



Senator Leahy Cites Middle East Peace Opportunities

Senator Patrick J. Leahy (Democrat-Vermont) declared at the Standing Committee's March 21 breakfast in Washington, D.C., that strong presidential leadership is essential to resolve the Arab-Israeli dispute. Senator Leahy has an L.L.B. degree from Georgetown University, was elected to the Senate in 1974, and is Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry. Following are the Senator's edited remarks.

When the United States moved troops to Saudi Arabia for the showdown with Saddam Hussein, many raised questions about the challenges America would face in the postwar world. That reality—and the accompanying responsibility—is now upon us. Reviving and energizing the Middle East peace process is one of the most critical, difficult and controversial aspects of the war's aftermath.

The brilliant and decisive victory over Saddam's forces was only the first, and shortest, phase of this challenge to American leadership. The key is to follow Desert Storm by just as zealously addressing the roots of turmoil and conflict in that part of the world. This will take great patience and understanding. There is simply too much history, too much hatred, and too much fear for these deep-rooted conflicts to suddenly resolve themselves through some all-embracing international conference under the auspices of the United Nations or any other forum. The solution to long standing regional conflicts—to which the Arab-Israeli conflict is central—can only be achieved, step by careful step.

The war has given us the opportunity to start the process. American credibility, power, and influence in this area of the world have never been higher. The opening for diplomacy has never been so hopeful. But it is a temporary opportunity—and one that will fade as

quickly as the short desert ground war if we fail to move rapidly with strong leadership. The maneuvering has already begun, with harsh rhetoric and extremist pronouncements as countries seek to take advantage of shifts in the regional power balance.

Secretary Baker's trip to the Middle East so soon after the war is a welcome step. The Secretary has perceived that the favorable climate today can return quickly to the acrimony of yesterday unless we act promptly to revive the Middle East peace process. While Secretary Baker's initial discussions deserve our support, and even though he should continue the dialogue, there is no substitute for direct, personal and sustained involvement by the President.

The Egypt-Israeli Peace Treaty came about at Camp David through President Carter's willingness to commit

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"The Moving Finger Writes; and Having Writ . . .

Moves on: nor all thy Piety nor Wit Shall lure it back to cancel half a Line...." (Edward Fitzgerald)

And so it was with essays in the *Intelligence Report* written by the Standing Committee's Chairman Bob Turner, "War Powers and the Gulf Crisis" in the December 1990 issue, and by your editor, "We've Been Here Before," in the January 1991 issue. The great essayist Sir Francis Bacon once wrote: "My essays: come home, to men's business and bosoms." While I do not mean to compare the essays of Bob and your editor to those of Sir Francis, what we write for the *Intelligence Report* sometimes has unanticipated results.

In our Chairman's case a staffer on the Judiciary Committee of the United States Senate read his essay on war powers and Bob straightaway was invited to appear as a witness before the Judiciary Committee as it pre-

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Conference to Treat The Separation of Powers in Foreign Policy

One of the most important issues in the effective functioning of U.S. foreign policy is the ongoing struggle between Congress and the presidency for control over foreign affairs. This struggle, perhaps best known in recent years for the recurring war powers controversy (again evident in the Persian Gulf crisis), is waged over a wide range of issues also including treaty powers, information flow, and U.S. foreign policy commitments.

To call attention to the continuing importance of these issues, as well as to review a number of newer issues in the debate, the American Bar Association's Standing Committee on Law and National Security, and the Center for National Security Law at the University of Virginia, are cosponsoring a national conference on "Preserving the Separation of Powers in Foreign Policy: Checks and Balances and the New Congressional Activism." The conference will be held on May 29-30, 1991, at the International Club, 1800 K Street, Washington, D.C. 20006.

The conference will, among other issues, examine the constitutional limits on the use of the congressional appropriation power as a means of constraining executive national security powers and it will examine the growing practice of direct congressional involvement in foreign policy through hearings involving foreign government witnesses, travel abroad, and even secret communications with foreign governments. The conference also will seek

to develop criteria for determining the appropriate congressional role in the foreign policy process and to examine technologies by which the presidency might more effectively support its views in separation of powers disputes.

Because of the importance of this subject, the conference will invite some of the nation's top experts to discuss and debate the issues in their broadest context. Panels planned include: "General Background and Context," "The Use and Misuse of Conditional Appropriations to Constrain Executive Discretion," "Limits on Direct Involvement By Congress and Members of Congress in the Conduct of Foreign Policy," "Foreign Affairs and the Presentment Clause: The Use and Misuse of Omnibus Legislative Linkages," "The Limits of Congressional Micro-Management: Toward a Consensus on Criteria," "Presidential and Congressional Options for Clarifying and Preserving the Constitutional Limits," and "Round Table Discussion: Strengthening the Rule of Law in Separation of Powers Disputes."

It is hoped that the climate of enhanced executive-congressional cooperation resulting from the shared support for the United Nations coalition forces in the Gulf crisis will facilitate a particularly useful discussion.

For further information on the conference, please call the Standing Committee office at 703-242-0629.

Moving Finger Writes

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pared to vote on a joint resolution authorizing President Bush to use force in the Persian Gulf crisis.

In response to your editor's January piece, two congratulatory letters arrived which would gladden the heart of any writer. One came from Judge William Webster, the director of the Central Intelligence Agency, and the other from Gordon Hoxie, the president of the Center for the Study of the Presidency. After offering "congratulations on [the] fascinating essay 'We've Been Here Before,'" Mr. Hoxie invited your editor to a conference to serve on a panel to examine "The Constitutional Powers of the President as Commander-in-Chief." He added in his invitation letter that "participation will mean a great deal to 600 of the nation's most

outstanding college and university students, their faculty advisers, and guest observers."

Naturally, I could not refuse such a challenge and opportunity. So, on the appointed day and hour your editor appeared on a panel to discuss before those bright students just what powers our Constitution grants to the President when our safety as a nation is threatened. With me on the panel were a nationally known columnist and television personality from the *Baltimore Sun*, and a professor of political science from Gettysburg College. We each had ten to fifteen minutes to make our cases and there followed an hour of questions from the students.

While I do not hold myself out as a Constitutional lawyer, I have had personal experience (with the help of others) advising two Presidents (Eisenhower and Kennedy) regarding presidential rights under the Constitution to use naval forces to interdict possible enemy

attacks or incursions with offensive weapons into territory which posed a threat to our nation (Formosa under Eisenhower and Cuba under Kennedy).

Happily, I carried with me our Chairman's December article on war powers and a copy of his 45 pages of testimony on the subject before the Senate Judiciary Committee. Bob Turner **does** teach Constitutional law at the University of Virginia and is a recognized expert on the subject. The publications were to come in handy!

The panel seemed to be in general agreement as to the powers of the President as Commander-in-Chief to initiate limited or general hostilities under authority of a joint resolution of the Congress and without a formal declaration of war, with one exception. The Gettysburg College professor alleged and averred that the President had no Constitutional authority to invade Kuwait to take on the Iraqi army. As a consequence the professor took the brunt of the students' questions—and they were sharp.

When the session ended, I presented the professor with copies of the Standing Committee's December and January issues of the *Intelligence Report* and subsequently sent to the professor a copy of our Chairman's testimony before the Senate Judiciary Committee. In that testimony, Bob Turner made no bones about his position on the Constitutional issue.

He testified: "Whatever the [Judiciary] Committee decides about the need for or utility of formal legislative sanction for any use of force in the Gulf, one point is absolutely clear: any necessary authority can be provided by a joint resolution which does not formally 'declare war' against Iraq." And further on he declared: "It is beyond question that any Congressional approval may be provided by a joint resolution without formally declaring 'war.'"

Copies of Chairman Turner's testimony will be sent to members of the panel and to the President of the Center for the Study of the Presidency.

Let me conclude that it was both a satisfying and exhilarating experience to appear before and be questioned by those bright students. Anyone who questions the state of education in America should have such an experience.

William C. Mott

Book Review

By John P. Roche

The Web of Disinformation: Churchill's Yugoslav Blunder by David Martin. Harcourt, Brace, Jovanovich, New York, 1990, \$29.95.

For over 40 years David Martin, formerly Associate Editor of this *Intelligence Report*, has been laboring to discover the basis for the British World War II desertion of Draja Mihailović, commander of the Royal guerrilla forces in Yugoslavia, in favor of Josip Broz Tito, a veteran Comintern **apparatchik** and leader of the Partisans. Martin began work in 1946 with the publication of *Ally Betrayed: The Uncensored Story of Tito and Mihailovich* and was a key figure in creating the Committee for a Fair Trial for Mihailovich which did a vigorous, though, alas, fruitless, job of publicizing in 1946 Tito's lynching bee. The Truman administration made some bureaucratic noises, but contented itself with awarding General Mihailovich the Legion of Merit earlier recommended by General Eisenhower—after the executioners had done their work—and classifying the honor! (It was not publicized until 1967.)

Martin in 1978 published the documents which the defense committee had obtained (*Patriot or Traitor: The Case of General Mihailovich*) and in his "Introduction" filled a number of the evidential gaps that existed in 1946. To summarize, Winston Churchill, who even after Gallipoli continued his quest for soft Mediterranean underbellies, decided sometime in 1943 that Dalmatia filled the bill and launched planning for "Operation Armpit." This was to be an Anglo-American invasion landing south of Trieste, designed to rush through the (mythical) Ljubljana "Gap" to establish a non-Soviet military presence in Eastern Europe. Indeed, to the extent that it had any strategic utility once Allied airbases were set up around Foggia, the sanguinary inch-by-inch Allied campaign in Italy was justified by the British need for a secure jump-off point for "Armpit."

Initially Britain looked to General Mihailovich's forces as potential allies in pacifying the neighborhood once the troops hit shore, but as the Allied Mediterranean

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Calendar of Events

May 29-30

National Security Conference on "Preserving the Separation of Powers in Foreign Policy: Checks and Balances and the New Congressional Activism," Washington, D.C.

October

National Security Conference on "Strengthening Regional Security and the Rule of Law in Latin America and the Caribbean"

For further information on either of these events, contact James Arnold Miller, 703-242-0629.

Senator Leahy

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his prestige and political capital to that negotiation, and the diplomacy that led to it. To breathe new life into the Middle East, President Bush must be willing to sacrifice some of that 90 percent approval rating in the polls to exact hard decisions from all parties to the Arab-Israel conflict.

Israel faces a "land for peace" choice that includes justice for the Palestinians if United Nations Resolution 242 is to be the basis of a peace settlement. The Arabs face a decision to recognize Israel's right to exist, with normal relations with its neighbors, if the Palestinian issue is ever to be solved. These are historical decisions that cannot be resolved without the personal leadership of the President of the United States.

Genuine cooperation must exist between the United States, the Soviet Union, and Europe to create the environment to make these decisions. The participation of key European nations and the Soviet Union in the international coalition against Saddam Hussein's aggression increases the chances for this cooperation. There is much to gain from this new partnership of nations. It could lead to a mutual understanding on the need to restrain arms in the region.

The difficulties of such an understanding are enormous, because of long standing security assistance relationships that the United States has with Israel, Egypt, and Saudi Arabia. We must proceed with great caution not to weaken these relationships or our mutual, national security.

Senator Leahy said the United States must find ways to restrain the massive flows of advanced weaponry into the Middle East. If the arms race is destabilizing, it promotes competition for ever more sophisticated—and costly—weaponry, and it perpetuates a pervading sense of insecurity and fear. Whatever the mechanisms, and whether formal or informal, limitations on both the so-called "conventional" weapons and weapons of mass destruction are essential.

The United States must deal with the Middle East's most difficult problem, the Arab-Israeli conflict. We must promote talks, eventually leading to negotiations, between Israel and the Arab states. Secretary Baker has proposed a "two track" approach. The first track would engage in dialogue with Israel and those Arab states still in a legal state of war against it. The goal would be to seek solutions to bilateral issues and negotiate a formal peace. The other track seeks to bring Israel and the Palestinians together in search of solutions to the Palestinians' legitimate rights and the ultimate status of the West Bank and Gaza.

The two track strategy—or indeed any peace diplomacy—is feasible only as long as President Bush puts the full weight of his office behind them. Only the Pres-

ident and Secretary Baker can judge the diplomatic strategies needed to promote this, or any other approach. Clearly these tracks must be pursued simultaneously. Israel doubtless prefers to concentrate on the first track, and establish dialogue with Syria, Jordan, and Saudi Arabia. The Arabs would clearly prefer to push the Palestinian track before dealing with their own disputes with Israel. The problems are inseparable, and must be faced in tandem.

Congress and U.S. domestic politics will play a role in this tenuous, but hopeful, process. A starting point is the deep and strong support for Israel in Congress. The President and Secretary Baker will do well to recognize this, and avoid any strategy that is based on pressuring Israel through our aid program, or other forms of leverage. Congress is not going to demand Israeli concessions to the peace process as a prerequisite to U.S. aid to Israel. That is a political fact of life. Israel's security cannot be a bargaining chip in efforts for a Middle East peace policy. Israel wants security and peace with its neighbors, and that has to be the foundation of U.S. actions to move the peace process.

Senator Leahy has told President Bush and Secretary Baker, many times, that there is strong, bipartisan support for an Administration peace strategy in the Middle East under certain conditions. These include: bedrock U.S. commitment to Israel's security; willingness to find a just solution to the legitimate rights of the Palestinian people; and, exercise of presidential leadership in dealing with all parties to the Arab-Israeli conflict. Congress will support a President fully committed to a Middle East peace process and prepared to use his enormous political capital in pressing all sides in that process—even at the cost of some difficult decisions.

In the question and answer period, Senator Leahy agreed with several in the audience that a critical requirement is for more and better studies among the U.S. military, intelligence agencies, and the Foreign Service concerning foreign languages and cultures. The Gulf crisis highlighted this need. In addition, he noted, there is a strong need for familiarity with foreign languages and culture in academia and business. Senator Leahy lamented the general lack of foreign language requirements in U.S. high schools and universities.

Book Review

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ean timetable slowed down in 1943-44, London became more and more convinced that Mihailovich's forces were inactive while Tito's Partisans were gallantly killing Germans. There was some truth to this: Mihailovich was the leader of a movement committed to defending the Yugoslav peoples; his planning was largely premised on cooperation in an Allied invasion, not on murdering random Germans and triggering ferocious Nazi reprisals.

Tito's cadres, like Stalinists in all the underground organizations, believed the worse the better. A brutal Nazi reprisal would lead to the destruction of villages and flight to the hills by potential Partisan cannon-fodder. (General de Gaulle incurred similar French Stalinist attacks for his October 23, 1941, order to the **Résistance**: "kill no Germans," but he survived.)

Washington (read F.D.R.) simply turned all decisions on Yugoslavia over to London. Thus Martin in his 1990 work, *The Web of Disinformation: Churchill's Yugoslav Blunder*, turns his skilled microanalytical talent to investigate what information/disinformation led the old anti-Bolshevik Churchill to throw his weight behind Stalin's Yugoslav mafia. Given the British old-boy network, and libel laws, he had his task cut out for him: the first three volumes of the official history of British intelligence in World War II, produced by F.H. Hinsley *et al.*, has, e.g., no reference to Kim Philby.

The examination in Volume 3, Part 1, on the Yugoslav situation—published a decade after Walter Roberts in his *Tito, Mihailovich and the Alliances, 1941-45* had documented Tito's negotiations with German authorities in Zagreb in 1942-43 aimed at a united front against Mihailovich **and any British invasion**—reflects the 1944 British Foreign Office line: only Mihailovich's **Cetniks** were collaborating with the Nazis and Italians. Martin raised such matters in correspondence with Sir Harry Hinsley, but the latter found them **de minimus**, worthy only of a casual Establishment brush-off.

Other intelligence officers, both British and American, were appalled at the evidence Martin provided that the data on Yugoslavia provided to London by Special Operations Executive (SOE)—Cairo, was so egregiously cooked in favor of Tito, and Martin went in search of the choke-point. He found it in the person of James Klugmann who made it from corporal to major at SOE-Cairo as the principal man on the Yugoslav account. A leading Stalinist in his years at Cambridge, Klugmann was never secretive about his politics. A man of amazing energy and talent, he made himself indispensable.

Klugmann, in a singularly sensitive job, did everybody's work and was left alone. He used his status to "colonize" the political side of SOE-Cairo with a merry crew of Communists; he used his solitary control over the outgoing top-secret traffic and briefing of dignitaries on events within Yugoslavia to poison the well in London, and, on the first bounce, Washington. David Martin's bill of particulars is meticulously compiled and a devastating indictment of British counterintelligence and of official stupidity about the nature of a commitment to Marxist-Leninism. Though Martin suspects a conspiracy among the "Cambridge Comintern," the author thinks Klugmann lucked into his job: his first wholly non-political Cairo boss identified him as the "Cleverest boy who had ever been at his school"

and saw to his transfer to intelligence. But once in place, Klugmann needed no "control": he was thoroughly programmed and remained so until his death in 1986. David Martin has put together a convincing mosaic: he has played a central part in redeeming the honor of a gallant Yugoslav patriot and exposing a dismal, odious chapter in Anglo-American wartime policy.

(Note: Dr. John P. Roche is the John M. Olin Distinguished Professor of American Civilization and Foreign Affairs at the Fletcher School of Law and Diplomacy, Tufts University, and is the author of *The History of Marxist-Leninist Organizational Theory*. He was Special Consultant to the President during the Johnson administration, advising the president on public attitudes toward the Vietnam War and related issues.)

A Historical Perspective on Business

When Lewis Powell became president of the American Bar Association (ABA) he brought to the position unique Virginia oriented experience. He had been chairman of the School Board in the City of Richmond and later served on the board which oversees college education in Virginia. He perceived large gaps in the education curricula caused by neglect to study our own basic documents and failure to be able to contrast them with the basic documents of other nations.

In his gentle but telling manner he chided his fellow lawyers for not taking the lead to fill the education gaps. He pointed out that lawyers like Madison, Jefferson, Randolph, and Wythe (law tutor of both Jefferson and Marshall) were instrumental in drafting our basic documents. He felt that the present generation of lawyers could help to pay the debt to their forbears by supporting the educational process in America. And so, what is now called the Standing Committee on Law and National Security of the ABA was born, with Lewis Powell as its first chairman.

These facts are cited as a prelude to examining the debt owed by many businesses (and lawyers) to James Madison. A student of Montesquieu and Locke with a ripe knowledge of political theory and practice he perceived early on, at that grand convention of 1787, that America had little or no indigenous industry and that something had to be put in our Constitution to encourage its formation. Virtually everything we had from furniture to ladies' dresses was imported.

Madison had organizational genius and he turned to the South Carolina delegation (all four were lawyers) to draft something to put into the Constitution to encourage inventiveness and the founding of industry. Why South Carolina? Because as a colony it allowed and encouraged its citizens to invent things and receive a

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Perspective on Business

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monopoly patent from the legislature.

And so, that clause in Article I, Section 8 of the Constitution was born, which gave Congress the power "to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." Congress, pursuant to the grant of power, soon passed a law establishing our patent system. Many businesses owe their birth and continued existence to that patent system and, like the legal profession, owe a debt of gratitude to the foresightedness of people like Madison and the Pinckney cousins of South Carolina.

Even today, countries like the Soviet Union, Mozambique and South Africa are struggling to draft new Constitutions which would, like ours, encourage the formation of industries in the image of the free enterprise system.

Recently the President Elect of the American Bar Association, Talbot D'Alamberte, led a delegation of American lawyers to Moscow to help Soviet lawyers in the drafting of a new Constitution. In his plenary address he stated:

"Your transformation is every bit as bold, original and profound as the drafting of our constitutional system 203 years ago. . . . Your task, the task of lawyers, is to transform a legal system designed to prevent and punish private enterprise into a system to organize and nurture it. The scope of the work before you humbles us."

We owe a great debt of gratitude to those geniuses of 1787 who preceeded us and enabled us to operate in the free enterprise climate in which we live.

This was adapted from an article by W.C. Mott which appeared in the **Charlottesville Business Journal** in January 1991.

Training Law Professors

University of Virginia to Host National Security Law Institute in June

The Center for National Security Law at the University of Virginia School of Law will host the first in a series of National Security Law Institutes between June 9 and 22, 1991, to help prepare law professors and other educators to teach courses in national security law.

The first two-week long Institute will take place primarily at the law school in Charlottesville, Virginia, but will also include two days of meetings in the Washington, D.C., area—during which time the professors will visit CIA headquarters and the White House and will meet with a number of practicing national security lawyers in both the executive and legislative branches of government. Topics to be addressed at the Institute include: the use of force under international law, intelligence, terrorism, freedom of expression and national security, the constitutional separation of national security powers (e.g., war powers and treaty powers), arms control, human rights, and issues of trade and technology transfer. Faculty members and distinguished guests who are scheduled to address the professors include Director of Central Intelligence William Webster, Under Secretary of State for Political Affairs (and former Standing Committee member) Robert Kimmitt, Arms Control and Disarmament Agency (ACDA) Director

Ronald F. Lehman II, former National Security Agency Director Bobby Inman, Yale University Law Professor Harold Koh, and Standing Committee members John Shenefield and Delbert Spurlock.

The Institute is largely designed around the law school casebook on *National Security Law*, which was published last year and is now in use at about 18 law schools around the nation. The casebook was the brainchild of a number of individuals long associated with the Standing Committee on Law and National Security, including University of Virginia Law Professor John Norton Moore (a four-term past chairman of the committee) and current chairman Robert F. Turner (both of whom are co-editors). It includes several chapters authored by current or former members of the Standing Committee, many of whom have agreed to serve on the faculty of the summer Institute.

While the June Institute is filling rapidly and the application deadline is May 10, similar training programs are already being planned for the future. Individuals with a professional teaching interest in national security law who would like further information are invited to contact the Center for National Security Law, School of Law, University of Virginia, Charlottesville, VA 22903, (804) 924-4080.

The Intelligence Report, which is published monthly, reviews court cases and books concerned with (1) national security, and (2) intelligence. It also reports on developments in these two fields in the U.S. and abroad, and, in addition, on national security conferences sponsored by the Standing Committee on Law and National Security. The views expressed in this publication are not necessarily those of the American Bar Association or the Standing Committee on Law and National Security. Questions or comments should be directed to W.C. Mott, Editor, 1501 Trombone Court, Vienna, VA 22182, Tel. 703-242-0629, Fax. 703-938-1727.