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POLITICAL ASSASSINATION, THE STRATEGIC PRECISION WEAPON OF CHOICE

BY

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USAWC STRATEGY RESEARCH PROJECT

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ABSTRACT

AUTHOR: LTC Victor D. Irvin

TITLE: Assassination, The Strategic Precision Weapon of Choice

FORMAT: Strategy Research Project

DATE: 09 April 2002 PAGES: 33 CLASSIFICATION: Unclassified

In the dark environment of the new millennium where asymmetric forms of warfare will be the choice of attack by rogue states and non-state entities, political assassination offers the prospect of being the ultimate precision weapon to counter the agents that would wage such a war. This paper explores the history of assassination as a tool of US foreign policy, reviews the current US policy that limits the US government's use of assassination, and argues that the policy should be discarded for a more pragmatic approach given the age in which Americans live.

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PREFACE

Any complex work requires the help of a team. In the government we pride ourselves on understanding and fully acknowledging this fact. While this is my academic work, I as a student could not have completed this major student requirement without the help of the staff and faculty of the United States Army War College. Most importantly I owe unending gratitude to my project advisor, my student mentor, Mr. Frank L. Jones, on whose tremendous patience, instructor skills, and knowledge I wholly depended.

ASSASSINATION, THE STRATEGIC PRECESION WEAPON OF CHOICE

The aim here is not deterrence or rehabilitation, but security and victory.

—George Will, Columnist

September 11, 2001 the infamous date forever known as 911, forced the nation, indeed the world, to determine what actions could be taken to combat the unimaginable rising tide of violence associated with terrorism. For the first time in Americans' lives, they saw themselves as vulnerable to the terrorism scourge blanketing the shrinking globe. With the consciousness of United States society startled awake, the time has come to debate new methods for dealing with those persons and regimes that would use terrorism to harm America and its allies and friends around the world.

This paper explores the use of political assassination in a preemptive fashion, i.e., to target those individuals or groups that would seek to harm the American way of life in catastrophic ways. This paper uses open source material on the use of assassination by the United States to examine the current United States policy prohibiting political assassination and how we derived that policy. It explores the issue from the perspective of other nations suffering from terrorism, and lastly, it suggests a public revision to the policy that permits assassination as a means of combating terrorism.

AN AMERICAN VIEW ON ASSASSINATION

Assassination was last publicly reviewed in depth by the United States Congress in 1975.[1] The result of this review and the related public debate was Executive Order 11905 issued by President Ford on February 18, 1976, which for the first time in American history specifically restricted United States intelligence surveillance activities and clearly prohibited assassination. It has been updated twice. The most current version of the assassination ban is in Executive Order 12333. Paragraph 2.11 of Executive Order 12333 unequivocally reads: "Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."[2] The time is right in view of the events of September 11, 2001 for United States policy makers to re-sculpt this longstanding policy to permit the judicious application of political assassination in the national interest.

HURDLE TO POLICY CHANGE

Americans are most supportive of government policy that is consistent with American societal values as well as America's democratic traditions. The task of any President who

seeks to change the current assassination policy is to convince the American people that it can be revised in such a way that it will not be used against American citizens or bring retribution from the governments or peoples of other nations. Unfortunately, in-judicious and ineffective use of political assassination in the past has resulted in America's shelving an otherwise effective weapon of war. Interestingly, and almost perversely, the United States finds itself barred from using the "ultimate precision" weapon during a period in our history when the application of "surgical strike" and "pin-point precision" munitions are seen as the panacea for minimizing collateral damage.

Any favorable redrafting of paragraph 2.11 should have permissive language that allows timely application of force in appropriate situations. Examples of future targets might include narco-terrorists, enviro-terrorists, or political, religious, and social leaders whether the heads of state or not, who openly espouse mass murder and destruction through the use of weapons of mass destruction. Political assassination as a pre-emptive self-defense option is absolutely necessary. The United States of America should not suffer a biological, chemical, or nuclear terror incident before it responds to the attack. Leaders of groups merely having possession of such bomb making materials should be viewed as potential candidates for political assassination.

Other states do not share the United States' contemporary prohibition against political assassination nor does the United States condemn certain states for using this tactic. This is the case with Israel, Great Britain, and Egypt.

Assassination is an ages old tool that has been used by some militarily weak nations against stronger opponents. Critics of the use of political assassination contend that those that would use this method are immoral. This is an overly idealistic view. The strategic application of assassination to cause political or social change, or strike emotional, if not physical fear, in the target or enemy force so as to steer behavior in the direction of the desired political or social outcome is realistic and as this paper will argue, legal and moral. Viewed in this unemotional manner, political assassination is but one weapon of many available to national leaders to use to attain national security objectives.

ASSASSINATION DEFINED

The term "assassin" was first coined about 1090. Assassins were Muslim warriors from Persia and Syria whose chief objective was to assassinate Crusaders.[3] Today, particularly in the "civilized" and Christian nations of the world that heed the rule of law, assassination has come to be viewed as a heinous criminal act. The Random House College Dictionary defines

assassination as "1. to murder premeditatedly and treacherously. 2. to destroy or denigrate treacherously and viciously."[4]

COMMON CIVILIAN DEFINITION

Another commonly understood definition is that assassination is killing a prominent person by use of treacherous violence either for money or a fanatical cause.[5] Assassination is not typically associated with group or mass targets. Instead, the victim is singled out, often for political reasons. Political assassination is not murder in the conventional sense, however treacherous the act, regardless of whether money and fanaticism is involved. For the purposes of this paper a more specific definition has to be used. Borrowing from the works of Havens, Leiden, and Schmitt regarding political assassinations, this paper uses the following definition: "assassination is the deliberate, extralegal killing of an individual for political purposes."[6] This definition does not limit the discussion to a head of state, nation, tribe, or other organization normally associated with sovereignty.

THE UNITED STATES MILITARY POSITION

The primary source on the military position on the legality of assassination comes from an assessment by Mr. W. Hay Parks, Chief, International Law Branch, International Affairs Division, Department of the Army. Parks provides several competing and complementary definitions of assassination that have been accepted internationally and legally. The definition that he settles on is not largely different than the definition used earlier. Absent the more common theme of "treachery," Parks defines assassination as "murder of a targeted individual for political purposes."[7] The value of this definition is the legal basis on which it is founded. Parks writes: "While assassination generally is regarded as an act of murder for political reasons, its victims are not necessarily limited to persons of public office or prominence."[8] Parks believes the term assassination is appropriate to use under certain conditions. He continues: "the distinction lies not merely in the purpose of the act and/or its intended victim, but also under certain circumstances in its covert nature."[9]

Nonetheless, Park's definition and legal interpretation of what constitutes assassination is not limited to military or covert actions. He supports a wide array of lethal responses to national threats that include targeting of individual civilians with and without political or senior leadership responsibilities. According to him, "A prime example would be civilian scientists occupying key positions in a weapons program regarded as vital to a nation's national security or war aims."[10] From a purely legal perspective, Parks posits that targeting non-military

civilians who significantly aid military efforts when performed during a declared war is not assassination, but rather a legitimate attack on an enemy as permitted by the Hague Convention IV.[11]

The Hague Convention IV, 1907 is the international treaty that has shaped American thinking in its unique "legal" prohibition against assassination. Treaties have the force of law. There is , however, no specific United States law prohibiting assassination. Thus, the only legal basis (Executive Order 12333 is a policy statement) for limiting the United States Government from conducting assassination is founded in the Hague Conventions. The Hague Conventions concern themselves with the laws of war, and therefore, assassination must necessarily be understood in terms of military operations. For this purpose, Parks essentially divides assassination in three categories: assassination in peacetime, assassination in wartime, and counter-insurgency.[12] This paper is most interested in the first but to understand the legal complexity of the otherwise simple statement found in the Executive Order, that is, "no employee of the United States Government shall engage in, or conspire to engage in, political assassination" the reader must understand Park's tripartite framework.

Assassination in Peacetime

Although the Hague Convention addressed the matters of war, Parks points out that it did not address peacetime limitations to assassination as it did to wartime assassination. In examining the concept of peacetime assassination, Parks cites Article 2(4) of the United Nations Charter which says in part "all member states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purpose of the United Nations."[13] Parks concludes that peacetime "assassination is unlawful killing, and would be prohibited by international law even if there were no executive order proscribing it."[14]

Parks' legal viewpoint regarding peacetime assassination is open to debate, particularly given the belligerent nature of terrorists. Parks himself devotes a section of his peacetime assassination discussion to legitimizing selective killing of individuals and groups during what he terms "peacetime operations."[15] He argues that Article 51 of the Charter of the United Nations permits all nations the right of self-defense. As such, the "a national decision to employ military force in self-defense against a legitimate terrorist or related threat would not be unlike the employment of forces in response to a threat by conventional forces."[16] He states as well: "preemptive self-defense against an imminent use of force" is an acceptable reason to kill. Based upon his interpretation and definition, "legal killing" is not assassination. Therefore,

military action during peacetime directed against a terrorist is not assassination since it is sanctioned by the State, which has the right to self-defense.

Assassination in Wartime

Parks devotes a significant portion of his legal analysis to assassination in war. He agrees with Clausewitz that war is a "continuation of political activity by other means." He also quotes Howard and Paret's book, On War: "In wartime the role of the military includes legalized killing (as opposed to murder) of the enemy, whether lawful combatants or unprivileged belligerents, and may include in either category civilians who take part in the hostilities."[17] His purpose of laying out these points is to set the stage for a legal interpretation that at its core argues that killing is legal, to include targeting individuals, under certain conditions. The person singled out must be a belligerent. Parks calls this "lawful targeting (as opposed to assassination)."[18] In Parks' view the use of such devices as "booby-trap, single shot by a sniper, a commando attack, or other, similar means" is a legitimate method of killing special targets in war.[19] Thus in the strictest sense, it is not "assassination" to target and kill individuals in wartime. Nonetheless, the United States policy as written currently could be interpreted in such a manner that it prevents the assassination of individuals during wartime.

Counterinsurgency

Parks differentiates between "conventional war" and "counterinsurgency" for the purpose of legitimizing killing by the military. Parks argues, "Guerrilla warfare is particularly difficult to address because a guerrilla organization is generally divided into political and guerrilla (military) cadre, each garbed in civilian attire in order to conceal their presence or movement from the enemy."[20] Regardless, his views lead the reader to the conclusion that killing an individual in wartime, whether it be by conventional action or unconventional means is not "assassination unless carried out in a treacherous manner, as prohibited by article 23(b) of the Annex to the Hague Regulations (Hague Convention IV) of 1907."[21] He goes on to say that the term "treacherous" is not defined in the Hague Convention, nor does he believe that the Hague Convention prohibits "operations that depend on the element of surprise, such as a commando raid or other form of attack behind enemy lines."[22] In summary, Parks contends that specifically targeting and killing an individual, whether an insurgent or conventional fighter, is not assassination but a legitimate use of deadly military force.

There is sparse legal direction to military personnel below the executive order level, nonetheless it does exist. The Law of Land Warfare, Field Manual 27-10, provides direction for

Army personnel. Chapter 2, Section I, Paragraph 31, states, "It is especially forbidden to kill or wound treacherously individuals belonging to the hostile nation or Army."[23] The field manual continues by stating that the purpose of the citation is to bar the Army from declaring the enemy an outlaw and placing a price on the enemy's head "dead or alive." However, this prohibition does not preclude the Army from directly attacking an individual or "officers" for the purpose of killing them.[24]

Given the highly publicized remarks of President Bush regarding Osama Bin Laden, namely that American armed forces would get him "dead or alive," United States policy is already changing to meet the new threats the United States faces. The past may be defined by conventions, regulations, and international treaties, but the firm convictions of the Commander-in-Chief to battle terrorism on multiple fronts show that the time has come in American history for an adjustment to the current "no assassination" policy.

OTHER LEGAL AND MORAL INTERPRETATIONS

Casper W. Weinberger, Secretary of Defense during the Reagan administration, a Harvard Law School educated attorney, has offered his views on the legal and moral debate regarding assassination well before the September 2001 World Trade Center tragedy. Mr. Weinberger developed his views during the campaign against Iraq in 1990-91. Drawing on several noted legal and moral authors such as Robert F. Turner, Thomas C. Wingfield, and John Norton Moore, Weinberger asked and answered this issue regarding the legality of using assassination: "Can we eliminate or jail brutal aggressors? The answer is, unequivocally, yes."[25]

Weinberger was exploring the legitimacy of assassination only "during time of war."[26] He clearly stated that during a time of war "the head of state or its army appear to be a legitimate military target."[27] Weinberger argued that the head of State is responsible for the actions or undertakings of his armed forces as the nation's "commander and chief." He further argued that the idea that a head of state might be immune to personal attack is outdated and founded on antiquated ideas of elitism. The exemption theory "goes back to the Treaty of Westphalia in 1648."[28] Weinberger believes it is "logical" to attack the "princes" who would lead their nations in aggression. Further, he contends that "declaring princes or leaders immune from attack was an idea proposed by the leaders themselves and not otherwise supported in the law of armed conflict."[29]

In regard to his moral position on the subject of assassination, Weinberger is no less bashful. He writes: "There is a moral justification for targeting and killing the leader or the

elites."[30] He cites the Nuremburg trials as an example of a world moral judgment regarding what is acceptable behavior in war. The trials established that war could be a criminal act and those behind a war could be held accountable with their lives, execution being the ultimate punishment for permitting national aggression. He argues that if the United States and the world may punish such leaders as the Nazis after they had committed their nation to war or caused their nation to commit atrocities, then America and its allies are morally justified in deterring like minded aggressors as well. Regarding this moral stance he writes; "If targeting and killing of the leader or leaders can help end a war quickly, and thus spare the lives of hundreds of thousands of combatants, it is hard to find any moral argument for not attempting to kill the leaders."[31] Weinberger draws much of this argument from the scholarly work of Thomas C. Wingfield. Essentially, Wingfield holds that "new forms of deterrence ... may pay huge dividends in lives saved. Such new approaches include targeting that which is most important to the dictator himself ... and, ultimately, his life."[32]

THE PERCEIVED MORAL DILEMMA - JUST WAR, JUST ASSASSINATION

President Bush has unequivocally declared America's openly visible intervention in Afghanistan and less visible intervention in the Philippines as parts of a greater war on "global terrorism." In taking this fight to the enemies of the American people, Americans are getting a first hand look at asymmetric warfare, both by the enemy – planes into buildings, and by the US – Special Operations forces teamed with precision and stealth air forces. Herein lies a problem, is this war, conventional, unconventional, hybrid – a moral war, a just war? Mr. Michael Walzer, a noted philosopher, argues terrorism is a form of war or at least a strategy of war. He writes: "In war, terrorism is a way of avoiding engagement with the enemy army. It is so indirect that many soldiers have refused to call it war at all. This is a matter as much of professional pride as of moral judgment."[33] No one knows how the successes of the Combined/Joint Special Operations team against terrorism will influence the definition of future war as seen from the American perspective, but clearly old doctrine is crumbling. If the American campaign against global terrorism is war as the President has declared, then the theories and moral arguments of just and unjust wars as put forth by Walzer may be applied. Accepting that we are at war with the Army of Al Qaeda, a non-state, although perhaps an embryonic would-be-political entity, one can conclude that assassination when applied with proper political and legal bases is morally just.

Walzer provides ample review of the arguments regarding the moral aspects of killing in war in his book, Just and Unjust Wars. Assassination is an abomination no less than war itself

is an abomination. No man or nation should enter into a war except to defend oneself against aggression. This concept of "national defense" against "aggression" is a recurrent theme in just war theory. "When it comes to resisting aggression, ..., the theory is at least permissive, sometimes imperative."[34] Walzer clearly argues pacifism is not the only moral response to aggression. No nation or person must stand by as it is murdered. However, even when responding to aggression with war, nations can be just or moral by their actions or unjust and amoral by less deliberate responses to the aggression.

To attain and maintain the high moral ground, the use of war as a national response to aggression must consider two undeniable maxims: the rule of last resort, and the concept of proportionality.[35] Once at war, other subordinate moral considerations or rules such as legitimacy of targets, collateral damage, nature of necessity, etc., apply, which may be interpreted to permit assassination. It may be further argued these same moral considerations that stipulate "just wars are limited wars"[36] demand that assassination be considered a moral approach.

Assassination is a limited response to an aggression. For Americans, responding to the aggression by the Al Qaeda and its leader Osama Bin Laden, assassination is now more morally clear and acceptable as it is in all declared wars. Nonetheless, the use of assassination in limited wars, declared or not, against non-state enemies conflicts with American values and morals. However, in Walzer's view, "pre-emptive strikes" are a part of the moral theory regarding aggression. Walzer acknowledges that the medieval Scholastic writers commonly link injury and provocation "as two causes of just wars."[37] He believes, however, that this proposition is dubious, but does agree with the idea of pre-emptive strikes when taken against "combatants and non-combatants, engaged in harming us (and who have already harmed us, by their threats, even if they have not yet inflicted any physical injury)."[38] First strike does not mean waiting for "the point of imminent attack but the point of sufficient threat."[39]

Walzer examines the moral issues in light of the legal issues by considering the "two sorts of rules" that govern war. Those rules are central to the theme that soldiers, whether non-uniform terrorists or professionals, have an equal right to kill or be killed.[40] "The first cluster specifies when and how they can kill, the second whom they kill. Assassination fits snuggly and obediently into the rules. From a moral view "who" is more important than the "how." "War is distinguishable from murder and massacre only when restrictions are established on the reach of battle."[41] Assassination is supportive of "any rule that limits the intensity and duration of combat or the suffering of soldiers."[42] Whether used in total war to cause enemy surrender or

used in peacetime preemptive strikes to stop a civilian clad terrorist, assassination when applied legally has a moral value, that is, to limit greater death and destruction.

THE SPLINTERING AMERICAN PSYCHE: WHAT AMERICANS THINK

Most Americans, indeed most peoples of the world, find assassination an abhorrent activity. National and international surveys conducted over time have proven that people everywhere have a high regard for the process of allowing people to determine their future vice being driven to a position by the use of force. This relates to assassination as well.

The *Public Opinion Quarterly* has conducted numerous surveys with the question "can assassination be justified?"[43] The survey was conducted nationally and internationally in 1980-81 in twenty-three countries and again in 1990-91 in thirty-nine countries using a scoring scale of 1 (never) to 10 (always).[44] "Each time, in each nation, majorities chose the 'never' response. More than two-thirds chose 'never' in all but six of these 62 surveys."[45] Interestingly, setting aside the September 11, 2001 attacks, the trends do show a change in the attitude toward assassination. Of countries surveyed twice over the intervening years "the percentage choosing 'never' declined."[46] Only one country, Denmark, of the eighteen North American and European countries surveyed had an increase suggesting "that opposition to assassination in the Western world softened.[47]

The importance of this shift is the not lost on Americans. Again, prior to September 11, 2001, American tolerance for select assassination was on the rise. "As survey questions move away from the general principle and become more specific, Americans' aversion begins to erode further."[48] In surveys conducted in February 1991, 60 percent of Americans approved of a covert operation to assassinate Saddam Hussein.[49] Just as with the legal implications of assassination, Americans do not give the moral implications consideration prior to an emergency. An emergency, however, causes them to evaluate their beliefs in light of their security. "The percentage approving such action varies with events, but in several instances responses to identically worded items rise as a crisis progresses, then fall if it appears resolved."[50]

Global terrorism and assassination have tempered people's views, and softened the world's attitude toward assassination in general. "Worldwide, well over 200 assassination attempts have been made on the heads of state or heads of government alone during the twentieth century, and close to 60 have succeeded."[51] In 1986, only forty percent of Americans "favored ordering the Central Intelligence Agency 'to assassinate known terrorists before they can commit future terrorists' acts." By 1998, after the Kenya and Tanzania bombings, a majority

had been attained with fifty-four percent of Americans approving of assassination of known terrorists. In the survey conducted by *Public Opinion Quarterly* immediately following the embassy bombings "fully two-thirds advocated trying to kill the leaders of the terrorist group thought to be responsible for the tragedies."[52] The attitudes conveyed in these late 1990 to 2000 surveys are best summarized by the *Public Opinion Quarterly*:

> In principle, Americans-like those in other nations surveyed think political assassinations can never be justified and support severe penalties for would-be domestic assassins and strong retaliation against any foreigners who dare to kill American leaders. This opposition, however, appears to have eroded somewhat during the 1980s in both the United States and other Western nations. In specific cases, majorities of Americans are willing to approve of assassinating terrorists and other foreign leaders whom they are convinced threaten the national security of the United States.[53]

Now September 11, 2001 must be taken into consideration. As pointed out earlier, in this time of crisis, American acceptance of assassination increases. In a December 2001 *Newsweek* poll, after having had three months to calm themselves and reflect on the topic, sixty-five percent of Americans favored "giving U.S. military and intelligence agencies the power to assassinate terrorist leaders and Al Qaeda fighters in the Middle East."[54] Amazingly, forty-five percent of Americans now support "covert operations to assassinate individuals overseas who give major financial support to terrorists."[55] Other high percentages for support of "targeted killings" in Africa and Asia (54 percent) and Europe (57 percent) are reflective of the shift in the American moral stance on assassination.[56] The polls indicate the political mood of the nation is such that the president could make a timely adjustment to the assassination policy that has been in effect for nearly three decades.

US POLICY PRIOR TO EXECUTIVE ORDER 12333

While Executive Order 12333 has governed the American policy on assassination since December 4, 1981, the ban on assassination has not always been the policy of the United States Government. One need to only go back to the mid-70's to find the root of our existing policy. No policy, either explicitly supporting or publicly refuting assassination was in place prior to this time. Since the ban on assassination was first instituted by executive decree during that period, it has been continued verbatim in the succeeding years. This leads to the question: Why was there no specific United States Government prohibition against assassination for the preceding approximate 200 years of our nation's history?

The answer to this important question is that the ban on assassination may have been more the result of political pragmatism rather than sound policy review. The original 1976

limitation on assassination was but one of many governing mechanisms placed on the Central Intelligence Agency at a time when the organization was under substantial scrutiny for numerous violations of American law as well as activities that were inconsistent with the nation's democratic values. The American public and its political leaders demanded controls be placed over this special agency.

To understand why Executive Order 12333 issued by President Ronald Reagan on December 4, 1981 is in effect today, one must understand that Executive Order 12333 was an outgrowth of prior Executive Orders 11905, signed by President Gerald Ford on February 18, 1975, and 12036, signed by President Jimmy Carter on January 24, 1978. While issued by different administrations for different purposes, each executive order has had the same effect of stopping assassination as a legitimate national security instrument as intended in President Ford's initial decree.

Presidential Executive Order 11905 more than any prior governmental action determined the future use of covert operations by the Central Intelligence Agency. In fact, the primary purpose of Executive Order 11905 was not to exclude the United States Government or her agents from committing the act of assassination but rather to establish controls and strengthen oversight of the Central Intelligence Agency, particularly in regard to surveillance activities. Executive Order 11905 was "the first public Executive directive on intelligence and responsibilities and functions, reaffirmed the DCI's primary role in intelligence, abolished the United States Intelligence Board, the National Security Council Intelligence Committee, the IRAC, and the '40' Committee, and created a new United Intelligence Board."[57] Nonetheless, the highlight of Executive Order 11905 was not the more important limitations placed on domestic surveillance but rather the very controversial and consequential ban on assassination.

PRESIDENT WITH A POLITICAL DILEMMA

Gerald Ford's autobiography offers a look at the conditions that set the stage for Executive Order 11905. President Ford took office after the downfall of President Richard M. Nixon. The national obsession of the era was not scandals of Central Intelligence Agency assassination or murder, but rather "Watergate" and more importantly, presidential abuse of power. President Nixon's abuses included the misuse of the Federal Bureau of Investigation and the Central Intelligence Agency in activities that included the surveillance of American citizen's on American soil. The full extent of governmental abuses was not fully understood by the American people immediately after President Nixon's resignation but American mistrust of the government had developed.

Then, in late 1974, President Ford was advised by director of the Central Intelligence Agency, William Colby, that Mr. Seymour Hersh of the *New York Times* was working on a story that "the Central Intelligence Agency had, over a long period of years, exceeded its statutory authority by listening in on the telephone conversations of U.S. citizens, breaking into their homes and offices, keeping them under surveillance, and committing other illegal activities."[58] The American sense of mistrust was confirmed. Hersh had indeed been working on a series of stories to discredit the Central Intelligence Agency. American's were still stunned by President Ford's pardon of President Nixon and distrust of the government ran even higher. Hersh first reported in September 1974 a story about Central Intelligence Agency covert operations to "bring down the government of the democratically elected Marxist leader of Chile, Salavandor Allende."[59] While shocking, this story did not galvanize the American people; they were more interested in the domestic surveillance abuses of the Federal Government. Not until December 1974 did Hersh greatly incite American displeasure with an explosive story that recounted Central Intelligence Agency spying on domestic anti-war protesters and left-wing organizations during the 1960s. As was reported by Daniel Schorr, a CBS news correspondent, "this disclosure caused a stir in a way that a covert operation against a distant South American regime had not. It twinged the Watergate-raw 'invasion of liberties' nerve" that Americans had become so sensitive to feeling.[60] Americans had already been stirred by the knowledge that President Nixon had used Central Intelligence Agency equipment and operations to build psychiatric profiles on prominent Americans such as Daniel Ellesberg.[61] American's rightfully wanted no invasion of their privacy, particularly by their own government. The American elite and the general public were in harmony, wanting the Central Intelligence Agency checked, not for the specific protection of some distant foreign power, but for their own privacy and security. The revelation of assassination was just another log thrown on the bonfire that was already burning ferociously.

In response to Mr. Colby's news, President Ford told Colby that he "wouldn't tolerate any violations of law"[62] in his administration. "The agency's charter clearly prohibited operations within U.S. borders, and" he expected the charter to be upheld.[63] Colby tried to assure the President that all such practices had been terminated. The language of the President in his biography is very specific as to his concern for avoiding violations of law yet permitting the Central Intelligence Agency to go about its mission. President Ford, as would been seen later, was very concerned about guarding the Central Intelligence Agency legitimate works, not compromising its covert practices. Later in his administration, President Ford would "dismiss"[64]

Colby for, what many insiders believed, giving too much information to the Congress regarding those very Central Intelligence Agency practices a President wants to protect.

"Sniffing a potential Watergate, reporters bore down hard on the story."[65] This created "pressure in Congress to establish committees to investigate the agency's misdeeds."[66] President Ford met with Mr. Colby on January 3, 1975 to discuss intelligence matters. During this meeting is the first time that President Ford heard about the "family jewels."[67] "These were highly classified documents that provided details about unsavory and illegal Central Intelligence Agency practices. In the 1950's and 1960's, the Central Intelligence Agency had plotted to assassinate foreign leaders including Fidel Castro."[68] President Ford was satisfied none of the plots were executed but in the aftermath of Watergate he wanted to "avoid giving any substance to the charges that we were engaging in a 'cover-up.'"[69] On January 4, 1975 he announced a Blue Ribbon Commission headed by Vice President Nelson Rockefeller to investigate intelligence activities. President Ford formed the commission to wrestle the initiative from the Congress who he was sure would create unnecessary disclosures. He declared, "It is essential we meet our security requirements and at the same time avoid impairing our democratic institutions and fundamental freedoms. Intelligence activities must be conducted with both objectives."[70]

What worried President Ford the most was that the "Congress seemed determined to take over the act."[71] President Ford accepted the direction of the House investigation headed by Representative Otis Pike, but railed against Senator Frank Church who headed the Senate Committee. President Ford felt "the Church probe was sensational and irresponsible and it was having a devastating impact on the morale at the Central Intelligence Agency."[72]

The Select Committee to Study Governmental Operations with Respect to Intelligence Activities known as the "Church Committee" named after its Chairman, Senator Frank Church, brought Central Intelligence Agency covert operations into the public eye.[73] The Church Committee revealed that the Central Intelligence Agency had indirect, if not direct roles, in numerous assassination plots around the world that spanned several presidencies, specifically Presidents Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson.[74] The Central Intelligence Agency was embarrassed by its almost comical if not inept attempts to deal with Fidel Castro. Poisoned cigars were destined for the communist leader but never delivered to him personally. The Mafia was enlisted to help poison one of his drinks, and someone concocted a plan to deliver a recreational diving suit which bore disease-bearing fungus.[75]

Despite the efforts of the Church Committee, they "could not demonstrate either that the Central Intelligence Agency acted under presidential directive or that it did not. It is still not clear."[76] Richard Helms, a former Director of the Central Intelligence Agency, defended the agency. He believed that Senator Church was hypocritical as Church and other senators knew that the Central Intelligence Agency "was the agency of the President precisely to provide a policy option midway between persuasion and military conduct; the point of covert activity is that it be covert."[77] In testifying before the Church Committee, Helms was asked whether the Central Intelligence Agency could engage in assassination without Presidential order. Helms felt surely the Church Committee knew there was such approval, "but no president would be so stupid as to put it in writing."[78]

Yet an opportunity to lift the ban on assassination presents itself in the Introduction and Summary of the Church report. While condemning many of America's intelligence activities and covert operations, the report does state, "the committee believes that, short of war, assassination is incompatible with American principles, international order, and morality."[79] This congressional citation indirectly supports the argument to lift the assassination ban, even if only partially, for war. While a total lifting of the ban is optimal, the ban could be reworded to include specific language that would acknowledge the right of the intelligence community and the military to target political leaders and their lieutenants during declared war. Recall the definition of assassination, the deliberate, extralegal killing of an individual for political purposes. The use of assassination to slow or terminate a war is for moral, legal, political purposes.

President Ford became convinced "that some members of Congress wanted to dismantle the Central Intelligence Agency. They were trying to eliminate covert operations altogether, and if they didn't succeed in that, they wanted to restrict those operations to such an extent that they would be meaningless."[80] In June 1975 the Rockefeller report confirmed the illegal Central Intelligence Agency activities and accusations of domestic surveillance and spying.[81] Mr. Colby was dismissed in November 1975, and amid growing scrutiny and pressure President Ford signed on February 18, 1976 Executive Order 11905 to quite the political storm cycling around the House and Senate select committees on intelligence. President Ford appointed George Bush as the new Director of the Central Intelligence Agency to demonstrate "the image of significant change."[82]

President Ford was lauded for his handling of the intelligence issues of the day and recognized as one of the best post-war presidents in his management of the intelligence community.[83] "His bureaucratic oversight efforts, as reflected in his Executive Order, were much more realistic than those of his predecessors, and his appointment of [George Herbert

Walker] Bush to head the Central Intelligence Agency and Rockefeller to head the presidential investigative commission were strokes of political genius that did much to diffuse the crisis."[84] The history of the times clearly indicates that the measures effected in Executive Order 11095 and subsequently restated in Executive Order 12333 were pre-emptive. President Bush wanted to strike swiftly before Congress attempted to control the intelligence apparatus itself. In this regard, President Ford was most successful. To this day, there is no law that specifically bans the use of assassination by the United States Government.

A NEW POLICY FOR NEW TIMES

The current Policy is direct, "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."[85] The greatest defensive and preemptive strength of the United States is the power of the Commander-in-Chief to take swift, yet deliberate action. Given the new era America has been propelled into by heinous non-state forces that espouse mass effect terror, the tools available to the President should include assassination. Now is the time to rewrite Executive Order 12333 to eliminate completely the ban on assassination.

A rewording of the assassination ban to accommodate selective killing operations during war is not necessary. In his article, Weinberger supports such a proposal by Thomas C. Wingfield.[86] Wingfield proposes retaining Executive Order 12333, section 2.11 with revised language that merely clarifies targeting individuals in armed conflict is not assassination. Wingfield's suggested change is a legal fine tuning of a politically motivated and out-of-date mandate. The expressed change would read: "The otherwise legal targeting of lawful combatants in armed conflict, including all members of any enemy nation's or organization's operational chain of command is not assassination and is not forbidden by this order."[87] The thought that such language needs to be added to Executive Order 12333 demonstrates that United States government leaders fear that the average American citizen interprets individualized killing as "assassination" regardless of the events in which the nation is engaged.

Second, any rewrite of Executive Order 12333 that includes a partial ban on assassination by specifying acceptable or unacceptable uses of assassination would create a politically divisive policy subject to unnecessary debates of interpretation each time its use is anticipated. A partial ban on assassination would inhibit swift presidential action and expose America to unnecessary risk in this era of weapons of mass destruction. During times of crisis, a partial ban could cost the Chief Executive valuable time as the targeted person attempts to elude United States intelligence operations. The Chief Executive should not have to consume

additional-valuable time re-debating whether a desired "legal" target fit into a partial ban category of "do's and don'ts." As a minimum, the section 2.11 assassination ban language should be totally withdrawn consistent with proposed legislation HR19 introduced by Congressman Bob Barr (R-GA) on January 3, 2001.[88]

Bolder than the ambiguity produced by a revision of the language regarding assassination would be a rewrite of section 2.11 that expressly authorizes assassination. The President by his authority could reshape United States government policy by issuing a new Executive Order. Much like the language that prohibits assassination today, the new executive order would contain language that clearly puts the world on notice that the United States government will undertake covert actions to include assassination, in accordance with sound international legal and moral standing. The rewritten policy authorizing assassination could be as simple and direct as the ban is today:

> 2.11 Assassination. The Central Intelligence Agency in cooperation with the Department of Defense may evaluate, plan, and propose for approval to the President of the United States as a means of pre-emptive self-defense the assassination of persons know to be of threat to the national security, the safety, the welfare, and the way of life of the American people.

The United States of America would not be alone in such a policy. Other western nations practice the state notion of preemptive self-defense. Most open about their national policy and practices is Israel as this nation is in a daily struggle for national survival against what Israel perceives is a terrorist campaign. Israel's policy is to assassinate the suicide bomber before the bomber or any terrorists can kill himself and/or many other innocent people. Israeli Minister Ephraim Sneh is quoted by the British Broadcasting Corporation as saying, "I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit. It is effective, precise and just."[89]

The commitment of America's leaders to the protections of its citizens can be no less. Just as Israel has come under domestic and international criticism for its open assassination policy, American leaders must prepare to take up the fight. Human rights organizations such as Amnesty International condemn Israel for their "extra judicial killing."[90] They are sure to criticize the United States Government as well if it adopts a similar policy. Without doubt, in the eyes of Americans, the view of the world has changed since September 11, 2001. Now more than ever Americans are ready for United States Government officials to lift the assassination ban policy knowing the opposition will stay vocal if not strong.

Mr. Robert Andrews , Principal Deputy Secretary of Defense for Special Operations/Low Intensity Conflict is such an official who has engaged this vital debate in favor of assassination.

Andrews understands the nation "must pursue a new foreign and national security policy of 'defensive interventions' to protect itself and its interests against the threat of global terrorism."[91] He openly supports assassination as a tool of "an active program of prevention" that is the key to national self-defense in a time of weapons of mass destruction. Regarding assassination, he unequivocally states, "As long as it's the right target. If it's the right person, it's fine with me."[92] This is the tough talk from the senior level of the United States Government that signals America is ready to lift or favorably rewrite the ban on assassination.

CONCLUSION

With the deaths of 3000 American citizens as the key that turned the lock, America's door of security has been opened forever. To close the wide opening, if only slightly, America needs to explore every possible defensive option. Assassination is an old tactic that has new strategic value. World history proves that assassination has a strategic effect. Used wisely, assassination's precision has substantial moral and legal standing. Further, United States' history shows that America lived for decades without limitations regarding assassination. Only when the political debate and rancor of the mid-70s arose did America promulgate the assassination policy ban.

As pointed out in this paper, President Ford's decision to write the ban on assassination was politically pragmatic given the times. The policy that he was spurred to shape has lived on for nearly three decades with little rethinking. Surveys conclude American society has moved beyond the government and has already reconsidered and accepted that assassination is an acceptable form of governmental response to foreign threats that would endanger the nation. The governmental debate regarding "assassination" is breaking out of the shell of the politically correct term "pre-emptive self-defense" and is moving forward on its own merits. America must not shy away from this open-frank debate, nor complicate the debate in legal jargon intending to numb the American people. As professed in the title, for global, historical, moral, and legal reasons assassination should be regarded as the strategic precision weapon of choice when possible.

WORD COUNT = 7261

ENDNOTES

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[8]Ibid.

[9]Ibid.

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[17]Ibid, p. 5.

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[29]Ibid, p. 22.

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[45]Ibid.

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