

**OXFORD INTELLIGENCE GROUP  
and  
INTERNATIONAL INTELLIGENCE ETHICS  
ASSOCIATION**

**International conference on  
The Ethics of National Security Intelligence**

**Nuffield College, Oxford  
14/15 March 2011**

**OIG & IIEA OXFORD CONFERENCE**



Nuffield College  
Oxford  
14-15 March 2011



Program Committee:      Gwilym Hughes  
                                 Michael Herman  
                                 Jan Goldman

The conference is open to scholars from a broad spectrum of disciplines, including political science, law, history, law enforcement, philosophy, international relations, and theology, and others who are interested in intelligence ethics, including government employees, and members of the press and non-governmental organizations. The 2-day conference begins on the morning of Monday 14 March 2011 and ends on the afternoon of Tuesday 15 March 2011.

Funding for this conference has been generously supported by Parsons ([www.parsons.com](http://www.parsons.com)), named one of the world's most ethical companies for 2010 by Ethisphere, a leading international think-tank that focuses on best practices in business ethics, corporate social responsibility, anti-corruption and sustainability.

**PARSONS**

OXFORD INTELLIGENCE GROUP  
and  
INTERNATIONAL INTELLIGENCE ETHICS  
ASSOCIATION

welcome you to the

International conference on  
The Ethics of National Security Intelligence

at Nuffield College, Oxford  
14/15 March 2011

## **IIEA Mission**

- *Develop a theory of ethics* for application to the problems and dilemmas that confront intelligence practitioners and their constituencies
- *Develop intelligence ethics* as a field of research, study, and practice
- *Become a resource* for domestic and foreign intelligence practitioners to use in developing projects, improving the ethical climate and guiding their decisions
- *Work with like-minded academic and professional institutions* to establish intelligence ethics as a legitimate and robust field of research, study, and practice
- *Increase the academic and professional resources* for intelligence ethics available to the intelligence community
- *Encourage international and cross-cultural dialogue* on the subject of intelligence ethics

## **Oxford Intelligence Group (OIG) History**

- After a successful international conference on intelligence in 1999 the group was formed at St Antony's College in the following year as a three-year programme. After a subsequent year at Rhodes House it migrated to Nuffield College in 2004, where it was established in its present form as the Oxford Intelligence Group.
- The Group hears papers on 'intelligence', as part of academic 'intelligence studies' and their connections with political science, international relations, and modern history. It seeks to have both official and academic speakers, and particularly values papers on foreign intelligence systems and on subjects that link 'intelligence studies' with other academic fields.
- Attendance is by invitation, but the net is cast quite widely. Those attending include current senior university members and students, retired practitioners and other government officials, and officials and academics from London and elsewhere.
- The Director is Gwilym Hughes, Fellow and Bursar of Nuffield College. The Founder Director is Michael Herman. A Steering Group is chaired by Dennis Trevelyan, formerly Principal of Mansfield College, Oxford.

## **Chatham House Rule is in effect for this conference**

### **Chatham House Rule**

When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

**Oxford Conference on the Ethics of National Security  
Intelligence  
At Nuffield College, Oxford University**

**14-15 March 2011 Programme**

**Monday 14 March 2011**

- 0830-0930** REGISTRATION (Junior Common Room - JCR)
- 0930-0945** INTRODUCTION (Large Lecture Room – LLR)  
**Gwilym Hughes, Michael Herman and Jan Goldman**
- 0945-1000** OPENING REMARKS  
Chair **Jan Goldman** (IIEA)
- Todd Wager**  
President of Parsons Infrastructure & Technology Group
- 1000-1030** Secret Intelligence  
Chair **Michael Herman** (OIG)  
**Lord Butler**, former Cabinet Secretary
- 1030-1100** TEA/COFFEE
- 1100-1200** CONCURRENT SESSIONS
- Large Lecture Room British Approaches
- Chair **Christopher Vallandingham** (IIEA)
- Mark Phythian** (Leicester)  
*The Problem of Intelligence Ethics*
- Anthony Glees & Julian Richards** (Buckingham),  
*'Devious, dishonest and complicit in torture' (Lord Neuberger, 2010). Problems of British intelligence and Counter-Terrorism*
- Clay Room French Approaches
- Chair **Richard Aldrich** (Warwick)
- Charlotte Lepri** (IRIS Paris)  
*The Crossroads Between Ethics and Necessity*
- Andre Ranson** (French Army rtd)  
*Intelligence and French Soldier's Ethics*

**1210-1310**

PLENARY SESSION (LLR)

Intelligent Ethics

Chair **John Nomikos** (RIEAS Greece)

**Tony Coady** (Melbourne)

*Intelligent Ethics and the Ethics of Intelligence*

Discussant **Seth Lazar** (Nuffield)

**1315-1415**

LUNCH (Nuffield College Hall)

**1415-1515**

PLENARY SESSION (LLR)

Irish Experiences

Chair **Shlomo Shpiro** (Bar-Ilan)

**Samantha Newbery** (Salford)

*Does torture work? Are We Asking the Wrong Questions?  
The view from Northern Ireland, 1971*

**Bill Duff** (Royal Ulster Constabulary rtd)

*Ethics in Practice*

**1515-1545**

TEA/COFFEE

**1545-1700**

PLENARY SESSION (LLR)

Problems of Espionage

Chair **Don McDowell** (ISCN Austria)

**Jan Kleffel** (Bundesnachrichtendienst rtd)

*Ethics of Spying: German experience*

**Jan Goldman** (FBI)

Ethical Espionage: Overcoming Weakness and  
Vulnerability to the Intelligence Professional

**Professor Laurence Lustgarten** (Oxford)

**1830**

Reception in Senior Common Room (SCR)

Dress: Jacket & tie

**1900**

College Hall

CONFERENCE DINNER and ADDRESS - Nuffield

Chair **Laurence Whitehead** (Nuffield)

**Philip Bobbitt** (Texas, Columbia)

## Tuesday 15 March 2011

- 0900-1000** PLENARY SESSSION (LLR)
- Remote Killing & Surveillance  
Chair **George Peirce** (DIA)
- James Bamford** (author)  
*CIA and Remote Killing*
- Angela Gendron** (Buckingham and CCISS Ottawa)  
*Remote Overhead Surveillance*
- 1010-1040** CONCURRENT SESSIONS
- Large Lecture Room Intelligence Analysis  
Chair **Michael Kowalski** (Office of the Coordinator,  
Counter Terrorism, The Netherlands))
- John Tolson** (Ministry of Defence)  
*Ethics and the Intelligence Analyst*
- Clay Room Just Intelligence  
Chair **George Lucas** (US Naval Academy)
- Ross Bellaby** (Aberystwyth)  
*Just Intelligence*
- 1040-1110** TEA/COFFEE
- 1110-1210** PLENARY SESSION (LLR)
- Israeli Approaches  
Chair **John Wahlquist** (IIEA)
- Epraim Kahana** (Western Galilee College)  
*Israel as a Laboratory of Intelligence Ethics*
- 1210-1310** PLENARY SESSION (LLR)
- Chair **Alex Danchev** (Nottingham)
- Michael Maples**, US Army rtd  
*Title tba*
- 1315-1415** LUNCH – Nuffield College Hall

**1415-1550**

PLENARY SESSION (LLR)

Legal Perspectives

Chair **Anthony Glees** (Buckingham)

**John Radsan** ((William Mitchell College of Law, Saint Paul, Minnesota)

*When Lawyers and Intelligence Officers Dance to Different Beats*

**Ian Leigh** (Durham)

*The Rainbow's End? : Law, Ethics and International Intelligence Cooperation*

**Philip McEvoy** (Deputy Director Service Prosecutions, UK MoD) *Interrogation in the current military operating environment: a legal perspective*

Discussant: **Cecile Fabre** (Oxford)

**1550-1620**

TEA/COFFEE

**1620-1715**

PLENARY SESSIONS (LLR)

Chair: **Sir David Omand** (King's College London; formerly Intelligence and Security Coordinator, Cabinet Office)

**1620-1655**

ROUND TABLE

Non-Anglophone Contributions to Anglophone Debates

**Andre.Ranson, Charlotte Lepri, Jan Kleffel, Ephraim Kahana**

**1655-1715**

**Sir David Omand**

*Reflections and Conclusions*

**1715-1730**

FINAL REMARKS

**Michael Herman, Gwilym Hughes, Jan Goldman**

**2000**

Optional: Please indicate to organisers if you wish to attend:

FILM SHOWING (SCR)

Errol Morris, Standard Operating Procedure (a film of Abu Ghraib confessions)

Introduced by **Alex Danchev** (Nottingham)

# Abstracts and Notes on Speakers

Monday 14 March 2011

1000-1030

## Lord Butler

Starting Point is:

All acquisition of secret intelligence is abuse of Human Rights but, as European Convention recognises, right to privacy not absolute

Infringement must be:

- i. Proportionate
- ii. Under powers granted by law
- iii. Subject to Democratic Accountability
- iv. Monitored independently of the Executive
- v. Subject to Appeal by citizens

UK arrangements:

- i. Each Agency governed by specific law
- ii. Infringements on Privacy require warrant from Secretary of State or Senior Police Officer
- iii. Monitored by judge with full access to papers
- iv. Public right of appeal to tribunal
- v. Oversight by committee of Parliamentarians

No powers to authorise assassination or torture.

This basis seems satisfactory but remaining stresses:

- i. Length of detention without charge
- ii. Disclosure of evidence obtained by intelligence
- iii. Means of extracting evidence
- iv. Bribery
- v. Discrimination in Employment

1100-1200

## Professor Mark Phythian

Mark Phythian is Professor of Politics in the Department of Politics and International Relations at the University of Leicester. His research interests are in the areas of intelligence, national security and foreign policy. He is the author or editor/co-editor of eleven books including: *The Politics of British Arms Sales Since 1964* (Manchester University Press, 2000); *Intelligence in an Insecure World* (with P. Gill, Polity, 2006); *PSI Handbook of Global Security and Intelligence: National Approaches: Vol. 1 – The Americas and Asia / Vol. 2 – Europe and the Middle East* (edited with S. Farson, P. Gill & S. Shpiro, Praeger, 2008);

*Intelligence and National Security Policymaking on Iraq: British and American Perspectives* (edited with J. P. Pfiffner, Manchester University Press/Texas A & M University Press, 2008); *Intelligence Theory: Key Questions and Debates* (edited with P. Gill & S. Marrin, Routledge, 2008); and *Commissions of Inquiry and National Security: Comparative Approaches* (edited with S. Farson, Praeger, 2011), as well as numerous journal articles and book chapters. He is currently working on a 2<sup>nd</sup> edition of *Intelligence in an Insecure World* for Polity with Peter Gill.

### *The Problem of Intelligence Ethics*

This paper discusses the relationship between national security intelligence and ethics and the tensions inherent in it. It argues that in the contemporary world the relationship between ethics and intelligence cannot be properly understood in isolation from the question of the relationship between intelligence and theories of International Relations more broadly. The paper goes on to argue that the intelligence-ethics tension arises from the clash between the essentially communitarian nature of security intelligence, which defines responsibilities and obligations primarily in reference to the nation state, and the expectations of the cosmopolitanism that underpins much ethical and human rights discourse. In contrast to communitarian approaches, this sees all individuals as being of equal moral standing and all states as having responsibilities with regard to 'good international citizenship', as opposed to the promotion of narrower communitarian interests. In practice, the question of what constitutes 'ethical' intelligence conduct is understood in specific national contexts informed by national political cultures on which shifts in strategic environment impact. As former US Director of Central Intelligence Stansfield Turner put it: "There is one overall test of the ethics of human intelligence activities. That is whether those approving them feel they could defend their actions before the public if the actions became public." However, the public is not monolithic and is likely to be divided over shifts in practice, in response to shifts in the strategic environment, which have ethical implications. This points to the need for effective oversight to ensure that intelligence agencies apply appropriate ethical standards to their work. As the efforts of the Intelligence and Security Committee in the UK demonstrate, this represents a clear challenge that requires considerable political will as oversight bodies find themselves pitted in contests with their executive branches.

These contests extend to the challenge of investigating the ethical consequences of 'war on terror' intelligence co-operation, which also has a clearly political dimension. In this context, the 'war on terror' intelligence experience provides a powerful argument for the need for much more robust intelligence oversight. This paper sees oversight as performing a vital role in policing the relationship between ethics and national security intelligence. However, while enhanced oversight may be able to mitigate the problem of intelligence ethics, it cannot eliminate it.

**Professor Anthony Glees & Dr Julian Richards**

*'Devious, dishonest and complicit in torture' (Lord Neuberger, 2010). Problems of British intelligence and Counter-Terrorism*

The ethics of secret intelligence operations have been a matter of informed debate for a very long time. While Immanuel Kant dismissed spying as 'intrinsically despicable', rather more recently Michael Herman asked whether intelligence activity raises any ethical objections at all since 'no-one gets hurt by it, at least not directly'.<sup>1</sup> What is certain, however, is that since the advent of the 'War on Terror', the ethics of intelligence activity have come under even closer political, scholarly and public scrutiny than ever before. This has raised fundamental questions about the probity of any secret activity undertaken by western liberal democracies. In the UK, virtually no aspect of counter-terrorism policy has escaped investigation by those who fear it may undermine core ethical principles. Control orders have, properly, been one subject of intense discussion. Another has been the allegation that the strand of counter-terrorism policy known as 'Prevent' requires the police to spy on Muslim communities. Most dramatic of all, perhaps, has been the court case involving former Guantanamo detainee Binyam Mohamed. It is reported that the government's QC in the case, Jonathan Sumption, expressed considerable alarm at the views of MI5 expressed by the Master of the Rolls, Lord Neuberger, one of Britain's most senior judges. *The Guardian* summarised Lord Neuberger's opinion of MI5 as an agency that is 'devious, dishonest and complicit in torture'.<sup>2</sup>

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<sup>1</sup> M Herman (2004) Ethics and Intelligence after September 2001. *Intelligence and National Security* 19, p.342

<sup>2</sup> The Guardian, 11 February 2010

Such criticisms have led to a formal judicial review (headed by Sir Peter Gibson) but also the promise in November 2010 of substantial payments to the detainees being made by the government in return for their silence.<sup>3</sup> Public opinion may no longer be on the side of those demanding sound (but lawful) security policies but increasingly tending to favour those who call them into question. Such unprecedented disquiet about the UK's intelligence agencies suggests that ethical questions now being asked about intelligence activity are no longer abstract ones to do with private morality, but practical ones which affect public security policy. The Wikileaks chief, Julian Assange, has found many supporters in Britain who defend his decision to publish US state secrets which will inevitably cause much damage, chiefly to the US's allies.

This paper seeks to provide an analysis of the ethical issues surrounding the UK's secret intelligence activity since 9/11 and to ask whether a provisional judgement can be made as to whether the UK's secret agencies uphold or undermine the central and definitive position given to human rights in British political culture. It raises some of the problems now encountered by intelligence agencies, in the Age of Terror, in seeking to reassure the public about what they do and questions whether ethical concerns seem likely to redefine the limits of secret activity and the core intelligence relationships in contemporary Britain.

**1100-1200**

Clay Room

**Charlotte Lepri**

Charlotte Lepri has been researcher at IRIS (Institute for International and Strategic Relations) since 2007. She is specialized in Intelligence, Security and Defence issues, as well as in American Politics.

Her research includes the following areas:

- Intelligence: Democratic control of Intelligence agencies, Privatisation of Intelligence, French and American Intelligence policies
- Security: National security, Homeland Security, Global Security, Security Sector Reform, Crisis management
- Defence: French Defence Policy
- American Politics: US foreign and domestic policies

In October 2010, she took part in the Transatlantic Opinion Leaders to Afghanistan (TOLA), a NATO-

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<sup>3</sup> <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/8136068/Guantanamo-Bay-prisoners-profiles-of-the-seven-men-who-have-won-compensation-from-Britain.html>

organized tour in Afghanistan. In Jan-Fec 2010, she took part in the State Department sponsored Program : Study of the United States Institute on U.S. National Security Policy Making in a Post-9/11, at the University of Delaware.

She teaches American politics, Transatlantic Relations, Global Security, Homeland Security at ISRIS. She is Director of Studies for the Second year of the Masters (ISRIS) in Defense, Security and Crisis Management.

She is also currently a PhD student at the University of Paris. Her PhD topic deals with Parliamentary Oversight over Intelligence Services.

She graduated at the University of Bordeaux in Global Security, Political Science and Political Economy. She spent one year (undergraduate) at the Tor Vergata University in Rome, Italy, and one year (graduate) at the University of Virginia in International Relations.

### **Lt.General Andre Ranson**

Commissioned in 1968 from Saint-Cyr Military Academy, Lieutenant-General André RANSON (France) graduated from Ecole Supérieure de Guerre in Paris, and the US Army War College (class of 91). He held various positions in airborne operational units, the Army-staff and the Joint Defense Staff and served as Liaison officer to US Training and Doctrine Command, deputy-commander French 11<sup>th</sup> airborne division, ACOS/OPS Multi National division South-East in Bosnia-Herzegovina.

He was Commander Joint Special Operations Command (2000-2001) and Director Military Intelligence (2001-2005). Lt-General RANSON is Chairman of HESTIA Intelligence Studies Group and in charge of Intelligence studies for the Joint Defense College in Paris.

### ***Intelligence and French Soldier's Ethics***

The French Army faced a lot of ethical problems during the decolonization era, and especially during the Algerian operations of 1954-1962. The fight against terrorist attacks during the Battle of Algiers and the methods used by some intelligence officers while looking for intelligence opened a wide debate within the armed forces, compromised their moral authority, but also gave birth to a controversy which effects can still be felt in the population today.

From 1990 onward, the French Army, including officers ranking in the highest levels put a lot of thought into this problem, and the result was a series of documents dealing with the behavior of the soldier in action. Those documents were based on a new vision of what ethics in the armed forces should be. Change in the nature of most

conflicts happened too quickly for the law to adapt to the whole of these new situations. More and more, soldiers come face to face with asymmetrical conflicts and situations in which terrorist methods are used. In order to deal with these methods and to avoid the trauma of the Algerian conflict, regulatory requirements and procedures were given to the combatants to try and prevent unacceptable ethical behavior. Moreover, the goal was to reaffirm principles aiming to guide actions when there is a lack of regulations.

These rules and principles, valid for all military actions, also apply when dealing with intelligence, and above all with Human Intelligence. A clear line of conduct is essential when dealing with captured persons, using tricks and deception, manipulating sources; line of conduct which may be in contradiction with what might be considered as being efficient in the short term.

**1210-1310**

**Professor Tony Coady** (Melbourne), C.A.J. (Tony) Coady was Boyce Gibson Professor of Philosophy at the University of Melbourne and is now Vice Chancellor's Fellow and Professorial Fellow in the Centre for Applied Philosophy and Public Ethics at that university. He has played a major role in the growth of applied philosophy in Australia. His book, *Testimony: a philosophical study* (OUP, 1992) has had a significant impact on developments in contemporary epistemology. More recently, his book *Morality and Political Violence*, was published by Cambridge University Press in early 2008 and another book, *Messy Morality: the Challenge of Politics*, was published by Oxford University Press late in 2008.

***Intelligent Ethics and the Ethics of Intelligence***

The paper begins by raising the issue of the competence of intelligence work and its connection with ethics. It makes several distinctions in forms of intelligence work and then discusses the goal of such work. The paper next proposes some clarification of the nature of morality and of the role of philosophical theories concerning it before proceeding to a discussion of role morality and its relevance to the forms of intelligence work previously distinguished—analysis, spying and “spookery”. It is argued that role morality cannot be considered in isolation from an independent moral assessment of the purpose the role serves and of the means it licenses. This point is applied to intelligence work. Certain virtues and vices particularly relevant to intelligence work are then discussed, and the paper concludes with an elaboration of

the philosophical theory of “dirty hands” and its relevance to the topic.

1415-1515

**Dr Samantha Newbery**

Dr Newbery is Lecturer in Contemporary Intelligence Studies at the University of Salford, Greater Manchester. She has a PhD from Trinity College Dublin, entitled ‘Interrogation, Ill-Treatment and Intelligence: Northern Ireland, 1971-78’, which is currently being developed into a monograph addressing the origins and effects of controversial interrogation techniques in Northern Ireland in the 1970s and in the context of counter-insurgencies waged as part of the ‘war on terror’. Dr Newbery’s current teaching provision at Salford includes modules in contemporary intelligence and security, intelligence ethics, and counter-insurgency.

***Does torture work? Are We Asking the Wrong Questions? The view from Northern Ireland, 1971***

The torture debate is dominated by the question ‘does torture work?’. Although the issues this question pertains to are worthy of investigation, in its current form the question is of limited use. This paper will argue that in order for debate about the ethics of using controversial interrogation techniques as methods of intelligence-gathering to be more constructive, contributors to the torture debate should specify what they mean by ‘torture’ and the criteria against which they are judging its effectiveness. That these recommendations for moving the torture debate forward are realisable will be demonstrated with reference to the view from Northern Ireland, where controversial techniques were used as aids to interrogation against fourteen detainees in the autumn of 1971. The paper will examine the debates about whether these techniques constituted torture as defined in international human rights law, which demonstrate that the term ‘torture’ is not as useful as it is often assumed. The criteria used to judge the effectiveness of the techniques in the Northern Ireland case will then be discussed. This will be followed by discussion of the importance of specifying precisely how wide the net is being cast regarding what effects of controversial techniques are being included in a judgment of whether they have ‘worked’. In short, this paper will demonstrate that there is great scope for moving the torture debate forward by asking more specific questions than ‘does torture work?’

**Bill Duff** BSc, MA, FRGS, FRUSI *Ethics in Practice*  
Bill Duff served in the Royal Ulster Constabulary and Police Service of Northern Ireland and is a regular lecturer on intelligence and security related matters.

He will talk about the ethical dimension to intelligence gathering and the operational exploitation of intelligence in a counter terrorist environment.

1545-1700

**Col. Jan Kleffel**

Colonel rtd. Bundeswehr

27 yrs. German Foreign Intelligence (BND),

Including:

4 yrs. Head of International Terrorism Branch

4 yrs. Head of Western and Third World Division

13 yrs. COS Tokyo, Islamabad, New York/UN

after retirement OSCE Kosovo Verification Mission, Head of Field Office

5 yrs. OSCE/ODIHR and EU Election Observer (15 missions)

***Ethics of Spying: German experience***

***Public attitude towards intelligence in Germany***

In Germany Intelligence and Secret services were thoroughly discredited by the ruthless manner in which they were used by the Nazi regime to suppress the opposition. This historical fact explains the public attitude towards intelligence even nowadays, which is hostile, at least indifferent.

Public opinion: *"Intelligence professionals will say or do anything to accomplish their jobs, and to be employed as an intelligence professional is to abandon any sense of moral judgment"*

**Jan Goldman**

***Ethical Espionage: Overcoming Weakness and Vulnerability to the Intelligence Professional***

Going beyond the standard joke of the "oxymoron" of ethics and intelligence work, this presentation will centre on the "professionalism" required of intelligence operations. In the past, the public, policymakers and even some members of the intelligence community have been reluctant to accept ethical conduct in the intelligence profession. Is this because intelligence is not a profession? Or is intelligence work exempt from ethical conduct? Is intelligence work so unique that there is no other profession like it? What does it mean to be an

“ethical” intelligence professional?

Given the history, myth, folklore and media’s fascination of espionage, it is almost impossible to view ethical conduct as it applies to the intelligence cycle. Consequently, some individuals inside and outside of the intelligence community view ethical conduct as both a weakness and vulnerability to the profession -if in fact, intelligence work can be considered a profession. Given the history of intelligence work, where does a moral framework fit as part of the ethos of those that work in the intelligence community. This presentation will outline a short history of the US intelligence community and how it has evolved from a personal to an organizational ethos for the intelligence worker. This evolution that has been the predominant ethical basis for professionalism in the US Intelligence Community. This presentation will conclude with the argument that the current rules-based intelligence community determined solely by legal oversight, threatens the true nature of intelligence work and further weakens the effectiveness of the intelligence professional’s behaviour.

NOTE: The views expressed are those of the author and do not reflect the official policy or position of any agency, department or the US government.

### **Historical Review**

#### **Fremde Heere Ost (Foreign Armies East)**

was a German military intelligence organization as department of the General Staff focussed on analyzing the Soviet Union and other East European countries during the Second World War. Since 1942 it was headed by Major General Reinhard Gehlen. Gehlen realized early that the war was lost and foresaw the coming east-west conflict between Americans and Soviets. He ordered to microfilm his archives and buried them in the Austrian Alps. On May 22nd, 1945 he surrendered to the US Army. He offered them his intelligence archives and his network of contacts. In view of their insufficient knowledge about their previous allies the Americans accepted the offer.

**The Gehlen Organization** was set up in June 1946 under the tutelage of the US Army G2 (intelligence) and was handed over 1947 to the newly established Central Intelligence Agency (CIA). The Gehlen Org was for several years the only eyes and ears of the CIA on the ground of the Soviet Bloc.

On April, 1st, 1956 the **Bundesnachrichtendienst** was created from the Gehlen Organization and transferred to

the West German Government. Reinhard Gehlen became the first President of the BND and stayed in office until 1968.

### **Rules of the game**

- Only intelligence collection, no covert action
- Personal experience Afghanistan: only info and hardware collection, no support for mujahedin actions against Soviets ("leave that to the Americans")
- Always according to the rule of law; problem of "trial orders" in the field of International Terrorism; advance clearance with Federal Prosecutor General
- BND under strict control: Parliamentary Control Panel, Parliamentary Budget Committee, Data Protection Commissioner, G-10 commission (article 10 of constitution "Privacy of correspondence, posts and telecommunications"), Federal Chancellors Office
- No blackmail, no honey traps, only positive incentives (money)
- No "ruthless" methods; No "false flag" operations
- No academic titles for cover names
- No assignment of criminals
- No assignment of journalists, clergymen, own govt. officials
- No sexual or other blackmail; no extortion, betrayal

### **Motives for cooperation**

Motives for cooperation: patriotism, hate against enemy, greed, craving for recognition; sympathy for Germany (Mujahedin in Afghanistan against Soviets)  
Foreign citizens become agents of BND for a variety of personal reasons: ethical concerns about their own government; the lure of adventure, excitement and secrecy; desire of money; agents resentments and frustration concerning their own careers; combination of above mentioned facts.

### **Single aspects**

Agents should collect only that type of information which cannot be collected by Foreign Office diplomats or through clandestine technical means. Sometimes the agent will be asked to provide reporting in order to verify or amplify data from other sources. Sometimes the information desired is so valuable that extremely high risks and costs in an attempt to gain it are justifiable (International Terrorism). In our work, the end does not justify the means, but it frequently charts the course which must be taken.

Discussant: **Professor Laurence Lustgarten** (Oxford)

**Tuesday 15 March 2011**

**0900-1000**

**James Bamford** (author)

James Bamford, a bestselling author and an Academy Award nominated documentary producer, is the leading writer on the highly secret National Security Agency. His most recent book, *The Shadow Factory: The Ultra-Secret NSA, from 9/11 to the Eavesdropping on America* (Doubleday, 2008), became a *New York Times* bestseller, was named by *The Washington Post* as one of "The Best Books of 2008," and won the Best Book Award from Investigative Reporters and Editors, the professional association of investigative reporters. It was the third in his trilogy on the NSA, following *The Puzzle Palace: A Report on NSA, America's Most Secret Agency* (Houghton Mifflin, 1982) and *Body of Secrets: Anatomy of the Ultra-Secret NSA, From the Cold War to the Dawn of a New Century* (Doubleday 2001), both also award winning *New York Times* bestsellers. He is also the author of *A Pretext for War: 9/11, Iraq, and the Abuse of America's Intelligence Agencies* (Doubleday, 2004), also a bestseller. Mr. Bamford has also written for many magazines, including *The New York Review of Books*, *The Atlantic Magazine*, *The New York Times Magazine*, *Rolling Stone*, *Harpers* and other publications. In 2006 he won the National Magazine Award for Reporting, the highest award in the magazine industry, for his *Rolling Stone* article on Iraq, "The Man Who Sold The War." In addition to his writing, Mr. Bamford won numerous television awards as the Washington Investigative Producer for ABC's *World News Tonight* with Peter Jennings, where he covered the first Gulf War among other major stories. More recently, as a documentary producer for PBS, he was nominated for an Academy Award for his film, *The Spy Factory*, which was based on his most recent book.

Mr. Bamford has testified as an expert witness on intelligence issues before committees of the Senate and House of Representatives as well as the European Parliament in Brussels and the International Criminal Tribunal for the former Yugoslavia. Mr. Bamford holds a Juris Doctor degree and has taught at the University of California, Berkeley as a distinguished visiting professor.

### ***CIA and Remote Killing***

In my presentation, I will explore the ethical issues surrounding the CIA's devolution from a failed intelligence agency to a secret assassination bureau; technospies in the safety of windowless Washington offices pushing buttons on joysticks as they kill people half the world away, many of them innocent civilians, before heading home for supper with the family. "A virtueless war," Sir Brian Burridge, the former British Air Chief Marshal in Iraq called it, requiring neither courage nor heroism.

Early on the morning of December 17, 2009, a U.S. Navy warship secretly launched a series of BGM-109D Tomahawk cruise missiles loaded with cluster bombs that rained down on al-Maajala, a poor farming village in Southern Yemen. The attack killed 21 children and 29 innocent women and men as they slept, badly injured dozens more, burned much of the village to the ground, and spread hundreds of bomblets throughout the area that, days later, killed and seriously injured additional innocent people. Although the targets were senior al Qaeda members, the missiles were far off target. The Convention on Cluster Munitions, signed by 106 states, comprehensively bans the manufacture, transfer and use of cluster munitions. Another attack took place on Christmas Eve, with still more in 2010. One killed a deputy governor, a respected local leader who Yemeni officials said had been trying to talk al Qaeda members into giving up their fight.

To cover-up U.S. involvement in the bloody attacks, hiding it from the American public as well as the Yemeni public, the Obama administration agreed to an elaborate series of lies and deceptions with Yemen's corrupt president, Ali Abdallah Saleh, then in the thirtieth year of his reign. They included a well-publicized "congratulations" call to Saleh from President Obama for the deadly attack on al-Maajala, and a promise by Saleh that, "We'll continue saying the bombs are ours, not yours," according to a secret U.S. State Department cable made public by WikiLeaks.

Lies and deceptions with corrupt Middle East leaders; secret attacks on a country far from any war zone, a country with which the United States has never declared war; innocent women and children blown apart in their sleep by weapons banned around the world; friendly government ministers killed, press forbidden from viewing the carnage.

While much of the Middle East is undergoing a major change from the ground up, overthrowing dictators and corrupt leaders, for the past decade the United States has been attempting to change the Middle East from the sky down with cruise missiles, cluster bombs, Predators and Rapiers to keep those same leaders in place for decades more. And Americans wonder why over the years a handful of Middle East terrorists have attacked the U.S.? The real question is why so few, since such operations place the U.S. at great risk for retaliation, in addition to being seriously misguided.

According to U.S. officials, the only reason the attack was conducted by a U.S. Navy ship rather than by armed CIA drones was lack of availability at the time as a result of their constant use in the skies over Pakistan. A previous Yemen attack in November 2002 was conducted by a CIA Predator, leaving six people, including an American, dead. Plans are now being discussed to permanently base weaponized Predator and Rapiet drones at Camp Lemonnier, the U.S. Special Operations base in Djibouti, for future secret CIA attacks against Yemen, among the targets an American citizen never convicted of a crime.

**Angela Gendron** (Buckingham and CCISS Ottawa)

Angela Gendron is a Senior Fellow at the Canadian Centre of Intelligence and Security Studies (CCISS), The Norman Paterson School of International Affairs, Carleton University, Ottawa, Canada and a Visiting Fellow at the Centre for Intelligence and Security Studies at Buckingham University, Buckingham, England. Her research interests cover Intelligence Studies, terrorism and counter-terrorism, Islamic radicalization, critical infrastructure protection, and ethical issues pertaining to national security policy and operations.

Her research work on militant Islamism and radicalization has been commissioned by Canada's Integrated Threat Assessment Centre (ITAC) and the Department of Justice. Angela's current research interest in the ethics of using unmanned aerial vehicles for non-military national security purposes has received the support of the DHS Centre of Excellence for Border Security at the University of Arizona, Tucson where she has been a Visiting Fellow since January.

### ***Shrinking the realm of privacy***

What are the ethical implications of deploying unmanned aerial vehicles (UAVs) for national security purposes including law enforcement, critical infrastructure protection

(CIP), border security and counter-terrorism operations. While we may accept that intrusive methods of surveillance and investigation with respect to a specific person or small group may be a necessary and proportionate response to domestic threats, the migration of UAVs from the military battle space to the civilian sphere has raised the spectre of an ever present and pervasive 'spy in the sky.'

Domestic intelligence gathering, the secret collection of information by a government on its own citizens and residents, has always posed a potential threat to individual liberty and democratic/constitutional government. Public concern over the perceived erosion of individual privacy rights is generating opposition to the introduction of these new technologies which offer the benefits of cost effective, precise and timely information gathering - capabilities valued by those tasked with countering growing domestic threats. Arguably, information gathering to assess the vulnerabilities of critical infrastructure and protect the integrity of borders poses less of a risk to civil liberties but it is unlikely that the general public will draw that difference.

Privacy issues are not unique to the deployment of UAVs. What is new is that remote controlled UAV mounted sensors provide a surveillance capability which far exceeds anything previously possible in terms of scale, scope and detail. The implications of this are that a compelling case will need to be made on the basis of a precisely defined objectives and assessments of proportionality will need to take account of second order or 'spillover' effects on the population at large i.e. the 'chilling' effects of the surveillance society.

To assuage public fears and harness the technological imperative, a strong legal and ethical framework is required to uphold human rights and ensure that new technologies serve the interests of human kind and public safety. The inadequacy or ambiguity of existing legislation relating to overhead surveillance has led to an increasing number of cases coming before the courts. Central to any review of the existing rules is the question posed by Supreme Court Justice Antonin Scalia in 2001 when he said:

*"The question we confront today is what limits there are upon the power of technology to shrink the realm of guaranteed privacy."*

**John Tolson**

John Tolson has been Deputy Head in the Directorate of Strategic Assessments, Ministry of Defence (MoD), since July 2006. Since June 2010 he has been responsible for the operation of the 24/7 Intelligence Watch, the delivery of Defence Intelligence (DI)'s flagship current intelligence and warning products and leading the professional development process for analysts and managers. John joined MoD in 1970. He has filled a wide variety of analytical, administrative, liaison and managerial appointments in MoD and other government departments. In January 2004 he was appointed as leader of the team responsible for the MoD's input into Lord Butler's "Review of Intelligence on Weapons of Mass Destruction", the British equivalent to the US Senate report on intelligence assessments on Iraq. In September he was seconded to the Cabinet Office as the MoD member of the Butler Study Team. The latter was established to provide advice on the implementation of the Butler Review's recommendations, based on the Team's report "Towards Better Intelligence Analysis". John returned to the MoD to fill the new post of Deputy Director, Strategic Futures and Analysis Development in March 2005, with responsibility for creating and developing the necessary new capabilities, post-Butler, in Defence Intelligence.

***Ethics and the Intelligence Analyst***

Lord Butler's "Review of Intelligence on Weapons of Mass Destruction" published in July 2004 and the subsequent implementation plan developed in the Cabinet Office, are important milestones in the evolution of intelligence analysis in the United Kingdom. This has been particularly true of those divisions of Defence Intelligence (DI) responsible for all-source intelligence analysis and assessment. A key element of the process continues to be the effort to define and aspire to a body of professional standards and this, naturally, has a significant ethical dimension. In this short presentation, my objective will be to explain how DI analysts and managers, both military and civilian, have been made more aware of ethical issues, how this applies to their day to day work and the degree of success that is being achieved. A useful reflection of attitudes can be found in the response to a series of pilot surveys carried out on an ad hoc basis over the past three years. I plan to offer a preliminary analysis of this material and to draw some lessons for the direction of further work.

1010-1040

**Ross Bellaby**

Ross Bellaby is a PhD student in the Department of International Politics at Aberystwyth University. His research focuses on intelligence collection and the development of an ethical framework. Through his work he has created an ethical framework that is capable of evaluating different forms of intelligence collection and outlining if and when they are ethically justified. His publications include "What's the Harm? The Ethics of Intelligence Collection" in the journal of *Intelligence and National Security*.

***Just Intelligence***

As the professional practice of intelligence adapts to the changing environment and new threats of the twenty-first century, many academic experts and intelligence professionals call for a coherent ethical framework that outlines exactly when, by what means and to what ends intelligence is justified. Reports of abuse at detention centres such as Guantanamo Bay and Abu Ghraib, the ever increasing use of technological surveillance and the increased attention on the use of torture for intelligence collection purposes have all highlighted a need to make an explicit statement about what is and what is not permissible intelligence practice.

In this presentation I shall argue for an ethical framework based on the just war tradition that is capable of outlining when and under what circumstances the harm caused by intelligence collection is justified. This will be done in reference to the principle

1110-1210

**Dr Ephraim Kahana**

Dr Ephraim Kahana holds a Ph.D. in international politics from the University of South Africa, Pretoria. He chairs the the Department of Political Science at the Western Galilee College in Israel. He also taught international relations in the National Security Program at the University of Haifa and the Israeli Technion, where he was elected as outstanding lecturer. Dr. Kahana is a member of the Board of Editors of the *International Journal of Intelligence and Counterintelligence*. He is also a member of the executive committee of the Israeli International Studies Association (IISA).

***Israel as a Laboratory of Intelligence Ethics***

The 21st century has experienced its fair share of terrorism already, and current trends suggest that the issue of future attacks concerns their timing rather than their likelihood. Indeed, most experts today agree that terrorist acts by non-state actors represent one of the

most pressing threats to national security in free and democratic nations such as Israel, but there has been a notable paucity of consensus concerning how best to fight the expanding war on terrorism. In my paper I attempted to discover the contents of the recent relevant literature together with the results of interviews I had with key figures in the intelligence community of and Israel who are or were engaged in the war against terror. I tried to examine effective responses to the growing threat represented by domestic and global terrorism today without sacrificing human rights. In my paper I examined the target killings of terrorists and I examined whether this measure achieved the goal of containing terrorism.

**1210-1310**

**VADM (Ret) Bob Murrett** (former Director of the National Geospatial Intelligence Agency and Director of Naval Intelligence)

***National Security Intelligence: Ethics in Governance, Decision-Making and International Relations***

Robert Murrett is currently associated with the Institute for Defense Analysis, the RAND Corporation, and universities in New York and Washington. He is a career intelligence officer in the U.S. Navy, having served in assignments throughout the Pacific, Europe, and the Middle East during thirty-four years of duty, retiring as a Vice Admiral. He has held positions as Operational Intelligence Officer for the U.S. Pacific Fleet, Assistant Naval Attaché at the U.S. Embassy in Oslo, Norway, Vice Director for Intelligence on the U.S. Joint Chiefs of Staff, Director of Naval Intelligence, and Director of the National Geospatial-Intelligence Agency .

**1415-1550**

**Professor John Radsan**

John Radsan is a professor at William Mitchell College of Law in Saint Paul, Minnesota, where he teaches comparative counterterrorism, constitutional law, criminal procedure, evidence, and national security. John is a former federal prosecutor and a former assistant general counsel at the Central Intelligence Agency. His combination of law enforcement experience and intelligence community experience provides him with a unique perspective within the legal academy. At William Mitchell, John is the director of the National Security Forum (NSF), one of the few places outside the Washington Beltway that has pursued—on a sustained

basis—the balance between liberty and security in American counterterrorism policies. Speakers at the NSF have included prominent academics, journalists, government officials, and federal judges. NSF events have appeared on Minnesota public television and Minnesota public radio. NSF also supports an annual issue of the William Mitchell Law Review, dedicated to national security issues. John's own scholarship on extending the rule of law to intelligence activities has appeared in the Cardozo Law Review, the Iowa Law Review, the Michigan Journal of International Law, the Catholic University Law Review, the Temple Law Review, and the Texas Law Review. As an expert on the CIA, John has often been quoted by, and made appearances on, the local and national media. Plus, he has testified before the House Judiciary Committee concerning the legal implications of the destruction of CIA interrogation tapes and provided a written statement to the House Subcommittee on National Security and Foreign Affairs concerning the legality of armed drones. During his government career, John served on legal assistance projects in Russia, Kazakhstan, Turkmenistan, and Uzbekistan. In addition, he has taught courses in Chile, England, Russia, and Turkey. Between his assignments with the Justice Department and the CIA, John managed the Iran Commercial Initiative for the U.S. Chamber of Commerce and served as a consultant to Search for Common Ground and the American-Iranian Council. John graduated with honors from Duke University and Harvard Law School.

### ***When Lawyers and Intelligence Officers Dance to Different Beats***

Lawyers play a prominent role at the Central Intelligence Agency, perhaps more prominent than at any other intelligence service. This paper, drawing on personal experiences in the CIA's Office of General Counsel, analyzes a continuum of possibilities over which lawyers can serve as an internal check against abuses in the secret world or can be co-opted to protect CIA officers from the consequences of questionable activities. Very few officers at the CIA are lawyers. Before taking major decisions in foreign intelligence gathering or in conducting covert action, senior officials are accustomed to seeking legal advice. This advice usually comes from two places: in-house lawyers within the CIA's OGC or "outside" lawyers from the Office of Legal Counsel at the Justice Department. Of all the American agencies, the CIA, because of its charter and its mission, is most able to accompany a president who takes counter-terrorism

policies to the limits of legality. During the Bush Administration, these decisions included black sites, brutal interrogations, extraordinary renditions, and armed drones. (Some of these controversial programs have continued under the Obama Administration.)

To work, the relationship between intelligence officers and lawyers depends on a fine balance. The lawyers back at headquarters should not second-guess every action in the field. Yet the officers should comply when lawyers tell them that some actions are out of bounds. CIA officers, despite the popular outcry, believe that in the post-9/11 era they applied the lessons learned from abuses revealed by the Church Committee in the 1970s: they received written authorization from the president; they informed the congressional oversight committees of the broad contours of the aggressive programs; and they received written guidance from lawyers. In the global struggle against terrorists, they believe they deserve consistent support from the American people as well as a consistent application of the United States Constitution, statutes, and regulations. They have grown weary of what they see as a contradictory political cycle of first being blamed for risk aversion, then being criticized for doing the country's dirty work.

**Professor Ian Leigh**

*The Rainbow's End? : Law, Ethics and International Intelligence Cooperation*

Ian Leigh is Professor of Law at Durham University and a member of the Durham Global Security Institute. His books include *In From the Cold: National Security and Parliamentary Democracy* (Oxford University Press, 1994), with Laurence Lustgarten, *Who's Watching the Spies: Establishing Intelligence Service Accountability* (Potomac Books, 2005) with Hans Born and Loch Johnson, and *International Intelligence Cooperation and Accountability* (Routledge, 2011), with Hans Born and Aidan Wills. His policy report *Making Intelligence Accountable* (with Dr Hans Born, published by the Norwegian Parliament Printing House 2005) has been translated into 14 languages. He has also co-authored the *OSCE/ DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw, 2008) and has acted as a consultant to the OSCE Office of Democratic Institutions and Human Rights, to the Venice Commission on democratic control of security and intelligence agencies in Council of Europe states, and to the UNDP on security sector reform.

**Brigadier Philip McEvoy** *Interrogation in the current military operating environment: a legal perspective*

**1620-1655**

Round-Table: Non-Anglophone Contributions to Anglophone Debates  
**Andre Ranson, Charlotte Lepri, Jan Kleffel, Ephraim Kahana**

**1655-1715**

**Sir David Omand**

***Reflections and Conclusions***

Sir David Omand GCB is a visiting professor in the War Studies Department at King's College London.

He became in 2002 the first UK Security and Intelligence Coordinator, responsible to the Prime Minister for the professional health of the intelligence community, national counter-terrorism strategy and “homeland security”. He served for seven years on the Joint Intelligence Committee.

He was Permanent Secretary of the Home Office from 1997 to 2000, and before that Director of GCHQ. Previously, in the Ministry of Defence he served as Deputy Under Secretary of State for Policy, Principal Private Secretary to the Defence Secretary during the Falklands conflict, and served for three years in NATO Brussels as the UK Defence Counsellor.

He is an honorary Fellow of Corpus Christi College, Cambridge, a Trustee of the Natural History Museum, and a non-executive director of Babcock International plc and Finmeccanica UK Ltd. He gained a First in maths and theoretical physics with the Open University in 2008 and was awarded an honorary PhD by Birmingham University in 2009. His book, *Securing the State*, was published by C. Hurst (Publishers) Ltd and Columbia University Press in 2010.

**1715-1730**

**FINAL REMARKS**

**Michael Herman, Gwilym Hughes, Jan Goldman**