system to discipline unethical attorneys is one of the most common and serious complaints leveled against the bar. In its 2002 survey of American attitudes about the legal profession, the ABA found that only twenty-six percent of respondents agreed with the statement, “[T]he legal profession does a good job of disciplining lawyers.” ABA SECTION ON LITIGATION, PUBLIC PERCEPTIONS OF LAWYERS: CONSUMER RESEARCH FINDINGS 10 (2002), available at http://www.abanet.org/litigation/lawyers/publicperceptions.pdf. Similarly, improving the quality of legal discipline ranked as the second most important issue for the bar to address. Id. at 32.

108. See H. Geoffrey Moulton, Jr., Federalism and Choice of Law in the Regulation of Legal Ethics, 82 MINN. L. REV. 73, 75, 96 (1997).


110. See, e.g., id. at 748, 752–53.
the profession’s special circumstances that make more typical modalities of ethical regulation difficult.

CONCLUSION

Dealing with ethics primarily as a matter of legal compliance “ignores the fact that what is neither illegal nor against the rules may still be ethically problematic.”111 At most intelligence agencies, however, ethical guidance is precisely that: obey the law, whether it is the Ethics in Government Act, Executive Order 12,958, the Military Order of November 13, 2001, the Department of Defense’s Joint Ethics Regulation, or other agency-specific guidance.

In order to address ethical issues more directly, I have argued in this Note that the Intelligence Community should adopt universal ethical rules modeled on the ABA Model Rules of Professional Conduct. The need for such rules stems from the fast-multiplying ethical dilemmas facing intelligence officers, their Executive and Legislative Branch consumers and regulators, and members of the American public who are concerned about the Intelligence Community’s ethical struggles. The promulgation of Community-wide ethics rules should be done in the context of instituting a common culture of ethics within the Community and not merely a culture of compliance with arbitrary ethical rules. Regulating ethical behavior may not be enough to bring about the sweeping ethical reforms needed to further professionalize the Intelligence Community, but it would go a long way towards further integrating the disparate members of the intelligence profession around a shared mission and a common sense of how the mission ought to be accomplished. That, given ongoing debates about the future of the Intelligence Community and its place in our democratic society, should be foremost on our minds.