

The Criminal 'Laws' of Counterinsurgency

A new book traces how the CIA and U.S. counterinsurgency warfare operatives adopted lessons from the Nazis' fight against the partisans and evolved into a dangerous law unto themselves, writes retired JAG Major Todd E. Pierce.

By Todd E. Pierce

Douglas Valentine has once again added to the store of knowledge necessary for American citizens to understand how the U.S. government actually works today, in his most recent book entitled *The CIA As Organized Crime*. (Valentine previously wrote *The Phoenix Program*, which should be read with the current book.)

The U.S. "deep state" – of which the CIA is an integral part – is an open secret now and the Phoenix Program (assassinations, death squads, torture, mass detentions, exploitation of information) has been its means of controlling populations. Consequently, knowing the deep state's methods is the only hope of building a democratic opposition to the deep state and to restore as much as possible the Constitutional system we had in previous centuries, as imperfect as it was.

Princeton University political theorist Sheldon Wolin described the U.S. political system in place by 2003 as "inverted totalitarianism." He reaffirmed that in 2009 after seeing a year of the Obama administration. Correctly identifying the threat against constitutional governance is the first step to restore it, and as Wolin understood, substantive constitutional government ended long before Donald Trump campaigned. He's just taking unconstitutional governance to the next level in following the same path as his recent predecessors. However, even as some elements of the "deep state" seek to remove Trump, the President now has many "deep state" instruments in his own hands to be used at his unreviewable discretion.

Many "never-Trumpers" of both parties see the deep state's national security bureaucracy as their best hope to destroy Trump and thus defend constitutional government, but those hopes are misguided. After all, the deep state's bureaucratic leadership has worked arduously for decades to subvert constitutional order.

As Michael Glennon, author of *National Security and Double Government*, pointed out in a June 2017 Harper's essay, if "the president maintains his attack, splintered and demoralized factions within the bureaucracy could actually support – not oppose – many potential Trump initiatives, such as stepped-up drone strikes, cyberattacks, covert action, immigration bans, and mass

surveillance.”

Glennon noted that the propensity of “security managers” to back policies which ratchet up levels of security “will play into Trump’s hands, so that if and when he finally does declare victory, a revamped security directorate could emerge more menacing than ever, with him its devoted new ally.” Before that happens, it is incumbent for Americans to understand what Valentine explains in his book of CIA methods of “population control” as first fully developed in the Vietnam War’s Phoenix Program.

Hating the U.S.

There also must be the realization that our “national security” apparatchiks – principally but not solely the CIA – have served to exponentially increase the numbers of those people who hate the U.S. Some of these people turn to terrorism as an expression of that hostility. Anyone who is at all familiar with the CIA and Al Qaeda knows that the CIA has been Al Qaeda’s most important “combat multiplier” since 9/11, and the CIA can be said to have birthed ISIS as well with the mistreatment of incarcerated Iraqi men in U.S. prisons in Iraq.

Indeed, by following the model of the Phoenix Program, the CIA must be seen in the Twenty-first Century as a combination of the ultimate “Murder, Inc.,” when judged by the CIA’s methods such as drone warfare and its victims; and the Keystone Kops, when the multiple failures of CIA policies are considered. This is not to make light of what the CIA does, but the CIA’s misguided policies and practices have served to generate wrath, hatred and violence against Americans, which we see manifested in cities such as San Bernardino, Orlando, New York and Boston.

Pointing out the harm to Americans is not to dismiss the havoc that Americans under the influence of the CIA have perpetrated on foreign populations. But “morality” seems a lost virtue today in the U.S., which is under the influence of so much militaristic war propaganda that morality no longer enters into the equation in determining foreign policy.

In addition to the harm the CIA has caused to people around the world, the CIA works tirelessly at subverting its own government at home, as was most visible in the spying on and subversion of the torture investigation by the Senate Select Committee on Intelligence. The subversion of democracy also includes the role the CIA plays in developing and disseminating war propaganda as “information warfare,” upon the American people. This is what the Rand Corporation under the editorship of Zalmay Khalilzad has described as “conditioning the battlefield,” which begins with the minds of the American population.

Douglas Valentine discusses and documents the role of the CIA in disseminating pro-war propaganda and disinformation as complementary to the violent tactics of the Phoenix Program in Vietnam. Valentine explains that “before Phoenix was adopted as the model for policing the American empire, many US military commanders in Vietnam resisted the Phoenix strategy of targeting civilians with Einsatzgruppen-style ‘special forces’ and Gestapo-style secret police.”

Military Commanders considered that type of program a flagrant violation of the Law of War. “Their main job is to zap the in-betweeners – you know, the people who aren’t all the way with the government and aren’t all the way with the Viet Cong either. They figure if you zap enough in-betweeners, people will begin to get the idea,” according to one quote from *The Phoenix Program* referring to the unit tasked with much of the Phoenix operations.

Nazi Influences

Comparing the Phoenix Program and its operatives to “Einsatzgruppen-style ‘special forces’ and Gestapo-style secret police” is not a distortion of the strategic understanding of each. Both programs were extreme forms of repression operating under martial law principles where the slightest form of dissent was deemed to represent the work of the “enemy.” Hitler’s *Bandit Hunters: The SS and the Nazi Occupation of Europe* by Philip W. Blood describes German “Security Warfare” as practiced in World War II, which can be seen as identical in form to the Phoenix Program as to how the enemy is defined as anyone who is “potentially” a threat, deemed either “partizans” or terrorists.

That the Germans included entire racial categories in that does not change the underlying logic, which was, anyone deemed an internal enemy in a territory in which their military operated had to be “neutralized” by any means necessary. The U.S. military and the South Vietnamese military governments operated under the same principles but not based on race, rather the perception that certain areas and villages were loyal to the Viet Cong.

This repressive doctrine was also not unique to the Nazis in Europe and the U.S. military in Vietnam. Similar though less sophisticated strategies were used against the American Indians and by the imperial powers of the late Nineteenth and early Twentieth centuries, including by the U.S. in its newly acquired territories of the Philippines and in the Caribbean. This “imperial policing,” i.e., counter-insurgency, simply moved to more manipulative and, in ways, more violent levels.

That the U.S. drew upon German counter-insurgency doctrine, as brutal as it was, is well documented. This is shown explicitly in a 2011 article published in the *Journal of Military and Strategic Studies* entitled *German Counterinsurgency*

Revisited by Charles D. Melson. He wrote that in 1942, Nazi commander Heinrich Himmler named a deputy for "anti-bandit warfare," (Bevollmächtigter für die Bandenkämpfung im Osten), SS-General von dem Bach, whose responsibilities expanded in 1943 to head all SS and police anti-bandit units and operations. He was one of the architects of the Einsatzgruppen "concept of anti-partisan warfare," a German predecessor to the "Phoenix Program."

'Anti-Partisan' Lessons

It wasn't a coincidence that this "anti-partisan" warfare concept should be adopted by U.S. forces in Vietnam and retained to the present day. Melson pointed out that a "post-war German special forces officer described hunter or ranger units as 'men who knew every possible ruse and tactic of guerrilla warfare. They had gone through the hell of combat against the crafty partisans in the endless swamps and forests of Russia.'"

Consequently, "The German special forces and reconnaissance school was a sought after posting for North Atlantic Treaty Organization special operations personnel," who presumably included members of the newly created U.S. Army Special Forces soldiers, which was in part headquartered at Bad Tölz in Germany, as well as CIA paramilitary officers.

Just as with the later Phoenix Program to the present-day U.S. global counterinsurgency, Melson wrote that the "attitude of the [local] population and the amount of assistance it was willing to give guerilla units was of great concern to the Germans. Different treatment was supposed to be accorded to affected populations, bandit supporters, and bandits, while so-called population and resource control measures for each were noted (but were in practice, treated apparently one and the same). 'Action against enemy agitation' was the psychological or information operations of the *Nazi* period. The *Nazis* believed that, 'Because of the close relationship of guerilla warfare and politics, actions against enemy agitation are a task that is just as important as interdiction and combat actions. All means must be used to ward off enemy influence and waken and maintain a clear political will.'"

This is typical of any totalitarian system – a movement or a government – whether the process is characterized as counterinsurgency or internal security. The idea of any civilian collaboration with the "enemy" is the basis for what the U.S. government charges as "conspiracy" in the Guantanamo Military Commissions.

Valentine explains the Phoenix program as having been developed by the CIA in 1967 to combine "existing counterinsurgency programs in a concerted effort to 'neutralize' the Vietcong infrastructure (VCI)." He explained further that

“neutralize” meant “to kill, capture, or make to defect.” “Infrastructure” meant civilians suspected of supporting North Vietnamese and Vietcong soldiers. Central to the Phoenix program was that its targets were civilians, making the operation a violation of the Geneva Conventions which guaranteed protection to civilians in time of war.

“The Vietnam’s War’s Silver Lining: A Bureaucratic Model for Population Control Emerges” is the title of Chapter 3. Valentine writes that the “CIA’s Phoenix program changed how America fights its wars and how the public views this new type of political and psychological warfare, in which civilian casualties are an explicit objective.” The intent of the Phoenix program evolved from “neutralizing” enemy leaders into “a program of systematic repression for the political control of the South Vietnamese people. It sought to accomplish this through a highly bureaucratized system of disposing of people who could not be ideologically assimilated.” The CIA claimed a legal basis for the program in “emergency decrees” and orders for “administrative detention.”

Lauding Petraeus

Valentine refers to a paper by David Kilcullen entitled Countering Global Insurgency. Kilcullen is one of the so-called “counter-insurgency experts” whom General David Petraeus gathered together in a cell to promote and refine “counter-insurgency,” or COIN, for the modern era. Fred Kaplan, who is considered a “liberal author and journalist” at Slate, wrote a panegyric to these cultists entitled, The Insurgents: David Petraeus and the Plot to Change the American Way of War. The purpose of this cell was to change the practices of the U.S. military into that of “imperial policing,” or COIN, as they preferred to call it.

But Kilcullen argued in his paper that “The ‘War on Terrorism’ is actually a campaign to counter a global insurgency. Therefore, Kilcullen argued, “we need a new paradigm, capable of addressing globalised insurgency.” His “disaggregation strategy” called for “actions to target the insurgent infrastructure that would resemble the unfairly maligned (but highly effective) Vietnam-era Phoenix program.”

He went on, “Contrary to popular mythology, this was largely a civilian aid and development program, supported by targeted military pacification operations and intelligence activity to disrupt the Viet Cong Infrastructure. A global Phoenix program (including the other key elements that formed part of the successful Vietnam CORDS system) would provide a useful start point to consider how Disaggregation would develop in practice.”

It is readily apparent that, in fact, a Phoenix-type program is now U.S. global

policy and – just like in Vietnam – it is applying “death squad” strategies that eliminate not only active combatants but also civilians who simply find themselves in the same vicinity, thus creating antagonisms that expand the number of fighters.

Corroborative evidence of Valentine’s thesis is, perhaps surprisingly, provided by the CIA’s own website where a number of redacted historical documents have been published. Presumably, they are documents first revealed under the Freedom of Information Act. A few however are copies of news articles once available to the public but now archived by the CIA which has blacked-out portions of the articles.

The Bloody Reality

One “sanitized” article – approved for release in 2011 – is a partially redacted New Times article of Aug. 22, 1975, by Michael Drosnin. The article recounts a story of a U.S. Army counter-intelligence officer “who directed a small part of a secret war aimed not at the enemy’s soldiers but at its civilian leaders.” He describes how a CIA-directed Phoenix operative dumped a bag of “eleven bloody ears” as proof of six people killed.

The officer, who recalled this incident in 1971, said, “It made me sick. ... I couldn’t go on with what I was doing in Vietnam. . . . It was an assassination campaign . . . my job was to identify and eliminate VCI, the Viet Cong ‘infrastructure’ – the communist’s shadow government. I worked directly with two Vietnamese units, very tough guys who didn’t wear uniforms . . . In the beginning they brought back about 10 percent alive. By the end they had stopped taking prisoners. ...

“How many VC they got I don’t know. I saw a hell of a lot of dead bodies. We’d put a tag on saying VCI, but no one really knew – it was just some native in black pajamas with 16 bullet holes.”

This led to an investigation by New Times in a day when there were still “investigative reporters,” and not the government sycophants of today. Based on first-hand accounts, their investigation concluded that Operation Phoenix was the “only systematized kidnapping, torture and assassination program ever sponsored by the United States government. . . . Its victims were noncombatants.” At least 40,000 were murdered, with “only” about 8,000 supposed Viet Cong political cadres targeted for execution, with the rest civilians (including women and children) killed and “later conveniently labeled VCI. Hundreds of thousands were jailed without trial, often after sadistic abuse.” The article notes that Phoenix was conceived, financed, and directed by the Central Intelligence Agency, as Mr. Valentine writes.

A second article archived by the CIA was by the Christian Science Monitor, dated Jan. 5, 1971, describing how the Saigon government was "taking steps ... that could help eliminate one of the most glaring abuses of its controversial Phoenix program, which is aimed against the Viet Cong political and administrative apparatus." Note how the Monitor shifted blame away from the CIA and onto the South Vietnamese government.

But the article noted that one of the most persistent criticisms of Phoenix was that it resulted "in the arrest and imprisonment of many innocent civilians." These were called "Class C Communist offenders," some of whom may actually have been forced to commit such "belligerent acts" as digging trenches or carrying rice. It was those alleged as the "hard core, full-time cadre" who were deemed to make up the "shadow government" designated as Class A and B Viet Cong.

Yet "security committees" throughout South Vietnam, under the direction of the CIA, sentenced at least 10,000 "Class C civilians" to prison each year, far more than Class A and B combined. The article stated, "Thousands of these prisoners are never brought to court trial, and thousands of other have never been sentenced." The latter statement would mean they were just held in "indefinite detention," like the prisoners held at Guantanamo and other U.S. detention centers with high levels of CIA involvement.

Not surprisingly to someone not affiliated with the CIA, the article found as well that "Individual case histories indicate that many who have gone to prison as active supporters of neither the government nor the Viet Cong come out as active backers of the Viet Cong and with an implacable hatred of the government." In other words, the CIA and the COIN enthusiasts are achieving the same results today with the prisons they set up in Iraq and Afghanistan.

CIA Crimes

Valentine broadly covers the illegalities of the CIA over the years, including its well-documented role in facilitating the drug trade over the years. But, in this reviewer's opinion, his most valuable contribution is his description of the CIA's participation going back at least to the Vietnam War in the treatment of what the U.S. government today calls "unlawful combatants."

"Unlawful combatants" is a descriptive term made up by the Bush administration to remove people whom U.S. officials alleged were "terrorists" from the legal protections of the Geneva Conventions and Human Rights Law and thus to justify their capture or killing in the so-called "Global War on Terror." Since the U.S. government deems them "unlawful" – because they do not belong to an organized military structure and do not wear insignia – they are denied the "privilege" of belligerency that applies to traditional soldiers. But – unless they take a

“direct part in hostilities” – they would still maintain their civilian status under the law of war and thus not lose the legal protection due to civilians even if they exhibit sympathy or support to one side in a conflict.

Ironically, by the Bush administration’s broad definition of “unlawful combatants,” CIA officers and their support structure also would fit the category. But the American public is generally forgiving of its own war criminals though most self-righteous and hypocritical in judging foreign war criminals. But perhaps given sufficient evidence, the American public could begin to see both the immorality of this behavior and its counterproductive consequences.

This is not to condemn all CIA officers, some of whom acted in good faith that they were actually defending the United States by acquiring information on a professed enemy in the tradition of Nathan Hale. But it is to harshly condemn those CIA officials and officers who betrayed the United States by subverting its Constitution, including waging secret wars against foreign countries without a declaration of war by Congress. And it decidedly condemns the CIA war criminals who acted as a law unto themselves in the torture and murder of foreign nationals, as Valentine’s book describes.

Talleyrand is credited with saying, “They have learned nothing and forgotten nothing.” Reportedly, that was borrowed from a 1796 letter by a French naval officer, which stated, in the original language: *Personne n’est corrigé; personne n’a su ni rien oublier ni rien apprendre.* In English: “Nobody has been corrected; no one has known to forget, nor yet to learn anything.” That sums up the CIA leadership entirely.

Douglas Valentine’s book is a thorough documentation of that fact and it is essential reading for all Americans if we are to have any hope for salvaging a remnant of representative government.

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