

## **The "Panofsky" Critique and the Cox Committee Report: 50 Factual Errors in the Four Essays**

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### **Introduction**

The Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (the "Select Committee") is valuable, and--importantly for this purpose--factually accurate. Since it is mainly based on classified information, "critiques" of the sort issued by Messrs. Johnston, Panofsky, Di Capua, and Franklin do a disservice by implying the Select Committee Report lacks foundation.

The publisher of the essays, Stanford's Center for International Security and Cooperation, is the direct successor of the Center for International Security and Arms Control, an organization whose conclusions on Soviet intentions and compliance with arms control treaties were notoriously wrong. In 1986, the Center published a 437-page report detailing the Soviet Union's "good" record of compliance with arms control treaties and contradicting conclusions reached by the U.S. government after long and detailed review of the evidence. The signers included W.K.H. Panofsky. The findings of this report were repudiated in 1989, when then--Soviet Foreign Minister Eduard Shevardnadze admitted that the Soviet Union had in fact violated the ABM treaty.

The principal criticism in the four essays written by Messrs. Johnston, Panofsky, Di Capua, and Franklin is that portions of the Select Committee Report lack detailed substantiation. The authors of the critique then draw various inferences from this "fact." This criticism is one that the Select Committee anticipated when it cautioned readers about the proper use of the declassified report. The important findings of the Select Committee are almost all based on classified information. In the official report, which remains Top Secret, nearly every sentence is footnoted. All of the classified sources were kept secret by the government in order to protect intelligence sources and methods and other national security interests.

The Select Committee also cautioned that its classified Final Report is the definitive product of the Committee. The authors of the four essays acknowledged this deficiency in their critique when they stated: "We realize that not all of the report was declassified and thus some of the factual justification for the report's conclusions may be classified." The authors also acknowledge that much of their own work represents the personal conclusions and opinions of the authors and that those opinions may be right or wrong. In many cases, the opinions are based on incorrect factual assumptions. The critiques therefore would better be viewed as an attempt to foster debate and to reiterate the authors' views on U.S. relations with the People's Republic of China.

The following are examples of factual errors disclosed in a cursory review of the four essays.

### **A Sampling of Mistakes: 50 Factual Errors**

1. The paper by Franklin asserts about Chapter 2 of the Select Committee report, concerning PRC theft of U.S. thermonuclear design information, that "numerous reports have been published criticizing the conclusions of the nuclear section (e.g., the President's Foreign Intelligence Advisory Board's 'Rudman report')." The footnote substantiating this claim cites only the full title of the Rudman report. As discussed below, the PFIAB (Rudman Report) supports the Select Committee's conclusions.

The paper by Panofsky makes the same assertion, implying on page 46 that the Rudman report referred to the Select Committee when it wrote: "Possible damage has been minted as possible disaster; workaday delay and bureaucratic confusion have been cast as diabolical conspiracies. Enough is enough."

But PFIAB Chairman Warren Rudman stated that the Franklin-Panofsky view is wrong. Indeed, he wrote a letter to the editor of the Los Angeles Times, whose columnist had made the same false assertion. These "two declaratory sentences," Rudman wrote, "do not refer to the work of the distinguished Democratic and Republican members of the 'Cox Committee,' but to the unfortunate swirl of wild speculation and controversy that erupted publicly following the release of the Cox Committee report."

Moreover, Rudman continued, his report specifically praises the Select Committee's work, saying that "the Cox Committee made substantial and constructive contributions to understanding and resolving security problems at DOE."

Further, the Rudman report stated that "the evidence indicating widespread security vulnerabilities at the weapons laboratories has been ignored for far too long, and the work of the Cox committee has been invaluable in gaining the attention of the American public and in helping focus the political will necessary to resolve these problems."

2. The essay by Panofsky purports to compare unfavorably the Select Committee report with the Intelligence Community damage assessment, which he mistakenly states was prepared by Admiral David Jeremiah. Panofsky claims that the "report of the Intelligence Community is much more cautious." But Panofsky does not claim to have reviewed the highly classified Intelligence Community report. The only public version of the Jeremiah review is a one-page press release. I have reviewed both the entire damage assessment and the entire Jeremiah review, and had the opportunity to listen to questions and answers in a closed hearing at which Admiral Jeremiah, the Director of Central Intelligence, and others, including Robert Walpole, who actually prepared the damage assessment, testified. Both the damage assessment and the Jeremiah review correspond to the Select Committee report in all material respects.

3. The Panofsky essay is flat wrong when it refers to what little the Intelligence Community has said publicly about the subjects addressed in the Select Committee report. At page 50 of his essay, Panofsky says, "let me compare some of the statements in the Cox Commission [sic] report with the conclusions of the Intelligence Community." He then purports to "contrast" two statements:

\* "The PRC [sic] next generation of thermonuclear weapons [sic] currently under development [sic] will exploit elements of stolen design information." [Note: Panofsky inaccurately cites Chapter 2 of the Report for this statement. No such statement appears in Chapter 2. A passage similar, but not identical, to the one "quoted" appears in the Overview.]

\* "We cannot determine the full extent of weapons information obtained, for example we do not know whether any weapon design documentation or blueprints were acquired." [From the Intelligence Community Damage Assessment press release.]

This is a deliberate apples-and-oranges comparison. The Select Committee finding cited above is 100% consistent with the Intelligence Community assessment. Here is what the Intelligence Community actually said publicly in September 1999:

\* Within 15 years, the PRC will have new, mobile ICBMs "with smaller nuclear warheads--in part influenced by U.S. technology gained through espionage."

\* "China, for example, has been able to obtain significant nuclear weapons information from espionage"

In addition, the April 1999 highly classified "Damage Assessment of China's Acquisition of U.S. Nuclear Weapons Information"--the Walpole assessment--also affirmed the Select Committee's conclusions. It was prepared with the active participation of the U.S. government's leading nuclear weapons design physicists. After reviewing scientific and intelligence information not available to the authors of these four essays, the Intelligence Community and our country's current weapons designers concluded:

\* "By at least the late 1970s the Chinese launched an ambitious collection program focused on the U.S., including its national laboratories, to acquire nuclear weapons technologies."

\* "China obtained by espionage classified U.S. weapons information that probably accelerated its program to develop future nuclear weapons. This collection program allowed China to focus successfully down critical paths and avoid less promising approaches to nuclear weapons designs." (Emphasis added.)

\* "China obtained at least basic design information on several modern nuclear reentry vehicles, including the Trident II (W-88)."

\* "China obtained information on a variety of U.S. weapon design concepts and weaponization features, including those of a neutron bomb."

\* "China's technical advances have been made on the basis of classified and unclassified information derived from espionage, contact with U.S. and other countries'

scientists, conferences and publications, unauthorized media disclosures, declassified U.S. weapons information, and Chinese indigenous development." (Emphasis added.)

\* "U.S. information acquired by the Chinese could help them develop a MIRV for a future missile."

Moreover, this is the public version of the Intelligence Community assessment. The full, classified assessment is much more specific and detailed in both its judgments and its proof.

4. In his essay, Panofsky claims to have determined that the "basis of...unanimity" on the Select Committee is that "the Democratic leadership in the Congress decided that the Select Committee report should not become a matter of political contest...in the upcoming presidential and congressional campaigns." This is an astonishing claim, if it could be supported, of abusing the national security for campaign purposes. Panofsky offers no support.

5. On page 12 of the "Executive Summary," the authors state that "a committee for the Intelligence Community chaired by Admiral Jeremiah concluded in 1998...." The Jeremiah panel, however, did not conduct an independent assessment, but simply reviewed the Intelligence Community damage assessment--the Walpole Assessment recommended by the Select Committee. Both were undertaken and concluded in 1999--not 1998. (See Press Release by the Director of Central Intelligence, March 15, 1999.) The erroneous reference is important because it goes to the question of when the U.S. government reached its conclusions.

6. The language ascribed to the Jeremiah panel in fact comes from the Intelligence Community Damage Assessment, conducted pursuant to the recommendation of the Select Committee, by Robert Walpole, the National Intelligence Officer for Strategic and Nuclear Programs. The Walpole Assessment was made with assistance from CIA, DOE, DOD, DIA, NSA, INR, FBI, and multiple weapons designers, experts, and analysts from the national laboratories. (See April 21, 1999 Press Release by the Director of Central Intelligence.)

This mistake confuses both the timing and the substance of the Intelligence Community damage assessment (which was only undertaken after the Select Committee's specific recommendation), distorts the authors' view of the importance of the Select Committee's Report, and represents shoddy scholarship that the authors so indignantly condemn.

7. In his essay, Panofsky falsely asserts that "Chinese dissidents who left for the United States are designated [by the Select Committee report] as 'sleeper' agents." No such statement appears in the Select Committee report. In addition, noted Chinese dissidents such as Wei Jingsheng and Harry Wu have been highly complimentary of the work of the Select Committee.

8. In his essay, Panofsky states that the Select Committee report does not give "any indication" of the extent to which stolen U.S. nuclear weapons design information "has added to that developed by the [PRC] indigenously." But the Select Committee report in fact addresses the question directly. The theft "saved the PRC years of effort and resources, and helped the PRC in its efforts to fabricate and successfully test a new generation of thermonuclear weapons." (Select Committee report, p. 62) This is, in fact, the assessment of the Intelligence Community as well.

9. In his essay, Panofsky states that "this so-called neutron bomb lacks significant military utility." That the PRC stole U.S. neutron bomb design information is thus, he says, "irrelevant." But a neutron bomb is in fact far more likely to be used in actual combat operations than the PRC's existing "city buster" nuclear weapons. Moreover, a neutron weapon used against U.S. naval forces seeking to deter or repel a PRC attack on Taiwan could have a devastating effect on the combat capability of U.S. forces, and thus, could adversely affect the outcome of such a conflict. A neutron weapon used against Taiwan could produce electromagnetic pulse effects that would wreak havoc in Taiwan's electric power and communications infrastructure, decidedly affecting Taiwan's ability to deter or repel attack.

10. In his essay, Johnston states categorically that the PRC includes Taiwan in its declared "no first use" nuclear weapons policy (p. 35). In fact, however, the PRC's chief arms control official, Sha Zukang, told Newsweek in August 1996 that the PRC's "no first use" pledge on nuclear weapons "does not apply" to Taiwan. Johnston is free to believe later PRC statements by lower-ranking officials seeking to "clarify" this statement, but at best, the PRC has created ambiguity in its public statements. Prudent military planners cannot, as Johnston does, discount the possibility that the PRC does envision a range of nuclear options against Taiwan, including the possible use of neutron bombs. Indeed, during its recent displeasure with Taiwan President Lee's public statements about cross-strait relations, the PRC pointedly announced that it possesses neutron bomb capability.

11. In his essay, Panofsky states (p. 48) that it is "difficult to believe" the PRC will deploy a next generation of thermonuclear weapons. But the most recent unclassified version of the National Intelligence Council Report (September 1999) states that the PRC is "likely" to deploy new, smaller thermonuclear warheads, "and that these new warheads will be influenced by U.S. technology gained through espionage."

12. According to Panofsky, the Select Committee report "maintains that PRC penetration of U.S. labs commenced in the late 1970's." No such statement is made in the report. While the Select Committee investigation covered successful PRC thefts from espionage at U.S. weapons laboratories during the Carter administration, there is no basis for asserting that this is when PRC espionage against the labs "commenced."

13. In his essay, Panofsky refers to the W-88 thermonuclear warhead as "old" technology. It is, in fact, the most modern nuclear weapon in the U.S. arsenal, and until it was compromised, no other nation in the world possessed such a weapon. Elsewhere in

his essay, Panofsky contradicts himself, stating that, despite the fact that its design was commenced some years ago, it "is regarded as a 'modern' two-stage thermonuclear weapon." Since the W-88 is America's most modern nuclear weapon, Panofsky's description of it as "old" trivializes a very important national security loss.

14. The essays by Panofsky and Johnston claim that the U.S. has deployed a neutron bomb, whereas in fact this is true only if one accepts expansive definitions of both what constitutes a "neutron bomb," and what constitutes deployment.

First, the authors refer interchangeably to three different warheads as the "neutron bomb." (See, e.g., p. 21.) In fact, however, these three warheads--the W-70; the W-79; and the W-66--are each different.

Second, the authors incorrectly state that there were only two versions of the W-70 (p. 51). The Federation of American Scientists is a public, non-classified source that identifies four versions of the W-70. In fact, there were at least four versions and three distinct types. Moreover, the W-70 Mod 3 is the version commonly known as the neutron bomb.

Third, there is further indication that the authors do not have their neutron bomb facts straight. They incorrectly imply (p. 13) that the W-66 warhead was a version of the W-70 warhead. In fact, the W-66 was developed for the Sprint Interceptor. The W-66 was manufactured in 1974-1975, and the enhanced radiation version of the W-70 (the W-70 Mod 3) was not manufactured until 1981-83. The W-70 Mod 3 is the only U.S. enhanced radiation warhead designed for deployment on a battlefield ballistic missile.

The W-70 Mod 3 was the enhanced radiation version intended for use on the Lance SRBM. Responsible officials at the Department of Defense have advised that the W-70 Mod 3 was made ready for use, and stored in stockpiles, but its "deployment" is a matter of definition. According to Sam Cohen, an inventor of the neutron bomb (and a critic of both the U.S. Intelligence Community and the Select Committee), the W-70 Mod 3 was never deployed. The stockpile was ordered destroyed by President Bush in the early 1990s. Congress has prohibited the development of any advanced versions of this warhead.

As for the W-79 warhead, it was never deployed in its enhanced radiation version on any missile-U.S., NATO, or otherwise. The United States did prepare this version of the W-79 for use on an artillery shell, but never made it fully ready for battlefield operation. The artillery was intended for deployment in Europe, but its very existence raised such a political furor there that these weapons were not configured as battlefield ready and were quickly withdrawn.

Finally, the W-66 nuclear warhead was never deployed for offensive use on any U.S., NATO, or other missile, or on an artillery shell. Rather, the W-66 was used for only five months in the mid-1970s in an aborted anti-ballistic missile (ABM) system designed to defend against enemy missile attack.

15. In his essay, Panofsky states that "no evidence is given in any of the reports that the design of the [new, smaller PRC nuclear warhead] was derived from U.S. information." That the specific evidence is not given merely reflects the fact that it is classified. The conclusion has been stated, not only in the Select Committee report, but also in the public versions of the two Intelligence Community reports on this subject to Congress during 1999.

16. In his essay, Panofsky states that the PRC "tested a system exhibiting principles possibly similar to those incorporated in the W-88...[but which] is not even remotely a copy or a 'knock-off'...of the W-88." On its face, the statement lacks credibility that a system similar to the W-88 is not even remotely a copy of the W-88. In addition, Panofsky's unsubstantiated assertion flatly contradicts the evidence presented by the Intelligence Community to Congress. Panofsky's assertion is without basis in fact. Moreover, the U.S. analysis of the PRC's tests of this nuclear weapon, which underlies the U.S. government's conclusions, remains classified.

17. In his essay, Panofsky, in his chart at page 53, states that the PRC's DF-31 intercontinental ballistic missile is "under development." In fact, the PRC successfully tested the DF-31 in August 1999. Three DF-31's were paraded in Beijing on international television for the October 1, 1999 50th anniversary of Communist rule of China, indicating that production is already underway. Moreover, Jane's Defense Weekly has reported that DF-31s may already be deployed in southern China.

18. Panofsky asserts that "a MIRV-capable missile could not offer any significant strategic advantage to China." In fact, MIRVed missiles can be an effective means of attempting to defeat missile defenses, which the United States, Japan, South Korea, and possibly Taiwan are planning for the Asia-Pacific theatre. Moreover, there is ample evidence that the PRC is working to defeat potential U.S. missile defenses. The September 1999 National Intelligence Council analysis of missile threats confirmed the Select Committee's finding (Vol. I, pp.194-95) that the PRC likely would pursue various countermeasures to undercut U.S. theater and national missile defenses, including in particular penetration aids and potentially an increased number of missiles and/or MARV, MIRV, or MRV capabilities. (Penetration aids are designed to foil missile defense systems that can only counter a small number of incoming warheads.)

19. In his essay, Panofsky asserts that the PRC's development of new, smaller, more accurate thermonuclear warheads that can survive U.S. or other attempts to destroy them "provides for an increase in international strategic stability." But the PRC's acquisition of a "survivable" nuclear force is hardly stabilizing. It can tempt the PRC to impose its political will throughout Asia and potentially neutralizes the stabilizing deterrent of U.S. strategic forces.

Moreover, Panofsky's view implies that the United States should share its nuclear secrets with all "minor" nuclear powers, including potential adversaries. This stands the U.S. policy of non-proliferation on its head. Moreover, it contradicts another Panofsky

view at page 56: "The principle but not the only focus of protecting nuclear-weapons-related information today should rightly be to prevent its release to non-nuclear weapons states in order to keep the lid on nuclear weapons proliferation...."

Panofsky also states: "[U.S.] security is very unlikely to be significantly affected by changes in the nuclear posture of the minor nuclear weapons states (China, the United Kingdom, and France)." Putting the PRC in the same category as Britain and France as a threat to U.S. security speaks for itself. This stands the U.S. policy of non-proliferation on its head.

20. In his essay released to the press on December 15, 1999, Panofsky states, that Wen Ho Lee "has not been charged with any crime." Panofsky uses this "fact" to imply that the compromise of U.S. nuclear weapons codes is not gravely serious. In fact, however, Lee was indicted on 59 counts by the Justice Department for serious violations of the Atomic Energy Act on December 10, 1999.

21. In his essay, Panofsky asserts: "It is dubious these codes [the Los Alamos Division X nuclear codes] would have materially aided the Chinese nuclear weapons program." (P. 55.) In fact, these codes are extremely useful to nuclear weapons design and represent "centuries of work," according to Stephen Younger, the current head of nuclear weapons programs at Los Alamos. They represent "the complete nuclear weapons design capabilities of Los Alamos at the time," according to Younger. The Select Committee identified the lack of computer security at the U.S. national weapons labs. This finding was significant. The FBI learned in early 1999, after the Select Committee issued its classified report, that U.S. nuclear codes had been compromised at Los Alamos.

22. In his essay, Panofsky states, falsely, that according to the Select Committee report it would be "possible for China to develop new nuclear weapons which could enter its stockpile without testing." The Select Committee makes no such statement. To the contrary, the Select Committee reported that the PRC has already successfully tested its new, small, modern thermonuclear warhead. Moreover, the Select Committee report points out that the PRC did so before agreeing to abide by the Comprehensive Test Ban Treaty.

23. Panofsky states, without support, that "The United States...is very unlikely to be significantly affected by changes in the nuclear posture of [the PRC]." As the Select Committee reported--and the two Intelligence Community reports to Congress in 1999--have pointed out, the PRC's changing nuclear posture can have a significant impact on Asia-Pacific security, where the United States not only has substantial armed forces, but also considerable geopolitical and economic interests.

24. The Panofsky essay (pp. 56, 58) states that a new, semiautonomous agency responsible for nuclear weapons security is a subject of "current political discussions." In fact, President Clinton has long since signed legislation creating the National Nuclear Security Administration, a semiautonomous agency within the Department of Energy responsible for Department of Energy defense activities.

25. The Franklin essay refers to the "alleged" theft of missile technology by the PRC. He states flatly, and inaccurately, that "there is [sic] no...instances described of actual theft of U.S. missile technology" (p. 97). In fact, the Select Committee report describes with particularity several thefts that, according to the U.S. Intelligence Community, have in fact (not allegedly) occurred. Among these is the description of stolen guidance technology used on U.S. Army missiles, a description that Franklin's essay itself quotes. About this, Franklin says, "where the report is just repeating information the committee was provided by the government, one cannot disagree." He then promptly disagrees, nonetheless, based on his own (inaccurate) surmise.

26. The Franklin essay, without any specific citation to the Select Committee report, attributes to it "a broad assertion that nearly every contact between U.S. and Chinese individuals and organizations is organized for the purpose of acquiring U.S. technology." Panofsky's essay repeats this false assertion. This would be a preposterous statement to make, and not surprisingly the Select Committee does not make it. Rather, the Select Committee, in relying on FBI counterintelligence, stated that the PRC routinely tasks its nationals who visit the U.S. with collection requirements. These can include legal information gathering as well as illegal espionage. While Panofsky says, "I see no evidence" of this (p. 62), the specific source material was provided to the Select Committee by the FBI and remains classified. Moreover, the December 23, 1999 edition of the Far Eastern Economic Review reports that a PRC guide, entitled "Sources and Methods of Obtaining National Defense Science and Technology Intelligence," states that PRC intelligence seeks to exploit contacts with the West for technological gain. "From all public materials available, we can gather everything in sight and accumulate it bit by bit, and in that way basically uncover the general outlines of a piece of classified intelligence," the PRC manual is reported to say.

27. Franklin (p. 84) states that Qian Xuesen was arrested by U.S. Customs officials, that he was found to have technical documents in his possession "that appeared to violate...export control laws," and that the U.S. State Department wanted to prevent his emigration to the PRC because it "wanted to prevent the departure of foreign nationals with sensitive military information to enemy (defined as communist at that time) nations." Yet Franklin opines that "it is very unlikely Qian was a spy." Franklin is entitled to his opinion, but in this case his opinion is entitled to little weight because he does not know all the classified details of what he inaccurately describes as merely an INS "deportation" of Qian. The statement in the Select Committee's report that Qian was presumed by the U.S. government to be spying for the PRC is correct.

28. Franklin states that the Select Committee report is guilty of a "presumption of guilt" by using the word "illegally" to describe the transfer, by Loral and Hughes, of missile design information to the PRC. He is incorrect. This is the conclusion of the Select Committee's thorough investigation, not its a priori assumption. Specifically, State Department licenses were required. Both Loral and Hughes failed to obtain them and did so knowing of the license requirements (as is thoroughly documented in the report). The

transfer of rocket technology by Loral and Hughes was illegal. This is a fact. Franklin is in error.

29. In his essay, Franklin asserts, without support, that the PRC simply would not attempt to exploit lapses in security at U.S. launches there. He wrongly implies that the PRC would have to rely on risky invasive means, "using tools, removing covers, and risking dropping, breaking, denting, or marking the satellite," in order to exploit the satellite for technological gain. The PRC would not need to use such invasive techniques to see inside the satellite. U.S. government expert witnesses testified that "in as little as two hours, PRC technical personnel can penetrate the interior of a satellite without leaving any traces." This statement speaks for itself; there is ample classified evidence to back it up.

30. Franklin deems it "surprising" that PRC exploitation of U.S. satellites at PRC launch sites was not detected. The Select Committee report's ample descriptions of lax security and of prolonged absences of any U.S. monitors would make it surprising if such PRC exploitation were detected. He advances no evidence for his opposite inference, that "the PRC is abiding by the Satellite Technology Safeguards agreement," and the assertion is directly refuted by detailed examples in the report (see Select Committee report pp. 225 et. seq.).

31. Franklin falsely describes the Select Committee report as asserting that, without U.S. assistance, the PRC "would never have learned the true cause" of the Long March 3B failure in 1996 (emphasis added). The report says nothing of the kind. Rather, according to the report, U.S. assistance accelerated the discovery of the true reasons for the failure, and also educated the PRC about Western failure analysis. This is also the view of the State Department and the Defense Department, which examined the question.

32. In his essay, Franklin says the Select Committee's statement that the Long March 3B inertial measurement unit could be adapted for use in future ICBMs is "overly speculative." There is no speculation involved. This is a statement of fact; it could be so adapted if the PRC chooses to do so. Franklin is speculating by presuming to know what the PRC will do.

33. In his essay, Franklin complains that in the chapter on Hughes "there are no reports of stolen information." That is because the PRC thefts are recounted in other chapters. The Hughes issue involves illegal technology transfer by a U.S. company.

34. In his essay, Franklin states (p.88) "it is not known" whether in 1992 the PRC had the capability to perform the failure analysis that Hughes undertook for the Long March 2E rocket. Both the State Department and the Defense Department concluded that it did not.

35. Franklin states (p. 89) that the improvements to the Long March rocket fairing made by Hughes will only help the Peoples Liberation Army if it uses a hammerhead fairing (more accurately, a hammerhead "shroud") for future MRV or MIRV ballistic

missiles. Then, without basis, he opines that "it seems more likely" the PRC will not choose this sophisticated approach for future weapons. The only fact is that the PRC acquired this technology. The PRC can now use it if it wishes and may do so.

36. In his essay, Franklin states (p. 91) that "there was no U.S. involvement in the design of any aspect of the [Long March 3B] rocket." This is false. Loral participated in improving the guidance system of the rocket. The improved guidance system prevented a recurrence of the earlier Long March 3B launch failure.

37. In his essay, Franklin states that "although the Cox report wanted to portray it otherwise, it is not a bad outcome" for the PRC to have more reliable rockets (p. 91). The report did not "want" to portray this as a bad outcome; it is illegal for a U.S. company to improve a PRC rocket by making it more reliable. It is Franklin who "wants" an outcome different than is prescribed by U.S. law.

38. In his essay, Franklin implies that because indictments have not been issued against Loral or Hughes, technology transfer to the PRC is not a serious problem. He and the other authors simply ignore the dozens of cases of illegal technology transfer cited in the report and the criminal cases that have been initiated during 1999.

For example, the Department of Justice indicted Orbit/FR, Inc. for selling sophisticated military equipment to China North Industries Corp. (Norinco). In September 1999, Orbit/FR, Inc. agreed to plead guilty to violating the Arms Export Control Act by selling to Norinco software and equipment designed to measure the effectiveness of antennas in the nose cones of missiles. A guilty plea was accepted November 10, 1999. The company is expected to be fined \$600,000 and may face a non-discretionary denial of export licenses for up to three years. The equipment sold could be used to measure the accuracy of the antennas on a Patriot-type missile system. Norinco is a state-owned arms manufacturing and export firm that exports missiles, tanks and small arms. Norinco was highlighted by the Select Committee for its involvement in PRC technology acquisition.

Also, in October 1999, the Department of Justice indicted both McDonnell Douglas and China National Aero Technology Import and Export Corporation (CATIC). The indictment included 12 charges against CATIC--the first time a PRC state-owned enterprise had been so charged. In this case, sophisticated machine tools that were intended for a civilian factory in Beijing ended up 800 miles away in a factory that makes missiles and fighter aircraft. The underlying facts were set forth in the Select Committee report as an example of the PRC's and its state-owned enterprises' efforts to obtain U.S. technology.

The Select Committee, as stated in its report, "worked to ensure that neither its investigation nor its report would compromise ongoing criminal investigations. The Justice Department requested that the Select Committee not disclose details of its investigations of matters set forth in Chapters 1, 2, 5, and 6 in order to protect ongoing criminal investigations." While the Select Committee was thus constrained from disclosure, the authors of these essays were not, because these criminal cases are now

public. That the authors both ignored the criminal cases and criticized the Select Committee report for lack of specifics suggests a lack of objectivity.

39. Franklin states that the State Department is now applying new, restrictive license procedures to "close allies such as France and Canada." He is incorrect. This Clinton administration practice, which Franklin acknowledges is a misinterpretation of law, was overturned in the First Session of the 106th Congress.

40. In his essay, Franklin attributes the passage of the Strom Thurmond National Defense Authorization Act to the Select Committee (p. 93). The Act actually antedates the Select Committee report; it became law in the year before the report. Indeed, the Act is referred to in the report, and one of the Select Committee's unanimous recommendations is that the Act be enforced.

41. In his essay, Franklin complains that U.S. export controls are unilateral, and thus ineffective. He fails to mention that this subject is thoroughly discussed in the Select Committee report, and that the Committee unanimously urged the resumption of multilateral controls, as existed prior to 1994. Franklin also implies that U.S. allies would not join a resumption of multilateral export controls, but former Secretary of State Henry Kissinger (on the Los Angeles Times and Washington Post opinion pages in November 1999) said that the nuclear powers "must agree on controls over the export of new technologies."

42. In an essay meant to "critique" the Select Committee report, Franklin inexplicably complains that the Clinton administration has applied its export control regulations to research and scientific satellites, even though, he writes, "there is no evidence or even discussion in the Cox report indicating that this is a problem area." He is therefore wrong to criticize the Select Committee for the regulations.

43. At page 97, in the conclusion of his 17-page essay, Franklin states that there are a "surprising number of technical and numerical errors" in the report. His essay, however, cites not a single one.

44. The authors reveal their own bias by referring to the Tiananmen Massacre as the Tiananmen "event," using the PRC's preferred formulation.

45. The Johnston essay inaccurately attributes (p. 22) to the Select Committee report the assertion that the Chinese Communist Party (CCP) views the United States "as their primary adversary." No such statement appears in the Select Committee report. Nor does Johnston offer any quotation from the report to support his point.

46. Johnston asserts that "to say that the CCP ultimately controls" commerce in the PRC "would be similar to saying that the U.S. government ultimately controls the commercial activities of U.S. private businesses." This is an absurd statement. The Chinese Communist Party controls the media, information (including financial information) inflows and outflows, law courts, law enforcement, regulations (published

and, largely, unpublished, because the PRC regulatory system lacks transparency), and a vast array of prices and wages, and otherwise restricts a wide variety of freedoms that any U.S. entrepreneur or laborer enjoys. The significant changes in recent years in the Communist-administered economic system in China are acknowledged in the Select Committee Report. But comparing today's Communist dictatorship in China to U.S. control of our domestic economy lacks all objectivity.

47. Franklin (p. 97) refers to "the Cox Committee's ill-timed and poorly thought-out overturn of the existing satellite export-control regime." The law replacing the Commerce Department with the State Department in the satellite licensing process was enacted the year before the Select Committee's report.

48. The Franklin essay (p. 34) inaccurately states that the Select Committee Report described PRC nuclear weapons doctrine as "mutual assured destruction (MAD)." This is false. The report contains no such statement. Moreover, it would be an absurd statement to make, since the PRC's current nuclear arsenal is incapable of it.

MAD, as the author well knows, was the doctrine underlying the massive ICBM buildup by both the United States and the Soviet Union during the Cold War. It has no applicability in the U.S.-PRC context.

Franklin dishonestly substitutes his straw man formulation--that the Select Committee report claims the PRC relies on MAD--so that he can knock it down. The Select Committee report accurately sets forth the "announced" PRC doctrine as retaliation with a limited second strike capability. The reason the Select Committee properly refers to the PRC's "announced" doctrine is to indicate it is based on analysis of the PRC's own statements, rather than to suggest that the PRC in fact would only use its nuclear missiles as defensive weapons. Neither the United States nor these four authors can know what the PRC will, in fact, do with its nuclear weapons.

49. In an essay otherwise entirely bereft of any attempted rebuttal of the Select Committee report, Di Capua asserts that the Select Committee report "alleges" that U.S.-PRC lab-to-lab exchanges "were a pipeline for the transfer of U.S. secret information about nuclear weapons to China." This is a misrepresentation of the completely accurate statements of the Select Committee report that Di Capua quotes immediately prior (p. 66). The report accurately recounts what U.S. counterintelligence has repeatedly stressed to Congress and what has now been reported with the publication of excerpts from the PRC's "Sources and Methods of Obtaining National Defense Science and Technology Intelligence" in the *Far Eastern Economic Review*: that the PRC targets U.S. scientists in scientific exchanges. Moreover, the U.S. government has documented losses of scientific military technology in the course of these exchanges; the specifics remain classified.

50. In their essays, Panofsky and Johnston express disagreement with the Select Committee report's conclusion that security at U.S. national weapons laboratories did not meet "even minimal standards." Contrary to the authors' view of whether counterintelligence programs at the national weapons laboratories meet "minimal

standards," the head of counterintelligence for DOE testified that such programs did "not meet even minimal standards." Moreover, the President's own advisory panel, chaired by former Senator Warren Rudman, issued a scathing report entitled "Science At Its Best; Security At Its Worst" concerning security at our national laboratories, and recommended wide-ranging changes.

## **Conclusion**

The four essays fail to reveal any substantial errors in the Select Committee Report and, in fact, are replete with their own errors and mistakes. These errors are less explicable given the six months the authors had to review the Select Committee Report with a fine-tooth comb and an unlimited amount of time to check their own work.