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April Breakfast Remarks DeConcini Responds to Gates Remarks on Oversight

On February 18, former Director of Central Intelligence Robert Gates addressed a record crowd at the monthly Standing Committee breakfast. On April 22, Senator Dennis DeConcini (D-Az.), who recently assumed the chairmanship of the Senate Select Committee on Intelligence, addressed the breakfast and, in part, responded to Dr. Gates. We reprinted the verbatim text of Dr. Gates' remarks, and we thought it appropriate to give Senator DeConcini's remarks similar attention. The Senator's remarks follow.

I know that you had Mr. Gates, the former DCI, here at your last meeting, and I am pleased to hear of some of the statements he made about the oversight process. I thought I might give you a little bit of my own perspective; but, first, let me touch on a few of the things I understand he talked about.

I understand he said that, overall, he thought the oversight process had had a positive effect on the intelligence gathering agencies and the intelligence community. He also said that the oversight process had been accepted and had played a major role in the prevention of misuse of intelligence agencies by the Executive authority. I was pleased to hear the DCI say that, because I believe that in some instances the Intelligence Community has been misused, and I was pleased to see former DCI Gates address that issue after he was confirmed by the Senate. Indeed, he formed seven task forces, and I have read five of their reports. He started to implement them, and the present DCI is certainly moving in that direction.

I think the CIA has had some big problems. I'm not here to criticize, but having served on the committee as long as I have, it is obvious to this member that the CIA has not always played it straight with the oversight committees. Now part of that can be our fault. Mr. Gates pointed out there are very few members on the oversight and the appropriations committees who appear to devote a lot of time to this process, and there is not a broad knowledge by many—I think he said he could count them on one hand. Well, there is some truth to that, but he went so far as to say that the anonymous staff members, with little or no experience in intelligence or its use by the Executive, have

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A (Largely) Overlooked Accomplishment

Assessing the 1992 Intelligence Reorganization Legislation

by L. Britt Snider

In January, 1992, at the beginning of the second session of the 102d Congress, Senator David Boren and Congressman Dave McCurdy, then chairmen of the congressional intelligence committees, introduced far-reaching bills to reorganize the U.S. Intelligence Community. At the same time, the newly-confirmed Director of Central Intelligence, Robert M. Gates, ordered his own internal review of the existing organizational arrangements.

After a series of congressional hearings, Gates testified before a joint session of the two intelligence committees on April 1, 1992, and announced a series of actions taken as a result of this internal review. At the same time, he stated that the Bush Administration opposed legislation on this subject.

Not surprisingly, most observers lost interest at this point. They believed (correctly) that no bill could be enacted without the agreement of the President;

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acquired enormous power over the programs and direction of the entire American intelligence.

Let me comment briefly on this point. The demands, as those of you know who have worked on the Hill or with Members of Congress, are immense—no more so on the Intelligence Committee than the Appropriations Committee or Finance Committee or any other committee. But let me assure you that decisions are not left to the staff. They do frame the issues, they do tremendous work. On the Intelligence Committee we are exceptionally fortunate in having some real professional people who have been on that committee through a number of various chairmen and ranking members. One of them is Britt Snider, the legal counsel, who is here this morning.

I am delighted to inherit such a staff. I'm proud of that staff and made very few changes, because most of the people there are just damned good. And when it comes to making decisions for us, certainly they frame the issues and make some administrative decisions. But the decisions on whether or not to fund a program, whether or not to continue a program, whether or not to agree to reprogram the funds for a covert activity, are not decisions that are made by the staff, I can assure you.

Mr. Gates went on to urge that perhaps the committee process should be changed so it is not a rotating committee. As you know, in the Senate, members rotate off after eight years and the chairman may serve for as little as two years. Maybe—since I have been on the committee for six years and have just become chairman—there is some merit in keeping the chairman around a little bit longer! Mr. Gates suggested that perhaps the chairman should stay for four years. Perhaps he has a point, but I don't think that is going to occur.

There is a waiting list to get on this committee second to none. Believe it or not, in the United States Senate, members would rather be on the Intelligence Committee than they would on the Finance or Appropriations Committee. There is a real hunger, an appetite, to understand, a little bit if not completely, exactly what goes on in the intelligence gathering apparatus: what has gone wrong with it, and what can be done to improve it. And as you go on that committee, you realize just how complex the situation and problem is in gathering intelligence. What is proper use or misuse of it? How do you keep it from becoming politicized and how do you assure the oversight committees are getting everything that they need to know? The waiting list in the Senate probably includes 20 people from what the Majority Leader told me, so it

just gives you some idea of the interest in the process.

Finally, Mr. Gates urged that we do something about the conflict that constantly arises—and no more so than in the last couple of years—between the authorizers and appropriators. As many of you know, there is an underlying law that indicates that you can not spend money on intelligence unless and until it has been authorized. However, the appropriators—and I also sit on the appropriations subcommittee that appropriates the money for the intelligence agencies—do occasionally appropriate money that has not been authorized, for perhaps some very good reasons. I could not agree with the former DCI more than on the need to eliminate that and on the need to have the appropriators and the authorizers work together. It is really counterproductive, more so I think in the intelligence area than anyplace else, to have the appropriations committee marching out on its own. Appropriators do that all the time. Lots of times it is because the authorizers have not spent the time, have not gone through the programs, and have just failed to act—either they couldn't get the votes together to support the Administration's position or oppose it—and the Administration's budget request has just languished. That is not the case with the intelligence authorizing committees. We do our work, we review the programs, we report our budget recommendations and authorizations—we look at the programs more than any committee I've been on. Whether its the Judiciary Committee, the Veterans Committee, the Rules Committee—or any committee that I sit on—no committee scrutinizes the particular programs and the direct, line-item authorization as close as we do the intelligence budget.

From my standpoint, the oversight process—which

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and, accordingly, this effort was destined to be nothing more than an academic exercise.

Indeed, I have been surprised to find in the ensuing months that there remains widespread ignorance among otherwise knowledgeable practitioners that legislation on this subject was, in fact, subsequently enacted as Title VII of the Intelligence Authorization Act for Fiscal Year 1993, signed by President Bush on October 24, 1992 as Public Law 102-496.

This legislation resulted from a series of negotiations between the Senate Select Committee on Intelligence and the Bush Administration which took place during the summer of 1992. In the end, the differences between the Administration and the two oversight committees, which had once appeared insuperable, were resolved without fanfare or public controversy. While, to be sure, the resulting compromise did not represent a radical change in the *status quo*, it did result in a significant change in the statutory framework governing the conduct of U.S. intelligence activities, supplanting vague language that had been on the books for 45 years.

In the interest of alerting interested readers to this development, I wish to note here in general terms several key features of the new law.

- First, it formally recognizes the Director of Central Intelligence (DCI) for the first time in law as a participant in the deliberations of the National Security Council.
- Second, it provides for the first time in law a definition of the U.S. "intelligence community," clarifying what departments or agencies, or elements thereof, are subject to the authorities and responsibilities of the DCI.
- Third, it sets out as a matter of law the trifurcated roles of the DCI: as principal intelligence adviser to the President, as head of the U.S. intelligence

community, and as head of the Central Intelligence Agency (CIA).

In each of these functional areas, the legislation provides explicit new dimensions. Thus, the National Intelligence Council is expressly established by law to assist the DCI in his role as Presidential advisor. The DCI's responsibilities to develop a unified budget for the intelligence community and to establish priorities and requirements are specifically recognized. As head of the CIA, the DCI is given a specific charter to "provide overall direction" for all human intelligence-gathering activities, not simply to coordinate clandestine activities.

- Fourth, the law sets forth specific authorities of the DCI *vis-à-vis* the intelligence community. While most of these are consistent with existing authorities under Executive order, they have never before been a matter of law.
- Finally, the new law sets forth the responsibilities of the Secretary of Defense pertaining to "national" intelligence activities. These include specific responsibility for operating a "central imagery authority" to coordinate tasking of imagery collectors, and for coordinating imagery processing and exploitation; as well as operating the recently declassified National Reconnaissance Office.

Shocking, the new law is not. But significant, I believe it is. Significant, not only because it provides a clearer statutory framework for U.S. intelligence activities, but also because it represents the first time since 1947 that the executive and legislative branches have been able to agree on any statute setting forth missions and functions for intelligence agencies. Those who recall the ill-fated attempts of the past should recognize that this, in itself, is no mean feat.

Mr. Snider is General Counsel to the Senate Select Committee on Intelligence and a member of the Standing Committee.

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is about seventeen years old—has on the whole been very effective. There have been some troubles in it—and there have been some DCIs that have not wanted to really cooperate—but, for the most part, that's been the exception.

It is interesting to see how many foreign countries are sending delegations—we have had eleven this year—to come and visit with the staffs and the mem-

bers, to try to develop an oversight process for their own intelligence services. Last week I was in Romania, which, as you may recall, had one of the worst interior police services in the world. They had tremendous abuses, not only of human rights, but of the legitimate purposes of intelligence gathering. The Romanian service has been changed in name, and some of the people have been replaced. It is now an "internal intelligence agency."

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Having gone through a democratic reform process in Romania, having an elected Senate and an elected Chamber of Deputies, and a president of each of those, they now have a new law which provides for a joint committee to do the oversight on the internal intelligence agency; and they are learning from us how to do it. I don't know that we can teach them a lot, but we can sure tell them where we have had problems. We have been able to give them some good ideas.

Their system is going to be interesting. In addition to a joint committee of both houses that is going to do the oversight, they get to vote—as our Senate does—for the confirmation of the head of their internal intelligence agency appointed by both the prime minister and the president. They want to know from us just how far they can go in asking questions, and getting files, and what have you. In Romania there is a massive number of files on almost a third or more of the citizens which have been sealed and probably should remain sealed; but there is the necessity of knowing the policies and who was responsible for some of the decisions that have been made. In all candor, I think the United States is held out as a country which has a pretty good oversight process in the intelligence area.

Now, having said all of that, I'd like to just say a few words about where we are going and what I think intelligence agencies can do under the present circumstances. Clearly the overarching problem that we face in intelligence today is resources—financial resources. The money the intelligence community received substantially increased during the 1980s. This is the first time—last year and the year before—that there were substantial reductions in funding. My view is that these reductions were justified, including the over a billion dollar reduction that Congress made last year.

Can we do more? Probably so, but I think you have to be careful. We have insisted upon a substantial reduction, as you know—it has been published in the news media—a 17 percent reduction in personnel over four years, which is not a small thing for any agency. But, indeed, we are involved in downsizing government, hopefully across the board, as the President has indicated. We will have to see what it looks like one year from now. We need to be careful in the area of intelligence gathering—we have uncertain political situations still facing this country. Instead of the Soviet Union as the major super power threat that we have to devote so much for, we have so many other smaller, but yet very important, areas of concern. Many of these countries are involved in the sale and

development of weapons that could be disruptive to their neighbors and regions and perhaps even in a greater geopolitical sense, and some of these countries are not on good terms with the United States. So there is certainly no less “need to know”—but the direction and how much you need to spend on it is really the debate we are going to go through. The United States clearly has the most capable intelligence apparatus in the world in my judgment. When you are downsizing, you are going to perhaps go too far or perhaps not go far enough in some areas—there will be some glitches.

But I think there are some obvious areas to me where reductions are warranted that are being addressed by Director Woolsey, and were, quite frankly, before he came in, by former Director Gates. One of them is the hordes of analysts that have been devoted, and are still to some extent devoted, to the former Soviet Union's economic problems. Much of the information now is available without having to rely upon the techniques that have been used for so long to acquire that information. Plus, you can question how good that information actually was, which I think is where Senator Moynihan comes down, and a bit further than I do, in suggesting that we abolish the CIA or fold it into the Defense Department or someplace else, because of the faulty information that was released here in Congress on the economic capability of the former Soviet Union.

The tremendous technical overhead capabilities we have—how much more of that must we continue to invest in? Is it really necessary today, in a new world? I think there can be some reductions without taking away our capabilities for a managed—if you want to call it that—military effort that we saw in the Gulf. We saw in the Gulf that, even General Schwartzkopf had some criticism of the intelligence being delivered—he called it “mushy” by the time he got it. When I was there, two days after the war, he was even a little bit stronger than that. We can do better. I really think we can.

I also just returned from Somalia, which is certainly not a war zone, per se, but intelligence agencies are deeply involved there, and on the ground working

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Calendar of Events

August 8—2:00-4:00 PM, Standing Committee “Presidential Showcase” on “The Role of Law in Preventing Proliferation of Weapons of Mass Destruction,” ABA Annual Meeting, New York Hilton Hotel, New York City

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directly with General Johnson and his commanders. General Johnson told me, as he told Senator Boren four or five months ago, that never in his military experience has he had such fine intelligence available instantly; and there is a need to know what variously warlords and different organizations are doing there, for the protection of U.S. troops and also for the mission of distributing humanitarian aid. I was very pleased to hear that. The Agency and former DCI Gates deserve much credit for it. He really implemented what he told the confirmation hearing in the Senate that he would do—that he would put the operations in direct contact with those who needed the intelligence. It seems to me to be very common sense to do that. Perhaps it was done in Desert Storm, but I certainly gathered from General Johnson's and General Schwartzkopf's observations on intelligence that the situation in Somalia is much different—*much* different.

That doesn't mean that the information doesn't still come to Langley, where it is analyzed, processed, and distributed to various sources; but it does mean the general on the ground gets that information in time to make use of it. What is the warlord doing today? Who is he talking to, where is he getting his ammunition and equipment, and who is infiltrating—that's the kind of information that is so necessary.

I think that, for the most part, the intelligence community tells us what we want to know. Sometimes we have to ask a lot of questions—and, if we miss them, we don't get the information we need—but, overall, it is a matter of personalities, good intentions, both from the Executive branch and the members of the Congress who are charged with the oversight, to be sure that there is no use hiding something—it comes out one way or the other. If we are acting in good faith, not engaging in demagoguery or leaking materials, we ought to be able to get along. Quite frankly, I am optimistic that that is going to continue.

Just quickly, let me touch on a couple of things that I think are policy areas before the Committee. One

is economic intelligence. What can we do with the economic intelligence we have to promote more competition for U.S. firms? I think there is a lot we can do. I am hopeful the Administration will formulate a policy, and, if they don't, we will hold some hearings to try to develop a direction.

In the environment, the intelligence community has technical capabilities to collect environmental data and over the years has accumulated data and analysis which would be very useful in dealing with environmental problems around the world, not only just in the United States.

The intelligence community and its relation to law enforcement. The BNL and BCCI cases have illustrated that there is a real problem from the standpoint of coordination of intelligence gathering with law enforcement. I know that Director Woolsey and Attorney General Reno are forming a committee to attempt to come up with procedures that will guarantee the Justice Department obtains the necessary information held by the intelligence community while protecting the means and sources involved. In the BNL case, it was quite astounding how much information the CIA had—and I do believe they really didn't know they had it when they first responded to the Justice Department. Then they found more, and we found more. They were, quite frankly, very embarrassed and candid about it, but they have got to do a better job. Director Woolsey is in the process of doing it.

Finally, there is a question of whether we can now afford to be more open in terms of what is made available to the public, and whether we can afford now to reduce and eliminate the costs of security and counterintelligence programs. I think we have much more over-classified material than we need, but I am not an expert by any means at deciding what should or should not be classified. We need a policy, in my option, as to what information could be declassified.

With that, let me thank you for your attention and courtesies. I look forward to working with you. Some of you have some great expertise and we would welcome your comments or suggestions anytime.

Thank you.

Standing Committee on Law and National Security

Chairman: John H. Shenefield. *Members:* David R. Brink, Richard E. Friedman, Michael S. Greco, Edward Hidalgo, Lucinda A. Low, L. Britt Snider, Delbert L. Spurlock, Jr., Paul Schott Stevens, Richard K. Willard, Dianne P. Wood.

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The National Security Agenda

Security Council Unanimously Approves Bosnia War Crimes Tribunal; Urges DPRK to Reconsider NPT Withdrawal—On 25 May the United Nations Security Council unanimously approved a resolution establishing a war crimes tribunal in The Hague to try accused war criminals connected with the conflict in Bosnia-Herzegovina. Fifteen days earlier, by a vote of 13-0 (China and Pakistan abstaining), the Council called upon North Korea to reconsider its decision to withdraw from the Nuclear Nonproliferation Treaty (NPT) effective at the expiration of three-months notice on 12 June. Some observers believe the Pyongyang regime may seek to trade IAEA cooperation for U.S. diplomatic recognition.

Applied Magnetics-Nakamichi Sale Said to Violate Exon-Florio—On 19 January, during the final hours of the Bush Administration, the Commerce Department approved the sale of a component of the Applied Magnetic Corporation of Goleta, California, to the Tokyo-based Nakamichi Corporation. Senator James Exon (D-Nev.), author of the 1988 Exon-Florio Amendment to the Defense Production Act of 1950 (see *Report*, April 1993), has stated that the transaction “never should have been approved,” and the *New York Times* (9 April) asserted that a confidential Commerce Department report concluded that the Committee on Foreign Investment in the United States (CFIUS) was unaware that the sale involved the only American producer of sophisticated laser-disk drives used by the Navy’s Trident and Army’s Patriot missiles. The Treasury Department is allowed to reopen the case if it determines there were material misrepresentations made by the participants.

Ukraine Hardens Stand on Nukes—According to the *Wall Street Journal* (3 May), President Clinton’s refusal to meet with Ukrainian Foreign Minister Anatoliy Zienko in April may have hardened the Kiev regime’s position with respect to Soviet nuclear weapons. (After the collapse of the Soviet Union, Ukraine inherited 46 SS-24 and 130 SS-19 ICBMs, totaling 1,656 nuclear warheads.) Although Ukrainian authorities continue to assert that their parliament will ratify the START I accord (which cannot enter into effect between the United States and Russia absent such ratification), the treaty only mandates a 36% reduction in warheads. Some Ukrainian lawmakers say they have no intention of ratifying the Nuclear Nonproliferation Treaty (NPT), and 162 deputies recently sent a letter to President Leonid Kravchuk and parliamentary chairman Ivan Pliusch insisting that Ukraine must immediately assert ownership of all nuclear weapons on its territory as a pre-condition to any decision to give them up. The situation had improved somewhat by mid-month, according to the *London Financial Times* (11 May), after Special Ambassador Strobe Talbott visited Ukraine and took a less confrontational line. However, the tough stand taken by Ukraine may have spread to Kazakhstan, which has ratified START I but has thus far failed to sign the Nuclear Nonproliferation Treaty (NPT) despite a commitment to do so in the Lisbon Protocol of 23 May 1992. There is a 50 megawatt nuclear research reactor on a military base at the Semipalatinsk test range in Kazakhstan, and statements by the Alma-Ata regime that it intends to develop a “peaceful” nuclear energy program have caused some concern in the west. Most observers, however, still expect Kazakhstan and Ukraine to fulfill their non-proliferation commitments. Meanwhile, START II continues to be caught up in the Russian power struggle. Returning from an early May visit to Moscow, Senator Richard Lugar (R-Ind.) was quoted by the *Chicago Tribune* (6 May) as saying of Boris Yeltsin’s opposition in parliament: “They don’t have problems with the treaty, but with its authors.” An unidentified “Western diplomat” was quoted as saying: “Ironically, the ouster of Yeltsin would probably result in the treaty being approved.”

Iran Continues Arms Buildup, Nuclear Programs—The *London Observer* reported in early May that Iran has received eight Sunburst ground-launched cruise missiles (GLCMs) from Ukraine as part of a \$1.5 billion barter agreement with Moscow and Kiev. The agreement also reportedly includes as many as fifty MiG-29 fighters, more than 200 T-72M1 battle tanks and 300 air defense systems characterized by the Russians as being superior to the U.S. Patriot system. The *Wall Street Journal* earlier (9 April) reported that an Iranian military delegation was visiting North Korea to complete the purchase of 150 cruise missiles with a range of approximately 625 miles. The *Journal* further reported (11 May) that—after U.S.-led pressure halted exports of nuclear technology to Iran from Argentina, India, Spain, Germany, and France—Russian and Chinese nuclear experts were arriving in Tehran to work on Iran’s “rapidly expanding” program for “civilian” nuclear applications. Some intelligence analysts believe the two Russian and four Chinese nuclear power and research reactors are in reality being used as cover for Iran’s nuclear weapons program. The analysts were quoted as observing that Iranian “buying teams” were shopping for weapons-related nuclear equipment and experts in Ukraine, Kazakhstan, Turkmenistan and Azerbaijan. Former CIA analyst David Kay, who led the U.N. inspection teams into Iraq following the Gulf war, was quoted as saying the quarterly inspections by the International Atomic Energy Agency (IAEA) in Iran “may not be enough” to prevent development of nuclear weapons.