

FOREWORD BY DOUGLAS T. STUART
*Author of *Creating the National Security State**

— THE —

NATIONAL SECURITY COUNCIL

A LEGAL HISTORY OF THE PRESIDENT'S MOST POWERFUL ADVISERS

CODY M. BROWN



Legal Working Group
Gordon N. Lederman, Chair

THE NATIONAL SECURITY COUNCIL

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Cody M. Brown
Washington, DC

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For lack of guidance a nation falls, but many advisers make victory sure.

PROVERBS 11:14

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

NATIONAL SECURITY ACT OF 1947

FOREWORD

For the first 150 years of its existence, the United States government tended to distinguish between periods of peace and periods of major war. During periods of peace it was assumed that the State Department was responsible for managing foreign affairs. During major wars, the Navy and the War Department were preeminent, but as soon as the national emergency was over the military was expected to once again take a back seat to the State Department in the management of foreign affairs. By the late 1930s many policymakers and scholars had begun to criticize this bifurcated approach to U.S. foreign policy. These individuals argued that two developments during the interwar period – improvements in the range and lethality of airplanes and the rapid worldwide spread of totalitarian regimes – made this traditional policy-making approach both anachronistic and dangerous. America, they asserted, had to be prepared at all times for threats from abroad, and this required new procedures for permanent high-level collaboration between the civilian and military branches of the government.

The Japanese surprise attack on Pearl Harbor convinced almost every American of the wisdom of these arguments. The United States could never again afford to let down its guard. To insure against another surprise attack, Washington needed new machinery for the collection and coordination of foreign intelligence and, above all, new mechanisms for seamless cooperation “at the top of policy hill” between representatives of the military and civilian agencies involved in foreign and defense affairs.¹

During World War II, the government experimented with various arrangements designed to facilitate high-level policy coordination. Many of these arrangements were modeled on British institutions which became familiar to American policymakers as a result of close wartime cooperation between the two allied governments. The most important innovation was the U.S. Joint Chiefs of Staff (JCS), which was created at the start of the war to facilitate cooperation with the British Chiefs of Staff. Army Chief of Staff George Marshall viewed the JCS as a significant improvement. He would later complain, however, that the American service chiefs were at a distinct

disadvantage in discussions with their British counterparts because the British officers “are connected up with other branches of their Government through an elaborate but most closely knit Secretariat. On our side there is no such animal and we suffer accordingly”²

As the end of the war approached, the Roosevelt administration created the State-War-Navy Coordinating Committee to facilitate cooperation between the State Department and the armed services. It was left to Roosevelt’s successor, however, to develop plans for a postwar replacement for this committee. Between 1945 and the summer of 1947 Harry Truman oversaw an intense political debate over institutional reform. These deliberations took on greater urgency as Americans became increasingly concerned about the threat posed by Soviet communism. On July 26, 1947, the President signed comprehensive legislation designed not just to manage anti-Soviet containment but to insure American national security for the foreseeable future. One of the most ambitious pieces of legislation in American history, the National Security Act created a number of new institutions, including the National Military Establishment (which became the Department of Defense two years later), the Central Intelligence Agency and the National Security Resources Board. It also established the National Security Council (NSC) as the “keystone” of the new national security architecture. The NSC was envisioned as “a means of institutionalizing the relationship between those responsible for foreign policy and those responsible for military policy.”³ It was not at all clear how this new system for political-military cooperation would work, however, or whether it would work at all. On the day that the legislation was passed, *The New York Times* described the entire arrangement as “experimental,” and concluded that “it might require refinement later, as dictated by trial operation.”⁴

Over the next several years, four problems which had been identified during the drafting of the National Security Act became apparent as a result of the NSC’s trial operation. First, President Truman worried that the new NSC might function as a “second cabinet” and intrude upon his constitutionally-designated responsibility for the management of foreign affairs. Some of Truman’s advisers also warned that representatives of the armed services might unite within the NSC to “capture” the national security planning process. In spite of these concerns, it soon became obvious to the President that it was

necessary to rely upon the NSC in order to cope with the numerous national security crises that confronted his administration. Truman nonetheless continued to look for ways to monitor and control the NSC, so that it served his personal interests. Every president since Truman has confronted the same challenge.

A second and related problem was also recognized during the drafting of the 1947 legislation. Who should represent the president in the day-to-day operations of the NSC? Truman and his advisers discussed various formulas for preserving the President's direct authority over the NSC without making him a prisoner of the new institution. Most of the solutions that were proposed stressed the need for a gatekeeper. But this raised two obvious questions: Who should be trusted with this responsibility, and how much power should this person have? America's first Secretary of Defense, James Forrestal, believed that he should play this role, and that he should be granted considerable independent influence over the national security bureaucracy. He based these assumptions on the fact that the initial legislation designated the Secretary of Defense as "the principal assistant to the President in all matters relating to the national security." But Truman was not willing to give Forrestal this authority, and in 1949 the President approved an amendment to the National Security Act which designated the Secretary of Defense as the president's "principal assistant in all matters relating to the Department of Defense." Truman's decision to block Forrestal's efforts to establish the Secretary of Defense "at the top of policy hill" made sense from an organizational perspective, but it also left a vacuum at the top that has posed problems for every one of his successors.

Truman also confronted a third issue that has resurfaced periodically over the last six decades. During the debates which culminated in the passage of the National Security Act, the President resisted efforts by a few members of Congress to provide the legislative branch with access to, or oversight of, NSC deliberations. In fact, most members of Congress during this time accepted the principle that the President needed his own advisory mechanism for foreign and defense affairs. By the end of the Eisenhower administration, however, it had become obvious that the system which was established in 1947 assumed, in Harold Koh's words, "a strong plebiscitary president."⁵ As long as a president's foreign policy enjoyed widespread support, Congress was

content to allow the White House to manage the NSC policy-making process. But when a president's popularity declined, Congress and other outsiders tended to link the NSC process with policy, leading to inquiries into, and criticisms of, the structure and functioning of the NSC system. This problem has raised issues of executive privilege for every president since the Truman-Eisenhower era.

Finally, and most importantly, Truman and his advisers were acutely aware that the new system assumed a high level of voluntary cooperation among the powerful agencies responsible for foreign and defense affairs. As Dean Acheson noted in his memoirs, "A good many of us had cut our teeth and our throats with this sort of nonsense."⁶ Acheson, and all members of the Washington policy community, understood that issues of turf, budgets and influence would not disappear as a result of the creation of the NSC. They would simply surface at a higher level and in a different context. Former Secretary of Defense Robert Lovett described this as the "foul-up factor" in U.S. policy-making, and argued that it was not only inevitable, but also consistent with the constitutional principle of checks and balance.⁷ Such assurances have not made the job of managing the interagency process any easier for successive presidents.

Over the last sixty years, each president has attempted to find his own formula for dealing with these and other problems which have plagued the NSC system. *The National Security Council* sets forth the legal foundations of these presidential formulae, and serves to reopen the conversation regarding optimal national security policy machinery.

Douglas T. Stuart

PREFACE

This work sets forth, for the first time, a legal history of the National Security Council (NSC). In literal terms, the “NSC” is the official membership of the National Security Council. In common parlance, however, and for brevity’s sake, the term “NSC” commonly refers not merely to official membership, but to the NSC *system* – including membership, functions, substructures, processes,⁸ and staff.⁹ While the author has sought to embed the legal history of the NSC in a broader historical context, this work should not be viewed as a *general* history of the NSC.

Although Congress created a broad statutory framework for the NSC system in 1947, the President ultimately determines its form and influence. Robert Cutler, our Nation’s first National Security Advisor, has remarked, “Under the flexible Act of Congress which created the National Security Council, each President may avail himself of the mechanism in whatever way he finds best suited to his needs.”¹⁰

Presidents have shaped the formal NSC system through presidential directives, executive orders, and reorganization plans. These legal instruments generally have the force of law if issued pursuant to legitimate constitutional or statutory authority. Directives have been, and continue to be, most instrumental in shaping the substructures and processes of the NSC system. Directives are often classified and, unlike executive orders, are unpublished. Executive orders, sometimes characterized as a type of presidential directive,¹¹ are functionally equivalent to directives except they are published in the Federal Register and the Code of Federal Regulations.¹² According to the Department of Justice, executive orders and directives differ only in technical form. In other words, “It is the substance of the presidential action that is determinative, not the form of the document conveying that action.”¹³

An early form of reorganization plans, aardvarks of legal instruments, developed through the Economy Act of 1932, which granted the President broad reorganization authority via executive order, subject to a one-house legislative veto. Traditional reorganization plans did not develop, however, until passage of the Reorganization Act

of 1939, passed shortly after the Brownlow Committee. The act authorized the President to submit proposed plans for reorganizing executive departments and agencies to Congress for approval (or acquiescence).¹⁴ This authority provided the President flexibility for organizing the Executive Branch. Initially, a submitted plan automatically became law after 60 days, unless both chambers objected by concurrent resolution. Later, a one-house legislative veto was established in lieu of a concurrent resolution. Congress renewed this basic reorganization authority in various forms over the next several decades.¹⁵

The use of reorganization plans ceased after the Supreme Court held one-house legislative vetoes to be unconstitutional in *INS v. Chadha*.¹⁶ As applied to reorganization plans, *Chada* cast doubt on the ability of one chamber of Congress to effectively veto a President's submitted reorganization plan. The following year, in light of the decision, Congress passed the Reorganization Act Amendments of 1984 to require a *joint* resolution to void a President's reorganization plan.¹⁷ But the act limited the effectiveness of reorganization plans to those transmitted on or before December 31, 1984. So while a basic outline of executive reorganization authority remains codified at 5 U.S.C. § 901 *et seq.*, the authority expired in 1984 and has not been utilized since.

1. THE EXPERIMENT

In July 1944, a year before World War II ended, President Franklin D. Roosevelt nominated Harry S. Truman, a farmer, colonel, and former Senator, to be his Vice Presidential running mate. Truman replaced Henry Wallace, who was perceived as soft on the communist Soviet Union. Roosevelt was reelected, but in April 1945, mere months after his inauguration, he collapsed after sitting for his portrait painting thereby thrusting Harry Truman into history as the 33rd President of the United States. The following day Truman remarked, “I don’t know if you fellows ever had a load of hay fall on you, but when they told me yesterday what had happened, I felt like the moon, the stars, and all the planets had fallen on me.”¹⁸

Truman took office as World War II continued – a war that ended months later after Truman’s epic decision to drop atomic weapons on Japan, transforming warfare forever. Upon taking office, Truman not only faced formidable challenges abroad, he faced fundamental weaknesses in his national security apparatus, particularly involving independent and parochial military services, and inadequate mechanisms for departmental coordination.

Military unification was Truman’s foremost objective – prior to taking office and after. As Doug Stuart notes in his book, *Creating the National Security State*, Truman had written an article in *Collier’s* magazine entitled, “Our Armed Forces Must Be Unified.”¹⁹ In it, he argued that “[t]he end, of course, must be the integration of every element of America’s defense in one department under one authoritative, responsible head.” Military unification became the driving force of Truman’s efforts to reform the national security apparatus.

But inadequate coordination of the departments during World War II was also a significant problem, attributed in part to President Roosevelt’s “sometimes chaotic, ad hoc management style for guiding the war effort.”²⁰ Roosevelt had sought, to some degree, greater coordination of the departments. He approved a recommendation in 1938, for example, to establish a Standing Liaison Committee to facilitate policy coordination of the Departments of State, War, and Navy. But after the outbreak of hostilities in World War II, the

committee's influence over policy planning rapidly declined and the committee was disassembled in 1943.²¹

A similar committee, the State-War-Navy Coordinating Committee (SWNCC), was established in December 1944 to coordinate the views of the respective departments and, after the war, to coordinate post-war policies.²² The SWNCC, consisting of Assistant Secretary-level officials and modeled in part after the British War Cabinet,²³ was a significant development and "achieved what no other committee had before, providing a forum in which important policy issues could be thrashed out . . ."²⁴ But like the Standing Liaison Committee, the SWNCC lacked sufficient authority to make policy decisions or to consider interagency issues (unless an issue was referred by a department), eventually leading to its demise.²⁵

To address these problems and others, Truman requested plans for reorganizing the U.S. national security apparatus shortly after taking office. In June 1945, Secretary of Navy James Forrestal sent a letter to Ferdinand Eberstadt, a lawyer, investment banker, and former Chairman of the Army and Navy Munitions Board, requesting such a plan. Eberstadt responded in September 1945 with a 250-page report, completed by "a small team composed mostly of naval reserve officers,"²⁶ calling for greater integration of national resources, including the creation of a National Security Council (NSC) modeled after the SWNCC.

To afford a permanent vehicle for maintaining active, close, and continuous contact between the departments and agencies of our Government responsible, respectively, for our foreign and military policies and their implementation, we recommend the establishment of a National Security Council. The National Security Council would be the keystone of our organizational structure for national security.²⁷

According to the Eberstadt report, the NSC would be charged with formulating and coordinating overall policies in military and political realms; assessing and appraising foreign objectives, commitments, and risks; and balancing these with U.S. military power. Notably, it would be designed as "a policy-forming and *advisory*, not an executive, body."²⁸

Although military unification became the ultimate objective of Truman's reform efforts, the Eberstadt report had convinced Truman that unification alone would be insufficient. As he later wrote, the United States needed "actual coordination of the entire military, economic and political aspects of security and defense."²⁹ As it turned out, the NSC became the principal means for coordinating national security policy.

The idea of an NSC was not unanimously embraced within the Executive Branch. Secretary of State Marshall, for example, argued that as a general matter the NSC could "dissipate the constitutional responsibility of the president for the conduct of foreign affairs" and could undermine the "traditional prerogatives of the Secretary of State."³⁰ He foresaw that the NSC could become something of a rival to the State Department. The Budget Bureau, too, warned that if the NSC was established as anything other than an advisory body, it would be a "usurpation of the necessary powers of the president and a direct violation of our Constitutional system."³¹ The Budget Bureau's desire for an advisory body prevailed.

The NSC provision survived the legislative process, and as Congress debated military unification, Senator Ray Baldwin described his vision of the NSC as "the main coordinating factor . . . in all our preparations for national security and for our defense."³² According to Baldwin, previous attempts at coordination proved unsuccessful due to "much delay, much uncertainty, and a lack of sound integration of policy and program."³³ Nonetheless, he claimed that "experience demonstrated conclusively" that an entity like the NSC was needed.³⁴ Baldwin then yielded to Senator Leverett Saltonstall for a question.

Saltonstall: Does the Senator agree with me when I say that the purpose of creating the National Security Council is not to set up a new function of government with extraordinary powers, but *solely to provide an organization to give advice to the President*, not on general affairs of state, but through civilian groups, on affairs of state affecting the national security and

tending to make the military forces more efficient? Is that correct?

Baldwin: I agree wholeheartedly In other words, it is not essentially an administrative agency. It is an advisory council.

Saltonstall: And it is advisory on security matters alone.

Baldwin: That is correct.³⁵

On July 26, 1947, after months and years of formal and informal negotiations within and across the executive and legislative branches, Eberstadt's recommendation for a NSC was adopted when the National Security Act of 1947 was passed by a Republican-controlled Congress and signed by President Truman, a Democrat. The overall purpose of the act was "to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security,"³⁶ precisely what had been lacking during World War II.

The breadth of the National Security Act was remarkable. It not only created the NSC, it created a National Military Establishment (NME), a Central Intelligence Agency (CIA), a National Security Resources Board (NSRB), the Departments of Army, Navy, and Air Force, a War Council, a Joint Chiefs of Staff (JCI), a Munitions Board, and a Research and Development Board. Many of these institutions, and others, became core components of the modern national security system. The act did not, however, create a holistic enterprise. It was generally limited to functional, military-oriented institutions and other entities in support of military requirements. Instruments of "soft power" developed apart from the act.

Most entities established by the National Security Act were housed within the NME – what later became the Department of Defense. The NME consisted of the Departments of the Army, Navy, and Air Force, the War Council, the JCS, a Joint Staff, the Munitions Board, and the Research and Development Board. To lead the NME, a Secretary of Defense was established as "the principal assistant to the President in all matters relating to the national security." But the

military services continued to “be administered as individual executive departments by their respective Secretaries.”³⁷

The War Council consisted of the Secretary of Defense (Chairman), the military Secretaries, and the JCS. It advised the Secretary “on matters of broad policy relating to the armed forces.”

The JCS consisted of the Chiefs of Staff for the Army and Air Force, the Chief of Naval Operations, and the Chief of Staff to the Commander in Chief (if one existed). The JCS served “as the principal military advisers to the President and the Secretary of Defense,”³⁸ and they were responsible for preparing strategic plans, providing strategic direction, and establishing unified commands.

To support the JCS, a Joint Staff was created, led by a Director. The Joint Staff was limited to 100 officers and was “composed of approximately equal numbers of officers from each of the three armed services.”³⁹

The Munitions Board, which replaced the Joint Army and Navy Munitions Board, was led by a Chairman under the direction of the Secretary of Defense. It was responsible for, *inter alia*, coordinating activities within the NME for procurement, production, and distribution plans, as well as planning military aspects of industrial mobilization.⁴⁰

The Research and Development Board was also led by a Chairman and consisted of two representatives from each military service. The purpose of the Board was “to advise the Secretary of Defense as to the status of scientific research relative to the national security, and to assist him in assuring adequate provision for research and development on scientific problems.”⁴¹ To fulfill this purpose, the Board was charged with various duties, including preparing a complete and integrated program of research and development for military purposes.

The CIA, on the other hand, was established as an independent agency placed under the direction of the NSC “[f]or the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security.”⁴² The agency was assigned various duties, such as advising the NSC in

matters concerning intelligence; making recommendations to the NSC regarding the coordination of intelligence activities; and performing such other functions and duties related to intelligence as the NSC may from time to time direct.⁴³

The NSRB, also located outside of the NME, was established “to advise the President concerning the coordination of military, industrial, and civilian mobilization.”⁴⁴ This advice was particularly aimed at mobilizing human capital, making efficient use of resources, and unifying federal efforts. The Board was “composed of the Chairman of the Board and such heads or representatives of the various executive departments and independent agencies as may from time to time be designated by the President.”

Given the breadth of the act, the system needed a central hub to integrate the policies of these functional components and others. This responsibility was ultimately left solely on the shoulders of the President. But to assist the President, the NSC was established in section 101 of the National Security Act, indicative (some may say) of the priority of this new council.⁴⁵

In less than 500 words, the purpose, function, and composition of the NSC were established. The NSC was created to “*advise* the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving national security.”⁴⁶ It was responsible for assessing and appraising objectives, commitments, and risks of the United States as they related to the actual and potential power of the U.S. military. Furthermore, it was empowered to consider policies on matters of common interest to the national security community, i.e. interagency issues.

Membership of the NSC was initially limited to seven designated officials, including the President, the Secretaries of State, Defense, Army, Navy, and Air Force, and the Chairman of the NSRB. The President, who presided over NSC meetings, could designate any other department secretary as a member, as well as the Chairmen of the Munitions Board or Research and Development Board, provided they were confirmed by the Senate. The Director of Central Intelligence (DCI)⁴⁷ was designated as the principal intelligence

adviser to the NSC, while the JCS were designated as the principle military advisers to the President.⁴⁸

The NSC was required to “have a staff to be headed by a civilian executive secretary who shall be appointed by the President.”⁴⁹

Initially, the NSC staff consisted only of the Executive Secretary and three professional staff members. By 1950, when the staff was “organized into Senior Staff, consisting of assistant secretaries of the constituent departments, and Staff assistants who were appointed by the Senior Staff,” staff had grown to at least fifteen members.⁵⁰

Early staff, as described by Christopher Shoemaker, faced formidable bureaucratic challenges:

Individual Staff members, particularly the consultants, were creatures of the departments and owed primary loyalty to the secretaries they represented. . . . With this background, the NSC Staff developed no cohesion or bureaucratic orientation beyond the horizons of each department. Paradoxically, the Staff members themselves were not trusted by the departments they represented, so they experienced the worst of both worlds.⁵¹

No explicit duties or limitations were assigned to the NSC staff by statute, but John Prados later explained the practical function of early staff:

The staff was to maintain close contact with all concerned departments and agencies. When a policy paper was assigned, the NSC staff would map out the project, obtain the necessary facts, views and opinions from the bureaucracy, analyze the information in an effort to devise a generally acceptable solution, attempt to reconcile any remaining divergent views, and finally prepare a report for the council presenting concisely the facts, conclusions and recommendations, or alternatively, the majority and minority proposals.⁵²

The National Security Act was enacted, and the NSC was stood up, as the conflict between capitalist and communist ideals intensified. While such tensions predated World War II, they intensified in the post-war

period as the United States and the Soviet Union raced to shape the post-war world in their own image.

Months after World War II, George Kennan, then Deputy Chief of the Moscow mission, dispatched his Long Telegram to Washington which described the Soviet Union as “a political force committed fanatically to the belief . . . that it is desirable and necessary that the internal harmony of [American] society be disrupted, our traditional way of life be destroyed, the international authority of our state be broken, if Soviet power is to be secure.”⁵³ Kennan likened communism to a “malignant parasite which feeds only on diseased tissue,” and he concluded that the Soviet Union posed “undoubtedly [the] greatest task our diplomacy has ever faced and probably [the] greatest it will ever have to face.” Nonetheless, he believed the Soviet problem was “within our power to solve – and that without recourse to any general military conflict.” This would require the U.S. government to study the nature of the Soviet movement, to educate the public, to maintain the health and vigor of our own society, to advance a more positive vision for the world, and “to cling to our own methods and conceptions of human society.” Henry Kissinger later boiled the telegram down to this: “[T]he goals and philosophies of the United States and the Soviet Union were irreconcilable.”⁵⁴

In the fall of 1946, Clark Clifford, then Special Counsel to the President, submitted a report to Truman entitled, “American Relations with the Soviet Union” – more commonly referred to as the Clifford-Elsey report. It was reportedly “the first interagency policy review of U.S.-Soviet relations.”⁵⁵ Adopting a tone similar to Kennan’s telegram, the report flatly stated: “The gravest problem facing the United States today is that of American relations with the Soviet Union.” It recommended maintaining a powerful military “to restrain the Soviet Union and to confine Soviet influence to its present area,” while other nations “should be given generous economic assistance and political support in their opposition to Soviet penetration.”⁵⁶ In a word, containment.

The Long Telegram and the Clifford-Elsey report were remarkable precursors to Truman’s famous address to a joint session of Congress in March 1947. Truman then declared, “[i]t must be the policy of the United States to support free peoples who are resisting attempted

subjugation by armed minorities or by outside pressures.”⁵⁷ This doctrine, aptly named the Truman Doctrine, largely guided U.S. foreign policy throughout the Cold War era, and transformed U.S. international relations from a period of isolationism to an era of global leadership.

Months after Truman announced this new doctrine, as European post-war economies remained ravaged, Secretary of State George C. Marshall proposed that the United States “do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace.” From this basic idea, the Marshall plan emerged which led the United States to provide aid and assistance to struggling European economies from 1948 to 1952. The Marshall plan linked the internal conditions of third-party states to the success or failure of U.S. foreign policy and international security. It reflected and reaffirmed Kennan’s prior metaphor and sought to reduce the “diseased tissue” that communism sought to engulf. According to Truman, the Marshall plan and Truman Doctrine were “two halves of the same walnut.”

Then, the same month the National Security Act was enacted, Kennan (under the pseudonym ‘X’) published an article in *Foreign Affairs* entitled, “The Sources of Soviet Conduct.” The article extrapolated the ideological foundations of Soviet leadership and its relevance for U.S. foreign policy. Kennan concluded, “the main element of any United States policy toward the Soviet Union must be that of a long-term, patient but firm and vigilant containment of Russian expansive tendencies.” In other words, “Soviet pressure against the free institutions of the Western world is something that can be contained by the adroit and vigilant application of counterforce at a series of constantly shifting geographical and political points, corresponding to the shifts and maneuvers of Soviet policy, but which cannot be charmed or talked out of existence.”

[T]he United States has it in its power to increase enormously the strains under which Soviet policy must operate, to force upon the Kremlin a far greater degree of moderation and circumspection than it has had to observe in recent years, and in this way to promote tendencies which must eventually find their outlet in either the

breakup or the gradual mellowing of Soviet power. For no mystical, messianic movement – and particularly not that of the Kremlin – can face frustration indefinitely without eventually adjusting itself in one way or another to the logic of that state of affairs.

Kennan's article stood "in a class by itself," and came to "serve as the bible of the containment policy."⁵⁸

This is all to say that, although enactment of the National Security Act was largely driven by the World War II experience, the act created the modern national security system in the context of the emerging Cold War – a war that few Americans understood at the time.⁵⁹ And, although the enactment of the act was a tremendous achievement, it remained to be seen how the new national security system, including the NSC, would function in practice, particularly in response to the Soviet threat.

Truman, for his part, rarely attended NSC meetings in the years immediately following its creation and only statutory members initially attended meetings. After all, Truman had "questioned whether Congress had the constitutional power to require the President to seek advice from specific individuals before reaching decisions on certain subjects."⁶⁰ Truman's disengagement was attributed to his interest in "protecting his prerogatives as chief executive" and to "demonstrate from the outset the advisory – not policy-making – role of the Council."⁶¹ It has been similarly suggested that Truman sought "to ensure that no one thought he was captive to the council's decisions. The council would deliberate and then advise him."⁶²

The onset of the Korean War changed Truman's approach.⁶³ He began attending most NSC meetings and even came to depend on the NSC as an institution. But Truman's new approach to the NSC was also influenced by the National Security Act Amendments of 1949. The act was passed in response to perceived defects of the original National Security Act, particularly with respect to the defense establishment. The original act, for example, had created a weak Secretary of Defense. In a conversation with Robert Cutler at his Georgetown home in March 1948, James Forrestal – who as Secretary of the Navy played a key role in the creation of the original act – stated that it was "*his* fault that the Secretary of Defense lacked

sufficient power to compel unified policies and cohesion among the Services.”⁶⁴ Forrestal originally believed “that the position of Secretary of Defense was too big for one man to command” and he, therefore, granted the Secretary “only with the right to persuade.”⁶⁵ The 1949 act changed this. It transformed the NME into a more powerful Department of Defense led by an empowered Secretary who was given “direction, authority, and control over the Department of Defense.”⁶⁶ It also created the position of Chairman of the JCS, and designated the JCS as the principal military advisers to not only the President, but to the NSC.

With respect to the NSC specifically, the National Security Act Amendments reduced statutory membership by eliminating as members the Secretaries of the Army, Navy, and Air Force, while adding the Vice President. After the 1949 act, therefore, statutory members of the NSC included the President, Vice President, Secretaries of State and Defense, and the Chairman of the NSRB.

Ten days after passage of the 1949 amendments, Reorganization Plan No. 4 of 1949, proposed by Truman, also became effective and transferred the NSC and NSRB to the Executive Office of the President.⁶⁷ This reorganization formalized a *de facto* situation and evidenced the role of the NSC as an advisory arm of the President.⁶⁸

A key function of the NSC system under Truman, and later Eisenhower, involved producing ‘policy papers.’ The State Department reportedly played a significant role in requesting and drafting early papers.⁶⁹ Harold Relyea has described four types of papers that were initially produced:

Shortly after the creation of the [NSC] in 1947, supporting staff began producing four types of policy papers: basic comprehensive policy statements on a broad variety of national security problems, together with pertinent political, economic, and military implementation strategies; situation profiles of large geographic areas or specific countries; assessments of mobilization, arms control, atomic energy, and other functional matters; and organizational statements on NSC, foreign intelligence, and internal security structure and activities. The early NSC policy papers were initiated

by the council's members, executive secretary, and supporting staff.⁷⁰

One of the earliest and most important papers, NSC-20/4, concluded that "[t]he gravest threat to the security of the United States within the foreseeable future stems from the hostile designs and formidable power of the U.S.S.R., and from the nature of the Soviet system."⁷¹ Accordingly, the fundamental objective of U.S. foreign policy was to reduce "the power and influence" of the Soviet Union, but to do so "short of war." These phrases were nearly identical to verbiage used in Kennan's prior writings, as well as the Clifford-Elsey report. In a sense, NSC-20/4 functioned to codify these prior conclusions in official NSC doctrine, and it guided U.S. foreign policy from 1948 to 1950. But three events in 1949 began to subtly shift or invigorate the containment policy.

It became clear that neither the Marshall Plan nor American programs designed for the revival of Japan's industry had forged stable monetary environments in Western Europe and Japan. The Communist defeat of Chinese Nationalists was followed by the formation of a new Communist state, the People's Republic of China, and the detonation by the Soviet Union of its first atomic bomb marked the beginning of the end of America's atomic monopoly. These three crises of late 1949, coupled with growing domestic political pressures, hampered the NSC's freedom to distinguish between peripheral and vital interests. In response, the NSC shifted from a previous containment strategy of limited and reactive response to containment policies that were more active.⁷²

Based largely on the Soviet's nuclear developments, President Truman issued a directive on January 30, 1950 initiating the H-bomb program. Appended to this directive was a letter directing the Secretaries of State and Defense to "undertake a reexamination of our objectives in peace and war and of the effect of these objectives on our strategic plans, in the light of the probable fission bomb capability and possible thermonuclear bomb capability of the Soviet Union."⁷³ This reexamination led, in turn, to the submission of NSC-68 on April 7, 1950.

NSC-68 became a landmark document, later characterized as a blueprint for the Cold War, or similarly, “America’s official statement on Cold War strategy.”⁷⁴ The document was the result of a six-week study conducted by the State Department’s policy planning staff and the Defense Department. It escalated the Cold War by calling for “a rapid and sustained build-up of the political, economic, and military strength of the free world.” NSC-68 did not disturb the primary conclusions reached in NSC-20/4 regarding the nature of the Soviet threat, but it infused them with a sense of urgency and immediacy. It read: “[T]he United States now faces the contingency that within the next four or five years the Soviet Union will possess the military capability of delivering a surprise atomic attack.” According to the paper, the key to victory was to frustrate “the Kremlin design by the steady development of the moral and material strength of the free world and its projection into the Soviet world in such a way as to bring about an internal change in the Soviet system.” George Kennan reportedly hated NSC-68, “claiming he never intended his plan of containment to be militarised to such an extent, or to be extended beyond Europe.”⁷⁵ One author later remarked, “Some who read it thought it was a scare document; others, that it justified any international commitments the government wanted to undertake; still others, that it only expressed the prevailing view. None of them were entirely wrong.”⁷⁶

A recommendation on the last page of NSC-68 urged Truman to adopt the policy paper and reconstitute a stronger NSC staff “to coordinate and *insure the implementation* of the conclusions herein on an urgent and continuing basis.”⁷⁷ The words, “insure the implementation,” were underlined and an unidentified person scribbled the word “No!” directly to the left. These scribbles represented one scene in a long struggle for the identity of the NSC and NSC staff – a struggle which later prominently played out during the Iran-Contra Affair. The authors of NSC-68, in calling for the *implementation* of policy decisions, clearly viewed the NSC as something other than a limited advisory body as indicated by the plain language of the National Security Act. This liberal reading of the act did not prevail under Truman.

Although Truman had directed the study leading to the issuance of NSC-68, his approval of its conclusions was not immediate, and

perhaps even uncertain. In June 1950, as an NSC subcommittee pursued a cost analysis of the build-up, the communist North Korean army invaded South Korea in an attempt to unify the Korean peninsula. The threat of an expanded communist sphere of influence led Truman to send troops to Korea, a country previously declared to be outside America's defense perimeter, thus beginning the Korean War.⁷⁸ Truman described this decision as "the most important in my time as President of the United States."⁷⁹ As the war begun, however, "NSC-68 remained unprogrammed and unapproved."⁸⁰ Budgetary details of the build-up continued to develop over the next several months.

As hostilities in Korea escalated, Truman more forcefully engaged the NSC as an institution. On July 19, 1950, for example, he wrote a letter to the Chairman of the NSRB requiring all national security policies to be recommended to him through the NSC so he could "readily have the benefit of the collective views of the officials of the Government primarily concerned with the national security."⁸¹ Moreover, he directed the NSC to meet regularly every Thursday and he restricted meetings to statutory members, the Secretary of Treasury, a Special Assistant and Consultant to the President, the Chairman of the JCS, the DCI, and the NSC Executive Secretary.

Truman's newfound approach to the NSC ran parallel with not only the continued consideration of NSC-68, but also a national crisis. Although Truman finally approved NSC-68 in December 1950, the event was largely overshadowed by a declining economy and declining support for the war. Inflation and shortages ravaged the U.S. economy in the months after the war began. As economic woes began to stabilize, China unexpectedly intervened in Korea causing economic havoc at home.⁸² The NSRB instituted wage and price controls, and proved to be largely unsuccessful at mobilizing the country. As the national crisis climaxed in December 1950, Truman wrote in his diary: "[I]t looks like World War III is here."⁸³ This was precisely what Truman had sought to avoid. As he later wrote, "Every decision I made in connection with the Korean conflict had this one aim in mind: to prevent a third world war and the terrible destruction it would bring to the civilized world."⁸⁴ Truman ultimately proclaimed a state of national emergency and established a new Office of Defense Mobilization (ODM), which later eclipsed the NSRB in its entirety,⁸⁵

to supervise production and wage and price controls.⁸⁶ The director of ODM would participate in NSC meetings.⁸⁷

As the war continued through 1951, the aid and assistance provided under the Marshall plan came to an end. This led Congress to pass the Mutual Security Act of 1951, which created the Mutual Security Agency to provide “military, economic, and technical assistance to friendly countries to strengthen the mutual security and individual and collective defenses of the free world.”⁸⁸ Or, in the words of Truman, to continue assisting “free peoples around the world who want to develop and safeguard their freedom and maintain the peace.”⁸⁹ The act essentially extended the Marshall plan and affected the NSC by adding the Director of Mutual Security as a sixth statutory member. This was the last major institutional development to affect the NSC under Truman.

2. AN EXPANDING HORIZON

On a promise to end the Korean War, General Dwight D. Eisenhower was elected President in November 1952, along with his 39-year-old Vice Presidential running mate, Richard M. Nixon. As a career military man who served as Supreme Commander of Allied Forces in Europe during World War II and later as Supreme Commander of NATO, Eisenhower was keen to structure and process. If it is true, as is occasionally remarked, that the NSC reflects the personality and management style of each individual President, there could be no better example than Dwight Eisenhower's NSC.

Eisenhower, who reportedly characterized Truman's NSC as "moribund,"⁹⁰ moved swiftly to reform aspects of the national security system in his own image, particularly the NSC. Early on, he had frequent discussions with his Administrative Assistant, Robert "Bobby" Cutler, a Boston banker and graduate of both Harvard College and Law School, regarding the "vitalization of the National Security Council."⁹¹ Eisenhower desired the NSC to be a "valuable tool for his constant use, correlative in importance with the Cabinet."⁹²

These early discussions yielded a set of guidelines for the construction of Eisenhower's NSC system. Eisenhower viewed, for example, the integration of policy recommendations by qualified advisers as a "priceless ingredient in policy formulation." The President would be at the center of the decision-making process "with ideas and views moving centripetally from all sides to him." Eisenhower understood that national security had become too complex for a President to handle alone. As Cutler later wrote, "In a world shrunk in size by supersonic speeds, loomed over by ominous atomic clouds, fragmenting into new political entities, living in uneasy peace or scourged . . . it was no longer possible for a President himself to integrate the intelligence and opinions flooding in from all sides." For this reason, Eisenhower desired integrated policy recommendations through a process of "continuous association between skilled representatives of all elements of Government germane to the national security."⁹³

Based on his “long experience with war planning,” Eisenhower also wanted a continuous policy planning capability. These planners would consist of “highly qualified representatives of the departments and agencies” at the Assistant Secretary-level. He viewed the process of planning as more important than policies themselves. “More important than *what* is planned,” Cutler later wrote, “is that the planners *become accustomed* to working and thinking together on hard problems; enabling them – when put to the ultimate test – to arrive more surely at a reasonable plan or policy.”⁹⁴

During the first eight NSC meetings under Eisenhower, Cutler worked to transform these guidelines and others into a “Report of the Recommendations on the National Security Council,” which he presented to Eisenhower before church on Sunday, March 22, 1953. Eisenhower approved the Cutler plan that morning.

The Cutler plan overhauled the NSC in two major ways. First, it transformed the NSC from a loosely organized entity into a formal system “with an elaborate network of committees and staff arrangements.”⁹⁵ Two key bodies were established, including a Planning Board and an Operations Coordinating Board (OCB). The Planning Board, described as the “engine” of the NSC,⁹⁶ developed policy recommendations in “a highly formalized and complex ‘policy paper production’ system,” which were then forwarded to the NSC.⁹⁷ The Planning Board, consistent with Eisenhower’s guidelines, consisted of Assistant Secretary-level officials who enjoyed “direct access to their department or agency heads.”⁹⁸ Topics for policy papers were suggested by “[a]lmost any official in the NSC system, from the President on downward.”⁹⁹ From there, the Planning Board might issue a preliminary staff study, followed by a first draft written by a lead-agency.¹⁰⁰ The Planning Board was ultimately responsible for the final products that reached the NSC.¹⁰¹

The OCB was officially established months later pursuant to E.O. 10483 to ensure coordinated implementation of national security policy.¹⁰² The OCB was the result of a study initiated by Eisenhower the day after his inauguration; it was built from the “wreckage” of the dismantled Psychological Strategy Board (PSB), where Cutler had served briefly as Deputy Director under Truman.¹⁰³ Truman had established the PSB in 1951 to “provide for the more effective

planning, coordination, and conduct within the framework of approved national policies, of psychological operations.” The PSB was generally composed of the Under Secretary of State, the Deputy Secretary of Defense, and the DCI. Although it was not formally a part of the NSC, the PSB’s Director attended NSC meetings and the PSB reported to the NSC. Cutler described the PSB as a “veritable mare’s nest”¹⁰⁴ and those involved with it could not “grasp the concept of a ‘psychological strategy’ that ran along beside the great elements of foreign and military policy like an independent fifth wheel.”¹⁰⁵

Unlike the PSB, the OCB functioned “as a kind of executive committee on the performance of national security policies.”¹⁰⁶ Once the President approved a policy recommended by the NSC, the OCB was responsible for coordinating and executing interagency aspects of developed plans. Membership of the OCB included the Under Secretary of State (Chairman), the Deputy Secretary of Defense, the Director of the Foreign Operations Administration (FOA), the DCI, and another designee. The Director of the U.S. Information Agency (USIA) was responsible for advising the OCB upon request.¹⁰⁷ Cutler later described the functioning of the OCB:

The Board met Wednesdays at a skimpy luncheon in a State Department private dining room, where only the members were present, to discuss and settle (if possible) most secret and “p” factor matters and then to adjourn for a two-hour meeting with the member’s deputies and others to review papers dealing with security policy performance, “country plans” to carry out security policies in detail, and performance reports to the National Security Council. The need and potential utility of some impartial mechanism or small group continuously to check on policy *performance* became more apparent every year.¹⁰⁸

Although the OCB was initially located outside of the official NSC substructure, Eisenhower issued E.O. 10700 in 1957 to embed the OCB within the NSC. The order also added the Director of the International Cooperation Administration (established in the intervening years) as a member of the OCB, and it allowed the President to designate the leadership of his choice.¹⁰⁹

Cutler described the Planning Board-OCB approach as the uphill and downhill sides of the “policy hill” process.¹¹⁰ By separating planning and operations, Eisenhower allowed each substructure to focus on a single phase of the national security process. Strategic planning capabilities were bolstered because policy planners were not responsible for managing day-to-day operations. Indeed, this was the basis for Eisenhower’s decision to split planning from operations. He “believed that those concerned with daily operations could not look over and across the horizon to be long-range strategists.”¹¹¹

The second significant impact of the Cutler plan was the establishment of the non-statutory position of National Security Advisor – technically named the Special Assistant to the President for National Security Affairs. As it sometimes happens in Washington, Cutler’s proposal led to his new job – the first National Security Advisor to the NSC. Cutler learned of this fact the morning Eisenhower approved his plan. Walking downstairs from the Lincoln Study, Eisenhower remarked, “I’m going to appoint you Special Assistant for National Security Affairs, so that you can put this Report into action.”¹¹² In this role, Cutler “oversaw the flow of recommendations and decisions up and down the policy hill, and functioned in Council meetings to brief the Council and summarize the sense of discussion.”¹¹³ The National Security Advisor was appointed by the President without Senate confirmation. He served as Chairman of the Planning Board and later the OCB, as well as eventually running the daily operations of the NSC. (NSC operations were initially overseen by General Andrew Goodpaster, the NSC Executive Secretary.)

Cutler initially maintained no formal supervisory role over NSC staff, but because “the NSC Staff needed a champion of substance to lead it into bureaucratic relevance,” and because the National Security Advisor needed staff support, “a marriage of convenience quickly occurred.”¹¹⁴ Thereafter, the National Security Advisor became the *de facto* leader of the NSC staff.

Over the years, the position of National Security Advisor grew in power and prestige with different National Security Advisors functioning in different roles. In some cases, the Advisor advocated particular policy preferences to the President, notwithstanding the

views of departments or agencies. In other cases, the Advisor served as an “honest broker” between the President and departments and agencies, seeking to present all options to the President as fully and accurately as possible.

Aside from these historic reforms to the NSC, Eisenhower also reformed other components of the national security system. Within months after taking office, for example, he transferred the functions of the NSRB to the ODM by E.O. 10438.¹¹⁵ Months later, he abolished the NSRB altogether and established a new version of the ODM through Reorganization Plan No. 3 of 1953.¹¹⁶ The functions of the Chairman of the NSRB, including his functions as a member of the NSC, were transferred to the Director of ODM.

Eisenhower also abolished the Munitions Board by Reorganization Plan No. 6 of 1953,¹¹⁷ and by Reorganization Plan No. 7 of 1953, he replaced the Mutual Security Agency with the FOA to coordinate all operations of foreign assistance programs.¹¹⁸ Notably, the functions of the Director for Mutual Security, as a member of the NSC, were transferred to the Director of FOA.

After Eisenhower’s initial reforms of 1953, therefore, NSC membership included the President, the Vice President, the Secretaries of State and Defense, the Director of ODM, and the Director of FOA. But the National Security Act was not formally amended and even today the Directors of Mutual Security and the NSRB are listed as statutory members of the NSC, despite their nonexistence.¹¹⁹

The 1953 reforms were undertaken as the Cold War strategy was being reconsidered. Three months after Eisenhower’s inauguration, Secretary of State John Foster Dulles invited several officials to his Washington home, including National Security Advisor Robert Cutler, Under Secretary of State “Beedle” Smith, Director of CIA Allen Dulles, and Special Assistant to the President C. D. Jackson. There, Secretary Dulles explained that “he had been exploring a thorough overhaul of the prior Administration’s basic national security policy.”¹²⁰ For the next hour, he sketched out three strategic options for winning the Cold War with such “close-knit eloquence” that Cutler and the others were “spellbound.”¹²¹ The following day, Cutler explained Dulles’s talk to the President, referring to it as “the most eloquent unfolding of the worldwide scene I ever heard.”¹²² Eisenhower agreed to meet with Dulles that week. The

meeting might have been held in the White House living quarters, but Mamie Eisenhower was scheduled to have guests on the day of the meeting. Therefore, Eisenhower suggested the Solarium room of the White House.¹²³

Secretary Dulles met with Eisenhower that week in the Solarium room as Mamie's canary chirped in the background to discuss the future of U.S. national security policy. Although Dulles's presentation was "less overwhelming" than it had been days prior, Eisenhower approved the idea – originally suggested by Beedle Smith – for three teams to vigorously argue for a specific strategic option for winning the Cold War. This became "Operation Solarium."

Team A argued for a continuation of the policy of containment and deterrence. Team B argued for essentially drawing a line in the sand that, if crossed, would result in armed conflict with the Soviets. Team C argued for a direct roll back of the Soviet empire by whatever means necessary. After six weeks of preparation at the National War College, the teams convened at the White House and argued their cases before Eisenhower and top national security advisers: "At the end [Eisenhower] stated his reasons for adopting the essentials of Team A's proposal and emphasizing that, in the absence of a direct attack on the United States, America would not go to war in Europe or elsewhere except as an ally of affected free nations."¹²⁴ This exercise reaffirmed the fundamental policy established under Truman: containment and deterrence, with some qualifications and supplementations.

On July 27, 1953, Eisenhower fulfilled his initial campaign promise when a cease-fire was declared on the Korean peninsula. The Korean War ended, and as world dynamics changed, Eisenhower and his NSC took a 'New Look' at the Soviet threat. In October 1953, the NSC adopted a new policy paper, NSC-162/2, which modified the Cold War strategy in light of Operation Solarium and the end of the Korean War. Although the modified strategy largely reaffirmed the policy of containment and deterrence, NSC-162/2 clearly elevated the import of nuclear deterrence. It stated that the United States must continue to develop and maintain "[a] strong military posture, with emphasis on the capability of inflicting *massive retaliatory damage* by offensive striking power In the event of hostilities, the United

States will consider nuclear weapons to be as available for use as other munitions.”¹²⁵ NSC-68 was never so bold; instead, it saw “atomic capabilities” as only one type of deterrent and even questioned whether atomic capabilities, possessed by two independent powers, would have a deterrent effect.

NSC-162/2 emphasized the need to balance military strength with economic strength. Prior to taking office, Eisenhower and his advisers had developed “The Great Equation,”¹²⁶ which sought to “maintain a sound economy based on free private enterprise as a basis both for high defense productivity and for the maintenance of its living standards and free institutions.” Fiscal policy, including less government spending and lower taxes, was tied directly to the long-term growth of the U.S. economy, which Eisenhower viewed as critical to winning the Cold War. Reflective of this integration of fiscal policy and foreign policy was an order by Eisenhower for the Budget Director and Secretary of Treasury to attend NSC meetings.

NSC-162/2 also envisioned a greater role for covert action in winning the Cold War. It encouraged the use of “covert measures to discredit Soviet prestige and ideology as effective instruments of Soviet power, and to reduce the strength of communist parties and other pro-Soviet elements.” It similarly urged “selective, positive actions to eliminate Soviet-Communist control over any areas of the free world.” Although covert action was not a new phenomenon, the language of NSC-162/2 and subsequent activities indicated that CIA, under Director Allen Dulles, would play a more prominent role in frustrating communism around the world. In 1953, for example, CIA undertook covert measures to overthrow Iranian Prime Minister Mossadeq and empower the Shah of Iran.¹²⁷ Action was also approved that led to the overthrow of the President of Guatemala in 1954 – the same year the *Komitiet Gosudarstvennoy Bezopasnosti* (KGB) was established by the Soviets.¹²⁸

Eisenhower issued NSC-5412 in 1954 to reaffirm CIA’s authority and responsibility for conducting covert actions in coordination with the Departments of State and Defense, and also to clarify the role of the NSC.¹²⁹ The OCB was identified as “the normal channel for coordinating support for covert operations among State, Defense, and the CIA.”¹³⁰ This changed the following year when Eisenhower

issued a nearly identical directive, NSC-5412/1,¹³¹ but designated “the Planning Coordination Group as the body responsible for coordinating covert operations,”¹³² rather than the OCB. Several months later, Eisenhower issued yet another directive, NSC-5412/2,¹³³ which “assigned to representatives . . . of the Secretary of State, the Secretary of Defense, and the President responsibility for coordinating covert actions.”¹³⁴ This latter group became known as the ‘5412 Committee’ or the ‘Special Group.’ Membership varied depending on the circumstances and “[m]eetings were infrequent until 1959 when weekly meetings began to be held.”¹³⁵

In the years following the adoption of NSC-162/2, U.S. policy toward the Soviet Union began to solidify in many respects and the NSC became a stable institution in its own right. Eisenhower was in the midst of demonstrating the potential of the NSC as not merely a useful entity, but as a robust institution.

For the duration of the Eisenhower administration, only a few substantive changes to the NSC occurred. Due to a prior sunset provision, for example, the Director of FOA was eliminated as a member of the NSC, and through E.O. 10610, the functions and offices of FOA were transferred to the State Department.¹³⁶ In addition, when Eisenhower consolidated the ODM and Federal Civil Defense Administration in 1958 to form the Office of Civil and Defense Mobilization (OCDM),¹³⁷ the functions of the Director of ODM as a member of the NSC were transferred to the Director of OCDM.¹³⁸ By the end of Eisenhower’s presidency, therefore, NSC membership generally included the President, the Vice President, the Secretaries of State and Defense, and the Director of OCDM.

Another major change to the national security system occurred in 1958 when Congress passed the Department of Defense Reorganization Act,¹³⁹ the most significant reform of the military services since the National Security Act of 1947 and the 1949 amendments, to further unify the military chain of command. Among other things, the act eliminated the Departments of the Army, Navy, and Air Force from the chain of operational command, and unified the chain of command in the Secretary of Defense through the JCS. As Eisenhower explained in a message to Congress:

If ever again we should be involved in war, we will fight it in all elements, with all services, as one single concerted effort. Peacetime preparatory and organizational activity must conform to this fact. Strategic and tactical planning must be completely unified, combat forces organized into unified commands, each equipped with the most efficient weapons systems that science can develop, singly led and prepared to fight as one, regardless of service.¹⁴⁰

Under Eisenhower, the NSC became a powerful hub of U.S. national security policy. It was central to Eisenhower's decision-making process and he rarely missed a meeting. But Eisenhower's reliance on the NSC led to concerns that it was becoming too bureaucratic. On April 16, 1959, for example, Senator Henry "Scoop" Jackson, Chairman of the Senate Government Operations Subcommittee on National Policy Machinery, gave a speech at the National War College in which he characterized Eisenhower's NSC system as "a dangerously misleading façade."¹⁴¹ He argued that the proper role of the NSC was not policy planning, but rather "to criticize and evaluate Departmental planning and proposals in light of the knowledge, interests, and possibly conflicting policies of other Departments." He believed that, due to other commitments, members of the NSC lacked the time necessary to "thoroughly consider or think deeply about plans." He viewed NSC plans as a series of watered-down compromises that lacked internal consistency: "An NSC paper is commonly so ambiguous and so general that the issues must all be renegotiated when the situation to which it was supposed to apply actually arises." He even quoted Henry Kissinger as remarking, "[i]t is as if in commissioning a painting, a patron would ask one artist to draw the face, another the body, another the hands, and still another the feet, simply because each artist is particularly good in one category." Jackson concluded by calling for the first non-partisan congressional review of the NSC's role in policy formulation.

In the final month of Eisenhower's administration, the Jackson Subcommittee released a report based on its congressional review. The report diagnosed the existing NSC system as a large bureaucratic machine that had become too focused on protecting departmental interests, and void of innovation.¹⁴² It identified two approaches the next President could take with regard to the NSC. First, the NSC

could be an “intimate forum” where the President could discuss and debate “critical problems involving long-term strategic choices or demanding immediate action” with his chief advisers.¹⁴³ Alternatively, the NSC could be viewed “as the apex of a comprehensive and highly institutionalized system for generating policy proposals and following through on presidentially approved decisions.”¹⁴⁴ The first approach, according to the Subcommittee, constituted the “real worth” of the NSC to a President, which was undermined by the elaborate system Eisenhower had constructed. Therefore, the report recommended replacing the Planning Board with a less powerful board or relying more heavily on informal working groups or outside consultants. In addition, the report concluded that “[t]he case for abolishing the OCB is strong Responsibility for implementation of policies cutting across departmental lines should, wherever possible, be assigned to a particular department or to a particular action officer, possibly assisted by an informal interdepartmental group.”¹⁴⁵ This represented a classic “lead-agency” approach to interagency coordination.

Some modern scholars – with a view of 40 years of subsequent history – have since explicitly or implicitly challenged the critique of Jackson’s Subcommittee. Fred Greenstein and Richard Immerman, for example, published an article in 2000 urging the recovery of the Eisenhower legacy.¹⁴⁶ They argued that “[j]ust as Eisenhower’s contemporary critics belittled his political skills, they also deprecated the organizational machinery he instituted for making national security policy.”¹⁴⁷ They further argued that Eisenhower’s critics lacked “direct knowledge” of the workings of his NSC system, and “[t]hose who did observe it told a very different story.”¹⁴⁸ They quoted Clarence Randall, an observer of Eisenhower’s NSC, as stating: “Never have I seen a group of men keener, more sensitive in their instinct to understand what was said, more sympathetic to a presentation, or more penetrating in their questions.”¹⁴⁹ Nevertheless, the Jackson Subcommittee’s report had a significant and immediate impact on the NSC system when John F. Kennedy took office in 1961.

3. DECONSTRUCTION

When John F. Kennedy became President in 1961, fourteen years after the creation of the NSC, he largely adopted the recommendations of Jackson's Subcommittee. The Kennedy administration erased the distinction between planning and operations by abolishing the Planning Board and, pursuant to E.O. 10920, the OCB.¹⁵⁰ McGeorge Bundy, Kennedy's National Security Advisor, argued "that the President's interests and purposes can be better served if the staff officer who keeps in daily touch with operations in a given area is also the officer who acts for the White House staff in related planning activities."¹⁵¹

This deconstruction was attributable to Kennedy's fundamental view of the NSC as an institution. Unlike Eisenhower, Kennedy did not view the NSC as the central forum for presidential decision-making. Bundy, wrote to Senator Jackson: "[T]he National Security Council has never been and should never become the only instrument of counsel and decision available to the President in dealing with the problems of our national security."¹⁵² In fact, Kennedy relied on his NSC very little and never constructed an alternative NSC "system". In 1961, Robert Cutler bumped into one of Kennedy's assistants, who stated that the Kennedy administration had intended to first dismantle Eisenhower's NSC and, second, to construct a new NSC. The assistant added, "We've been so damn busy since we got down here, Bobby, that we've never had time to get on with that second step."¹⁵³

Kennedy's diminished reliance on the NSC resulted in several changes. Influence over national security policy shifted to the State Department, NSC meetings were held less frequently, and NSC staff was reduced. Kennedy transformed the NSC staff "from servants of the *presidency* to those of *the President*. Staff became Kennedy's eyes and ears, no longer disinterested mediators working to push papers up to the NSC level."¹⁵⁴ The National Security Advisor, for his part, began to oversee daily operations and his office was moved from the Executive Office Building to the White House, where it remains today.

Instead of relying on formal substructures and processes, Kennedy largely relied on ad hoc arrangements that emerged from particular

crises or other pressing needs. This was the case, for example, in the Bay of Pigs debacle of April 1961, an operation largely inherited from Eisenhower's administration. As a result of the Bay of Pigs, Kennedy created the Situation Room in the White House to provide the President and his advisers with real-time information and communication capabilities so the President would no longer be held "hostage to the information and analysis that was provided to him by cabinet agencies."¹⁵⁵

Other changes were made to the national security system in 1961. Kennedy created, for example, the President's Foreign Intelligence Advisory Board (PFIAB) pursuant to E.O. 10938, a continuation of the President's Board of Consultants on Foreign Intelligence Activities established by Eisenhower in 1956, to advise the President on the objectives and conduct of the foreign intelligence.¹⁵⁶ Every President has continued the use of PFIAB, with the exception of Jimmy Carter. Other significant institutions also emerged, including the Defense Intelligence Agency (DIA),¹⁵⁷ the Arms Control and Disarmament Agency (ACDA),¹⁵⁸ and the Agency for International Development (AID).¹⁵⁹

NSC membership also technically changed when the OCDM was redesignated as the Office of Emergency Planning.¹⁶⁰ Under Kennedy, therefore, NSC membership generally included the President, the Vice President, the Secretaries of State and Defense, and the Director of the Office of Emergency Planning.

A year and a half after the Bay of Pigs, the Cold War came to a head when U.S. intelligence discovered Soviet missile sites in Cuba. Unlike the Bay of Pigs, Kennedy moved quickly to establish a formal committee structure to handle the crisis, thus marking a significant change in Kennedy's approach to contingencies. Kennedy issued National Security Action Memorandum (NSAM) 196, a type of presidential directive that evolved from NSC policy papers under Truman and Eisenhower,¹⁶¹ to establish an Executive Committee, or "ExComm." The committee was stood-up "for the purpose of effective conduct of the operations of the Executive Branch in the current crisis."¹⁶² The committee, which met every morning in the Cabinet room, was composed of statutory members of the NSC, as well as the Secretary of Treasury, the Attorney General, the DCI,

the Under Secretary of State, the Deputy Secretary of Defense, the Chairman of the JCS, the Ambassador-at-large, the Special Counsel, and the National Security Advisor. It met 37 times during the two-week crisis.¹⁶³

Aside from the Bay of Pigs and the Cuban Missile Crisis, another major foreign policy dilemma began to escalate during Kennedy's administration: Vietnam. Consistent with the 'domino theory,' some experts within the U.S. government viewed Vietnam as a critical geographic area in the fight against communism. Others, like Under Secretary of State George Ball, warned against the consequences of military action in Vietnam. Nonetheless, by the time Kennedy was assassinated, the United States was sending troops to Vietnam, setting the stage for one of the most strategically challenging wars in U.S. history.

After Kennedy's assassination, President Lyndon B. Johnson took Kennedy's informal and ad hoc approach to national security decision-making to a new level, leading Kissinger to describe Johnson's NSC as no longer "a decision-making instrument."¹⁶⁴ Instead of formal meetings, Johnson met with his principal national security advisers over Tuesday lunch. Attendees at these lunches initially included statutory members of the NSC and the National Security Advisor, but the group gradually expanded to include the DCI, the Chairman of the JCS, and even Johnson's Press Secretary.¹⁶⁵ There was often no formal agenda or follow-up, and decisions were simply conveyed orally to departments and agencies.¹⁶⁶

In the initial years of his presidency, Johnson modified NSC substructures in two ways. First, he changed the name of the '5412 Committee,' established by Eisenhower to review and recommend covert actions, to the '303 Committee.' The new directive did not modify functions or responsibilities of the committee. Like most prior and subsequent covert action committees, it was named after the directive that created it – NSAM-303. Second, he issued NSAM-327 to abolish the Net Evaluation Subcommittee,¹⁶⁷ established within the NSC in the mid-1950s to prepare annual studies of a potential nuclear war with the Soviet Union.¹⁶⁸

The Vietnam War was the central issue during the Johnson presidency. Johnson's Tuesday lunch group, in particular, became consumed

with Vietnam in the years following passage of the Gulf of Tonkin Resolution. It was in this context that Johnson largely divested the NSC of any remaining interagency coordinating functions for policy development and implementation.¹⁶⁹

In March 1966, Johnson issued NSAM-341, drafted by General Maxwell Taylor, delegating authority for coordinating interdepartmental activities abroad to the Secretary of State.¹⁷⁰ The directive specifically assigned to the Secretary “authority and responsibility to the full extent permitted by law for the overall direction, coordination and supervision of interdepartmental activities of the United States Government overseas.” It established a Senior Interdepartmental Group (SIG), as well as Interdepartmental Regional Groups (IRGs). The SIG was “immediately subordinate to the NSC” and was designed to assist the Secretary of State with interdepartmental matters that could not be dealt with at lower levels or through existing procedures.¹⁷¹ This assistance included: ensuring that important interdepartmental foreign policy issues received due and prompt consideration; assuring proper resource allocation; assuming the duties of the former Special Group (counterinsurgency), which was abolished; and conducting periodic reviews of interdepartmental overseas programs. Membership included the Under Secretary of State (Chairman), the Deputy Secretary of Defense, the Administrator of AID, the DCI, the Chairman of the JCS, the Director of USIA, and the National Security Advisor. According to one account, the SIG was notable because “it established the precedent of a high-level committee to do much of the work of the NSC – a mini-NSC of sorts. This function was to be carried forward into every succeeding administration.”¹⁷²

IRGs were responsible for ensuring the adequacy of U.S. policy for the countries in their region and the plans, programs, resources and performance for implementing that policy. IRGs were established for each geographic region corresponding to the jurisdiction of the geographic bureaus in the State Department. Each IRG was composed of a regional Assistant Secretary of State (Chairmen), and designated representatives from the Department of Defense, AID, CIA, the JCS, USIA, and the White House or NSC staff.

The ‘Taylor Plan’ initially struggled. The SIG failed to meet from July to December of 1966, and a new budgeting system faltered. CIA

and embassy staffs also resisted change. Nonetheless, the President's Task Force on Foreign Affairs Organization endorsed the underlying purpose of NSAM-341 and a later SIG staff study concluded that the existing structure could function effectively with unambiguous support from the highest levels of government.¹⁷³

According to one source, Johnson's increased reliance on the State Department initially led "to a certain atrophy of the NSC staff, as well as a slight diminution in the role and influence of the national security adviser."¹⁷⁴ But as Vietnam escalated, the National Security Advisor began to assume additional responsibilities, including speaking publicly on behalf of the administration, and even becoming something of a "diplomatic trouble shooter."¹⁷⁵ Bundy traveled to Vietnam on a fact-finding mission, for example, as well as to the Dominican Republic after U.S. intervention. This activist role was contrary to Robert Cutler's original understanding of the proper role of the National Security Advisor. If an issue needed to be disclosed, Cutler believed the President "should make the disclosure."¹⁷⁶ Cutler had agreed never to talk in public or with the press about the substance of Council operations, without direct presidential approval.

NSC membership technically changed in the last year of Johnson's administration when Congress passed a statute redesignating the Office of Emergency Planning as the Office of Emergency Preparedness.¹⁷⁷ Therefore, by the end of the Johnson administration, NSC statutory membership consisted of the President, Vice President, Secretaries of State and Defense, and the Director of the Office of Emergency Preparedness.

In the end, the significance of the NSC under Kennedy and Johnson could properly be characterized as minimal: "At best, the NSC was used by Kennedy and Johnson for educational, ratification, and ceremonial purposes."¹⁷⁸ In other words, it was "sharply reduced as an advisory body."¹⁷⁹ The most significant legal development affecting the NSC under Johnson was the issuance of NSAM-341, but Johnson's successor quickly transformed the directive from an ambitious reform plan into a stale artifact of an old administration.

4. THE BRIDGE

Richard M. Nixon's 1968 campaign for President was remarkably similar to Eisenhower's campaign of 1952. Both men ran against Democrat incumbents who were waging difficult wars in Asia as part of an overarching strategy for winning the Cold War. Nixon, like Eisenhower in the case of Korea, promised to end the Vietnam War. "New leadership will end the war and win the peace in the Pacific," declared Nixon.¹⁸⁰

In light of Johnson's divestiture of NSC coordinating functions to the State Department, Nixon promised to "restore the National Security Council to its prominent role in national security planning."¹⁸¹ This is perhaps unsurprising considering Nixon, as Vice President under Eisenhower, spent eight years as a member of the Nation's most powerful NSC. Nixon was, in fact, the only President by that time who had served as a member of the NSC prior to taking office.

Nixon and Eisenhower also shared another significant asset: a trusted aide with ideas. It may be said that Henry Kissinger was to Nixon what Bobby Cutler was to Eisenhower, and perhaps more. In December 1968, prior to taking office, Nixon appointed Kissinger as National Security Advisor. Later that month, Kissinger presented a plan for reorganizing the NSC. The plan contrasted the NSC models adopted by Eisenhower and Johnson and sought to maximize the strengths of each. The informal and ad hoc approach taken by Johnson, for example, provided flexibility and speed. Eisenhower's formal and systemic approach, on the other hand, allowed for "fully staffed papers" and provided "all interested parties a hearing." Kissinger did not directly address the merits of Eisenhower's decision to split planning and operations. Kissinger synthesized the Eisenhower and Johnson models into a new vision for the NSC:

The National Security Council should be the principal forum for issues requiring interagency coordination, especially where Presidential decisions of a middle and long-range nature are involved. It should meet regularly, and discussion should be limited to agenda subjects. The Assistant to the President for National Security Affairs – at

the direction of the President and in consultation with the Secretary of State – should be responsible for determining the agenda and ensuring that the necessary papers are prepared – normally by the responsible departments. The NSC staff should assist by synthesizing and sharply defining the options, and occasionally by providing an independent staff study. To keep the meetings small, only principals should attend (with the possible exception of the Under Secretary of State).¹⁸²

The contours of Kissinger's proposed plan entailed four new NSC substructures. First, a Review Group would function as a filtering mechanism between the departments and the NSC. It "would examine papers prior to their consideration by the NSC," and it would "frame the issues to be decided by the NSC, not to achieve a compromise or consensus which hides alternatives."¹⁸³ Second, an Ad Hoc Under Secretary's Committee would "deal with matters referred to it by the NSC Review Group."¹⁸⁴ Third, existing IRGs would be reconstituted as sub-organs of the NSC to decide low-level implementation issues and to prepare policy papers and crisis contingency papers for NSC review. Fourth, ad hoc working groups would handle problems not of a geographic nature and to develop policy alternatives for the NSC. Outside experts would also assist the NSC in policy deliberations.

Kissinger also proposed new procedures. For example, NSC memoranda would be divided into two series. National Security Study Memoranda (NSSM) would direct the NSC staff to prepare studies for NSC consideration.¹⁸⁵ National Security Decision Memoranda (NSDM) would succeed the Kennedy/Johnson NSAMs to explicitly report presidential decisions to departments and agencies. NSC staff would also prepare an annual NSC review of the international landscape, modeled on the annual economic message.

Under the Kissinger plan, NSC staff would be divided into programs, operations, and planning. Assistants for programs would be responsible for preparing studies on the long-term implications of major policy issues. Operations staff would consist of five senior members, each of whom would be responsible for alerting the National Security Advisor to important matters affecting a particular assigned geographic region or function. Planning staff would prepare,

synthesize, and provide follow-up on NSC agenda papers. Kissinger also proposed utilizing a military assistant to aid the development of policy papers affecting military issues. The NSC staff ultimately “dramatically expanded” to more than 50 professionals under Nixon, which allowed staff “to extend its functional responsibilities to such a degree that it assumed the dominant role among the various government agencies concerned with national security.”¹⁸⁶

It did not escape Kissinger that the State Department was likely to object to a plan that rolled-back the State-friendly reforms made by NSAM-341. So he addressed this concern by providing the President with arguments and counterarguments for a State-centered system in his initial memorandum to Nixon. In support of a State-centered system, Kissinger argued that the State Department already maintained “experienced personnel, with geographical and functional structures established to cover the various areas and issues which arise in the conduct of foreign relations.” Alternatively, the Secretary of State needed authority over other departments to “pull together foreign policy positions.”

In opposition to a State-centered system, Kissinger argued that the State Department was simply “unable to take the lead in managing interagency affairs” because the Department’s staff was “inadequate to the task of planning or of management.” The Department had demonstrated a “consistent failure to utilize its own Policy Planning Council adequately” and the Department had proved unable “to manage operations,” evidenced by the Vietnam experience. Kissinger also argued that the President’s interests would be inadequately protected with a State-centered system: “The only way the President can ensure that all options are examined, and all the arguments fairly presented, is to have his own people – responsive to him, accustomed to his style, and with a Presidential rather than departmental perspective – oversee the preparation of papers.” And, in any event, Kissinger believed his plan already provided “an adequate role for the State Department.”

Nixon issued NSDM-2, the legal shell containing the substance of Kissinger’s plan (with a few modifications), on inauguration day and over the State Department’s objections. NSDM-2 reorganized the NSC by establishing a Review Group and an Under Secretaries

Committee, while reconstituting particular Interdepartmental Groups (IGs).¹⁸⁷ Ad hoc groups would be used as appropriate to deal with particular problems, such as those transcending regional boundaries. NSC membership was limited to statutory members, which then included the President, Vice President, Secretaries of State and Defense, and the Director of the Office of Emergency Preparedness. The National Security Advisor set the NSC agenda, a responsibility described as “a potentially powerful tool in managing national security affairs.”¹⁸⁸ Unlike Kissinger’s original plan, NSDM-2 did not detail the organization of NSC staff, and it referenced the NSC as “*the* principal forum for consideration of policy issues,” as opposed to “*a* principal forum.”

As forecasted in the original plan, NSDM-2 established the Review Group as a filtering mechanism between the departments and the NSC. The Review Group would examine and prioritize policy papers prior to their submission to the NSC, include alternatives for the NSC, and fact check. This would address the Jackson Subcommittee’s prior criticism that the principals were simply too busy to address all of the issues that came before them. The Review Group consisted of the National Security Advisor (Chairman) and representatives of the Secretaries of State and Defense, the DCI, and the Chairman of the JCS. (Kissinger’s original plan would have made the *heads* of departments and agencies members of the group.) The Review Group could also task the IGs or ad hoc groups.

The Under Secretaries Committee was established to consider issues referred by the Review Group, matters pertaining to interagency activities abroad,¹⁸⁹ and other operational issues referred jointly by the Under Secretary of State and National Security Advisor. It consisted of the Under Secretary of State (Chairman), the Deputy Secretary of Defense, the National Security Advisor, the DCI, and the Chairman of the JCS.

Under NSDM-2, Nixon also reconstituted existing Interdepartmental Regional Groups and the existing Political-Military Interdepartmental Group, chaired by the appropriate Assistant Secretary of State.¹⁹⁰ These groups were responsible for discussing and deciding interdepartmental issues that could be resolved at the Assistant Secretary-level, to prepare policy papers, and to prepare contingency

papers on potential crisis areas. Regional groups were composed of the agencies represented on the Review Group.

In the initial years of the Nixon administration, several additional entities were established. Just four months into the Nixon administration the North Koreans shot down an American EC-121 on a reconnaissance mission over the Sea of Japan, killing all 31 Americans on board. This incident led to the establishment of the Washington Special Action Group (WSAG), created by a Kissinger memorandum dated May 16, 1969.¹⁹¹ The WSAG was composed of the National Security Advisor (Chairman), the Deputy Secretaries of State and Defense, the Chairman of the JCS, and the DCI. The purpose of the WSAG was to consider crisis and contingency policies and plans. It met approximately 150 times in Nixon's first term. Nixon later described the WSAG in a report to Congress:

This group drafts contingency plans for possible crises, integrating the political and military requirements of crisis action. The action responsibilities of the departments of the Government are planned in detail, and specific responsibilities assigned in an agreed time sequence in advance. While no one can anticipate exactly the timing and course of a possible crisis, the WSAG's planning helps insure that we have asked the right questions in advance, and thought through the implications of various responses.¹⁹²

The forethought and planning involved in WSAG deliberations was reportedly impressive: "[E]ven today, senior policymakers look back on the Kissinger era as a halcyon time for planning ahead and anticipating change."¹⁹³

Months after the creation of WSAG, on October 11, 1969, Nixon issued NSDM-26 to establish a Defense Program Review Committee (DPRC).¹⁹⁴ It was responsible for reviewing diplomatic, military, political, and economic consequences of issues resulting from: proposals to change defense strategy, programs and budgets; proposals to change overseas force deployments and committed forces based in the U.S.; and major defense policy and program issues raised by NSC studies.¹⁹⁵ The committee generally consisted of the National Security Advisor (Chairman), Under Secretary of State,

Deputy Secretary of Defense, the DCI, the Chairman of the JCS, the Chairman of the Council of Economic Advisors, and the Director of the Bureau of the Budget. According to a 1972 staff memorandum, however, the DPRC turned out to be “a real disappointment because of its inability to come to grips with significant issues.”¹⁹⁶

On February 17, 1970, Nixon issued NSDM-40 to establish the 40 Committee to approve “all major and/or politically sensitive covert action programs.”¹⁹⁷ The directive, which expressly superseded NSC-5412 issued by Eisenhower,¹⁹⁸ clarified that the DCI was responsible for the coordination and control of covert action programs, as well as the preparation of annual reviews. The committee consisted of the National Security Advisor (Chairman), the Attorney General, the Under Secretary of State for Political Affairs, the Deputy Secretary of Defense, and the DCI. Although the committee met regularly at the outset of the Nixon administration, formal meetings later declined, business began to be conducted via couriers and telephone votes, and it “actually met only for major new proposals.”¹⁹⁹

Although most of the original substructures established in NSDM-2 subsisted throughout the Nixon administration, the Review Group was an exception. In September 1970, Nixon issued NSDM-85 to reestablish the original Review Group as the Senior Review Group. Membership remained the same, but the new directive specified that representatives of the Departments of State and Defense would specifically consist of the Under Secretary of State and Deputy Secretary of Defense, respectively. Like the original group, the Senior Review Group would review papers prior to NSC consideration. Papers could be received from the IGs, ad hoc groups, or even the departments themselves, and the group retained its tasking authority. The Senior Review Group met most frequently of any NSC substructure.²⁰⁰

In November 1971, Nixon also created the NSC Intelligence Committee.²⁰¹ The committee was “charged with advising the President on the quality, scope, and timeliness of the intelligence input to Presidential decision and on the steps to improve it.”²⁰² In other words, it was established to “provide improved review and guidance from senior [intelligence] consumers.”²⁰³ It consisted of the

same members as the Senior Review Group.²⁰⁴ But a year after it was established, the committee had met only once.²⁰⁵

Throughout Nixon's first term, a staged withdrawal of forces from Vietnam had been occurring with the hope of "turning over the responsibility for ground combat operations in Vietnam to the South Vietnamese government and army."²⁰⁶ When Nixon took office, there were more than 500,000 U.S. troops in Vietnam. By January 1973, when the Paris Peace Accords were signed, troop levels had fallen to 21,500.²⁰⁷ Nixon addressed the nation on January 23, 1973, announcing the end of the Vietnam War and attempting to fulfill his initial campaign promise to bring forth "peace with honor."

Months after the Paris Peace Accords were signed, Reorganization Plan No. 1 of 1973 abolished the functions of the Director of the Office of Emergency Preparedness as a member of the NSC.²⁰⁸ Over the next decades statutory membership consisted of the President, Vice President, the Secretary of State, and the Secretary of Defense. The DCI and Chairman of the JCS continued to function as statutory advisers. Congress later authorized other officials to attend and participate in NSC meetings, subject to the direction and control of the President.²⁰⁹

By the time President Gerald R. Ford took office, the presidency was in a weakened state. Watergate and Nixon's resignation cast a cloud over the propriety of many of the activities being conducted out of the nation's highest office. The Vietnam War, too, had led the American people to question and even distrust the judgment of top governmental officials. This translated into increased tensions between the people's representatives in Congress and the presidency itself. The President, the NSC, and certain components of the national security system, faced heightened congressional scrutiny. Congress had already passed the War Powers Resolution over Nixon's veto,²¹⁰ which pushed – if not crossed – the limits of Congress's constitutional authority to control particular executive actions abroad. Among other things, it set timetables for the use of force abroad and it mandated the removal of forces from hostilities upon passage of a concurrent resolution. Nixon claimed the resolution was a dangerous infringement on executive powers and was an "attempt to take away, by a mere legislative act, authorities which the President has properly

exercised under the Constitution for almost 200 years.”²¹¹ Subsequent Presidents have generally taken the same view.

In 1974, Congress also passed arguably the most radical legislation affecting intelligence operations in American history – the Hughes-Ryan amendment to the Foreign Assistance Act of 1961.²¹² The legislation, prompted by concerns over actions in Chile, prohibited covert actions unless the President issued a finding that an operation was important to national security and a description of the operation was timely reported to congressional committees, which numbered six at the time.²¹³ This marked Congress’s first successful attempt to substantively limit the scope of intelligence operations and to statutorily require disclosure of particular operations.

Then, in December 1974, months after Ford took office, *The New York Times* published an article alleging that CIA had “conducted a massive illegal domestic intelligence operation during the Nixon Administration against the antiwar movement and other dissident groups in the United States.”²¹⁴ Congress initiated parallel House and Senate investigations into the domestic activities of U.S. intelligence agencies, ultimately leading to the creation of the House and Senate intelligence committees. Shortly thereafter, Senators John Tunney and Dick Clark offered two separate amendments that terminated funding for operations against communists in Angola, who were being supported by the Soviets and Cuba. This marked the first time Congress terminated funding for covert action.²¹⁵ “The two amendments represented the high point of a congressional revolt against the anti-Communist ethos of the Cold War and executive authority in foreign policy.”²¹⁶

This is all to say that this period transformed Legislative and Executive Branch relations, and the U.S. national security establishment faced a new, powerful (and perhaps justifiable) dynamic: increased congressional distrust of, and involvement in, national security affairs.

Throughout this tumultuous period, President Ford tried to maintain a level of normalcy not only throughout the Executive Branch at large, but within the NSC in particular. The day of Nixon’s resignation, for example, Ford issued NSDM-265 to maintain existing NSC substructures and procedures established by NSDM-2, as

amended.²¹⁷ Ford even kept Nixon's NSC staff, including Kissinger, who was serving a dual-hatted role as National Security Advisor and Secretary of State. Ford eventually replaced Kissinger as National Security Advisor in 1975 when he appointed General Brent Scowcroft to the post. Kissinger remained as Secretary of State.

Although NSDM-265 was the first legal development to affect the NSC during Ford's administration, there would be two other notable events during his short tenure. The first was his veto of S. 2350 on December 31, 1975, which sought to amend the National Security Act of 1947 to add the Secretary of Treasury as a member of the NSC.²¹⁸ In his letter to the Senate, Ford referred to the bill as both "undesirable as well as unnecessary."²¹⁹ Since the original act provided the President with authority to add members to the NSC, and since the President could always invite additional officers to participate in NSC meetings, Ford believed that "existing arrangements provide for adequate participation of the Secretary of the Treasury in National Security Council matters."²²⁰

The second and most significant development to affect not only NSC substructures, but U.S. intelligence generally, was Ford's issuance of E.O. 11905.²²¹ The order, issued after the conclusion of the Murphy²²² and Rockefeller Commissions, constituted the first public executive order to govern intelligence activities. It established the Intelligence Oversight Board to conduct Executive Branch oversight of intelligence activities and it contained – for the first time – explicit limitations on the collection of foreign intelligence, particularly related to U.S. persons.²²³ But the order also directly impacted NSC activities. It required the NSC to provide guidance and direction for the development and formulation of national intelligence activities. Additionally, the NSC was ordered to conduct a semi-annual review of intelligence policies and ongoing "special activities" in support of U.S. foreign policy, in consultation with other users of intelligence.

Most notably, E.O. 11905 abolished existing NSC intelligence committees and established two new entities. First, it established the Committee on Foreign Intelligence (CFI) to establish policy priorities for the collection and production of national intelligence and to control budget preparation and resource allocation for the National Foreign Intelligence Program.²²⁴ The CFI reported directly

to the NSC. Membership included the DCI (Chairman), the Deputy Secretary of Defense for Intelligence, and the Deputy National Security Advisor. The CFI was supported by intelligence community staff, headed by the Deputy DCI. Second, an Operations Advisory Group (“Operations Group”), the successor to the 40 Committee, was created to consider and develop policy recommendations, including dissents, to the President regarding each “special activity.” The Operations Group was ordered to conduct periodic reviews of programs and to approve specific sensitive intelligence collection operations. Membership included the National Security Advisor, the Secretaries of State and Defense, the Chairman of the JCS, and the DCI. The Chairman was designated by the President, and representatives of the Attorney General and the Director of OMB were required to observe the meetings. NSC staff supported the Operations Group. These reforms were instituted in the last year of Ford’s presidency and, consistent with prior practice, the next administration quickly overrode these reforms.

By the end of the Nixon and Ford administrations, the NSC system had been revitalized as the principal forum for presidential consideration of national security policy. Although some scholars attribute this to particular personalities involved, other scholars believe this revitalization had far more to do with the increasing scope of U.S. national security. As described by one author, greater reliance on the NSC system reflected the government’s recognition “that the scope of issues impacting on the security of the nation ranged far beyond the purview of a single department and that only the White House could effect the coordination demanded by the mounting complexity of the international system.”²²⁵ But if the scope of national security responsibilities was widening, centralization was not the only solution, evidenced by the next administration.

5. SIMPLE AND CLEANER

Zbigniew Brzezinski, like Henry Kissinger, was a foreign-born immigrant to the United States and a former Harvard professor steeped in studies of international relations and foreign policy, particularly related to the Soviet Union. He served as chief foreign policy adviser during Jimmy Carter's successful presidential campaign of 1976, and was subsequently appointed National Security Advisor. Brzezinski was the first National Security Advisor to be elevated to Cabinet-level status, although he later admitted that Cabinet meetings "were just awful" and he would bring in the morning paper to read "because it was a waste of time."²²⁶

Like Kissinger, Brzezinski presented Carter with a plan for reorganizing the NSC prior to inauguration. His plan called for seven different NSC committees, but Carter rejected the plan, insisting instead on "a simple, cleaner structure."²²⁷

Upon taking office, Carter changed the NSC nomenclature by renaming Nixon's NSDMs as Presidential Directives (PD), and renaming NSSMs as Presidential Review Memoranda (PRM). Carter then issued PD-2 to "place more responsibility in the departments and agencies,"²²⁸ exactly what Nixon had avoided. As a result, attendees of NSC meetings expanded under Carter and included not only statutory members, but also the Secretary of the Treasury, the Attorney General, the U.S. Representative to the United Nations, the Director of the Office of Management and Budget (OMB), the National Security Advisor, the Chairman of the Council of Economic Advisers, the Director of the Arms Control and Disarmament Agency, the Chairman of the JCS, the DCI, and the Administrator of the Energy Research and Development Administration. Most non-statutory members would attend NSC meetings only as "appropriate", depending on the subject matter of deliberations. NSC staff was also reduced.²²⁹

PD-2 replaced the committees established by NSDM-2 with a Policy Review Committee (PRC), a Special Coordination Committee (SCC), IGs, and ad hoc groups. The PRC was established to develop policy in areas "where the basic responsibilities fall primarily within a given department but where the subject also has important implications for

other departments and agencies.” More specifically, it was responsible for: foreign policy issues that contained significant military or other interagency aspects; defense policy issues with international implications and the coordination of the annual defense budget with foreign policy objectives; the preparation of a consolidated national intelligence budget and resource allocation for the intelligence community; and international economic issues pertinent to U.S. foreign policy and security. According to Brzezinski, the PRC essentially dealt with “long-range policy issues and would be chaired by a Secretary.”²³⁰ Membership included statutory members of the NSC, the National Security Advisor, and other senior officials.

The SCC, on the other hand, was established to handle “cross-cutting issues requiring coordination in the development of options and the implementation of Presidential decisions.” It was chaired by the National Security Advisor and consisted of statutory members of the NSC (or their representatives) and other senior officials. The SCC was responsible for the oversight of sensitive intelligence activities, including covert operations, arms control evaluation, and crisis management assistance.

PD-2 retained existing IGs under the direction of the PRC, but they “were not formally constituted or used to any large extent.”²³¹

Like Kennedy and Johnson, Carter instituted informal NSC procedures. Instead of Tuesday lunches, for example, Carter opted for Friday breakfasts where he could discuss pressing issues affecting the NSC and foreign relations with the Vice President, Secretary of State, and the National Security Advisor – although others eventually attended as well, including the Secretary of Defense.²³² Brzezinski also initiated his own weekly lunches with the Secretaries of State and Defense “to resolve issues that did not require the attention of a formal PRC or SCC meeting.”²³³ According to Brzezinski, these lunches became “an important mechanism, relieving us of the obligation to hold special PRC or SCC meetings, which always took more time.”²³⁴

Consistent with Carter’s desire for a “simple, cleaner structure,” he abolished the separate NSC intelligence committees established by Ford when he issued E.O. 11985.²³⁵ The order did not abolish the functions of the committees, but instead, utilized the PRC and SCC

for those functions. The PRC took over the functions of the CFI and, when meeting to discuss intelligence matters, it consisted of the DCI (Chairman), the Deputy Secretary of Defense, the Deputy National Security Advisor, and a senior representative of the Secretary of State. The SCC also took over the functions of the Operations Group. When meeting for these purposes, as it did during the Iranian hostage crisis, it consisted of the National Security Advisor (Chairman), the Secretaries of State and Defense, the DCI, and the Chairman of the JCS. The Attorney General and the Director of OMB would also observe the meetings.

A year into his presidency, Carter issued E.O. 12036 which superseded Ford's E.O. 11905 governing intelligence activities and revised a prior order of his own.²³⁶ This order is particularly notable for two reasons. First, it constituted the first time in U.S. history that a President ordered the intelligence community to keep Congress "fully and currently informed" of intelligence activities and to provide documents to congressional committees. Intelligence and diplomatic secrets, for example, had been shielded from Congress by the Contingent Fund of Foreign Intercourse from July 1, 1790 through enactment of the National Security Act of 1947 – a fund which Congress itself had established by statute. As one court explained, the secret fund achieved "longstanding acceptance within our constitutional structure."²³⁷ And, even after a basic framework for congressional oversight was constructed, congressional overseers largely deferred to the Executive Branch until the scandals of the 1970s.

Second, E.O. 12036 modified the membership and roles of the PRC and SCC with respect to intelligence activities. Under the new order, PRC membership included the DCI (Chairman), the Vice President, the Secretaries of State, Defense, and Treasury, the National Security Advisor, the Chairman of the JCS, and other senior officials as appropriate. The PRC was responsible for establishing requirements and priorities for national foreign intelligence; reviewing the National Foreign Intelligence Program and budget proposals; conducting periodic reviews of foreign intelligence products and for developing policy guidance; and submitting an annual report on its activities to the NSC.

The SCC, on the other hand, was generally composed of the National Security Advisor (Chairman), statutory members of the NSC, and other senior officials as appropriate. But SCC membership changed depending on different circumstances. For example, when it met to consider “special activities,” membership included the Secretaries of State and Defense, the Attorney General, the Director of OMB, the National Security Advisor, the Chairman of the JCS, and the DCI. When it reviewed proposals for sensitive foreign intelligence collection operations, membership included the Secretaries of State and Defense, the Attorney General, the National Security Advisor, the DCI, and other members designated by the National Security Advisor. The SCC was also given counterintelligence responsibilities that included the development of standards and doctrines for counterintelligence; the resolution of interagency differences concerning implementation; the development of guidelines for record keeping; the submission of an annual assessment of threats posed by foreign intelligence services and international terrorists; and the approval of specific counterintelligence activities. When meeting for these purposes, membership included the Secretaries of State and Defense, the Attorney General, the Director of OMB, the National Security Advisor, the Chairman of the JCS, the DCI, and the Director of the FBI.

Meanwhile, other notable legal developments emerged, largely in response to the intelligence scandals of the 1970s. President Carter, for example, abolished the President’s Foreign Intelligence Advisory Board pursuant to E.O. 11984,²³⁸ making him the only President to have ever abolished the board (which was reestablished by his successor). In addition, Congress passed the Foreign Intelligence Surveillance Act of 1978 to require Executive officials to obtain a court order to conduct certain electronic surveillance for foreign intelligence purposes within the United States.²³⁹ Moreover, Congress passed the Intelligence Oversight Act of 1980, to establish new procedures and requirements for covert action.²⁴⁰ This latter development, along with subsequent congressional restrictions on covert action, took center stage in the next administration.

6. FALL AND RESURRECTION

By the time Ronald W. Reagan became President in 1981, a general trend involving NSC systems had been established. Democratic Presidents since Truman tended to funnel responsibility for national security policy down to the departments and they generally preferred less structure and informal procedures for NSC deliberations. Republican Presidents since Eisenhower, on the other hand, tended to view the NSC as the principal forum for national security deliberations and they generally preferred more formal procedures and elaborate substructures. When Reagan took office, therefore, one may have expected him to immediately reinstate an Eisenhower or Nixon-style NSC system. This did not occur. Reagan's Secretary of State-designate, Alexander Haig, presented a State-centered plan to Ed Meese, then Counselor to the President and a member of the *'troika'*.²⁴¹ But Haig's plan "was never responded to."²⁴² In fact, unlike prior and subsequent Presidents, Reagan did not formally organize his NSC system for an entire year.

Nonetheless, Reagan issued a directive shortly after his inauguration that renamed national security directives and memoranda as National Security Decision Directives (NSDD) and National Security Study Directives (NSSD).²⁴³ He issued thirteen NSDDs in his first year in office, but not a single NSSD. None of these directives reorganized the NSC. These latter two facts are attributable to the Reagan administration's initial emphasis on domestic policy, particularly the economy.

During this time, Reagan demoted the National Security Advisor, then Richard Allen, from Cabinet-level status and subordinated him to the Secretary of State: "[F]or the first time in the history of the NSC, the National Security Adviser lost direct access to the President."²⁴⁴ As it was reported, Allen also practically lost access to the Secretary of State. Allen and Haig refused to communicate. According to Judge William Clark, Reagan's closest confidant and then Deputy Secretary of State, "[t]his left a void, and that void was essentially filled by [Secretary of Defense] Weinberger and Haig who went their own respective ways on matters of defense and foreign policy during the first year of the Reagan administration."²⁴⁵

Despite Reagan's initial emphasis on domestic policy, he set forth guidance within his first year on such significant issues as conventional arms transfers,²⁴⁶ non-proliferation policy and peaceful nuclear cooperation,²⁴⁷ the space transportation system,²⁴⁸ and his strategic forces modernization initiative, including the MX missile program.²⁴⁹ Various interim substructures were created to assist him with these issues and others.

Reagan informally established three Senior Interagency Groups (SIGs) to handle issues relating to foreign relations, defense, and intelligence activities. The SIGs were chaired by the Secretary of State, Secretary of Defense, and the DCI, respectively. Various IGs, led by Assistant-Secretaries, were established under each SIG. These SIGs would later be reestablished by formal directive.²⁵⁰

In the summer of 1981, Reagan also authorized the establishment of the National Security Planning Group (NSPG), which met weekly "to improve policy coordination" among the departments and agencies.²⁵¹ The NSPG was essentially the NSC, but without the President – or in modern parlance, a "principals" committee. It became "the principal forum within the Reagan Administration for national security decision making,"²⁵² and it was later formally established in the wake of the Iran-Contra Affair.²⁵³ The creation of NSPG was an attempt "to conduct more restrictive and 'leakproof' meetings of his key advisers."²⁵⁴ Leaks became "a problem of major proportions" and led Reagan to issue NSDD-19 in January 1982 to require prior approval of contacts with the media if NSC or intelligence matters would be discussed.²⁵⁵

One of the most significant legal developments within Reagan's first year was the issuance of E.O. 12333, which revoked Carter's E.O. 12036 and became the modern legal touchstone for U.S. intelligence activities.²⁵⁶ The order affected the NSC by requiring it to provide "review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs." It also required the NSC to review proposals for sensitive intelligence operations and to submit recommendations to the President for each special activity. Unlike Carter's order, E.O. 12333 did not specifically establish NSC committees to carry out these functions; instead, it simply required the NSC to establish committees as necessary.

A week later, Reagan issued NSDD-3, which assigned crisis management responsibilities to a Special Situations Group (SSG), a group that had been sorely missing the day Reagan was shot earlier that year.²⁵⁷ On that day, uncertainties existed as to who was actually running the government in the President's absence. Haig eventually declared that he was in control at the White House while Vice President Bush was airborne en route to Washington. But uncertainties were exacerbated when Haig mistakenly declared that the Secretary of State was third in line to succeed the President.²⁵⁸ The SSG, had it existed at the time, could have provided at least a structure from which to govern.

According to NSDD-3, the SSG consisted of the Vice President (Chairman), the Secretaries of State and Defense, the DCI, the Chairman of the JCS, the National Security Advisor, and the *troika*. The SSG would formulate contingency plans, monitor crises, formulate options for NSC consideration, monitor and ensure the implementation of presidential decisions and directives, and provide communications and press guidance. It was supported by NSC staff.

Around this time, and less than one year into Reagan's administration, Richard Allen resigned as National Security Advisor. Allen was the first of six National Security Advisors under Reagan, representing the highest turnover of the position in history.²⁵⁹ Reagan replaced Allen with Judge William Clark, who had been serving as Haig's deputy at the State Department. Reagan later described Clark as "one of my most trusted and valued advisers."²⁶⁰ Clark's appointment coincided with Reagan's shift in presidential priorities. Reagan reportedly called a meeting in the Oval Office and remarked, "Gentlemen, our concentration has been on domestic matters this year, and I want to roll the sleeves up now and get to foreign policy, defense, and intelligence."²⁶¹ This resulted in new structures, processes, and studies of the Cold War, as well as the rescission of prior directives bearing on the NSC.²⁶²

On January 12, 1982, Reagan issued NSDD-2, the most detailed presidential directive to ever govern the NSC system. NSDD-2 reestablished Senior Interagency Groups for foreign policy (SIG-FP), defense policy (SIG-DP), and intelligence (SIG-I), as well as various regional and functional IGs. Membership of these three

SIGs generally consisted of the top deputies of the Departments of State and Defense, the DCI, the National Security Advisor, and the Chairman of the JCS.²⁶³

The SIGs were fundamentally responsible for ensuring that interagency matters affecting their issue areas were adequately addressed, and that approved policy was properly executed. In addition to these duties, the SIG-FP was responsible for ensuring that government efforts were directed to proper areas and issues affecting foreign policy and foreign affairs, and to evaluate the adequacy and effectiveness of interagency overseas programs and activities. The SIG-I was also responsible for, among other things, overseeing the National Foreign Intelligence Program;²⁶⁴ reviewing proposals for sensitive foreign intelligence collection operations; guiding the development and implementation of certain counterintelligence policies and activities; and for submitting an annual assessment of foreign threats.

The directive gave the Secretaries of State and Defense, and the DCI, responsibility for establishing IGs under each SIG. To assist the SIG-FP, for example, the Secretary of State was responsible for establishing IGs for political-military affairs, international economic affairs, and each geographic region corresponding to bureaus in the State Department.²⁶⁵ Likewise, the Secretary of Defense was responsible for establishing IGs corresponding to the functional areas within the Department of Defense.²⁶⁶ The DCI, too, was required to establish an IG for counterintelligence and other areas.

After NSDD-2, the Reagan NSC system essentially consisted of four tiers: the NSC, the NSPG, the SIGs, and the IGs. Over time, the SIGs expanded to nearly two-dozen with 55 IGs making the system largely unmanageable.²⁶⁷ This was a far cry from Carter's "simple, cleaner structure."

NSDD-2 enhanced Clark's role as National Security Advisor.²⁶⁸ Unlike Allen, Clark was given direct access to the President and resumed daily presidential briefings. In addition to setting the NSC agenda, Clark was given authority to develop, coordinate, and implement national security policy as approved by the President. This expanded authority would be partially curtailed following the Iran-Contra Affair.²⁶⁹

Less than a month after formally organizing the NSC, the Reagan administration was ready to tackle the single most important issue of the day: U.S.-Soviet relations. Reagan issued NSSD-1/82 which called for a review of fundamental national security objectives, including the “[i]mpact of Soviet military power and international behavior on U.S. National Strategy.”²⁷⁰ NSSD-1/82 tasked a review group to conduct the study, which consisted of a team of six men supervised by William Clark.²⁷¹

Reagan approved the study under NSSD-1/82 months later when he issued NSDD-32, setting forth the Reagan administration’s fundamental objectives for winning the Cold War.²⁷² NSDD-32 sought more than mere containment; it sought to “reverse the expansion of Soviet control and military presence throughout the world.” It prophetically forecasted that the U.S. response to the Soviet Union throughout the 1980s “could result in a fundamentally different East-West relationship by the end of this decade.” It did not seek to maintain the status quo; it sought victory. In other words, NSDD-32 was a “plan to prevail.” NSDD-32 contemplated “a set of strategies, including diplomatic, informational, economic/political, and military components,” and it forecasted a more direct approach to the fundamental weakness of the Soviet state: its economic system. The directive sought, for example, “to increase the costs of Soviet support and use of proxy, terrorist, and subversive forces” and to force “the USSR to bear the brunt of its economic shortcomings.” Indicative of this new economic strategy was Reagan’s issuance of NSDD-48 (classified), which created a SIG for International Economic Policy (SIG-IEP).²⁷³

It was not until NSDD-66 was issued in November 1982 that a formal framework was constructed for East-West economic relations under the Reagan administration, guided by the SIG-IEP.²⁷⁴ This framework was intended to squeeze the Soviet economy by minimizing economic rewards of the Siberian gas pipeline, to restrict technology and equipment transfers, and to increase credit rates. These basic objectives merged into a wonderfully deceptive event when CIA duped the Soviets into stealing faulty technology for use with the Siberian pipeline. Thomas Reed, a former NSC staff member, retold the story years later.

In order to disrupt the Soviet gas supply, its hard currency earnings from the West, and the internal Russian economy, the pipeline software that was to run the pumps, turbines and valves was programmed to go haywire after a decent interval, to reset pump speeds and valve settings to produce pressures far beyond those acceptable to pipeline joints and welds.²⁷⁵

This resulted in “the most monumental non-nuclear explosion and fire ever seen from space.”²⁷⁶

On January 17, 1983, after two years in office, Reagan set forth a more detailed policy stance toward the Soviet Union when he issued NSDD-75.²⁷⁷ The directive consisted of three strategic objectives: external resistance to Soviet imperialism; internal pressure on the USSR to weaken the sources of Soviet imperialism; and negotiations to eliminate outstanding disagreements. The directive approached U.S. Soviet-relations on several different levels, including “a wide variety of functional and geopolitical arenas and in the U.S.-Soviet bilateral relationship.” The cornerstone of the U.S. military strategy was modernization, as reflected earlier by NSDD-12,²⁷⁸ and economic policy continued to be driven by the objectives set forth in NSDD-66.

But NSDD-75 also forecasted more intense countermeasures in Central America and particularly Cuba. It stated, for example, that “[t]he U.S. must take strong countermeasures to affect the political/military impact of Soviet arms deliveries to Cuba. The U.S. must also provide economic and military assistance to states in Central America and the Caribbean Basin threatened by Cuban destabilizing activities.” Reagan’s commitment to Central America was reinforced months later when he issued E.O. 12433 to establish the National Bipartisan Commission on Central America – commonly known as the “Kissinger Commission.”²⁷⁹ The commission was directed to “study the nature of United States interests in the Central American region and the threats now posed to those interests,” and to “provide advice to the President, the Secretary of State and the Congress on elements of a long-term United States policy that will best respond to the challenges of social, economic, and democratic development in the region, and to internal and external threats to its security and stability.”²⁸⁰ The commission ultimately concluded that “the projection

of U.S. power, in some form, will be required to preserve the interests of the United States and of other nations in the region.”²⁸¹

Nicaragua, backed by Cuba and the Soviets, was seen as a key strategic component of the U.S. approach to Central America. The commission estimated that “[t]here are some 8,000 Cuban advisers now in Nicaragua . . . [and] an estimated 15,000 tons of Soviet bloc arms and equipment.” In the words of one CIA case officer, “[t]he Sandinistas were playing footsie with the Soviets in the U.S. backyard.”²⁸² This gave the situation a “special urgency,” according to the commission, and it concluded that “[t]he direct involvement of aggressive external forces [in Nicaragua] makes it a challenge to the system of hemispheric security, and, quite specifically, to the security interests of the United States. This is a challenge to which the United States must respond.”²⁸³

CIA became actively involved in supporting the Contras against the Marxist Sandinistas. But Congress had already begun to put the brakes on the administration’s efforts. Edward Boland, Chairman of the House Permanent Select Committee on Intelligence, had earlier introduced and passed an amendment to the 1983 defense appropriations bill to prohibit CIA from using appropriated funds to “train, arm, or support persons not members of the regular army for the purpose of overthrowing the government of Nicaragua.”²⁸⁴ The following year, Congress capped Contra funding at \$24 million and it was disclosed shortly thereafter that CIA had mined a Nicaraguan harbor without notifying congressional committees.²⁸⁵ This in turn led Congress to cut-off funds for the Nicaraguan effort.

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.²⁸⁶

The Boland amendments were the primary catalysts for the Iran-Contra Affair in the mid-1980s, which injected Executive-Legislative

Branch relations with a dose of distrust that had not been seen since the intelligence scandals of the 1970s.

But to understand Iran-Contra, one must look beyond Nicaragua. At the time, American hostages were being held in Lebanon, including CIA's Station Chief, William Buckley. For DCI William Casey, the "hostage situation was personal" because he and Buckley were friends.²⁸⁷ It was later revealed that Buckley was kidnapped by Hezbollah and "taken secretly by car to Syria and then flown from Damascus to Tehran for interrogation and torture by Iran's Islamist government."²⁸⁸ Buckley died after being imprisoned for 444 days and enduring brutal torture.

In short, to gain the release of Buckley and the rest of the hostages, members of the NSC staff concocted a creative and elaborate plan to sell arms to Iran at markup, the proceeds of which were used to fund the Nicaraguan Contras – an apparent violation of the Boland amendment. On November 3, 1986, the Lebanon magazine *Asb-Shiraa* revealed the arms deal with Iran, and Reagan quickly stated that NSC staff would no longer be involved in operations.²⁸⁹ Congressional investigations ensued, and Reagan established his own President's Special Review Board, commonly referred to as the "Tower commission."²⁹⁰

The Iran-Contra Affair, aside from the legalities (or illegalities) of the affair, is notable on a number of levels. It was, among other things, the first true test of congressional oversight of intelligence since the establishment of the House and Senate intelligence committees in the mid-1970s. But more relevant, it illustrated the longstanding struggle for the very identity of the NSC. According to the original National Security Act, the purpose of the NSC was solely to "advise" the President, not implement policy. Iran-Contra clearly revealed that the NSC staff, whether acting under or outside the control of the President and National Security Advisor, had become something of an administrative agency.

In February 1987, the Tower commission submitted its report and recommendations, which Reagan strongly endorsed. The following month, Reagan issued NSDD-266 to implement the commission's recommendations with respect to the NSC system.²⁹¹ The directive explicitly disclaimed the authority of the National Security Advisor

to execute or implement national security policy, and it limited his role to managing day-to-day processes of the NSC. It ordered a comprehensive review of all covert action programs and procedures to ensure that proposed covert actions would be coordinated with NSC participants, including the Attorney General.²⁹² The NSC Executive Secretary was ordered to establish a smaller, competent staff with clear and vertical lines of control and accountability, ultimately leading to a 60 percent staff reduction.²⁹³ A Legal Advisor was established as part of the NSC staff to counsel the NSC “with respect to the full range of their activities.” In addition, the directive urged Congress not to amend the National Security Act relating to the structure and operations of the NSC, not to subject the National Security Advisor to Senate confirmation, and to establish a Joint Committee on Intelligence to oversee intelligence activities.

Under NSDD-266, the National Security Advisor was ordered to review the complex NSC substructures established by NSDD-2.²⁹⁴ Based on this review, Reagan issued NSDD-276 months later, which superseded all applicable directives and transformed the NSC system from a highly complex and largely unmanageable body into a simpler and streamlined organization.²⁹⁵ The NSC system returned to a more traditional model with fewer committees, less staff, and a stronger National Security Advisor. A single Senior Review Group (SRG) replaced the three previously established SIGs and it became the Cabinet-level interagency group responsible for reviewing, coordinating, and monitoring the implementation of national security policy on behalf of the NSC. Membership included the National Security Advisor (Chairman), the Secretaries of State and Defense, the President’s Chief of Staff, the DCI, and the Chairman of the JCS.

A Policy Review Group (PRG) became the senior sub-Cabinet-level interagency group responsible for reviewing and making recommendations “concerning national security policy developed through the day-to-day functioning of the interagency process.” Membership included the Deputy National Security Advisor (Chairman), a representative of the Vice President, and senior officials from the Departments of State and Defense, CIA, the JCS, OMB, and, as appropriate, the Executive Office of the President or other agencies.²⁹⁶

The NSPG was also formally established within the NSC to monitor and review the development and implementation of national security policy. It was composed of statutory members, the Attorney General, the Secretary of Treasury, the National Security Advisor, the President's Chief of Staff, the DCI, the Chairman of the JCS, and the Director of OMB.

During the Reagan administration and beyond, Congress became more active in prescribing attendance and participation of officials at NSC meetings, as well as codifying NSC substructures. The Goldwater-Nichols Act of 1986, for example, authorized the Chairman of the JCS,²⁹⁷ in his role as principal military adviser to the NSC, to attend and participate in NSC meetings, subject to the direction of the President. Since the Chairman had been doing so for several decades, this amendment did not significantly impact existing NSC practices. Two years later, Congress also passed the Anti-Drug Abuse Amendments Act of 1988, which similarly authorized the Director of National Drug Control Policy to attend and participate in NSC meetings, subject to the direction of the President.²⁹⁸ Congress also included language in the fiscal year 1987 defense authorization bill to establish the Board for Low Intensity Conflict within the NSC,²⁹⁹ but Reagan did not establish a separate board, *per se*. Instead, he simply designated the SRG "as the Board for Low Intensity Conflict when considering matters dealing with the coordination of policy or strategy for Low Intensity Conflict."³⁰⁰ Congress codified additional entities in subsequent years.³⁰¹

By the time Reagan revamped his NSC system, his administration was winding down. But Reagan's NSC reforms helped stabilize a tumultuous decade for the institution. The NSC had not only confronted its greatest test to date, it had survived.

7. THE MODERN STANDARD

When George H. W. Bush was elected President in 1988, he came to office with the most NSC experience of any prior President, including Richard Nixon. Not only did Bush have eight years of experience as Vice President under Reagan, but as DCI in the 1970s he had also served as the principal intelligence adviser to the NSC.

Shortly after the election, Bush appointed General Brent Scowcroft, “a highly experienced Washington hand,”³⁰² as National Security Advisor. Scowcroft served as Kissinger’s deputy in the Nixon administration, and then as National Security Advisor under Ford. He became the first National Security Advisor to serve in two different administrations.³⁰³ As remarkable, however, was his service on the Tower commission. While on the commission, Scowcroft helped to draft the recommended reforms to the NSC that were made under Reagan. When he took over as National Security Advisor, therefore, he already had a roadmap – which he had helped to draw – to guide the NSC.

Consistent with prior practice, Bush renamed his predecessor’s national security directives as National Security Reviews (NSR) and National Security Directives (NSD). He immediately issued NSD-1 to supersede prior directives bearing on the NSC.³⁰⁴ He (and Scowcroft) wanted a clean slate, and the NSC arrangements they ultimately constructed set the mold for future administrations. NSD-1 limited NSC membership to statutory members, while requiring the DCI, the Chairman of the JCS, the National Security Advisor, and the President’s Chief of Staff, to attend NSC meetings.³⁰⁵ The Secretary of Treasury would also normally attend NSC meetings, while the Attorney General would attend select meetings involving his jurisdiction, including covert actions.

NSD-1 established the Principals Committee (PC), the Deputies Committee (DC), and Policy Coordinating Committees (PCCs), while abolishing then-existing interagency groups. The PC was established as the senior interagency forum for national security policy considerations. Membership included the National Security Advisor

(Chairman), Secretaries of State and Defense, the DCI, the Chairman of the JCS, and the President's Chief of Staff.

The DC was established as the senior sub-Cabinet interagency forum that would review, monitor, and make recommendations regarding the development and implementation of the NSC interagency process. Membership included the Deputy National Security Advisor (Chairman), the Under Secretary of Defense for Policy, the Under Secretary of State for Political Affairs, the Deputy DCI, and the Vice Chairman of the JCS. When meetings related to covert action, a representative of the Attorney General was required to attend.

The DC became the “engine of the policy process”³⁰⁶ and convened nearly 160 times in 1990 alone.³⁰⁷ According to one account, the DC was able to be effective because “first, it included a small group of people senior enough to get things done; and, second, participants in the meetings had immediate and direct access to their principals, so they could either commit to their views at the table or be able to get back quickly to say yes or no.”³⁰⁸

The DC also maintained tasking authority for the various PCCs, which were divided into regions and functions. Regional PCCs were established for Europe, the Soviet Union, Latin America, East Asia, Africa, and the Near East/South Asia. Functional PCCs, on the other hand, were established for such areas as defense, international economics, intelligence, and arms control. The PCCs consisted of Assistant Secretary-level officials and, at base, were responsible for identifying and developing policy issues for NSC consideration.

Initially, Bush assigned crisis management responsibilities to interagency committees, but this changed months later when he issued a supplemental directive ordering the Deputy Secretaries for State and Defense, in their capacities on the DC, to assume day-to-day crisis management responsibilities.³⁰⁹ The arrangements established by NSD-1 became the modern NSC.

Two months into his presidency, Bush requested a review of the U.S. national defense strategy pursuant to NSR-12. The preface to that memorandum recapped the Cold War strategy that had brought the United States to its current position.

Throughout the post-war era, we have successfully provided for the security of the United States and for the furtherance of our security interest in the world by following a broad national defense strategy of containment. We have sought successfully, through the combined use of all elements of our national power, and in concert with our Allies, to prevent the Soviet Union from dominating the concentrations of industrial power and human capacity that are Western Europe and East Asia, and to protect our common security interests in other regions of the world. Central to this broad strategy have been the concepts of deterrence and flexible response. To deter potential adversaries, we have had to make clear that we, and our Allies, have the means and the will to respond effectively to coercion or aggression. But, our policy has been to avoid specifying exactly what our response would be, confronting potential adversaries instead with a broad range of potential responses. Within that range of responses, U.S. general purpose forces have provided the military capabilities that have made credible the conventional component of our national security strategy, and U.S. nuclear forces have served as the ultimate guarantors of our security.³¹⁰

Within months of issuing NSR-12, Bush forecasted a potential change in U.S.-Soviet relations. “The character of the changes taking place in the Soviet Union,” a Bush directive stated, “leads to the possibility that a new era may now be upon us. We may be able to move beyond containment to a U.S. policy that actively promotes the integration of the Soviet Union into the existing international system.”³¹¹ This was a transformative statement.

Less than two months later, the Cold War strategy devised by patriots of the past began to bear fruit – big fruit. The struggle between communist and capitalist ideals that had intensified after World War II deflated in the late 1980s as communism began to implode, symbolized by the fall of the Berlin Wall in November 1989. Gorbachev’s *perestroika* failed and governments in Poland, Hungary, and eventually the Soviet Union, collapsed. These changes brought relief and vindication of the early ideas of Kennan, Clifford, Truman, Marshall, Eisenhower, and

others. But with the good also came transition and uncertainty. The national security system had been established for the Cold War era, but the war was over. In the ensuing years, there were looming questions about the future of this Cold War system.

At the start of Bush's administration, Congress was still reeling from the Iran-Contra Affair. As a result, Congress attempted to tighten notification requirements for covert actions in 1990. Specifically, it sought to amend the Intelligence Oversight Act of 1980 by inserting language into the Intelligence Authorization Act for Fiscal Year 1991 that would have required the House and Senate intelligence committees to be notified "within a few days" of a covert action if prior notice was not provided. In addition, the President would have been required to notify Congress of any covert action undertaken by a foreign government at the request of the U.S. government. Bush vetoed this version of the bill,³¹² and Congress subsequently passed a new version that eliminated these latter provisions, which Bush signed.³¹³

The 1991 legislation continues to provide the modern statutory framework for congressional oversight of covert actions, which colors the internal deliberations of the NSC. As it stands, the President must keep the intelligence committees fully and currently informed of intelligence activities, including any significant anticipated intelligence activity, as well as significant intelligence failures. Prior to any covert action, the President must make a written finding that a covert action is necessary to support identifiable foreign policy objectives and is important to national security. If prior notice is not given, at a minimum, congressional notification is required "in a timely fashion." Each finding must describe the participants of the activities and retroactive authorizations are forbidden. In extraordinary circumstances, the President is entitled to notify the "gang of eight."

The following year, Congress also passed the Intelligence Organization Act of 1992, which "represented the first successful effort by the Congress since the National Security Act of 1947 to enact organizational legislation for the [intelligence community]."³¹⁴ As part of the act, Congress authorized the DCI to attend and participate in NSC meetings, subject to the direction of the President.³¹⁵ But the DCI had been attending NSC meetings since

the Truman administration, so the practical effect of this statutory provision was nominal.

The stability of the Bush NSC was perhaps its most notable feature. Despite such events as Tiananmen Square, the unification of Germany, the dissolution of the Soviet Union, and the Gulf War, the fundamental NSC substructures and processes established by Bush and Scowcroft remained largely unchanged throughout the administration. Bush did, however, issue an executive order prior to leaving office that gave the NSC responsibility for providing overall policy direction for the National Industrial Security Program, which was established to safeguard classified information released to government contractors. But this was a rare development.³¹⁶ Although Bush would not see a second term, he and Scowcroft had managed to establish an NSC model that would transcend administrations and set the modern standard for the NSC.

8. CONTINUITY

“It’s the economy, stupid” – these words encapsulated the Clinton campaign of 1992. The Cold War was over and the Gulf War was swift; Clinton’s economic message resonated. Clinton transformed his message into an institutional priority when he established the National Economic Council as one of his first acts as President.³¹⁷ The council, modeled after the NSC, was designed to coordinate economic policies across the government.³¹⁸ But Clinton’s economic message also became intertwined with the functions of the NSC itself. Clinton directed the NSC to not only advise him with respect to domestic, foreign, military, and intelligence issues, but also economics – in conjunction with the National Economic Council. This reflected a shift in national priorities.

Clinton’s first directive did what Presidents historically do; that is, to mark their territory by changing the nomenclature of the NSC. He renamed Bush’s NSRs as Presidential Review Directives (PRD) and renamed the NSDs as Presidential Decision Directives (PDD).³¹⁹

Clinton’s second directive was most remarkable. He did what no other President (with the exceptions of Johnson and Ford) had ever done; he kept in place key substructures and processes of his predecessor’s NSC system when he issued PDD-2.³²⁰ The directive reestablished, for example, both the PC and DC. The PC was the senior interagency forum established to review, coordinate, and monitor the development and implementation of national security policy. It was designed as a “flexible instrument” where Cabinet-level officials could meet to discuss and resolve issues not requiring the President’s participation. Membership included the National Security Advisor (Chairman), the Secretaries of State and Defense, the U.S. Representative to the United Nations, the DCI, the Chairman of the JCS, and the Assistant to the President for Economic Policy (as appropriate).

The DC, on the other hand, was the senior sub-Cabinet interagency forum established to review and monitor the work of the NSC interagency process, particularly policy implementation. As part of this responsibility, it was granted tasking authority with respect to the Interagency Working Groups (IWGs), successors to Bush’s PCCs.

Membership of the DC included the Deputy National Security Advisor (Chairman), the Under Secretary of Defense for Policy, the Under Secretary of State for Political Affairs, the Deputy DCI, the Vice Chairman of the JCS, the National Security Advisor, and the Deputy Assistant to the President for Economic Policy (as needed). A representative of the Attorney General was required to attend when DC meetings related to covert action.

The DC was also responsible for day-to-day crisis management, as it was under Bush. Related to this, Clinton's NSC did something that no prior NSC had ever done - it maintained an independent press and communications shop located within the NSC itself, and independent from the White House. Asked why this occurred, Leon Panetta remarked, "[b]ecause nobody in the White House cared enough about foreign policy."³²¹ Other officials intimated, however, that this change had more to do with the evolution of the information age.³²²

Throughout the Clinton administration, a relatively new responsibility was increasingly being given to the national security system – "complex contingency operations," i.e., peace-keeping. This was generally the case, for example, in Somalia, Haiti, and Bosnia. During each of these operations, the NSC established an Executive Committee, or "ExCom," to manage the operations. ExComs were essentially run by lower level staff, while the DC "maintained its primacy in the overall policy formulation process."³²³

In light of the increasing frequency of complex contingencies, Clinton issued PDD-56 in his second term to provide further guidance for the bureaucracy. The directive was intended to establish "management practices to achieve unity of effort among U.S. Government agencies and international organizations engaged in complex contingency operations."³²⁴ Under the directive, the DC would establish IWGs to "assist in policy development, planning, and execution of complex contingency operations."³²⁵ In most cases, the DC would establish an ExCom to supervise operations.

Although Clinton's NSC substantially conformed to his predecessor's model, he made some changes aside from the foregoing. For example, he greatly expanded the composition of NSC attendees as Carter had done. But, Clinton went further than any prior President when he expanded actual NSC *membership*

to include not only statutory members, but also the Secretary of Treasury, the U.S. Representative to the United Nations, the National Security Advisor, the Assistant to the President for Economic policy, and the President's Chief of Staff. This is notable because, by statute, NSC membership is limited to enumerated officials and non-enumerated department secretaries confirmed by the Senate. Neither the National Security Advisor nor the President's Chief of Staff were subject to Senate confirmation.

Clinton also exchanged Bush's PCCs for IWGs. These IWGs, which were supposed to convene on a regular basis to review and coordinate the implementation of presidential policy decisions, would be established by the DC. Additionally, whereas prior NSCs were instructed to meet "regularly," Clinton's NSC would merely meet "as required."

The NSC faced a very different world after the Bush presidency. Clinton was, after all, the first President elected in the post-Cold War era and, as a result, he (and Congress) faced an entirely new paradigm. How should a national security system change in light of a drastically different international security environment? The enemy that had previously unified the system toward a common cause was gone. In other words, "now what?" This question loomed over the 1990s particularly as a result of other transformative changes that were occurring, including globalization, the further rise of fourth generation warfare, the commercialization of the Internet, satellite technology, and other global, instantaneous communication capabilities.

National security agencies had invested substantial resources in Soviet issues, and decisions needed to be made as to where those resources would be distributed – if at all. The budget for the intelligence community, for example, had doubled in the 1980s, but some began to question the need for robust intelligence. Ultimately, Congress and the President opted for what became known as the 'peace dividend,' resulting in significant cuts in national security budgets and capabilities. Aside from cuts in defense spending, the intelligence budget was cut in 1993 for the first time in over a decade, and Congress made an across-the-board cut of 17.5 percent in civilian intelligence personnel.³²⁶ These cuts, in addition to other factors, caused considerable harm to the capabilities and effectiveness of U.S.

intelligence. DCI George Tenet later stated that the “‘peace dividend’ was devastating to the spy business at a time when its vitality was most needed. The entire intelligence community, not just CIA, lost billions of dollars in funding. Our workforce was slashed by almost 25 percent.”³²⁷ Richard Holm, a renowned CIA case officer, similarly described the 1990s as the “worst decade in the CIA’s history” due to budget cuts, low morale, and the hiring of unqualified directors.³²⁸

Other key capabilities were simply eliminated or “folded” into the State Department, including institutions dedicated to arms control and nonproliferation, public diplomacy, and international development. Remarkably, as the information age arrived, the U.S. government abolished USIA, the government’s primary tool for disseminating information abroad to friends and foes.

In the midst of these budget cuts, and throughout the rest of the Clinton administration, Congress became more active in modifying or supplementing NSC substructures, processes, and functions. Congress passed, for example, the Intelligence Renewal Act of 1996, which codified two internal entities of the NSC.³²⁹ It codified the Committee on Foreign Intelligence, led by the National Security Advisor,³³⁰ which was responsible for establishing policies and priorities among intelligence programs and activities; conducting annual reviews of U.S. national security interests, including the elements of the intelligence community; and submitting a comprehensive report on its activities to the NSC and the DCI. Membership included the DCI and the Secretaries of State and Defense, or any other member the President desired.

The act also codified the Committee on Transnational Threats, similarly led by the National Security Advisor, which was responsible for the coordination and direction of the activities relating to transnational threats.³³¹ More specifically, the committee was charged with identifying threats, developing strategies and making recommendations to respond to them, and monitoring implementation of those strategies. Membership replicated that of the Committee on Foreign Intelligence, but also included the Attorney General.

Congress also passed the Office of National Drug Control Policy Reauthorization Act of 1998³³² to authorize the Director of National Drug Control Policy to attend and participate in NSC meetings. The

same year, Congress passed the International Religious Freedom Act of 1998, which contained a non-binding ‘sense of the Congress’ resolution urging the establishment of a Special Adviser to the President on International Religious Freedom within the NSC.³³³

Meanwhile, a new kind of threat had budded in the Middle East. Although Islamic extremists had attacked U.S. interests in the years prior to the Clinton presidency, including the 1983 Lebanon bombings,³³⁴ the 1984 kidnapping of William Buckley,³³⁵ the hijacking of TWA flight 847,³³⁶ and the 1992 bombing in Yemen,³³⁷ they had never attacked U.S. soil until 1993.

On January 25, 1993, Mir Amal Kansi, an Islamic extremist from Pakistan, shot and killed two CIA employees at the main highway entrance to CIA headquarters in Virginia. (Kansi drove away and was captured abroad much later.) Only a month afterward came the World Trade Center bombing and, a few weeks after that, the Iraqi plot against former President Bush.³³⁸

That same year, the FBI uncovered a plot by Muslim terrorists “to bomb major New York landmarks, including the Holland and Lincoln tunnels.”³³⁹ These plots followed a fatwa issued a year earlier by al Qaeda calling for *jihad* “against the Western ‘occupation’ of Islamic lands.”³⁴⁰ Shortly thereafter, the Counterterrorism Security Group (CSG) was established, chaired by Richard Clarke.³⁴¹ Clinton also issued PDD-39, which stated that the United States should “deter, defeat and respond vigorously to all terrorist attacks on our territory and against our citizens.”³⁴²

Attacks continued throughout the 1990s, including the 1995 killings of U.S. diplomats in Karachi and a bombing outside a Saudi-U.S. joint facility in Riyadh,³⁴³ and the 1996 bombing of the Khobar Towers in Dhahran.³⁴⁴ In 1998, Osama bin Ladin issued a second fatwa – with four signatories – that declared:

To kill the American and their allies – civilians and military – is an individual duty incumbent upon every Muslim in all countries, in order to liberate the al-Asqa Mosque and the Holy Mosque from their grip, so that their armies leave

all the territory of Islam, defeated, broken, and unable to threaten any Muslim.³⁴⁵

Shortly after this declaration, Clinton issued PDD-62 (classified) to establish the position of National Coordinator for Security, Infrastructure Protection and Counter-Terrorism within the NSC system.³⁴⁶ According to the accompanying fact-sheet, “[t]he National Coordinator will oversee the broad variety of relevant polices and programs including such areas as counter-terrorism, protection of critical infrastructure, preparedness and consequence management for weapons of mass destruction.”

Al Qaeda subsequently set up teams in Nairobi, Kenya and Dar es Salaam, Tanzania. On August 7, 1998, they bombed the U.S. Embassy in Nairobi killing 12 U.S. Citizens and 279 others, and injuring more than 5,000 people. Almost simultaneously, a bomb detonated outside the U.S. Embassy in Dar es Salaam killing 10 people and injuring a U.S. citizen and 76 Tanzanians. Unlike prior terrorist attacks, these attacks were “planned, directed, and executed by al Qaeda, under the direct supervision of Bin Ladin and his chief aides.”³⁴⁷ The same year, in an interview with al Jazeera, Osama bin Ladin asserted his quest for weapons of mass destruction: “There is a duty on Muslims to acquire [nuclear weapons],” he stated, “and America knows today that Muslims are in possession of such a weapon, by the grace of God Almighty.”³⁴⁸

After these bombings, a new NSC-led interagency committee was created related to terrorist financing, but additional Islamist plots continued to unravel. In 2000, al Qaeda attempted to bomb the *USS The Sullivans* off the coast of Yemen. Al Qaeda deployed a boat full of explosives, but it sank prior to detonating. Later that year, al Qaeda attempted to bomb another U.S. warship, but this time succeeded. On October 12, 2000, al Qaeda bombed the *USS Cole* killing 17 sailors. As it turned out, the plot “was a full-fledged al Qaeda operation, supervised directly by Osama Bin Ladin. He chose the target and location of the attack, selected the suicide operatives, and provided the money needed to purchase explosives and equipment.”³⁴⁹

It was clear that Islamic-terrorism was a serious, ongoing challenge, but was it sufficiently important to engage the military, or was the criminal justice system the best avenue for justice? The Clinton

administration generally opted for the latter, but when Islamic-terrorism attempted to strike at the heart of the U.S. economic (World Trade Center), military (Pentagon), and political centers (Capitol Region), the next administration changed course.

9. A DICHOTOMY

President George W. Bush was elected as the second post-Cold War President in one of the closest elections in U.S. history. After the election, he appointed his chief foreign policy campaign adviser, Condoleezza Rice, as National Security Advisor. Within the first three weeks in office, the Bush administration began reshaping the NSC.

National security adviser Rice had cut the NSC staff by a third and reorganized it to emphasize the administration's priorities, including national missile defense and international economics. Offices handling international environmental and health issues were eliminated, as were those responsible for communications and legislative affairs (these functions were returned to the main White House staff).³⁵⁰

A month into his administration, Bush issued his first National Security Presidential Directive (NSPD), which replaced Clinton's study and decision directives. For the first time since the Kissinger plan, only one set of directives would govern NSC operations.

Bush's first directive, NSPD-1, superseded all existing presidential guidance relating to the NSC system.³⁵¹ Interestingly, it included a definition (or description) of 'national security' for what appears to be the first time in the history of presidential directives. It defined 'national security' as "the defense of the United States of America, protection of our constitutional system of government, and the advancement of United States interests around the globe."

Unlike prior directives, NSPD-1 did not set forth NSC membership; instead, it set forth "regular attendees" of NSC meetings that included the President, the Vice President, the Secretaries of State, Treasury, and Defense, the National Security Advisor, the DCI, and the Chairman of the JCS. Using the term "attendee" avoided potential issues associated with the provision of the National Security Act that limits NSC *membership* to enumerated officials and non-enumerated department secretaries confirmed by the Senate. Other department heads and White House staff were also invited

to attend NSC meetings in particular situations, including the President's top legal adviser.

The directive reestablished the PC and DC, which had existed since 1989, and abolished Clinton's IWGs in favor of the PCC system established by his father. The PC was reestablished as the senior interagency forum for consideration of national security policy. Regular attendees included the National Security Advisor (Chairman), Secretaries of State, Treasury, and Defense, and the President's Chief of Staff. In addition, the DCI, the Chairman of the JCS, the Attorney General, the Director of OMB, and the President's top legal adviser, would attend relevant meetings at appropriate times. If the agenda included international economic issues, regular attendees were modified to include the Secretary of Commerce, the U.S. Trade Representative, the Assistant to the President for Economic Policy, and the Secretary of Agriculture (when appropriate). The National Security Advisor generally called meetings and determined the agenda for the PC, unless international economic issues were on the agenda, in which case she was to act in concert with the National Economic Advisor. This reflected a continued emphasis on integrating economic and national security policy.

One of the starkest differences between this PC and its predecessors was the inclusion of the Chief of Staff and National Security Advisor to the Vice President at every meeting. This reflected an enhanced role of the Office of Vice President, occupied by Vice President Richard Cheney, in the deliberations of national security policy. Considering Cheney's extensive foreign policy background, this was unremarkable – although it was a break from prior practice. Cheney had previously served as Secretary of Defense, as a member of Congress, and as White House Chief of Staff under Ford.

The DC was reestablished as the senior sub-Cabinet interagency forum for consideration of national security policy. It would prescribe and review the work of interagency groups (discussed below), while ensuring that issues presented to the PC or the NSC were properly analyzed and prepared. Peculiarly, unlike prior provisions within NSPD-1, the DC was described in terms of "regular members," which generally included the Deputy National Security Advisor (Chairman), the Deputy Secretary of State, the Deputy Secretary

of Defense, the Deputy Attorney General, the Deputy Director of OMB, the Deputy DCI, the Vice Chairman of the JCS, the Deputy Chief of Staff to the President for Policy, the Chief of Staff and National Security Advisor to the Vice President, and the Deputy Assistant to the President for International Economic Affairs. Membership changed, however, when international economic issues were on the agenda to include the Deputy Assistant to the President for International Economic Affairs (Chairman), Deputy Secretary of Commerce, a Deputy U.S. Trade Representative, and, when appropriate, the Deputy Secretary of Agriculture.

NSPD-1 reestablished the PCCs that George H. W. Bush instituted to manage and coordinate the development and implementation of national security policies across the interagency. PCCs were charged with providing policy analysis for consideration by senior committees of the NSC system and to ensure timely responses to presidential decisions. Each PCC was required to include representatives from the entities represented on the DC. Like his father, Bush divided PCCs into regional areas and functions. Six regional committees were established for Europe and Eurasia, the Western Hemisphere, East Asia, South Asia, the Near East and North Africa, and Africa. These committees were chaired by an official of Under Secretary or Assistant Secretary-level rank designated by the Secretary of State. Eleven functional committees were also established for: democracy, human rights, and international operations; international development and humanitarian assistance; global environment; international finance; transnational economic issues; counter-terrorism and national preparedness; defense strategy, force structure, and planning; arms control; proliferation, counterproliferation, and homeland defense; intelligence and counterintelligence; and records access and information security.

The National Security Advisor was given authority to establish additional PCCs, in consultation with appropriate officials, and the chairmen of each PCC could establish subordinate working groups with the consent of the Executive Secretary for each PCC. According to one report, fifteen additional functional PCCs were retained or established in the following areas: biodefense; combating terrorism information strategy, contingency planning; detainees; HIV-AIDS and infectious diseases; information sharing; interdiction; international

drug control policy; international organized crime; maritime security; Muslim world outreach; reconstruction and stabilization operations; space; strategic communication; and terrorist financing.³⁵² Authorities giving rise to these new PCCs are not generally publicly available.

Although NSPD-1 abolished the IWG system established under Clinton, it kept and reassigned some groups, responsibilities, and functions. The Trade Promotion Coordinating Committee (established by E.O. 12870), for example, was retained. And, the directive ordered the PC and DC to assume the roles of the committees codified by Congress. NSPD-1 also abolished special presidential emissaries, special envoys, senior and special advisers to the President and the Secretary of State, unless reestablished in the State Department.

The first major foreign policy crisis for the Bush administration came in April 2001 when a U.S. Navy EP-3 reconnaissance plane collided with a Chinese F-8 fighter plane over the South China Sea. Although this incident garnered substantial attention, out of public view existed other reports that were raising eyebrows within intelligence circles. Counter-terrorism officials were receiving substantial numbers of reports of unrelated terrorist threats and planned attacks throughout this period.³⁵³ According to the 9/11 Commission Report, “[i]n May 2001, the drumbeat of reporting grew louder with reports to top officials that ‘Bin Ladin public profile may presage attack’ and ‘Bin Ladin network’s plans advancing.’”³⁵⁴ These reports continued throughout the summer and, in the words of DCI George Tenet, “the system was blinking red.”³⁵⁵ Fears were realized on September 11, 2001.

The 9/11 attacks forced policymakers to confront the increasingly potent threat posed by non-state actors in an age of catastrophic weaponry. In conventional wars, enemies wore uniforms; armies fought on discernable battlefields; enemies would muster large armies; and threats would emerge, in relative terms, slowly. National security must now account for not only conventional threats, but unconventional. Non-state actors, represented by the likes of al Qaeda or affiliates, wear no uniforms; they hide among civilians; and they strike without warning. The advent of catastrophic weaponry, the ease of international movement, and global, instantaneous communication capabilities, among other things, make these unconventional threats that much more potent. As President Bush stated the day after 9/11,

“The American people need to know that we’re facing a different enemy than we have ever faced.”³⁵⁶

These new realities raised critical questions. How does a free and open society protect itself against so-called ‘asymmetric’ attacks? How do we prepare for, respond to, or mitigate the risks of such attacks? What are the optimal policies and/or organizations to deal with this type of threat? And, what NSC substructures or processes should exist to guide policy development, policy implementation, and crisis management? These were some of the questions being asked in the aftermath of 9/11, the answers to which resulted in the deployment of U.S. military forces in the heart of the Middle East, as well as the most significant reorganization of the Executive Branch since the National Security Act of 1947.

Within a month of the attacks, President George W. Bush issued E.O. 13228 to establish two new entities.³⁵⁷ He established the Office of Homeland Security to produce a National Strategy for Homeland Security. The Strategy was later released in July of 2002, which coincided with the President’s proposal for a new Department of Homeland Security.³⁵⁸ The purpose of the Strategy was to mobilize the nation to secure the homeland from terrorist attacks. It recommended broad federal reorganization to increase accountability and to create a singularity of purpose among departments and agencies. It also outlined three primary objectives to secure the homeland: to prevent terrorist attacks within the United States; to reduce America’s vulnerability to terrorism; and to minimize the damage and recover from attacks that do occur.

Pursuant to E.O. 13228, Bush also established the first-ever Homeland Security Council (HSC) as a counterpart to the NSC. The HSC was established to advise and assist the President with respect to the development and implementation of homeland security policy, while ensuring coordination of homeland security-related activities across the government. The order vested the HSC with responsibility for developing and administering national security emergency preparedness policy relating to terrorist threats and attacks within the United States.

HSC membership included the President, Vice President, the Secretaries of Treasury, Defense, Health and Human Services,

Transportation, Homeland Security, the Attorney General, the Director of FEMA, the Director of the FBI, the DCI, and a new Homeland Security Advisor. Other officials, including the Chiefs of Staff to the President and Vice President, the National Security Advisor, the President's legal counsel, and the Director of OMB, were invited to attend council meetings. Other secretaries and senior officials would also be invited to appropriate meetings, which would be called by the President. The Homeland Security Advisor set the agenda.

A week after issuing E.O. 13228, Bush issued E.O. 13231 to establish the President's Critical Infrastructure Protection Board (PCIPB) for purposes of coordinating federal activities relating to the protection of information systems.³⁵⁹ Most notably, the Homeland Security Advisor, in coordination with the National Security Advisor, was responsible for defining the responsibilities of the PCIPB in coordinating efforts to protect physical assets that support information systems. To ensure coordination between the NSC and Office of Homeland Security, the Chairman of the PCIPB reported to both the National and Homeland Security Advisors. The National Security Advisor was responsible for advising the President or agency head when a critical deficiency existed in the security practices of an agency. The DCI and Secretary of Defense maintained independent authority to govern the security of information systems in support of operations under their respective controls.

Less than a month later, Bush issued the first-ever Homeland Security Presidential Directive (HSPD), designed to "record and communicate presidential decisions about the homeland security policies of the United States."³⁶⁰ HSPDs were generally identical in nature to the NSPDs, and in some cases they have been issued simultaneously.³⁶¹

HSPD-1 established the organizational framework of the HSC, practically mirroring that of the NSC under NSPD-1. The HSC was organized, for example, into a Principals Committee (HSC/PC), Deputies Committee (HSC/DC), and various Policy Coordinating Committees (HSC/PCCs). The HSC/PC was established as the senior interagency forum for consideration of homeland security policy. Membership included the Homeland Security Advisor (Chairman), Secretaries of Treasury, Defense, Health and Human Services, and Transportation, the Attorney General, the Director of OMB, the

President's Chief of Staff, the DCI, the Director of the FBI, the Director of FEMA, and the Assistant to the President and Chief of Staff to the Vice President. The National Security Advisor could attend any HSC meeting and other officials would be invited as appropriate, including the heads of major departments and agencies. HSC/PC meetings were called by the Homeland Security Advisor, who also set the agenda. If the agenda included global terrorism issues with domestic implications, however, the Homeland Security Advisor was required to perform these functions in concert with the National Security Advisor. The HSC/PC reportedly "tends to meet less frequently than its NSC/PC counterpart, usually once every other month, although more frequently if circumstances demand."³⁶²

The HSC/DC, authorized to task and review the work of interagency groups discussed below, was established to ensure that issues brought before the HSC/PC or HSC were properly analyzed and prepared. Membership of the HSC/DC included the Deputy Secretaries of Treasury, Defense, Attorney General, Health and Human Services, Transportation, the Deputy Directors of the Office of Homeland Security (Chairman), CIA, FBI, FEMA, OMB, and the Assistant to the President and Chief of Staff to the Vice President. The Deputy National Security Advisor could attend any HSC/DC meeting and other officials could attend as appropriate, including the heads of the major departments and agencies. The DC has been the committee most responsible for ensuring coordination between the NSC and HSC,³⁶³ and it typically meets "weekly."³⁶⁴

The HSC/PCCs were charged with coordinating the development and implementation of homeland security policies across the interagency, in addition to coordinating those policies with state and local governments. This latter responsibility marked a significant difference between the responsibilities of the HSC and NSC. The HSC/PCCs were also responsible for providing policy analysis for the more senior committees of the HSC system and for ensuring timely responses to presidential decisions. Each HSC/PCC included representatives from the departments, offices, and agencies represented on the HSC/DC.

The HSC/PCCs were organized into eleven functions, including detection, surveillance, and intelligence; plans, training, exercises, and evaluation; law enforcement and investigation; weapons of mass

destruction consequence management; key asset, border, territorial waters, and airspace security; domestic transportation security; research and development; medical and public health preparedness; domestic threat response and incident management; economic consequences; and public affairs. Each HSC/PCC was led by a designated senior director from the Office of Homeland Security. At the direction of the President, the Homeland Security Advisor was authorized to establish additional HSC/PCCs, and the chairmen of each HSC/PCC could establish subordinate working groups, with the consent of the Executive Secretary.

After the Bush reforms of 2001, Congress passed the Homeland Security Act of 2002, the most extensive government reorganization in 55 years.³⁶⁵ It consolidated 22 federal agencies and established the Department of Homeland Security (DHS) as a Cabinet-level department. Prior to this, no single federal department had homeland security as its primary objective. DHS was intended to unify the vast national network of organizations and institutions to secure the homeland, and it became operational in January of 2003.

The Homeland Security Act codified the HSC in Title 6 of the U.S. Code to advise the President on homeland security matters and to coordinate homeland security policies and functions of the government. Unlike the statutory creation of the NSC, established in the first section of the National Security Act, the HSC was embedded deep within the Homeland Security Act of 2002 (section 901). Under the act, HSC membership included the President, Vice President, Secretaries of Homeland Security and Defense, the Attorney General, and other individuals designated by the President. The functions of the HSC, as described in the Homeland Security Act, paralleled the functions of the NSC under the National Security Act. In both cases, the HSC and NSC were responsible for assessing the objectives, commitments, and risks of the United States, and for making recommendations to the President with respect to homeland security or national security policies, respectively. Overlap was sure to exist between homeland security and national security policies, so the President was authorized to hold joint meetings of the NSC and HSC. Such joint meetings are reportedly “common.”³⁶⁶

Like the NSC, a civilian Executive Secretary appointed by the President would lead an HSC staff. By 2007, the HSC staff consisted of “approximately 40 policy positions including detailees and assignees from the US Secret Service and other Department of Homeland Security agencies, DoD, the FBI, the Department of Health and Human Services, and individuals assigned from other Executive Branch agencies.”³⁶⁷

Codification of the HSC created a formal dichotomy between ‘national security’ and ‘homeland security.’ Some experts endorsed this distinction; others were less convinced. A 2002 report issued by the Cato Institute stated: “Why the NSC could not have shouldered the responsibility to lead the government’s efforts against terrorism from the outset is a mystery.”³⁶⁸ Skeptics continue to question the wisdom of the HSC,³⁶⁹ but others argue that its existence should be left to the discretion of the commander in chief.³⁷⁰

The Bush administration and international allies responded to the 9/11 attacks by removing the Taliban from power in Afghanistan, and later removing Saddam Hussein from power in Iraq. Documents relating to NSC activities throughout these wars are not generally publicly available. Consequently, it is difficult to determine how the NSC machinery has functioned in recent years. But it is clear that these wars – or battles – have demonstrated the fundamental challenges posed by insurgencies, fourth generational warfare, and interagency coordination abroad.³⁷¹ Moreover, it is clear that terrorism is now treated as a matter of national security, as opposed to a matter largely reserved for the criminal justice system.

There have been several recent developments affecting the NSC and HSC that are particularly noteworthy. In 2004, for example, Bush issued E.O. 13355 to establish the DCI as the principal adviser not only to the NSC, but also the HSC.³⁷² This all changed, of course, when Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which created the position of Director of National Intelligence to serve as the President’s principal adviser on intelligence matters, thereby displacing the role previously held by the DCI since 1947.³⁷³ IRTPA also amended section 101 of the National Security Act to replace the DCI with the DNI on the Committee on Foreign Intelligence, the Committee

on Transnational Threats, and as the intelligence community representative in NSC meetings.

In addition, recent legislation has authorized further involvement by particular officials in HSC or NSC meetings. The National Defense Authorization Act for Fiscal Year 2006, for example, authorized the Chairman of the JCS to attend and participate in HSC meetings, subject to the President's direction.³⁷⁴ The Implementing Recommendations of the 9/11 Commission Act of 2007 authorized the U.S. Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism to attend and participate in NSC and HSC meetings, also subject to the President's direction.³⁷⁵

Most recently, and most remarkably, Congress quietly amended section 101(a) of the National Security Act for the first time in nearly 60 years when it added the Secretary of Energy as a statutory member of the NSC.³⁷⁶ Today, therefore, statutory members of the NSC include the President, Vice President, and the Secretaries of State, Defense, and Energy.

When the Bush presidency finally concludes, he will have presided over the most extensive reorganization of the national security system since the National Security Act of 1947. The NSC remains a firmly ensconced institution that is statutorily limited to advising the President on national security policy and the integration of that policy across the government. The HSC, on the other hand, remains a young entity, and it is less clear how President Bush's successor will approach the dichotomy between national security and homeland security, initially adopted by President Bush and subsequently codified by Congress. Will, or should, the dichotomy continue? Will, or should, the HSC subsist? Time will tell.

CONCLUSION

In the aftermath of World War II, Truman embarked cautiously upon the initial NSC experiment; Eisenhower transformed the NSC into a systematic and robust institution; Kennedy and Johnson opted for less structure, informal procedures, and greater reliance on the State Department; Nixon and Ford reinvigorated the NSC, while Kissinger's plan bridged the gap between formalism and informalism; Carter opted for a simple, cleaner structure with greater reliance on departments and agencies; Reagan oversaw a period of tumult and chaos, but eventually constructed the precursor to an enduring NSC system; George H. W. Bush and Brent Scowcroft brought stability and set the modern standard for the NSC; Clinton brought continuity between administrations and began to more deliberately integrate economic policy with national security policy; and George W. Bush elevated domestic security to a national level.

Since passage of the original National Security Act of 1947, Congress has left unchanged the fundamental purpose, function, and duties of the NSC. Each President has made an independent determination of the type of NSC that would best serve the nation. But over time, it is clear that the NSC has evolved from a limited advisory council to a vast network of interagency groups that are deeply involved in integrating national security policy development, oversight of implementation, and crisis management. This evolution has not been the result of congressional action, but rather presidential determination, rooted in the increasingly complex task of managing and optimizing U.S. national security.

From Harry Truman to George W. Bush, Presidents have wrestled with creating the optimal internal conditions, substructures, and procedures for developing and implementing national security policy through the NSC. How many NSC members should there be? Who should attend NSC meetings? What type of access should members and staff have with the President? What is the appropriate staff size? What is the proper role of the National Security Advisor? What processes should be instituted to ensure clarity, efficiency, and quality of the deliberative process? What is the proper scope of NSC activities? Should it be purely an advisory body, or should it act

more like an administrative agency? What is the proper relationship between the NSC and the departments? What role, if any, should Congress play in the process? Has the NSC become too powerful or too inefficient?

Answers to these questions, and others, have the potential to either help or hinder the President's most powerful advisory body, and arguably the world's most powerful council. Every President has confronted these questions, and each has answered in his own way – with some arrangements proving more advantageous than others, but each with their own unique qualities.

The more recent creation of the HSC, however, has presented a new set of questions that only one President has confronted thus far. What does the future hold for the HSC? Is the dichotomy between national security and homeland security worth keeping? The HSC remains a young entity, and it remains to be seen how future presidents will approach, utilize, and organize the HSC in the post-9/11 era.

ENDNOTES

- 1 The phrase was coined by Robert Cutler, President Eisenhower's first special assistant for national security affairs. *See generally* DOUGLAS T. STUART, *CREATING THE NATIONAL SECURITY STATE: A HISTORY OF THE LAW THAT TRANSFORMED AMERICA* 232-58 (2008).
- 2 *THE PAPERS OF GEORGE CATLETT MARSHALL*, Vol. 4, at 50 (Larry Bland ed., 1996).
- 3 Unification of the War and Navy Departments and Postwar Organization for National Security, Report to Hon. James Forrestal, Committee on Naval Affairs 47, 7 (1945).
- 4 C.P. Trussell, *Voice Vote in House Sends Unification Bill to Truman*, N.Y. TIMES, July 26, 1947, at 1.
- 5 HAROLD KOH, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIR* 102 (1990).
- 6 DEAN ACHESON, *PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT* 161 (1969).
- 7 Robert A. Lovett, Testimony Before the Senate Subcommittee on National Policy Machinery (Feb. 23, 1960), *reprinted in* THE NATIONAL SECURITY COUNCIL: JACKSON SUBCOMMITTEE PAPERS ON POLICY-MAKING AT THE PRESIDENTIAL LEVEL 78 (Henry M. Jackson, ed. 1965).
- 8 The reader should note that the NSC system consists of both formal and informal processes. Formal processes are typically established by presidential directive, whereas informal processes are not. Although this work is primarily concerned with formal processes, the reader should not underestimate the critical importance of informal processes in the overall national security process.
- 9 Most NSC components have evolved through legal instruments, but the NSC staff has not - despite a statutory basis. Therefore, the reader should not expect satisfactory coverage of the NSC staff, including the National Security Advisor. Instead, the reader may wish to consult such works as Prados's *Keepers of the Keys*, Shoemaker's *The NSC Staff*, Inderfurth and Johnson's *Fateful Decisions*, or Baker's *In the Common Defense*, among others.
- 10 ROBERT CUTLER, *NO TIME FOR REST* 366 (1966); *see also* CHRISTOPHER C. SHOEMAKER, *THE NSC STAFF: COUNSELING THE COUNCIL* 10 (1991) ("One of the most widely held views among students of national security is that the NSC is first and foremost a product of the president it serves."); DAVID ROTHKOPF, *RUNNING THE WORLD: THE INSIDE STORY OF THE NATIONAL SECURITY COUNCIL AND THE ARCHITECTS OF AMERICAN POWER* 5 (2005) (stating that the NSC "was created to serve the president, and each individual president has tremendous latitude to shape both the institution of the NSC and the formal and informal mechanisms of his

or her White House national security apparatus that augment or even compete with it”).

- 11 Harold C. Relyea, Presidential Directives: Background and Overview, CONG. RES. SERV. (Aug. 9, 2007), at 6.
- 12 *See generally* Federal Register Act of 1935, PUB. L. NO. 74-220, 50 Stat. 500 (1935).
- 13 Randolph D. Moss, Memorandum for the Counsel to the President, Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order (Jan. 29, 2000).
- 14 Reorganization Act of 1939, PUB. L. NO. 76-19, 53 Stat. 561 (1939); *see also generally* Economy Act of 1932, PUB. L. NO. 72-212, 47 Stat. 413 (1932) (authorizing broad organizational authority by executive order, subject to a one-house legislative veto).
- 15 Relyea, *supra* note 11, at 13.
- 16 *See generally* INS v. Chadha, 462 U.S. 919 (1983).
- 17 Reorganization Act Amendments of 1984, PUB. L. NO. 98-614, 98 Stat. 3192 (1984) (codified at 5 U.S.C. § 901 *et seq.*).
- 18 Harry S. Truman: His Life and Times, Truman Presidential Library, <http://www.trumanlibrary.org/lifetimes/whouse.htm>.
- 19 *See* STUART, *supra* note 1, at 86.
- 20 FATEFUL DECISIONS: INSIDE THE NATIONAL SECURITY COUNCIL 1 (Karl F. Inderfurth & Loch K. Johnson eds. 2004).
- 21 *Id.* at 41.
- 22 The SWNCC was renamed the State-Army-Navy-Air Force Coordinating Committee in 1947 and it terminated in June 1949.
- 23 STUART, *supra* note 1, at 69.
- 24 FATEFUL DECISIONS, *supra* note 20, at 2.
- 25 *See* Ernest R. May, *The Development of Political-Military Consultation in the United States*, POL. SCI. QUARTERLY, Vol. 70, No. 2 (June 1955), at 178.
- 26 STUART, *supra* note 1, at 88.
- 27 UNIFICATION OF THE WAR AND NAVY DEPARTMENTS AND POSTWAR ORGANIZATION FOR NATIONAL SECURITY, Report to Hon. James Forrestal, Committee on Naval Affairs (1945), *reprinted in* THE NATIONAL SECURITY COUNCIL: JACKSON SUBCOMMITTEE PAPERS ON POLICY-MAKING AT THE PRESIDENTIAL LEVEL 293 (Henry M. Jackson, ed. 1965) [hereinafter JACKSON SUBCOMMITTEE].
- 28 *Id.* (emphasis added).
- 29 MEMOIRS BY HARRY S. TRUMAN: YEARS OF TRIAL AND HOPE 49 (1956).
- 30 STUART, *supra* note 1, at 129.
- 31 *Id.* at 130. The Bureau also successfully opposed a Senate attempt to compel the President “to provide Congress with an accounting of budgetary deliberations within the proposed council.” *Id.*
- 32 CONG. REC. 8497 (July 9, 1947).
- 33 *Id.*

- 34 *Id.*
- 35 *Id.* (emphasis added).
- 36 National Security Act of 1947, PUB. L. NO. 80-253, § 2, 61 Stat. 496 (1947).
- 37 *Id.* at § 202(a).
- 38 *Id.* at § 211.
- 39 *Id.* at § 212.
- 40 *Id.* at § 213.
- 41 *Id.* at § 214.
- 42 *Id.* at § 101(d).
- 43 *Id.*
- 44 *Id.* at § 103(c).
- 45 James Forrestal reportedly testified that the NSC constituted “perhaps the most important feature of the [National Security Act].” *See* JOHN PRADOS, *KEEPERS OF THE KEYS: A HISTORY OF THE NATIONAL SECURITY COUNCIL FROM TRUMAN TO BUSH* 30 (1991); *but see generally* AMY ZEGART, *FLAWED BY DESIGN* (1999).
- 46 National Security Act of 1947, PUB. L. NO. 80-253, § 101(a), 61 Stat. 496 (1947) (emphasis added).
- 47 *Id.* at § 102(d)(1).
- 48 *Id.* at § 211(c).
- 49 *Id.* at § 101(c).
- 50 SHOEMAKER, *supra* note 10, at 10-11.
- 51 *Id.* at 11.
- 52 PRADOS, *supra* note 45, at 34; *see also* SHOEMAKER, *supra* note 10, at 10 (“The NSC Staff was charged with the development of long-range studies, but the primary strategic direction of the nation came from other groups.”).
- 53 Telegram from George Kennan to the Secretary of State, “The Long Telegram” (Feb. 22, 1946), *available at* <http://www.gwu.edu/~nsarchiv/coldwar/documents/episode-1/kennan.htm>.
- 54 HENRY KISSINGER, *DIPLOMACY* 449 (1994).
- 55 ROTHKOPF, *supra* note 10, at 46.
- 56 A Report to the President by the Special Counsel to the President, American Relations with the Soviet Union, 79 (Sept. 24, 1946).
- 57 President Harry S. Truman’s Address Before a Joint Session of Congress (Mar. 12, 1947), *available at* <http://www.yale.edu/lawweb/avalon/trudoc.htm>.
- 58 KISSINGER, *supra* note 54, at 454.
- 59 James Forrestal reportedly remarked that, “[f]ew Americans understood the spreading danger of Communist power.” CUTLER, *supra* note 10, at 244.
- 60 Stanley L. Falk, *The NSC Under Truman, Eisenhower, and Kennedy*, POL. SCI. QUARTERLY, Vol. 79, No. 3, at 403, 405 (Sept. 1964). For a general

discussion of Truman's caution, see Alfred D. Sander, *Truman and the National Security Council: 1945-1947*, JOURNAL OF AM. HISTORY, Vol. 59, No. 2, at 369, 383-84 (Sep. 1972).

- 61 FATEFUL DECISIONS, *supra* note 20, at 20.
- 62 ROTHKOPF, *supra* note 10, at 57.
- 63 Sander, *supra* note 60, at 369.
- 64 CUTLER, *supra* note 10, at 244.
- 65 *Id.*
- 66 National Security Act Amendments of 1949, PUB. L. NO. 81-216, § 5, 63 Stat. 580 (1949).
- 67 Reorganization Plan No. 4 of 1949, 63 Stat. 1067 (eff. Aug. 20, 1949).
- 68 Falk, *supra* note 60, at 36.
- 69 Relyea, *supra* note 11, at 8-9 (citation omitted).
- 70 *Id.*
- 71 NSC-20/4, U.S. Objectives with Respect to the USSR to Counter Soviet Threats to U.S. Security (Truman Nov. 23, 1948), *available at* <http://www.mtholyoke.edu/acad/intrel/coldwar/nsc20-4.htm>.
- 72 SARA L. SALE, THE SHAPING OF CONTAINMENT: HARRY S. TRUMAN, THE NATIONAL SECURITY COUNCIL, AND THE COLD WAR 9 (1998).
- 73 NSC-68, United States Objectives and Programs for National Security, A Report to the President pursuant to the President's directive of January 31, 1950 (Truman, signed Sept. 30, 1950; first issued Apr. 7, 1950), *available at* http://www.trumanlibrary.org/whistlestop/study_collections/korea/large/week2/nsc68_4.htm.
- 74 KISSINGER, *supra* note 54, at 462.
- 75 Kenneth Weisbrode, *A tale of three Cold Warriors*, NATO REVIEW (Spring 2006), <http://www.nato.int/docu/review/2006/issue1/english/special.html>.
- 76 Paul Y. Hammond, *NSC-68: Prologue to Rearmament*, in WARNER R. SCHILLING, ET AL., STRATEGY, POLITICS, AND DEFENSE BUDGETS 267-378 (1962), *available at* <http://www.mtholyoke.edu/acad/intrel/hammond.htm>.
- 77 NSC-68, Recommendations, *supra* note 73, at 9 (emphasis added), *available at* http://www.trumanlibrary.org/whistlestop/study_collections/korea/large/week2/nsc68_107.htm.
- 78 KISSINGER, *supra* note 54, at 474.
- 79 President Harry S. Truman, Farewell Address (Jan. 15, 1953), *available at* <http://trumanlibrary.org/calendar/viewpapers.php?pid=2059>.
- 80 Hammond, *supra* note 76.
- 81 Letter from President Harry S. Truman to Stuart Symington (July 19, 1950), *available at* http://www.trumanlibrary.org/whistlestop/study_collections/korea/large/kwarj19thru21.htm.
- 82 Paul G. Pierpaoli, Jr., *Truman's Other War: The Battle for the American Homefront, 1950-1953*, OAH MAG. OF HIST., Vol. 14, No. 3 (Spring

- 2000), *available at* <http://www.oah.org/pubs/magazine/korea/pierpaoli.html>.
- 83 Diary entry of Harry S. Truman, Truman Presidential Library (Dec. 9, 1950), *available at* http://www.trumanlibrary.org/flip_books/index.php?tldate=1950-12-09&groupid=3725&titleid=&pagenumber=1&collectionid=ihow.
- 84 KISSINGER, *supra* note 54, at 487.
- 85 Reorganization Plan No. 3 of 1953, 67 Stat. 634 (eff. June 12, 1953).
- 86 Exec. Order No. 10193, 15 F.R. 9031, Providing for the Conduct of the Mobilization Effort of the Government (Truman, Dec. 16, 1950).
- 87 OFFICE OF THE HISTORIAN, DEPT. OF STATE, History of the National Security Council, 1947-1997 (Aug. 1997), *republished at* Whitehouse.gov, NSC History, <http://www.whitehouse.gov/nsc/history.html>.
- 88 Mutual Security Act of 1951, PUB. L. NO. 82-165, § 501(e)(1), 65 Stat. 373 (1951).
- 89 Harry S. Truman, Statement by the President Upon Signing the Mutual Security Act (Oct. 10, 1951) *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=13944>.
- 90 PRADOS, *supra* note 45, at 61.
- 91 CUTLER, *supra* note 10, at 295.
- 92 *Id.*
- 93 *Id.* at 296.
- 94 *Id.* at 296-98 (emphasis in original).
- 95 *Id.*
- 96 *Id.*
- 97 JACKSON SUBCOMMITTEE, *supra* note 27, at 33.
- 98 CUTLER, *supra* note 10, at 296.
- 99 Relyea, *supra* note 11, at 9.
- 100 *Id.*
- 101 JACKSON SUBCOMMITTEE, *supra* note 27, at 34. Under Eisenhower, policy papers also contained “a ‘financial appendix’ indicating the fiscal implications of proposed policy.” Relyea, *supra* note 11, at 9 (citing Robert Cutler, *The Development of the National Security Council*, FOREIGN AFFAIRS, Vol. 34 (Apr. 1956) at 449).
- 102 See Exec. Order No. 10483, 18 F.R. 5379, Establishing the Operations Coordinating Board (Eisenhower, Sept. 2, 1953) (later amended by E.O. 10598; superseded by E.O. 10700).
- 103 CUTLER, *supra* note 10, at 266.
- 104 *Id.*
- 105 *Id.*
- 106 *Id.* at 313.
- 107 Less than two years later, the Director of USIA was made a permanent member of the OCB by executive order. See Exec. Order No. 10598, 20 F.R. 1237, Amending Executive Order No. 10483, Establishing the

- Operations Coordinating Board (Eisenhower, Feb. 28, 1955) (amended E.O. 10483; superseded by E.O. 10700). Author's note: E.O. 10598 is not explicitly mentioned in E.O. 10700.
- 108 CUTLER, *supra* note 10, at 313 (emphasis in original).
- 109 Exec. Order No. 10700, 22 F.R. 1111, Further Providing for the Operations Coordinating Board (Eisenhower, Feb. 25, 1957) (amended E.O. 10610; superseded E.O. 10483; later amended by E.O. 10773 and E.O. 10838; revoked by E.O. 10920).
- 110 History of the National Security Council, *supra* note 87.
- 111 DAVID M. ABSHIRE, *A CALL TO GREATNESS: CHALLENGING OUR NEXT PRESIDENT* 45 (2008).
- 112 CUTLER, *supra* note 10, at 299.
- 113 History of the National Security Council, *supra* note 87.
- 114 SHOEMAKER, *supra* note 10, at 12.
- 115 Exec. Order No. 10438, 18 F.R. 1491, Transferring Certain Functions of the National Security Resources Board and of the Chairman Thereof to the Director of Defense Mobilization (Eisenhower, Mar. 13, 1953) (amended E.O. 9781, E.O. 10312, E.O. 10346, E.O. 10421; revoked by E.O. 11051 (modifying references to the Office of Civil and Defense Mobilization in various executive orders to the Office of Emergency Planning)).
- 116 Reorganization Plan No. 3 of 1953, 67 Stat. 634 (eff. June 12, 1953).
- 117 Reorganization Plan No. 6 of 1953, 67 Stat. 638 (eff. June 30, 1953); *see also* National Security Act of 1947, PUB. L. NO. 80-253, § 101(a), 61 Stat. 496 (1947).
- 118 Reorganization Plan No. 7 of 1953, 67 Stat. 639 (eff. Aug. 1, 1953).
- 119 *See* 50 U.S.C. § 402(a).
- 120 CUTLER, *supra* note 10, at 308.
- 121 *Id.*
- 122 *Id.* (emphasis in original).
- 123 *Id.* at 309.
- 124 Project Solarium, EISENHOWER MEMORIAL COMMS'N, <http://www.eisenhowermemorial.org/stories/Project-Solarium.htm>.
- 125 NSC-162/2, Basic National Security Policy, A Report to the National Security Council (Oct. 30, 1953) (emphasis added).
- 126 *The Logical Man*, TIME (Jan. 23, 1956), *available at* <http://www.time.com/time/magazine/article/0,9171,861882-2,00.html>.
- 127 According to one biographer, the plan was hatched by the Dulles brothers, Beetle Smith, and Charlie Wilson, and involved "out-and-out bribes for Iranian Army Officers. Code name for the plan was Ajax. Before going into the operation, Ajax had to have the approval of the President. Eisenhower participated in none of the meetings that set up Ajax, he received only oral reports on the plan, and he did not discuss it with his Cabinet or the NSC. Establishing a pattern he

- would hold to throughout his Presidency, he kept his distance and left no documents behind that could implicate the President in any projected coup.” STEPHEN E. AMBROSE, *EISENHOWER: SOLDIER AND PRESIDENT* 333 (1990).
- 128 Various forerunners to the KGB had existed since the *chrezvychaika* (“Cheka”) was established after the Bolshevik Revolution in December 1917.
- 129 NSC-5412, National Security Council Directive on Covert Operations (Eisenhower, Mar. 15, 1954).
- 130 DEPT. OF STATE, Note on U.S. Covert Actions, at LI, <http://www.state.gov/documents/organization/70138.pdf>.
- 131 NSC-5412/1, National Security Council Directive on Covert Operations (Eisenhower, Mar. 12, 1955).
- 132 Note on U.S. Covert Actions, *supra* note 130.
- 133 NSC-5412/2, National Security Council Directive on Covert Operations (Eisenhower, Dec. 28, 1955).
- 134 Note on U.S. Covert Actions, *supra* note 130.
- 135 *Id.*
- 136 Exec. Order No. 10610, 20 F.R. 3179, Administration of Mutual Security and Related Functions (Eisenhower, May 9, 1955) (later amended by E.O. 10663, E.O. 10700, E.O. 10742; superseded by E.O. 10893; revoked by E.O. 10822 (in part)).
- 137 *See* Reorganization Plan No. 1 of 1958, 72 Stat. 1799 (eff. July 1, 1958).
- 138 President Kennedy transferred the civil defense functions of the office to the Defense Department when he issued E.O. 10952, 26 F.R. 6577, Assigning Civil Defense Responsibilities to the Secretary of Defense and Others (Kennedy, July 20, 1961). The office subsisted nonetheless and it was re-designated as the Office of Emergency Planning by an act to further amend Reorganization Plan Numbered 1 of 1958, 75 Stat. 630 (eff. Sept. 22, 1961). The Office of Emergency Planning was later renamed the Office of Emergency Preparedness. *See* Supplemental Appropriation Act for Fiscal Year 1969, PUB. L. No. 90-608, § 402, 82 Stat. 1194 (1968); *see also* Reorganization Plan No. 1 of 1973, 87 Stat. 1089 (eff. July 1, 1973) (abolishing the Office of Emergency Preparedness and transferring its functions to the Department of the Treasury, the Department of Housing and Urban Development, and the General Services Administration.).
- 139 Department of Defense Reorganization Act of 1958, PUB. L. No. 85-599, 72 Stat. 514 (1958).
- 140 President Dwight D. Eisenhower Message to Congress (Apr. 3, 1958).
- 141 Henry M. Jackson, Forging a Strategy for Survival, Address before the National War College (Apr. 16, 1959), *reprinted in* FATEFUL DECISIONS, *supra* note 20, at 55.
- 142 History of the National Security Council, *supra* note 87.

- 143 A Report by the Senate Subcommittee on National Policy Machinery, Organizing for National Security, (1961), *reprinted in* DECISIONS OF THE HIGHEST ORDER: PERSPECTIVES ON THE NATIONAL SECURITY COUNCIL 83 (eds. Karl F. Inderfurth & Loch K. Johnson 1988).
- 144 *Id.*
- 145 *Id.* at 61.
- 146 *See generally* Fred I. Greenstein & Richard H. Immerman, *Effective National Security Advising: Recovering the Eisenhower Legacy*, POL. SCI. QUARTERLY, Vol. 115, No. 3, at 335 (Fall 2000); *see also* ABSHIRE, *supra* note 111, at 45 (urging the next President to “take a hint from Ike”).
- 147 Greenstein & Immerman, *supra* note 146, at 336.
- 148 *Id.* at 340.
- 149 *Id.* at 340-41.
- 150 Exec. Order No. 10920, 26 F.R. 1463, Revoking Executive Order No. 10700 of February 25, 1957, as Amended (Kennedy, Feb. 18, 1961).
- 151 Letter from McGeorge Bundy to Senator Henry M. Jackson (Sept. 4, 1961), *reprinted in* DECISIONS OF THE HIGHEST ORDER, *supra* note 143, at 105.
- 152 *Id.* at 82.
- 153 CUTLER, *supra* note 10, at 301.
- 154 PRADOS, *supra* note 45, at 102 (emphasis in original).
- 155 *Id.* at 90.
- 156 Exec. Order No. 10938, 26 F.R. 3951, Establishing the President’s Foreign Intelligence Advisory Board (Kennedy, May 4, 1961).
- 157 DoD Directive 5105.21, Defense Intelligence Agency (Aug. 1, 1961). DIA was an attempt to unify the intelligence components of the military services, as recommended by a Joint Study Group established by Eisenhower. The Joint Study Group had submitted a report in December 1960 recommending that “there should be established within the Office of the Secretary of Defense a focal point for exerting broad management review authority over military intelligence programs, and providing over-all coordinating of all foreign intelligence activities conducted by various Defense components.” DIA ultimately became responsible for overall military intelligence and counterintelligence. It reported through the JCS to the Secretary of Defense. *See generally* The Joint Study Group Report on Foreign Intelligence Activities of the United States Government (Dec. 15, 1960), *in* Defense Intelligence Agency, *At the Creation: 1961-1965* (2002), *available at* <http://www.dia.mil/history/chronologies/atthecreation.pdf>.
- 158 Arms Control and Disarmament Act, PUB. L. No. 87-297, 75 Stat. 631 (1961). The ACDA was created as “a new agency of peace to deal with the problem of reduction and control of armaments looking toward ultimate world disarmament.” The ACDA was established to carry

- out the following functions: the conduct, support, and coordination of research for arms control and disarmament policy formulation; preparation for and management of United States participation in international negotiations in the arms control and disarmament field; dissemination and coordination of public information concerning arms control and disarmament; and preparation for, operation of, or as appropriate, direction of United States participation in such control systems as may become part of United States arms control and disarmament activities.
- 159 Foreign Assistance Act, PUB. L. No. 87-195, 75 Stat. 424, (1961) (codified as amended at 22 U.S.C. § 2151 *et seq.*). The Agency for International Development, the successor to the International Cooperation Administration, emerged from the landmark Foreign Assistance Act of 1961, which reorganized foreign assistance programs by separating military and non-military aid. The act required the President to designate an officer or head of an agency to administer various foreign economic assistance programs. On November 3, 1961, Kennedy issued E.O. 10973 to establish AID within the State Department, led by an Administrator. AID remained in the State Department until 1979, when President Carter folded it into the International Development Cooperation Agency. Reorganization Plan No. 2 of 1979, 44 F.R. 41165, 93 Stat. 1378 (1979); *see also* Exec. Order No. 12163, 44 F.R. 56673, Administration of foreign assistance and related functions (Carter, Sept. 29, 1979).
 - 160 *See* An act to further amend Reorganization Plan Numbered 1 of 1958, 75 Stat. 630 (eff. Sept. 22, 1961).
 - 161 Unlike Eisenhower, Kennedy did not include a separate ‘financial appendix’ in his NSAMs; instead, “[f]iscal considerations were integrated into the body of the document.” *See* Relyea, *supra* note 11, at 10.
 - 162 NSAM-196, Establishment of an Executive Committee of the National Security Council (Kennedy, Oct. 22, 1962).
 - 163 ROTHKOPF, *supra* note 10, at 92.
 - 164 Memorandum From the President’s Assistant for National Security Affairs-Designate (Kissinger) to President-Elect Nixon, Memorandum on a New NSC System (Dec. 27, 1968), at 3 [hereinafter KISSINGER MEMORANDUM], *reprinted in* DEPT. OF STATE, Organization and Management of U.S. Foreign Policy, 1969–1972, FOREIGN RELATIONS, 1969–1976, Vol. II, available at <http://www.state.gov/documents/organization/77855.pdf>.
 - 165 History of the National Security Council, *supra* note 87.
 - 166 KISSINGER MEMORANDUM, *supra* note 164, at 2.
 - 167 NSAM-327, Discontinuance of the Net Evaluation Subcommittee Of the National Security Council (Johnson, Mar. 18, 1965).

- 168 National Security Archive Electronic Briefing Book No. 31, *U.S. Planning for War in Europe, 1963-64* (William Burr, ed. 2000), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB31/index.html>.
- 169 Although Johnson largely divested the NSC of interagency coordination functions, he continued to utilize it for contingencies. During the Six Days' War of 1967, for example, Johnson created the NSC Special Committee, which largely mirrored ExComm established by Kennedy during the Cuban Missile Crisis.
- 170 NSAM-341, Interdepartmental Activities Overseas (Johnson, Mar. 2, 1966).
- 171 SHOEMAKER, *supra* note 10, at 15.
- 172 *Id.*
- 173 DEPT. OF STATE, Organization and Management of Foreign Policy; United Nations, FOREIGN RELATIONS, 1964-1968, Vol. XXXIII, available at <http://www.state.gov/r/pa/ho/frus/johnsonlb/xxxiii/32687.htm>.
- 174 FATEFUL DECISIONS, *supra* note 20, at 66.
- 175 *Id.* at 67.
- 176 CUTLER, *supra* note 10, at 318.
- 177 See Supplemental Appropriation Act for Fiscal Year 1969, PUB. L. NO. 90-608 § 402, 82 Stat. 1194 (1968).
- 178 FATEFUL DECISIONS, *supra* note 20, at 67.
- 179 Edward A. Kolodziej, *The National Security Council: Innovations and Implications*, PUB. ADMIN. REV., Vol. 29, No. 6 (Nov.-Dec. 1969), at 573.
- 180 THE MEMOIRS OF RICHARD M. NIXON, Vol. 1, at 369 (1978).
- 181 FATEFUL DECISIONS, *supra* note 20, at 67.
- 182 KISSINGER MEMORANDUM, *supra* note 164, at 4.
- 183 *Id.*
- 184 *Id.* at 5.
- 185 NSSM-3, for example, was issued a day after Nixon's inauguration and required a review of U.S. military posture and balance of power; it spawned several additional studies that came to reshape U.S. foreign policy for the Cold War. See e.g., NSSM-24, U.S. Military Posture Review (Nixon, Feb. 20, 1969); NSSM-65, Relationships Among Strategic and Theater Forces for NATO (Nixon, Jul. 8, 1969); NSSM-69, U.S. Nuclear Policy in Asia (Nixon, July 14, 1969). The NSSM-3 review was attributable, in part, to Kissinger's skepticism of the "massive retaliatory damage" theory that had guided U.S. foreign policy in the Cold War since NSC-162/2. ROTHKOPF, *supra* note 10, at 121. In the end, the NSSM-3 review concluded that the dynamics of the Cold War had changed and the doctrine of mutually assured destruction no longer provided a sufficient deterrent effect.
- 186 SHOEMAKER, *supra* note 10, at 17.
- 187 NSDM-2, Reorganization of the National Security Council System (Nixon, Jan. 20, 1969).

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- 188 SHOEMAKER, *supra* note 10, at 24.
- 189 These interdepartmental activities included operational issues for which the IGs could not reach agreement and which did not require presidential or NSC consideration.
- 190 The Interdepartmental Regional Groups were previously established by President Lyndon Johnson through NSAM-341, Direction, Coordination, and Supervision of Interdepartmental Activities Overseas (Johnson, Mar. 2, 1966); *see also* History of the National Security Council, *supra* note 87.
- 191 *See generally* Memorandum by the President's Assistant for National Security Affairs (Kissinger), Washington Special Actions Group (May 16, 1969), *reprinted in* DEPT. OF STATE, Organization and Management of U.S. Foreign Policy, 1969–1972, FOREIGN RELATIONS, 1969–1976, Vol. II, *available at* <http://www.state.gov/documents/organization/77855.pdf>.
- 192 Richard Nixon, U.S. Foreign Policy for the 1970's: A New Strategy for Peace, A Report to the Congress (Feb. 18, 1970), *reprinted in* Organization and Management of U.S. Foreign Policy, *supra* note 191, at 212.
- 193 ROTHKOPF, *supra* note 10, at 118.
- 194 NSDM-26, Defense Program Review Committee (Nixon, Oct. 11, 1969).
- 195 The DPRC, rather than the Review Group, considered studies relating to defense policy and programs prior to NSC consideration.
- 196 Memorandum From Donald Stukel of the National Security Council Staff to the Director of the National Security Council Planning Group (Kennedy), The NSC System (Dec. 26, 1972) [hereinafter STUKEL MEMORANDUM], *reprinted in* DEPT. OF STATE, Organization and Management of U.S. Foreign Policy, 1969–1972, FOREIGN RELATIONS, 1969–1976, Vol. II, at 358, *available at* <http://www.state.gov/documents/organization/77855.pdf>.
- 197 NSDM-40, Responsibility for Conduct, Supervision, and Coordination of Covert Action Operations (Nixon, Feb. 17, 1970).
- 198 Johnson had issued NSAM-303 in the intervening years, which renamed Eisenhower's 5412 committee the '303 Committee,' but Johnson's directive did not amend the substance of NSC 5412.
- 199 Note on U.S. Covert Actions, *supra* note 130, at LIV.
- 200 STUKEL MEMORANDUM, *supra* note 196, at 360.
- 201 *Id.* at 359
- 202 *Id.*
- 203 Douglas F. Garthoff, Directors of Central Intelligence as Leaders of the US Intelligence Community: 1946 – 2005 (2005), at 70.
- 204 Membership of the Intelligence Committee was later set forth in NSDM-253, Membership of the National Security Council Intelligence Committee (Nixon, Apr. 24, 1974).

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- 205 STUKEL MEMORANDUM, *supra* note 196, at 359.
- 206 Amy Belasco, et al., Congressional Restrictions on U.S. Military Operations in Vietnam, Cambodia, Laos, Somalia, and Kosovo: Funding and Non-Funding Approaches, CONG. RES. SERV. (Jan. 16, 2007) at 1-2.
- 207 *Id.*
- 208 Reorganization Plan No. 1 of 1973, 87 Stat. 1089 (eff. July 1, 1973).
- 209 *See e.g.*, Goldwater-Nichols Department of Defense Reorganization Act of 1986, PUB. L. NO. 99-433, § 203, 100 Stat. 1011 (1986); Anti-Drug Abuse Amendments Act of 1988, PUB. L. NO. 100-690, §§ 1003(a)(3), 1009, 102 Stat. 4182, 4188 (1988).
- 210 *See* PUB. L. NO. 93-148, 87 Stat. 555 (1973) (50 U.S.C. § 1541 *et seq.*).
- 211 President Richard Nixon, Veto of the War Powers Resolution (Oct. 24, 1973), *available at* <http://www.presidency.ucsb.edu/ws/print.php?pid=4021>.
- 212 Foreign Assistance Act of 1974, PUB. L. NO. 93-559, 88 Stat. 1795 (1974); *see also* Frederick M. Kaiser, *Congress and the Intelligence Community: Taking the Road Less Traveled*, in *THE POSTREFORM CONGRESS* 281 (Roger H. Davidson, ed. 1992).
- 213 The Hughes-Ryan amendment stated: “No funds...may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining *necessary* intelligence, unless and until the President finds that each such operation is *important* to the national security of the United States and reports, *in a timely fashion*, a description and scope of such operation to the appropriate committees of the Congress...” Foreign Assistance Act of 1974, PUB. L. NO. 93-559, 88 Stat. 1795 (1974) (emphasis added). The meaning of “timely” was left open to interpretation. It also expanded the number of committees eligible to receive briefings on intelligence matters.
- 214 Seymour Hersh, *Huge C.I.A. Operation Reported in U.S. Against Antirwar Forces, Other Dissidents in Nixon Years*, N.Y. TIMES, Dec. 22, 1974, at 1. Weeks earlier, the Chairman of the Government Operations Subcommittee on Intergovernmental Relations, Edmund Muskie, held hearings to consider options for increased intelligence oversight. One such proposal, would have established a committee to conduct a comprehensive investigation into intelligence activities and ways to improve Senate oversight. *See* S. Res. 419, 93d Cong. (1974).
- 215 *See* Robert David Johnson, *The Unintended Consequences of Congressional Reform: The Clark and Tunney Amendments and U.S. Policy toward Angola*, in *DIPLOMATIC HISTORY*, Vol. 27, Issue 2 (Spring 2003), at 215, *available at* http://academic.brooklyn.cuny.edu/history/johnson/diph_3.pdf (“On the one hand, the Clark amendment relied on a traditional gambit...to unequivocally establish the principle that Congress

- possessed the right to oversee covert intelligence operations. The Tunney amendment, on the other hand, used the appropriations power...to suggest that defense spending matters were fair game for congressional attempts to legislate foreign policy. Both tactics were so controversial that, before the debate over Angolan policy, no clear-cut congressional implementation of either approach had occurred during the Cold War.”).
- 216 *Id.*
- 217 NSDM-265, The National Security Council System (Ford, Aug. 9, 1974).
- 218 The veto message was dated December 31, 1975, but it was not released until January 1, 1976.
- 219 Gerald R. Ford, Veto of a Bill To Amend the National Security Act of 1947 (Dec. 31, 1975), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=5490>.
- 220 *Id.*
- 221 Exec. Order No. 11905, 41 F.R. 7703, United States Foreign Intelligence Activities (Ford, Feb. 18, 1976) (later amended by E.O. 11985, E.O. 11994, E.O. 12038; superseded by E.O. 12036).
- 222 The Commission on the Organization of the Government for the Conduct of Foreign Policy was created by the Foreign Relations Authorization Act for Fiscal Year 1973, PUB. L. NO. 92-352, 86 Stat. 489 (1972).
- 223 The order forbade, for example, the examination of federal tax returns, the opening of postal mail, and the infiltration of domestic organizations consisting of U.S. persons, unless in accordance with applicable laws.
- 224 *See generally* Stephen Daggett, The U.S. Intelligence Budget: A Basic Overview, CONG. RES. SERV. (Sept. 24, 2004) (describing the National Foreign Intelligence Program).
- 225 SHOEMAKER, *supra* note 10, at 18.
- 226 Interview with Zbigniew Brzezinski, Carter Presidency Project, UNIV. OF VIRGINIA, Transcript at 61, (Feb. 18, 1982), *transcript available at* http://webstorage3.mcpa.virginia.edu/poh/transcripts/ohp_1982_0218_brzezinski.pdf.
- 227 ZBIGNIEW BRZEZINSKI, POWER AND PRINCIPLE: MEMOIRS OF THE NATIONAL SECURITY ADVISOR, 1977-1981 59 (1983).
- 228 PD-2, The National Security Council System (Carter, Jan. 20, 1977).
- 229 According to Brzezinski, when Carter took office, he “reduced the full [NSC] staff from about 130 to 99, and the policy-making staff . . . [to] 30 to 35, or less.” Interview with Zbigniew Brzezinski, *supra* note 226, at 62.
- 230 *Id.* at 63.
- 231 SHOEMAKER, *supra* note 10, at 55.

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- 232 FATEFUL DECISIONS, *supra* note 20, at 72.
- 233 *Id.* at 73.
- 234 Interview with Zbigniew Brzezinski, *supra* note 226, at 86.
- 235 Exec. Order No. 11985, 42 F.R. 25487, United States Foreign Intelligence Activities (Carter, May 18, 1977) (amended E.O. 11905; superseded by E.O. 12036).
- 236 Exec. Order No. 12036, 43 F.R. 3674, United States Intelligence Activities (Carter, Jan. 24, 1978) (superseded E.O. 11905, E.O. 11985, E.O. 11994; later amended by E.O. 12139; revoked by E.O. 12333).
- 237 Halperin v. CIA, 629 F.2d 144, 158-59 (D.C. Cir. 1980).
- 238 Exec. Order No. 11984, 42 F.R. 23129, Abolition of President's Foreign Intelligence Advisory Board (Carter, May 4, 1977).
- 239 Foreign Intelligence Surveillance Act, PUB. L. NO. 95-511, 92 Stat. 1783 (1978) (codified as amended at 50 U.S.C. § 1801 et seq.).
- 240 *See* Intelligence Oversight Act of 1980, PUB. L. NO. 96-450, 94 Stat. 1975 (1980). The act mandated intelligence agencies to keep Congress fully and currently informed of all intelligence activities, including any significant anticipated intelligence activity. If prior notice of covert action was not possible, the act required notice in a "timely fashion." It also required agencies to report violations of law and significant intelligence failures to the committees. The act did, however, accommodate the executive branch by limiting the number of congressional committees entitled to notification of covert action to the House and Senate intelligence committees. In extraordinary circumstances, the President could notify only the chairmen of the House and Senate intelligence committees, as well as the majority and minority leaders of the House and Senate, commonly referred to as the "gang of eight."
- 241 History of the National Security Council, *supra* note 87. "*Troika*" is a Russian word meaning "threesome," and a reference to Ronald Reagan's three closest White House advisers consisting of the Counselor to the President, the President's Chief of Staff, and Deputy Chief of Staff.
- 242 *Id.*
- 243 NSDD-1, National Security Council Directives (Reagan, Feb. 25, 1981).
- 244 History of the National Security Council, *supra* note 87.
- 245 PAUL KENGOR & PATRICIA CLARK DOERNER, THE JUDGE: WILLIAM P. CLARK, RONALD REAGAN'S TOP HAND 142 (2007).
- 246 NSDD-5, Conventional Arms Transfer Policy (Reagan, July 8, 1981).
- 247 NSDD-6, United States Non-Proliferation and Peaceful Nuclear Cooperation Policy (Reagan, July 16, 1981).
- 248 NSDD-8, Space Transportation System (Reagan, Nov. 13, 1981).

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- 249 NSDD-12, Strategic Forces Modernization Program (Reagan, Oct. 1, 1981).
- 250 *See* NSDD-2, National Security Council Structure (Reagan, Jan. 12, 1982).
- 251 History of the National Security Council, *supra* note 87.
- 252 FATEFUL DECISIONS, *supra* note 20, at 76.
- 253 *See* NSDD-276, National Security Council Interagency Process (Reagan, June 9, 1987).
- 254 FATEFUL DECISIONS, *supra* note 20, at 75.
- 255 NSDD-19, Protection of Classified National Security Council and Intelligence Information (Reagan, Jan. 12, 1982).
- 256 Exec. Order No. 12333, 46 F.R. 59941, United States Intelligence Activities (Dec. 8, 1981) (amended E.O. 12139; later amended by E.O. 13284, E.O. 13355; revoked E.O. 12036).
- 257 NSDD-3, Crisis Management (Reagan, Dec. 14, 1981).
- 258 Years later, Haig attempted to clarify that he was merely talking about who was running the government, not who was in line should the president die. *See* Alexander Haig Interview with 60 Minutes (Apr. 23, 2001).
- 259 National security advisors under Reagan included the following: Richard Allen (1981–1982), William Clark (1982–1983), Robert McFarlane (1983–1985), John Poindexter (1985–1986), Frank Carlucci (1986–1987), and Colin Powell (1987–1989).
- 260 KENGOR, *supra* note 245, at 15.
- 261 *Id.* at 165.
- 262 NSDD-4, Disposition of Presidential Directives (Reagan, Jan. 12, 1982).
- 263 In the case of the SIG-FP, the director of the arms control and disarmament agency would be included during consideration of arms control matters. Membership of the SIG-I was augmented by the head of an element of the intelligence community when the group considered “sensitive intelligence collection activities”; and, when it considered counterintelligence activities, the Director of the FBI and the Director of the National Security Agency would participate.
- 264 The National Foreign Intelligence Program generally funded “foreign intelligence and counterintelligence activities of the government that respond[ed] to ‘national’ needs, as opposed to needs of a single department or agency.” Daggett, *supra* note 224, at 1-2. Today, the intelligence budget is divided into two parts, the National Intelligence Program and the Military Intelligence Program. *See generally* Richard A. Best Jr. & Elizabeth B. Bazan, Intelligence Spending: Public Disclosure Issues, CONG. RES. SERV. (Feb. 15, 2007).
- 265 Each IG was composed of an appropriate representative of the Secretary of State (Chairmen), the DCI, the National Security Advisor,

the Chairman of the JCS, and a representative of the Secretary of Defense.

- 266 Each IG was comprised of the appropriate Under or Assistant Secretary of Defense (Chairmen), a representative of the Secretary of State, the DCI, the National Security Advisor, and the Chairman of the JCS.
- 267 *See* NSDD-276, National Security Council Interagency Process (Reagan, June 9, 1987); *see e.g.*, NSDD-2, National Security Council Structure (Reagan, Jan. 12, 1982) (SIGs for foreign policy, defense policy, and intelligence, as well as various regional and functional IGs); NSDD-30, Managing Terrorism Incidents (Reagan, Apr. 10, 1982) (Terrorist Incident Working Group, IG on Terrorism, and White House Operations Group); NSDD-33, U.S. Approach to START Negotiations (Reagan, May 14, 1982) (IG on START); NSDD-37, Cuba and Central America (Reagan, May 28, 1982) (Legislative liaison IG for Central America appropriations and Central America Core Group); NSDD-42, National Space Policy (Reagan, July 4, 1982) (SIG for Space); NSDD-48, International Economic Policy (Reagan, July 23, 1982) (SIG for international economic policy); NSDD-58, United States Oceans Policy and Law of the Sea (Reagan, Sept. 30, 1982) (SIG for Oceans Policy and Law of the Sea); NSDD-65, Establishment of National Security Council Arms Control Verification Committee (Reagan, Nov. 10, 1982) (Arms Control Verification Committee); NSDD-70, Nuclear Capable Missile Technology Transfer Policy (Reagan, Nov. 30, 1982) (IG to monitor transfer of strategic military missile technology); NSDD-77, Management of Public Diplomacy Relative to National Security (Reagan, Jan. 14, 1983) (Special Planning Group for public diplomacy and four interagency standing committees); NSDD-82, U.S. Policy Initiatives to Improve Prospects for Victory in El Salvador (Reagan, Feb. 24, 1983) (Central America Working Group); NSDD-84, Safeguarding National Security Information (Reagan, Mar. 11, 1983) (IG to study federal personnel security program); NSDD-85, Eliminating the Threat from Ballistic Missiles (Reagan, Mar. 25, 1983) (Defense Technologies Executive Committee); NSDD-90, U.S. Arctic Policy (Reagan, Apr. 14, 1983) (referring to the Interagency Arctic Policy Group); NSDD-93, Refugee Policy and Processing Refugees from Indochina (Reagan, May 13, 1983) (SIG for Refugee Policy); NSDD-94, Commercialization of Expendable Launch Vehicles (Reagan, May 16, 1983) (Interim SIG (Space) Working Group on Commercial Launch Operations); NSDD-97, National Security Telecommunications Policy (Reagan, June 13, 1983) (Steering Group for Telecommunications); NSDD-107, Foreign Aircraft Overflight Security Program (Reagan, Oct. 5, 1983) (Overflight Security Committee); NSDD-112, Processing and Disposition of Documents Acquired by U.S. Forces in Grenada

- (Reagan, Nov. 15, 1983) (Interagency committee for public disclosure and information); NSDD-116, Strategic Defense Initiative: Congressional and Allied Consultation (Reagan, Dec. 2, 1983) (White House Coordination Group for SDI); NSDD-130, U.N. International Information Policy (Reagan, Mar. 6, 1984) (Foreign Opinion Research Advisory Group); NSDD-136, U.S. Initiative to Ban Chemical Weapons (Reagan, Apr. 2, 1984) (referring to IG for Chemical and Biological Weapons Arms Control); NSDD-143, U.S. Third World Hunger Relief: Emergency Assistance (Reagan, July 9, 1984) (Emergency Food Needs Research Working Group); NSDD-145, National Policy on Telecommunications and Automated Information Systems Security (Reagan, Sept. 17, 1984) (Systems Security Steering Group, and National Telecommunications and Information Systems Security Committee); NSDD-159, Covert Action Policy Approval and Coordination Procedures (Reagan, Jan. 18, 1985) (Planning and Coordination Group (covert action)); NSDD-175, Establishment of a Blue Ribbon Commission on Defense Management (Reagan, Jun 17, 1985) (Commission on Defense Management); NSDD-179, Task Force on Combatting Terrorism (Reagan, July 17, 1985) (Task Force on Combatting Terrorism); NSDD-188, Government Coordination for National Security Emergency Preparedness (Reagan, Sept. 16, 1985) (SIG for National Security Emergency Preparedness); NSDD-196, Counterintelligence/Countermeasure Implementation Task Force (Reagan, Nov. 1, 1985) (Counterintelligence/Countermeasure Implementation Task Force); NSDD-248, Central America (Reagan, Oct. 22, 1986) (SIG and IG for Nicaragua); NSDD-311, U.S.-Soviet Defense and Military Relations (Reagan, July 28, 1988) (SIG and IG for US-Soviet Defense and Military Relations).
- 268 NSDD-2, National Security Council Structure (Reagan, Jan. 12, 1982).
- 269 *See* NSDD-266, Implementation of the Recommendations of the President's Special Review Board (Reagan, Mar. 31, 1987).
- 270 NSDD-1/82, U.S. National Security Strategy (Reagan, Feb. 5, 1982).
- 271 RICHARD REEVES, *PRESIDENT REAGAN: THE TRIUMPH OF IMAGINATION* 104 (2005).
- 272 *See* NSDD-32, U.S. National Security Strategy (Reagan, May 20, 1982).
- 273 NSDD-48 (Classified), International Economic Policy (Reagan, July 23, 1982).
- 274 NSDD-66, East-West Economic Relations and Poland-Related Sanctions (Reagan, Nov. 29, 1982).
- 275 THOMAS REED, *AT THE ABYSS: AN INSIDER'S HISTORY OF THE COLD WAR* 285 (2004); *but see* Anatoly Medetsky, *KGB Veteran Denies CIA Caused '82 Blast*, *MOSCOW TIMES*, at 4 (Mar. 18, 2004).
- 276 REED, *supra* note 275, at 285.
- 277 NSDD-75, U.S. Relations with the USSR (Reagan, Jan. 17, 1983).

- 278 *See* NSDD-12, Strategic Forces Modernization Program (Reagan, Oct. 1, 1981).
- 279 Exec. Order No. 12433, 48 F.R. 33227, National Bipartisan Commission on Central America (Reagan, July 19, 1983; amended by E.O. 12449; revoked by E.O. 12534).
- 280 *Id.*
- 281 Report of the National Bipartisan Commission on Central America 106-07 (Jan. 1984) [hereinafter "Kissinger Commission"].
- 282 MELISSA BOYLE MAHLE, DENIAL AND DECEPTION: AN INSIDER'S VIEW OF THE CIA FROM IRAN-CONTRA TO 9/11 (2004), at 19.
- 283 Kissinger Commission, *supra* note 281, at 127.
- 284 *See* Continuing Appropriations Resolution for 1983, PUB. L. NO. 97-377, 96 Stat. 1830 (1982). The Boland amendment would be passed in various forms in subsequent years. *See, e.g.*, PUB. L. NO. 98-473, 98 Stat. 1904 (1984); *see also* 133 Cong. Rec. 15664-15701 (June 15, 1987) (detailing various forms of the Boland Amendment that were enacted).
- 285 *See* S. REP. NO. 103-88, at 22 (1994).
- 286 Making continuing appropriations for the fiscal year 1985, and for other purposes, PUB. L. NO. 98-473, 98 Stat. 1935-1937 (1984).
- 287 *See* MAHLE, *supra* note 282, at 23.
- 288 *See* TOM DIAZ & BARBARA NEWMAN, *Introduction to LIGHTNING OUT OF LEBANON: HEZBOLLAH TERRORISTS ON AMERICAN SOIL XV* (2005).
- 289 *See* President Ronald Reagan's Address to the Nation on the Iran Arms and Contra Aid Controversy (Mar. 4, 1987), *available at* <http://www.reagan.utexas.edu/archives/speeches/1987/030487h.htm>.
- 290 *See* Exec. Order No. 12575, 51 F.R. 43718, President's Special Review Board (Dec. 1, 1986) (revoked by Exec. Order No. 12610).
- 291 NSDD-266, Implementation of the Recommendations of the President's Special Review Board (Reagan, Mar. 31, 1987).
- 292 The responsibility for this review was given to the National Security Advisor and the Planning and Coordination Group (PCG), a group previously established by NSDD-159 to review covert actions. Under NSDD-159, Reagan tasked the NSPG with the responsibility for making recommendations to the President for each covert action, such as those activities in Central America. The PCG was responsible for reviewing "covert action proposals and implementation for the purpose of ensuring their effectiveness and their integration with other aspects of US national security policy." *See* NSDD-159, Covert Action Policy Approval and Coordination Procedures (Reagan, Jan. 18, 1985); *see also* NSDD-286, Approval and Review of Special Activities (Reagan, Oct. 15, 1987).
- 293 ROTHKOPF, *supra* note 10, at 253.

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- 294 *See* NSDD-276, National Security Council Interagency Process (Reagan, June 9, 1987) (implementing the national security advisor's review).
- 295 *Id.*
- 296 The Planning and Coordination Group, as provided in a separate directive revising NSDD-159, continued as the senior sub-Cabinet level interagency group responsible for covert action.
- 297 Goldwater-Nichols Department of Defense Reorganization Act of 1986, PUB. L. NO. 99-433, § 203, 100 Stat. 1011 (1986).
- 298 Anti-Drug Abuse Amendments Act of 1988, PUB. L. NO. 100-690, §§ 1003(a)(3), 1009, 102 Stat. 4182, 4188 (1988). The bill included a five-year sunset provision, which was later extended until 1997 by the Violent Crime Control and Law Enforcement Act of 1994. In 1998, the Office of National Drug Control Policy Reauthorization Act, as part of an omnibus bill, permanently authorized the Director of National Drug Control Policy to attend and participate in NSC meetings, subject to the direction of the President.
- 299 National Defense Authorization Act for Fiscal Year 1987, PUB. L. NO. 99-661, 100 Stat. 3816 (1986).
- 300 NSDD-277, National Policy and Strategy for Low Intensity Conflict (Reagan, June 15, 1987).
- 301 *See e.g.*, Intelligence Renewal and Reform Act of 1996, PUB. L. NO. 104-293, §§ 802, 804, 110 Stat. 3474, 3476 (1996) (codifying the Committee on Foreign Intelligence and the Committee on Transnational Threats).
- 302 Michael R. Gordon, *Man in the News: Brent Scowcroft; Sentinel of Security*, N.Y. TIMES, Nov. 24, 1988.
- 303 Robert Cutler had served twice, but both times under Eisenhower.
- 304 NSD-1, Organization of the National Security Council System (George H. W. Bush, Jan. 30, 1989).
- 305 *Id.*
- 306 ROTHKOPF, *supra* note 10, at 267.
- 307 FATEFUL DECISIONS, *supra* note 20, at 99.
- 308 *Id.*
- 309 NSD-1A, Supplement to National Security Directive 1 (Crisis Management) (George H. W. Bush, Oct. 25, 1989).
- 310 NSR-12, Review of National Defense Strategy (George H. W. Bush, Mar. 3, 1989).
- 311 NSD-23, United States Relations with the Soviet Union (Sept. 22, 1989).
- 312 *See* Memorandum of Disapproval issued by President George H. W. Bush (Nov. 30, 1990).
- 313 Fiscal Year 1991 Intelligence Authorization Act, PUB. L. NO. 102-88, 105 Stat. 429 (1991) (codified as amended at 50 U.S.C. §§ 413-413b).

- 314 James S. Van Wagenen, *A Review of Congressional Oversight: Critics and Defenders*, Studies in Intelligence No. 1 (1997).
- 315 Intelligence Organization Act of 1992, PUB. L. NO. 102-496, § 703, 106 Stat. 3189 (1992).
- 316 Exec. Order No. 12829, 58 F.R. 3479, National Industrial Security Program (George H. W. Bush, Jan. 6, 1993) (amended E.O. 10865; later amended by E.O. 12885). The Director of the Information Security Oversight Office was established by E.O. 12356, 47 F.R. 14874, National Security Information (Reagan, Apr. 2, 1982). Although the director of the Information Security Oversight Office was responsible for implementing and monitoring the NISP, the NSC was required to approve any implementing directives proposed by the director.
- 317 Exec. Order No. 12835, 58 F.R. 6189, Establishment of the National Economic Council (Clinton, Jan. 25, 1993).
- 318 History of the National Security Council, *supra* note 87 (“The NEC was to deal with foreign and domestic economic issues in much the same way as the NSC coordinated diplomatic and security issues, and the Assistant to the President for Economic Policy was to be included in meetings involving international economic issues.”).
- 319 PDD-1, Establishment of Presidential Review and Decision Series (Clinton, Jan. 20, 1993).
- 320 PDD-2, Organization of the National Security Council (Clinton, Jan. 20, 1993).
- 321 Oral History Roundtables: The Clinton Administration National Security Council, Transcript at 37, The National Security Council Project, CENTER FOR INT’L AND SECURITY STUDIES & THE BROOKINGS INST. (Sept. 27, 2000), *available at* <http://www.brookings.edu/fp/research/projects/nsc/transcripts/20000927.pdf>.
- 322 *See* Remarks by Samuel R. Berger, Asst. to the President for National Security Affairs, 50th Anniv. Symposium (Oct. 31, 1997), *available at* <http://clinton2.nara.gov/WH/EOP/NSC/html/srb-50th.html>.
- 323 The Clinton Administration National Security Council, *supra* note 321, at 13.
- 324 PDD-56, Managing Complex Contingency Operations (Clinton, May 1997).
- 325 *Id.*
- 326 *See* Fiscal Year 1993 Intelligence Authorization Act, PUB. L. NO. 102-496, 106 Stat. 3180 (1992).
- 327 GEORGE TENET, AT THE CENTER OF THE STORM 14 (2007).
- 328 *See* Mike Belt, *Former CIA officer sees better tomorrow*, LJWORLD.COM, Sept. 21, 2005.
- 329 Intelligence Renewal and Reform Act of 1996, PUB. L. NO. 104-293, §§ 802, 804, 110 Stat. 3474, 3476 (1996).

- 330 *But see* NSPD-1, Organization of the National Security Council System (George W. Bush, Feb. 13, 2001) (stating that committees established under NSPD-1 were to assume the roles of the committees established by congress under section 101 of the National Security Act).
- 331 The terms, ‘transnational threat,’ were defined as any individual or group engaging in transnational activity that threatens U.S. national security.
- 332 Office of National Drug Control Policy Reauthorization Act of 1998, PUB. L. NO. 105-277, Div C, § 713(b), 112 Stat. 2681-693 (1998) (as part of an omnibus appropriations bill).
- 333 International Religious Freedom Act of 1998, PUB. L. NO. 105-292, § 301, 112 Stat. 2800 (1998).
- 334 On April 18, 1983, Hezbollah drove a 400-pound truck-bomb into the U.S. Embassy in Beirut, Lebanon killing 63 people and injuring 120. Seventeen Americans died, including a U.S. Marine and six CIA officers. That same year, Hezbollah launched simultaneous suicide truck-bomb attacks on the American and French military compounds in Beirut. A smiling suicide bomber drove a 12,000-pound truck bomb into the U.S. Marine barracks killing 241 Americans. Another bomb destroyed the French compound killing 58 French troops. It remains the deadliest attack on Americans abroad since World War II. After these attacks, according to the 9/11 Commission, “President Reagan quickly withdrew U.S. forces from Lebanon – a reversal later routinely cited by jihadists as evidence of U.S. weakness,” similar to the later U.S. withdrawal from Somalia. NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT 96 (2004) [hereinafter 9/11 COMMISSION REPORT].
- 335 *See* discussion *infra* p.54.
- 336 On June 14, 1985, Hezbollah hijacked TWA Flight 847 bound from Athens to Rome: “Robby Stethem was singled out after the terrorists saw his U.S. Navy ID. His hands were tied behind his back with a bungee cord and he was savagely beaten. As sobbing passengers watched, he was punched to the cabin floor, and one of the terrorists, wearing boots, jumped up and down on his chest, breaking all of his ribs . . . Robby was dragged to the front of the plane and shot in the head by Mohammed Ali Hammadei. Still alive, he was thrown onto the tarmac where he lived for a few more minutes.” DIAZ, *supra* note 288, at XV.
- 337 The attackers were reportedly affiliated with Bin Laden’s Islamic Army Shura and some of the attackers received training at a Sudan al Qaeda camp.
- 338 9/11 COMMISSION REPORT, *supra* note 334, at 100.
- 339 *Id.* at 72.
- 340 *Id.* at 59.

- 341 *Id.* at 100.
- 342 PDD-39, Counterterrorism Policy (Clinton, Jun. 21, 1995); *see also* 9/11 COMMISSION REPORT, *supra* note 334, at 100.
- 343 Five Americans and two Indian officials were killed. The Saudi government arrested four perpetrators, who admitted being inspired by Osama Bin Laden.
- 344 Nineteen Americans were killed, and 372 were wounded. The operation was carried out by Saudi Hezbollah with likely Iranian involvement. 9/11 COMMISSION REPORT, *supra* note 334, at 60 (“[T]here are also signs that al Qaeda played some role, as yet unknown.”).
- 345 Declaration of jihad from the World Islamic Front (Feb. 23, 1998), in BRUCE LAWRENCE, MESSAGES TO THE WORLD: THE STATEMENTS OF OSAMA BIN LADEN 61 (Verso 2005).
- 346 *See* PDD-62, Fact Sheet, Protection Against Unconventional Threats to the Homeland and Americans Overseas (May 22, 1998), *available at* <http://www.fas.org/irp/offdocs/pdd-62.htm>.
- 347 9/11 COMMISSION REPORT, *supra* note 334, at 67.
- 348 Interview by al-Jazeera with Osama bin Laden (Dec. 1998), in BRUCE LAWRENCE, MESSAGES TO THE WORLD: THE STATEMENTS OF OSAMA BIN LADEN 72 (2005).
- 349 9/11 COMMISSION REPORT, *supra* note 334, at 190.
- 350 FATEFUL DECISIONS, *supra* note 20, at 104.
- 351 NSPD-1, Organization of the National Security Council System (George W. Bush, Feb. 13, 2001).
- 352 Alan G. Whittaker, et al., *The National Security Policy Process: The National Security Council and Interagency System* (Apr. 2007), at 14, *available at* http://ndu.edu/ica/nsc_report_2007_final-20_april.pdf.
- 353 9/11 COMMISSION REPORT, *supra* note 334, at 255.
- 354 *Id.*
- 355 *Id.* at 277.
- 356 Remarks by the President In Photo Opportunity with the National Security Team (Sept. 12, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/09/20010912-4.html>.
- 357 Exec. Order No. 13228, 66 F.R. 51812, Establishing the Office of Homeland Security and the Homeland Security Council (George W. Bush, Oct. 8, 2001) (amended E.O. 12656; later amended by E.O. 13284 and E.O. 13286).
- 358 *See generally* National Strategy for Homeland Security, Office of Homeland Security (July 2002), *available at* http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf.
- 359 Exec. Order No. 13231, 66 F.R. 53063, Critical Infrastructure Protection in the Information Age (George W. Bush, Oct. 16, 2001) (revoked E.O. 13130; later amended by E.O. 13284, E.O. 13286, E.O. 13316, E.O. 13385; continued by E.O. 13446).

- 360 HSPD-1, Organization and Operation of the Homeland Security Council (George W. Bush, Oct. 29, 2001). HSPDs are published online and in the Weekly Compilation of Presidential Documents.
- 361 *Compare* HSPD-13, Maritime Security Policy (George W. Bush, Dec. 21, 2004), *with* NSPD-41, Maritime Security Policy (George W. Bush, Dec. 21, 2004); HSPD-14, Domestic Nuclear Detection (George W. Bush, Apr. 15, 2005), *with* NSPD-43, Domestic Nuclear Detection (George W. Bush, Apr. 15, 2005); HSPD-20, National Continuity Policy (George W. Bush, Apr. 4, 2007), *with* NSPD-51, National Continuity Policy (George W. Bush, Apr. 4, 2007).
- 362 Whittaker, *supra* note 352, at 49.
- 363 *Id.* at 50.
- 364 *Id.*
- 365 Homeland Security Act of 2002, PUB. L. NO. 107-296, Tit. IX, 116 Stat. 2135 (2002).
- 366 Whittaker, *supra* note 352, at 50.
- 367 *Id.* at 49.
- 368 Eric R. Taylor, "The New Homeland Security Apparatus: Impeding the Fight Against Agile Terrorists," CATO INST., Foreign Policy Briefing No. 70 (June 26, 2002), at 3, *available at* <http://www.cato.org/pubs/fpbriefs/fpb70.pdf>.
- 369 *See* CATO INST., CATO HANDBOOK FOR CONGRESS: POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS 66 (2003), *available at* <http://www.cato.org/pubs/handbook/hb108/hb108-6.pdf>; 9/11 COMMISSION REPORT 406 (2004); *Failing Grades: America's Security Three Years After 9/11*, CTR. FOR AM. PROGRESS 53 (Sept. 2004), *available at* <http://www.americanprogress.org/kf/failinggrades.pdf>.
- 370 James Jay Carafano, "The Senate and House 9/11 Reform Bills Both Miss the Mark," Exec. Mem. # 946, HERITAGE FOUND. (Oct. 19, 2004).
- 371 *See generally* COL. THOMAS X. HAMMES, THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY (2006).
- 372 Exec. Order No. 13355, 69 F.R. 53593, Strengthened Management of the Intelligence Community (George W. Bush, Aug. 27, 2004) (amended E.O. 12333).
- 373 Intelligence Reform and Terrorism Prevention Act of 2004, PUB. L. NO. 108-458, § 102(b), 118 Stat. 3644 (2004) (codified at 50 U.S.C. § 403). The act preserved the existing 'chain of command' and left the intelligence communities in their existing departments.
- 374 National Defense Authorization Act for Fiscal Year 2006, PUB. L. NO. 109-163, Div. A, § 908(b), 119 Stat. 3404 (2006).
- 375 Implementing Recommendations of the 9/11 Commission Act of 2007, PUB. L. NO. 110-53, § 1841(g), 121 Stat. 500 (2007).
- 376 Energy Independence and Security Act of 2007, PUB. L. NO. 110-140, § 932, 121 Stat. 1740 (2007).

APPENDIX A:

MAJOR NSC AUTHORITIES

DATE	AUTHORITIES
TRUMAN	
07/26/1947	National Security Act of 1947
08/10/1949	National Security Act Amendments of 1949
08/20/1949	Reorganization Plan No. 4 of 1949
07/19/1950	Truman Directive, July 19, 1950
10/10/1951	Mutual Security Act of 1951
EISENHOWER	
03/13/1953	E.O 10438, Transferring Certain Functions of the National Security Resources Board and of the Chairman Thereof to the Director of Defense Mobilization
03/22/1953	Robert Cutler Report of March 1953
06/12/1953	Reorganization Plan No. 3 of 1953
06/30/1953	Reorganization Plan No. 6 of 1953
08/01/1953	Reorganization Plan No. 7 of 1953
09/02/1953	E.O. 10483, Establishing the Operations Coordinating Board
02/28/1955	E.O. 10598, Amending Executive Order No. 10483, Establishing the Operations Coordinating Board
05/09/1955	E.O. 10610, Administration of Mutual Security and Related Functions
02/25/1957	E.O. 10700 Further Providing for the Operations Coordinating Board
06/01/1958	Reorganization Plan No. 1 of 1958

KENNEDY

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| 02/18/1961 | E.O. 10920, Revoking Executive Order No. 10700 of February 25, 1957, as Amended |
| 10/22/1962 | NSAM-196, Establishment of an Executive Committee of the National Security Council |

JOHNSON

- | | |
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| 03/18/1965 | NSAM-327, Discontinuance of the Net Evaluation Subcommittee Of the National Security Council |
| 03/02/1966 | NSAM-341, The Direction, Coordination and Supervision of Interdepartmental Activities Overseas |

NIXON

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| 01/20/1969 | NSDM-2, Reorganization of the National Security Council System |
| 07/01/1973 | Reorganization Plan No. 1 1973 |

FORD

- | | |
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| 08/09/1974 | NSDM-265, The National Security Council System |
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CARTER

- | | |
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| 02/18/1976 | E.O. 11905, United States Foreign Intelligence Activities |
| 01/20/1977 | PD-2, The National Security Council System |
| 05/18/1977 | E.O. 11985, United States Foreign Intelligence Activities |
| 01/24/1978 | E.O. 12036, United States Intelligence Activities |

REAGAN

- | | |
|------------|---|
| 12/08/1981 | E.O. 12333, United States Intelligence Activities |
| 01/12/1982 | NSDD-2, National Security Council Structure |
| 04/02/1982 | E.O. 12356, National Security Information |
| 04/03/1984 | E.O. 12472, Assignment of national security and emergency preparedness telecommunications functions |

10/01/1986	Goldwater-Nichols Department of Defense Reorganization Act of 1986
11/14/1986	Department of Defense Authorization Act for FY 1987
12/01/1986	E.O. 12575, President's Special Review Board
03/31/1987	NSDD-266, Implementation of the Recommendations of the President's Special Review Board
06/09/1987	NSDD-276, National Security Council Interagency Process
11/18/1988	Anti-Drug Abuse Act of 1988
11/18/1988	E.O. 12656, Assignment of Emergency Preparedness Responsibilities

GEORGE H. W. BUSH

01/30/1989	NSD-1, Organization of the National Security Council System
10/25/1989	NSD-1A, Supplement to National Security Directive 1 (Crisis Management)
10/24/1992	Intelligence Organization Act of 1992

CLINTON

01/06/1993	E.O. 12829, National Industrial Security Program
01/20/1993	PDD-2, Organization of the National Security Council
10/11/1996	Intelligence Renewal and Reform Act of 1996
10/21/1998	Office of National Drug Control Policy Reauthorization Act of 1998
10/27/1998	International Religious Freedom Act of 1998

GEORGE W. BUSH

02/13/2001	NSPD-1, Organization of the National Security Council System
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10/08/2001	E.O. 13228, Establishing the Office of Homeland Security and the Homeland Security Council
10/16/2001	E.O. 13231, Critical Infrastructure Protection in the Information Age
10/29/2001	HSPD-1, Organization and Operation of the Homeland Security Council
03/19/2002	E.O. 13260, Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security
11/25/2002	Homeland Security Act of 2002
02/28/2003	E.O. 13286, Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security
08/27/2004	E.O. 13355, Strengthened Management of the Intelligence Community
12/17/2004	Intelligence Reform and Terrorism Prevention Act of 2004
01/06/2006	National Defense Authorization Act for FY 2006
08/03/2007	Implementing Recommendations of the 9/11 Commission Act of 2007

APPENDIX B:

CURRENT NSC STATUTE

50 U.S.C. § 402. National Security Council

(a) Establishment; presiding officer; functions; composition

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the “Council”).

The President of the United States shall preside over meetings of the Council: Provided, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

- (1) the President;
- (2) the Vice President;
- (3) the Secretary of State;
- (4) the Secretary of Defense;
- (5) the Secretary of Energy;
- (6) the Director for Mutual Security;
- (7) the Chairman of the National Security Resources Board; and
- (8) the Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) Additional functions

In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) Executive secretary; appointment; staff employees

The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) Recommendations and reports

The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) Participation of Chairman or Vice Chairman of Joint Chiefs of Staff

The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) Participation by Director of National Drug Control Policy

The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national

drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(g) Board for Low Intensity Conflict

The President shall establish within the National Security Council a board to be known as the “Board for Low Intensity Conflict”. The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h) Committee on Foreign Intelligence

(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the “Committee”).

(2) The Committee shall be composed of the following:

(A) The Director of National Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

(A) identifying the intelligence required to address the national security interests of the United States as specified by the President;

(B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and

(C) establishing policies relating to the conduct of intelligence activities of the United States, including appropriate roles and missions for the elements of the intelligence community and appropriate targets of intelligence collection activities.

(4) In carrying out its function, the Committee shall—

(A) conduct an annual review of the national security interests of the United States;

(B) identify on an annual basis, and at such other times as the Council may require, the intelligence required to meet such interests and establish an order of priority for the collection and analysis of such intelligence; and

(C) conduct an annual review of the elements of the intelligence community in order to determine the success of such elements in collecting, analyzing, and disseminating the intelligence identified under subparagraph (B).

(5) The Committee shall submit each year to the Council and to the Director of National Intelligence a comprehensive report on its activities during the preceding year, including its activities under paragraphs (3) and (4).

(i) Committee on Transnational Threats

(1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the “Committee”).

(2) The Committee shall include the following members:

(A) The Director of National Intelligence.

(B) The Secretary of State.

(C) The Secretary of Defense.

(D) The Attorney General.

(E) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.

(F) Such other members as the President may designate.

(3) The function of the Committee shall be to coordinate and direct the activities of the United States Government relating to combatting transnational threats.

(4) In carrying out its function, the Committee shall—

(A) identify transnational threats;

(B) develop strategies to enable the United States Government to respond to transnational threats identified under subparagraph (A);

(C) monitor implementation of such strategies;

(D) make recommendations as to appropriate responses to specific transnational threats;

(E) assist in the resolution of operational and policy differences among Federal departments and agencies in their responses to transnational threats;

(F) develop policies and procedures to ensure the effective sharing of information about transnational threats among Federal departments and agencies, including law enforcement agencies and the elements of the intelligence community; and

(G) develop guidelines to enhance and improve the coordination of activities of Federal law enforcement agencies and elements of the intelligence community outside the United States with respect to transnational threats.

(5) For purposes of this subsection, the term “transnational threat” means the following:

(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States.

(B) Any individual or group that engages in an activity referred to in subparagraph (A).

(j) Participation of Director of National Intelligence

The Director of National Intelligence (or, in the Director’s absence, the Principal Deputy Director of National Intelligence) may, in the performance of the Director’s duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(k) Special Adviser on International Religious Freedom

It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on International Religious Freedom, whose position should be comparable to that of a director within the Executive Office of the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of violations of religious freedom (as defined in section 6402 of Title 22), and making policy

recommendations. The Special Adviser should serve as liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations.

(I) Participation of coordinator for the prevention of weapons of mass destruction proliferation and terrorism

The United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (or, in the Coordinator's absence, the Deputy United States Coordinator) may, in the performance of the Coordinator's duty as principal advisor to the President on all matters relating to the prevention of weapons of mass destruction proliferation and terrorism, and, subject to the direction of the President, attend and participate in meetings of the National Security Council and the Homeland Security Council.

[Effective Dec. 20, 2007]

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