# Chapter 17 - Covert Action

## What are some forms of covert action?

### What are the potential risks of covert action?

### What is plausible deniability?

### When does it matter?

### When is it meaningless?

## Neutrality Act of 1794

### What is the text of the Neutrality Act?

### What was the original purpose of the Neutrality Act?

### What did Jefferson say about the Neutrality Act?

### What does it mean if we are at war?

### Does peace mean no declaration of war?

### What if the president says it is alright for a private group to engage in military action, say rescuing a hostage?

### What about private companies training foreign armed forces to fight our friends?

## What is the Logan Act of 1799?

### Could this have been used against Jane Fonda in the Vietnam War?

### What about Sean Penn visiting Iraq?

### Are there 1st amendment issues?

### Has the law been enforced?

## Origins of the CIA

### What did of Mitchell Rogovin, Special Counsel to the Director of Central Intelligence, argue was precedent for the powers of the CIA?

### How did Robert Borosage dispute this precedent?

## Implementing the National Security Act of 1947

### Why is it hard to look back to 1947 and make determinations about covert action as it is currently understood?

### Why might the formal congressional record not be an accurate picture of whether congress intended for the CIA to carry out cover actions?

### What provision of the Act could shelter covert action?

### What did the CIA general counsel say in 1947?

### What did annex NSC-4[/]A, adopted by the National Security Council (NSC) at its first meeting, provide?

### How was this expanded by NSC-10/2?

### Were these approved by President Truman?

### How does presidential approval undermine plausible denial?

### How did Congress try to limit plausible deniability in 1974?

### Why is the year this was passed critical?

### What is the recourse if the president does not comply with this law?

### What does this tells about questions of whether CIA was authorized to carry our covert actions?

### Notes

#### US v. Lopez-Lima, 738 F.Supp 1404 (1990)

##### What was defendant charged with?

##### How is it that he is on trial in the US?

##### Where did he spend most of the previous 20 odd years?

##### Who did the hijacker say sent him to Cuba?

##### Why a hijacking?

##### What is his defense?

##### Was hijacking illegal at the time?

##### What did the Church Committee find that supports defendant's theory?

##### What will the court have to determine to evaluate his defense?

##### Will the CIA be willing to produce information about its agents or activities relating to illegal activities?

##### What will this mean for the prosecution’s case if judge finds that is plausible that the CIA did send him to Cuba?

#### Can covert activities be consistent with America values? What did a 1954 report tell us about how the public’s attitudes would have to be changes?

## Congressional Oversight

### There was little review of CIA covert operations through the 1950s. What does a 1954 report about the CIA tell us the thinking in those days?

### What is the tension between accountability and secrecy for covert activities?

### What caused Congress to try to increase its oversight of the CIA?

### Budgetary supervision

#### What does the Statement and Account Clause of the Constitution, Article I, Section 9, Clause 7, state:

#### How did Richardson try to use this to get information about the CIA budget?

#### What did he find when the Treasury turned over the reports to him?

#### Why did the United States Supreme Court hold that he had not standing?

#### Notes

##### What the Court say Congress could do to solve Richardson’s problem?

##### Assume the president claims that the budget is classified. Do you think Congress is bound by the determination?

##### By any determination of secrecy by the president?

##### How would you distinguish this from Congresses ability to force the president to make reports under the War Powers Act?

##### How does the 1949 Central Intelligence Agency Act enable secret funding of the CIA, giving that the president usually can only spend money as specifically obligated by appropriations?

##### Congress now requires the DNI to produce general budget figures for the agencies. Do such general numbers provide any information about what the agencies are doing?

##### What level of detail would be required to implicate specific intelligence activities?

### What did the Hughes-Ryan Amendment require?

### What prompted this amendment?

### How did President Ford think the Hughes-Ryan amendment would affect intelligence?

### What was exempted from the Hughes-Ryan amendment?

### What did the CIA general counsel claim that the amendment ratified?

### What is plausible deniability and how does the Amendment try to end it?

### Intelligence Oversight Act of 1980

#### What does it require the president to do

#### Does it require congressional approval?

#### How can the reporting be limited if the President is concerned about secrecy?

## Iran Contra

### What was the original deal as suggested by Israel?

#### What is the downside of this sort of deal?

#### What about buying back slaves in Africa?

### How did the arms get to Iran?

### What did Secretary of State Schultz determine in 1984 that complicates the use of the Arms Export Control Act and other legal authorities?

### How does the Hostage Act support the arms deal?

### What provision of the Hostage was ignored?

### What are the legal problems of using the Arms Export Control Act as authority?

### What act did the president use to get out from under the Arms Export Control Act?

### But may the President avoid the AECA simply by labeling an arms transfer as a covert action?

### What would the President have to do to use the National Security Act, added by the Intelligence Oversight Act of 1980 as authority?

### How did Poindexter finesse this?

### What is the loophole for reporting in §501 of the Intelligence Oversight Act?

### When did Judge Sporkin say the White House thought it could report?

### Does this support the argument by Meese and others that the president did not have to report at the time of the transaction?

### What is an argument for why the president has a constitutional right to not report certain covert actions?

### What finding did Regan make on 1 Dec 1981 and convey to the Congressional intelligence committees?

### What was the purpose of this finding?

### What was the purpose of the Boland Amendments?

#### (Bad history - the communist movement is named for someone we overthrew decades earlier – Sandino. They fought against Somoza, a really bad guy, but our bad guy)

### What were the Congressional conflicts over the Amendments?

### What did Boland II provide?

### What prompted this amendment?

### What are the three interpretation problems with this amendment?

### What did Congress think the amendment meant in its report on Iran-Contra?

### How did the White House try it take advantage of its interpretation questions to get around Boland II?

### Putting aside policy and constitutional considerations, why is it a bad idea to have White House personnel running off the books operations?

### What did the GAO report on government contracting say about the White House theory that the "no funds" provision only applied to funds in the defense appropriations bill that the Boland Amendment was part of?

### Why might congress have used "no funds" rather than language about specific appropriations?

### What did Regan say about what he knew and authorized?

### How did this defuse the impeachment issue?

### What was latter support for this position, i.e., what was Regan’s endgame?

### If there are no presidential findings, where does this leave the legal status of these activities, even if they might have been legal with presidential findings?

### What does congress require be done with gifts to the US?

### Why is possibly unconstitutional for the president to solicit funds from other countries that are not put under the control of Congress?

### Is there evidence that countries that provided funds were paid back through other channels?

### Is this money laundering?

### What is the effect of money outside the appropriations process on separation of powers?

### Is there a difference ij the president tries to persuade other countries to directly support causes that the Congress will not support?

### How important is it if Congress has said no to supporting the cause, rather than merely being silent?

### Are there constitutional limits on acts such as the Boland Amendment?

### Who has the constitutional authority to issue letters of Marque and Reprisal?

### What kind of war are these aimed at?

### What kind of war were we involved in with the Contras?

### How can the Marque and Reprisal Clause be used to support the constitutionally of the Boland amendment?

## Iran Contra in the Courts

### North et. al

#### What crimes were the Iran Contra defendant's charged with?

#### What did the appeals court say about North's requested instruction that authorization by his superiors was a complete defense?

#### When did the appeals court say this might be a defense?

#### The white house refused to turn over classified documents requested by North's attorneys, resulting in the dismissal of most of the money crimes

#### Is criminal prosecution appropriate?

#### Was North just carrying out the president's policy?

#### What is the advantage of not protecting the individuals who carry out the policy?

#### North played it as a patriot caught up in technicalities and made the fall guy by higher ups.

#### What was the problem with immunity that eventually resulted in the dismissal of the charges against North and others?

#### Do you think Congress intended that result?

#### Is it better to have the hearing or a conviction?

#### McFarlane pleaded guilty to misdemeanor charges of withholding information from Congress. He was pardoned by Bush.

#### Casper Weinberger was pardoned, foreclosing trial.

#### Six were pardoned, 5 after convictions.

### US v. Terrell, 731 F.Supp 473 (1989)

#### What was the prosecution based on?

#### Why did the defendants say the Act did not apply?

#### What was the factual support for their claim?

#### What did the court find?

## The Intelligence Authorization Act of 1991

### What are the limits on covert action?

### What are the directions on notification to avoid long delays?

### What did the act do to address the president’s memo of disapproval that accompanied his pocket veto?

### Did the president say that he would always report?

### What provision might violate INS v. Chadha?

### Should reporting to the intelligence committees constitute notice to Congress?

### What are the powers of the new IG under the act?

### Could Iran Contra occur again?

### Do the laws really matter?

### What does control of the executive depend on?