



National Security Law Report

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Harold Brown Reports on Work of Intelligence Commission

Former Secretary of Defense (1977-81) Harold Brown was recently the Chairman of the Commission on Roles and Capabilities of the United States Intelligence Community. He addressed the Standing Committee on March 14 concerning the recently released Commission report.

Dr. Brown's predecessor as Commission chair was the late Les Aspin, who addressed a similar Standing Committee breakfast on January 18, 1995 (see Report, Feb.-Mar. 1995) at the start of this process and actively solicited input from the ABA group. Shortly thereafter, SSCI Chief Counsel L. Britt Snider, a Standing Committee member, was selected to serve as Executive Director of the Commission.

Excerpts from Dr. Brown's remarks follow:

Let me begin by saying a few words about the Commission itself. It was established by congressional legislation in late 1994. Its seventeen members, who were appointed eight by the congressional leadership and nine by the President, have a variety of backgrounds.

Les Aspin was the chairman until his tragic and untimely death. He was the one who was responsible for hiring the outstanding staff and starting the process of interviewing people and witnesses, having visits overseas, and so forth. During the two or three months before I was named chairman, Senator Warren Rudman did an outstanding job of keeping things going.

We looked at things in great detail.

We examined intelligence organization from a "clean sheet of paper" approach, but concluded you



Intelligence Commission Chairman Harold Brown addresses the March 14 Standing Committee breakfast program.

couldn't just start over from scratch, because intelligence is already so embedded in government. One thing we looked at was putting everything under the Director of Central Intelligence, giving him line authority over all intelligence activities.

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General Krulak Warns of "Lack of Values" in Society

General Charles Krulak, Commandant of the Marine Corps, addressed the Standing Committee's January 22 breakfast program at the University Club. Excerpts from his remarks follow:

I want to start with a vignette that, in fact, I played a part in. In order to set the stage, I am going to have to go with a little history lesson—please bear with me.

In the early spring of 1966, the 344 Bravo North Vietnamese Army Division was pulled south off of the border between China and North Vietnam . . . to lead the first direct invasion of South Vietnam by the North. This was, in fact, the same division that spearheaded the [1954] assault on Dien Bien Phu, a group of tremendously capable warriors.

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That sort of solution happens when you look at things from a functional point of view. In the past, for example, it has been proposed that all research and development be centered in one place, and that the National Science Foundation should be in charge of all Defense research and development.

When Jack Brooks was chairman of the Government Oversight Committee in the House and had under his oversight the General Services Administration, he proposed that GSA be in charge of all information technology—every computer in government, and anybody who operated one, would report to the Administration. When Griffin Bell was Attorney General, he proposed that all General Counsels in the Government, and all the lawyers who worked for them, should report to the Attorney General. Well, from a lawyer's point of view, perhaps that makes sense. It didn't make too much sense from the point of view of the rest of the government. So we threw away that "clean sheet of paper."

We looked at making the DO separate, taking it out of CIA—leaving CIA as an analytical agency. We looked at having a Director of National Intelligence, situated in the White House and with some tens of billions of dollars to play with. (That's an appalling thought.) We looked at putting it all in Defense.

In the end, we decided that, whatever the virtues of these proposals, their deficiencies outweighed them. We said let's start with the present system and see how we can make it better. We tried very hard to do that.

We looked at whether we need intelligence after the Cold War—kind of a silly question, but it keeps getting asked—and we concluded that you need intelligence to save U.S. lives by preventing war through supporting diplomacy. To save U.S. lives if combat nevertheless occurs, you need intelligence to support military operations. You need intelligence to save U.S. lives from terrorism, from international crime, and we need intelligence to improve the U.S. comparative position by informing the U.S. Government about what others are doing secretly or illegally in economic matters. We can do that and should do that, without indulging in industrial espionage—stealing secrets from foreign companies to give to U.S. companies. So there was no question in our minds that intelligence is a vital part of our national security and well-being.

So we turned to the question of how you make it better. Our recommendations fall into several categories. One is to make intelligence more respon-

sive and consumer driven. An enormous amount of intelligence is turned out. Some senior officials find their desks every morning cluttered with raw intelligence, and even those who have spent decades in government sometimes don't know what to make of it. That situation is exacerbated by a conclusion that I've reached after many years in and watching government, and that is the first reports are always wrong—but you don't know when to start paying attention.

We have a number of recommendations on how to make intelligence more responsive and consumer driven. One is to get more attention to it at the top level, and to have better connections between the top-level policymakers and intelligence people. We suggest establishing an NSC committee on foreign intelligence to deal with overall priorities, recommending to the President what priorities to establish. Although we didn't make the point adequately in the report, one thing that we need to keep in mind is that, if you have a list of ten priorities, the most important ten percent of the eighth priority is probably more important than the 99th percent of the first priority. In other words, priorities aren't absolute.

We also would expect this proposed committee to deal with difficult policy questions, such as how far should you go in dealing with unsavory people, which we have to do when we deal with terrorism and with unsavory governments with which we have relationships. Also, we proposed that a subcommittee of that committee, consisting of people like the under secretary level—the Foreign Intelligence Committee would be at the Deputy Secretary level, chaired by the National Security Adviser—would meet every month and say: "This is what we need now." "This is how well you're doing." We found that some of our allies do better at this than we do. The

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Paul Schott Stevens

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The National Security Lawyers

An Interview with State Department Legal Adviser Conrad Harper

This is the second in a series of interviews with senior national security lawyers in the Government. The questions were posed by Standing Committee Chairman Paul Schott Stevens. —Ed.

Stevens: You came to the State Department during a period of major transitions. You were part of a new team under President Clinton and Secretary Christopher, following 12 years of Republican administrations. You have seen close-up the many new realities of the post-Cold-War world. You are also the first Legal Adviser in many years to serve with a Republican majority in Congress. What were your objectives at State/L on arriving at the Department? How have they changed? And how far have you come in accomplishing them?

Harper: Beginning in March 1993, some two months before I was sworn in, I commuted from New York to Washington in order to consult a couple of days each week with my new colleagues. I quickly saw that the 100 lawyers in the Legal Adviser's office were immensely talented, diligent, sophisticated, in short as fine a group of lawyers as any I had ever known. During the same period I came to know many of the State policy makers and to respect and like them as well. My goals evolved easily from these observations. I wanted to assure that we continued to deliver, and improve where possible, professional advice of the highest quality. Policy makers are entitled to know, in a phrase favored by Alan Kreczko, whether an option is "legally available." But my job is more than that. Policy makers also should have my best judgment about the wisdom of pursuing the available options. At the same time, no advice should be shaded in favor of or away from an option simply because I favor it as a policy matter. Once clients are secure that the advice is straight, and is not policy in the guise of legal analysis, increasingly they ask, usually informally, for one's policy views.



Conrad Harper, Legal Adviser to the Department of State.

It is critical that the Legal Adviser have direct access to the Secretary of State and all other policy makers in the Department. On occasion, matters of great delicacy require immediate communication between my office and a Department principal. I have enjoyed such access from the beginning. The goals I mentioned earlier have remained central and while our clients could give you the best answer, I think I can fairly say that our continuing efforts have been successful.

Stevens: Does the US have an international legal agenda? How would you describe it, and how are we seeking to implement it today? Is it one we agree upon with our traditional allies? Do you believe there is sufficient US public understanding of that agenda or its importance?

Harper: Our international legal agenda has many facets; among them are: Forwarding the work of International War Crimes Tribunals for the Former Yugoslavia and Rwanda; working to develop an appropriate statute for the proposed International Criminal Court; negotiating new extradition and mutual legal assistance

treaties; advising on compliance with U.S. obligations under various international agreements (e.g., human rights treaties addressing Political and Civil Rights, Racial Discrimination, and Torture); negotiating the land mines convention under the able leadership of Principal Deputy Legal Adviser Michael Matheson; representing the United States before the International Court of Justice; defending the United States and aiding U.S. claimants before the Iran-U.S. Claims Tribunal.

We work closely with our traditional allies on a number of matters, including extradition, the War Crimes Tribunals, International Court of Justice cases and UN Security Council sanction regimes respecting Iraq and Libya. Twice a year I meet with the Legal Advisers of the United Kingdom, France, Russia and China to discuss matters of mutual interest.

I am confident we could do more to explain to the U.S. public the importance of these international issues and I hope this interview may help.

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Conrad Harper Interview . . .

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Stevens: Have US views of the International Court of Justice changed during your tenure? If so, how? Please comment, if you will, on the cases before the ICJ in which the US currently is involved.

Harper: The United States continues to regard the International Court of Justice as an important asset to the international community for the peaceful resolution of various types of disputes. For example, the expert knowledge of the Court in the resolution of territorial and maritime disputes is well known, and the United States recently endorsed the possibility of use of the Court to help resolve the dispute between Greece and Turkey over certain islands in the Aegean Sea. During the past two decades, the United States has itself resorted to the Court in several cases, including the Tehran hostages case, and will continue to do so in the future in appropriate situations. Where parties have not consented to the Court's jurisdiction, however, or where issues otherwise fall outside the Court's competence, we shall look to other appropriate international mechanisms for resolving disputes.

With respect to cases before the Court in which the U.S. currently is involved, we were recently able to settle one important case — the action brought by Iran regarding the downing of an Iranian civil aircraft during the Iran-Iraq war — on acceptable terms, which included the *ex gratia* payment of compensation to the families of those killed in the incident. Apart from that case, there are two other contentious cases in which the United States is a party, as well as two advisory cases in which we have a significant interest.

One of the contentious cases is an Iranian suit concerning U.S. attacks against Iranian oil platforms in the Persian Gulf which were used to stage assaults against neutral shipping during the Iran-Iraq War. The second action, filed by Libya, grows out of attempts to prosecute the persons charged with the destruction of Pan Am Flight 103 over Lockerbie, Scotland in 1988. In each case, the United States has filed Preliminary Objections challenging the jurisdictional basis for the action, and we expect oral proceedings on both within the next year or so. Both cases raise legal issues of great importance to U.S. national security interests, and if either proceeds to the merits, we shall defend the U.S. position vigorously.

The two advisory cases involve requests by the World Health Organization and the UN General

Assembly for the Court's advice on the legality of the use of nuclear weapons. The United States has argued that the Court should decline these requests or, if it decides to give an advisory opinion, that it should reject the assertion by a number of states that the use of nuclear weapons is prohibited categorically by international law. Oral argument in these cases was heard last fall and we are currently awaiting the Court's decision.

Stevens: One international legal development of major significance during your watch is the Yugoslav War Crimes Tribunal. What do you make of this development and what is its importance for the future? Are you optimistic that the Tribunal will succeed in its mandate?

Harper: The creation of the Yugoslav and Rwanda War Crimes Tribunals by the Security Council was of major significance, both in terms of the development of international humanitarian law and the peaceful resolution of horrendous conflicts. The creation of the two Tribunals was a milestone in the efforts of the international community to suppress and provide redress for genocide, war crimes and crimes against humanity. It was a demonstration of the flexible ways in which the considerable authority of the Security Council can be used to deal with difficult problems. Most important, the two Tribunals were a necessary part of the long-term peaceful solution of these humanitarian catastrophes.

It is, of course, much too early to predict whether the Tribunals will succeed in their mandates. The Yugoslav Tribunal has indicted more than 50 persons and has now begun the more difficult process of obtaining custody of those indicted. It will obviously not be easy to bring all the accused to trial in The Hague, although we shall continue to assist the Tribunal in accomplishing that objective.

In a more fundamental sense, however, the Tribunals have already done much of what they were designed to do. In particular, it was generally assumed by political commentators that the U.S. and others would eventually have to choose between peace and justice in these conflicts — that some form of amnesty would have to be given to influential war criminals to negotiate an end to the fighting. But, contrary to this conventional wisdom, the Dayton Accords not only brought peace but also strongly endorsed the pursuit of justice through the Yugoslav Tribunal. Indicted persons — including the two top Bosnian Serb leaders — were effectively excluded from the Dayton negotiations and are to be excluded from office under the new political

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BOOK REVIEW

The Wages of Guilt:

Memories of War in Germany and Japan

Ian Buruma

Farrar Strauss Giroux, New York (1994)

Meridien (1995, paperback ed.)

Pages: 330.

Price: \$25.00 (hardcover), \$12.95 (paper)

Reviewed by Seth L. Hurwitz

One fascinating aspect of the movement toward democratic institutions that has occurred over the last fifteen years has been the efforts of various nations to come to terms with the more unpleasant parts of their recent history. The manner in which information about state surveillance of citizens (e.g. East Germany) and direct or indirect state involvement in violent activity against internal opposition (e.g., South Africa, Chile) should be released and other appropriate action taken admits of no easy or universal answers. Practical political considerations coexist with age-old moral questions regarding who deserves punishment—or perhaps just moral censure.

Yet until the citizens of a nation can come to grips with their past they cannot be fully at peace with themselves. As Ian Buruma writes in *The Wages of Guilt: Memories of War in Germany and Japan*, “when society has become sufficiently open and free to look back, from the point of view neither of the victim nor of the criminal, but of the critic, only then will the ghosts be laid to rest.” Despite the fact that Germany and Japan have taken their place in the post-war years as strong, responsible and peaceful members of the international community, Buruma shows that both nations are still struggling to come to terms with their terrible actions during the war and pre-war years.

Buruma is perhaps uniquely qualified to address this subject. Raised in the Netherlands, he has spent much of his life in East Asia and is fluent in Japanese and German. His comparison of German and Japanese treatment of and attitudes toward the war is informed by his discussion of the intellectual debates, films, novels, and museums and memorials of both countries, supplemented by his conversations with Germans and Japanese of all ages and walks of life. The result is a fascinating cultural history, which reads like a novel. An example: “The German war was not only remembered [in Germany] on television, on the radio, in community halls, schools, and museums; it was actively worked on,

labored, rehearsed. One sometimes got the impression, especially in Berlin, that German memory was like a massive tongue seeking out, over and over, a sore tooth.”

Buruma's starting point is the popular reaction in Germany and Japan during the Gulf War. The strong pacifist sentiment in both countries reflected perceptions shaped by their overwhelming defeat in the Second World War. Yet while little distinction was made in Japan among the position of the parties to the conflict—i.e., the U.S. and Iraq were both considered guilty—the reaction in Germany was more complex. Germans protested against the war, but at the same time were often at pains to show their empathy with Israel (though not with the U.S.). There was a clear conflict between their rejection of the use of force and their memory of German atrocities against the Jews during the Nazi years.

As the above quotation indicates, the Germans (in the Federal Republic and in post-unification Germany; the GDR is a different story) have devoted an enormous effort, both official and non-official, to preserving the memory of the war and pre-war years. By contrast, the Japanese have been much less willing to address the difficult issues raised by their actions during this period. Indeed, according to Buruma, until 1992 the only war museum dealing with the war was the controversial Yasukuni Shrine, which celebrates the war and the sacrifices that Japanese made on behalf of the Emperor—and where Class A Japanese war criminals hanged after the war are buried.

Readers who are unfamiliar with this subject may be surprised to learn that for the majority of Japanese “Hiroshima is the supreme symbol of the Pacific War. . . . [and] it is more than a symbol of national martyrdom; Hiroshima is a symbol of absolute evil, often compared to Auschwitz.” In other words, Japan has defined itself generally as a victim of the war, and the atomic bombs are depicted as the defining event of that conflict. This approach affects not only the internal politics of Japan, but also creates problems in its international relations.

Buruma speculates that the Germany has found it easier to deal with its past because of the fact of Nazi rule—although Germans are still wrestling with the question of whether or not the actions of that era should be viewed as a logical outgrowth of German history or as an aberration. In Japan, on the other hand, where individual responsibility was (and is) much harder to pin down, where there was virtually no resistance to the State, and where the Emperor remained in power after the war, it has

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British have a system like this, and it appears to work well.

Another, related, recommendation with respect to improving responsiveness is to attach an experienced intelligence person as an assistant to each senior policy person at the secretary, deputy secretary, under secretary levels to feed back to the Intelligence Community what that person is interested in, and to select from the enormous mass of raw intelligence that spews out onto the desks in the morning that which is more likely to be useful to the policy maker. So that is one set of recommendations.

The second set, and one that is I think of special importance to members of this group, involves paying more attention to the interface between law enforcement and national security. We conclude that what we call "global crime"—terrorism, narcotics, and other transnational threats—is not only a law enforcement matter, but very much a national security matter. That means it needs to be dealt with in a national security context.

There is a difficulty in this approach, however. Prosecutors are afraid that their case will be tainted if intelligence is brought in and used in a way that might do that. Intelligence people are afraid that prosecutors, in their zeal to jail people who everybody knows they are never going to jail, will compromise sources and methods. So we suggest a high level committee of the National Security Council deal with these matters. We think that the current Administration is beginning to face up to these issues, and we encourage that. I would add that we think that clarification is needed, probably in an Executive Order, making clear to the intelligence collectors that they can collect on non-U.S. persons outside the United States for law enforcement purposes. They do it now, but only under restrictive rules which preclude assistance unless there is an intelligence purpose as well as a law enforcement purpose. We think that such a change would actually make our intelligence capabilities much more effective in dealing with transnational threats.

A third set has to do with increasing efficiency and effectiveness. That's a mantra for all of the Government, but I think it is especially important for the intelligence activities which are less subject to informed public scrutiny. They get a great deal of sensational publicity, but they don't get the same oversight as other government agencies. In order to do that, one important recommendation is to increase the ability of the Director of Central Intel-

ligence to exercise central direction. I said at the beginning that we rejected giving him line authority over the national intelligence agencies that are funded and managed by the Department of Defense; but, that is not a reason for keeping those agencies from being looked at, supervised, made more efficient, to a central authority. To that end, we propose deputies to the DCI, confirmed by the Senate, which would give them more clout and allow him to spend his time not entirely being raked over the coals every month for the latest scandal at the CIA. One of the deputies would be Deputy DCI for CIA, and accountable for most of the activities and all but the most sensational errors. The other would be a Deputy DCI for the Intelligence Community—who we would make the senior deputy—and we would give him or her sufficient staff so more attention could be given to budget and programs and how they work across the entire Intelligence Community—the CIA, the various national agencies in Defense. This office would also pay attention to the tactical intelligence budget which is entirely in the Defense budget—and to the general defense intelligence programs. You can have elements of collection in the tactical budget, in the general defense budget, and in the national foreign intelligence programs—all of which includes aspects of signals intelligence collection, or all of which includes aspects of imagery intelligence collection. We would give the Intelligence Community staff more capability to examine trade-offs, and to examine overlaps and duplication, in those areas.

We would also dual-hat the directors of NRO, the

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been more difficult to face up to the past. Buruma believes that, owing to the American occupation after the war and its legacy, Japan remains a psychological child when it comes to the question of assuming responsibility for its past actions. Germany, if not yet a "normal country," is much further along the path toward becoming reconciled with the unsavory elements of its history.

Readers will, of course, reach their own conclusions. But all will learn from this honest and informative look at an important and, ultimately, universal topic.

Seth L. Hurwitz, who served in the Bush White House as Counsel to the Intelligence Oversight Board, recently returned to Virginia from Tokyo, where he spent eighteen months working as an attorney.

Martin Faga Describes Work of Government Secrecy Commission

Martin Faga, a member of the Commission on Protecting and Reducing Government Secrecy, addressed a Standing Committee breakfast of February 15th at the University Club in Washington, DC. Several other of the dozen individuals who make up the Commission—which was established in January 1995 pursuant to the FY 1994-95 Foreign Relations Authorization Act, and resulted largely from the initiative of Senator Daniel Patrick Moynihan and Representative Lee Hamilton—were also in attendance.

Mr. Faga began by explaining that the Commission was established to address two "key issues": (1) the implications of the extensive classification of information; and (2) current procedures for granting security clearances.

He noted that the Commission "is charged to provide recommendations to Congress by January 1997," and disclosed that the group was still "in the information-gathering portion" of its effort and had not yet begun "to formulate positions," so his comments were said to be personal and might not be shared by others on the Commission.

"The questions faced by the Commission," he said, "pit the government's need for secrecy in some circumstances against the public's right to know and the need to predict loyalty against the citizens' expectation of trust absent specific fault."

He then described his personal perspective on the issue of secrecy:

[L]et me state clearly where I stand. I believe passionately in the need for an effective security system. Despite what we often hear, I know that secrets *are* kept. While there certainly are breaches of security, I have personally witnessed, over thirty years, many instances where secrets are kept. I remember particularly, when serving as a staff member for the House Intelligence Committee, that when programs would come forward where people were putting lives at risk, the Members would listen, literally on the edges of their chairs, with fascination and admiration as these programs were explained. Those secrets were never lost. I have found throughout government, that the more clear the need for the secrecy, the less likely it is lost.

He argued that excessive secrecy undermines the system, quoting Justice Potter Stewart as saying: "When everything is secret, then nothing is secret." As an example, he mentioned an event his son had experienced shortly after graduating from the Naval Academy:

Our security people thought he should be briefed about the NRO in case he was confronted by a question in the Navy. After he received the briefing, I asked him how it had gone. He said: "Fine, but I never figured out what the secret was." I asked if they had informed him about the NRO, reconnaissance satellites and the like. He interrupted: "Sure, sure, but everybody knows about that. What was the secret?"

Mr. Faga told the audience that he had related this story to then-Secretary of Defense Dick Cheney, during a debate over whether the existence of the National Reconnaissance Office (NRO) ought to be declassified, explaining: "My point to the Secretary was that we had information that was classified but not secret and it was corrosive to our genuine security needs. He agreed to the proposal."

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Standing Committee on Law and National Security

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NSA, the imaging agency, as Assistant Directors of Central Intelligence; give the DCI a greater say in their appointment and give him responsibility for evaluating them in their role as Assistant Directors of Central Intelligence. All of those, we think, would increase the attention to and the rationalization of our intelligence activities. There is really no excuse for doing that less well than it is now done in the Department of Defense through the programming and budgeting system. But intelligence has been handled outside that system because it is spread out over the various non-DoD agencies and because many of the reviewers in the Office of Management and Budget, and the Program Analysis and Evaluation Office at DoD, do not have adequate access to those programs.

In addition to improving centralized direction and examination, we think it quite important in assuring efficiency and effectiveness to do something about the personnel system. What's happened is, especially in the large agencies, such as DIA and CIA, a larger and larger fraction of the budget has gone to personnel, even though personnel numbers have begun to shrink slightly after a very large expansion in the 1980s. Personnel costs have gone up 50 percent to 65 percent, and that is squeezing the development and procurement resources down at a time when, after the Cold War, there is a need for different skills—different regional skills—the Soviet Union is no longer the single greater threat—and at a time when the so-called information revolution has changed the nature of technical collection and requires new kinds of technical and scientific skills. We need to change the mix of personnel, both to make resources available for acquisition of new capabilities and to make available area and language skills that deal with different parts of the world and different kinds of threats.

And so we propose a one-time authority for the Secretary of Defense and the DCI to abolish positions and give the individuals in them early retirement benefits of a quite generous nature, depending upon how long they have served. We got this idea from the Canadians, who adopted it first in their Defence Department and then, because it was so successful, through the entire government. This one, I think, is going to be the toughest one of all to get through; because people don't like their rice bowls cracked.

Other ways of saving funds which were endorsed by the Commission include greater cooperation

with our allies and friendly countries by making available to them designs of certain intelligence satellites that they could themselves build or buy from us, that would be compatible with our own systems, and would increase the current coverage of U.S. systems. That one's going to be tough also, not so much because of internal U.S. problems, but because there are some countries who are determined that they are going to compete in this both commercially and strategically and who want to occupy what they call "the heights of technology." I think they'll find that they can't really compete with us effectively, but that may not be enough to persuade them to join us.

The procurement regulation changes that Secretary John Deuch tried to make at Defense when he was there are an important way of saving resources.

Finally, there are undoubtedly some overlaps and duplications among existing programs. We looked at some of these and have made suggestions to the DCI and Congress as to where to look. The Commission concluded that money can be saved by doing this. How much of it will be necessary to fund the difference between what is now programmed for intelligence and how much will be necessary for new development and procurement which is not programmed, we don't know. We leave that to the Congress and the Executive, which have to decide it anyway.

We dealt with the accountability question, pointing out that covert operations—the necessity for which we support—have not always gotten approval at the appropriate policy level; and we suggest ways of seeing that they do in the future. We also propose declassifying the size of the overall intelligence budget, as a way of reassuring people that it is not infinitely large. If it were also appreciated that CIA is maybe 10 percent of the total budget, that would reassure people that the CIA budget is not the tens of billions that some of the public thinks it is. I myself think budget disclosure is largely an inside the beltway issue, but you've got to throw meat to the lions every once in a while—otherwise, they'll eat people.

We made some suggestions, gingerly, about congressional oversight committees—saying that they ought to be treated more like ordinary committees—and we also suggested both the congressional overseers and other people within the Executive branch occasionally speak out to recognize the value of intelligence activities as well as publicizing its deficiencies.

It is really up to Congress and the Executive branch now. We've provided a proposed set of

changes in the Executive Order governing intelligence activities; and we've also provided a package—not a very large package—of legislative changes. We've testified before the congressional oversight Committees and we've met with the President. It is now up to them. This is not the best year for legislative changes, but I think some of them may happen. I think there will be significant changes in the Executive Order. The DCI and the Secretary of Defense, both of whom we met with, are quite aware of what we recommended, will have then to carry out those changes. If those changes are adopted, I am convinced that the Intelligence Community will be more responsive, more efficient and effective, and better able to protect American national security and well-being.

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By June of 1966, the Marine Corps and other forces had moved eleven battalions up along the border to blunt this invasion. I was a young first lieutenant company commander. My captain . . . had been killed, and I was taking his place. My mission was very simple: to land in a valley, about six dried-up rice paddies in length, three rice paddies in depth—by the eastern side was a dried-out stream bed. The whole area was surrounded by jungle covered mountains. The mission was to land in this landing zone and do what all Marine units do—look for the highest ground in the world, hump up it, and defend it.

About 0600 in the morning, my company had landed all at once in this LZ, the helicopters pulled out, and as they pulled out—my world collapsed. We were taken under heavy small arms, automatic weapons, mortar, and artillery fire; and it was Hell!

Fortunately, the vast majority of the company was able to get into this dried-out stream bed. I had my command group sitting on the lip of this stream bed looking out on the rice paddy; and I saw that one of the platoons had been landed too far to the west. As they started to move to the east they were taken under such heavy fire that they hit the deck. One squad found itself directly in the line of fire of a North Vietnamese .50 caliber machine-gun, and within a matter of seconds I had two Marines killed and several terribly wounded. As I sat there, it became obvious that this gun was going to kill everybody in that squad, shift to the next squad, kill everybody in that one, shift to the third, and kill

everyone in that. I was going to literally lose a platoon of Marines in a matter of minutes.

Using my radio, I got one platoon moving up this stream bed to get on the flank of this gun so that they could assault through it. I also had another platoon, that served as a base of fire on to the tree line where this gun was located to try to keep the enemy pinned down. Trying to carefully coordinate this, with artillery coming in, smoke screens—it was bad!

As all of this was going, my radio operator grabbed me by the shirtsleeve, and he pointed out into the rice paddy and said: "Look at Lance Corporal Graves." I looked out there, and a young Marine Lance Corporal, the acting squad leader of this squad, had jumped to his feet, taken his M-14 rifle, stuck it into his hip, and charged about 40 meters right towards the machine gun. He ran about 30 meters, and immediately cut to his right, all the while firing his rifle. When he got rid of the first magazine of ammunition, he kicked it out and stuck another one in his weapon and fired again.

The amazing thing that happened was that the machine gun picked up off of that squad, and started tracking after this Lance Corporal. You could literally see the rounds getting close to him; and then he would somehow sense them, and cut the other way. The squad felt the fire lift off of them, and they moved up under the cover of a rice paddy dike; and the other two squads that were also in danger did the same.

The problem was that the Lance Corporal didn't look back. He didn't know that had happened, and he kept on fighting. He went back and forth, back and forth, until finally, he got hit, picked up like a dishrag, and thrown back. But in that time that he had done what he had done, we got our platoon in a safe position, along the flank of that gun.

I got back on the radio and said "I am going to pop a green star cluster"—nothing more than the old roman candle—and when that goes up in the air, I want that base of fire to shift to the left, because we are going to assault across with this platoon and I don't want our own Marines getting shot by our own Marines." I popped that green star cluster, up it went, the base of fire shifted, and the platoon began the assault.

As all that was being done, my radio operator grabbed my arm again. This time, he didn't say anything. He pointed out into the field, where this Lance Corporal had gotten back up on his feet, had taken his weapon—like he was taught to do in basic training—he put it into his shoulder, he got good sight alignment, he got a good sight picture, a good

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Gen. Krulak . . .

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trigger squeeze, and he walked down the line of fire of that .50 caliber machine-gun.

Shortly thereafter, my commander got up to the now silenced machine-gun position, and there were nine dead North Vietnamese soldiers around that gun. Draped over the barrel of the weapon itself was this Lance Corporal.

Six months later, when the Commandant of the Marine Corps awarded the widow the Navy Cross, the Nation's second highest military decoration, in her arms was a baby boy her husband had only seen in a Polaroid picture.

Now, you probably are saying, "What has that got to do with this great assembly of men and women here at the University Club for a breakfast to talk about the Marine Corps?" Because, you need to understand, that in the Corps, the heart and soul is the individual Marine.

What the Corps does for this great Nation of ours, is tied, once again, to the individual Marine. If you look at it very cold, and without any smoke and mirrors, the Marine Corps does two things for the Nation: (1) We make people like this Lance Corporal; and (2) We win battles. We make Marines. We win battles.

We make Marines by going out into the towns, and cities, and farms of America, we get these young men and women, we take them to a boot camp, we discipline them and instill an ethos and an ethic in them, we train them, we send them out into the Marine Corps, and they serve for maybe four years—or maybe thirty-four. And then we turn them back to the nation, like an Andy Anderson (a retired four-star Marine General now serving on the Standing Committee—*Ed.*), or other people. They have been imbued with something that is very important, and they serve the country, not just as Marines, but after they get out.

But there is a problem, and it is a challenge not just for the Marine Corps but for all of the Services. We are getting the most intelligent and talented Marines we have ever gotten. We do not take now anybody who does not have a high school diploma unless he or she gets a waiver. We are not recruiting a woman Marine who does not have a high school diploma, and we give less than 0.1 percent waivers to males. So we have an all high school education force.

We measure mental groups 1 through 3 Alpha. It used to be that if we could get 20 percent of our recruits from that mental group. Our goal now is 63 percent, we are getting 65 percent. But where are

we getting them from? We're getting them from a society that is in many ways disintegrating: because of the disintegration of the family, because of the problems in the schools, because of the problems of the values that you see on the radio, on TV, and in the movies. Let me just tell you, that is impacting, not just on the Marine Corps, but on all the services. And we need to understand that and to get a handle on it.

I cannot speak for the other Services. I will tell you what we are doing. There has been great pressure over the years to reduce the time devoted to boot camp. The Marine Corps right now has the longest boot camp. We've been under pressure for the last ten years to cut it down.

I've just given directions to extend the length. We believe that there has got to be a transformation of that young man or woman from what they are in society to what we expect them to be in the Marine Corps, and that transformation is going to take longer because we want to give to them, as best we can, the values that we believe are important for the Nation.

Now, you might say, "What are you going to do—extend it for ten years—because that's how long it's going to take to change a value system." No, we can't do that, so what we are going to do is change not only recruit training, but also training as we continue on as a Marine, in order to somehow get at this problem.

Unless there is a change in the Nation, this problem is going to manifest itself in larger proportion as we go along. What we are talking about, is that all of the Services are seeing an increase in the use of drugs. There was a time not so long ago when Marines would not lock their weapons, when you could leave a wallet on your rack and expect it to be there when you came back. Well that is not necessarily the truth now. We have certain things that are critical to our Corps and critical to the Nation that we need to work on. We're doing that.

The second thing we do is win battles. Notice I didn't say "win wars." The Marine Corps is not a war-winning force for this Nation. The war-winning force, steel-mailed fist that is used to win wars is the United States Army. Now that may sound strange coming from a Marine, but it is the truth. My Marines don't like to hear it, but it is the truth. . . .

But the Marine Corps wins the battles that set that war winning force in motion. We're the ones that go in hard and fast; we are the 911 force. That's what we do. We don't want anyone else's mission, but we want to be very good for what we do.

So what is the battlefield going to look like? We know what it looked like yesterday and today; our

problem is, who's looking at what the battlefield will look like tomorrow—or, more importantly, the day after tomorrow? I don't think too many people are.

We find ourselves constantly, and with very good reason, being forced to look into the realities of today: the Bosnias, the Haitis, the Cubas, the Somalias—but where will our national interests lie in the year 2010 to 2015? How will we exert our national influence in those areas of national interest?

It is my belief, coming from my own personal experience as well as my reading, that the backbone of our national interest will not be in the European theater, but will be found in a great tyranny called distance ranging from Korea down to the Pacific rim through the Strait of Malacca into the Indian Ocean and up into the Persian Gulf. That is where our national interests are, and that is the only place where American mothers and fathers will be willing to send their sons and daughters to shed their blood.

We need to really start concentrating on how you solve the problems of chaos in the littorals of a place we haven't even looked at. In order to do that, on the 18th of November we stood up something called the War Fighting Laboratory. Underneath that War Fighting Laboratory is an experimentation group that is called "Sea Dragon." Sea Dragon is looking at the world in 2010. It is not just looking at what technology is going to bring to the warrior. It is looking at how we need to think, what our doctrine is going to look like, what our education problem is going to look like.

A little bit about systems. Where are we going to fight? How are we going to get there? How are we going to influence? How will we manage instability so that we don't have to fight? What will the Department of Defense organization be like? I'm not talking about "roles and missions"—we've "rolled and missioned" it to death—what we need to really start looking at is "What is the future?"; because you buy, you program, in five-year increments; and we're probably behind time right now in programming for what I believe the world will look like in 2010 to 2015.

So, we are working on very hard at doing the two things I believe we've done for the Country: (1) to make Marines—and I've got to figure out how to make those Marines relevant in an age where values and ethics are in such disarray—and (2) to win battles—but how will we organize and structure ourselves to win battles, not today and tomorrow, but, far more importantly, for the day after tomorrow?

Martin Faga . . .

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To put the issue in perspective, he noted that more than six million classified documents were produced every year, that more than three million people had security clearances, and that—not counting CIA, NSA, and "supporting industry" costs, the current secrecy system is estimated to cost more than two billion dollars annually.

Noting that "the problem is not being ignored," he reported that a new Executive Order on classification "limits the duration of classification to ten years in most cases, provides mechanisms to challenge classification," and "puts limitations on special access programs." "Most important," he concluded, the Executive Order "states that where there is doubt, don't classify."

The costs associated with classifying information, he told the group, begin as soon as the threshold between *unclassified* and *confidential* is passed. At that point, "we get to cleared personnel, locks, safes, guards, alarms, administrative and document controls." Drawing from the experience of the NRO, he said that significant savings were made when it was established that "a significant fraction of our work" could be done at the unclassified level.

While national security bureaucracies may initially display a reluctance to declassify, there are *positive* incentives to improving the system. He noted that the military tends to work at the *secret* level, which precludes people knowing about resources that might help them accomplish their missions. Declassification could also have a positive impact upon program costs.

Turning next to the question of granting security clearances, Mr. Faga expressed some concern about the use of the polygraph—noting that "it may have an inverted effect: the most conscientious people may have the most difficulty." He illustrated this point by observing that, over the years, he had encountered situations where employees could not clear the polygraph for a particularly sensitive program; but after he assured them that they could keep their positions even with that level of clearance they were able to pass the polygraph without difficulty. "Anxiety can play a large role," he said: "Obviously, they weren't different people but their emotional state was changed . . ." He said he didn't oppose using the polygraph, but that in his view "the issue is what is done with inconclusive information from the polygraph."

Mr. Faga noted that changes were taking place in

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Conrad Harper Interview . . .

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structures set up by the Dayton Accords. All parties are obligated to cooperate with the Tribunal, and we are working hard to see that all parties fulfill this obligation. Even if custody of an indicted person cannot be obtained in a given case, the Tribunals can thoroughly document the crimes committed and the guilt of the person responsible, and can make the perpetrator an international fugitive, thus depriving him of any political legitimacy.

Stevens: Your Republican predecessors had frequent occasion to comment on the problems caused by Congressional micromanagement of foreign policy. They often found it necessary to defend the President's prerogatives under the Constitution—for example, in disputes over War Powers, treaty interpretation and the like. Have you detected any change in dealings between the President and Congress on such issues since 1994, when our major political parties came to control different ends of Pennsylvania Avenue? In general terms, what is your own point of view about the President's Constitutional authority in this area?

Harper: I do not want this interview to be the provocation of a confrontation with Congress over the President's prerogatives. Nor shall I attempt to use this occasion to improve on Justice Jackson's justly famous concurrence in the *Steel Seizure* cases. My office has worked well with Congress and I expect we shall continue to do so.

Stevens: In a tradition of public service, you came out of a successful international practice with a distinguished New York firm. It's said that senior jobs in government have become more difficult over recent years. Do you agree that the course is tougher today? The lawyer's job in the State Department has always posed its own special challenges. What has surprised you most about the job since coming to the Department?

Harper: I would mention two areas of major change from what I sense was the situation some twenty years ago. First, many more statutes now regulate the exercise of presidential power, direct the imposition of sanctions for violations of U.S. law, and require reports about presidential action. Second, ethics issues are pervasive, embracing the bases of recusal, the appropriate use of government resources and ever more complex individual reporting requirements.

What has surprised me most about my job is the sheer joy with which I approach it every day. It is the most varied and exciting position I have ever had, dealing with world-class issues for exceptionally able policy makers and working with extraordinary lawyers. This is true not only within the State Department but also includes the necessarily close working relationships we have with the Justice Department, particularly the Solicitor General's Office and the Office of Legal Counsel, and with lawyers at the Department of Defense, including the Joint Chiefs of Staff, the CIA and the National Security Council. The second most surprising thing about my job has been learning how difficult it is to complete a task, whether it is seeing a treaty through to ratification or working out necessary adjustments to proposed legislation. Teamwork at every level is required, which brings me back to the joy of engagement in international affairs and in the management of a major governmental department which this job provides.

Martin Faga . . .

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the clearance process as a result of a recent Executive Order:

[T]his order provides for reciprocal acceptance of access, eliminates sexual orientation and mental health counseling as disqualifying in themselves, and provides for explanation to those who are turned down for clearance and for a process of appeal. It also begins a difficult foray into financial disclosure. We know that most espionage cases develop out of financial problems but balancing the need for some information against excessive intrusiveness is proving difficult indeed.

On the issue of background checks, he argued that "a very few interviews with people who really do know us" is more effective than "lots of background checking with people who do not know us" as well. From his own experience, he ranked the security programs at CIA and NRO (which is derivative of that at CIA) the best—in part because "security officers were empowered to adjust standards to the real situation around them so that we did things sensibly."

In closing, Mr. Faga invited the audience—"individually or as a group—to offer experiences or ideas to the Commission. While still in the information gathering mode, the Commission will soon begin to "sift and sort all that we're learning" and get on with the business of preparing its report.