



# National Security Law Report

Volume 18, Number 2 STANDING COMMITTEE ON LAW AND NATIONAL SECURITY March 1996

## About the Standing Committee

The American Bar Association's Standing Committee on Law and National Security was founded in 1962 by a distinguished group that included ABA President (and later Supreme Court Justice) Lewis F. Powell, Chicago attorney Morris I. Leibman, Rear Admiral William C. Mott (USN-JAG, Ret.), Professor Frank Barnett, and R. Daniel McMichael of U.S. Steel Corporation (and later, Secretary of the Scaife Foundation). Their initial goal was to contrast the American system of government under the rule of law with the alternative vision being offered by international communism. Gradually they broadened the Standing Committee's mandate to provide legal insight on a host of important national security problems, ranging from legal controls on intelligence and the use of armed force to export controls and the importance of maintaining adequate strategic stockpiles.

From its inception, the Standing Committee has pursued its objectives through a diverse program of

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*John Shenefield (left), who chaired the Standing Committee for three terms ending in August, was presented a silver bowl by new Chairman Paul Schott Stevens at the October conference.*

**This special supplement to the *National Security Law Report* surveys the ongoing programs and recent activities of the Standing Committee. The Committee intends to report periodically in this form to members of the law and national security community, whose continued support and active involvement in the Committee's work are essential to our success.**

## Chairman's Report

Paul Schott Stevens, 1995-date

John H. Shenefield, 1992-95

In recent years, the Standing Committee has continued its efforts to bring hard-headed legal thinking to national security law issues. In the aftermath of the Cold War, we focussed on the transition issues of proliferation of weapons of mass destruction, terrorism, intelligence reform, and the gray area challenge of international organized crime and drug cartels.

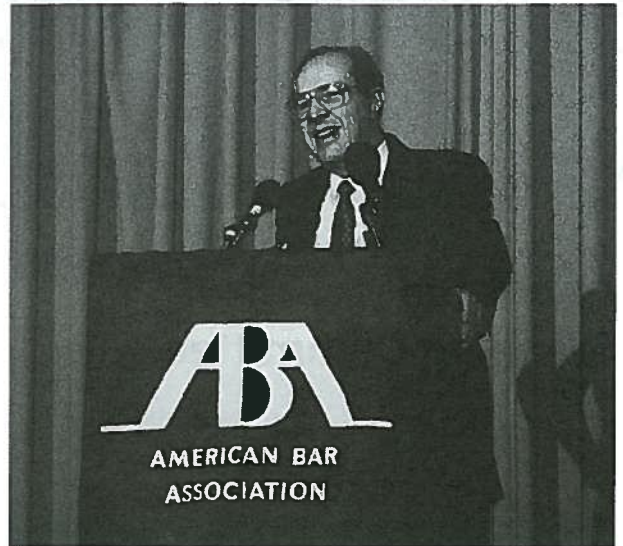
An excellent example was the June 1994 conference on the "Nonproliferation of Weapons of Mass Destruction" held at the very same time as the tense negotiations with North Korea were underway. The Standing Committee's task force followed up with a report entitled "Beyond COCOM: A Comparative Study of Export Controls," which was widely disseminated.

Another theme was the intersection of the worlds of law enforcement and intelligence, with the potential for legal and policy confusion. We hosted a national security retreat involving the senior legal officers of most of the federal agencies and congress-

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## Standing Committee Members

- **Paul Schott Stevens (Chairman)** served as the first Legal Adviser to the National Security Council and as NSC Executive Secretary under General Colin Powell. He is currently senior vice president and general counsel to a major trade association in Washington.
  - **Gen. E. E. Anderson** was the youngest person in the history of the Marine Corps selected for promotion to four-star General, and the first aviator to achieve that rank. He is a former Chairman of the ABA Government and Public Sector Lawyers Division.
  - **Zoë Baird** serves as a member of the President's Foreign Intelligence Advisory Board (PFIAB) and on the Commission on the Roles and Capabilities of the U.S. Intelligence Community. She is currently senior vice president and general counsel to a major insurance company.
  - **Stewart Baker** is former General Counsel to the National Security Agency (NSA) and is currently an attorney in private practice.
  - **Russell J. Bruemmer** is former General Counsel to the Central Intelligence Agency (CIA) and is currently in private practice.
  - **Philip B. Heymann** is James Barr Ames Professor at Harvard Law School and a Professor at Harvard's Kennedy School of Government. He formerly served as Deputy Attorney General of the United States.
  - **Lucinda A. Low** is a specialist in international trade in private law practice in Washington, DC. She is also Chair-Elect of the ABA Section of International Law and Practice.
  - **J. Michael McWilliams** is an attorney in private law practice in Baltimore and is a former President of the American Bar Association.
  - **Elizabeth R. Rindskopf** formerly served as General Counsel of both the NSA and the CIA, and as the Deputy Legal Adviser to the Department of State. She is now in private law practice.
  - **John H. Shenefield**, in private law practice, is a former Associate U.S. Attorney General. He has just completed serving three terms as Chairman of the Standing Committee.
  - **Jeffrey H. Smith** serves as the General Counsel of the Central Intelligence Agency and is a former Chief Counsel to the Senate Armed Services Committee.
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- **Holly Stewart McMahon**, a former member of the Reagan White House staff with considerable ABA experience, serves as the Standing Committee's Staff Director.



*Dr. William Perry made one of his first public presentations as Secretary of Defense to a March 31, 1994, Standing Committee breakfast program.*

## About the Standing Committee . . .

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scholarship, conferences, workshops, and publications—only a small number of which are highlighted herein. One measure of the Committee's effectiveness is the rapid growth in recent years of the field it has pioneered. For example, the number of accredited law schools offering courses or seminars on national security law has increased from 1 in 1974, to 7 in 1984, and to 83 in 1994—more than a ten-fold increase in the past decade. By 1990, there were three separate law school casebooks on "national security law." Today nearly half of the nation's accredited law schools have one or more offerings in this field.

Limited by ABA rules to fewer than a dozen members at any one time—each appointed by the ABA President to a three-year term—the Standing Committee over the years has included among its members individuals who have served as Senators and Representatives, Director of Central Intelligence, Secretary of the Army, Deputy Secretary of Labor, ambassadors, legal advisers to the Department of State and National Security Council, general counsels to the Department of Defense, Central Intelligence Agency, National Security Agency, several military services, and key congressional committees; and a diverse range of prominent scholars from the nation's preeminent law schools.

The current membership is briefly profiled in the box on the left. The Committee also has a distinguished Advisory Committee and eight eminent Counselors (see pages 5-6).

## Breakfast Programs

The Standing Committee hosts a popular monthly breakfast program that brings together attorneys, government officials, journalists, and others interested in the field. The forum regularly attracts very senior guest officials speaking on a variety of timely issues. Attendees, often numbering 200 or more, include attorneys from all of the military services, representatives from all of the major government departments and agencies dealing with national security issues, senior congressional staff members, and a broad range of private practitioners.

## Publications

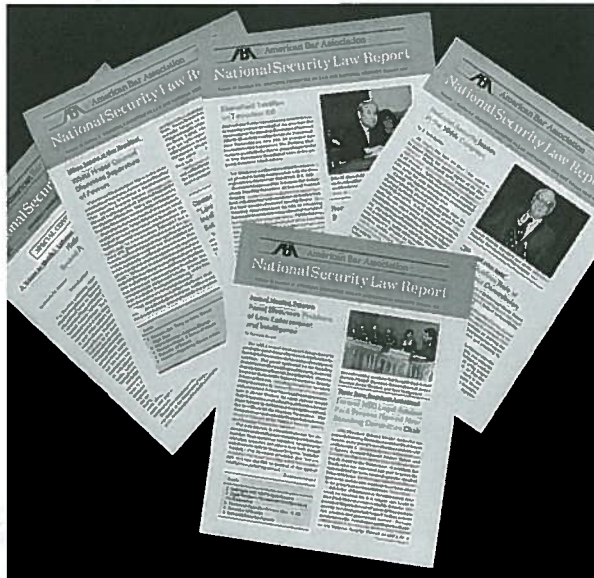
For the past 18 years, the flagship of the Standing Committee's publications program has been our newsletter. Originally known as the *National Security Intelligence Report*, it was renamed in October 1991 the *National Security Law Report (N.S.L.R.)*. It is distributed free of charge, eight times a year, to more than 3,500 government officials, private practitioners, educators, journalists, students, and others with an interest in the subject matter.

The newsletter serves as far more than just a summary of Standing Committee activities. In addition to keeping the national security legal community apprised of the important work of the organization, it provides summaries of important court decisions and pending legislation; reviews of books, monographs, and other writings of relevance to the field; and provides a format for brief exchanges of substantive opinion. The Com-

## Recent Breakfast Speakers

- Secretary of Defense **William Perry**
- Joint Chiefs of Staff Vice Chairman  
**Admiral William A. Owens**
- Senate Intelligence Committee  
Chairman **Senator Arlen Specter**
- White House Counsel **Abner J. Mikva**
- Former Secretary of Defense **Frank Carlucci**
- Atomic Scientist **Dr. Edward Teller**
- Russian Ambassador **Yuli Vorontsov**
- Former Secretary of Defense **Harold Brown**

mittee continues to develop the features and content of *N.S.L.R.* to make it most useful and interesting to its readership.



*The National Security Law Report is published eight times each year.*

*N.S.L.R.* is frequently photocopied and routed through government offices, and specific articles have been reprinted for distribution in class or at conferences. It has also been cited in scholarly books and prestigious law reviews—not to mention in a nationally syndicated newspaper column by "Dear Abby."

Over the years the Standing Committee has also published several volumes of conference proceedings and reports of topics of special interest. In addition, conference papers or proceedings have often been published in law reviews. In 1996, the premier issue of the new *Journal of National Security Law* is scheduled for publication—which will provide yet another outlet for publication of the work of the Standing Committee and its members.

**"Those . . . who follow the Committee's activities are well aware of the continuing impact of its work across the land, from high school classrooms and college campuses to boardrooms and the halls of government—and on distant battlefields. The Committee's leadership and composition have been consistently high in integrity and sense of mission."**

**—R. Daniel McMichael, Scaife Foundation**

## Conferences

Since its inception the Standing Committee has sponsored scores of conference programs addressing a wide range of issues. In addition to drawing hundreds of attorneys, scholars, practitioners, and government officials, many of these programs have reached much larger audiences through C-Span, other national media coverage, or the reprinting of conference papers or proceedings in law reviews or books. Conference proceedings are audio-taped, and they are often summarized in special issues of the *National Security Law Report*.

In 1994-95, the Standing Committee sponsored three major conferences.

### National Security Law in a Changing World: Annual Reviews of the Field

At the suggestion of six-term chairman Morry Leibman, the Standing Committee in 1990 began a highly successful series of annual conferences designed to provide an overall "review of the field" of national security law. One of the highlights of these conferences is a panel discussion featuring the general counsel or senior legal adviser to each of the major national security departments and agencies of the government. In addition to reporting on important ongoing issues, this panel has served to alert the Standing Committee and the national security law academic community about important issues that government attorneys foresee requiring serious attention in the foreseeable future.

The fourth annual review conference, held in October 1994 at the International Club in Washington, DC, was dedicated to the memory of the late Dr. Frank R. Barnett—a former Rhodes Scholar who had helped organize the Standing Committee three decades ago and served as the Committee's first Executive Director. A pioneer in the field of national security education, Barnett served as founding President of the National Strategy Information Center.



*Standing Committee Counselor William Colby, who served as Director of Central Intelligence between 1973 and 1976, spoke at a recent review of the field conference.*

## Past Chairs of the Standing Committee

- Morris I. Leibman (1982-87)
- Charles S. Maddock (1987-89)
- William C. Mott (1969-73)
- James M. Spiro (1973-75)
- Morris I. Leibman (1975-82)
- John Norton Moore (1982-86)
- Richard E. Friedman (1986-89)
- Robert F. Turner (1989-92)
- John H. Shenefield (1992-95)

The fifth annual review conference, held in Washington in October 1995, featured speakers and panels on a variety of subjects—including the sometimes messy relationship between the media and the national security establishment, ongoing efforts to "reinvent" the U.S. Intelligence Community, special problems in the counterintelligence area, and the threats posed by domestic and international terrorism. This conference was summarized in the December, 1995, special issue of the N.S.L.R.

To reach a wider audience, conferences have been cosponsored with the Center on National Security Law at the University of Virginia and the Center for Law, Ethics and National Security at Duke University.

### Nonproliferation of Weapons of Mass Destruction

The possibility that nuclear materials from the former Soviet Union will be diverted to provide weapons for radical regimes, that North Korea will build a deliverable nuclear arsenal, or that chemical or biological weapons will be developed for use in future conflicts or acts of terrorism, must certainly rank as among the greatest threats to American security in the post-Cold War era.

To address these and related issues, the Standing Committee sponsored a conference in June, 1994, at the International Club in Washington, DC.

Panels addressed such topics as the special responsibilities of the major powers, problems of en-

forcing existing legal constraints on weapons of mass destruction, the special difficulties presented by the situation in the former Soviet Union, and status reports on the chemical and biological weapons conventions. The distinguished participants included the Director and Deputy Director of the Arms Control and Disarmament Agency, the Executive Chairman of the UN Special Commission on Iraq, the chief U.S. negotiator for the dismantlement of weapons in the former Soviet Union, the Assistant Secretary of State for Political Military Affairs, several senior National Security Council staff members, and top technical experts from the Central Intelligence Agency and Defense Department.

### **Non-Governmental Security Threats: The "Gray Area" Challenge**

Another alarming post-Cold War national security threat has been the cooperative efforts by drug cartels, terrorist organizations, and traditional organized crime elements across national borders. Although largely non-State actors, groups like the Sicilian Mafia and radical Middle East terrorist organizations pose substantial threats of their own. In recent years, a major organized criminal element has developed as well within the former Soviet Union. Alarming, such groups are beginning to coordi-

nate some of their activities—and they are working as well with well-financed drug cartels in Colombia and elsewhere. The United States and other peace-loving States within the world community can no longer afford to ignore the threat posed by such non-governmental groups.

To identify and explore some of these problems, in December, 1994, the Standing Committee held a conference at the International Club in Washington. Separate panels examined the problems in the former Soviet Union, international terrorist threats, the drug cartels, assaults on national justice systems and the "rule of law," and issues involving the exportation of defense and dual-use materials and information in the post-Cold War era. Another panel addressed the need for enhanced cooperation between the national security and law enforcement communities in this struggle.

The blue ribbon list of speakers included the Chief of the Organized Crime and Drug Operation Section of the Federal Bureau of Investigation, the Assistant Secretary of State for International Narcotics Matters, the Director of the Financial Crimes Enforcement Net-

work at the Treasury Department, the Chief of the Organized Crime and Racketeering Section of the Justice Department, and several journalist and business leaders.

## **Advisory Committee**

- Richard E. Friedman (Chair)
- T.J. Anthony
- Peter F. Axelrad
- David R. Brink
- Alison B. Brotman
- Kathleen A. Buck
- James P. Chandler
- Alberto R. Coll
- Chapman B. Cox
- Robinson O. Everett
- Harris L. Hartz
- L. Christine Healey
- Pamela M. Jimenez
- Lance E. Lindblom
- Franz M. Oppenheimer
- Nicholas Rostow
- Richard Schifter
- William W. Schwarzer
- Jackson R. Sharman, III
- Jeffrey B. Smith
- L. Britt Snider
- Laurence Storch
- Lynne K. Zusman

**"I consider the creation of the Standing Committee on Law and National Security one of the most important and most productive initiatives the Association has taken during my professional life. And its record of accomplishment, and its influence both in the law schools and in the bar at large, constitute an achievement of lasting significance, which is helping to guide the response of the nation to the changing circumstances of its security in a prudent and realistic way."**

**—Professor Eugene V. Rostow**

**“One of the Standing Committee’s most important contributions has been to identify a new body of law called national security law. It began with the recognition that there is a real external threat to our free society. The challenge was to take steps to protect our society without destroying the essential nature of our institutions. This was particularly within the competence and responsibility of the American legal community.”**

— Morris I. Leibman

## Chairman’s Report . . .

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sional committees concerned with national security issues last October for the purpose of off-the-record discussions of the legal issues and policy options. That was followed by significant examination of these issues in our December conference on “Non-Governmental Security Threats: The ‘Gray Area’ Challenge.” Then, just this past August at the ABA Annual Meeting in Chicago, a distinguished panel, including the Deputy Attorney General of the United States, discussed these issues on a practical and operational level.

The Standing Committee in the last year has also focussed on the prevention of international and domestic terrorism. Having formed a task force on terrorism, the Committee was invited to deliver comprehensive testimony on pending counterterrorism legislation before the House Judiciary Committee.

Involvement in the Standing Committee has been, for us, a great honor and a great opportunity — an honor, because the membership of the Standing Committee over the years, and the constituencies we serve, include so many distinguished and fascinating Americans; an opportunity, because national security law issues are difficult and interesting, and because they also are vitally important to our Constitution and our Nation. We believe it is imperative that the Standing Committee continue in its role as the informal legal counselor to the national security community.

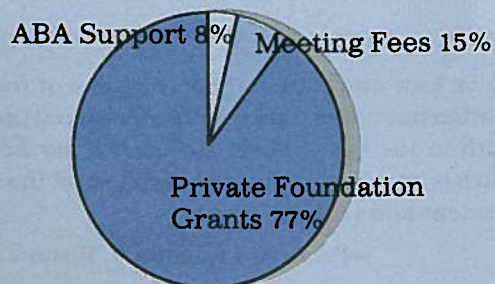
## Counselors

- **William E. Colby**, former Director of Central Intelligence
- **Ambassador Max Kampelman**, former Delegation Head to the Nuclear and Space Arms Negotiations in Geneva
- **Edward H. Levi**, former U.S. Attorney General
- John O. Marsh, Jr.**, former Secretary of the Army
- **Myres S. McDougal**, Sterling Professor of Law, Emeritus, at Yale Law School
- **William P. Rogers**, former U.S. Secretary of State
- **Eugene V. Rostow**, former Yale Law School Dean and Under Secretary of State for Political Affairs
- **William H. Webster**, former Federal Judge and FBI Director and Director of Central Intelligence

(Secretary of State **Warren Christopher** is a former Standing Committee Counselor)

## Financial Highlights

### Income



### Expenditures

