



National Security Law Report

Shenefield Named Chairman

Five Named to Standing Committee

ABA President J. Michael McWilliams has appointed John H. Shenefield as chair and named five others to three-year terms on the eleven member Standing Committee. Former committee chairman Richard Friedman, who for the past three years has chaired the advisory committee, returns for a third three year term. New appointees to the committee are former Navy Secretary Edward Hidalgo, Senate Intelligence Committee General Counsel L. Britt Snider, former NSC General Counsel Paul Schott Stevens, and former Assistant Attorney General Richard K. Willard.

A native of Mexico City who emigrated to the United States as a child, Hidalgo brings to the committee professional experience dating back five decades to his service as a State Department attorney during World War II. He received his legal education at Columbia and the University of Mexico. Much of his professional career has been with the Navy, beginning as a reserve Lieutenant in 1942 and including service as special assistant to Navy secretaries James Forrestal and—two decades later—Paul H. Nitze. After serving as General Counsel and Congressional Liaison to the U.S. Information Agency, Mr. Hidalgo served as Assistant Secretary and then Secretary of the Navy during the Carter Administration. During 1989-90, he served as a member of President Bush's Commission on Avia-

tion Security and Terrorism.

After receiving his J.D. from the University of Virginia in 1969, L. Britt Snider joined the Army Signal Corps and served in the Republic of Vietnam. After being discharged as a Captain, he moved to Washington, D.C., and accepted a position as Counsel to the Judiciary Subcommittee on Constitutional Rights. From there he moved to the newly established Senate Intelligence Committee as Counsel, and in 1977 he began nearly a decade of service as Assistant Deputy Under Secretary of Defense for Counterintelligence and Security. After brief service as Chief Counsel to the House Government Operations Subcommittee on Government Information, he returned in 1987 to the Senate Intelli-

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Ex-KGB Chairman Addresses Breakfast

By Jackson R. Sharman III

Both the last chairman of the KGB prior to the coup and a former KGB general recently issued guardedly optimistic predictions concerning the role of the security services in the former Soviet Union. Mr. Vadim Bakatin and General Oleg Kalugin spoke to a packed house of 250 lawyers, government officials, and others at the University Club on September 17, 1992. The breakfast meeting was the first in the Standing Committee's 1992-1993 breakfast series.

Mr. Bakatin was named Minister of Internal Affairs by Mikhail Gorbachev in October of 1988 and subsequently became Director of the KGB. He took a vigorous reformist approach and was subsequently relieved by Mr. Gorbachev in response to pressure from hardliners. In his address, Mr. Bakatin noted that there is no real argument anymore concerning the failure of the Communist system. While he understood the desire of Western leaders to claim victory in the Cold War, in his view no one actually "won" or "lost" the conflict; rather, the Communist system was doomed to failure from the start. Quoting Alexander Solzhenitsyn's warning concerning his country's move from the rocks of totalitarian-

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ABA Convention Panel Links Law And World Order

By John Shenefield

In a program co-sponsored by the Standing Committee at the ABA's annual convention in San Francisco on August 10, a panel of eminent speakers from across the political spectrum described the rule of law as the foundation of national and international security in the next century. Chaired by Professor Abraham Chayes of the Harvard Law School, the program was keynoted by Ambassador Max M. Kampelman, a counselor to the Standing Committee, who spoke of the need to jump start Russia by helping political structures to grow in order to keep pace with the technological revolution that Russia was facing. Warning that the United States would be criticized if it did not do its duty, Kampelman recalled the Marshall Plan half a century ago and pointed to the beginnings of such an effort in the ABA program on Central and Eastern Europe (CEELI) and other allied efforts. Outgoing ABA President Talbot D'Alemberte accepted the invitation on behalf of the legal profession and endorsed the need for American lawyers to respond vigorously.

Ambassador James Leonard, one of the country's leading experts on nuclear weapons proliferation, called for U.S. leadership within the context of a well-organized international security system to deal with the problem of proliferation. Leonard noted that the Non-Proliferation Treaty would be reconsidered in 1995, and called for the United States to embrace its own program of de-nuclearization in circumstances to be negotiated with the other key parties to the treaty. In addition, he argued for the strengthening of export controls and proposed a halt to nuclear testing. Leonard said that the most difficult cases were India and Pakistan, where he thought U.S. de-nuclearization would have a profound effect, and in the Middle East, where he endorsed the Bush administration's support for arms control and serious attention to the political conflict.

Standing Committee member Richard Schifter, former Assistant Secretary of State for Human Rights and Humanitarian Affairs, stated that U.S. efforts to assist former totalitarian regimes toward democratization ought to include the suggestion of appropriate law, the promotion of an independent judiciary, and support for societies that have proved they accept the rule of law. He argued that accusations of ethnocentrism were not a reason not to push our own views. While we do not wish to interfere in the domestic affairs of another country, loans and assis-

tance to countries in which human rights violations are taking place are a legitimate international concern. Schifter pointed to the symbiotic relationship between world order and democracy, on one hand, and the rule of law. He noted the availability of U.S. lawyers as a reliable source of guidance to emerging democracies, and stated that Americans were generally admired and trusted. He expressed specific concern about our efforts on Russia, in which democracy was not deeply rooted and where the potential for a red-brown coalition of communists and fascists was not beyond the realm of possibility.

Professor Allen Weinstein, President of the Center for Democracy, called for a rebirth of the American determination to promote democracy. Reburnishing public myths within the United States should be an important objective, so that we can act as successful missionaries for democracy for the rest of the world. Announcing that our defining moment was right now, he characterized the importance to our own national security of encouraging Garabaldi, while discouraging Mussolini.

John Shenefield is Chairman of the Standing Committee.

Ex-KGB Chairman Speaks

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ism to the valley of democracy, Mr. Bakatin argued that the major threat to a free and prosperous Russia is an internal threat posed by individuals or institutions still taken with the old Soviet concept of security. The concept of security in the former Soviet state was based on a focus on enemies, Mr. Bakatin said, and Russian citizens paid the price for such policies with their present-day impoverishment. Mr. Bakatin reminded his audience that the Russian economy is fragile, that democratic structures are

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Chairman, Standing Committee on Law and National Security

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Ex-KGB Chairman Speaks

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undeveloped, and that citizens' psychological approaches to government will need to be transformed.

Mr. Bakatin believes that the security forces do not pose a present-day threat to Russian citizens. He noted that the security services are no longer centralized, a move that he believes simply reflects larger splits in the nation (such as the departure of the republics). He pointed out that the security services now operate under unprecedented legislation and have some legal basis for their existence. Although he conceded that centralism is witnessing a period of rebirth in Russia today, Mr. Bakatin applauded the establishment of a legal basis for the security services, operations, despite specific criticisms that might justly be directed at the particular legislation. The security services need to take a selective approach to personnel, he added, because it is extremely important today to avoid the kind of clandestine violence against citizens that marked the KGB's historical treatment of the Russian population. He concluded by asserting his beliefs that one cannot build a democratic society on the ground of violence, and that President Yeltsin has taken the right approach to avoid mistrust, suspicion and fear.

General Kalugin presented a somewhat gloomier picture to his audience, noting that production has decreased and prices have increased in Russia. He predicted that public frustration and anger will become more evident as this inflationary process continues. General Kalugin argued that the Russian government has largely failed on the economic front because the government liberalized prices but not the economy; in other words, privatization has not kept up with prices. General Kalugin predicted a parliamentary clash in the coming weeks between President Yeltsin and members of Parliament who will demand changes in government personnel.

In this environment, General Kalugin continued, it is unlikely that President Yeltsin will take extensive steps to dismantle the security services. He described the former KGB as a disgruntled, grumbling organization, and he pointed out several signs that indicate to him that the old guard in the security services is attempting to regain recently lost ground. General Kalugin agreed with Mr. Bakatin that oversight laws are desirable, but he believes that the loopholes in current Russian laws undercut their efficacy. General Kalugin concluded by emphasizing that more effective oversight of the security services must be established before they undertake actions, and that oversight is necessarily exercised through firm fiscal control.

Second "Review of Field"

Conference to Honor

Morris Leibman

The Standing Committee will again join the University of Virginia's Center for National Security Law in co-sponsoring a "review of the field" conference about national security law. Entitled, "National Security Law: Second Annual Review of the Field—A Tribute to Morris I. Leibman," the conference will take place at the International Club in Washington on Thursday and Friday, October 29-30, 1992.

The conference will provide an opportunity for the committee and its friends to pay special tribute to the late Morry Leibman, a six-term chairman of the Standing Committee and Presidential Medal of Freedom recipient. It was at Mr. Leibman's suggestion that the first review of the field conference took place in 1991. In a departure from the traditional format of such programs, a special dinner will be held Thursday night to pay tribute to Mr. Leibman.

While a few aspects of the program are still being finalized, we already have acceptances from two very distinguished individuals to address the luncheon programs. On Thursday, Ambassador Ronald F. Lehman, II, the Director of the U.S. Arms Control and Disarmament Agency and former Chief START Negotiator has agreed to provide an overview of "Recent Developments in Arms Control." On Friday, The Honorable Stephen M. Schwebel, Judge on the International Court of Justice in The Hague, has agreed to address the conference.

Last year's conference was widely hailed as a great success, and the committee is retaining much of the same format this year. A panel of educators will discuss materials and approaches useful in teaching courses on national security law, followed by a panel of experts addressing "new developments" in the field. Thursday afternoon will focus upon "operational law" in the military services—examining ways in which the military has systematically incorporated national security law advice in operational military decisions—with a special focus upon operational law in the Gulf war.

Friday morning's session will examine "Humanitarian Intervention in the New World Order," examining among other things the prospects for further international intervention in the current Sarajevo crisis. This will be followed by a repeat of one of last year's most popular presentations, a panel of general counsels to national security agencies and departments discussing "Advising the Government on National Security Law."

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Five Named to Committee

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gence Committee, where he was named General Counsel in early 1989.

Another University of Virginia Law School graduate to be named to the committee is Paul Schott Stevens. A *magna cum laude* graduate of Yale University in 1974, Stevens served as Deputy Director and General Counsel to the President's Blue Ribbon Commission on Defense Management (the Packard Commission), and subsequently as General Counsel to the Presidential Commission to Investigate the Iran-Contra Affair (the Tower Commission). In 1987, President Reagan selected him to become the first full-time Legal Adviser to the National Security Council, where he subsequently served also as Executive Secretary, with the rank of Special Assistant to the President. Stevens also serves as a lecturer on the faculty of the Washington College of Law at the American University.

The fifth appointee to the committee is Richard K. Willard, another veteran of Vietnam, who served as Notes Editor of the Harvard Law Review while earning his J.D. *magna cum laude* in 1975. After clerking for Judge Anthony M. Kennedy and Justice Harry A. Blackmun, Willard practiced law in Texas before joining the Justice Department during the early days of the Reagan Administration. In 1983 he was named Assistant Attorney General (Civil Division), a position he held for five years and which involved supervising more than 400 attorneys representing the government in a wide range of legal matters. Willard is an adjunct professor at the Georgetown University Law Center and chairs the Legal Policy Advisory Board of the Washington Legal Foundation. Like all of the new members, he has been active with the standing committee on the advisory committee and in other ways for many years.

Former Defense Department General Counsel Kathleen Buck, whose three-year appointment to the committee expired in August, was named by President McWilliams to chair the advisory committee. She is joined by new members Peter F. Axelrad,

Lisa Creighton, Alberto R. Coll, Michael P. Galvin, Mario V. Mirabelli, Mitchell Reiss, Richard Schifter, J. Michael Shepherd, and Robert Wiss.

Outgoing chairman Robert F. Turner has agreed to take over editing the *National Security Law Report*, which has been edited by Shenefield for the past year. Turner will share editing duties with Jackson R. Sharman III, who has agreed to serve as associate editor. A former editor in chief of the Harvard Journal of Law and Public Policy, Sharman clerked for Judge David Sentelle on the D.C. Circuit Court of Appeals before joining a large Washington law firm.

Holly McMahon Named Staff Director

Holly Stewart McMahon became the Staff Director of the Standing Committee on October 1. An Ohio native and graduate of Youngstown State University, Holly has been a regular attendee of the Committee breakfasts.

Prior to joining the committee, Holly was Director of Government Programs for the ABA Washington office; and, before that, she served for five years in the White House. She succeeds Dr. James Arnold Miller, who has decided to return to the consulting business in northern Virginia. Both Jim and his able spouse, Daiva—who contributed to making things run so smoothly during the past 18 months—will remain part of the Standing Committee's "extended family," and we look forward to seeing them at breakfasts and other programs when their schedules permit.

Please contact Holly if she can be of assistance to you and please make note of the Standing Committee's new address and telephone numbers:

**Standing Committee on Law
and National Security**
1800 M Street, South Lobby
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Fax (202) 331-2220

Calendar of Events

October 15

Breakfast Meeting, University Club, Washington, D.C. (Speaker: Gen. Rafael del Pino, top Cuban defector)

October 29-30

Conference on "National Security Law: Second Annual Review of the Field—A Tribute to Morris I. Leibman," International Club, Washington, D.C.



For Your Information

Cuban Defector to Address October Breakfast—General Rafael del Pino, former chief of the Cuban Air Force and "Hero of the Revolution" in the Bay of Pigs battle, will address the Standing Committee's October 15th breakfast.

Defense Intelligence Journal Published—Shortly after our last issue went to press we received a complementary copy of what promises to be a very valuable new journal for scholars and practitioners interested in intelligence matters. The *Defense Intelligence Journal* will be published semi-annually by the Defense Intelligence College Foundation, a 501(c)(3) corporation supporting the work of the Defense Intelligence College. The first issue includes articles by Senate Intelligence Committee Chairman David L. Boren, former Director of Central Intelligence William E. Colby, and DIA Director Lt. Gen. James R. Clapper, Jr., as well as short book reviews and a section on "Intelligence Community Notes." Further information is available from: *Defense Intelligence Journal*, 1750 30th Street, Suite 441, Boulder, CO 80301.

"Intelligence in a Democracy" Proceedings Published—We have received a copy of the proceedings of a conference on "The Proper Role of an Intelligence Agency in a Democracy," co-sponsored by the Office of the President of the Republic of Bulgaria, the Center for Democracy, and the E.L. Wiegand Foundation. The conference occurred in Sofia, Bulgaria, 8-10 April 1992, and drew top experts—often including the director or deputy director of the national intelligence service and top advisers to presidents—from more than twenty countries. The United States delegation, for example, consisted of U.S. Ambassador Kenneth Hill, former CIA Director William Colby, and Center for Democracy President Allen Weinstein. The report makes fascinating reading. For further information, contact the Center for Democracy in Washington, D.C.

ACLU Center For National Security Studies Holds Post Cold War Security Conference—Associate Editor Jackson Sharman reports that on September 18 and 19, 1992 the Center for National Security Studies (a project of the American Civil Liberties Union Foundation and The Fund For Peace) co-sponsored with the Georgetown University Law Center a conference on "Democratic Government and Military Intervention After the Cold War." The conference was organized around a discussion of three types of force that have emerged in the international realm since the end of World War II: extended deployment of United States forces; immediate or emergency use of United States forces; and covert paramilitary actions. The conference also examined the meaning and intent of the "declare war" clause of article I, section 8, of the Constitution, the effect of the United Nations Charter and other international agreements on the distribution of war powers, the role of nuclear weapons and unconventional tactics such as assassination under both domestic and international law, and the effect of warmaking on domestic law and domestic life. Conference participants included, among others, John Hart Ely, Louis Fisher, Michael Glennon, Morton H. Halperin, Harold Koh, Jules Lobel, Mark Lynch, John Norton Moore, John Prados, Peter Raven-Hansen, Eugene Rostow, Nicholas Rostow, Gregory Sidak, Gregory Treverton, and Edwin Williamson.

Conference to Honor Leibman

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Friday afternoon there will be a special panel on "Democracy and Deterrence: Toward a New Central Paradigm in International Law and Relations," followed by a review and critique of the independent counsel provisions of the Ethics in Government Act as they have been applied in the national security field. All panels are open to the public without charge. For further information, contact the committee's Staff Director, Holly McMahan, at (202) 466-8463.

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

Advisory Committee Chair: Kathleen A. Buck

The National Security Agenda

SFRC Hearing on Assigning U.S. Troops to the Security Council—On 24 September, the Senate Foreign Relations Committee held a hearing on S.J. Res. 325, which would urge the President to negotiate an agreement with the U.N. Security Council under Article 43 of the U.N. Charter by which American armed forces would be designated in advance for deployment on the order of the Security Council to deter or combat international aggression.

Germans Who Illegally Aided Saddam Receive Suspended Sentences—On 21 September, three executives from a subsidiary of the giant German steel and engineering firm Thyssen received suspended sentences after being convicted of illegally exporting rocket engine parts to Iraq prior to the Gulf conflict. The parts were used in upgrading Scud-B rockets subsequently used against Saudi Arabia and Israel during the war. They were concealed in boxes exported as oil and water drilling equipment.

Pentagon Declassifies NRO—On 18 September, the Pentagon issued a press release confirming for the first time the existence of the National Reconnaissance Office, identified as “the single, national program to meet U.S. government intelligence needs through spaceborne and assigned airborne reconnaissance.” Although existence of the 32 year old organization was reported in the press and the Congressional Record years ago, until now even the organization’s name has been classified at the codeword level. No details were released about the NRO budget.

House Subcommittee Approves Anti-Terrorism Bill—On 18 September the Subcommittee on Intellectual Property and Judicial Administration of the House Judiciary Committee approved H.R. 2222, which would provide a new civil cause of action for international terrorism and establishes extraterritorial jurisdiction over terrorist acts committed abroad against U.S. nationals.

Castro Halts Nuclear Power Plant Construction—On September 5, Cuban President Fidel Castro announced the suspension of further construction of a Soviet-funded nuclear power plant near Cienfuegos. The plant, which had already cost more than a billion dollars and was 80% completed, was the latest victim of the worst economic crisis to face Cuba since Castro’s seizure of power more than three decades ago.

POW Information Declassified—On July 22, President Bush ordered the declassification of all information concerning Americans held prisoner or missing in action in Southeast Asia except that likely to result in an invasion of personal privacy or to hamper government decision making.