The Standing Committee's fifth annual "review of the field" conference was held at the Hotel Washington, in Washington, DC, on October 19-20, 1995. This summary was prepared by Advisory Committee member Pamela M. Jimenez, who served as rapporteur for the conference.

Welcoming Remarks by Chairman Paul Schott Stevens

Paul Schott Stevens, Chairman of the Standing Committee on Law and National Security and former Legal Adviser to the National Security Council, opened the conference with a warm welcome to the panelists, the participants, the press, and the Committee's cosponsor, the Center on Law, Ethics and National Security at the Duke University School of Law. Established only two years ago, the Center has already carved out for itself a promising place in the field.

Panel I: Survey of New Developments

Nicholas J. Rostow, Executive Director of the Commonwealth of Massachusetts Office of International Trade and Investment and former Legal Adviser to the National Security Council, outlined new developments in the field, ranging from the constitutional implications of U.S. policy in former Yugoslavia to the international debate concerning the appropriate use of force under the U.N. Charter. These topics, and the full panoply of issues in between, were then addressed in detail by senior legal representatives of the national security community, including the National Security Council, the Department of State, the Department of Defense and the Central Intelligence Agency.

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national security field. Equally promising is the recently chartered Journal of National Security Law, a new publication resulting from the combined efforts of three organizations: the Duke Center on Law, Ethics and National Security Law; the University of Mississippi School of Law; and the established Center for National Security Law at the University of Virginia School of Law. These new entrants to the field attest to the continuing vitality of national security law as an important area of study.

In the post-Cold War world, Stevens observed, national security policy has, in several ways, changed in response to the nature of the threat. Examples include recent efforts to restructure the intelligence community, to implement more effective counter-intelligence methods in the wake of the Ames scandal, and to address the continuing threat of international terrorism and the rise of domestic terrorism. In the aftermath of the World Trade Center, Oklahoma City and Amtrak bombings, it is clear that problems of terrorism are no longer "over there" on the other side of the globe. These disturbing developments create new demands, and require new approaches to intelligence and law enforcement policy. In our free society, such policy is necessarily influenced by the role of the media in U.S. diplomacy, defense and other national security matters. While American attitudes tend to support pragmatic internationalism, the way in which the press fulfills its role in reporting and interpreting events which impact national security interests is a subject of ongoing debate. This conference will provide a forum for the views of current and former administration officials, prominent scholars and representatives of the media on these important topics, and related issues.

Standing Committee Chairman Paul Schott Stevens addressed the conference on several occasions. Here he is seen paying tribute to Professor Eugene V. Rostow at Thursday evening's dinner (see p. 11).

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Alan J. Kreczko

Alan J. Kreczko, Special Assistant to the President and Legal Adviser to the National Security Council, addressed the separation of powers between the executive and legislative branches, and recent initiatives by Congress to decide matters exclusively within the prerogative of the President. Those matters include the authority of the President to negotiate with foreign governments, to open U.S. missions overseas, to interpret treaties, to share intelligence, and to deploy U.S. troops. Pointing to the unambiguous text of the Constitution, explicit statutory authorization, and specific legal decisions, Kreczko presented a vigorous defense of these executive powers. Despite this precedent, congressional efforts to legislate restrictions on

State Department Principal Deputy Legal Adviser Michael J. Matheson, one of the government's most experienced national security lawyers, provided an update on the ICJ and war crimes tribunals.

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Panel II: The Press and National Security

Advisory Committee and former Standing Committee member Richard K. Willard, a former Assistant U.S. Attorney General, opened the panel with a series of notable quotables, wryly illustrating the perennial tensions between the military and the press. These clips included examples of censorship dating back to World War II, the escalation of animosities epitomized by the “Five O’Clock Follies” during the Vietnam War, and more recent clashes of media objectives and military strategy. These anecdotes highlighted the sometime tension between the First Amendment “right to know” and the need to preserve the secrecy of military operations, and set the stage for remarks by a distinguished group of panelists.

Bob Zelnick

ABC-TV News Correspondent C. Robert Zelnick contended the idea of a conflict between the media and the Pentagon is overstated. There can be matters of inconvenience, he noted, but in essence little can actually be described as conflict. Armed with anecdotes of his own, Zelnick portrayed the relationship between the press and the national security apparatus as a “complex mosaic.” Ironically, he observed, the relationship is depicted as “adversarial”; yet, the so-called adversaries are not on different sides. Each in its own way seeks to advance democratic values and ideals. Moreover, history and experience contradict the characterization of the relationship as one of “conflict.”

The problem, in Zelnick’s view, has more to do with a general lack of trust, rooted in Vietnam. Zelnick conceded there were two instances where carelessness put operations and lives at risk, but challenged the perception that negative press coverage impacted strategic options. Nevertheless, despite the recommendations of the Sidel Commission, briefings in Panama were conducted by political spokesmen instead of military commanders. In the Gulf, media access to areas of conflict was restricted and there were efforts by military escorts to influence reporting. Zelnick asserted that such efforts to keep reporters on a “leash” are geared to control editorial slant, rather than to protect national security interests. Yet, courts remain hesitant to substitute their judgment for that of the military on these issues. Zelnick concluded on an optimistic note, however, with the observation that the past dozen years have witnessed a movement away from the mutual distrust and suspicion of Vietnam and toward a new era of good faith and agreement.

Richard Willard, in his role as moderator, observed that the issue of access is at the heart of the debate concerning effective press coverage, but there is no First Amendment right to access. Thus, he argued, the issue is one of accommodation and mutual interest, not First Amendment rights.

Peter Rodman

Peter W. Rodman, who serves as Senior Editor of National Review, argued that the government cannot blame the media for its problems, as it generally gets into trouble because of its policies. By way of example, he noted the Johnson administration struggled not because of the press, but because of its own incoherent policies. Today, this issue is compounded by “The CNN Problem,” which Rodman defined as the transmission of tragic events into our living rooms, as well as pressure on government to react immediately to everything that happens, without time to fashion a considered response. He criticized the view that this pressure has sometimes forced the pace of decision-making, contending that a government with “discipline” can still retain control over policy. The initiative, in Rodman’s view, lies in the hands of government, as does the capacity for restraint. In the end, the public judges the outcome, as evidenced by the 180 degree change in public opinion concerning humanitarian interventionism in Mogadishu, once the objective changed from humanitarian aid to peace building. The lesson, Rodman reiterated, is that the problem lay with the policy, not the coverage.

Regarding leaks, Rodman presented three practical lessons for a “wise” government. First, govern-

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The government has the ability to keep secrets in its hands, but should consult Congress, and Congress should keep those secrets. This is an important component of democratic government. Second, government should disclose secrets as soon as practicable. Third, if the policy makes sense, it should survive public scrutiny.

Déjà Vu All Over Again

In the category of the more things change, the more they stay the same. Shortly before the Battle of Midway, a senior U.S. admiral was reportedly asked “What should we tell the press?” He responded: “Tell them nothing! When the war is over, tell them who won!”

Tim Weiner

Timothy Weiner, correspondent in the New York Times’ Washington Bureau, discussed his experience covering the various activities of the Central Intelligence Agency including recent high profile stories. While noting that there is sometimes antagonism from the “other side,” the narrow mission of the CIA is similar to that of the press, namely the collection and dissemination of information. However, there is an abhorrence for secrecy by the press, and the public generally rooted in the public perception that the CIA is still a “rogue elephant.” The grey area in between—where legitimate government interests in secrecy clashes with legitimate press interests in disclosure—is more difficult to delineate. To illustrate, Weiner discussed his reporting on four stories, which he conceded may technically have violated the law regarding official secrets, but which in his view were appropriate for publication. Weiner questioned the basis or justification for certain legal prohibitions on disclosure of sources and methods. In the end he observed, our system leaves much to be decided on the basis of professional journalistic judgment.

Carl Stern

Carl Stern, Director of Public Affairs at the Department of Justice, defended legitimate secrecy objectives of the United States government. Responding to Weiner’s remarks, Stern observed that part of the problem is lack of understanding on the “other side.” Stern observed that there is simply no institutional effort to suppress media coverage. While in some instances the need for secrecy has been exaggerated, in many areas, there is a legitimate reason for secrecy. Examples include grand jury proceedings, Privacy Act protections, and independent counsel investigations. Government officials who follow the mandate of the secrecy laws are neither enemies of open government nor hostile to the press. Indeed, most government officials are earnest, idealistic, committed, and too under-respected by the press corps. Stern attributed the tension between government and the press to problems of perception and judgment. In his view, there is more good will than antagonism, more responsibility than recklessness; the system is designed for the public good, not private gain, and self-interested conduct is the exception. Thus, Stern concluded, the system is really not broken.

Luncheon Address: 
Kenneth H. Bacon

The theme of Pentagon - press relations continued through the luncheon, with remarks by Kenneth H. Bacon, Assistant Secretary of Defense for Public Affairs. Bacon acknowledged the need to communicate what the military has done, and what it intends to do. At times, he observed, the military is quite accessible to the media. To be sure, 50 reporters have desks in the Pentagon and 1600 others have Pentagon press passes. The Pentagon is the only defense department in the world that permits that type of access. The problem, in Bacon’s view, is that effective dialogue requires constant communication with the press before and during a military operation, which is when the military is most reluctant to talk. Bacon suggested that is the time clear communication with the press can avoid future problems, including disclosures that could damage operational security.

Another problem is that the conflicting claims of the First Amendment and military security have not been adequately defined by the courts. Accordingly, the military and the media have had to negotiate accommodations. While this has worked in the past, the negotiations have become more complex, with the growth of the Pentagon press corps and the technological ability to provide real time combat coverage. Although discussions on combat coverage have been facilitated by the creation of press pools, more needs to be done to appropriately balance the demand for open coverage and the need for operational security.

Operational security presents the most vexing and complex problem in this area, for three reasons. First, today’s military operations, unlike traditional wars, do not have clear lines of engagement. Examples include peacekeeping operations and operations to police compliance with international mandates. Second, many operations are covered by reporters who are off the battlefield, and who do not fully appreciate the risk of a given operation. Third, the “CNN factor” means that foreign entities learn about U.S. operations, objectives and results quickly. That was one of the lessons of Bosnia.

In Bosnia, speculation in the press about the use of U.S. Tomahawk cruise missiles aimed at elements of the Bosnia Serb air defense system compromised the operation by providing advance notice to the Serbs, who moved some of the targets. One important lesson was that the Bosnians watch CNN, and as a result, certain components of the Bosnian Serb air defense remain a threat to U.S. aircraft. Another important lesson is that this problem might have been avoided if the military had briefed the press on the implications of disclosing certain information that could lead to conclusions about target selection.

Bacon concluded that the relationship between the military and the press will always be uneasy, but there has been some progress. In recent crises, the military has been more in tune with the requirements of dealing with the press. The press, in turn, has been more responsive to legitimate concerns about operational security. Even if resolving the tensions between the two is not always easy, these developments are encouraging.

Assistant Secretary of Defense for Public Affairs
Kenneth H. Bacon discussed progress being made in the relationship between the media and the military at Thursday’s luncheon.

Tapes Available

Audio and video tapes of most conference panels and speeches are still available from the Standing Committee for a reasonable charge. For further information, contact Staff Director Holly Stewart McMahon at the address given on the bottom of page 19.
executive powers continue unabated. Kreczko was highly critical of those efforts. [The full text of Kreczko's remarks was published in the November issue of the Report.]

Michael J. Matheson

Michael J. Matheson, Principal Deputy Legal Adviser to the Department of State, discussed war crimes, new rules of law regarding armed conflict, and the current agenda at the International Court of Justice. The U.N. Security Council created a War Crimes Tribunal in 1993 to hear controversies concerning crimes against humanity in former Yugoslavia. To date, the general chamber has issued 50 indictments against Yugoslavian war criminals, including Serb leader Radovan Karadzic and his army chief Gen. Ratko Mladic, and the appellate panel has ruled on several important issues, including the authority of the Security Council to create ad hoc tribunals and the broad jurisdiction of such tribunals in matters of internal and international conflict. Although the Rwanda tribunal established in 1994 has been set back with logistical problems, the facilities to try Rwandan war criminals should be in place by year end.

The Vienna conference on rules of law in armed conflict resulted in a protocol which prohibits the use of laser weapons designed to blind, a prohibition supported by the U.S., and preliminary efforts to revise the existing convention on the use of land mines and booby traps. Those efforts include proposals to expand the scope of the convention beyond international conflicts, and to upgrade restrictions on use of such weapons by requiring self-destructive devices after a certain period of time, or by imposing obligations to mark, monitor and control those devices to warn the civilian population. Other measures intended to protect civilians include proposals to upgrade compliance.

Current issues before the ICJ include the pending suit by Iran against the United States concerning the Iranian Airbus shot down by the Vincennes on July 3, 1988, a second suit by Iran against the United States concerning the attack by U.S. forces in the Gulf, a suit by Libya against the United States for its failure to assist them in their investigation concerning the bombing of Pan Am 103, and a request by the World Health Organization and the U.N. General Assembly for an advisory opinion on the legality of the use of nuclear weapons. With respect to the Iranian claims, the United States has reached agreement in principle concerning the first, but not the second suit, which the United States has challenged on jurisdictional grounds. The U.S. position on the request for an advisory opinion is that there is no general prohibition on the use of nuclear weapons. There are, however, prohibitions in existing treaties, such as arms control limitations. Matheson concluded that disputes concerning these prohibitions must be resolved through political channels, without interference from the court.

Judith A. Miller

Judith A. Miller, General Counsel to the Department of Defense, spoke on the U.N. Convention on the Safety of Peacekeeping Forces, the International Criminal Court and the Law of the Sea Convention. The U.N. Convention on the Safety of Peacekeeping Forces creates legal protections and imposes sanctions for the benefit of U.N. and associated personnel involved in peacekeeping operations. There has been some resistance to extending those protections to NATO forces in former Yugoslavia and international forces in Haiti which are not technically under the umbrella of the U.N. The result is an exclusion for enforcement action under chapter seven of the U.N. Charter.

The International Criminal Court has jurisdiction over four areas: (i) genocide; (ii) aggression; (iii) serious violations of the laws of armed conflict; and (iv) crimes against humanity. From the perspective of the U.S., some of these areas, and in particular the crime of aggression, require further clarification. Other U.S. concerns include the need to maximize U.S. jurisdiction over its own personnel accused of war crimes, the desire for the ICC to be available when no national system is available, and the need to ensure that the jurisdiction of the ICC is adequately circumscribed so that the most serious breaches of international peace and security remain within the jurisdiction of the Security Council, which may then refer certain issues to the ICC.

The Law of the Sea Convention entered into force in 1994. To date, 81 nations have ratified or acceded to the Convention, and 124 parties have committed to implement the agreement with respect to seabed mining. The Defense Department strongly favors U.S. ratification of the treaty.

Jeffrey H. Smith

Jeffrey H. Smith, General Counsel to the Central Intelligence Agency, reviewed the changes Direct-
Panel III: Reinventing the Intelligence Community

Mark M. Lowenthal, Staff Director for the House Permanent Select Committee on Intelligence, moderated the panel on “reinventing” the U.S. Intelligence Community. The task of reinvention raises a broad range of questions, from the very general question of which areas of national security the intelligence community should focus on in the post-cold war era, to specific issues such as the effect of technology on intelligence gathering, logistical matters such as the effect of budget constraints on restructuring efforts. Responses to these questions, and other thoughts for the future of the intelligence community, were presented by three veterans of the field, William E. Colby, William S. Sessions and Admiral William O. Studeman.

William E. Colby

William E. Colby, former Director of Central Intelligence (1973-1976) and Counselor to the Standing Committee, opened the panel noting that the end of the Cold War requires a “rethinking” of American intelligence. The answer is not, as Senator Moynihan advocates, the disbanding of the intelligence community. The futility of that approach was demonstrated in the aftermath of World War II. Since that time, there have been five revolutions in the discipline of intelligence. The product is a valuable national asset which, with some innovation, may be reallocated to more appropriate uses in today’s world.

The first revolution in intelligence concerns the development of the analyst in the place of the spy. Rather than discard this analytical capability, the focus should be on ways the talents and techniques developed for security purposes can be reoriented to help analyze and assess other serious problems — in economics, science, cultural conflicts and social relationships.

The second revolution is technological. The question is whether the apparatus used for traditional intelligence gathering is available for other uses. Declassification of satellite technology, for example, has capabilities for the world beyond the cold war. This raises further questions of whether other technology could be made available, and if so, how much could be released into the public domain. While there is still some need for secrecy in matters such as electronic interceptions and decryption, there is no longer a need for secrecy in some other areas.

The third revolution was the determination to bring U.S. intelligence under the Constitution. The recognition of the rule of law has now been institutionalized, and decisions about intelligence are increasingly made out in the open. While there may always be some lingering questions about the conduct of security operations in a democratic society, espionage and covert operations are now recognized as important components of our national arsenal for use against enemies operating abroad.

The fourth revolution concerns the function of intelligence. Originally, it was designed to obtain an advantage, based upon the conviction that knowledge is power. This has been replaced by disclosure of the factual basis of one’s position in negotiations, most notably in the area of arms control. The idea is to replace ignorance, fear and suspicion with knowledge and confidence, and to use information and analysis for wise decisions, not momentary advantage over an adversary.

The fifth revolution is the privatization of intelligence. The databanks of centralized information used by investigative agencies and private enterprise, both analytical centers and think tanks, resemble the apparatus typically used in the intelligence community. This use of “business intelligence” demonstrates that intelligence gathering does not require breaking the law, and perhaps most importantly, that traditional intelligence re-

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sources may be useful in confronting nontraditional challenges of the future. These, Colby concluded, are the forces driving the reinvention of intelligence for the post-cold war world.

William Sessions

William S. Sessions, former Director of the Federal Bureau of Investigation (1987-1993), concurred with Colby's contention that good intelligence can replace fear and suspicion with confidence. He also agreed that intelligence resources could and should be redeployed to alternate uses. The most effective use, from Session's perspective, is to support law enforcement efforts in four interrelated areas: terrorism, organized crime, drug use and trafficking, and the development and smuggling of nuclear weapons and technology.

These criminal activities are of great concern to all legitimate governments of the world. Yet, despite mutual legal assistance treaties and other international accords, organized criminal activity in illegal drugs, money laundering, and weapons smuggling continues unabated. Technology aids the process by permitting instantaneous communications by telephone, computer and facsimile, often encrypted, among criminal organizers. To effectively curtail these activities, governments throughout the world should pool intelligence resources. Put simply, "this multifaceted challenge requires a multifaceted response."

The intelligence community needs to deal effectively with these complex issues. To date, the CIA and other members of the intelligence community have not been sufficiently responsive to requests for assistance from law enforcement officers. This problem could be alleviated with a joint effort focused on application of intelligence gathered to the needs of law enforcement in its battle against organized crime, money laundering, drug trafficking, terrorism, weapons smuggling and proliferation.

Admiral William Studeman

Admiral William O. Studeman, USN (Ret.), former Acting Director of Central Intelligence (1995), observed that the parameters of intelligence and law enforcement coordination are constantly evolving. Presidential Directive 35 is the most recent initiative in this area. It classifies intelligence objectives by a four tier scale, revalidates the requirements of the political structure with respect to intelligence activities, and provides guidelines for dealing with transnational issues such as terrorism. As other initiatives are developed for the coordination of intelligence and law enforcement efforts, Studeman identified several factors that should be considered.

Important among these is the nature and character of the intelligence structure. Contrary to popular belief in the civilian world, the Central Intelligence Agency is neither the largest nor the best funded agency in the Intelligence Community. In fact, the Department of Defense accounts for 90% of the intelligence budget and 80% of intelligence personnel. Nor does the CIA make policy. The CIA does, however, execute the policy made at the highest levels of authority. In coordinating efforts, then, it is important to designate clear lines of authority and responsibility.

Another factor concerns changes in the nature of covert action, which has migrated into new areas. Intelligence and law enforcement resources must be pooled to form a seamless mechanism to address international criminal threats. Other factors to be considered in the reinvention process include the development of a mechanism to assure the protection of sources and methods, the determination of the most appropriate method of training, the proper integration of strategy, doctrine and policy, and the resolution of command and control issues. As these varied factors suggest, there are many interesting, and promising, possibilities for intelligence and law enforcement interaction and coordination.
Panel IV: Problems in Counterintelligence

David Bickford, former Legal Adviser to the British Intelligence Services (MI5-MI6) and Visiting Professor at the Cleveland Marshall College of Law, opened the panel with an overview of the counterintelligence function and problems associated with the exercise of that function. The counterintelligence function, as defined by Bickford, is "the protection by covert means of the national security of the State, including its economic well-being." Three problems arise in the exercise of that function: (i) how to identify national security threats; (ii) how to operate covertly in obtaining relevant information and in protecting information obtained; and (iii) how to use the information effectively. As Cold War tensions have declined, these functional problems have taken new forms on both sides of the Atlantic.

The United Kingdom, like many other States, has been lulled into a false sense of security by the disappearance of familiar threats. At the same time, intelligence agencies have been slow to recognize limitations on their ability to control economic espionage and international crime. There is no real mechanism to deal with these emerging problems. Although there have been some efforts to coordinate intelligence and law enforcement resources, there remain legal and operational barriers to effective coordination. For example, there is no clear framework for the use of counterintelligence in law enforcement efforts to combat organized crime. There are also limitations on the use of covert intelligence as evidence at trial. Perhaps most importantly, in the United Kingdom as in the United States, there is a need to concentrate on prevention. This, in Bickford’s view, requires a radical review of “need to know” policy, to enable intelligence agencies to inform industry and commerce of impending threats. It also requires coordination among intelligence and law enforcement agencies, treasuries, regulators, and foreign and justice departments of state, and associated changes in traditional counterintelligence policy.

John H. McNeill

John H. McNeill, Senior Deputy General Counsel at the Department of Defense, stated that changes in the international scene, most notably the dissolution of the Soviet Union and the decreased threat of nuclear war, have been the most important developments at the Department of Defense. These developments also impact counterintelligence. It has always been difficult to attract highly capable professionals in this field. Today, those difficulties have been exacerbated by the focus on risk avoidance rather than risk prevention, the movement toward openness, and the inability to fully understand what motivates U.S. citizens to spy.

There is a need for change to enable us to adapt to a rapidly changing world. There is a large operational role for the combatant commanders-in-chief and senior members of the command apparatus. Military departments have reorganized to provide operational control to joint commanders. Counterintelligence is part of this process. The Defense Department and the Intelligence Community have tried to adapt to these changes. Four studies are currently in progress, by the Commission on the Roles and Capabilities of the U.S. Intelligence Community, the Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, and the Council on Foreign Relations task force on intelligence.
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force headed by DCI John Deutch. These studies will guide the future of U.S. intelligence and counterintelligence operations.

L. Britt Snider

Advisory Committee and former Standing Committee member L. Britt Snider, Executive Director of the Commission on the Roles and Capabilities of the U.S. Intelligence Community and former General Counsel to the Senate Select Committee on Intelligence, discussed three categories of counterintelligence: investigations, operations and analysis. He explained that investigations within the FBI, CIA and each military department focus primarily on government employees, where there is reason to believe there has been contact with a foreign government. The purpose is usually to recruit double agents or to identify threats from other foreign government agencies. Investigations should also reveal internal problems, but the Ames case reflects a pervasive defect in this area.

In the Ames case, CIA employees in the directorate of operations realized assets had been compromised that could not be explained by the defection of David Lee Howard. For five years, their investigations reviewed all sources except the most obvious. Though Ames may be viewed as an aberration, there have been an unusual number of security breaches in past years. In fact, most intelligence resources have been compromised in some way or another. The one common element in each of those cases is that there were indications before the cases were investigated. The problem is that counterintelligence has not been adequately integrated into other agencies of government.

Other problems in counterintelligence include isolation from substantive intelligence issues, unwillingness to entertain the idea that a colleague may be a spy, and reluctance to admit that sources may be bad. There are tipoffs in virtually all cases. In the Ames case, for example, no one questioned how Ames could afford a $540,000 residence and a new Jaguar automobile on a $70,000 salary. Of course, there is not always a sinister explanation for these anomalies, but it does reflect a failure of synthesis and analysis. There should be a process in place to identify and review those anomalies. Yet another problem is that there continues to be a disconnect between counterintelligence and security operations. Counterintelligence has no responsibility for personnel security. There are valid reasons to separate the two, but there should be some type of bureaucratic bridge. The problem is illustrated by the failure in the Ames case to tie in background information, such as exorbitant spending in Rome, and solo meetings with Soviet agents without filing required reports. Although the CIA has taken steps to deal with these types of problems, there has been little progress in other parts of the government. Clearly, the implementation of new counterintelligence measures will not eradicate the problem. Nor will reform insulate us completely from the clever spy. These measures will, however, help solve the problem. The price we have paid for our inattention demonstrates that the problem will not solve itself.

Michael J. Waguespack

Michael J. Waguespack, Director of the National Counterintelligence Center, discussed the application of Executive Order 12333 to problems identified through the Ames investigation. Waguespack asserted that Ames arose out of differences in the goals and objectives of the Intelligence Community. The Community hopes to resolve those differences through 44 initiatives which focus on three principal areas of review: integration, cooperation and accountability within the Intelligence Community. Specific initiatives include the creation of a National Counterintelligence Policy Board and National Control Center. Waguespack conceded that these measures may not be the "perfect solution" to all counterintelligence problems. There is no such thing. They are, however, the first of a series of steps to improve areas where there have been serious problems in the past.
A Special Tribute to
Eugene V. Rostow

The conference was dedicated to Professor Eugene V. Rostow. At dinner, on October 19, 1995, two colleagues were invited to comment on Rostow's remarkable career and accomplishments. Professor Reisman is currently Wesley Hoeftel Professor of Jurisprudence at Yale Law School. Mr. Rodman is Director of National Security Programs at the Nixon Center for Peace and Freedom and a Senior Editor at National Review.

Remarks by W. Michael Reisman

I met Eugene Rostow 32 years ago, when I came to Yale to study. Planning for Freedom was a bestseller and Sovereign Prerogative had just come out. Gene was Dean and, thanks to the publications and his government service, a national and international figure and, far and away, the leading law school dean of the country. With a grant from the Ford Foundation, he had already presided over the restructuring of the law school and, indeed, the American law curriculum. Gene had introduced the "joint-degree" program, incorporated many other disciplines and in particular brought psychiatry into the law's trivium and quadrivium. At the time, he said, in words that still capture the spirit of Yale and of Rostow:

Our purpose is to train lawyers, law teachers, and public servants who will be capable of constructive leadership in American life. We want Yale lawyers of course to be masters of their professional skills. Beyond that, we seek to turn out lawyers whose command of law is rooted in a sure knowledge of the historic, social, and economic sources and purposes of law. We remain convinced that that kind of human and broadly based law school training is indispensable in preparing lawyers for the highest and most responsible kind of professional careers, not merely as advocates, but as participants in every phase of their work, in the endless struggle to achieve justice through law.

The Rostow spirit is a wonderful amalgam of ideas and their dazzling presentation, wit, loyalty, courage, personal elegance and the ease and grace

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Remarks by Peter W. Rodman

Scholar, lawyer, teacher, public servant, policy advocate—in all these endeavors of Eugene Rostow's career, there is a theme: He has been a defender and champion of America. Just as in academia he has stood unapologetically for the values of our civilization, in an environment not altogether congenial to that point of view, so too in his public life. His recent book, A Breakfast for Bonaparte, is not only a brilliant account of the intellectual and

historical origins of American foreign policy; it is also an impassioned plea for continued American leadership in the world. In the State Department as Under Secretary for Political Affairs, and as Director of the Arms Control and Disarmament Agency, and in all his prolific writings on public policy, he has embodied the profound conviction that America's cause was just, and that therefore America's national interest and the international rule of law were not in conflict but interdependent—indeed, that the cause of justice and law

required America's strength, and America's courage, especially in the great struggle against totalitarianism.

I have to say, it was not always comfortable being, or seeming to be, on the opposite side from Gene Rostow in a great debate. He was one of the founders of the Committee on the Present Danger, which denounced policies of detente in the 1970s and summoned Americans to greater vigilance in the fight against Soviet tyranny. From today's perspective, it is clear that—whatever tactical disagree-

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with which Gene moves from New Haven, to Washington, to London, to Paris, indeed, to any outpost of civilization. There are other distinctive ingredients. Incandescent enthusiasm, an infectious joie de vivre and love of fun. One example and my first exposure: When Gene spoke to the understandably nervous entering students, he said, with his eyes twinkling, that his counterpart in a great institution to the North, as it was called in those days, Dean Erwin Griswold, greeted Harvard’s incoming class with the words, “Look to your right and to your left. One of you won’t be here next year.” Gene paused, fixed his eye on us and said, “Look to your right and to your left. One of you doesn’t have a Phi Beta Kappa key.” A more senior graduate student who fancied himself wise in the ways of Yale and life, discoursed on the Rostow spirit: “for Rostow,” according to this sage, “law is serious, but fun — like sex among intelligent adults.” It has stuck in my mind over the years, though I have never asked Gene for confirmation.

Gene’s decanal duties prevented him from taking a full teaching load, so my first real personal encounter came two years later when he hired me. Despite my lengthy preparation for this important tractation, the negotiations, conducted in his spacious and elegantly furnished office, proved to be brief. I left with the realization that you did not work at Yale for the money and a rueful appreciation of Rostovian powers of persuasion and negotiation. Fifteen years later, when Gene assumed the direction of the Arms Control and Disarmament Agency, I knew the Cold War would end shortly.

On a more serious note, it is impossible to separate Eugene Rostow’s scholarship from his public service. He is first and foremost a citizen, with a constant concern for the security and well-being of the communities of which he is a part, from New Haven, to the national community, to the world community. He has been actively, often decisively, engaged in the great events of our time. If Holmes was right when he said that a man who fails to take part in the events of his time risks being judged not to have lived, Gene is living many lives. But central to all of them is his life as a scholar. His scholarship has been the instrument for understanding the momentous events of the day, the historical parallel events, the probable consequences of current alternatives and his own cogent appraisals and recommendations.

From the National Policy for the Oil Industry in 1948 and Planning for Freedom in 1958 through to Toward Managed Peace in 1993, the intellectual leitmotif in Gene’s work has been a profound study, understanding and respect for “the nature of things,” as Gene paraphrases Lucretius. This is Rostow the historian, but he is not content with mere passive contemplation and description of that nature. Gene’s distinctive contribution is a continuing historical demonstration of the need for human agency to intervene and act— to “plan” and “manage,” words that recur in Gene’s work—so that “the things”—the rei naturae — work in ways that maintain order and contribute to human dignity. Activist, yes, but certainly not a knee-jerk interventionism. In his first study of the national oil industry, for example, Gene concluded that “the remedy . . . is not more and more protection but improvements in efficiency under the goal of competition.” His is neither a conventionally conservative nor liberal position. Introducing one book, Gene wrote “I remain of the conviction, despite ten years as a university administrator and six in the American government and the United Nations, that reason should be an important source of policy. . . . If this be rationalism in a romantic age, the reader is duly warned.” (Peace in the Balance, p. 21)

Gene is a warm and affirmative person, but the Rostow thesis is far from buoyantly optimistic. In concluding Peace in the Balance, Gene wrote, “The spectacle of world politics today confirms the appalling wisdom of Sophocles’ remark: ‘Human life in its utmost strength and splendor hangs on the brink of an abyss.’” (p. 342) This balance between respect for the inherent dynamics of things, but the need to manage them, and between confidence in rational agency but full acknowledgment of our potential for irrationality, is distinctively Rostovian. From 1948 to 1993, it has not changed. Time and time again, the planks of the political parties have been baited and switched and the contexts in which the key code words are used have changed. Gene’s values have been constant.

As has his style. For Gene, style of presentation is not an add-on. It is a hallmark of Rostow, the citizen-scholar. The ideas in his work are original and sophisticated, the examination of historical and
especially diplomatic historical material astonishingly detailed, the examination of other scholars’ work fair, but rigorous, yet all of his work is easily accessible to any other intelligent citizen. One finds in all of Rostow’s work what seems to be a conscious rejection of a scholarly style that might repel outsiders. On the contrary. The work invites reading by everyone. And read anything by Rostow, and you know you are encountering one of the masters of the language.

All Gene’s books show a mind bent on using law to appraise and guide political decision. In Planning for Freedom, Gene’s objective, as he put it, was to “fortify and not weaken, the health, vigor, and autonomy of the free institutions of business and labor . . . to minimize the risk of Socialism, Fascism, or other forms of collectivist domination by the state.” The Sovereign Prerogative was Gene’s vision of the contribution the Supreme Court’s judicial review function should make to our public order, in security, civil liberties and the policing of morality. Better than anyone writing at the time, Gene saw that judicial review was not at all undemocratic, for if one focussed not on a single institution, but on the ensemble of Branches, it was clear that judicial review—properly performed (and in Gene’s civil, but unequivocal view, this was not always the case)—was indispensable for the maintenance of liberty.

In 1968, Gene published Law, Power, and the Pursuit of Peace, a revision of two lectures given at the University of Nebraska two year earlier. Here, again, he sounded one of the great themes of his career: after a century of isolationism and hiding behind the foreign policy of Great Britain, the United States must not conclude that a Great Power can retreat from involvement in international affairs. It cannot. Gene defended the Truman Doctrine and American involvement in the Mediterranean, the Middle East, and Southeast Asia as a consistent coherent foreign policy and a sequence of honorable attempts to discharge this responsibility. He urged that “we . . . at last . . . come to terms with the role of power in international society.”

Wisdom, patience, and luck can confine power, and subject its use to the control of law. But they cannot exorcise it or deny its role in the quest for peace. Of all the ideas which cloud our perception of reality, perhaps the most deceptive is the hardy Utopianism which has come down to us from our isolated and protected experience during the nineteenth century. It is an attractive creed, for all its naivety, the source of much that is good in American attitudes and American policy. What we must guard against is the illusion that law can prevail without force, either within societies or in the society of nations (p. 125).

Four years later, in Peace in the Balance, Gene renewed his argument for sober realism and the role of reason in shaping policies to bring about lasting peace. Here, Gene went beyond the historical and policy-oriented analysis of Law, Power, and the Pursuit of Peace to detail and critique seven schools of thought critical of American foreign policy.

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statements might be permitted among reasonable and patriotic Americans—the Committee on the Present Danger was a phenomenon of tremendous political and moral significance. Its founding and its advocacy of American rearmament represented one of the most important stages of America’s recovery from its Vietnam-era demoralization.

Remember the Vietnam era? It was a time of congressional assaults on defense spending, on our intelligence services, on presidential authority. There was a counterculture assault on all our institutions. (You want funk? I’ll tell you about funk.) It was a period of national self-flagellation and abdication of international responsibility, a period of American escapism and weakness and withdrawal. In reaction to this came Eugene Rostow and Paul Nitze and Jeane Kirkpatrick and Norman Podhoretz and other patriots who reaffirmed—and by reaffirming helped restore—America’s spirit and faith in itself and determination to defend democracy. Gene Rostow and his colleagues summoned America once again to her duty. The American people responded—tired of humiliation, alarmed by Soviet expansionism. One result was Ronald Reagan. Another result was democracy’s triumph in the Cold War.

It is hard to pay adequate tribute to a man whose intellectual and moral leadership played such a role in making this happen. Admiration is one way. Gratitude is another. Deep affection is another. It is a career and a contribution we will never forget.

Thank you, Gene.
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The year 1972 also saw the publication in the Texas Law Review of "Great Cases Make Bad Law: The War Powers Act" (50 Tex. L. Rev. 833 (1972)). In it, Gene argued that the War Powers Act was drafted as a response to frustrations over American policy in Vietnam, but that it was couched in constitutional terms and thus seriously threatened the conduct of foreign policy as it had developed in our history. He examined the historical record and concluded that:

There is therefore no basis for the charge that the American course of action in Vietnam violates the internal law of the United States, or arrogates power to the President at the expense of Congress. In this regard, the constitutional practice with regard to Vietnam was more punctilious and complete in pool

ing Congressional and Presidential power than that used in Korea (pp. 880-81).

The chasm between America's postwar practice of foreign policy and the understanding of America's role held by the public had become "much too great for public safety," and could only be resolved "through a disciplined and scrupulous examination of what the nation must do, given the condition of world politics, to preserve the possibility of surviving as a democracy at home." As always, Gene kept one eye on the ideal of the United Nations Charter and the other on the harsh reality of the world in which we are condemned to live.

The most recent book, the first of three projected volumes, may well be the chef d'oeuvre. In his magisterial Toward Managed Peace: The National Security Interests of the United States, 1759 to the Present, Gene reviews the changes and constants in the security imperatives of our Republic from its inception, taking account of geopolitical and balance-of-power factors, changing weapons technology, changing demographics and the changing world context. It is diplomatic history par excellence, sweeping and grand. But it is more: it is instruction in a profound diplomatic morality. For if Gene's lodestar has always been American national interest, in the good sense in which Pericles' interest was Athens', Gene has, with the discipline of the legal scholar and diplomatic historian, firmly moored the process of clarifying that interest in reality. In words that should be studied carefully in Washington, London and Paris. Gene concludes this magnum opus:

The [American] people, as distinguished from many of their leaders, have learned that Wilson was right when he proposed the League of Nations in 1919, and that the United States was tragically wrong in rejecting his advice. The United States, they have come to realize, has always been part of the worldwide state system, and in modern times is an inescapably important member of that system. (p. 386) . . . The American people have learned another bitter truth about their relation to the system of world public order: if the United States cannot avoid being drawn into its crises, then surely prudence requires the United States to participate in its day-to-day diplomacy in order to help resolve conflicts before they become crises. . . . The United States is not the world's policeman, as Soviet and Chinese propaganda used to remind us frequently during the Vietnam war. But we are one of the five permanent members of the Security Council, the successors of the responsibilities of the Concert of Europe. Since the attitudes of China and Russia to these responsibilities are still equivocal and problematic, no peacekeeping efforts can be expected to prevail unless the

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Panel V: Addressing the Threat of Domestic Terrorism

Advisory Committee and former Standing Committee member Kathleen A. Buck, a former General Counsel to the Department of Defense, moderated a provocative panel on the threat of domestic terrorism and initiatives to address the threat. The panel members included academics and members of the law enforcement community, with different areas of expertise but complementary views on these issues.

Professor Stephen Sloan

Stephen Sloan, Professor of Political Science at the University of Oklahoma, addressed the vulnerability of the United States to international and domestic terrorism based upon the application of strategic intelligence, which incorporates politics, social studies and the study of technology. In the international environment, the disintegration of the former Soviet Union has been accompanied by political violence including terrorism, low-intensity conflict, organized crime and civil war. This instability has spilled over into Eastern Europe. In addition, regional powers have emerged, such as Iran, Syria and Libya, which use terrorism as a form of diplomacy and as an adjunct to their foreign policies. This “new world disorder” has resulted in challenges to legitimate states by sub-national and transnational ethnic and political groups, and new non-state actors and criminal enterprises, such as arms traders and drug cartels. These new groups move in the “gray areas,” regions where control has shifted from legitimate government to new “half-political, half-criminal” powers.

These changes in the international environment have been accompanied by technological changes in weapons, timing devices, nuclear, biological and chemical capabilities. The “stage” where terrorist activities are conducted, the media for the communication of terrorist acts, and the nature of the terrorist have also changed. As the traditional motivations for terrorism (i.e. ethnic, tribal and religious animosities) intensify, apolitical groups resort to terrorism in pursuit of financial gain as part of criminal enterprise. Perhaps the most prominent new development in the United States is the emergence of international radical terrorism, by extremist groups which are international in nature, yet act in furtherance of political, economic or social objectives — either alone or in concert with issue-oriented domestic groups seeking to effect change in U.S. policy. There is a danger that the activities of these terrorists may become a self-fulfilling prophecy: they protagonist in the hope that the government will overreact, and thereby justify their carnage.

Oklahoma stands as a sobering reminder that terrorism is not a problem abroad; it can happen even out in the heartland. To appropriately respond to such threats, Sloan suggested it is necessary to think strategically, and at times “think the unthinkable,” rather than overreacting to terrorist acts. Strategic thinking, in turn, requires greater levels of awareness, resolve, counter-terrorism measures and consistent policies.

Stephen Rubenstein

Stephen Rubenstein, Assistant Counsel to the Bureau of Alcohol, Tobacco and Firearms (ATF), of the Department of the Treasury, discussed the role of the ATF in responding to terrorism through the federal explosives and firearms laws. The resources of the ATF, Rubenstein explained, are geared toward the regulation and control of the tools of terrorists. These resources include regulations concerning the licensing, storage, and tracing of explosive materials, ATF authorization to conduct physical inspections, mandatory reporting requirements for any theft or loss of explosives, and tracing capability through date-shift codes. In 1992, the ATF established an explosives-detecting canine training program for use overseas. This program

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be followed by the FBI in the conduct of investigations. These "attorney general guidelines" are meant to insure that investigations are confined to matters of legitimate law enforcement interest. Current attorney general guidelines require, prior to the initiation of a domestic terrorism investigation, a "reasonable indication" that two or more persons engaged in an enterprise to further political or social goals through activities that "involve the use of force or violence and the violation of criminal law." In determining whether these criteria exist, the FBI must balance the magnitude of the threat, the likelihood it will occur and the immediacy of the jeopardy with the danger to privacy and free expression inherent in FBI investigations.

The FBI, Shapiro conceded, has not always done everything perfectly. Investigatory mistakes do occur. However, mistakes make larger headlines than successes. Of the 63,000 criminal cases pending by the Bureau, several thousand of which relate to national security matters, there have been few instances of overreaching. Yet, 10% of the American public — 25 million people — believes the U.S. government is somehow responsible for the Oklahoma City bombing. The figure increases to 17% if one limits the poll to those in the category of 18-27 years of age. The FBI is very sensitive to these statistics, and attentive to its mistakes. It recognizes that, as a people, we cannot let the possibility of terrorism deter us from a "jealous guardianship of our civil liberties." It also recognizes the need to protect these freedoms without encroaching on the very rights terrorists seek to subvert. Perhaps most importantly, it recognizes that, in responding to terrorist threats, it is imperative to preserve the rights and liberties of American citizens the FBI is charged to defend.

Howard M. Shapiro

Howard M. Shapiro, General Counsel to the Federal Bureau of Investigation, addressed the dilemma of effectively combating terrorism within the structure of society predicated on individual liberties. This dilemma becomes more pronounced when terrorist acts occur on U.S. soil. For example, despite legislative activism in enacting measures to combat terrorism, the World Trade Center and Oklahoma City serve as vivid reminders of our vulnerability to terrorism, of both the international and homegrown varieties. This vulnerability, and the public demand for protection, calls for an immediate, decisive response. Yet, the more urgent the call for public protection, the greater the possibility of overreaction, in ways inconsistent with the fundamental liberties of American democracy.

To assure the protection of democratic freedoms, the attorney general has instituted procedures to
Panel VI: International Terrorism—The Continuing Challenge

Former Committee Chairman John H. Shenefield moderated the panel on the continuing challenge of international terrorism, and new initiatives by law enforcement agencies to confront that challenge. As in the prior panel, experts from academia and government convened to share their collective thoughts on the subject.

Professor Anthony Clark Arend

Anthony Clark Arend, Professor of Government at Georgetown University, presented four propositions on the international terrorist threat and four recommendations for responding to the threat. First, the propositions. One, there is a link between domestic and international terrorism. Although the spectrum ranges from political objectives, such as land and religion, to anger at the American system as a whole, there is a common expression of rage against society. Two, terrorism is a symptom and we need to understand it as such. Three, terrorism is conducted within certain states in the international system. Four, the post-Cold War world is especially fertile for terrorism.

According to Arend, there are several things that could be done in the international system to enhance our ability to deal with terrorism. Those recommendations are as follows. One, terrorism should be recognized to be a crime of universal jurisdiction—so that any State could try accused terrorists. Two, efforts must move forward in establishing an international criminal court. Three, we need to be clear in holding states responsible for support of international terrorist groups. Four, organizations responsible for organizing and sponsoring terrorist acts should be held legally accountable for their actions.

Oliver B. Revell

Oliver B. "Buck" Revell, former Deputy Director, Federal Bureau of Investigation, presented his insights on the tragedy in Oklahoma City. Initially, he explained, the government had three theories on the identity of the terrorists. On the domestic front, one theory implicated supporters of the Branch Davidians—people who were outraged over the response of the Government to events in Waco, Texas. This theory was supported by the location, target and timing of the bombing. The other two theories concentrated on international threats, namely, threats posed by radical Islamic extremists and members of international drug cartels. The inability, in the first instance, to pinpoint the perpetrator of the crime reflects a recognition that there are many different causes of terrorism, many different terrorist movements, and many different initiatives which cause us to lose equilibrium.

This uncertainty is further complicated by three changes in global affairs in the post-Cold-War world: the decline of communism as a viable philosophy; the U.S. support of Afghan freedom to defeat Soviet expansion, through the unification of Islamic fundamentalists; and the continued rise of fundamentalism with the demise of the Shah and return to Iran of the Ayatollah. The irony is that the U.S. is viewed as "the great Satan" by these groups, yet continues to provide the greatest sanctuary for its members. This dilemma is equally, if not more vexing on the domestic front, in the continuing struggle to protect the public from the threat of terrorism without violating democratic liberties.

James S. Reynolds

James S. Reynolds, Chief of the Terrorism & Violent Crimes Section at the Department of Justice, remarked that, contrary to the conventional wisdom that terrorism would subside in the post-cold war era, terrorism continues to be a predominant focus of U.S. law enforcement. To be sure, 40% of terrorist acts are directed at the United States or U.S. interests. This threat is magnified by the increased availability of weapons of mass destruction. The United States has a relatively comprehensive scheme for dealing with terrorist threats against U.S. citizens and property. The United States also has perhaps the most far reaching extraterritorial statutes. United States policy is to build, charge and indict in any case involving a terrorist act against U.S. citizens. This policy is supported through the diplomatic efforts of the Department of State, the resources of the Intelligence Community and the military, and the tenacity of U.S. law enforcement agencies.
Panel I—New Developments . . .  

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itor John Deutch has implemented at the CIA, emphasizing two key themes: effectiveness and accountability. The objective is to "reinvent" the CIA to ensure that intelligence activities are carried out in an effective manner consistent with our nation's values and interests. To accomplish this objective, five basic changes have been made. First, there is a greater emphasis on customer focus, and more frequent interaction with key consumers, i.e. the President and other cabinet officers, through the establishment of a Joint Space Management Board and the creation of a single National Imagery Agency. Second, the agency has recognized the need for integrated resource planning, and associated budget planning, for the entire intelligence community. Third, efforts are underway to improve the quality of personnel, through new evaluative techniques and system-wide changes designed to attract and retain the most qualified and loyal employees. Fourth, the Directorate of Operations is conducting a "scrub" of all assets, in accordance with new guidelines that balance the potential utility of existing assets with concerns about human rights and criminal violations. At the same time, covert action will be carefully tailored to support policy objectives, and counterintelligence operations will be monitored through the new position of Associate Deputy Director of Operations for Counterintelligence. Fifth, there will be increased cooperation with the law enforcement community—the FBI, the DEA and Customs—within the parameters of law.

Cooperation among intelligence and law enforcement agencies will be achieved through the follow-

ing initiatives: the collection of information by intelligence agencies against transnational law enforcement targets, improvement of coordination among agencies operating abroad, enhancement of technology sharing, implementation of coordination at all agency levels, initiation of senior personnel exchanges and improvement of training on joint intelligence/law enforcement issues.

The foregoing changes and initiatives are designed to lay the foundation to enable the intelligence community to respond effectively to new challenges in the post-Cold war world. Quoting Woolsey, Smith cautioned, "We may have slain the dragon, but the forest is still full of poisonous snakes that may be hard to find." The need to continue that search is underscored by the activities of rogue states, the rise of more sophisticated terrorists, the increased power and influence of organized criminals, the proliferation of weapons of mass destruction, threats to U.S. economic security, and continued instability in the former Soviet Union.

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United States, Great Britain, and France, at least, act together as the core members of the peacekeeping coalitions. (p. 368)

As you can see from this review, Gene Rostow is not one of those scholars who pretends that our work is or can be "value-neutral," who conceals his views in obscure language or burrows foxholes in piles of impenetrable jargon or identifies the politically acceptable view and makes it his own or simply retreats from the great issues of the day into the safety of the past. He is always at the barricades and, whether defending or attacking, more often than not, at the breach. Not that he ever allowed the politicization of the academy in which he has based himself. To the contrary. Speaking at York University in Canada, he said: "universities serve their nations best by cleaving to the old international university tradition, and devoting their energies to the search for reason and knowledge in the name of humanity."

For Gene, the contribution of the academy and the learned society is to provide the forum for the civil exchange of considered ideas. Its life depends on eschewing some "politically correct" official dogma. Gene sought to protect the academy, sometimes from itself. One example. When the American Society of International Law ill-advisedly broke with its long tradition and undertook to issue ukas-
Luncheon Address by the Honorable Frank Keating

The conference concluded with closing remarks by the Honorable Frank Keating, Governor of Oklahoma. Governor Keating observed that dissent is not new to our country. There has always been some discontent among a minority of Americans who view government as oppressive and unjust. When dissent becomes disruptive and violent, however, government must respond accordingly.

Oklahoma City is a case in point. The bombing of the Murrah federal office building represents the most serious and extreme act of domestic terrorism in the history of our nation. One of the greatest travesties is that 168 innocent people were killed by individuals who were open in their contempt for government, yet unrestrained in their activities due to legal and policy-based constraints on the investigative and law enforcement agencies responsible for protecting our society from terrorism. Tragically, these constraints "put the handcuffs" on the investigators, before the investigators could put the handcuffs on the suspects. In response to this injustice, it is the responsibility of legislators to enact laws and policies that protect the public from these types of threats, and deal with terrorists firmly, swiftly, conclusively, and finally. This is one of the key lessons of the Oklahoma City bombing.

Other lessons are that organization is important, preparation is essential, and a sense of community that transcends racial, ethnic and gender-based animosities is indispensable in moments of crisis. In Oklahoma City, community support was unconditional, and the absence of violence, unprecedented. Despite damage to 350 buildings in the vicinity of the Murrah wreck, there was not a single instance of looting. The public response was one of compassion, not opportunism.

This reveals perhaps the greatest lesson of Oklahoma City: that terrorism cannot overcome the spirit of free men and women, who value, respect, and emulate democratic virtues.

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es on current issues in international law. Gene stood his ground and wrote: "The goal of the Society has been and should once more become to encourage the advancement of learning by supporting a rich variety of views based on serious study, not the preparation of communiques designed to put the Society's prestige behind one or another side of a current political controversy."

If Gene wants to take a position, he does it in his own name or creates an instrument, like the Committee on the Present Danger. And from the beginning of his public career, he has taken positions with great moral courage. When the United States, shamefully, incarcerated mainland Nisei during the Second World War, Gene, though high in the government, said it was wrong and refused to have anything to do with it. As soon as he returned to Yale, he denounced it in a famous article in the Yale Law Journal and set in motion the process of restoring the citizenship and property of the victims.

Make no mistake: there are hazards to this type of honesty and courage of conviction and Gene has his academic Purple Hearts. When the Rostow brothers left the Johnson Administration, Harvard, to its shame and loss, did not warmly welcome Walt back. Our Faculty embraced Gene; our international law component could not have imagined not having him. As I recall it, Edna and the children stayed in Washington until the end of the school year. Gene came back and lived in one of the guest suites in the school and took his meals in the student dining room, which, in those days, was still a pretty good restaurant. (O tempora, O Mory's!) I often saw Gene, as always Saville-row elegant, sitting across from students and calmly explaining his view of the law and facts of Vietnam. The students were less calm, sometimes shrieking horrible things, even running off if words failed them. Gene, ever polite, continued to take his meals there and to talk and listen. By the end of the semester, he had won the respect and admiration of even those who did not share his views.

Now that the Soviet Union has been consigned to the rubbish-heap of history, to borrow a phrase, everyone is quick to acknowledge the wake of wick-

dness, calamity and tragedy that it and its ideology strewed across the century. It wasn't always that way. When the country seemed poised for isolationism and all it entailed, Gene formed and led the Committee on the Present Danger and undertook the task of educating the country on unyielding features of international reality and the responsibilities that Americans have with regard to them. Gene understood that America's interest, more than ever, was in a stable and just international order, yet that without American leadership, that order would never come about. He also understood that isolationism—broadly understood as the rejection of this proposition—can take many concealed forms: not simply yielding to evil in the name of pluralistic tolerance or a suicidal unilateral disarmament, or Munich-style "peace-initiatives," but, under the banner of arms control, letting the military balance so shift against the United States that it can no longer provide credible leadership, or, under the banner of internationalism, going beyond a sound multilateralism to rigid organizational creations in which those hostile to a humane vision of world order can use specious legalisms to block all action. In a stream of political papers and legal articles, Gene defended his position. It was not a popular view in the academy, but, as the 1980 elections showed, it prevailed in the national community.

Called back to government in 1981, this time to head ACDA, Gene proved too good for the context. Barely halfway into the term, he was dismissed, ostensibly for reasons of "process." At his final press conference, he sadly quoted Talleyrand's apostrophe: "Surtout, pas de zèle." As if Eugene Rostow, this incandescent man, is conceivable without zeal. In February, 1983, the New York Times and the New Republic exposed the real reason for the dismissal: "Mr. Rostow," the New Republic wrote in its lead article, "was stripped of his authority for arms control because he had been controlling arms too avidly." The New Republic concluded prophetically that "you can fire a man, but you can't fire an idea."

Gene: There are many more ideas there. The work is not finished. For starters, there are those two companion volumes to Toward Managed Peace. Those of us who have been reading and learning from you for our entire professional lives are entitled to have the work finished. We have a vested right in you and you owe it to us. We look forward to a rich flow of future installments.