

## REMARKS OF DR. WALTER PFORZHEIMER\*

I want to note at the outset that I am speaking personally, not as the Chairman of the Association of Former Intelligence Officers (AFIO) and not as an Adjunct Professor of the Defense Intelligence College. The ABA Committee on Law and National Security, at its monthly breakfasts and other functions, has made it wonderful not only to have present and former practitioners of the craft of intelligence as participants, together with members of the bench and bar, but also to have members of the staffs of the Senate and House Intelligence Committees participate. I must tell Mike O'Neil, Chief Counsel of the House Permanent Select Committee on Intelligence, and his colleagues here from the Senate committee staff, that when I teach my seminar on "The Literature of Intelligence" at the Defense Intelligence College, I have always cited the reports and hearings of these two committees as a part of the "Literature" and stressed their importance for these young officers whose careers lie before them. Nor have I ever forgotten to say that, without these two committees in the late 1970's, intelligence might well have gone down the drain for lack of adequate provision of funds and personnel from the administration. The actions of these two committees and the Appropriations Committees of the House and Senate helped rectify a very serious situation. We owe them a much greater debt than the occasional committee bashing and arguments with the executive branch might indicate.

Our panel, on the policies of Irangate, presents a very hard problem to define, despite the queries from the Chair a few minutes ago. In some measure, how do you prevent the overlap of the discussion of "policies" from the legal problems that were also involved in the Iran-Contra Affair? Thus, you take, for example, the so-called diversion of funds: perhaps starting it as a policy problem; but it sure becomes a legal problem as to what was done with the money, including any profits or commissions, and what may have been stashed away in foreign bank accounts by the so-called "Enterprise." I also have a note here of the several Boland amendments. Of course they were a legal problem, more than a policy problem; but living within them was a matter of policy as well in determining what could or could not be done in their constantly changing text. Coping with the Boland amendments, *seriatim*, reminds me of a

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little anonymous verse about the secretary of a cabinet committee in England:

Now that the Cabinet's gone to its dinner,  
The Secretary stays and gets thinner and thinner,  
Racking his brains to record and report  
What he thinks what they think  
They ought to have thought.

That is really my thought in debating the policy problems of Irangate.

Now I shall start, as I was asked to do, on an historical note, observing that the Majority Report on the Iran-Contra Affair got off on the wrong foot historically, when they wrote that peace time covert action became an instrument of U.S. foreign policy in response to the expansion of Soviet political and military influence following World War II, particularly the 1948 coup in Czechoslovakia. This was not the only major factor in our recent development of covert action as an instrument of government policy. The major figure in getting the U.S. government going in this field was a brilliant, magnificent official, James Forrestal. James Forrestal served as Secretary of the Navy in the latter half of World War II, and, in 1947, was appointed as our first Secretary of Defense. He was a leading figure in pushing the United States into covert action because of his concern with the up-coming Italian election in 1948 and his fear of a communist takeover in Italy. In this, he had the solid backing of President Truman, and the covert action function was assigned to the CIA. The Minority Report is on more solid historical ground on United States use of covert action, when they go back to the American Revolution, the Continental Congress and George Washington. The "Founding Fathers" were avid practitioners of covert action as an instrument of policy. To correct something that was said this morning, it was in President Washington's first term, in his first message to the Congress, that the President asked for the so-called "Foreign Intercourse Fund," popularly known as the "Secret Service Fund." These confidential funds were voted to the President annually, until 1810, when they were codified. Hard as some of us have searched, we cannot seem to find when this codification was repealed, or whether it is still current, but in any event, similar language was enacted in the CIA Act of 1949.

Since the Majority Report on Irangate is so weak in dating covert action after World War II, let me state that actually it is a very old instrument indeed. Some people cite the case of Samson and Delilah as a very early example; one must remember that Samson's strength was in his hair. So, while Samson slept, Delilah had his head shaved, reducing his strength to zero. It was a covert action. I have argued with Allen Dulles many times on his thesis that the incident of the Trojan Horse, in

the eleventh century, B.C., was the first great covert deception operation. I am willing to concede the issue, if one can ask the question: Wasn't the Trojan Horse operation also a shocking failure of Trojan counterintelligence?

I stuck in my pocket, to show you, what is possibly the first published text in English—a forty-six page pamphlet really—entirely devoted to a covert action operation. It is entitled, *An Account of the Secret Services of Monsieur de Vernay, the French Minister at Ratisbonne*, published at Ratisbonne, in 1683. Ratisbonne is what we now call Regensburg. This copy, it is interesting to note, is one of seven known copies. Here we have the French Ambassador to Poland, the Marquis de Vitry, with his agent, M. de Vernay, and the approval of the King of France, attempting to destabilize the Hungarian Government on Polish soil, with the aid of the Turks. The Austrian Ambassador, catching up with some of De Vernay's documents, asked the King of Poland to throw out De Vitry and put a stop to the operation. You all can see that these covert actions are by no means a new idea as an instrument of government policy.

When I first came to the CIA (then called CIG) in early 1946, we had a term, which I find very useful, which stemmed from the Joint Chiefs of Staff; that term was "unconventional warfare." Somewhere along the line, the term "covert action" came into use, largely to make the budget process easier. One was able to put all covert actions in one place in the budget, itemized; and as the government came further into the use of the so-called "program budget," this was a helpful gambit. Now, when you come to the present day Executive Order on Intelligence Activities, issued by President Reagan (Executive Order No. 12,333), one finds that the Congress and the executive branch have dropped the term "covert action," and substituted "special activities." However, even as we sit here, we find the Congress returning to the term "covert action" in their legislative drafting, and the executive branch seems to be following suit; "special activities" as a term has fallen by the wayside.

For the purposes of our panels we should set forth the definition of covert action (then called special activities), as it is included in President Reagan's Executive Order No. 12,333, section 3.4(h). The term is defined as:

activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies or media and do not include diplomatic

activities or the collection and production of intelligence or related support functions.

Those last three words in the definition, "related support functions," are interesting. They apparently come from an early covert action pronouncement by President Truman and his issuance of NSC 10/2. In Irangate, until a certain point of time reasonably early on, one can think of the Iran part of the "gate" as a foreign policy initiative, as a "related support" function and not a covert action. After all, some people suggest that making a call or two to get landing clearances in a European country is strictly a support function; not until you start carting Tow missiles around in a clandestine aircraft do you really begin to think of covert action in Irangate.

Members of Congress felt that the Iran-Contra Affair carried such serious implications for U.S. foreign policy, and for the role of law in a democracy, that they determined to have an investigation of their own into the matter. One can remember the hours of television exposure. There were even some members who felt that they could make some political hay out of it all, until Ollie North tamped some of it down with his interesting performance. But the hearings produced a certain "cry baby" performance too, on the part of some members. As one watched them on television, some gave the impression that what bothered them more than anything else was not this subverting of democratic procedures, or whatever high-falutin' phrases they used, but the fact that they had not been told about it for many months. There was a secret, a covert action perhaps, and nobody had shared it with them. Later, the members found other grounds on which to pitch their opposition, and what then developed was what all came to see as an outrageous scandal.

The committees proceeded through these hearings, ultimately looking over 300,000 pages of documents, interviewing more than 500 witnesses, holding forty days of hearings and executive sessions. They began to get into what I consider a little bit of overkill. But the Congress had the bit in its teeth, and they saw great advantages with elections coming up, so of course they went into overkill—particularly in the responding legislation on oversight, which has been reported out in the Senate and has been ordered reported out in the House. I certainly think there is overkill in these proposals, but there are others who will be following on our legal panel here; let them argue about it.

Now when you get to policies and Irangate, our Chairman, John Shenefield, asked whether we, as a nation, needed covert action. The answer is "yes," and the Iran-Contra Report so states. One can always return to former Director Colby's trenchant phrase that covert action is the difference between diplomatic protest and sending in the Marines.

For this reason, we can all agree, this country must have an Executive, be he Republican or Democrat, and that Executive must have the capability to carry out covert actions. The record on covert action is mixed; there have been some great successes, and there are some failures. One does not usually hear about the successes in public. If you want to call the Bay of Pigs a covert action, it did not work terribly well. There were reasons outside the intelligence community that contributed largely to the failure, but we are not going into those reasons today. But the overall record is mixed, and one of the reasons why you do not have great popular support for covert actions is that they are covert; the successes are not generally reported, or not reported until years later, so you do not get popular support for an operation about which the public knows nothing. Let us take an example. Covert action played an important part, back in the late 1940's, in supporting President Truman's great Marshall plan initiative. Covert action was fighting back the communist controlled French labor unions, which were trying to defeat the plan, particularly in Marseilles and other ports. In helping to win that battle, covert action was instrumental. Can you imagine what might have happened to post-war Europe if the Marshall plan had not succeeded? That was covert action at its best. I think, although they may have run too long, that Radio Free Europe and Radio Liberation were also magnificent examples of covert action at its best.

I think it is too much to suggest that some poor covert action operation, and its subsequent public reporting, might jeopardize its ultimate retention. Both the Senate and House Intelligence Committees have recently had, as their witness, on the current covert action oversight legislation, one of the most distinguished public servants in post-war America, Clark Clifford. Among many other services, he was counsel to President Truman until some time in 1947, and had a hand in the President's letter of January 22, 1946, which established the Central Intelligence Group, as well as some of the early drafting of the National Security Act of 1947, which, *inter alia*, created the CIA. In his recent testimony, Mr. Clifford called for continued use of covert action, but added that, in his opinion, its misuse might make it worthwhile to consider abandoning it altogether. One cannot dismiss Mr. Clifford as a hostile witness, for he is a distinguished thinker and knows whereof he speaks. However, there are those of us who believe he was a little bit off in his testimony and his interpretation of section 102(c)(5) of the National Security Act of 1947. This section provides that the CIA shall perform such other functions relating to intelligence as the National Security Council may direct. Mr. Clifford feels that this section was included as the basis for the conduct of covert action. This has not been the CIA's

interpretation of that section. Starting with Secretary Forrestal's request that the CIA take covert steps to try to assure that the communists would not win the Italian election of 1948, the CIA's general counsel has taken the position that section 102(c)(5) did not serve as the legal basis for the CIA to engage in covert action; that the CIA can perform a covert action only if the President, or the National Security Council, which the President chairs, so directs, and the Congress deliberately funds it. So the 1947 concept starts with the basic thought of a partnership in covert action between the Executive and the Congress. I hope it does not stop. If it is to continue, however, one would do well to study the additional views in the Iran-Contra Report expressed by Senator David Boren, chairman of the Senate Select Committee on Intelligence, where he stresses the one element that is crucial in this matter. In Boren's view, it is not a question of law; it is trust on which the whole thing must pivot. If the Intelligence Committees do not trust what the executive branch is doing; and if the executive branch does not trust what the committees are doing; the whole working arrangement is bound to go down the drain. There is no excuse for that to happen between men of good will, and certainly, Chairman Boren is a man of good will. I commend to you wholeheartedly the "additional views" of Chairman Boren which are included in the Iran-Contra Report.

There is one last quotation which I wish to cite to you. It is from a recent article in the *New York Times*. The writer says:

Congress' willingness to wink at assistance to the Contras reflected the reluctance of some members to accept political responsibility for abandoning the Contras. In short, game playing by Congress invites game playing by the Administration. This trust is shattered when the President and his aides circumvent law and do not level with Congress, but it is also impaired when Congress acts feebly and erratically.

The author of these recent lines is Arthur Liman, chief majority counsel to the Senate Select Committee on the Iran-Contra Affair.